

# TAX FLASH NEWS

12 October 2022

## No Equalisation Levy on online advertisement charges since the advertiser, targeted audience and advertising platform are outside India and the Indian remitter is merely acting as a conduit

### Executive Summary

The Finance Act, 2016 introduced Equalisation Levy (EL) on payments for online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement with effect from 1 April 2016<sup>1</sup>. This EL is applicable on the consideration received by a non-resident, from a person resident in India and carrying on business or profession or a non-resident having a Permanent Establishment (PE) in India.

Recently, the Jaipur Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Prakash Chandra Mishra<sup>2</sup> (the Indian proprietor) dealt with the applicability of EL on the advertisement (adwords) charges paid by an Indian proprietor to a non-resident entity, Google Singapore. The Tribunal observed that the targeted audience, the advertiser (service recipient) and the advertising platform i.e. Google (service provider), are outside India. The Indian proprietor was only acting as a conduit for channelising the funds from the advertiser to Google. The tax department had failed to demonstrate how the specified services were provided to a resident in India. Accordingly, EL was not applicable to the Indian proprietor while paying online advertisement (adwords) charges to Google Singapore.

### Facts of the case

- The Indian proprietor is engaged in the business of providing support services of online advertisement, digital marketing and web designing. The Indian proprietor entered into an agreement with Google Singapore whereby it was granted access for the purpose of advertisement to be made on Google. Google Singapore does not have a Permanent Enterprise (PE) in India. In terms of the agreement, the Indian proprietor paid the amount for online advertisement (adwords) charges to Google Singapore without deduction of EL.
- The Indian proprietor contended that it had collected such charges on behalf of its clients. Its role was merely of conduit between the entity carrying out the advertisement and Google. Accordingly, EL provisions<sup>3</sup> were not applicable on the deductor. The Indian proprietor also contended that the EL provisions were only confined to the transactions in India. However, in the present case, the target audience of the advertisement and the person carrying out the advertisement were both outside India, resultantly, the tax department did not have the jurisdiction to tax such transactions.
- The Assessing Officer (AO) held that the Indian proprietor was liable to deduct EL on the online advertisement (adwords) charges as the transaction was made through digital mode on behalf of his clients and the conditions specified under EL provisions were satisfied. Further on account of the non-deduction of EL, the AO disallowed the payment under Section 40(a)(ib).

<sup>1</sup> Equalisation Levy @ 6 per cent

<sup>2</sup> DCIT v. Prakash Chandra Mishra (ITA No. 305/JPR/2022) – Taxsutra.com

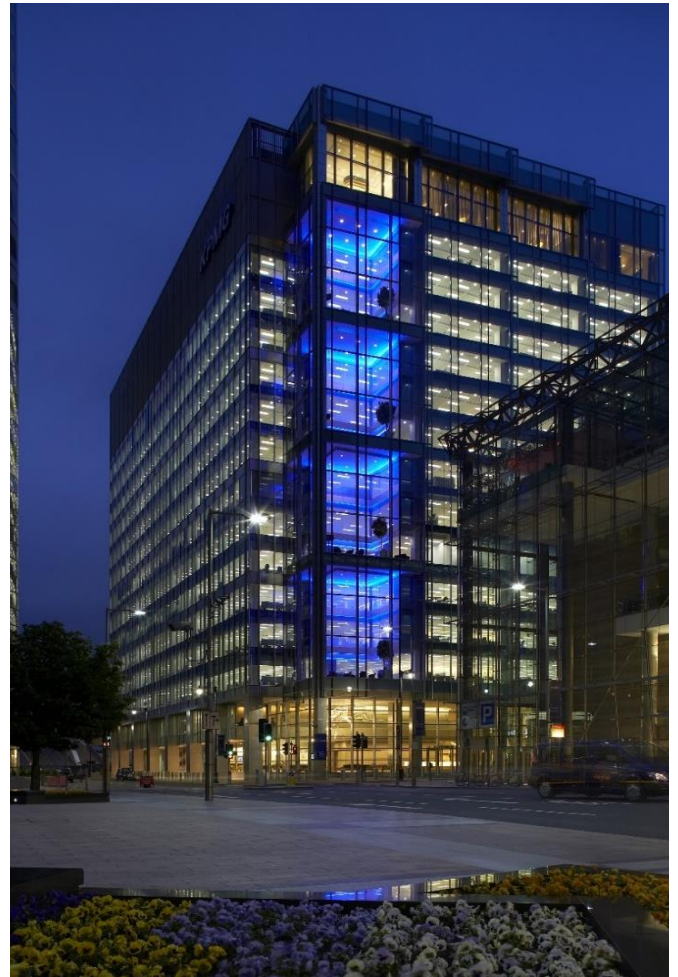
<sup>3</sup> Section 165 of the Finance Act, 2016

## The Tribunal's decision

- The Indian proprietor was only acting as a conduit/agent for channelising the funds from the advertiser to the platform on which such advertisement was to be put up i.e. Google.
- Targeted audience, the person who runs the advertisement and the party who assist on displaying [Google Singapore] all are outside India and on this aspect there was no dispute. The tax department failed to demonstrate how the specified services were provided to a resident in India.
- Since the targeted audience and the party paying for the online advertisement had no relationship with India, EL was not attracted.

## Our comments

Since the introduction of EL provisions, taxpayers have been grappling with various interpretational issues to comply with these provisions. The Tribunal has addressed a situation where an Indian resident is acting as a conduit/agent for online advertisement of a foreign client. Further, since the advertiser, target audience as well as the service provider were outside India, the Tribunal held that the EL provisions would not apply.



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