

India; Ireland

Indian Court Rules Google India Not a Dependent Agent of Irish Associate, No WHT Liability in India

19 April 2023

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The Bangalore Tribunal, in the case of *M/s. Google India Private Ltd. v. ACIT* (ITA No.374 & 362/Bang/2013), has ruled that M/s. Google India Private Ltd. (the taxpayer) was not a dependent agent of its Irish Associated Enterprise (AE) and hence, no withholding tax deduction was required in India. Details of the decision are summarized below.

The taxpayer and its AE Google Ireland Ltd. (GIL) entered into an agreement for marketing and distribution of the AdWord programmes. Of the total amount received from advertisers, the taxpayer paid approximately INR 1.19 billion as distribution fees to GIL without deducting any withholding tax (WHT).

The tax authority argued that distribution fees were taxable in India as GIL constituted a dependent agent permanent establishment (DAPE) of the taxpayer in India and that the taxpayer ought to have deducted WHT. Accordingly, the tax authority sought to disallow the deduction of distribution fees to the taxpayer.

The Bangalore Tribunal, however, ruled in favour of the taxpayer on the grounds that it was not a DAPE of GIL in view of the clauses in the distribution agreement between the taxpayer and GIL, the invoices raised on advertisers and articles 5(6) and 5(8) of [India-Ireland Income Tax Treaty \(2000\)](#). Further, no WHT deduction was required on distribution fees paid by the taxpayer to GIL and therefore, no disallowance was warranted. The Court further held that the distribution fees, alternatively, could not be considered as royalty/fees for technical services considering that the issue was already settled in the taxpayer's previous case.

The relevant clauses of the distribution agreement between the taxpayer and GIL are laid out below.

- GIL appointed the taxpayer as a "distributor" of Google's Adwords programme in India and the taxpayer would conduct business on its own account (not as a franchisee, agent, employee, or partner of GIL).
- The taxpayer would market and distribute the programme with its commercial expertise, own sales force, customer service infrastructure and also provide after-sales services.
- GIL and the taxpayer shall be independent contractors and neither of them has an authority or obligation towards the other.

The full text of the decision pronounced by the Bangalore Income Tax Appellate Tribunal on 31 March 2023 is available [here](#).

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News IBFD.

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