

# TransPrice Times

Edition: 16<sup>th</sup> February 2018 – 28<sup>th</sup> February 2018

## Sabre Asia Pacific Pte. Ltd. – ITAT Mumbai

**Outcome:** In **favour** of taxpayer  
**Category:** Permanent Establishment ('PE'); Attribution of Income

The taxpayer, Sabre Asia Pacific Pte. Ltd.; has a business of promotion, development, operation, marketing and maintenance of Computerized Reservation Systems ('CRS'). It has a wholly owned subsidiary in India by the name of Abacus Distribution System (India) Ltd ('ADSIL').

According to the intermediate tax authorities, ADSIL performs marketing as well as distribution activities for the taxpayer in relation to CRS. Also, ADSIL secures business for the taxpayer by entering into subscription agreements with the travel agents thereby implying that ADSIL habitually and exclusively performs such activities for the taxpayer. Such case facts lead to an understanding that the taxpayer has a PE in India as per the India-Singapore Double Taxation Avoidance Agreement.

Concerning the attribution of income to the PE here in India; the intermediate tax authorities proposed that a Functions, Assets and Risk Analysis ('FAR Analysis') must be taken up for determining the fair share of income that should be attributed to the Indian PE.

However, the Tax Court, relying on the previous judgements of the taxpayer's own case, stated that 15% of the gross receipts of the taxpayer shall be the income attributed to the PE since such a ratio too, was determined based on a FAR analysis earlier. Hence, there wasn't any need to take up a fresh FAR analysis. The Tax Court also noted that ADSIL had been paid commission for the aforementioned services at '25% of the gross

receipts' by the taxpayer. Since  $15\% < 25\%$  i.e.  $\text{income} < \text{expenses}$ , it was declared by the Tax Court that the taxpayer's PE is left with no income which could be taxed in India. Hence, the case gets concluded in favour of the taxpayer.

## MMTC Ltd. – Delhi High Court

**Outcome:** In **favour** of taxpayer  
**Category:** Transfer Pricing Documentation

The Tax Court deletes penalty on non-furnishing of Transfer Pricing documentation that was put forth by the intermediate tax authorities.

The intermediate tax authorities had issued a notice to the taxpayer directing them to comply with the provisions of maintaining Transfer Pricing documentation within the prescribed date. However, only part compliance was made by the taxpayer till the date prescribed in the notice.

The Tax Court on examination of case facts exhaustively and relying on various judicial pronouncements, stated that no error of law or substantial question of law prevailed since the taxpayer was successful in complying with the notice later on i.e. after the prescribed due date. Thus, the penalty which was imposed earlier gets deleted by the Tax Court.

## Motorola Solutions (India) Pvt. Ltd. – ITAT Delhi

**Outcome:** **Against** taxpayer  
**Category:** Advertising, Marketing & Promotion expenses ('AMP expenses')

Tax Court upholds the transfer pricing adjustment made by the intermediate authorities in relation to AMP expenses.

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The taxpayer is involved in the business of mobile phones and equipment for mobile broadband and automobile network. In addition to this, it provides marketing/administrative support services and software development services to its associated enterprises ('AE').

During the year under consideration, the tax authorities noted that one of the AEs had issued credit notes to the taxpayer. The taxpayer asserted that these credit notes were relating to the AMP expenses incurred by it and were in the nature of pure reimbursements. The intermediate tax authorities had a view contrary to such an assertion. It believed that the credit notes were issued to the taxpayer for compensation against the price charged for products sold by the AE.

After an in-depth perusal, the Tax Court observed that the dates on such credit notes were the dates of purchase transactions of the taxpayer. Also, the narration mentioned in the credit notes read as "*Credit note against transfer price charged for the period.....*"

In view of this, it was opined that the credit notes were not relating to reimbursement of AMP expenses incurred by the taxpayer. Thus, the taxpayer's views were rejected by the Tax Court.

sign for other taxpayers to get into the expanding Indian APA regime.

## Google India litigation moves into top gear

In the case of *Google India Private Ltd vs. ACIT (ITAT Bangalore)*; Karnataka High Court directs ITAT Bangalore to expeditiously hear and dispose the appeals on or before 16<sup>th</sup> April 2018. Check out our previous coverage of this case's ruling [here](#).

## OECD updates guidance for implementing BEPS Action Plan 13 – CbCR

OECD provides a global update for the calculation of total consolidated group revenue threshold of an MNE Group which is not required to prepare a consolidated financial statement ('CFS') as its shares are not traded on any public securities exchange. OECD states that an MNE Group may still be preparing CFS for the purposes of use of investors and lenders. Therefore, in these cases, MNE Group would still be required to calculate group consolidated revenue threshold for CbCR based on accounting standards used for making the CFS.

Further, OECD specifies new guidance on consequences of non-compliance with confidentiality, appropriate use and consistency conditions and Systemic Failure. It provides that all information exchanges are subject to the compliance above, and remedies should be made available by Competent Authority ('CA') in case of any non-compliance before suspension of automatic exchange of information. Before suspension (Systemic Failure), the first CA must consult with the other CA.

## RECENT NEWS

### CBDT takes a step forward in the Indian APA Regime

CBDT (Central Board of Direct Taxes) of India recently concluded two Advance Pricing Agreements ('APA') related to the most debated issue – AMP expenses. This indicates a welcome