

GAP International Sourcing (India) Private Ltd – High Court – Delhi

Outcome: In favour of taxpayer
Category: Concealment Penalty

High Court upholds the deletion regarding concealment penalty and passes the verdict in favour of taxpayer.

The taxpayer is remunerated at cost plus a mark-up of 15% by its AE (Associated Enterprise) GAP International Sourcing Inc, USA. The intermediate tax authorities had an opinion that the mark-up should be at 32% and stated that mark-up of 15% which was determined by taxpayer's transfer pricing study is not appropriate. In view of that, the Tax Court upheld the mark-up of 32%. Subsequently, the taxpayer accepted this mark-up. The intermediate tax authorities held that this subsequent acceptance of a higher mark-up indicates that the taxpayer intended to conceal its income and hence a penalty should be levied.

Tax Court on its part maintained that a penalty cannot be imposed merely because the addition was accepted by the taxpayer. Also, it concluded that the taxpayer had shown due diligence while computing the arm's length price. Not satisfied by this decision, the intermediate tax authorities approached the High Court. Supporting Tax Court's view; the High Court too, concludes the case in favour of taxpayer.

Strides Shasun Limited – ITAT – Mumbai

Outcome: Against Taxpayer
Category: Interest on Advances

Tax Court rules against taxpayer by confirming the addition regarding interest on advances to its Associated Enterprises (AEs).

The taxpayer had provided funds to its AEs without charging any interest. Also, it was noted that certain costs were incurred by the taxpayer for availing credit facility so as to advance funds to the AEs. Such facts of the case made tax authorities to believe that the AEs were undeniably benefitted due to taxpayer since they didn't incur any cost to avail funds. Consequently, an addition regarding

'notional interest' on these advances was proposed. The Tax Court also upholds the proposed addition and settles the case in favour of Revenue.

Zee Entertainment Enterprises Limited – ITAT – Mumbai

Outcome: In favour of taxpayer
Category: Methods for computation of Arm's Length Price

Tax court rejects the method for computation of arm's length price (Resale Price Method) which was proposed by the tax officer and rules in favour of taxpayer.

The taxpayer is involved in broadcasting and distribution of TV channels. Apart from this, the taxpayer sells limited telecasting rights to its Associated Enterprise (AE) – Asia Today Limited, Mauritius (ATL). Further; this AE – ATL supplies such rights to its subsidiaries.

Stating taxpayer's transfer pricing study as invalid, the tax officer chose ATL as the tested party and considered 'Resale Price Method' (RPM) as the most suitable method. Whereas, the Tax Court mentions that the basic condition to follow RPM is that 'the property purchased by the enterprise from an AE should be re-sold/provided to an independent entity.' In this case, the rights were not re-sold to an independent entity. Hence, the Tax Court discards this method and rules in favour of taxpayer.

Real Estate Transactions

Certain suggestions were made regarding real estate transactions for the purpose of ICDS by the Committee in a draft. As per the press release dated 11th May, 2017 by the Finance Ministry of India; the draft is based on the Guidance Note issued by ICAI (Institute of Chartered Accountants of India).

However, for providing uniformity and certainty with the Income Tax Act, certain changes are

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proposed by the Committee. Comments on this draft are awaited.

Following are the differences among the draft ICDS and the Guidance Note :

Draft ICDS vs. Guidance Note issued by ICAI – An Overview

1. Definition of Project : According to the Guidance Note, a single project constitutes the set of units which are connected by a common set of amenities. On the other hand, draft ICDS has mentioned the term ‘basic facilities’ in place of common amenities.
2. Definition of Project Cost : The Guidance Note contains illustrative list of items that are to be included, allocated or excluded in the project cost. Whereas, draft ICDS puts emphasis on the main principle – ‘Costs that cannot be attributed to any project activity or allocated to project shall be excluded from project cost.’
(To achieve consistency, the illustrations were later excluded from the Guidance Note.)
3. Real Estate Projects : The Guidance Note states that revenue in respect of real estate projects is required to be recognised as per AS 9 (Revenue Recognition) or AS 7 (Construction Contracts) depending on the economic substance of the project. The proposed ICDS retains the same principles. However, it does not include the illustrative language which is mentioned in the Guidance Note to provide simplicity and certainty.
4. Application of POCM (Percentage of Completion Method) for Real Estate projects :
 - (i) As per the Guidance Note, one of the many conditions that should be satisfied for recognizing revenue is to obtain all critical approvals regarding the project. Whereas, the aforementioned condition need not be satisfied according to draft ICDS.

(ii) The Guidance Note puts a cap on recognition of revenue based on stage of completion determined with reference to the project cost incurred. However, the proposed ICDS does not provide for capping the recognition of revenue based on stage of completion method.

5. Transferable Development Rights (TDRs) : The Guidance Note states that where development rights are acquired by way of giving up of rights over existing structures or open land, the development rights shall be recorded at the fair market value OR the net book value. While in draft ICDS, the development rights shall be recorded at the fair value of development rights so acquired.

The Committee recommends the same to ICAI for achieving certainty and consistency.

Recent News

Release of Country-by-Country Reporting (CbCR) Implementation Status by OECD.

Through activations of automatic exchange relationships under the Multilateral Competent Authority Agreement, OECD moves a step forward for implementing CbCR. Owing to this, more than 700 automatic exchange relationships have been established. A full list of such exchange relationships has been released along with the implementation status of CbCR by OECD.

[For full list of exchange relationships, [click here](#)]