

TransPrice Times

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Jaypee Capital Services Limited – Delhi ITAT

Outcome: In **favour** of the taxpayer

Category: Recharacterization of investment in equity as loan

The taxpayer is engaged in the business of trading of equity, commodity and derivatives of equity and forex market. In the given case, the transfer pricing officer ('TPO') recharacterized the transaction of providing equity as a loan transaction.

The Tax Court observed that investment in shares of the Associated Enterprise ('AE') was made by the taxpayer by way of infusion of capital in accordance with applicable Reserve Bank of India guidelines. The Tax Court further remarked that the TPO cannot treat the transaction of capital infusion as loan and charge interest thereon on a notional basis, unless the TPO finds the transaction in question as a sham transaction. Indian transfer pricing provisions apply if there is an income arising from an international transaction. In the given case, there are no specific findings that income has arisen from the said international transaction and accordingly transfer pricing provisions do not apply. Thus, the Tax Court concluded that the addition proposed by the TPO is not sustainable.

Mcdonald's India Private Limited. – Delhi ITAT

Outcome: In **favour** of the taxpayer

Category: Initiation of Penalty after MAP resolution

The taxpayer had accepted MAP resolution to resolve the issue of double taxation arising due

to transfer pricing adjustments, between competent authorities (India and USA). In respect of the above, the TPO had again initiated fresh penalty proceedings under the applicable provisions of the Indian Income tax laws on taxable income post without considering the fact of the MAP Order.

Considering the factual position, the Tax Court concluded that as the initiation of fresh penalty proceedings on the basis of previous Order, subsequent to Order giving effect to MAP resolution, such penalty was infructuous.

Chemoil Adani Private Limited. – Ahmedabad ITAT

Outcome: In **favour** of the taxpayer

Category: Time-limit for Assessment Order absent TP-adjustment

The time-limit of passing the Assessment Order by a tax officer gets extended by 12 months in case there is a transfer pricing reference made to the TPO. However, the Tax Court in this case, held that when the TPO passes a Nil-adjustment Order, then such extension of time-limit is not afforded to the tax officer for passing the Assessment Order. Thus, if an Assessment Order is passed after the regular due-date for the same (without extension), such order would be considered time-barred and thereby, would be invalid and untenable.

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