

TRANSFER PRICING

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Assessing Officer cannot disturb the deduction under Section 80IC of the Act, if Specified Domestic Transactions have been accepted to be at ALP by the TPO – Mahindra & Mahindra Limited, vs. DCIT [TS-320-ITAT-2020(Mum)-TP]

Facts:

- The Assessee claimed deduction u/s 80IC of the Act in respect of Rudrapur unit;
- The transactions reflected in Rudrapur unit were subject matter of TP Assessment under the category of “Specified Domestic Transaction” and were accepted to be at arm’s length in TPO’s order;
- However, the Assessing Officer in-line with earlier years’ approach restricted the deduction under Section 80IC for AY 2013-14 by applying the following formula:-

Total business of the company × Rudrapur unit turn over

Total turnover

Tribunal’s Ruling

The Hon’ble Tribunal noted the following:

- For AY 2013-14, the statute provided for determining arm’s length price in respect of SDTs unlike earlier years when no such provisions were available;
- Once the profitability disclosed by the Assessee for Rudrapur unit had been accepted to be at arm’s length by the TPO, the same cannot be further disturbed by the AO by making some disallowance or by adopting different method of determining the profitability. Further, no adverse findings were recorded by the lower authorities;
- In terms of Section 92CA(4) of the Act, the order of the TPO is binding on the AO which is further been strengthened by CBDT instruction No.3/2016;
- Accordingly, approach of the AO was rejected and claim of deduction u/s.80IC of the Act made by the Assessee in the return of income was accepted.

Margin of international transaction ought to be computed by adopting related operating costs only and not total cost incurred by the Assessee through-out the year – M/s Trident Microsystems India Pvt. Ltd vs. DCIT [TS-319-ITAT-2020(Bang)-TP]

Facts:

- The Assessee had earned all its revenue only in the month of April and May as it had stopped its operation thereafter.
- For the purpose of benchmarking, the Assessee considered net cost plus margin (i.e. Operating Profit to Operating Cost) as Profit Level Indicator wherein relevant operating cost of only two months was considered even though it was incurring expenses through-out the year;
- The TPO, however computed the operating margins by considering the expenditure of the whole year and proposed a TP adjustment.

Tribunal’s Ruling

Accepting the contentions of the Assessee, the Hon’ble Tribunal noted as under:

- Operating cost relating to the operating revenue generated by the Assessee should alone be considered for computing operating margin for the purpose of determining Arm’s length price of the international transactions. In this case expenses related to first two months only.
- Considering the expenses incurred by the Assessee in subsequent months, where no revenue was generated, would result in distorted picture.

- However, if it is found that any of the expenditure relating to the first two months has been accounted for by the Assessee in any of the subsequent months, then the said expenditure should also be taken into account for determining the operating profit of the first two months.

A valid tax holiday claim u/s 10A of the Act, otherwise permissible cannot be denied on additional TP income offered to tax pursuant to resolution under Mutual Agreement Procedure ('MAP') – M/s. Dell International Services India Private Limited vs. DCIT [TS-319-ITAT-2020(Bang)-TP]

Facts:

- TPO made a TP adjustment in respect of IT enabled services rendered by the Assessee to its AE. Assessee preferred an appeal before CIT(A) against the said addition;
- During the pendency of the appeal, the Assessee's AE in USA initiated and concluded the discussions around mark-up on cost to be earned by the Assessee for IT enabled services;
- AO passed an order under Rule 44H(4) of the Rules giving effect to MAP resolution however did not allow Section 10A deduction on the enhanced TP income pursuant to MAP;
- Assessee raised an additional ground before CIT(A) in this regard. CIT(A) rejecting the additional ground held that the upward adjustment made as per MAP is undisclosed in books of accounts and hence the same cannot be allowed as deduction.

Tribunal's Ruling

- Section 92C(4) of the Act depicts that deduction u/s 10A will not be allowed in respect of ALP determined by the AO based on the order of the TPO. Accordingly, the proviso to Section 92CA(4) of the Act will apply only to transfer pricing adjustment made by the AO and not to any other modes of determination of ALP;
- Price agreed under MAP cannot be said to be TP adjustment determined by the AO as it is a procedure agreed between two countries under DTAA;
- The purpose for which the first proviso of section 92CA(4) of the Act was enacted is that the amount represented by the adjustment would not actually be received in India or would have actually gone out of the country (CBDT Circular No.14/2001 dated 09.11.2001);
- In the present case, the condition on which the dispute was resolved under MAP, was that the Assessee had to increase its taxable income and the sum agreed was to be subsequently invoiced and realized and thereby there was inflow of foreign exchange in India.
- In view of the above and considering principles laid down by Hon'ble Pune Tribunal in the case of Dar Al Handasah Consultants (Shair & Partners) India Private Limited vs. DCIT (ITA No. 1413/PUN/2019), Hon'ble Tribunal allowed the benefit of deduction u/s 10A of the Act in respect of additional income pursuant to settlement under MAP.

Commission income earned on counter guarantee cannot be compared to financial guarantee provided by other banks when Indian Bank's role is that of mere facilitator – Bank Of Tokyo Mitsubishi UFJ Ltd. vs DDIT [2020-TII-91-ITAT-DEL-INTL]

Facts:

- The Assessee in an Indian Branch of a foreign bank, resident of Japan.
- It has entered into various international transactions with its AEs – one of them being receipt of commission on guarantee which is under dispute.
- The Assessee issues guarantees to the unrelated beneficiaries in India, based on the counter guarantees provided by the AEs in favour of the Assessee.
- For performing limited functions, the Assessee received guarantee commission upto 1 percent for issuing letter of guarantee.
- The Assessee applied TNMM approach under aggregation method to benchmark the said transaction. It also submitted data-points in respect of internal CUP available.
- The TPO however rejected the said analysis and considered the arithmetical mean of the bank guarantee charged by the various banks at 2.71 percent under external CUP method.

- DRP rejected the objections of the Assessee.

Tribunal's Ruling

- Hon'ble Tribunal appreciated that the Assessee in this case has limited role and was not bearing any risks. The Assessee received part of guarantee commission in its capacity as facilitator only.
- Accordingly, rejecting TPOs approach, the Hon'ble Tribunal observed that there is no merit in comparing the rate received by the Assessee with the rate charged by different banks who are operational in India and providing financial guarantee to its customers, with all risk involved therein.
- Further, reliance on internal CUP data may also not be appropriate due to difference in risk profile (Assessee bears all risk in those cases).
- In view of above and considering overall fact of the case, Hon'ble Tribunal upheld Assessee's approach of aggregated benchmarking under TNMM and deleted the adjustment.