

Siemens Aktiengesellschaft - SC

Outcome: **Against** taxpayer (Admission of revenue SLP)

Category: Royalty / FTS

SC to examine cash vs. accrual basis taxation for royalty/FTS under Indo-German treaty.

Further, SC admits Tax Department's application against Bombay HC judgement in case of taxpayer where HC had upheld 'receipt basis' taxation of royalty / FTS under India - Germany treaty. HC had relied on notification dated August 26, 1985 on amended treaty, which provides royalty / FTS assessment only in the year amounts are received. HC had rejected Revenue's stand that credit entry to taxpayer - NR's account in Indian company's books amount to receipt by the non-resident.

DQ Entertainment (International) Ltd – Hyderabad

Outcome: **In favour** taxpayer

Category: IPR Valuation

Tax Court holds Discounted Cash Flow (DCF) approach for sale of IPR on actual figures & latest information as incorrect and not good in law.

The taxpayer sells 'IP' at development stage to its "AE" after independent valuing and arriving at sale consideration and also submits future projections. Previously, the tax officer had done IPR valuation by replacing future projections with actual figures.

TVS Logistics Services Ltd – ITAT-Chennai

Outcome: **Against** taxpayer

Category: Interest free loan

Tax court rules against taxpayer in respect of interest free loan granted to foreign AE.

Further, holds that there is no prohibition for expanding the business outside India by investing its own funds outside India. The taxpayer states interest free loan to be from equity capital and not from borrowed capital. However, when taxpayer borrowed funds in India and paid interest in India, investment of funds outside India would naturally reduce the tax liability in India.

Flakt (India) Ltd – Chennai – ITAT

Outcome: **In favour** of taxpayer

Category: Management Service Fees.

Tax court rules in favour of taxpayer in respect of management service fees paid to foreign AE.

Tax officer on estimation basis had determined arm's length price of management service fee paid to AE at 25% of the amount actually paid. ITAT holds that, in the absence of any comparison of the transaction with transaction carried out in an uncontrolled market, tax office cannot use such estimation. The Tax Officer cannot independently come to a conclusion that volume and quality of services was disproportionate to the payment.

Pricol Ltd – ITAT – Chennai

Outcome: **In favour** of taxpayer

Category: Tax deduction at source (TDS)

Tax Court rules in favour of taxpayer in respect of TDS rates on payments made to non-residents as per applicable tax treaty.

Further, tax court rejects use of higher 20% TDS rate (without PAN) as per Section 206AA of income-tax Act 1961 and adopts TDS at 10% under the applicable tax treaty. As per the tax Court 206AA cannot override the tax treaty.

Recent News:

India-Switzerland move closer to Automatic Information Exchange

Both India & Switzerland have shown clear intent to hail the advent of BEPS and combat tax evasion by allowing shared access to information. The aim is to improve basic, legal and beneficial ownership information of legal persons and legal arrangements.

CBDT relaxes certain Non-residents from higher TDS applicability

The necessity of obtaining PAN for non-residents under section 206AA for being eligible for lower withholding tax rates has been relaxed by substituting other information from the non-residents. Refer notification

<http://www.incometaxindia.gov.in/communications/notification/notification532016.pdf>