

Nishith Desai Associates
Legal & Tax Counseling Worldwide

MUMBAI • SILICON VALLEY • BANGALORE • SINGAPORE



Tax Litigation Practice

Team: Nishith Desai, Bijal Ajinkya, Rajesh
Simhan & Vivek Mimani

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The Practice

Nishith Desai Associates is recognized internationally for its international tax expertise. Mr. Nishith Desai, the founder of the firm, himself a renowned tax practitioner, was included in the Gold List of the 50 top tax professionals worldwide in November 2004 by UK publication *Tax Business*. The firm has an excellent track record in its tax litigation practice and has obtained many favourable rulings for its clients in respect of their taxation in India.

An illustrative list of Nishith Desai Associates' experience in the tax litigation area can be summarized below:

Advance Rulings

The firm has obtained several favourable landmark rulings for its clients who include **AIG**, **Bechtel**, **DLJ**, **TCW-ICICI**, **Prudential (UK)**, **Fidelity**, **Dun & Bradstreet** (Spain and UK), **General Electric Pension Trust** and **Morgan Stanley & Co.** from the Authority for Advance Rulings (AAR) in India.

In the case of **AIG**, the firm successfully obtained a landmark ruling where the AAR confirmed that the benefits of the India-Mauritius tax treaty would be available to an offshore fund set up in Mauritius. For **Bechtel**, it has obtained an interesting advance ruling on taxation of EPC contracts in India. In case of **Prudential (UK)**, it was affirmed that the gains derived by a foreign insurance company from sale of shares of Indian companies would be regarded as business income. In the case of **TCW-ICICI**, intricate issue of Permanent Establishment (**PE**) in the context of a Private Equity Fund was discussed. In the case of **Fidelity**, the firm obtained a landmark ruling where the AAR confirmed that the gains derived by the foreign investment fund from sale of shares of Indian companies would be regarded as business income, and on the facts of the case, where there was no Permanent Establishment in India, would not be subject to tax in India. In the case of **Dun & Bradstreet** (Spain and UK), the firm successfully obtained rulings regarding the tax treatment of an e-commerce transaction involving on-line purchase of reports.

In the case of General Electric Pension Trust the firm obtained a ruling where the AAR confirmed that the gains realised by the pension trust from the sale of shares of Indian companies would be regarded as

business income. The trust was however held ineligible to treaty benefits. In the case of Morgan Stanley (US) the firm successfully obtained a ruling regarding the **PE** exposure in outsourcing activities and also on the quantum of attribution of profits in case of an existence of PE. The Advance Ruling authority held that Morgan Stanley (US) did not have a PE in India and so long as it remunerated the India PE (if present) on an arm's length basis, nothing more was attributable. In the case of GEPT, it was held that a pension trust was not treated as a US tax resident in terms of the India-US tax treaty and hence was ineligible to claim tax treaty benefits.

Cross-border Tax litigation

The firm successfully represented **Global Business Institute**, a Mauritius not-for-profit organisation, in a high-profile Indian litigation before the Supreme Court of India (in the case of **Union of India v. Azadi Bachao Andolan**, delivered on October 7, 2003) with respect to the availability of the India-Mauritius tax treaty benefits to Mauritius residents having a source of income in India. The matter was of immense importance to the international community, as Mauritius has been a preferred jurisdiction for making investments into India and has by far been the largest investor in India. The firm represented Virage Logic, US before the Income Tax Appellate Tribunal on the question as to whether a branch of a US company would be entitled to claim a tax holiday in India in respect of its profits.

The firm was involved in the first transaction of taxation of E-commerce in respect of a CRS company, **Abacus**. It has advised and represented **Sumitomo Corporation on several tax litigations in India** in relation to EPC contracts. The firm advised **MasterCard** on its tax litigation in India. The firm has also advised **PanAmSat International Systems, Inc.**, and the Illinois Institute of Technology, Chicago on the permanent establishment and relevant tax litigation issues that arose from their cross-border transactions.

Pursuant to the successful advance ruling in the case of **Morgan Stanley**, US, the tax department filed a special leave to petition before the Supreme Court of India challenging the order of the Advance Ruling Authority. The Supreme Court has disposed of matter to upholding the order of the AAR

Team

Nishith Desai, nishith@nishithdesai.com

Bijal Ajinkya, bijal@nishithdesai.com

Rajesh Simhann, rajesh@nishithdesai.com

Vivek Mimani, vivek@nishithdesai.com

Offices

93 - B MITTAL COURT, NARIMAN POINT
MUMBAI 400 021. INDIA
TEL: +91 - 22 - 6669 5000
FAX: +91 - 22 - 6669 5001

220 CALIFORNIA AVE., SUITE 201
PALO ALTO, CA 94306, USA
TEL: +1 - 650 - 325 7100
FAX: +1 - 650 - 325 7300

PRESTIGE LOKA G01
7/1 BRUNTUN ROAD
BANGALORE 560 025. INDIA
TEL: +91 - 80 - 6693 5000
FAX: +91 - 80 - 6693 5001

LEVEL 30, SIX BATTERY RD,
SINGAPORE - 049909
TEL: 65 - 6550 9855
FAX: 65 - 6550 9856