

India; Switzerland

Royalty Received by Swiss Company Is Taxable on Receipt Basis under India-Switzerland Treaty, Says Indian Court

8 November 2023

Report from our correspondent Urvi Asher, Chartered Accountant, India

The Bangalore Income Tax Appellate Tribunal (ITAT) has ruled that royalty received by a Swiss company from an Indian group company (AE) is taxable in India on a receipt basis under Article 12 of the [India-Switzerland Income Tax Treaty \(1994\)](#) (the Treaty).

(a) Facts. The taxpayer, a tax resident of Switzerland, earned royalty of INR 1,856 million from its AE for the tax year 2014-15. Out of this amount, the taxpayer offered to tax INR 1,840 million received during the year. INR 16 million, not received during the year, was not offered to tax in light of Article 12 of the Treaty. However, the tax authorities contested that INR 16 million is taxable in India in the relevant tax year itself as it was included in Form 3CEB (transfer pricing report of an accountant).

(b) Issue. The ITAT examined whether INR 16 million is taxable, although it is not received in the relevant tax year, as per article 12 of the Treaty.

(c) Decision. The ITAT ruled in favour of the taxpayer with observations set out below.

- Royalty of INR 1,840 million is offered to tax during the relevant tax year and withholding tax of 10% has been deducted on this income.
- In a similar case, M/s. ABB AG [(IT)A No.1444/Bang/2019], the court had held that fees for technical services were taxable in India on a receipt basis under the [Germany-India Income and Capital Tax Treaty \(1995\)](#). Since the facts of the taxpayer and this decision, as well as the provisions of both treaties, are similar, the ITAT relied on this decision and held that royalty of INR 16 million was taxable on a receipt basis under the Treaty.

The decision, pronounced by the ITAT on 3 August 2023, in the case of *ABB Switzerland Ltd. vs. DCIT, International Taxation* (ITA No. 273/Bang/2023) is available [here](#) and the corrigendum to the decision is available [here](#).

India; Switzerland - Royalty Received by Swiss Company Is Taxable on Receipt Basis under India-Switzerland Treaty, Says Indian Court (08 Nov. 2023), News IBFD.

Exported / Printed on 6 Mar. 2024 by hkermadi@deloitte.lu.

