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Royalty: No tax liability in the absence of "Economic Link" between non resident's PE and the payment of royalty

Case Involved: DDIT vs. SET Satellite (Singapore) (ITAT Mumbai)

Cases Referred: Stanley Keith Kinnett 278 ITR 155 & Elitos S.P.A 280 ITR 495

Section Involved: Section 9 (1) (vi), 195 & 201 of the IT Act; Article 12(7) of the India-Singapore DTAA

Facts :

The assessee, a Singapore company with a PE in India, obtained rights from the Global Cricket Council, Singapore, for telecast of cricket matches in India. The AO took the view that the payment for the said rights constituted "royalty" in the hands of GCC u/s 9(1)(vi) & Article 12(7) of the India-Singapore DTAA and that it had arisen in India on the ground that the payer had a PE in India and there was a direct nexus between collection of advertisement revenue in India and payment for the rights. The assessee was held liable u/s 201 for failure to deduct tax u/s 195.

On appeal, the CIT (A) disagreed with the AO.

On further appeal by the department, the Tribunal UPHELD CIT (A), dismissing the appeal.

Finding were as Follows:

- Under the first limb of Article 12(7) of the DTAA, royalties can be said to have arisen in India only if the payer is a resident of India. Payer being non resident this condition not met.

- Under the second limb of Article 12(7), payments made by a non-resident are deemed to arise in India if the non-resident has a PE in India *with which the liability to pay the royalties is incurred and such royalties are borne by the PE*. This condition is also not met as even though the assessee has a PE in India the royalty the *Economic Link* is not established (Royalty is not "**incurred in connection with**" and "**borne by**" the such PE).

Transfer Pricing: Transactional Net Margin Method to be applied to transaction margins and not to enterprise level margins

Case: DCIT vs. M/s Starlite (ITAT Mumbai)

Section: Sec 92 (F) of The IT act & Rule 10B Of IT rules

Fact:

The assessee, engaged in the business of manufacture and export of diamonds and jewellery, claimed that having regard to the nature of the product, none of the transfer pricing methods were applicable for benchmarking the international transactions with associated enterprises. The TPO rejected the argument on the ground that the Transactional Net Margin Method (TNMM) was applicable and made an adjustment by comparing the enterprise level operating margins.

This was upheld in principle by the CIT(A).

On further appeal, the Tribunal HELD:

- (i) It is mandatory for an assessee to follow one of the methods prescribed in Rule 10B and demonstrate that the international transactions entered into by it with an associated enterprise are at arms' length. *The argument that no method is applicable is unsustainable.*
- (ii) However, the TPO is wrong in adopting the enterprise level margins as the TNMM. U/s 92F (ii) r.w.s. 10B(e), *TNMM requires comparison of net profit margins realized by an enterprise from an international transaction(s) and not comparison of operating margins of enterprises.*
- (iii) Further, the *adjustments arising due to computation of ALP should be restricted only to the international transactions and not to the entire turnover of the assessee.* No addition can be made to local transactions under Chapter X of the Act.

I-T staff to boycott search, seizure operations from July 20

Followed by the July 15th strike, The employees of the Income-Tax Department plan to boycott all search and seizure operations as well as survey operations from July 20 to secure their charter of demands.

Charter of Demand inter alia prominently protests:

- Against large-scale outsourcing of operations in the Central Processing centre at Bangalore.

According to them, almost 80 per cent of the work is outsourced to the private vendors. They allege that most of the work done by these vendors are error ridden which needs to be rectified by the employees.

- Abundance of the vacant posts at Assistant Commissioner, Joint Commissioner and Additional Commissioner level. They are also seeking equal treatment for officers who are promoted from within the ranks and those recruited directly.

-Of the 2,192 posts of Assistant Commissioners, almost 700 are vacant. Of the 1,300 posts of Joint and Additional Commissioners, 500 are lying vacant, said Mr Rajesh Menon, Joint convenor of ITEF and ITGOA.

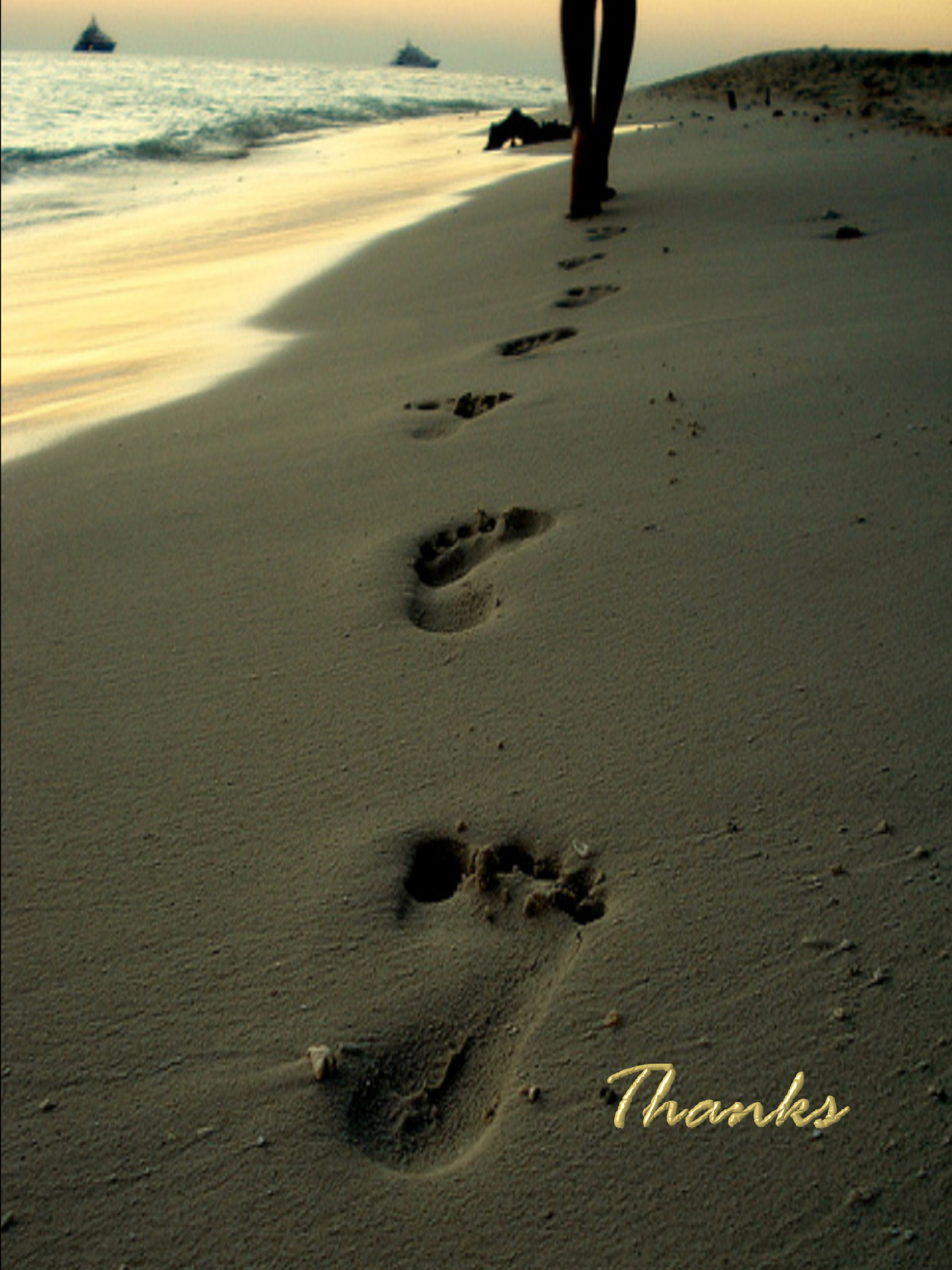
Agriculture minister says: govt mulls import tax on wheat

Sharad Pawar said a ministerial panel will consider a proposal to levy import tax on wheat.

Steel Minister Says: Higher iron ore export tax

There is a long-simmering debate over whether India should cash in on roaring demand for the key steelmaking raw material or save it for domestic industry. India's steel industry has frequently lobbied for a ban on iron ore export or at least for further raising the export duty on it so that more of the commodity is available for local use at low prices. The discussion further flared this week when Indian media quoted a top steel ministry official as saying exports should be cut or banned.

However Steel Minister Virbhadra Singh, today, said export tax on iron ore should be raised to at least 20 percent. This is in keeping with the fact the government itself benefits from ore exports, a big earner of foreign exchange that boosts the profits of state-run steel and mining firms. *(India exports about half of its total iron ore output mainly to China that houses the world's largest steel industry).*



Thanks