

Transaction between two resident entities won't be an 'International transaction'; no additions to be made

Summary – The Hyderabad ITAT in a recent case of Swarnandhara IJMII Integrated Township Development Co. (P.) Ltd., (the Assessee) held that where for assessment year 2006-07 assessee and its associated enterprise both were residents of India for tax purposes, transaction between them did not constitute an international transaction, thus, addition made under section 92CA(4) was to be deleted.

Facts

- The assessee was a company created as a result of a joint venture between IJMII and AP Housing Board (APHB) for development of integrated township. During the year, assessee entered into transactions with IJMII.
- A draft assessment order was received by the assessee wherein addition was proposed under section 92CA(4).
- Aggrieved by said order, objections were filed before Dispute Resolution Panel wherein assessee contended that the subject transaction with IJMII does not fall with the sweep of section 92B as the assessee and IJMII are domestic companies.
- Further, assessee also placed reliance on the decision of the Tribunal in its own case for subsequent assessment year wherein it was held that the assessee and IJMII are residents of India for tax purposes. As both the parties are residents, the transaction between them did not constitute an international transaction. Thus basic premise for invoking deeming fiction under section 92B(2) does not arise.
- The Dispute Resolution Panel after following above decision deleted the said addition made under section 92CA and held that subject transactions were not in nature of international transactions.
- On appeal:

Held

- Admittedly, this issue came up for consideration before this Tribunal in assessee's own case for Assessment year 2007-08 in *Swarnandhra IJMII Integrated Township Development Co. (P.) Ltd. v. Dy. CIT [2013] 32 taxmann.com 395/58 SOT 117 (Hyd.) (URO)* the co-ordinate bench held that –
- The legal fiction created in respect of the specified transaction can be used only for the purpose of examining whether such transaction constitutes an international transaction under section 92B(1). In case section 92B(1) is not attracted, the fiction under section 92B(2) ceases to operate. In our opinion, the impugned transaction between the assessee and IJMII does not fall under section 92B(2). This is for the following reason.
- Both the assessee and IJMII are residents of India for tax purposes. They pay their taxes in India. To fall under section 92B(1), the international transaction has to be between associated enterprises, at

least one of whom is a non-resident. As both the parties are residents, the transaction between the assessee and IJMII do not constitute an international transaction. Thus the basic premise for invoking the deeming fiction under section 92B(2) does not arise.

- The primary condition for attracting transfer pricing provisions is that there should be a transaction between two or more AEs in terms of section 92A(1) and 92A(2). In our opinion, the transactions between the assessee and IJMII do not fall under section 92B(2). The addition made towards transfer pricing transactions is deleted in its entirety.
- In view of the above discussion, the facts in the assessment year are identical, and based on consistent view, the order of the DRP is upheld following the decision for assessment year 2007-08 in assessee's own case *Swarnandhra IJMII Integrated Township Development Co. (P) Ltd. (supra)* and dismiss the grounds raised by the revenue.