

Indian Tax Tribunal pronounces “data processing” to be “computer software” eligible for tax benefits

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Indian Tax Tribunal: Data Processing Activities Eligible for Tax Benefits In a recent decision in the case of Amadeus India Pvt. Ltd., the Delhi bench of the Income Tax Tribunal has held that data processing activities qualify for the tax benefits available for exports of computer software.

SUMMARY

In a recent decision in the case of Amadeus India Pvt. Ltd. (ITR 257, 23 (2002)), the Delhi bench of the Income Tax Tribunal has held that data processing activities qualify for the tax benefits available for exports of computer software. Amadeus India Private Limited was incorporated in India. Amadeus set up a unit in the Software Technology Park in Noida, which qualifies for tax benefits under the Indian Income Tax Act, 1961 (ITA 1961). Amadeus's main business activity was to provide its customers, mainly travel agents, with an online computer reservation system (AMADEUS CRS system) without charge. The travel agents received information regarding worldwide schedules and availability, reservation data and records, and training. The tribunal held that the activities of Amadeus amounted to the export of a computer programme, and the tribunal therefore allowed a tax benefit under section 80HHE of the ITA.

FULL TEXT

In a recent decision in the case of Amadeus India Pvt. Ltd. (ITR 257, 23 (2002)), the Delhi bench of the Income Tax Tribunal held that data processing activities qualify for the tax benefits available for exports of computer software. Amadeus India Private Limited was incorporated in India. Amadeus set up a unit in the Software Technology Park in Noida, which qualifies for tax benefits under the Indian Income Tax Act, 1961 (ITA 1961). Amadeus's main business activity was to provide its customers, mainly travel agents, with an online computer reservation system (AMADEUS CRS system) without charge. The travel agents received information regarding worldwide schedules and availability, reservation data and records, and training. The data and records were processed and exported by Amadeus to Amadeus Data Processing Center in Erding, Germany. Amadeus raised invoices for the processing and export of the data, on a monthly basis, to Amadeus Madrid. Amadeus claimed a tax benefit for the export of computer software under section 80HHE of the ITA. It claimed that it was exporting data processing software on the AMADEUS CRS system and was therefore exporting computer software outside India, which entitled Amadeus to a tax benefit under section 80HHE of the ITA.

The tax officer denied Amadeus's claim for a tax benefit, concluding that the activities carried on by Amadeus did not constitute the export of computer software, but rather the export of data processing, which could not be regarded as software development.

Customs Act and Income Tax Act

The assistant director (tech) of the Software Technology Park, Noida, confirmed that a Customs Notification defined data entry or data processing to be software. The Electronics and Computer Software Export Promotion Council also stated that data processing was covered by the definition of "computer software" under Customs notifications. The deputy director general of the National Informatics Centre, Planning Commission, concluded that Amadeus was processing data and then forwarding the collated information. That did not constitute a software programme.

The Tax Department argued that although data was required to run a programme, the data did not constitute a computer programme. It further argued that the Customs Act and the Income Tax Act were two different acts, and while determining the nature of computer programme for Income Tax Act, reliance could not be placed on the Customs Act. In response, the taxpayer claimed that the doctrine of para material applied. When certain words were used in the Income Tax Act and the Customs Act, unless the meanings in the two acts were contrary to each other, they needed to be considered together.

Decision

The tribunal held that the activities of Amadeus amounted to the export of a computer programme, and the tribunal therefore allowed the tax benefit under section 80HHE of the ITA. The tribunal held that although "computer programme" was not defined in the ITA, it was defined in the Copyright Act, 1957, as amended in 1994. Under that definition, "a computer programme means a set of instructions expressed in words, codes, scheme or any other forms including a machine readable medium capable of causing a computer to perform a particular task or achieve a particular result."

According to the tribunal, it was necessary to examine the activities of Amadeus in light of that definition. The tribunal said that Amadeus was exporting instructions that were capable of causing a computer to perform a particular task or achieve a particular result.

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