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# TransPrice Times

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## Texport Overseas Pvt. Ltd. – Karnataka High Court

**Outcome: In favour of the taxpayer**
**Category: Applicability of Specified Domestic Transaction ('SDT')**

The taxpayer is engaged in the business of exporting readymade garments. For Assessment Years ('AY') 2013-14 and 2014-15, certain adjustments got proposed by the transfer pricing authorities in respect of payments which were treated as SDTs by virtue of Section 92BA(i) of the Income-tax Act, 1961 ('the Act'). Section 92BA(i) covers transactions in relation to payments to persons as referred to in Section 40A(2)(b) of the Act. The persons as covered under Section 40A(2)(b) of the Act include directors, partners, relatives, entities or individuals having substantial interest in other entities, etc.

However, Section 92BA(i) of the Act got omitted by the Finance Act, 2017 w.e.f. 01st April 2017. Subsequently, the Transfer Pricing adjustments as stated above got deleted by the Tax Court since they were of the view that such an omission is to be applied retrospectively. Having reservations about the retrospective application of the said omission, the tax authorities approached the High Court to seek an answer for this substantial question of law. The transfer pricing authorities contested that the statute itself, explicitly states such omission is prospective in nature and hence, the additions are in accordance with the applicable provisions of the Act.

After hearing the contentions of the taxpayer and the intermediate tax authorities, the High Court quoted Section 6 of the General Clauses Act which states that "***The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute book as completely as if it had never been passed, and the statute must be considered as a law that never existed... If a provision is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them...***"

Thus, the decision of the Tax Court was upheld, and the judgement was passed favouring the taxpayer.

## Spentex Industries Ltd. – Delhi ITAT

**Outcome: In favour of the taxpayer**
**Category: Corporate Guarantee**

The taxpayer is engaged in the business of manufacturing polyester cotton yarn, cotton yarn, man-made fibre yarn, etc. During the year under consideration, it had provided corporate guarantee for its Associated Enterprise ('AE') for which the transfer pricing authorities proposed an adjustment of a 'corporate guarantee fee'.

On perusal of the facts and contentions that were put forward by both the parties, the Tax Court placed reliance on various judgements and opined that one of the vital requirements for a transaction to be an 'International Transaction' is that it should have a bearing/ impact on the profits, incomes, losses or assets of the taxpayer. The onus to demonstrate such an impact is on the intermediate tax authorities. It was also stated that the impact should be on a real basis – whether in present or in future, but should not be on hypothetical or contingent basis. The Tax Court underlined the fact that no iota of material

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is on record to say that the taxpayer incurred any costs in providing corporate guarantee thereby implying that there was no real impact on the profits, incomes, losses or assets of the taxpayer. Hence, the case gets concluded in favour of the taxpayer.

## Samsung India Electronics Pvt. Ltd. – Delhi ITAT

**Outcome: In favour of the taxpayer**
**Category: Marketing Intangibles**

The taxpayer is engaged in the business of manufacturing and selling electronic and technological devices. It had a Marketing Fund Agreement ('MFA') with its AE in relation to AMP and shop display activities. The transfer pricing authorities were of the view that the AMP expenses incurred by the taxpayer lead to the promotion of 'Samsung' brand thereby implying creation of 'marketing intangibles'.

In the Tax Court, it was contended that such AMP expenses incurred by the taxpayer are wholly and exclusively for domestic sales and the resulting benefits from these AMP expenses are intended to be enjoyed purely by the taxpayer. The benefits, if any, resulting to its AE, are merely incidental in nature. On the other hand, the transfer pricing authorities stated that the MFA between the taxpayer and the AE shows that the reimbursement of a portion of AMP expenses as incurred by the taxpayer are on a pre-approval basis and an annual budget in this regard is decided by the AE. The transfer pricing authorities further argued that such AMP expenses are not a grant given by the AE but in fact, is a part of the pre-approved AMP activities. After taking into consideration the due facts and circumstances, the Tax Court noted that the taxpayer is a full-fledged risk bearing manufacturer with its core operations in India and accordingly carries out sales in India with all the risks and rewards. Thus, it could be said that the AMP expenses were genuinely incurred to drive the sales in India thereby justifying the role of a full-fledged risk bearing manufacturer. As regards the MFA, the Tax Court opined that the material on record was neither able to substantiate that the AMP activities were carried out at the behest of the AE beyond what was approved and reimbursed, nor the AMP activities of the taxpayer were 'excessive' when compared to its operations. Therefore, owing to these facts, the judgement gets passed in favour of the taxpayer.

## RECENT NEWS

### Synthesised Texts of DTAAs released:

India's synthesised texts of the altered Double Taxation Avoidance Agreements ('DTAAs') have been released by the Central Board of Direct Taxes based on the for Multi-Lateral Instruments. These pertain to the countries – UK, Australia, Ireland, Austria, Lithuania and Poland.

**Suggested Read:** https://transprice.blog/

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