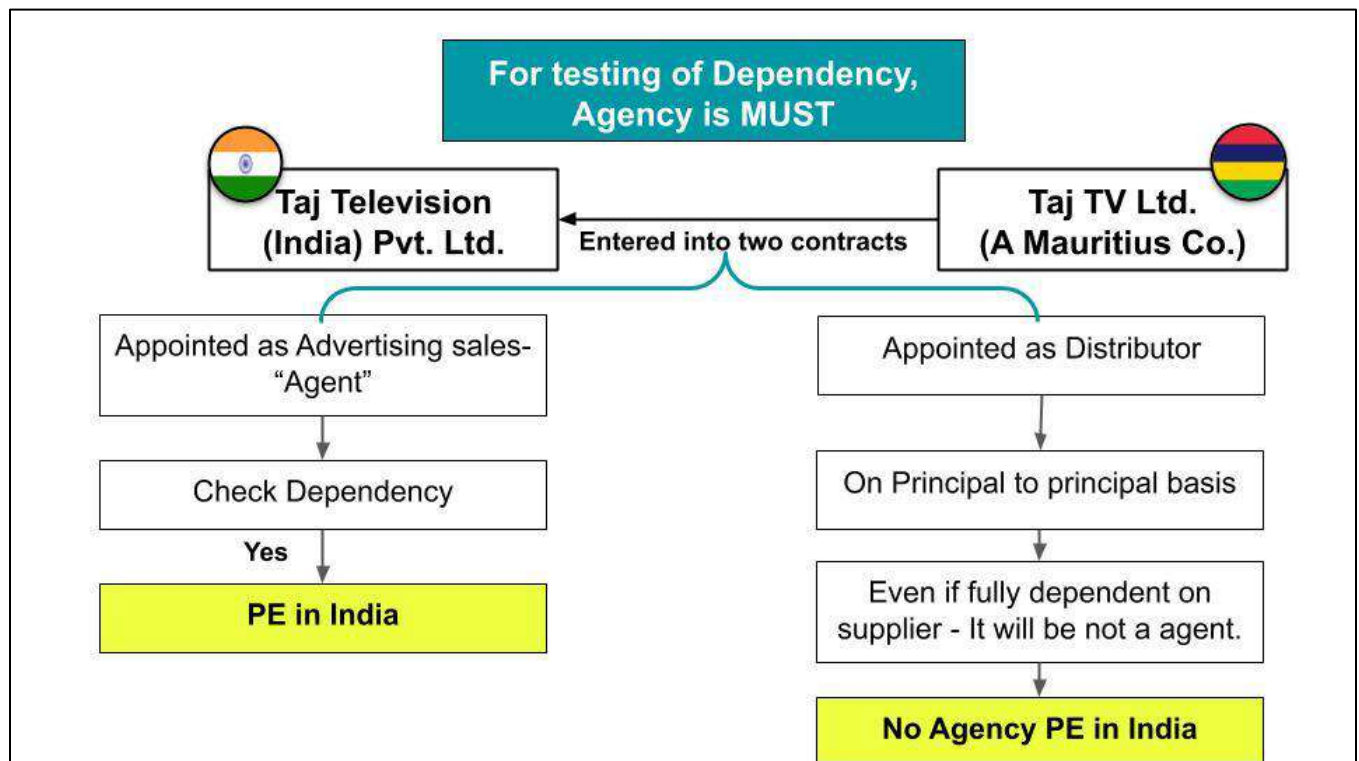


SATURDAY INTERNATIONAL TAX GYAN !!!

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Commissioner of Income Tax v. Taj TV Ltd¹

**PE has to be ascertained qua stream of Income and not on entity.
Dependency to be only checked if established as agent and not on
principal to principal basis**



Facts:

- Assessee is a foreign company registered in Mauritius, it is engaged in telecasting the sports channel. It has appointed Taj Television (India) Private Limited as
 - its advertising sales agent in India to sell commercial advertisement spots to prospective advertisers and other parties in India and to collect advertisement charges from the Indian advertisers.
 - its distributor to distribute it to various Channel systems for exhibition.

¹ [2020] 115 taxmann.com 305 (Bombay)



Assessee's contention:

- **Advertisement Contract-** Taj India private limited was separate legal entity and it was having no authority to enter into an agreement on behalf of the assessee and
- **Distribution of TV Channel rights-** Assessee entered into every agreement on a principal to principal basis and at arm's length price.
- Therefore, assessee's contention states that it was not having any permanent establishment in India by virtue of Article 5 of the India Mauritius DTAA and hence it was not required to file any return of income or pay any tax on income which is earned from India.

Revenue's contention:

- **Advertisement Contract-** Assessing officer was of the opinion that Taj India had authority to conclude various agreements in the name of assessee and hence by virtue of such authority the assessee had PE by virtue of 5.4(i) of DTAA between India and mauritius.
- **Distribution of TV Channel rights-** It was contended that Taj India had the exclusive right to distribute and represent assessee, therefore assessee was fully dependent on Taj India for its revenue, also distribution revenue was shared in the ratio of 60:40
- Both the above contentions prove that assessee had a PE in India. Hence, the income of assessee would be charged as business income in India.

Ruling:

- Advertisement Contract- It was held that Taj India was fully dependent on assessee for its revenue and hence it was a dependent agent. Based on the above facts it was held that by virtue of clause 4 of Article 5 assessee had a agency PE in India and hence such income would be taxable in India.
- Distribution of TV Channel rights- It could be seen that Taj India was given the exclusive right to distribute the channel's of assessee. Taj India shall be solely responsible for marketing and promoting the service to drive cable operators.
 - **Perusal of the Distribution Agreement clearly provides that Taj India is not acting as agent of appellatant but has obtained the right of distribution of TV channel for itself and subsequently it is entering into contract with other parties in its own name.**
 - Thus, from the above facts it's clear that Taj India was **not acting as agent for assessee** and hence Taj India cannot be called as agent of assessee and no PE is established for such business.





Our comments:

- The Indian company had two revenue streams. It was ascertained as Agency PE for one business and not an agent for another business. Therefore, **PE is always ascertained on revenue stream wise and not entity wise.**
- First it needs to be ascertained whether the Indian entity is an agent for foreign company or not. If the Indian entity is principal and not an agent, even the fact that it is completely dependent on the foreign company will not make Indian Company as a Dependent agent.

Section	Article 5
DTAA/Country	Mauritius
Court	Bombay High Court
Date of decision	06.02.2020

Note: Case law name in **Red**- in favour of the Revenue, **Green**- In favour of the Assessee, **Orange** = Partial.

Refer our previous case laws editions at our website jainshrimal.com/topic/saturday-international-tax-gyan/

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