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CHARTERED ACCOUNTANTS

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DIRECT TAX REVIEW
MAY 2020

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HIGH COURT RULINGS

No additions in a case where change in method of accounting has revenue neutral effect in the AY under consideration

Facts

Assessee being a company engaged in the business of real estate. Return of the assessee was selected u/s. 142(1) during which it was noticed that assessee has adopted Completed Contract Method of accounting for all its real estate projects. On the ground that as per the provisions of accounting standard AS - 7, assessee was required to mandatorily follow Percentage Completion Method and as such, a sum of IN 7.33 lacs was added to the income. Further, AO also held that rental income received from Forum Mall and rental income received from fit outs were income from business and income from other sources and not as income from house property. An appeal was filed before the CIT-A which was dismissed. Further, ITAT partly allowed the appeal and held that AO ought to have followed Complete Contract Method as claimed by the assessee and rental income received from Forum Mall should be brought to tax under the head profits and gains from business and income from fit outs should be brought to tax under income from other sources.

Ruling

The revenue had accepted the method of accounting adopted by the assessee for the previous years and in the light of guidance note provided that AS- 7 is applicable to real estate developers, assessee itself has changed the method of accounting and for the subsequent years, it has changed from Project Completion Method to Percentage Completion Method in the subsequent years. Hence, for the reasons already stated, the substantial question of law is answered in favour of the assessee and against the revenue.

Source: HC, Karnataka in CIT vs. Prestige Estate Projects (P.) Ltd. App No. 84 of 2010, dated May 05, 2020

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Relief under Section 80-HHC could not be ignored in case where prior approval of RBI has been taken for purpose of Export Sale proceeds

Facts

The appellant assessee received an order from an Indonesian company for export of transformers, switch gears, conveyor rolls, etc. wherein an advance payment of 10 percent of the total value was to be received at time of placing order and balance 90 percent would be paid in twelve equal half yearly instalments commencing two years from the date of shipment for which finance was obtained. Further, the Indonesian Company paid the 10 percent advance and, thereafter, two half yearly installments. Subsequently, the foreign customer wanted to pay off the balance amount at one go. The RBI permitted the Bank to accept the balance amount in one installment.

Due to such exchange rate fluctuations, Bank received an excess sum in Indian rupee amounting to INR. 1.13 cr. The amount received was passed on by Bank to the assessee during the AY 1996-97. The assessee treated the said

amount as part of its export turnover for the purpose of computing deduction under Section 80-HHC of the Income Tax Act. The assessee filed an application under sub-Section (2)(a) of Section 80-HHC of the said Act before the CIT-West Bengal, requesting to enable the assessee to claim the said amount of as export turnover but before any decision was given on such application, the AO, on March 26, 1999, completed assessment rejecting the assessee's claim and treated the said amount as business income of the assessee. The first appeal from the AO's order was dismissed by the CIT which was further upheld by the Ld. Tribunal. The assessee is in appeal before the HC.

Ruling

HC held that it is not in dispute that the foreign exchange was received in India beyond the period of six months stipulated in sub-Section (2)(a) of Section 80-HHC. However, this was in accordance with the permission granted by the RBI. HC further held that the extra realization made in rupees for export sale proceeds in foreign exchange due to adverse exchange rate of rupee would be part of the export turnover in the year of receipt subject to the foreign exchange coming into the country within the statutorily prescribed time period. It further held that export sale proceeds received in accordance with and in terms of the export contract and with approval of RBI could not be ignored for the purpose of relief under Section 80-HHC of the said Act. The order under appeal was set aside and the matter was remanded to the Ld. Tribunal for fresh consideration and decision after giving opportunity of hearing to both sides.

Source: HC, Calcutta in Ispat projects Ltd. vs. CIT

App No. 32 of 2003, dated May 15, 2020

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Order treated as impugned wherein suppression was reported by the applicant and calculations were accepted without any deliberation by Settlement Commission

Facts

The applicant had entered into agreement with a German Company for carrying out a turn-key project wherein an initial amount was directly paid by opening an L.C. in the favour of the company. The total amount of agreement was INR. 102 cr., invoiced was INR. 72.43 cr. whereas an amount of INR. 35.77 cr. was only received by the assessee. The CIT stated that the invoiced amount of INR. 72.43 cr. should be considered as income of the applicant. The billed amount of INR. 102 cr. cannot be considered as income when the applicant has not at all received the balance amount. The AR fairly also stated that the CIT's contention that INR. 72.43 cr. was billed is correct. Considering the circumstances, Settlement Commission held that there is no discrepancy in the amounts as claimed by the CIT. Settlement Commission has accepted the case that a sum of INR. 20.14 cr. was directly paid by opening a LC directly in favour of the company and that the amount was not received by the petitioner. It was further held that there are sufficient reasons to interfere with the impugned order as there are several contradictions and it appears to have not disclosed truly all facts that are required for settling the case.

Ruling

The impugned order passed by the respondent was quashed and the case was remanded back to the Settlement Commission to pass a fresh order within a period of 6 months from the date of receipt of

this order after considering the report and the objections of the petitioner filed under rule 9 of the Settlement Commission (Procedure) Rules 1997 through videoconferencing, if situations so warrants on account of continuance of Covid-19 pandemic and accordingly the writ petition stood disposed of.

Source: HC, Madras in CIT vs. ITSC.

App No. 1 of 2008, dated May 19, 2020

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ITAT RULINGS

No dis-allowance would be called for under rule 8D(2)(ii) in a case where entire investment in assets yielding exempt income had been made out of interest free own funds

Facts

The assessee being an NBFC filed its return of income which was selected for scrutiny assessment, concluded on following additions:

Disallowance of INR. 3.92 cr. was made under Section 14A of the Act. The assessee received exempt dividend income against which in the ROI, no disallowance of expenses was made by the assessee for earning such exempt income. The AO did not accept the contention of the assessee regarding disallowance under rule 8D(2)(ii) of the rules and held that the assessee has made investment in assets yielding exempt income out of the borrowings and therefore disallowance for proportionate interest towards investment in assets yielding exempt income was correct.

Ruling

The Ld. CIT(A) deleted the disallowance under rule 8D(2)(ii) placing its reliance firstly on the decision in the case of **CCI Ltd. v. JCIT 20 Taxman 196 (Kar.)**, in which the Hon'ble HC held that *'the exempt income earned on stock in trade will not attract disallowance u/s 14A. The Ld. CIT(A) vide order in appeal for A.Y. 2011-12 had also held that disallowance under Rule 8D(2)(ii) was not attracted as the appellant held the securities, as stock in trade'.* Secondly, in **CIT v. Reliance Utilities and Power Ltd.**, it was held that *'if there is sufficient interest free funds available, it can be presumed that the investments were made from such funds'.* Thirdly, in CIT v. HDFC Bank Ltd., the Hon'ble Bombay HC held that *'in case the assessee owns funds were more than the investments in tax free securities; it would have to be presumed that the investment made by the assessee would be out of interest free funds available with the assessee'.*

Further, disallowance of INR. 34.25 lacs as per Rule 8D(2)(iii) which is conceded by the Ld. AR, is sustained and balance disallowance of INR. 3.92 cr. under Rule 8D(2)(ii) is deleted. This ground of appeal is partly in favour of the appellant."

Source: ITAT, Delhi in Addl. CIT vs. PNB Gilts Ltd.

App No. 682/DEL/2017, dated May 1, 2020

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Provisions of Section 50C cannot be invoked on sale of an immovable property

Facts

The assessee in her return disclosed sale of agricultural land with LTCG of INR. 17 lakhs. The case was selected for scrutiny assessment wherein agreement to sell drafted on a non-judicial stamp paper (neither registered nor notarized) was submitted when the Ld. AO asked for the sale deed of the

property, but the assessee was unable to submit the sale deed. The Ld. AO gathered a copy of the sale deed from the office of the Sub-Registrar and found that the sale deed was registered on June 23, 2010, wherein the total sale consideration of the property exchanged was recorded at a much higher value than as offered by the assessee in her return. Addition was made by the AO. Provisions of Section 50C were contested in the appeal.

Ruling

ITAT held that since in the present case the sale agreement was neither registered nor evaluated by the Stamp Valuation Authority at the time of execution, the deeming provision of Section 50C does not come into play thereby replacing the full valuation of consideration of the document with the value calculated by the Stamp Valuation Authority/registering Authority. In the absence of any adoption or assessment by the authority of SG for the purposes of the Stamp duty in respect of subject transfer, there was no occasion for the AO to either refer the matter to the Registering Authority or to the Stamp Valuation Authority for the purpose of arriving at the valuation of the property." And thus, the provisions of Section 50C could not be invoked in the given case.

Source: ITAT, Delhi in Smt. Alka Jain vs. ACIT

App No. 3402/DEL/2015, dated May 1, 2020

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Digital content being a copyrighted Intangible asset eligible for depreciation at 25 percent.

Facts

The AO held that the assessee is eligible for depreciation @ 25% on 'Digital Content' developed by it as the same is 'intangible asset' and not @ 60% as the said digital content is not computer software. The assessee on its part had contended before the AO and relied upon Explanation-2 to Sec. 10B of the Act and further added that the assessee is an animation company and special effects are being produced using computer software and specially prepared software for the characters, backgrounds and properties which are made specially and then combined using many computers processers to make shots.

AO held that Section 32 deals with an asset, whether it is tangible or intangible in the first place. The prescribed rates come into play only once the asset is categorized as tangible or intangible. Animation software developed by the company is eligible for depreciation as applicable to Intangible assets since the company hold intellectual property rights and exploit the same. He held it was clear that the assessee company is eligible to claim depreciation @25% which was upheld by the CIT-A.

Ruling

ITAT affirmed the order passed by the CIT-A against the assessee wherein it was held that digital content was manipulated by assessee to be used in different films but still it could not be categorized as a higher pedestal of being termed as 'computer program' rather it still retains the character of copyrighted material being intangible asset and view of the Tribunal, the assessee was eligible for depreciation @ 25%. ITAT further held that we concur with the view of learned CIT(A) who has passed well-reasoned order which we affirm and dismiss the appeal filed by the assessee.

Source: ITAT, Chennai in Pentamedia Graphics Ltd. vs. DCIT

ITA No. 1406-1407/CHNY/2015 dated May 8, 2020

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CIRCULARS & NOTIFICATIONS

Determination of Residency of an Individual due to Covid-19 lockdown.

In order to avoid genuine hardship in the cases of individuals who had come on a visit to India during the PY 2019-20 for a particular duration and intended to leave India before the end of the PY for maintaining their status as non-resident or not ordinary resident in India, the Board, in exercise of powers conferred under Section 119 of the Act, has decided that for the purpose of determining the residential status under Section 6 of the Act during the PY 2019-20 in respect of an individual who has come to India on a visit before 22nd March, 2020 and:

(a) *Has been unable to leave India on or before 31st March, 2020, his period of stay in India from 22nd March, 2020 to 31st March, 2020 shall not be considered; or*

(b) *Has been quarantined in India on account of Novel Corona Virus (Covid-19) on or after March 1, 2020 and has departed on an evacuation flight on or before March 31, 2020 or has been unable to leave India on or before March 31, 2020, his period of stay from the beginning of his quarantine to his date of departure or March 31, 2020, as the case may be, shall not be considered; or*

(c) *Has departed on an evacuation flight on or before March 31, 2020, his period of stay in India from March 22, 2020 to his date of departure shall not be considered.*

Source: CBDT Circular No.11/2020 dt. May 05, 2020

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Acceptance of payment through prescribed electronic modes

To encourage digital transactions and move towards a cashless economy, a new provision namely Section 269SU was inserted vide the Finance (No. 2) Act 2019 which requires every person carrying on business and having sales/turnover/gross receipts from business of more than INR. 50 Crores in the immediately preceding PY to mandatorily provide facilities for accepting payments through prescribed electronic modes. Subsequently vide notification 105/2019 dt. December 30, 2019 prescribed electronic modes were notified.

Further, it is hereby clarified that the provisions of Section 269SU of the Act shall not be applicable to a specified person having only B2B transactions (i.e. no transaction with retail customer/consumer) if at least 95% of aggregate of all amounts received during the previous year, including amount received for sales, turnover or gross receipts, are by any mode other than cash.

Source: CBDT Circular No.12/2020 dt. May 20, 2020.

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CBDT extends reregistration date of charitable and religious trusts to October 1, 2020

Entities not approved: In view of the unprecedented humanitarian and economic crisis, the CBDT has decided to defer the implementation of new procedure for approval/registration/notification of certain entities to October 1, 2020. Now the entities will be able to register by October 1, 2020 instead of the earlier deadline of June 1, 2020, giving the relaxation owing to hardships caused by Covid-19 pandemic. Accordingly, the entities approved/ registered/ notified under Section 10(23C), 12AA, 35 and 80G of the Income-tax Act, 1961 would be required to file intimation within three months from 1st October, 2020, i.e, by December 31, 2020. Further, the amended procedure for

approval/ registration/ notification of new entities shall also apply from October 1, 2020.

Entities already approved: As per the new procedure, the entities already approved/ registered/ notified under these Sections would be required to file intimation within three months, i.e., by August 31, 2020. Further, the procedure for approval/ registration/ notification of new entities has also been rationalized with effect from June 1, 2020.

Source: Press Release dt. May 09, 2020

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Reduction in rates of TDS and TCS

In order to provide more funds at the disposal of the taxpayers for dealing with the economic situation arising out of COVID-19 pandemic, the rates of TDS for the non-salaried specified payments made to residents and TCS for the specified receipts has been reduced by 25% for the period from May 14, 2020 to March 31, 2021. The link to the reduced rates list is attached herewith for your reference.

- Therefore, TDS on the amount paid or credited or TCS on the amount received or debited during the period from May 14, 2020 to March 31, 2021 shall be deducted/collected at the reduced rates.
- There shall be no reduction in rates of TDS or TCS, where the tax is required to be deducted or collected at higher rate due to non-furnishing of PAN/Aadhaar. For e.g., if the tax is required to be deducted at 20% under Section 206AA of the Income-tax Act due to non-furnishing of PAN/Aadhaar, it shall be deducted at the rate of 20% and not at the rate of 15%.

Source: Press Release dt. May 13, 2020

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Extension in several Income tax compliance due dates

- The due date of all Income Tax Returns for AY 2020-21 has been extended to November 30, 2020.
- Due date of furnishing the Tax audit Report under Section 44AB has also been extended to October 31, 2020.
- The date for making payment without additional amount under the Vivad Se Vishwas scheme extended to December 31, 2020.
- Due date has been extended for completion of assessments:
  - Assessments time barring by September 30, 2020 stands extended to December 31, 2020.
  - Assessments time barring by March 31, 2021 stand extended to September 30, 2021

Source: Press Release dt. May 13, 2020

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Facility of Instant allotment of PAN through Aadhaar based e-KYC

This facility is now available for those PAN applicants who possess a valid aadhaar number and have a mobile number registered with aadhaar. The allotment process is paperless and an electronic PAN (e-PAN) is issued to the applicants free of cost.

The instant PAN applicant is required to access the e-filing website of the Income Tax Department to provide her/his valid aadhaar number and then submit the OTP received on her/his aadhaar registered mobile number. On successful completion of this process, a 15-digit acknowledgment number is generated. If required, the applicant can check the status of the request anytime by providing her/his valid aadhaar number and on successful allotment, can download the e-PAN and is also sent to the applicant on her/his registered email id.

Source: Press Release dt. May 28, 2020

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Rule 44G: Application and procedure for seeking effect to the mutual agreement entered under Section 295(2)(h) of the Income-tax Act, 1961.

Rule 44H has been omitted and a new rule 44G has been substituted. The new rule states as under:

- Where an assessee, being a resident of India, is aggrieved by any action of the tax authorities of any country or specified territory outside India for the reason that, according to him, such action is not in accordance with the terms of agreement, he may make an application to the Competent Authority in India seeking to invoke the mutual agreement procedure, if provided in such agreement, in Form No. 34F.
- Where a reference has been received, the Competent Authority in India shall convey his acceptance or otherwise for taking up the reference under mutual agreement procedure to the competent authority of the other country or specified territory.
- Detailed procedure for giving effect to the decision under the Agreement in Form 34F is described in detail in the attached link.

Source: CBDT Notification No. 23/2020, dated May 6, 2020

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Notified place of Historic Importance and Public Worship are eligible for exemption under Section 80G of the Income-tax Act, 1961.

The CG notifies **"Shri Ram Janmabhoomi Teerth Kshetra"** (PAN: AAZTS6197B) to be place of historic importance and a place of public worship of renown for the purposes of the said Section **from F.Y. 2020-21,** relevant to the AY 2021-22.

Source: CBDT Notification No. 24/2020, dated May 8, 2020

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New 26AS captures information beyond TDS/TCS – Annual Information Statement notified by CBDT

To give effect to the amendment as proposed in Budget 2020, New Form 26AS has been notified by CBDT for rationalization of provision relating to Form 26AS. The new form provides for details beyond the TDS, TCS and taxes paid viz. information on specified financial transactions, status of demand and refunds, pending and completed proceedings. A new Section 285BB to the Act has been introduced which proposes to mandate the prescribed Income-tax authority or the person authorized by such authority to upload in the registered account of the assessee a statement in such form and manner and setting forth such information, which is in the possession of an income-tax authority, and within such time, as may be prescribed.

Income Tax Rules, 1962

- Rule 31AB of the Income-tax Rules, 1962 stands omitted.
- A new rule 114-I has been inserted after the rule 114-H the Income-tax Rules, 1962 named as Annual Information Statement.

Rule 114-I: Annual Information Statement

The following information will be captured in the New Form 26AS

- Information relating to tax deducted or collected at source
- Information relating to specified financial transaction
- Information relating to payment of taxes
- Information relating to demand and refund
- Information relating to pending proceedings
- Information relating to completed proceedings
- Any other information in relation to sub-rule (2) of rule 114-I

Source: CBDT Notification No. 30/2020, dated May 28, 2020

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SUPREME COURT RULINGS

DTAA has no bearing on obligation to deduct tax under Section 194E for payments made to the Non-Resident Sports Associations

Facts

Assessee had made payments to ICC as well as to the Cricket Control Boards/Associations of the different Member countries of ICC from its two London Bank Accounts. The AO passed an order under Section 201(1) r.w.s. 194E computing short deduction of tax.

The CIT (A) held that so far as the payment of prize money to other countries for matches played there is concerned, the prize money is always paid to the winner and other individual players in a particular match and, inasmuch as, these prizes were meant for matches outside India, the same could not be brought within the scope of Section 115BBA. As regards the other six payments, the CIT (A) held that the provisions of Section 115BBA would be attracted to all those payments.

The High Court on perusal of the said Section, held that once income referred to in Section 115BBA is held to be payable to foreigner non-resident sportsman or non-resident sports association or institution the person responsible for making payment is obliged at the time of making payment or at the time of credit of such income to the account of the payee to deduct income tax thereon at the rate of 10%. It is significant that said Section nowhere says whether the income is chargeable to tax or not. It therefore be concluded that once the income accrues deduction is a matter of course. Naturally failure to deduct will have a consequence under Section 201 of the said Act. Although it is not argued but we feel that obligation to deduction under Section 194E is not affected by the DTAA since such a deduction is not the final payment of tax nor can be said to be an assessment of tax. The deduction has to be made and after it is done the assesse concerned gets the credit of the same and once it is found later on that income from which the deduction is made is not eligible to tax then on application being made refund with interest is always allowed. Fundamental distinction between the deduction at source by the payer is one thing and obligation to pay tax is another thing. Advantage of the DTAA can be pleaded and taken by the real assessee on whose account the deduction is made not by the payer. The HC was of the view irrespective of the existence of DTAA, the obligation under Section 195E has to be discharged once the income accrues under Section 115BBA.

Ruling

The Apex Court observed that mandate under Section 115BBA(1)(b) is also clear in that if the total income of a Non-resident Sports Association includes the amount guaranteed to be paid or payable to it in relation to any game or sports played in India, the amount of income tax calculated in terms of said Section shall become payable. The expression 'in relation to' emphasizes the connection between

the game or sport played in India on one hand and the Guarantee Money paid or payable to the Non-resident Sports Association on the other. Once the connection is established, the liability under the provision must arise. Upholding the view of the HC, the Apex Court ruled that the obligation to deduct Tax at Source under Section 194E of the Act is not affected by the DTAA and in case the exigibility to tax is disputed by the assesse on whose account the deduction is made, the benefit of DTAA can be pleaded and if the case is made out, the amount in question will always be refunded with interest. But, that by itself, cannot absolve the liability under Section 194E of the Act.

Source: SC in PILCOM vs. CIT
Civil Appeal No. 5749 of 2012 dated May 1, 2020

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HIGH COURT RULINGS

Merely because a comparable clears the filters, its inclusion in the list of comparables is not immune to challenge by the assessee

Facts

Assessee is engaged in the business of development of computer software and related services. It was set up in India as a separate entity to specifically provide software development, research and other services to its AE. The price for the international transactions with its AE was valued at INR. 38.40 cores. The assessee benchmarked the aforesaid international transaction using Transactional Net Margin Method ('TNMM') and computed the Profit Level Indicator ('PLI') of the international transaction at 11.87%.

The TPO vide order dated 16.01.2014 rejected the transfer pricing study undertaken by the assessee and further undertook an extensive study by applying fresh filters for benchmarking the international transaction entered into by the respondent- assessee and substituted its own ALP with the ALP determined by the respondent. In this exercise, the TPO, inter alia introduced the four comparables which became the subject matter of present dispute. Further, the DRP vide order partially allowed and affirmed the inclusion of the said comparable. Post the ruling of the ITAT on the matter, the question of law which arose before the High Court for consideration was whether the ld. Tribunal was correct in deleting four comparable companies for the purpose of assessment of the arm's length price for benchmarking the present assessee's international transaction.

Ruling

The High Court observed that it has consistently held that only those comparables which are functionally similar to the assessee (tested party) and operate in a similar business environment as that of the assessee should be used for benchmarking to arrive at an accurate calculation of arm's length price. It did not agree with the contention of the appellant that TNMM does not require functional similarity between the tested party and the comparable. Section 92C (1) of the Act contains provisions relating to various methods for calculation of ALP. Rule 10B of the IT Rules provides for calculation/determination of ALP. Rule 10B (2) describes the grounds on which the comparability of an international transaction (or a specified domestic transaction) with an uncontrolled transaction should be based on.

The court observed the following reasons for rejecting the comparables in the present case:

- The functions of first comparable were highly diversified, and branching out into product conceptualization, core design, research & development to marketing and sales of products, etc. No such function is carried out by the assessee. Being a captive service provider, its function is completely confined to software development services for its AE. There are no intangibles owned by the assessee and it incurs no expenditure on research & development. The Court found that these distinguishing factors are highly substantial and could not be ignored or severed from the comparison.
- For the second comparable taken, the Court held that the entity could not serve as a comparable in the benchmarking mechanism for the present assessee, since the RPT filter of this company failed to meet the filter criteria of 25% of RPT, as applied by TPO
- The other comparables were deleted on the ground of being functionally dissimilar to the assessee and on account of absence of segmental information with regard to their earnings and sales in the field of software development.

The Court held that none of the comparables were excluded on the ground of high turnover alone. The test of functional similarity applied by the Tribunal is in consonance with the legal position discussed hereinabove. Therefore, the Court did not find merit in the contentions urged by the Revenue on this ground and found equally meritless the contention of the Revenue regarding the bar to challenge the comparables after the acceptance of the filters. The filters are applied to narrow down the search to find the comparables that are closest to the assessee. The use of filters has to be necessarily validated from the annual reports. Since the TPO would have to do this exercise on the basis of the actual data in the report of the comparables, he would surely have the freedom to adopt or reject the comparables. The court concluded the case in favor of the assessee by holding that merely because a comparable clears the filters, its inclusion in the list of comparables is immune to challenge by the assessee.

Source: HC, Delhi in PCIT vs. Open Solutions Software Service Pvt Ltd ITA No. 201/2018 dated May 18, 2020

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ITAT RULINGS

Review of own order in grab of reassessment when taxable royalty income duly offered by assessee and all facts of No-PE duly disclosed during reassessment proceedings, is not sustainable.

Facts

Assessee is a non-resident company incorporated in the United States of America and having its principal place of business at New York. Subsequent to completion of assessment under section 143(3) of the

Act, the AO noticed that there was an agreement under which the assessee company would develop and maintain applications and would also allow the use of systems software and such applications including use of incidental software

to American Express (India) Pvt. Ltd and opined that the consideration received as compensation for the use of or the right to use of the systems software and applications software by American Express (India) Pvt. Ltd. was covered by the definition of 'Royalty' both as per the provisions of the Act as well as Article-12 of the Double Taxation Avoidance Agreement (DTAA) between Indian and the US. Accordingly, reassessment proceedings were initiated by the Assessing Officer.

Ruling

The Court observed that the reassessment proceedings were initiated on the basis of the information which was already available with the Department at the time of completion of the original assessment proceedings. It is apparent that no new information or material has been brought on record by the Assessing Officer to establish or even indicate that any income for the year under consideration has escaped assessment.

- Contention that the assessee has not offered to tax the royalty of USD to 263,532 received from American Express (India) Pvt. Ltd. towards the right given for use of Global Makers System, Software and application was is factually incorrect in as much as it is apparent from the records that American Express (Indian) Pvt. Ltd. had filed the return of income in the capacity of the representative assessee for the assessee company wherein this royalty income equivalent had been offered to tax @ 15% under Article-12(3) (a) of the DTAA between India and USA.
- During the course of original assessment proceedings, the assessee had duly furnished copies of the relevant agreements entered into with American Express (India) Pvt. Ltd. along with the description of process undertaken in India. The assessee had submitted that it did not carry out any credit card business in India and that the assessee did not have any activity that would constitute PE under Article-5 of the DTAA. This contention was duly accepted by the Assessing Officer during the course of assessment proceedings and thus the re-opening of the concluded assessment on this issue would tantamount to re-visiting the issue without there being any fresh material having been brought on record by the Assessing Officer.
- The reassessment proceedings have been initiated on the ground that the assessee had seconded some employees to American Express (India) Pvt. Ltd. which would constitute a fixed place of business of the assessee company. In this regard also, it is seen that the assessee had furnished copies of agreement relating to the secondment of employees during the course of the original assessment proceedings vide submissions and, thus, apparently, this issue also was examined by the AO and it was the view of the Assessing Officer then that there was no fixed place PE and the return of the assessee was accepted in the original assessment proceedings. Apparently, this information also was available at the time of the completion of original assessment proceedings and no fresh information came to be in possession of the Assessing Officer on this issue also.

Forming an overall view of the matter, the Tribunal was of the considered opinion that reassessment proceedings in this case were initiated without there being any fresh material in possession of the Assessing Officer. Thus, there was no tangible material with the

Assessing Officer which could justify the initiation of reassessment proceedings and proceedings were quashed.

Source: ITAT Delhi in American Express Tavel Related Services Company Inc. Vs. Assistant Director Of Income Tax
ITA No. 5941/Del/2010 dated May 28, 2020

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