



TAX

Supreme Court: Non-Resident Companies Liable to Tax in India Even Without Permanent Office

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The Supreme Court of India delivered a significant judgment on October 17, 2025, in the matter of Pride Foramer S.A. (a non-resident French company) against the Commissioner of Income Tax concerning the crucial issue of whether the appellant continued to carry on business in India during the assessment years despite a lull in operations.

Facts of the Case

Pride Foramer S.A., incorporated in France and engaged in offshore oil drilling activities, was initially awarded a 10-year drilling contract off Mumbai from 1983 to 1993. Following this contract's completion, there was a period of inactivity with no contracts awarded until a new contract was formalized in January 1999. During these interim years (1996-1998), the appellant continued business correspondence with ONGC from its foreign offices and submitted bids for projects but did not have any active contracts. The company incurred various business-related expenses and claimed deductions for these expenditures along with set-off of unabsorbed depreciation in the relevant assessment years, reporting NIL income except for interest earned from tax refunds.

The Income Tax Department disallowed the deductions and set-offs, concluding that the company had ceased to carry on business during the lull period. The subsequent route of appeals led to divergent findings between the Income Tax Appellate Tribunal (ITAT), the High Court of Uttarakhand, and ultimately the Supreme Court.

Analysis and Judgment

The Supreme Court affirmed the ITAT's view distinguishing a "lull in business" from the "cessation of business." The Court held that a temporary discontinuation or lean period does not equate to permanent cessation if the company's conduct indicates intention to carry on business. In this case, Pride Foramer's continuous business correspondence, submission of bids, and efforts to procure new contracts during the interregnum demonstrated its intention to continue operations despite failing to secure contracts immediately.

Further, the Court clarified that the absence of a permanent establishment in India or conducting business purely through foreign offices does not imply cessation of business in the country. Under the Income Tax Act, tax liability arises from income accruing or arising in India, regardless of whether the company maintains an office locally. The Court criticized the High Court's restrictive interpretation as an outdated approach inconsistent with globalized trade dynamics.

Consequently, the Supreme Court set aside the High Court's order, reinstated the ITAT's decision allowing the deduction of business expenses under Section 37, and permitted carrying forward unabsorbed depreciation under Section 32(2) of the Income Tax Act.

Key Legal Takeaways

- A lull or break in business activities does not amount to cessation if the company has clear intent and tangible efforts to continue business.
- Business correspondence and bidding for contracts during inactive years evidence ongoing business operations.
- The existence of a permanent establishment in India is not a prerequisite for carrying on business or claiming tax benefits.
- The scope of "business" under the Income Tax Act includes systemic and organized activities or attempts towards business continuation.
- Courts must interpret tax laws in a manner consistent with global trade realities and ease of doing business principles.

This judgment reinforces a pragmatic approach towards tax assessment of non-resident companies engaged in international business. It underscores the importance of substance over form in ascertaining business continuity and entitlement to related tax deductions.

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