

Dabur India Limited – ITAT – Delhi

Outcome: In **favour** of taxpayer

Category: Royalty received

Tax Court reduces taxpayer's transfer pricing adjustment on royalty received from its foreign AE for the use of the brand name 'Dabur'.

The 139-pager ruling essentially conveys that brand value in a particular area does not depend upon ownership of a brand, but on various factors like quality and acceptable products in local public that justify the economic ownership of the brand in commercial sense. As per the facts, taxpayer provided technical know-how and R&D support to its AE in UAE; and technical know-how, marketing, financial and managerial support to its AE in Nepal. For these transactions, the taxpayer received royalty. However, in year under consideration taxpayer did not charge royalty from its UAE AE.

Previously, taxpayer charged royalty @1% of FOB sale (net of taxes and sale return) from UAE AE for manufacturing Ayurvedic products. However, in year under consideration, UAE AE could not use the technical know-how as Ayurvedic products were consequently not found to be acceptable in UAE market. Thus, UAE AE started manufacturing FMCG products instead, on its own, in accordance with local trends and market. The taxpayer gave up its right to receive any royalty as UAE AE abandoned manufacturing of Ayurvedic products and did not make use of taxpayer's technical know-how / R&D support. The UAE AE continued using the brand name of 'Dabur' and incurred brand building expenses. The first appellate authority adjusted royalty from UAE AE @2%, when technical know-how was not used by UAE AE.

Tax Court finds that taxpayer neither incurred any expenses for marketing the products manufactured by UAE AE nor make payment for establishing its brand name or provide market strategies in the UAE market. In view of this, Tax Court observes that products manufactured (including raw materials used) by UAE AE were different from products manufactured by taxpayer. Tax Court holds royalty charge @0.75% as reasonable after considering that the UAE AE incurred huge expenses on marketing, advertisement & brand building etc in year under consideration, as compared to previous year where the same expenses were comparatively less. Tax Court thereby relieves the taxpayer by

effectively restricting its transfer pricing adjustment to 0.75% as the royalty charge.

ABB FZ-LLC – ITAT – Bangalore

Outcome: **Against** taxpayer

Category: Royalty & Service PE

Tax Court rejects UAE taxpayer's views regarding consideration received from Indian entity and consultancy services provided by taxpayer's employees in India

Accordingly, non-resident taxpayer rendered consultancy and management services to its Indian entity for which it received consideration. However, taxpayer claimed that this consideration would be Fees for Technical Services (FTS) and not be taxable under India-UAE DTAA which did not contain a specific article for FTS, and hence FTS rate under Indian Income-tax Act 1961 should prevail. Taxpayer claimed that since under treaty, consideration received would not be taxable under FTS, it should be taxable under the residual Article 22 ('Other income'). However, this Article would be attracted only if an entity would have a PE (Permanent Establishment) in India which taxpayer claimed that it didn't.

Tax Court holds that services received by Indian entity allowed it to use information pertaining to industrial/ commercial/ scientific experience of the taxpayer, not available in the public domain. Also holds that taxpayer simply shared information with Indian entity, and thus constitutes consideration received by UAE taxpayer as royalty under Article 12(3) of treaty.

In respect of consultancy services provided by taxpayer's employees in India, Tax Court holds this to be a Service PE under Article 5(2)(i) of treaty. Per this Article, Tax Court rules that an entity rendering consultancy services through employees for more than 9 months within any 12-month period shall have a PE. The 9-month period does not imply stay of employees for more than 9 months. Hence, rejects taxpayer's contention that its employees were in India for 25 days only, and rules that services were rendered without the physical presence of employees of taxpayer.

OECD set to release Transfer Pricing 2017 guidelines