

TransPrice Times

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Barclays Technology Centre India Pvt. Ltd. – Bombay High Court

Outcome: In **favour** of taxpayer
Category: Selection of Comparables

History: The taxpayer is engaged in rendering software development services to its Associated Enterprises ('AEs') worldwide. It acts as a captive service provider and provides services on a cost-plus basis.

The tax authorities were not satisfied with the Transfer Pricing study adopted by the taxpayer and included various comparable companies. This led to a tax litigation with the prime focus being on inclusion/ exclusion of comparable companies. The Tax Court evaluated the case and passed a final order by excluding certain companies from the final set of comparables. With an intention to counter this order, the tax authorities appealed to the Hon'ble Bombay High Court.

Ruling: Analysing the case, the Hon'ble Bombay High Court upholds the exclusion of such comparable companies. It also noted that the tax authorities did not validate their stand as to how the findings of the Tax Court were in contradiction to the law. In furtherance to this, it also stated that there were no reasons to entertain such an appeal.

At the end, it was mentioned that the tax authorities have been appealing to the High Courts in a '*ritualistic manner*' w.r.t. to the issue of 'selection of comparables' which technically, is a matter of fact and not law. Thus, it is the Tax Court who should have a final word in

respect of such issues. Appealing to the High Courts for such issues have led to taking up '*the scarce time of the High Courts.*'

Shilpa Shetty – ITAT – Mumbai

Outcome: In **favour** of taxpayer
Category: Associated Enterprise and Deemed International Transaction

History: The taxpayer is a renowned Indian film actress who is also engaged in various brand ambassadorship activities.

During the year under review, the taxpayer was a party to a Share Purchase Agreement ('SPA') between EM Sporting Holding Ltd. ('EM Sporting') – a company based in Mauritius and Kuki Investments Ltd. ('Kuki') – a company having its base in the Bahamas. As per the SPA, EM Sporting would transfer its shares as well as issue further shares to Kuki.

The tax officer pointed out that Kuki was controlled by the taxpayer's husband (i.e. a relative) – Mr. Raj Kundra. Moreover, even though the taxpayer was neither a buyer nor a seller of shares, the SPA required the taxpayer to render brand ambassadorship services to promote an IPL cricket team by the name of 'Rajasthan Royals' which in turn was owned by Jaipur IPL Cricket Pvt. Ltd. ('JICPL') – a subsidiary of EM Sporting. Such brand ambassadorship services were to be provided by the taxpayer without any charges.

In view of this, the tax officer considered the taxpayer and EM Sporting as AEs. It was also opined that the transaction of rendering brand ambassadorship services gets covered under the meaning of international transaction under

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section 92B of the Income-tax Act, 1961 ('the Act'). Consequent to this, an arm's length price of INR 3.42 crores was computed based on a different brand ambassadorship agreement between the taxpayer and an independent third party (i.e. Hindustan Unilever Ltd.).

The case reached the higher level tax authorities. They asserted that instead of EM Sporting, Kuki is an AE of the taxpayer. This assertion was given by drawing a line of separation between the taxpayer and its profession (construed as a distinct enterprise that was controlled by the taxpayer). It was mentioned that the taxpayer's relative controlled Kuki as well the taxpayer's profession through the taxpayer itself. Hence, by virtue of section 92A(2)(j) of the Act, Kuki and the taxpayer should be termed as AEs. In addition to this, since there was a prior agreement, it was determined that the transaction between the taxpayer and JICPL constituted a deemed international transaction under section 92B(2) of the Act and for this reason, the taxpayer and JICPL would also be AEs. The higher level tax authorities were also of the view that Kuki had benefitted undeniably due to this deemed international transaction since the purchase consideration got reduced by the monetary value of the brand ambassadorship services provided by the taxpayer.

Ruling: The Tax Court notes that section 92A(2)(j) has two limbs, the first one being an individual controlling an enterprise and the second one being another enterprise which too, is controlled by such an individual or his relatives jointly or severally. It holds that the first limb is satisfied fittingly wherein Mr. Raj Kundra controls Kuki. However, the second limb is not satisfied since the tax authorities fail to

corroborate as to how Mr. Raj Kundra or his relatives controlled the taxpayer. Accordingly, it is declared that section 92A(2)(j) is not applicable and thus, Kuki and the taxpayer are not AEs.

With regards to the deemed international transaction, the Tax Court mentions that the tax authorities held the transaction to be a 'deemed international transaction' under section 92B(2) of the Act without actually finding out the AE of the taxpayer with whom JICPL had a prior agreement. Owing to the absence of a prior agreement, section 92B(2) also, is not applicable. Thus, the Tax Court rules in favour of the taxpayer.

RECENT NEWS

CBDT releases selection criteria for complete Scrutiny of Income-tax Returns:

The Central Board of Direct Taxes ('CBDT') has released an instruction document which lays down the criteria for manual selection of returns for complete scrutiny during FY 2017-18. To check the criteria, click [here](#).