

India; Singapore

Administrative, IT Services Provided by Singapore Resident to Indian Subsidiary Not Fees for Technical Services, Indian Court Says

31 October 2023

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The Delhi High Court (HC), in the case of *Commissioner of Income Tax v. M/S Bio-Rad Laboratories (Singapore) Pte Ltd* (ITA 564/2023), ruled that information technology (IT) and administrative services provided by a Singapore resident to its Indian subsidiary were not in the nature of fees for technical services (FTS) as the "make available" test under article 12(4)(b) of the [India-Singapore Income Tax Treaty \(1994\)](#) (the Treaty) was not satisfied and accordingly, not taxable in India.

(a) Facts. The taxpayer, a tax resident of Singapore, provided IT and other administrative services to its Indian subsidiary during the tax year 2019-2020. The taxpayer contended that the services were not taxable in India as they did not fulfil the criteria of "make available" under article 12(4)(b) of the Treaty. The tax authorities, however, contested that such services were in the nature of FTS and taxable in India at 10%.

(b) Issue. The HC examined whether income from IT and other administrative services provided by the taxpayer to its subsidiary could be construed as FTS under the Treaty.

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

- The lower court (Income Tax Appellate Tribunal (ITAT)) was right in concluding that the services offered by the taxpayer did not come within the purview of FTS, as reflected in article 12(4)(b) of the Treaty as they did not fulfil the "make available" principle.
- The HC further endorsed ITAT's observation that the agreement between the taxpayer and its subsidiary was effective since 1 January 2010. Assuming that technical knowledge, experience, skill, and other processes had been made available to the subsidiary, the agreement would not have been in existence for the relevant tax year. Thus, the services provided by the taxpayer did not "make available" technical knowledge, experience or skill.

The decision was pronounced by the HC on 3 October 2023.

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

