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Nike India Private Limited – ITAT – Bangalore

Outcome: Partially in favour of taxpayer
Category: International transaction

Tax Court provides clarity in respect of characterising a transaction as international transaction within the meaning of Section 92B of the Income-tax Act 1961.

Accordingly, the taxpayer shares cost with its AE for promoting and building the Nike Brand under a contract with BCCI for cricket sponsorship. As per a contract between taxpayer and AE, the latter bores 50% of the BCCI cost. Placing reliance on the 2 agreements, Tax Court rejects taxpayer's views and rules such cost sharing with AE as an international transaction constituting a proper understanding and arrangement for development of brand which belongs to AE of the taxpayer.

Tax Court also rules in respect of local AMP expenses incurred by taxpayer for promoting products using only brand name of AE. Accordingly, in absence of agreement or arrangement in writing with AE, it cannot be called an international transaction.

Elitecore Technologies Private Limited – ITAT – Ahmedabad

Outcome: Against taxpayer
Category: Foreign tax credit (FTC)

The Tax Court opines on the eligibility of FTC claimed by taxpayer.

Accordingly, taxpayer received payment from Singapore and Indonesia, after deduction of tax at source, and claimed a credit on the aggregate of these tax deductions as FTC. However, the intermediary authorities viewed FTC to be eligible only to extent of income being taxed in India as per actual MAT liability. The actual MAT liability was taken in the ratio of corresponding foreign receipts to overall turnover.

Taxpayer submits that it considered gross receipts for computing the tax credit. Tax Court rejects this argument and states 'income' to be considered for FTC eligibility, not gross receipts.

Recent News:

Amendment to India – Singapore Treaty

India has paved way for revising its tax treaty with Singapore, following on par with changes in its treaties with Mauritius and Cyprus recently. The key change is the amendment to capital gains in respect of alienation of shares. Now, a two year period from 1st April 2017 to 31st March 2019, is provided to allow a changeover from residence based taxation to a purely source based taxation, where taxation will be at 50% of the domestic tax rate in the country of source. Further, grandfathering provisions have been kept for shares acquired before 1st April 2017. However, the above benefits shall be subject to a Limitations of Benefits clause, if the resident intentionally aligns its business to take advantage of the above benefits.

In terms of BEPS implementations, the amended treaty looks forward to achieve the minimum standards by cracking MAP problems and avoiding arbitration swiftly. Furthermore, the now amended treaty gives both countries independency in applying its domestic laws and measures relating to tax avoidance or tax evasion.

CBDT Update on BEPS Implementation

Following India's active participation in the construction of OECD and G20's BEPS Project, India has decided to usher in the new year with constituting a committee towards ensuring fruitful implementation of 15 BEPS Action Plans.

With equalisation levy, country-by-country reporting, patent box already introduced, anti-treaty abuse, CBDT has stated that it shall ensure implementation of remaining BEPS Action Plans (CFC to be the possible entrant in Budget 2017) through amendments in Income-Tax Act 1961, Rules or Guidelines.

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