

Transfer Pricing and International Taxation

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Article 24(1) of the India Singapore Tax Treaty would not apply, where entire income by a Singapore resident has been subject to tax in Singapore, even where the said income is not repatriated to Singapore

Citicorp Investment Bank (Singapore) Ltd. vs. CIT (151 taxmann.com 501) (Bombay High Court)

In favour of assessee

Facts

The assessee, a tax resident of Singapore was investing in debt securities in India. In the tax return filed, the assessee declared capital gain on sale of debt instruments as not taxable in India, as per Article 13(4) of the India Singapore Tax Treaty.

The Assessing Officer (AO) disallowed the benefit of Article 13(4) of the Tax Treaty to the assessee by holding that Article 24 of the Tax Treaty grants exemption of such capital gain only to the extent income is repatriated to Singapore. The assessee had not produced any evidence to show such repatriation to Singapore as mandated by Article 24.

The assessee argued that it being a Foreign Institutional Investor (FII), it was liable to tax in Singapore of its worldwide income. Even Singapore Revenue Authority had confirmed the taxation of the assessee in Singapore.

The assessee placed on record a certificate from Singapore Tax Authorities certifying that the income derived by the assessee from buying and selling of Indian debt securities and from foreign exchange transactions in India would be considered under Singapore Taxes Law as accruing in or derived from Singapore. Such income has been brought to tax in Singapore, without reference to the amount remitted or received in Singapore.

Held

Entire capital gain earned by the assessee in India would not be taxable in India as per Article 13(4) of the Tax Treaty, even where the said income has not

been repatriated to Singapore. Where Singapore Revenue Authority has accepted the fact that entire capital gain earned by the assessee is taxed in Singapore, Article 24 of Tax Treaty would not apply.

Purchase of shares of a Foreign Company from Associated Enterprise (AE) is not an international transactions

WNS Global Services Pvt Ltd. vs. TPO (TS-464-ITAT-2023) (Mumbai Tribunal)

In favour of assessee

Facts

The assessee had purchased 1,32,500 shares of UK Group company Ltd from another group company for an aggregate consideration of USD 25.48 million with its equivalent value in INR of Rs. 439.33 crores. The face value of the shares in INR was Rs 11.66 lakhs and the premium paid on the said shares was Rs. 439.21 crores.

The assessee formed the view that in the absence of income from admitted international transaction, the Indian Transfer Pricing provisions are not applicable. The assessee, out of abundant caution, disclosed the said transaction by adopting Other Specified Method (OSM). The assessee had valued the shares by adopting the weighted average of Markets Multiple Method (MMM) and Discounted Cash Flow (DCF) method.

The Transfer Pricing Officer (TPO) re-worked the valuation as per DCF method by replacing the projections with the actual, as there was huge difference in the figures adopted for valuation. The TPO accordingly arrived at a value of Rs.19,612 per share.

Argument of the assessee

The assessee relied on the decision of the Bombay High Court in the case of Vodafone India (WP No.871/2014), wherein the High Court had held that in the absence of income from admitted international transaction, the Indian Transfer Pricing provisions are not applicable. The assessee also relied on the Central Board of Direct Taxes (CBDT) Instruction

No.2/2015 dated 29th January 2015, wherein the CBDT has accepted the decision of the Bombay High Court in the case of Vodafone India. The CBDT has instructed all its field officers to adhere to the said decision. In the assessee's own case for AY 2016-17, coordinate bench of Tribunal had deleted similar adjustment by stating that the transaction of purchase of equity shares was a capital transaction and the same does not fall in the category of international transaction as defined in Section 92 since there is no income arising on account of such transactions.

Held

The transfer pricing adjustment made by the TPO was deleted relying on the decision of the Bombay High Court and CBDT Instruction No.2/2015.

Non-resident assessee can now furnish electronic version of Form 10F without Indian PAN

Background

The Finance Act, 2012 had inserted Section 90(4) to provide that a non-resident shall not be entitled to the Tax Treaty benefits unless such non-resident obtains a Tax Residency Certificate (TRC) from the government of the country of which he is a resident. Section 90(5) was inserted by the Finance Act, 2013 along with Rule 21AB of the Rules provided for furnishing a self-declaration in Form 10F in case the TRC, obtained from the government of a particular country, does not contain certain details.

The CBDT vide its Notification No. 03/2022 dated 16th July 2022 issued by the Directorate of Income Tax (Systems), New Delhi mandated furnishing of Form 10F, electronically. For obtaining electronic version of Form 10F, one is required to create a login id and password on the Income-tax portal, for which obtaining a PAN is mandatory. This requirement creates a hurdle for non-resident payees, as in certain cases, a non-resident payee is not required to obtain PAN.

The CBDT considering the practical challenge being faced by non-resident taxpayers, not having PAN as

well as not required to obtain PAN, had postponed the mandatory electronic filing of Form 10F till 31st March 2023. The said deadline was further extended till 30th September 2023.

To overcome the challenge of obtaining a PAN in India just for filing Form 10F, the CBDT came up with certain relaxations for non-resident assessee not having a PAN and not required to obtain PAN in India.

Recently, on the expiry of the exemption period, which was 30th September 2023, the Income Tax Department has now enabled a new category while registering on the income tax portal without any official notification of such relaxation.

Procedure for registration

The non-resident can click on the 'Register' option on the e-filing portal, i.e., <https://www.incometax.gov.in/iec/foportal/>. Under the 'others' category, there is an option to choose 'non-residents not having a PAN and not required to have a PAN'. Certain details like name, date of incorporation, tax identification number, status, and country of residence, need to be entered. The non-resident has to provide the details of the key person, i.e., name, date of birth, etc. The next step is to provide contact details, i.e., email address and mobile number, which will be verified through an OTP. The non-resident also needs to upload certain documents like its TRC, address proof, identification proof, and any other document if required. Once the non-resident is registered on the portal, it can file and obtain an electronic version of Form 10F.



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