

India; United States

# Indian Court Taxes Reimbursement of Costs Paid to Non-Resident Without Adequate Cost Allocation Details

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The Mumbai Income Tax Appellate Tribunal (ITAT), in the case of Kraft Foods Group Brands LLC vs. Assistant Commissioner of Income Tax (ITA NO. 2495/MUM/2022), rules that reimbursement of costs, in order to be non-taxable, must be supported by adequate cost allocation details and documentary evidence.

(a) Facts. The taxpayer, a US company and a tax resident of the US, received certain payments from its related party in India, viz. Heinz India (Pvt) Ltd. (HIPL). The taxpayer provided various services to HIPL as per the Support Services Agreement (SSA). HIPL remitted partial payment to the taxpayer after deducting withholding tax (WHT) and the rest without deducting WHT stating that the same was in the nature of reimbursement of costs. The tax authorities, however, were of the opinion that the reimbursement amount was in the nature of fees for technical services under section 9(1)(vii) of the Income Tax Act, 1961 as well as article 12 of the [India-United States Income Tax Treaty \(1989\)](#).

(b) Issue. The ITAT examined whether the payment made by HIPL without deducting WHT in India can be considered 'reimbursement of costs' and be, accordingly, not taxable in India.

(c) Decision. The ITAT ruled partially in favour of the taxpayer with observations set out as follows:

- the SSA prescribes a 0% mark-up on costs of performing support services, unless a different mark-up is required under the US transfer pricing (TP) rules. The taxpayer did not bring on record the relevant assessment made under the US TP rules;
- the taxpayer entered into an SSA to provide support services through various cost centres but failed to submit any details or proper factors or allocation basis to classify the various support service charges provided/collected from various affiliates, in particular HIPL. A 0% mark-up provided in SSA does not suffice as evidence;
- the reimbursement of costs is not taxable as there is no profit element embedded in such expenses which are incurred on behalf of another person. However, in the given case, there is no supporting evidence to appreciate that the taxpayer has incurred various expenses on behalf of HIPL and recovered the same from HIPL; and
- the first hurdle is proving that the amount is an actual reimbursement of costs and the claim of the exemption under domestic tax law or tax treaty comes next. The taxpayer has failed in proving the same. The taxpayer has provided services to its affiliates in India, partly claims them as chargeable to tax and the balance not chargeable, without any basis.

The decision, pronounced by the ITAT on 27 September 2023, is available [here](#).

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