



Global Business Tax Alert Sharp Insights

¹Delhi High Court upholds benefit of deduction for export of data processing/ IT enabled data processing services under Section 10A/10AA.

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Background/ Facts

Amadeus India Pvt. Ltd.

- Amadeus India Pvt. Ltd. ('the taxpayer', 'AIPL') established an approved 100% export-oriented unit ('EOU') under the Software Technology Park Scheme.
- The EOU is engaged in the business of export (by transmission outside India through data communication link) of data processing/IT enabled Services ('ITES') to Amadeus Spain ('overseas entity'). It provides software connectivity for giving access to the international Amadeus Computer Reservation System ('CRS') facility to travel agents for which it received income from the overseas entity.
- The taxpayer claimed tax deduction under Section 10A of the Act for INR 20.03 crores in tax year 2008-09, toward export of computer software, which includes data processing/IT enabled services.
- The tax return filed by the taxpayer was supported by a certificate issued by a chartered accountant certifying the claim of deduction under Section 10A of the Act.
- The tax authorities took a view that the taxpayer was an agent of the overseas entity carrying on marketing and distribution functions and the revenue derived by the taxpayer was received under the Distribution Agreement entered into with its overseas entity and not on account of export of computer software as mentioned by the taxpayer.
- Revenue relied on the Tribunal's ruling in ²Amadeus Global Travel Distribution SA wherein it was held that the taxpayer was a dependent agent permanent establishment of Amadeus Spain and the remuneration derived by it from Amadeus Spain in the form of distribution fee, was for services rendered by it in India as an agent of the foreign company. Accordingly, deduction under Section 10A was reduced to INR 1.59 crores.
- Aggrieved by the order of the AO, the taxpayer filed an appeal before the Tribunal.

Tribunal's Observation

- It was noted that
 - The registration granted by STPI authorities to the concerned unit of the taxpayer was exclusively for manufacture of computer software/ITES.
 - In an earlier ruling rendered by the coordinate bench of the Tribunal on a similar issue, the Tribunal decided in favour of the tax payer. In that case, a detailed inspection of the activities of the taxpayer was undertaken and the reports of the STPI and Export Promotion Council were examined wherein it was held that the taxpayer manufactures, produces and exports software. Thus, the Tribunal in that case concluded that the taxpayer could claim exemption under any of the three provisions viz. Section 80HHE/10A/10B of the Act.

² Amadeus Global Travel Distribution SA v DCIT [2008] 113 TTJ 767 (Delhi bench)

- The Tribunal taking cognizance of the fact that since then there had been no change in the modus operandi of the taxpayer, held that there is no reason not to follow the decision of the earlier year. Revenue's reliance on Amadeus Spain case (supra) was disregarded.

Inter Globe Technology Quotient Pvt. Ltd.

- Inter Globe Technology Quotient Pvt. Ltd. ('IGT') was engaged in the business of software development and providing ITES, namely, data processing.
- The taxpayer claimed deduction under Section 10AA of the Act towards export of services from its Noida-based Special Economic Zone ('SEZ') unit.
- IGT had entered into a distribution agreement with a Netherland based company, Galileo B.V. ('Galileo') for installing computer hardware/software at offices of travel agents.
- During assessment proceedings, the tax authorities observed that
 - Very few invoices were addressed to the SEZ Noida office of IGT.
 - The number of employees and the value of computer at the Noida SEZ address were also inadequate having regard to the claim of the taxpayer towards export of services.
- Thus, the tax authorities formed a view that IGT acted as a mere distributor of Galileo which was the owner of the CRS through which the airline and hotel reservations were done worldwide. They did not agree with the contention of IGT that data processing services were exported from the unit located in Noida and accordingly denied deduction claimed by IGT under Section 10AA of the Act.
- On appeal to Commissioner of Income Tax Appeals [CIT(A)], the CIT (A) following the earlier years' decisions, allowed the appeal of IGT.

Tribunal's Observation

- It was noted that the auditor's report certified that IGT had been engaged in the development of computer software and ITES. This had also been certified by the office of the Development Commissioner, Noida SEZ.
- The Tribunal concurred with the findings of the CIT(A) that data processing services were rendered from the units located in Noida SEZ and not at the desk of the travel agent. Thus, it ruled in favour of IGT.

Ruling of the High Court

- The court dismissed the appeal of the Revenue in the case of both the taxpayers, AIPL and IGT.
- It approved Tribunal's order passed in the case of AIPL holding that it suffers from no legal infirmity either in its analysis of the legal provisions or in its conclusions.
- In the case of IGT, the court concluded that the concurrent factual findings of both the CIT (A) and the Tribunal fulfilling the conditions of eligibility for deduction under Section 10AA of the Act have not been shown as perverse.

Conclusion

The Honourable High Court in its decisions of Amadeus India Pvt. Ltd. and Inter Globe Technology Quotient Pvt. Ltd. has reiterated the principle that a beneficial provision has to be construed beneficially. The Honourable Court has further held that provisions of Section 10A and 10AA are part of the integrated policy of the government of India for export promotion and the said provisions have to be interpreted in a manner to make the scheme workable. The benefit of the said provisions should not ordinarily be denied on hyper procedural and minor grounds.

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