

## TTK Prestige Ltd – ITAT – Bangalore

**Outcome** – **Against** the Taxpayer

**Category** – International Transaction – Interest free Loans to AE

**Background** – The taxpayer is engaged in the business of manufacturing and marketing of pressure cooker, cookware and domestic electrical appliances. Taxpayer had advanced an interest free loan of Rs. 3.05 crores to Mantra Inc (AE) incorporated in USA. It was observed that the taxpayer has provided loan out of its borrowed funds on which it had claimed interest expenses in its P&L account accordingly. Tax Officer proposed an adjustment considering interest Prime Lending Rate (PLR) of SBI at 10%.

**ITAT's Decision** – Tax Court held that lending and borrowing of money between associated enterprises is an 'international transaction'. Further while computing the business income in case of interest free loans to AEs, general principles applicable to non – AEs, do not apply to TP. Tax Court upheld the application of LIBOR rates for computing additional interest on loan advanced to AE, instead of prime lending rate or currency rates.

## Prithvi Information Solutions Ltd – ITAT – Hyderabad

**Outcome** – **Against** the Taxpayer

**Category** – International Transaction – Equity Investments in subsidiary

**Background** – The taxpayer is engaged in the business of globally providing customized information technology (IT) solutions and engineering services to a number of clients in USA. It was observed that the taxpayer made certain investments/loans/advances to its AEs, but had not charged any interest on such advances. It was further observed that the advances made by the taxpayer falls within the higher risk category and thus proposed an adjustment.

The taxpayer contended that the amounts categorized by TPO as loans and advances were actually equity investment made by the taxpayer in its subsidiary as part of its business expansion program. It was further observed that as per share allotment certificate taxpayer was allotted shares of Prithvi solutions Inc. USA (its AE) of Rs.

32 crores, but as per the Form no. 3CEB the loan advanced was mentioned at Rs. 29.985 crores, instead of Rs. 32 crores.

**ITAT's Decision** – Tax court, based on bench ruling of Vijay Electricals Ltd., had held that if the investments are in the nature of equity, then they cannot be treated as loans and advances. If the nature of investments is determined as loans/advances, only then TP adjustments can be made.

Tax court approved LIBOR + 2% as the appropriate rate of interest (as ordered by DRP) and disapproved the interest calculation for a period exceeding 12 months.

## Copal Research Mauritius Limited – Delhi

**Outcome** – In **favour** of Taxpayer

**Category** – **Substantial value** for indirect transfers.

**Background** – Copal Partners Limited, incorporated in Jersey (CPL Jersey) held 100% shares in Copal Research limited, incorporated in Mauritius. CRL Mauritius in turn held 100% shares in Copal Research India Pvt Ltd, incorporated in India and in Copal Market Research Ltd, a company incorporated in Mauritius. CMRL Mauritius, in turn held 100% shares in Exevo Inc.US. ExevoInc US held 100 % shares in Exevo India Pvt Ltd a company Incorporated in India.

CRL sold its entire holding in CRIL to Moody's Analytics Inc (Moody's Cyprus).Further CMRL sold its entire holdings in Exevo to another US Company, Moody's USA (M USA).

An advance ruling was sought on this case in respect of levy of income tax in India on gains arising from the above transactions and consequently tax withholding obligation of the acquirer under section 195 of the Income tax Act.

**High Court's Decisions** –

Indirect transfers are taxable in India only if shares derive substantial value from Indian assets. Reference was also made to Shome Committee Report and Direct Tax Code 2010 where both had considered the term substantially to be threshold of 50 %of total value derived from assets of the Company or Entity.

The Tax Court upheld that conclusion of AAR that gains arising from the transactions shall be chargeable to tax in India only if Indian Assets contribute to its value by more than 50 %. Further it was stated that Gain arising on sale of shares of company incorporated overseas deriving less than 50 % of its value from assets situated in India would certainly not be taxable in India under Section 9 read with Explanation 5.

## Recent Amendments:

### Tax Audits

The due date for obtaining and furnishing of the report of audit under section 44AB of the Act for Assessment Year 2014-15 is extended from 30<sup>th</sup> day of September, 2014 to 30 the November, 2014.

It is further clarified that the tax audit report under section 44 AB of the Act filed during the period from 1<sup>st</sup> April, 2014 to 24 the July, 2014 in the pre –revised Forms shall be treated as valid tax audit report furnished under Section 44 AB of the Act.

## NEWS:

### DTAA with Fiji

The Government of the Republic of India signed a Double Taxation Avoidance Agreement (DTAA) with the Government of Republic of Fiji for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income on 30th January, 2014.

### TP Adjustment

In the final release of Annual report for the FY 2013-14, it was observed that total TP adjustments made by the Tax court were around Rs. 60,000 crores overall. Out of which, Mumbai and Delhi Account for 75% of total TP Additions.