

TransPrice Times

Edition: 16th – 30th April 2017

Formula One World Championship Ltd – SC – Delhi

Outcome: Against taxpayer

Category: Permanent Establishment (PE)

Hon'ble Supreme Court firmly affirms Buddh International Circuit as a fixed place and holds UK-based taxpayer to have a fixed place PE in India as per the double tax treaty between India and UK.

The Court places reliance on OECD Model Tax Convention commentary and states that a PE has to be a fixed place of business through which the business of an enterprise is wholly or partly carried on. In the taxpayer's case, the races were conducted from an international circuit in India, which is held to be a fixed place forming part of taxpayer's economic and business activity.

Accordingly, Jaypee Sports International Limited performs hosting, stage and promoting rights (basically organising the event) on behalf of taxpayer for conducting the Formula One Grand Prix event in India. Court notes that crux of issue pertains to whether Jaypee Sports has complete real and dominant control over the race event or the taxpayer does. While taxpayer entered into an agreement with Jaypee Sports for transfer of rights, Jaypee Sports entered into another agreement (on same day) with 3 affiliates of taxpayer in which Jaypee Sports gave back circuit rights, mainly media and title sponsorship rights, and paddock rights (to taxpayer's affiliates). Court finds that the race event could not have been completed without the teams, circuit and paddock. The above facts relating to agreements, led the Court to believe that the entire event was taken over and controlled by taxpayer and (3) affiliates.

In the above arrangement involving taxpayer's affiliates, it is observed that the commercial rights were retained with the taxpayer and were exploited through actual conduct of race in India through the international circuit (fixed place). This also meant the physical control of circuit was with taxpayer throughout the event, however short the duration of event was.

Therefore, Court holds Buddh International Circuit to be at the taxpayer's disposal. Court rejects taxpayer's views that international circuit was at Jaypee Sports' disposal since the party conducted the races and organised the event.

Hyundai Motor India Limited – ITAT – Chennai

Outcome: In favour of taxpayer

Category: Deemed brand development

Tax Court rules in favour of taxpayer in respect of compensation for deemed brand development because of using brand name of foreign holding company.

Accordingly, taxpayer under a technology use agreement with holding company uses the brand name of foreign AE for which it carried out brand development activity in India. While the arrangement has been agreed to be at an arm's length, the tax officer questioned the lack of any compensation received from holding company for developing the brand. Further, tax officer contended that since taxpayer did not receive any benefit by using the brand name, and taxpayer relinquishes right to use its own logo/ brand name, it should receive a compensation from holding company on an arm's length basis.

Tax Court in regard of taxpayer enhancing the value of foreign brand name in India, holds that this does not result into a separate international transaction that should be benchmarked for arm's length price. Therefore, Tax Court deletes any adjustment on accretion to brand value by not considering it as international transaction.

Open Solutions Software Services – ITAT – Delhi

Outcome: In favour of taxpayer

Category: Deemed international transaction

Tax Court rules in taxpayer's favour by excluding Wipro Technology Services Ltd. ('Wipro') as taxpayer's comparable company from the tax officer's adjusted computation of arm's length.

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Accordingly, taxpayer did not accept tax officer's inclusion of Wipro as its comparable company as the company had an extraordinary event during the year. Taxpayer highlights that Wipro (formerly known as "Citi Technology Services Ltd") was part of "Citi Group" which was later acquired by Wipro. There existed a prior agreement between Citi Technology Services Ltd and Citi Group which extended over 6 years after the acquisition by Wipro. Taxpayer points out that the transaction between City Group and City Technology Services Ltd would result in a deemed international transaction as there was a prior agreement between the 2 parties. When one of the parties was acquired by Wipro (unrelated party), even then the revenue received would be deemed to be a transaction between 2 related parties.

Further, a comparable company should essentially pass the Related Party Transaction (RPT) filter which should not exceed 25% of the total revenue. In case of Wipro, majority of its revenue was because of deemed international transaction. Taxpayer terms the acquisition event as extraordinary in nature and proves that Wipro would fail the RPT filter (25% of total revenue) when the total revenue would contain deemed international transaction as well.

Therefore, Tax Court upholds taxpayer's views and excludes Wipro as a comparable company from the tax officer's adjusted arm's length computation.

Kaypee Electronics & Associates Private Limited – ITAT – Bangalore

Outcome: Against taxpayer
Category: Basket approach – Royalty

Tax Court rules against taxpayer regarding royalty payment in consideration of technical assistance received from foreign AE.

Accordingly, taxpayer aggregated purchase of raw materials, sales, purchase of fixed assets along with royalty payment. However, tax officer noted that royalty was paid on a gross sales basis, it would result into a royalty on purchase made by AE also. Therefore, a separate benchmark of royalty payment was carried out. Further, taxpayer

contends that tax officer carried a separate benchmark of royalty payment on an entity level.

Tax Court holds basket approach true for benchmarking transactions which are closely related to each other. In taxpayer's case, however, the taxpayer fails to prove royalty payment to be similar to other transactions.

Further, Tax Court rejects taxpayer's views and points out that tax officer carried out a separate benchmark of royalty payment, and did not consider other international transactions other than royalty, and therefore not on entity level. Further, Tax Court holds royalty to be separately benchmarked on standalone basis and rejects taxpayer's basket approach.

Recent News

CBDT may seek to issue a circular relaxing Place of Effective Management rules for foreign company, including subsidiaries of local firms managed from India.

CBDT is contemplating to provide a leeway in POEM rules by reducing compliance with respect to withholding tax, transfer pricing and advance tax requirements for foreign companies, including subsidiaries of local firms managed from India.

CBDT firmly clarifies retrospective removal of Cyprus from a notified jurisdictional area.