

DIRECT TAX

Judicial pronouncements

Mobile number '9999999999' in ITR, no ground to deny treaty benefits to Government owned entity namely Abu Dhabi Investment Authority

Commissioner of income Tax (Appeals) [CIT(a)] denied the treaty benefit to Abu Dhabi Investment Authority (ADIA) on the basis that in the return of income, the mobile no. was given '9999999999' and from the true caller it was mentioned that it is a fraud having several spam reports.

On appeal, the Tribunal ITAT finds this reasoning very flimsy and remarks that

- ADIA is entitled to the benefit under Article 24(2)(b)(ii), making it exempt from tax on interest income amounting to Rs.365 Cr earned from India. Article 24 of the India-UAE tax treaty exempts the Government of one Contracting State (i.e. UAE) from tax in the other Contracting State (i.e. India) in respect of any income derived by such Government from that other Contracting State (i.e. India).
- The Tribunal criticized the CIT(A)'s unconventional approach of denying the treaty benefit based solely on checking the mobile number on True Caller and emphasized on the importance of proper verification.
- The tribunal urged a more comprehensive verification process, suggesting that if doubts persisted, the CIT (A) should have verified the PAN and address provided in the return to ascertain whether ADIA is indeed a government-owned entity of Abu Dhabi. Further, held that if CIT(A) was incapable of verifying it himself then he should have asked from the Assessee itself.

- The Tribunal stated, if ADIA shown its valid registration as a foreign portfolio investor with SEBI, and holds a valid Tax Residency Certificate (TRC), and given the particulars of income, then, there should be no doubt to reject the benefit provided under Article 24.

Abu Dhabi Investment Authority [TS-140-ITAT-2024(Mum)]

Dismisses Revenue's appeal against ITAT's exclusion of TCS E-serve as comparable

- One of the questions raised by Revenue was whether ITAT was justified in deleting TCS e-Serve as comparable on the basis of said comparable having high profitability and brand, when TNMM was deployed to iron out differences among comparables.
- The Hon'ble Delhi High Court dismisses Revenue's appeal against ITAT's order excluding TCS E-Serve as comparable by stating that issue of TCS e-Serve being used as comparable had come up for consideration in B. C. Management Services Pvt Ltd, wherein HC had upheld ITAT's exclusion of the TCS E-Serve as comparable on the same reason that brand value associated with TCS Consultancy Services Limited reflected/impacted TCS E-serve profitability in a very positive manner. Relevant content of the decision of Hon'ble Delhi High court in the case of B. C. Management Services Pvt Ltd is provided below

The third comparable that the Assessing Officer/Transfer Pricing Officer excluded is TCS E-serve. The Income-tax Appellate Tribunal observed that though there is a close functional similarity between that entity and the assessee, however, there is a close connection between TCS E-serve and TATA Consultancy Service Ltd. which was high brand value ; that distinguished it and marked it out for exclusion.

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The Income-tax Appellate Tribunal recorded that the brand value associated with TCS Consultancy reflected/impacted TCS E-serve profitability in a very positive manner. This inference too in the opinion of the court, cannot be termed as unreasonable. The rationale for exclusion is therefore upheld.

Integreon India Pvt Ltd [TS-80-HC-2024(DEL)-TP]

Delivery and warranty expenses are not part of AMP expense

- Amazon Seller Services Private Limited, an Amazon subsidiary, is engaged in marketing support, marketplace services, and wholesale trading of Kindle devices.
 - The TPO excluded delivery and warranty charges from the Advertising, Marketing, and Promotion (AMP) expenses while passing the order.
 - The **Commissioner** of Income Tax (Transfer Pricing) deemed the TPO's order as erroneous and issued a show cause notice under Section 263 for revision. After assessing the submissions, the CIT(TP) found the TPO's order prejudicial to revenue and directed a fresh order with specific findings.
 - TPO had initially sought to include these expenses in AMP but later agreed with the Appellant's argument that they are post-sales activities, not part of brand development.
- Appellant contended expenditure on account of warranty and delivery costs cannot be regarded as having been incurred for the purpose of development of brand. The said expenditure is not incurred for publicity or promotion of brand and at best can be regarded as having been incurred after effecting the sales of goods.
 - Reliance in this regard is placed on the decision of the Delhi High Court in the case of Sony Ericson Mobile communication India Pvt. Ltd. v. CIT, wherein the Hon'ble Delhi High Court held that selling expenses are not in the nature and character of 'brand promotion' and thus cannot be construed as part of AMP expense.
 - The Hon'ble Tribunal, considering detailed submissions and case laws, concluded that delivery and warranty expenses are not part of AMP. The Hon'ble Tribunal ruled in favour of the Appellant, stating that the CIT(TP) was not justified in revising the order on this issue.

Amazon Seller Services Private Limited [TS-60-ITAT-2024(Bang)-TP]

INDIRECT TAX

Advisories

Integration of E-Waybill system with New IRP Portal

- integration of E-Waybill services with four new IRP portals via NIC, enabling taxpayers to generate E-Waybills alongside E-Invoicing on these four IRPs.
- This new facility complements the existing services available on the NIC-IRP portal, making E-Waybill services, along with E-Invoicing, available across all six IRPs.

Instances of Delay in registration despite successful Aadhar Authentication

At time of GST registration, where a person has undergone Aadhaar authentication as per sub-rule (4A) of rule 8 but has been identified in terms of Rule 9(aa) by the common portal for detailed verification based on risk profile, then application for registration would be processed within thirty days of application submission.

Judicial Rulings

Assessee is entitled to refund of tax paid on export and the unutilized input tax credit used in export of services even if receipts are routed through the intermediary and received in Indian currency

- Assessee is engaged in the business of providing online services through its website w.r.t. opinions on equity and futures market, trading stocks, options based on stock and share markets.
- Assessee qualifies section 2(6) of Act of export of services and applies refund of export of services without payment of tax.
- Assessee is receiving payment from outside customers through PayPal, PayPal is acting as an intermediary for assessee.
- PayPal is acting as a gateway and receiving payment from subscribers in foreign currency into India and transferring the money to the assessee in Indian Rupees

- Assessee had filed appeal before HC of Madras for rejection of refund on grounds not receiving receipt in convertible foreign exchange.
- There is no dispute on the services provided by the assessee to its foreign clients, the export services were provided within the meaning of Section 2(b) of the IGST Act.
- The amounts are first credited into its account with CITI Bank of the said intermediary namely PayPal. Thereafter, amounts in Indian currency are transferred from the intermediaries' CITI Bank account to the petitioner's account with HDFC Bank after the deduction of its service charge, PayPal merely acts as an intermediary.
- HC observed that such outing of the payment by the intermediary viz., PayPal from its account in CITI Bank to the Assessee's own account with HDFC Bank in Indian Rupees is in accordance with the provisions of the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 as notified by Notification No: FEMA 14(R)/2016-RB dated May 02, 2016.
- Further, Regulation 3(2) of the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016, makes it clear that in respect of export from India, a receipt shall be made in currency appropriate to the place of final destination as mentioned in the declaration form and as per Regulation 3(2)(b), any other mode of receipt of export proceeds for an export from India in accordance with the directions issued by the RBI to authorized dealers from time to time.
- HC held that the assessee is entitled to a refund of tax paid on export and the unutilized input tax credit used in the export of service and rendered the impugned order as unsustainable and set aside the same.

Afortune Trading Research Lab LLP vs. Additional Commissioner & Ors. [TS-80-HC(MAD)-2024-GST]