

# FLASH ALERT

Direct Tax  
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**Mumbai ITAT holds that date of transfer shall be reckoned on the date when shares are delivered and not from SPA execution date for Capital gains purpose**

## Brief facts of the case



- Citicorp International Finance Corporation<sup>1</sup> ('Citicorp' or 'assessee') is an entity incorporated under the laws of US engaged primarily in making investments in various companies in India under the Foreign Direct Investment (FDI) route and hence, earning capital gains income thereon
- Assessee had acquired Compulsorily Convertible Preference Shares (CCPS) of Infosys BPO Limited (erstwhile known as Progeon Limited) ('Infosys BPO') by entering into a Share Purchase Agreement (SPA) on 14 June 2002. CCPS were later converted into equity shares on 30 June 2005
- Thereafter, on 20 April 2006, assessee entered into SPA with Infosys Technologies Ltd to transfer shares of Infosys BPO for a consideration of USD 115.13 million. The SPA had various conditions precedents to it wherein both the parties to SPA were provided with right to terminate SPA upon non-fulfillment of any of such conditions precedent. Further, actual delivery of shares was to be affected only upon satisfaction of all conditions precedent
- On 30 June 2006, assessee had transferred shares from its Demat account and had received sales consideration in its bank account. Assessee treated 30 June 2006 as date of transfer and accordingly, computed period of holding and resultant long-term capital gains income thereon in its return of income
- Ld. AO considered 20 April 2006 being the date of execution of SPA as date of transfer and accordingly, arrived at period of holding of less than 12 months (by considering difference of date of conversion of CCPS into equity shares and date of entering into SPA)

- Consequently, Ld. AO treated income earned by assessee as short-term capital gains as per provisions of section 2(29B) of the Income-tax Act, 1961 relying on Circular No. 704 dated 28.04.1995 and decision of co-ordinate bench in **Max Telecom Ventures Ltd. Vs. ACIT (114 ITD 46)**
- On appeal, CIT(A) confirmed the order of Ld. AO and aggrieved by same, assessee preferred appeal with ITAT

### Ruling by Mumbai ITAT



- Hon'ble ITAT noted that the moot question which existed before it was what would be the effective date for transfer of shares - whether the date of agreement or the date when the transfer was effected. The answer to the same would determine whether the assessee would be liable to long term capital gains or short-term capital gains on the impugned transaction.
- Ld. AR further placed reliance on co-ordinate bench ruling in the case of **Mrs. Hami Aspi Balsara vs. The ACIT (in ITA No. 6402/Mum/2008)** and various other judicial precedents wherein it has been held that the date of transfer shall be considered to be the date when all the conditions precedent to SPA are fulfilled
- ITAT held that co-ordinate bench in the above case has dealt with the identical issue after duly considering the decision of the Max Telecom Ventures Ltd. (supra) relied upon by the Id. DR and had decided the said issue in favour of the assessee. Since, the said ruling is distinguishable on the facts where in that case the share purchase agreement was acted upon immediately on the execution of the said agreement and it was not a conditional sale as in the case of the assessee. Therefore, the said decision relied upon by the lower authorities does not support the department's view. On the above observation, ITAT held that there is merit in the submission of the assessee and, therefore, date of transfer should be reckoned to be the date when actual delivery of shares was affected.

