

TVS Motor Company Ltd – ITAT – Chennai

Outcome: **Against** taxpayer

Category: Economic ownership

Tax Court rejects taxpayer's claims and does not recognize it as an economic owner of TVS brand.

Accordingly, taxpayer a parent company, incurred brand building expenses to build a significant presence in Indonesian market. However, Tax Court observes that economic ownership of brand would remain with Indonesian AE.

Previously, it had been noticed that AMP expenditure incurred by Indonesian AE was met by taxpayer indicating that services were being provided from taxpayer to develop TVS brand in Indonesia. Tax Court advocates that since benefit of AMP expenditure was allowed only to Indonesian AE, taxpayer cannot claim such expenditure.

Further reliance was placed on recent Supreme Court judgement in the case of Vodafone International Holding [TS-23-SC-2012]

Business Process Outsourcing (India) Pvt Ltd – ITAT – Bangalore

Outcome: **In favour** of taxpayer

Category: Operating expenses

Tax Court accepts taxpayer's claim for expenses of business unit after its operations were terminated.

Consequently, taxpayer submits that no operating revenue was being generated in business unit as its employees were retrenched after its operations closed down. Therefore, its personal expenses, depreciation and other maintenance related expenses should be non-operating in nature during this period. However, the tax officer had rejected this. As there was no operating revenue being generated, the Tax Court considered such expenses as non-operating in nature. Furthermore, provision for bad and doubtful debts is held to be treated as operating expenses considering they are closely linked to taxpayer's business.

Recent news:

Key changes in revised India – Cyprus treaty

In our previous issue, we covered the amendments made to India-Cyprus treaty providing for source based taxation of capital gains. The tax treaty now stands revised and its key changes are encapsulated in following highlights:

- Coverage of PE expanded to include sales outlet, warehouse providing storage facilities and farms, plantation or any other place involving agriculture-forestry-plantation related activities.
- Word 'delivery' has been removed from Article 5(3)(a) forming part of exclusionary activities of creating a PE.
- Insertion of service PE clause with a threshold of 90 days within any 12-month period.
- Reduction in threshold of installation/construction PE from 12 month to 6 months.
- Agency PE now includes a person regularly delivering goods on behalf of enterprise while habitually maintaining stock of goods. Further, person who habitually secures order on behalf of enterprise is also covered.
- If Place of Effective Management (POEM) cannot be determined in case of dual residency, question should be settled by competent authority within 2 years question following MAP.
- Revised treaty rejects the concept of 'Fees for Included Services' and provide concept of FTS
- FTS does not include make available clause
- Dividend paid to beneficial owner under new treaty to be taxed at 10% (earlier 15%)
- No withholding tax to apply on dividend distributed by Indian company u/s 10(34) of Income-tax Act 1961
- No deduction shall be allowed under amended Article 7 on Business Profits, for amount paid (excluding reimbursement of actual expenses) by PE to head office (HO) or any of its other office in form of royalties, commission or other specific charges. Similarly, any amount charged by PE to its HO or any other office will not be taken in to account.
- New Article 27 incorporating assistance between India and Cyprus for collection of taxes.