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TAX FLASH NEWS

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Intra-group services may be rendered orally and would not necessarily be recorded in writing

Background

Recently, the Punjab and Haryana High Court (High Court) in the case of Max India Limited[1] (the taxpayer) held that services of the nature mentioned in the agreement between the taxpayer and its Associated Enterprise (AE) would not necessarily be recorded in writing. Further, the High Court observed that advice, introductions, information can be communicated orally and the possibility of the same is enhanced on account of the fact that these were group companies.

Facts of the case

- The taxpayer is engaged in various activities through different divisions such as packaging, metallise, max foil, pharmaceuticals, treasury and healthcare divisions.

- During the year, the taxpayer incurred an expenditure of about INR1.25 crores towards legal and professional charges paid to its AE viz. Max UK Ltd. The taxpayer had entered into an agreement with its AE for provision of various services such as exploration of business opportunities initially in the field of healthcare, financial services, life insurance, information technology and allied areas, identification and due diligence of potential collaborators/partners and other support that may be required from time to time for facilitating collaboration/joint venture arrangements, etc.

- During the assessment proceedings, the Assessing Officer disallowed the aforesaid expenditure on the ground that the taxpayer had not furnished any details to establish that the services were actually rendered. The Commissioner of Income-tax (Appeals) upheld the same. Aggrieved, the taxpayer filed an appeal before the Income-tax Appellate Tribunal (the Tribunal).

Tribunal's ruling

- The Tribunal observed that the nature of the services rendered by AE was supported by an invoice and the nature of the services provided by AE were such that it was difficult to provide evidence showing that the services have actually been rendered.

- Further, the Tribunal accepted the taxpayer's contention that the taxpayer was infact able to achieve an export turnover of INR29 crores, and it has benefited in the area of Healthcare services, which prima facie demonstrated that the services were rendered by AE. Thus, the Tribunal ruled in favour of the taxpayer. Aggrieved by the said Tribunal order, the Revenue preferred an appeal before the High Court.

Issue before the High Court

- Whether the Tribunal was right in holding that the legal and professional are allowable expenses, ignoring the fact that the taxpayer has failed to discharge its onus with respect to providing evidence of services rendered and benefits received.

[1] CIT v. Max India Limited [ITA No.186 of 2013 (O&M)] - Punjab & Haryana High Court - Assessment Year 2002-03

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Taxpayer's contention

- The taxpayer relied upon the fact that its total exports were in excess of INR29 crores and that it had also benefited in the area of healthcare services pursuant to the notification received from its AE.

Tax department's contentions

- The taxpayer had not furnished any details to establish that the services were actually rendered by the AE. Although the agreement provided details of the services to be provided, the taxpayer was unable to establish that the services were actually provided.
- There was no material to establish that the AE was involved in obtaining export orders or facilitating the exports for the taxpayer and that particulars of such information had not been submitted.

High Court's ruling

- The High Court observed that this issue was essentially a question of fact and not one of law and held that the conclusion arrived at by Tribunal was not absurd or perverse, and it was a possible view.

- The High Court observed that the nature of services mentioned in the agreement between the taxpayer and its AE would not necessarily be recorded in writing. Further, the High Court observed that advice, introductions, information can be communicated orally and the possibility of the same would be enhanced on account of the fact that these were group companies.

- Thus, considering all the facts together, the High Court upheld the view taken by the Tribunal.

- The High Court also ruled on disallowance under section 14A of the Income Tax Act, 1961.

Our comments

The above ruling brings about a very important aspect in case of intra-group services wherein the High Court has considered the possibility that intra-group services may be rendered orally and thus, the same may not be recorded in writing. Such an observation by the High Court may prove beneficial for taxpayers and will help in cases where the tax department makes adjustments on the basis of evidence test and requires taxpayers to maintain extensive documentation to justify the nature of services rendered and the benefits derived therefrom.

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