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JJ Limited, a company incorporated in Australia has entered into an agreement with KK Limited, an Indian company for rendering technical services to the latter for setting up a fertilizer plant in Orissa. As per the agreement, JJ Limited rendered both off-shore services and on-shore services to KK Limited at fee of Rs. 1 crore and Rs. 1.5 crore, respectively. JJ Limited is of the view that it is not liable to tax in India in respect of fee of Rs. 1 crore as it is for rendering services outside India. Discuss the correctness of the view of JJ Limited.

Solution

- The Explanation below section 9(2) clarifies that income by way of, inter alia, fees for technical services from services utilized in India would be deemed to accrue or arise in India under section 9(1)(vii) in case of a non-resident and be included in his total income, whether or not such services were rendered in India.
- In this case, the technical services rendered by the foreign company, JJ Ltd., were for setting up a fertilizer plant in Orissa. Therefore, the services were utilized in India. Consequently, as per section 9(2), the fee of Rs. 2.5 crore for technical services rendered by JJ Ltd. (both off - shore and on-shore services) to KK Ltd. is deemed to accrue or arise in India and includible in the total income of JJ Ltd.
- Therefore, the view of JJ Ltd. that it is not liable to tax in India in respect of fee of Rs. 1 crore (as it is for rendering services outside India) is not correct.

Readers Note:**54.38 | INCOME BY WAY OF INTEREST, ROYALTY OR FEES FOR TECHNICAL SERVICES****Section:-** Explanation to section 9

For the removal of doubts, it is hereby declared that for the purposes of this section, income by way of interest, royalty or fees for technical services of a non-resident shall always be deemed to accrue or arise in India, whether or not,—

- the non-resident has a residence or place of business or business connection in India; or
- the non-resident has rendered services in India.

Practical 41

"Income of a non-resident by way of fees for technical services, interest and royalty, from services utilized in India would not be deemed to accrue or arise to him in India unless the services are rendered in India" – Discuss the correctness or otherwise of the statement.

Or

Kawasaki Yokogawa Ltd (KYL), Japanese company has entered into an agreement with KATA Limited, Indian Company. As per terms and conditions (a) KYL provide know-how for manufacturing specified goods by post (b) If employees / workers of KATA Limited wants to be trained then such employees will visit Japan and will be trained there. KYL does not have permanent establishment in INDIA. KATA Limited is going to use this know-how in INDIA. And for this arrangement, KATA Limited has to pay 5 Lakh Japanese Yen to KYL. KYL denies tax liability in India on the ground that no services are rendered in India. Verify the correctness of the contention made by KYL.

Or

A non-resident German company, which did not have a permanent establishment in India, entered into an agreement for execution of electrical work in India. Separate payments were made towards drawings & designs, which were described as "Engineering Fee". The assessee contended that such business profits should be taxable in Germany as there is no business connection within the meaning of section 9(1)(i) of the Income-tax Act, 1961.