

Allcargo Global Logistics Ltd – ITAT - Mumbai

Decision Outcome: In favour of the taxpayer

Category: Re-characterisation of share application money as loan

Summary of decision:

- Taxpayer's concluded assessments for assessment years 2007-08 and 2008-09 were reopened by tax authorities on the grounds that share application money paid by taxpayer to its Associated Enterprise ('AE') be treated as loan and a notional interest be charged on the same
- Tax authorities relied on Tax Court's ruling in the case of 'Petrot Systems TSI' wherein it was held that amount lying unutilized beyond a period of 60 days must be treated as loan and subsequently an adjustment on account of notional interest at the rate of LIBOR + 3% was made by tax authorities for both the abovementioned years
- Tax payer contended that delay in allotment of shares by AE was for genuine and unavoidable reasons and submitted detailed facts resulting in consummation of a deal involving AE and its erstwhile shareholders
- Tax authorities rejected tax payer's contentions and upheld the adjustments
- On appeal by taxpayer, Tax Court relied on the case of 'Bharti Airtel Ltd' wherein a similar issue was decided in favour of the taxpayer
- Tax court held that share application money cannot be re-characterised as an international transaction of loan merely because of a delay in allotment of shares by AE and deleted adjustments made by tax authorities