

TransPrice Times

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Taj TV Ltd - Mumbai ITAT

Outcome: In **favour** of taxpayer

Category: Agency Permanent Establishment ('PE')

The taxpayer is a Mauritius company and is engaged in the business of global telecasting of TV channel 'TEN Sports'. The taxpayer appointed its Indian subsidiary i.e. Taj India as an advertising sales agent as well as an exclusive distributor of TEN Sports in India. The taxpayer, applying the 'Comparable Uncontrolled Price Method' of benchmarking, determined that the International transaction with its Indian subsidiary was at arm's length price.

The intermediate tax authorities upheld the action of the tax officer and treated the Indian subsidiary as an 'Agency PE' of the taxpayer, because, as per the Agreement between the entities, Taj India had been given 'exclusive right to represent the taxpayer before distribution system/ cable operator and negotiate and procure cable distribution licence agreement' for the advertising services; and consequently, attributed income to the taxpayer in respect of the advertisement revenue earned. The aggrieved taxpayer approached the Tribunal.

The Tribunal decided in favour of the taxpayer by referring to the co-ordinate bench ruling in taxpayer's own prior years' cases, concluding that Taj India does not constitute an 'agency PE' in terms of India-Mauritius Double Taxation Avoidance Agreement, and also that Taj India is remunerated at arm's length. Hence, no income/profit needs to be attributable in India to the taxpayer.

Van Oord Dredging and Marine Contractor BV – Mumbai ITAT

Outcome: In **favour** of taxpayer

Category: Valuation certificate as per CIRIA norms for dredger rentals, as a CUP

The taxpayer operates in the Netherlands and has a project-office in India to execute its dredging contracts. The taxpayer had benchmarked its charter hire/ lease rental charges paid to its Associated Enterprise ('AE') using Comparable Uncontrolled Price ('CUP') method on the basis of a valuation certificate from an independent valuer following the Construction Industry Research and Information Association ('CIRIA') norms and claimed the same to be at arm's length.

The transfer pricing authorities were of the view that the price quoted in the valuation report was on the basis of indicative rates of charter hire charges and further, included a caveat implying that 'the actual rates of hire would depend on the actual market conditions and on the basis of negotiation'. The taxpayer contended that the valuation of the charter hire charges in accordance with the CIRIA norms, had been accepted as a valid CUP by the Revenue in the taxpayer's own case in prior years.

The Tribunal concluded that although the principle of res judicata cannot be applied, however following the rule of consistency in the absence of material factual position, the valuation certificate issued as per the CIRIA norms should be considered as a valid CUP in the current assessment year, as is also accepted by the Department in the earlier years.

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