

Prudential Process Management Services India Private Limited – ITAT – Mumbai

Outcome: In **favour** of taxpayer
Category: Secondary Adjustments

History: Taxpayer is a call center and back office support service provider to its Associated Enterprise (AE). It's UK-based AE had entered into an agreement with a third party also in the UK. One of the clauses of the agreement contained selling the BPO divisions of the taxpayer to the third party's (UK) AE in India.

Facts and contentions: The transfer pricing officer contended that transaction between the taxpayer and the Indian AE of the third party (UK) would not have taken place had there been no agreement between the two UK entities. Moreover, the transfer pricing officer had proposed a secondary adjustment in the form of interest @ 15% on the primary adjustment made on sale of business division. The tax officer further considered the sale of business division as a slump sale and made a tax adjustment. On adjudication by first appellate authority, it confirmed that the transaction was deemed to be an international transaction claiming the global agreement in substance determined the terms of transaction. In other words, the Indian taxpayer was said to not have an opportunity of determining substance and influenced by the agreement between the two UK entities. Further, the first appellate authority noted that concept of secondary adjustment is not expressly provided in Chapter X of Income-tax Act 1961 ('the Act').

Ruling: Tax Court rejected the calculation of interest for secondary adjustment as the same

cannot be made for assessment years starting before AY 2017-18 as per Indian transfer pricing law; not finding fault in first appellate authority's observation. Tax Court does not rule on transfer pricing adjustment after noting that first appellate authority did not adjudicate on addition of slump sale. To avoid multiplicity of proceedings, Tax Court remits matter back to first decide on the slump sale adjustment.

Mahaveer Kumar Jain – Supreme Court

Outcome: In **favour** of taxpayer
Category: Double Taxation

History: The taxpayer had income from lottery winnings subject to withholding tax in the state of Sikkim. It claimed a deduction of this income under the Act. The intermediary authorities considered it to be taxable under the Act.

Legality: Ruling in favour of taxpayer, the Hon'ble Supreme Court explained the fundamental rule on the law of taxation and stated that unless otherwise expressly provided, income cannot be taxed twice. Highlighting the need for courts to cast reasonable doubt where appropriate, the judgement also specified that a taxing statute (when tax becomes payable) should not be interpreted in such a manner that leads to double taxation unless the language specifically uses it in sanctioned express words and the courts have no choice but to accept it.

RECENT NEWS

India & USA – The Amplifying APA Connect: The US Internal Revenue Service in its Annual Advance Pricing Agreement ('APA') report for 2017 pointed out that India's share in the total bilateral APA filings is **21%**, a sign of healthy APA dynamism.