



Hon'ble ITAT Delhi Bench follows Steria's ruling to invoke the Most favoured nation's clause and held that IT & SAP Support services are not FTS, under India-Israel DTAA.

Netafim Ltd. Versus DCIT [TS-70-ITAT-2023(DEL)]

New Delhi, February 21, 2023

In the present case, the assessee was a foreign company registered in Israel. The assessee provided the IT & SAP-related services to its subsidiary Netafim Irrigation India Pvt. Ltd. (NIPL) situated in India.

The revenue treated the amounts received towards IT and SAP support services as FTS under Article 13 of India – Israel DTAA (Double taxation avoidance agreement)

The assessee claim that: -

- By providing IT and SAP support services the assessee is not making available any technical knowledge, know-how, skill etc.
- Further, as per the protocol to India – Israel Treaty, if India enters into a DTAA with any other country after 01.01.1995 and in the said treaty the FTS provisions are more beneficial for the assessee, the terms of that treaty will apply to India – Israel DTAA also.
- And, as per India – Portugal and India – Canada DTAA's the definition of FTS is beneficial for the assessee, as compared to India-Israel DTAA hence same should be applied to the case of the assessee.

The Hon'ble ITAT Delhi: -

Affirmed the Steria ruling in which it was held that once the DTAA itself has been notified and contains the protocol there is no need to notify protocol separately. The Tribunal held that the assessee is eligible to take benefit of the treaty protocol.

And IT & SAP support doesn't fall within the ambit of FTS as it does not satisfy the make available clause and thus, decides the issue in favour of the Assessee.

