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Co. solely performing marketing & distribution of Computerized Reservation System of Foreign Co. rightly held as PE

Summary – The Mumbai ITAT in a recent case of Sabre Asia Pacific Pte. Ltd., (the Assessee) held that where assessee a Singapore based company engaged in business of marketing and maintenance of Computerized Reservation System (CRS) had licensed its wholly owned Indian subsidiary company ADSIL, as its National Marketing Company in India for marketing CRS and said company was exclusively performing marketing and distribution for assessee, it was to be held as PE of assessee in India

Profit attribution at 15 per cent of gross receipts to Indian PE of non-resident assessee engaged in providing Computerized Reservation System already being based on FAR analysis was justified

Where assessee a Singapore based company advanced USD denominated interest free ECB loan to its wholly owned subsidiary in India, rate of interest was to be determined on LIBOR and not as per Indian Prime Lending Rate

Facts

- The assessee was a company resident of Singapore engaged in the business of promotion, development, operation, marketing and maintenance of a Computerized Reservation System (CRS). The assessee licensed the right to market the CRS to a company in each of the Asia Pacific Countries, *i.e.*, a National Marketing Company (NMC), which in turn marketed the CRS directly to the travel agents. The assessee also solicited the participation of the travel related vendors, so as to list their services in the CRS in order to enable the travel agents to make booking for their services through the CRS. The airlines/travel related vendors pay to the assessee a fee for each of the booking made by the travel agents. That for each of the booking made through the NMC's subscribers commission is paid by the assessee to the NMC. The assessee had licensed its wholly owned Indian subsidiary company, *viz.* Abacus Distribution System (India) Ltd. (ADSIL) as its NMC in India.
- The Assessing Officer was of the view that ADSIL was functioning as a controlled subsidiary of the assessee and was exclusively performing the marketing and distribution of CRS for the assessee. The Assessing Officer observed that the assessee carried out its activities of CRS through the Abacus Country Node located in India, which remained under the management and control of the assessee. The Assessing Officer in the backdrop of his aforesaid observations concluded that the assessee had a fixed place of business in India which served as a distribution point for its services in India. The Assessing Officer also took stand that as ADSIL was securing business for the assessee by entering into subscription agreements with the travel agents and the said activity was habitually, wholly and exclusively performed by ADSIL for the assessee, hence, ADSIL constituted an Agency PE of the assessee in terms of article 8(*c*) and 9 of the India-Singapore DTAA. Thus, Assessing Officer concluded that the assessee had a PE in terms of article 5 of the India-Singapore treaty.

- On appeal, the Commissioner (Appeals) was of the view that as the issue of PE in India was covered against the assessee by the orders passed by the coordinate benches of the Tribunal in the assessee own case for assessment years 1999-2000 to 2004-05 and also by the order of his predecessor in the case of the assessee for assessment year 2004-05, thus observing that admittedly as the facts of the case for the year under consideration, *viz.* assessment year 2005-06 remained the same, therefore, followed the aforesaid orders and concluded that the assessee during the year under consideration had a PE in India within the meaning of article 5(1) and 5(8) of the India-Singapore treaty. The Commissioner (Appeals) to support his aforesaid finding observed that the issue of PE in India was also decided against the assessee by the Dispute Resolution Panel (DRP) in the subsequent years *i.e* assessment years 2006-07 to 2010-11.
- On appeal to Tribunal:

Held

- The issue as to whether the assessee had a PE in India, or not, had been deliberated upon by the Tribunal in the assessee own case for assessment years 1999-2000 to 2004-05. The Tribunal in the aforementioned appeals upholding the orders of the lower authorities had concluded that the assessee was having business connection and PE in India. Though the assessee had raised a ground of appeal assailing the observations of the DRP that the assessee had a PE in India in terms of article 5(1) and 5(8) of the India-Singapore DTAA, but however, during the course of the hearing of the appeal no contention was advanced by the assessee to support his aforesaid claim. Thus, following the orders passed by the coordinate benches of the Tribunal in the assessee own case in assessment years 1999-2000 to 2004-05, the order of the DRP that the assessee had a business connection/PE in India is upheld.