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Communiqué
International Tax

September 2022

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Entering a Contract of Extended Warranty for Bentley Cars Does Not Constitute as DAPE

Facts

The assessee is a resident corporate entity and an exclusive dealer of Bentley Cars in India. For the assessment year under dispute, the assessee filed its return of income on 29.09.2016 declaring income of Rs.13,21,71,320. The case was selected for complete scrutiny, essentially, for examining the foreign remittances by the assessee. During the assessment proceedings, The Assessing Officer (AO) examined such remittances and found that in addition to the payment made against purchases from Bentley, UK, the assessee had also remitted an amount of Rs.3,75,68,310 towards extended warranty payment to an Overseas Entity, namely, Car Care Private Ltd. (CCPL) a unit of Bentley Pre-Administrative Services. Referring to the invoices raised for extended warranty, the AO observed that the assessee had entered into a contract for extended warranty with the Indian customers on behalf of CCPL as the assessee was not authorized to enter into such contracts by M/s. Bentley Ltd. He observed that the assessee had merely acts as a dependent agent of CCPL and as such held that the assessee was a dependent agent of CCPL, in so far as, as it related to the extended warranty contract. Thus, he held that the amount remitted to the CCPL towards extended warranty was taxable in India through the PE and that the assessee had failed to deduct tax under Section 195 of the Act, he disallowed the amount of Rs.3,75,68,310.

Consequently, the assessee approached the CIT for relief who ruled in favor of the assessee and deleted the disallowance made under section 40(a)(i) of the Act.

Ruling

The Tribunal ruled in favor of the assessee. It noted that on the basis of the factual matrix of the case, it was evident that the CIT had passed the correct order in rightfully deleting the disallowance made by the AO. While delivering its judgement, the Tribunal observed that extended warranties fall in the nature of security and assurance to customers against any such defect or repair after the lapse of original warranty. Furthermore, these warranties are entirely optional in nature. It was further noticed that although the assessee had purchased such warranty from CCPL at a particular price, it had, however, independently negotiated the price wit h its customers.

Additionally, as per the facts of the case, it was evident that the sales invoices raised by the assessee to the Indian customers towards extended warranty were in its own name and were devoid of any name and identity of CCPL. As such it was clear that the privity of contract was between the assessee and the Indian customers and the CCPL had no role to play.

Source: Tribunal, Delhi in ACIT, Circle 8(2) New Delhi vs. M/s. Exclusive Motors Pvt. Ltd. Vide ITA No. 9198/Del/2019 dated 26th September 2022.

ITAT deletes TP adjustment on account of ALP of specified domestic transaction (SDT), attributes reason to omission of clause (1) of section 92BA

Facts

The assessee is a company engaged in the business of wholesale trading activities of fabrics, grey fabrics, recycled polyester yarn and other allied textile products. Assessee filed its return of income 30.11.16 at Rs. 10,39,500. Due to the specified domestic transaction mentioned in form 3CEB, the AO referred to the Asst. Commissioner of Income tax, Transfer Pricing Officer (1)(1)(2), Mumbai for the determination of Arm's Length Price (ALP) of such transactions.

The assessee had entered into international transactions of purchase of goods from its Associated Enterprises amounting to Rs. 216,11,36,959 (benchmarked as Cost Plus Method). However, upon failure to furnish information regarding such benchmarking, the TPO adopted the Transactional Net Margin Method as the most appropriate method and accordingly made an adjustment of Rs. 4,04,58,834. Subsequently, a draft assessment order was also passed.

Assessee approached the DRP and relying upon the judgment of the co-ordinate Bench in case of Texport Overseas Pvt. Ltd. contended that the benchmarking of specified domestic transaction is not required. However, these contentions were dismissed. As such, an assessment order was passed at a total income of Rs. 4, 26, 97, 870.

Ruling

The Tribunal ruled in favor of the assessee, it held that the adjustment had been made on account of ALP of specified domestic transaction in accordance with section 92 BA (i), however such provision now stood omitted by the Finance Act 2017 with effect from 01.04.2017. Relying upon the judgement of the Karnataka High Court in the case of PCIT vs. Taxport Overseas Pvt Ltd., wherein it was held that "*the resultant effect of the above omission is that it had never been passed and is to be considered as law never been existed*", the Tribunal deleted the adjustment of Rs. 4, 26,97,870 made by the TPO and held that no transfer pricing adjustment should nave been made on account of ALP of specified domestic transactions.

Source: ITAT, Mumbai in M/s. Aura Spinwell Ltd. Vs. The ITO, Circle 4(1)(3) vide ITA No. 1147/Mum/2021 dated 27th September 2022.

ITAT holds German Company Eligible for Concessional Tax-Rate 5% on Interest from Rupee Denominated NCDs

Facts

The assessee had invested in rupee denominated non-convertible debentures (NCD's) of Indian Companies (Zuari Cement Limited and Heidelberg Cement Indian Limited) from which interest income worth Rs. 47,69,72, 539 was accrued to the assessee during the relevant year. The same was offered to tax by the assessee @ 5% in accordance with section 194LD read with section 115A(1)(a) (iiab) of the Act. The AO denied the assessee the benefit of the 5% concessional rate by holding that section 194LD is applicable only in case of interest' from rupee denominated bonds ('RDBs') of Indian company or a Government security whereas the assessee has earned interest from NCD. When the proceedings reached the Dispute Resolution Panel (DRP), the assessee contended that in the absence of specific definition of bonds in the Act, the term 'bonds' used in section 194LD should be considered as including NCDs by relying on a letter issued by the Hon'ble PCCIT, International Tax, New Delhi to CCIT/CIT of various International Tax jurisdiction (including CIT having jurisdiction over the assessee, however the DRP upheld the viewpoint of the AO.

Consequently, the assessee appealed before the tribunal.

Ruling

The Tribunal ruled in favor of the assessee. It relied on the case of DIT vs. Shree Visheshwar Nath Memorial Public Ch. Trust (2010) 194 taxmann280 (Delhi) wherein the High Court had deeply examined the meaning of debentures in their judgment and held that,

"The word 'debenture' is nowhere defined under the Act. However, the Companies Act, 1956 specifically defines this term and as per the definition provided in section 2(12) of the said statute, 'bond' is covered under the expression 'debenture'.... The Kerala High Court in CIT v. Cochin Refineries Ltd. [1983] 142 ITR 441/ [1982] 11 Taxman 135 held that in the absence of any definition of 'debenture' in the Act, reliance could be placed upon the definition given in section 2(12) and also the common parlance in which this term is understood. [Para 4] Thus, it would be appropriate to rely upon the definition of 'debenture' as contained in section 2(12) and, therefore, it could not be held that the assessee contravened the provisions of section I3(I)(d). It is a trite principle of interpretation that in the absence of any definition given to a particular term in a statute, the meaning which is to be given to the said term is the meaning which is understood in common parlance. Even as per new Gem dictionary, the term 'debenture' includes bond of a company or a corporation."

Source: : ITAT, Delhi in Heidelberg Cement AG vs. ACIT, International Tax, Gurgaon vide ITA No. 531/Del./2022 dated 26th September 2022.

ITAT Remits the Issue of Application of MAM: Notes and Upholds the Consistent Approach applicable in such respect.

Facts

The assessee, Toyota Boshoku Automotive India PO Ltd, is engaged in the manufacture of automobile components like seats, door trims and interiors, for passenger cars. TBI is a licensed manufacturer conducting the manufacturing activities with the license and technical know-how obtained from TBC. The Assessee filed its return of income on 29.11.2017 declaring total income of Rs.1,29,08,53,660. The return filed was taken upon for complete Scrutiny and accordingly due noticed were issued to assessee. Form 3CEB filed by the assessee reflected the total value of the international transactions of the assessee with its Associated Enterprises as Rs.4,51,53,446. The TPO made an adjustment of Rs. 4,51,53,446 on the basis on which a draft assessment order was made against the assessee. Consequently, the assessee raised objections before the DRP, who upheld the order of the AO. Therefore, the assessee approached the Tribunal for relief.

Ruling

The Tribunal ruled in favor of the assessee. It observed that in the past a consistent approach has been adopted by this Tribunal in which the cases have been consistently remanded back to the AO in order to verify the factual position and to apply TNMM as the most appropriate method. It noted that the same approach had been taken up by the Tribunal in the AYs 2015-16 and 2016-17 in IT(TP)A No. 326/Bang/2021. The Tribunal further noted that the same issue had been upheld by the High Court in the case of CIT vs. Toyota Kirloskar Autoparts Pvt. Ltd. ITA No.104/2015.

Therefore, relying upon past precedents, the Tribunal directed the AO to adopt TNMM as the most appropriate method in determining the ALP, after granting the assessee the proper opportunity of being heard.

Source: ITAT, Bangalore in M/s. Toyota Boshoku Automotive India Pvt. Ltd. Vs. The Deputy Commissioner of Income Tax, Circle 7(1)(1), Bangalore vide IT(TP)A No. 722/Bang/2022 dated 26th September 2022.

ITAT holds due to absence of make-believe clause in India Mexico Tax Treaty, Liability to Deduct Tax at Source on Clinical Payments as Fees for Technical services (FTS) Arises

Facts

The assessee is a global pharmaceutical company with its principal place of business at Ahmedabad, India. During the Assessment Year the assessee made remittances to certain non-residents which the AO believed were liable for tax withholding under section 195. Upon verification of the remittances made and withholding tax deducted by the assessee, the AO was of the view that the assessee had made remittances to four parties of USA, one-party of Canada and one-party of Mexico for clinical trials, in respect of which no tax was deducted at source. Moreover, in respect of one party belonging to USA, the payments were made towards consultancy fees, which according to the assessing officer were in the nature of FTS (fee for technical services). As such, he raised the tax demand of Rs. 96,59,334 and interest amounting to _Rs. 62,88,969 (amounting to a total of Rs. 1,59,48,303). The CIT(A) ruled party in favor of both the assessee as well as the Revenue.

Consequently, both the Revenue as well as the assessee approached the Tribunal for relief.

Ruling

The Tribunal ruled in favor of neither party and dismissed both the appeals preferred before it. Relying on previous precedents, it noted that the condition of "make available" under the India USA/ India Canada tax treaty has not been met and as such these services cannot be classified under the ambit of fees for technical services. In such view, the CIT(A) stands correct and had not erred in facts and in law by holding that there was no requirement to withhold tax at source in respect of payments for clinical trial, these services did not qualify as fees for technical services. Furthermore, the Tribunal noted that alternatively nor could such payments be considered as royalty. For the assessee, the Tribunal noted that with respect to the payments made by the assessee to Cliantha research Mexico amounting to Rs. 90,49,625, the same were in the nature of technical services and due to the absence of the "make believe" in the India Mexico tax treaty, there would be a requirement for deduction of tax at source. As for the alternate argument that the same payments would be covered under the exception of section 9(1)(vii)(b), the Tribunal dismissed the contention by agreeing with the stance adopted by the CIT(A).

Source: ITAT, Ahmedabad in Cadila Healthcare Ltd. Vs. DCIT (intl. Tax)-1 vide ITA No. 711/Ahd/2019 dated 9th September 2022.

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