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**Harman Connected Services Corporation India Pvt Ltd
[Formerly Symphony Teleca Corporation (India) Private Ltd]
Karnataka HC**

Outcome: In favour of the taxpayer

Category: Amendment of assessment orders in conformity with MAP

The taxpayer and the United States - Competent Authority ('US-CA') made a reference for the Mutual Agreement Procedure ('MAP') settlement based on the adjustments made by the tax authorities in the United States corresponding to certain assessment years. In this regard, it was noted by the High Court that neither the Indian competent authority ('Indian CA') called for information regarding the Indian TP adjustments nor did the taxpayer volunteer to offer such information. The reference to MAP, in this case, was made by the US-CA and the taxpayer prior to the amendment in the Rules which are now amended and direct the Indian CA to call for information regarding the TP adjustments from the taxpayer.

It was noticed that the Indian CA dealt with the MAP, as proceedings that were pending as on the date of the amendment in the Rules by informing the taxpayer to communicate its acceptance of the terms of the MAP settlement and hence, as per the amended rules, the Indian CA was obliged to call for the relevant records and additional documentation before the conclusion of MAP, from either the Indian tax authorities or the taxpayer. Therefore, it cannot be argued that the Indian CA or the Indian tax authorities were unaware of the amendment in the Rules.

Consequently, the tax authorities are not in a position to contend that the provisions of unamended Rules must apply and it must defer the implementation of the concluded MAP because the taxpayer had not invited the attention of the Indian-CA to the Indian TP adjustments. Further, the High Court relying upon various rulings also concluded that the terms of DTAA shall have precedence over the provisions of the Income-Tax Act when it is beneficial to a taxpayer.

Hence, the High Court allowed the taxpayers' writ petition and directed the tax authorities to amend the Assessment Orders passed for the relevant assessment years, in conformity with the MAP settlement along with refund and permissible interest.



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United Breweries Ltd

Bangalore ITAT

Outcome: In favour of the taxpayer

Category: Appropriate evidence for benefit test

In the instant case, the plea of the taxpayer has been that lower tax authorities disregarded the evidence produced and determined the Arm's length Price ('ALP') as NIL, by merely stating that the taxpayer failed to prove the nature of services availed and that the evidence produced was 'general' in nature. The tax court concurred with the taxpayer concluding that 'clear' evidence cannot be insisted upon and the overall business scenario and the type of services rendered shall have to be looked into. The tax court further observed that similar payment made by the taxpayer was concluded to be at Arm's length in prior years and directed the lower tax authorities for a fresh consideration of the matter.

McCain Foods India Pvt Ltd

Delhi ITAT

Outcome: In favour of the taxpayer

Category: Simultaneous application of Section 92CA(3) and 40(a)(ia)

The tax court elucidated that liability under section 40(a)(ia) arises when there is a failure on part of the taxpayer to deduct tax at source and hence the total income of the taxpayer is increased by such deduction. In a similar manner, ALP concluded to be NIL by the lower tax authorities would again result in addition to the taxpayer's total income. This would lead to the situation of paying taxes twice on the same amount. Reliance was also placed on a Supreme Court ruling stating that as a fundamental rule of law of taxation, income cannot be taxed twice. In light of the above, the simultaneous application of Section 92CA(3) and 40(a)(ia) by the lower tax authorities was considered devoid of any merit and appeal of the taxpayer was allowed.



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DQ Entertainment (International) Ltd
Hyderabad ITAT
Outcome: In favour of the taxpayer
Category: No profit attribution on sale of IPR

In the instant case, the lower tax authorities on account of the sale of intellectual property rights ('IPR') by the taxpayer to its Associated Enterprise ('AE'), proposed an adjustment and attribute profits to the taxpayer using the Profit Split Method ('PSM').

The tax court relied on rulings in the taxpayer's own case during the previous years, where it was pronounced that once an IP is sold and ALP is determined, it becomes the property of the AE. After the completion of sale, the AE further enters into transactions with outsiders or outside the Indian jurisdiction, it, however, does not enter into a transaction with the taxpayer involving the IP and hence there is no existence of an international transaction. Accordingly, the tax court deletes the adjustment made by the lower tax authorities.

RECENT NEWS
Tax dispute | Paris Court Vs. McDonald's

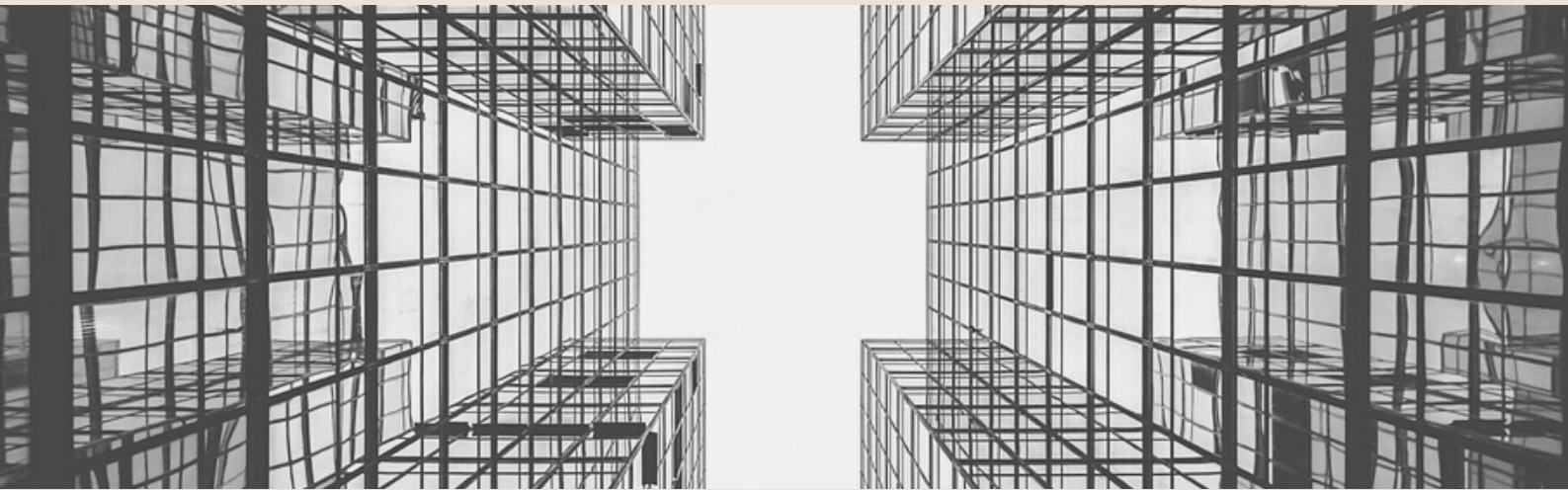
McDonald's has agreed to pay Euro 1.25 billion in fines (Euro 508 million) and tax settlement (Euro 737 million) to avoid legal cases over tax evasion, and tax avoidance between 2009 and 2020. The case of McDonald's is seen as the second largest settlement case in the History of French taxation. The allegations first surfaced in 2014, that McDonald's diverted fees paid by its franchise restaurants to units in other countries, thereby reducing its taxable income in France.

McDonald carried out a transfer pricing intra-group restructuring in 2009 and increased royalty from 5% to 10% of restaurant turnover. The payment was made from McDonald's companies in France to the Swiss branch of the group company in Luxembourg. These payments were not taxable in Luxembourg or Switzerland, or the USA.

Such restructuring has been under the French tax lens for a long time with the issues around double non-taxation and staking up of profits without the adequate substance being the key aspects questioned by the French authorities.



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