

Siemens Public Communications Network Ltd – SC – Chennai

Outcome: In favour of taxpayer
Category: Subvention

Hon'ble Supreme Court rules subvention income received by taxpayer from its parent company as a capital receipt.

A subvention is a voluntary payment from parent company, often to make good the losses incurred by taxpayer. In this case, as subvention payment was made to keep the capital investment of taxpayer intact, the income is considered as capital in nature, contrary to the ruling of Hon'ble High Court in taxpayer's case.

Hon'ble HC ruled subvention to be revenue in nature, as subvention is not utilised by taxpayer for setting up a business or creating a new asset. HC placed reliance on its rulings in Ponni Sugars and Sahney Steel where subsidies were received from a public fund. Accordingly, Hon'ble SC pointed out an incorrect reliance by HC as the voluntary payment in the taxpayer's case was a grant-in aid by parent company, not from a public fund.

Accordingly, the Hon'ble SC reversed HC ruling to suggest that any subvention received from parent company will be treated as capital receipts and upheld the taxpayer's views.

McKinsey Knowledge Centre Pvt Ltd – ITAT – Delhi

Outcome: Against taxpayer
Category: KPO vs BPO

Tax Court rejects claims of taxpayer and characterises services provided by taxpayer as KPO services.

Taxpayer carries out research using various databases and further customises it before exporting to its clients. Accordingly, in the situation where taxpayer adds value to the data it accesses from databases before exporting it, such services shall not be considered as BPO services.

Therefore, Tax Court holds that services provided under 'Research and information' segment of the

taxpayer as KPO services and cannot simply switch back to argue that it is simply collecting data from databases before sending to its group companies.

Syngenta India Ltd – ITAT – Mumbai

Outcome: In favour of taxpayer
Category: Location savings

Tax Court deletes taxpayer's tax adjustment with respect to location savings and green environmental cost savings.

Accordingly, separate adjustment for location savings/ environmental costs is not justified as any kind of return or location saving advantage would have already been taken into consideration while computing margins of local comparables. Further, reliance is placed on OECD BEPS Guidance (Action Plan 8) and Draft UN Transfer Pricing Manual, where it is recognised that separate location savings adjustment is not required if reliable local market comparables are available.

Tax Court observes that adjustment is made by considering economic factors of overseas AE and comparing cost per employee globally with cost per employee in India. Evaluating the above method of applying adjustment as incorrect, Tax Court proceeds to delete the adjustment and provide relief to taxpayer.

Del Monte Foods India Pvt Ltd – ITAT – Mumbai

Outcome: In favour of taxpayer
Category: Concealment Penalty

Tax Court removes concealment penalty imposed on taxpayer on account of tax adjustments made.

Taxpayer submits that it does not execute orders from ultimate consumer and followed a procedure of routing all orders from its Singapore AE by raising invoices on AE instead of final customer at same price subject to differences in exchange rates between date of purchases and date of actual exports. Such exchange differences further resulted in a shortfall in its arm's length computation.