

11th July, 2025

Friday Tax Alert

Indian Subsidiary is not to be treated as a Dependent Agent Permanent Establishment (DAPE) if the transaction with it is at Arm's Length Price – Bangalore ITAT.

The case before the Bangalore Income Tax Appellate Tribunal (ITAT) pertains to Assessment Year 2021-22 and involves a foreign company in the name of Qlik Tech International AB (the Assessee) and its Indian subsidiary named Qlik Tech India Pvt Ltd. The main issue in this case revolves around **whether the Indian subsidiary constitutes a Dependent Agent Permanent Establishment (DAPE) of the foreign company and whether income should be attributed to the foreign company in India.** Here, the Assessee had supplied software to its Indian subsidiary, which remitted the payment after deducting TDS. The Assessee claimed a refund of the TDS as it had not offered any income in its return on such software supply in India.

Facts of the Case:

- The AO and the DRP had treated the Indian subsidiary as a Dependent Agent Permanent Establishment (DAPE) of the foreign company. Based on this finding, income was attributed to the foreign company in India on the assumption that the Indian entity carried out activities on behalf of the foreign company, thereby creating a taxable presence (PE).
- The foreign company was engaged in selling software to customers in India, and the Indian subsidiary was involved in some part of this process. The transaction between the foreign company and its Indian subsidiary was considered a purchase and sale of software and had been evaluated under Transfer Pricing (TP) rules in the assessment of the subsidiary, not the parent foreign company.
- The Assessee filed a Miscellaneous Application (MA) under Section 254(2) of the Income Tax Act, 1961 seeking rectification of the earlier Tribunal order. It argued that once the Tribunal had concluded that there was no DAPE, there was no need to remit the matter back to the AO for fresh adjudication. The Assessee also expressed concern that the AO might misuse the remand and expand the scope of assessment unnecessarily.

Decision of the Hon'ble Income Tax Appellate Tribunal:

- The Tribunal acknowledged that its own earlier order contained ambiguity regarding the scope of remand, it had already concluded that the Indian subsidiary was not a DAPE, based on the TP treatment. Further adjudication was unnecessary if the TP analysis had accepted the transaction.
- The Tribunal modified **Paragraph 10** of its earlier order to insert the following clarification:

*"Accordingly, it is clarified that if, upon verification, the Revenue finds that **the transaction between the Assessee and the Indian subsidiary has been accepted as a transaction of purchase and sale and has been subjected to arm's length price determination, then the Revenue shall not treat the Indian subsidiary as a DAPE in the case of the Assessee. Hence, we set aside the issue to the file of the AO to decide in the light of the above-stated discussion and as per the provisions of law. Hence, the ground of appeal is hereby allowed for statistical purposes.**"*

(Qlik Tech International AB C/o Qlik Tech India Pvt Ltd [TS-279-ITAT-2025(Bangalore)-TP])

DESAI SAKSENA & ASSOCIATES

Reassessment proceedings held invalid due to notice issued u/s 148 to deceased Assessee and not served on legal heir within limitation period – Delhi ITAT.

Facts of the Case:

- The original Assessee filed his return of income declaring certain amount of long-term capital gain out of the sale of house property which was processed under section 143(1) of the Income Tax Act, 1961. **The original Assessee passed away on 02-10-2015.**
- Thereafter, **a notice under section 148 was issued in the name of the deceased on 31-3-2016** upon receipt where of the son of the Assessee requested the Assessing Officer in writing to drop the proceeding as the notice was a nullity having been issued in the name of the dead person.
- On the contrary the legal heir of the Assessee was directed to file the return of income, where upon the son of the Assessee again reiterated the prayer of dropping of the proceeding and filed the return already filed by his father.
- The Assessing Officer adopted an amount of Rs. 9.90crores in respect of one of the draft agreements found from the computer of a deed writer as the actual sale consideration and computed the amount of LTCG at Rs. 8.71crores.
- The Assessee filed an appeal before the Commissioner (Appeals) who deleted the entire addition.
- Aggrieved by the order Revenue filed an appeal before the Hon'ble Income Tax Appellate Tribunal:

Decision held by Hon'ble Income Tax Appellate Tribunal:

- Under the present facts and circumstances of the matter it is evident that admittedly the original Assessee passed away on 02-10-2015, therefore, no notice could have been served upon him in April 2016 and more so the dead person could not file the return of income as required by notice under section 148. Admittedly the notice was issued in the name of the deceased on 31-3-2016 *i.e.* at the fag end of the limitation prescribed under the law and it was incapable of being served upon him and in that view of the matter the entire proceedings become non est in the eyes of law.
- Section 159(2) makes a specific reference to the reassessment proceeding under section 147. While section 159(2)(a) speaks of a proceeding already taken against an Assessee 'before his death', **section 159(2)(b) envisages any proceeding which could have been taken against the deceased if he had survived. It further permits such a proceeding to be taken against the legal heirs of the deceased Assessee even if it had not been taken while the Assessee was alive.** Section 159(2)(b) is, therefore, applicable to the case in hand. Taking into consideration this particular provision of law it was the duty incumbent upon the Assessing Officer to initiate proceeding under section 148 against the deceased Assessee for Assessment year 2009-10. The limitation for issuance of the notice under section 148 was 31-3-2016. However, on that particular day when the notice was issued the Assessee was already dead. In that view of the matter if the Assessing Officer intended to proceed under section 147 he could have done so prior to 31-3-2016 by issuing notice to the legal heir of the deceased. Beyond that date he could not have proceeded in the matter even by issuing notice to the legal heirs of the Assessee.

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- The notice issued in the name of a dead person is, thus, not a valid notice. **In order to undertake the proceeding in respect of a deceased person, the legal heirs need to be identified and notices are required to be served upon such legal heirs being deemed Assessee, in the names and in that capacity as legal heirs of the deceased and that particular notices are required to be served within the statutory time limit prescribed, which is absent in the case in hand. As admittedly, no notice under section 148 was served upon the original Assessee when was alive or on the deemed Assessee, the appellant having regard to the provision of law as narrated hereinabove, the entire proceeding is vitiated;** the same is void ab initio and therefore, liable to be quashed which has been rightly taken care of by the Commissioner of Income Tax (Appeals) in the order impugned in deleting the addition made against the Assessee; the same is found to be just and proper so as not to warrant any interference.
- The appeal preferred by the Revenue is, thus, found to be devoid of any merit and thus, dismissed.

(Deputy Commissioner of Income-tax v. Pranav Gupta [2025] 176 taxmann.com 15 (Delhi - Trib.))

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