

TransPrice Times

Edition: 16th December 2017 – 15th January 2018

Veer Gems – Supreme Court, India

Outcome: In **favour** of taxpayer

Category: Associated Enterprises ('AE')

The Hon'ble Supreme Court rules in favour of the taxpayer by advocating the decision given by the Gujarat High Court.

The taxpayer is engaged in manufacturing and selling polished diamonds in India as well as globally. It had entered into various transactions with a Belgian entity – Blue Gems BVBA. The intermediate tax authorities were of the view that the taxpayer and the Belgian entity are 'Associated Enterprises' u/s 92A(2)(j) of the Income-tax Act, 1961 ('the Act') by virtue of these entities being controlled by a same family of four brothers and close relatives. Consequently, a transfer pricing adjustment was imputed.

Sec 92A(2)(j) of the Act states that two entities are believed to be associated with each other if an individual controls one entity and at the same time; either he or his relative enjoys control over another entity severally/ jointly.

The taxpayer had approached the higher tax authorities. After going through the facts of the case in detail and the memorandum of earlier Finance Bills, it was held that mere participation of one entity in another's management, control or capital does not make them associated enterprises. As a result, a verdict favouring the taxpayer was delivered by the higher tax authorities.

This verdict prompted the intermediate tax authorities to file an appeal before the Gujarat

High Court. The verdict given earlier was upheld by the Gujarat High Court.

The aggrieved intermediate tax authorities then; considered Special Leave Petition to be the last recourse. The Supreme Court dismissed this petition after analysing the instant case and maintained the verdict delivered by the Gujarat High Court which was in favour of the taxpayer.

Texport Overseas Private Limited – ITAT Bangalore

Outcome: In **favour** of taxpayer

Category: Specified Domestic Transaction

The Tax Court rules in favour of the taxpayer by dismissing the transfer pricing adjustment made on remuneration paid to the directors.

As per the intermediate tax authorities, remuneration to the directors is a 'specified domestic transaction' by virtue of section 92BA(i) of the Act on which the Indian Transfer Pricing provisions shall be made applicable. In view of this, a transfer pricing adjustment was recommended for the year under consideration i.e. AY 2013-14. However, the aforementioned provision was subsequently omitted w.e.f. 01st April 2017. **Owing to this, the Tax Court held that if a provision is deleted, it shall be assumed that it has been deleted from its inception.** Along with this, the Tax Court relied on numerous Supreme Court and High Court rulings.

Thus, the applicability of transfer pricing provisions on the erstwhile specified domestic transaction shall stand invalid. The Tax Court has remitted the matter back to the Tax Officer for further adjudication stating that assessment proceedings initiated, or action taken under the erstwhile clause would not survive at all.

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First Advantage Quest Research Limited – ITAT Mumbai

Outcome: In **favour** of taxpayer
Category: Sale of Shares

Tax Court rules in favour the taxpayer regarding valuation of sale of shares in a group company scenario.

During the year under consideration, the taxpayer sold shares of its Indian subsidiary to another AE, based in Singapore. The shares were sold at the rate of INR 8,158 per share. This value per share was based on a valuation report which in turn was obtained from an independent party.

However, the intermediate tax authorities affirmed that value per share should be taken assuming a perpetual growth rate of 7% (based on a PWC report stating long term nominal growth of Indian economy at 7.5%) as a scientific measure during the valuation exercise. Consequently, a value per share of INR 12,285.92 was arrived at, and a transfer pricing adjustment of INR 69.11 crores was proposed.

The taxpayer pointed out that in the past 5 years the compounded annual growth rate of Indian subsidiary was minus 16%, and contended that it was unreasonable to adopt a perpetual growth rate of 7% suddenly.

Tax Court accepted the taxpayer's contention and held that the assumption made by intermediary tax authorities was unreasonable as there are multiple factors determining the value of share and the same should be based on a prospective earning capacity, rather than actual past earnings – although the past data is to be used to calculate the prospective data.

Suessen Asia Private Limited – ITAT Pune

Outcome: In **favour** of taxpayer
Category: Operating/ Non-operating expenses

Tax Court asserts that the amount written back by the taxpayer is of 'operating' nature and hence, rules in favour of the taxpayer. Relying on various past judgements, it was held that the write-back shall be allowed to the taxpayer as it was 'revenue in nature', contrary to the contention taken by tax authorities that such entries are merely book entries.

Cambridge Technology Enterprises Ltd – ITAT Hyderabad

Outcome: In **favour** of taxpayer
Category: Reimbursement of Expenses

Tax Court maintains that reimbursement of expenses cannot have a mark-up. Accordingly, rules in favour of the taxpayer and deletes the transfer pricing adjustment.

RECENT NEWS

India activates its bilateral exchange relationships for CbC & CRS MCAA

OECD has announced activation of 1400+ and 2000+ bilateral exchange relationships recently (as of 21st December 2017) for CbC MCAA and CRS MCAA respectively. India currently has activated relationships with 50+ countries. The [full list](#) is available on the list of CbC exchange relationships.