

# TransPrice Times

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## Approva Systems Private Limited – ITAT – Pune

**Outcome:** In **favour** of taxpayer

**Category:** Allowability of certain deductions with respect to transfer pricing adjustments

**Transaction:** Export of software solutions services to Associated Enterprise ('AE')

**History:** Taxpayer being a 100% captive export-oriented unit, eligibly claimed deduction of profits earned on export of services to AE under Section 10A/10B of the Income-tax Act 1961 ('the Act') while filing its income-tax return. Taxpayer, on its own had made a transfer pricing adjustment to the arm's length price and offered a higher income. Intermediate tax authorities disallowed the deduction in respect of proviso to Section 92C(4) of the Act which empowered assessing officer to make such disallowance in respect of transfer pricing adjustments to arm's length price.

**Facts and contentions:** Taxpayer contended that the deduction shall be disallowed only when the assessing officer makes a Transfer Pricing Adjustment under section 92C of the Act. As taxpayer made a suo-moto adjustment, the deduction should be allowed. Intermediary authorities opined that suo-moto adjustment offering extra income was actually a notional income for which taxpayer failed to bring any foreign exchange in India. Hence, a deduction under Section 10A/10B of the Act should be appropriately denied. The taxpayer countered that foreign exchange due on exports were received in India, and deduction shall be denied only if the foreign exchange sale proceeds are not realized in time. Further, taxpayer argued that the adjustment was made to the overall income and not to the sale proceeds.

**Ruling:** Tax Court observes that provisions of Section 92C(4) of the Act will not apply. Further, deductions were allowed to the taxpayer in its own case in earlier years as well. Hence, Tax Court allowed the deduction on the income.

## Calance Software Private Limited – ITAT – Delhi

**Outcome:** In **favour** of taxpayer

**Category:** Reference to TPO (TP officer)

**Legality:** CBDT Instruction 3/2003

**History:** Taxpayer's quantum of international transactions were below INR 5 crores (i.e INR 50 million) for year under consideration, in respect of which the intermediary authorities made an adjustment. The assessing officer (AO) referred taxpayer's matter to TPO to determine the arm's length of such international transactions.

**Facts and contentions:** Taxpayer relied on CBDT Instruction 3/2003 which provided that where the quantum of international transactions were below INR 50 million, the AO should decide issue himself and not refer matter to the TPO.

**Ruling:** Tax Court opined that the Assessing Officer should have passed the assessment order. It upheld that Instruction 3/2003 was binding on authorities & ruled that reference to TPO was not sustainable in law.

## RECENT NEWS

**Finance Bill 2018 receives Presidential Assent**

**Supreme Court to hear Revenue's appeal against Delhi High Court ruling of Krishak Bharti Cooperative Ltd on foreign tax credit granted to Indian co-operative housing society for dividends received from its JV company in Oman where no tax was payable.**

## **Nissan Motor India Private Limited – ITAT – Chennai**

**Outcome:** In **favour** of taxpayer

**Category:** Fees for Technical Service (FTS)

**Transaction:** Reimbursement of warranty expenditure to group entities outside India.

**History:** With respect to transactions specified above, the Revenue noticed that taxpayer had not deducted tax at source. Revenue opined that reimbursement transaction was of the nature of FTS outside India. It stated that taxpayer, being the manufacturer took responsibility and promise to provide warranty services to customers at own cost and it was engaged as a dealer with its group companies to provide such warranty services for which taxpayer reimbursed them accordingly. Hence Revenue considered this as FTS as per the Act and tax treaty and held reimbursements to be taxable in India for which tax should be deducted.

**Facts and contentions:** Taxpayer relied on FTS provisions of the Act. It relied on Section 9(1)(vii)(b) of the Act which states that where any resident pays fees for services with the purpose of making or earning any income from any source outside India, then such income cannot deem to accrue or arise in India. As per the contract, taxpayer characterises its group entities as ‘dealer – sister companies’ which incur expenditure on behalf of taxpayer by acting as dealers maintaining cars sold as per warranty promised by taxpayer.

**Ruling:** Tax Court studied the provisions of FTS in Section 9(1)(vii) of the Act and observed that the taxpayer was a manufacturer of motor cars in India and exported such cars through its

dealer - sister companies who incurred expenditure outside India for the purpose of earning income from source outside India. Hence, by virtue of Section 9(1)(vii)(b) of the Act, it was ruled that reimbursements was not liable to be taxed under deeming provision of Section 9(1) of the Act and taxpayer was not liable to deduct tax at source in India.

## **RECENT NEWS**

**Furnishing of Country-by-country Report –** Due date of 31st March 2018 not applicable to constituent entities resident in India, required to furnish the CbCR by virtue of having parent entity outside India, whose country of residence does not have an exchange agreement of CbCR with India or the parent entity is located in a country where it is not required to maintain CbCR. (Due date to be prescribed soon) – **CBDT Press release dated 23<sup>rd</sup> March 2018.**

**OECD additional guidance on attribution of profits to a PE –** dives right into the changes to Article 5(5) of OECD MC to prevent artificial avoidance of PE through commissionaire arrangements (related intermediary) with examples of deemed PEs. It covers guidance on changes to Article 5(4) (specific activity exemptions to PE) and proposes anti-fragmentation rules [one cannot avoid PE by fragmenting cohesive operating business into small operations to contend that each part is engaged in preparatory/auxiliary character and exclude under specific activity exemptions provided in Article 5(4)].

**OECD releases Interim Report 2018 on the Tax Challenges arising from Digitisation**