Tax Flash News

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High Court confirms deletion of transfer pricing adjustment absent any perversity - no substantial question of law involved

Executive summary

The Bombay High Court dismissed the Revenue's appeal against the deletion of a transfer pricing adjustment towards payment made by *Grupo Antolin India Private Limited* (the taxpayer) to its Associated Enterprise (AE) for advisory services.[1]

The Court held that the findings of the Pune Bench of the Income-tax Appellate Tribunal (the Tribunal) were purely factual, supported by documentary evidence, and did not give rise to any substantial question of law under section 260A of the Income-tax Act, 1961 (the Act).

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[1] *PCIT* v. *Grupo Antolin India Pvt Ltd* (ITA No. 98 of 2024)

Facts of the case

The taxpayer had entered into an intra-group agreement under which its AE was required to provide advisory and business support services.

The taxpayer made payments to its AE during the relevant assessment year in accordance with this agreement.

The Transfer Pricing Officer (TPO) disallowed the expenditure on the ground that the taxpayer did not substantiate the rendering of services by the AE and that the services allegedly received did not correspond with the services described in the agreement.

Upon appeal, the taxpayer succeeded before the Tribunal which held that the taxpayer had sufficiently proved to have received advisory services from its AE and the Revenue erred in rejecting the same in entirety.

The Revenue thereafter preferred an appeal before the High Court, contending that the Tribunal erred in accepting the documentation and in concluding that services were rendered by the AE to the taxpayer.

Taxpayer's contentions

Similar transfer pricing issue had arisen in earlier financial years. In all such cases, the Tribunal had consistently decided the matter in favour of the taxpayer.

The AE possessed the requisite expertise in the same line of business and provided similar support services to other group companies.

The taxpayer submitted voluminous box file containing e-mails regarding information technology, technical support, quality check, extra/miscellaneous heads, indexation relating to pricing and account support etc. to demonstrate availing of advisory services from its AE.

Emphasised that the Tribunal, being the final fact-finding authority, had thoroughly examined the record and that no perversity existed in its findings, thereby precluding Court's interference.

Summary of Tribunal's decision

The Tribunal relied on the judgment of its coordinate bench in the taxpayer's own case in the earlier year and in the case of the overseas AE on nature of services rendered under the said agreement (managerial/ technical), wherein rendering of such services by the AE were examined and were proved to have been rendered.

In addition to the above, the Tribunal relied on the inter-company agreement, supporting documents, and email correspondences.

Consequently, the Tribunal held that the taxpayer had sufficiently proved to have received the services from its AE and same should not have been rejected by the lower authorities in entirety.

High Court's decision

The Court did not find any perversity in the findings of the Tribunal on factual basis wherein it had already examined the emails, agreements, and documentary evidence, holding that the AE actually rendered the services.

The Court observed that the reliance is not merely on the emails exchanged between the parties, but factors such as the inter-company agreement, the fact that the AE was rendering services to other group companies, as well as there being evidence that the AE was possessing such expertise precisely in the line of activity of the taxpayer – played pivotal role in arriving at this conclusion.

Our comments

This decision brings much-needed clarity to one of the most litigated issues in Indian Transfer Pricing, i.e. payments made by Indian taxpayers for intra-group services to its overseas AEs. The decision reinforces that determination must be based on the taxpayer's contemporaneous documentation, including details of the cost pool, the cost allocation methodology, the nature, and extent of services rendered, and supporting evidence demonstrating actual receipt and business nexus.

This decision will have significance in providing resolution and relief to several taxpayers in similar cases pending before various Courts. Many taxpayers have been facing recurring disallowances on intra-group service payments despite maintaining robust documentation and evidentiary support.

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