

# TransPrice Times

Edition: 01<sup>st</sup> – 30<sup>th</sup> November 2021

## **Sulzer Pumps India Private Limited – Bombay HC**

**Outcome:** In **favour** of the taxpayer

**Category:** **DRP directions to AO**

The tax court discovered that on account of Assessments being faceless and wholly electronic, the taxpayer was under reasonable belief that the reference filed to the Dispute Resolution Panel ('DRP') would be communicated directly by the DRP to the Assessing Officer ('AO'). The AO, being unaware of the objections filed by the taxpayer, edged forward to pass the Assessment Order after the expiry of the prescribed period of 30 days. While the tax court does not reprimand the AO for passing the order, the Act clearly requires the AO to incorporate the directions expressed by the DRP. The tax court further observed that the taxpayer had filed to directly communicate the reference made to the DRP to the AO. In consideration of the same, the tax court set aside the order of the AO. Further, the tax court directed the AO to take supplementary steps in the matter post directions of the DRP.

## **Convergys India Services Pvt Ltd – Delhi ITAT**

**Outcome:** In **favour** of the taxpayer

**Category:** **Foreign exchange gain | Interest on receivables**

The tax court opined that foreign exchange gain/loss is an integral part of transfer price and accordingly by default is an operating item. Additionally, foreign exchange gain/loss shall partake the same character as that of the international transaction as it is a direct outcome of the international transaction.

On account of adjustment relating to interest on receivables, the tax court adjudicated that in the absence of any fact to prove that the taxpayer is liable to payment of interest, no adjustment is warranted. Further professed that there is no requirement to benchmark the interest on receivables wherein the interest has not been charged.

Hence, the appeal of the taxpayer was affirmed on the above grounds. Reliance was also placed on a host of rulings by the higher and lower tax courts.

## **Mission Pharma Logistics (India) P Ltd – Ahmedabad ITAT**

**Outcome:** In **favour** of the taxpayer

**Category:** **Application of APA terms for years not covered**

The taxpayer in the instant case which relates to AY 2007-08, had proposed to apply the terms of the APA which were applicable to the years commencing from AY 2010-11 to the year under consideration in order to buy peace of mind and reduce litigation with the tax authorities. The taxpayer leveraged on a host of rulings wherein such preposition of the appellant was accepted.

The tax court in reaching a conclusion in the present case, took a note of the fact that an appeal by the tax authorities in the case of the taxpayer for AY 2010-11 was dismissed and finalized by the tax court on the basis of the said APA.

The tax court further observed that for AY 2007-08, comments were sought from the lower tax authorities during the assessment proceedings in relation to merits of admissibility and on the content of additional evidence presented by the

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taxpayer. As nothing was forthcoming from the lower tax authorities in this regard, decision was made based on the aforementioned order of the tax court for AY 2010-11 which was adjudicated in favour of the taxpayer based on the terms of the APA.

Hence, it was concluded that appeal preferred by the lower tax authorities was devoid of any merit and consequently dismissed.

## **Honda Motorcycle and Scooter India Private Limited – Delhi ITAT**

**Outcome:** In **favour** of the taxpayer

**Category:** Export Commission | Royalty

The tax court with regards to the payment of export commission, relied on taxpayers own cases in various assessment years wherein the tax court had rejected the lower tax authorities NIL ALP determination. On examining the facts, the export commission was paid to the parent by the taxpayer in order to access various global markets where the AE exists. In this connection, the taxpayer was able to demonstrate the benefits derived and also showcase higher profitability. Accordingly, the tax court directed the tax authorities to delete the adjustment on account of payment of export commission.

Similarly, with respect to payment of royalty, the tax court relied on taxpayers past cases across assessment years wherein the tax authorities actions on characterizing the taxpayer as a contract manufacturer were rejected as the taxpayer, according to the terms of the agreement, operated as a licensed manufacturer.

Therefore, as the aforementioned issues were squarely adjudicated by the tax courts in favor of

the taxpayer in the earlier years, with no change in the facts and circumstances of the case, the tax authorities were directed to delete the adjustments made on account of payment of export commission and royalty.

## **RECENT NEWS**

### **Transitional approach on Equalization Levy | India-USA**

On 24 November 2021, India and the United States reached an agreement in relation to the treatment of equalization levy of 2% on e-commerce supply and services during the interim period ahead of the full implementation of Pillar 1 of the OECD along with the United States trade action regarding the levy.

Maintaining consistency with the terms applicable to the earlier agreements between the United States AND Austria, France, Italy, Spain, the United Kingdom and Turkey, the liability from India's equalisation levy on e-commerce supply of services that companies in the United States will accrue in India during the interim period will be creditable against future taxes accrued under Pillar 1 of the OECD agreement.

The period during which the credit accrues shall commence from April 1, 2022 until either the implementation of Pillar 1 or March 31, 2024, whichever is earlier.

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