

Four Soft Pvt. Ltd: ITAT- Hyderabad

Decision Outcome: Against the Taxpayer

Category: Receipt of Guarantee fees

- The Taxpayer is engaged in providing services in enterprise solutions by operating software products and services in ITES sector for the logistics industry
- The Taxpayer is a parent company of subsidiaries in Denmark, Singapore, Netherland and Malaysia
- During the Financial Year (FY) 2006-07, the taxpayer has entered in to international transaction of provision and receipt of services from its Associated Enterprises (AEs), provision of loans and other reimbursements
- Further, for the relevant FY, the taxpayer also provided Corporate Guarantee on behalf of its Overseas Subsidiary based out of Netherland i.e. AE
- No remuneration for provision of such Corporate Guarantee was received from the AE
- The Tax Officer following the order of previous year i.e. FY 2005-06 treated the commission charged by ICICI Bank at 3.75% as an arm's length remuneration for Corporate Guarantees and proposed a Transfer Pricing adjustment of Rs. 2.62 crores
- Taxpayer submitted that the corporate guarantee is nothing but an additional guarantee provided by the parent company and it does not involve any cost or risk to the shareholders
- It was further submitted that the retrospective amendment effected to definition of International Transaction has not enlarged the scope to include Corporate Guarantees
- The Tax Court held as follows:
 - Corporate Guarantee comes within the scope of amended definition of International Transaction and hence needs to be remunerated, reported and benchmarked
 - A Corporate Guarantee cannot be equated to a bank guarantee and hence the rate applied by the tax officer of 3.75%, which is a bank guarantee rate needs to be re-visited
 - Relying on the decision of Infotech Enterprise, the case has been remanded back to the files of tax officer to ascertain appropriate rate of Guarantee fees for such transaction