

India; Japan; Singapore; Thailand; United States

Payment to Foreign AEs for Purchases Not Chargeable, No WHT Obligation, Says Indian Court

22 February 2024

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The Delhi High Court (HC) has ruled, in the case of *CIT v. Mitsubishi Corporation India P. Ltd (ITA 180/2014)*, that payments made to foreign associated enterprises (AEs) for purchases made were not subject to withholding tax (WHT) in India. Accordingly, these payments were not to be disallowed under section 40(a)(i) of the Income Tax Act, 1961 (Act).

(a) Facts. The taxpayer, an Indian tax resident, made payments for purchases to its foreign AEs without deduction of WHT for the tax year 2006-07. The assessing officer (AO) disallowed these payments under section 40(a)(i) of the Act, considering that all AEs had a permanent establishment (PE) in India, the said payments were chargeable to tax in India and the taxpayer failed to deduct WHT while making the payments.

(b) Issue. The HC examined whether the said payments were taxable in India under the Act and the relevant tax treaties for applicability of WHT.

(c) Decision. The HC ruled in favour of the taxpayer with observations set out below:

- payments made to AEs in Japan and the United States were entitled to equal treatment under the non-discrimination clause as per articles 24(3) of the [India-Japan Income Tax Treaty \(1989\)](#) and 26(3) of the [India - United States Income Tax Treaty \(1989\)](#). The taxpayer was entitled to benefit from the provisions of the tax treaties which were more beneficial;
- payments made to AEs in Singapore and Thailand were not chargeable to tax in India as they did not have PEs in India. The business connection test was not relevant in the absence of a PE;
- section 195 of the Act requires that chargeability to tax is the paramount condition for triggering the obligation to deduct WHT. Payments made to AEs were not chargeable in India and, hence, they were not subject to WHT; and
- section 40(a)(i) of the Act provided for the disallowance of specific payments for non-deduction of WHT. Payment for purchases was not included in its scope for the relevant tax year.

The decision was pronounced by the HC on 16 February 2024 and is available [here](#) (as a PDF).

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Exported / Printed on 6 Mar. 2024 by hkermadi@deloitte.lu.

