Daily news summary

ITAT Ruling Fees for Technical Services DTAA

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WHY IN NEWS

- The Income Tax Appellate Tribunal (ITAT) ruled that executive search fees do not constitute Fees for Technical Services (FTS) or royalties under bilateral tax treaties.

WHAT IS FEES FOR TECHNICAL SERVICES (FTS)?

- Under Section 9(1)(vii) of the Income-tax Act, 1961, FTS refers to payments for managerial, technical, or consultancy services rendered by non-residents.
- Under bilateral Double Taxation Avoidance Agreements (DTAA), taxability as FTS generally requires meeting the **make-available clause** where technical knowledge or skill is transferred to the recipient.

KEY LEGAL PRINCIPLES UPHELD

- Executive search and recruitment services do not involve transferring technical know-how or technology, excluding them from FTS under DTAA provisions.
- Reimbursement of pure costs incurred by a foreign entity without any profit element cannot be subjected to tax additions in India.

WHY IT MATTERS

- Establishes precedent regarding the tax treatment of cross-border managerial consultancy and recruitment fees.
- Reduces tax uncertainty and litigation for multinational service providers operating under tax treaty frameworks.

KEY TERMS

- **Fees for Technical Services (FTS):** Consideration paid for rendering managerial, technical, or consultancy services under statutory tax laws.
- **Make-Available Clause:** A treaty condition where FTS is taxable only if the service provider enables the recipient to independently apply the technology or skill later.

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PRELIMS FACTS

- Under most DTAAs, FTS taxation requires the transfer of technical know-how under the make-available principle.

MAINS DISCUSSION

- Impact of clear treaty interpretation on reducing international tax disputes and enhancing cross-border business predictability.

KEY DATA

- **Parent Statute:** Section 9(1)(vii), Income-tax Act, 1961 - Defines income deemed to accrue or arise in India through technical and managerial service fees.
- **Quasi-Judicial Body:** Income Tax Appellate Tribunal (ITAT) - Statutory appellate body established under the Income-tax Act, 1961 to resolve direct tax disputes.

Official source