In association with Delhi High Court quashed reassessment proceedings against Blackstone Group’s Singaporean Co. with regard to taxability of capital gains arising from sale of an Indian company. The High Court held that the Singaporean company was eligible for treaty benefits as it held a valid Tax Residency Certificate (TRC). The High Court also held that the Revenue cannot go behind TRC and deny treaty benefit as it would be contrary to repeated assurance given by the Government of India to the foreign investors.

Delhi ITAT held that fees received for providing services in relation to software license to be not taxable as fee for technical services where software related payments were not taxable. ITAT observed that mere use of words ‘make available’ in the service agreement would not mean that the provisions of India-UK DTAA have been satisfied.

On transfer pricing front, Mumbai ITAT rejected Revenue’s Discounted Cash Flow (DCF) method to determine ALP of sale of shares given the uncertainty regarding income/future cash flow projections in the method and adopted value determined on the date of sale of shares by following method under Rule 11UA, accompanied by unaudited financial statements as on that date, as FMV. In a separate case, considering the APA assessee entered into that covered AYs 2015-16 to 2019-20 with a roll back period of three years covering AYs 2012-13 to 2014-15, Chennai ITAT directed TPO to restrict TP adjustment considering 100% of sale consideration receivable from Nike.

Separately, Bangalore ITAT rejected assessee’s plea regarding adjustment of under-utilization capacity and held that if assessee had under-utilization capacity during the subject assessment year, it would be factually and legally eligible for an adjustment for the same although assessee had failed to demonstrate except stating the installed capacity and utilization level. ITAT went on to agree with TPO’s opinion observing that all the costs could not be removed for capacity under-utilization adjustment.

To contribute to our ongoing discussions on these matters, please write to @Shweta Kathuria and @Anikha Ashraf

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