

TRANSFER PRICING

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Enfinity Solar Solutions Pvt Ltd [TS-259-HC-2021(MAD)-TP]

Ruling summary and findings

Madras High Court passes a judgment on whether draft assessment order is required in the case of remand back of appeal or not. Interestingly this is a contradictory judgment to a earlier High court judgment in the case of Durr India Pvt Ltd.

The Enfinity Solar Solutions Pvt Ltd ("assessee") raised the plea that even after remand by the ITAT, the entire procedure u/s.144C has to be followed. High Court opined that "when the matter was remitted with reference to a particular issue to be clarified or decided by the competent authority, it is sufficient if such an issue is decided and thereafter, a final assessment order is passed".

HC explains that as per the legislative intention of Sec.144C of 'providing an opportunity to an assessee before passing the final assessment order', the same had already been provided and the assessee also availed of the opportunity by submitting an objection before the DRP who in turn, also passed an order and thereafter, a final assessment order was passed. Thus, states that "once again commencing from the beginning is not the idea behind the provision and therefore, the very principles mooted out by the petitioner to commence the proceedings right from the initial stage deserves no merit consideration and stands rejected". The High noted that "Repetition of the same procedures would become an empty formality, which is not intended under the provision".

Bank Guarantee not comparable to Counter Guarantee. Deletes TP adjustment made by the TPO on counter guarantee commission - The Bank of Tokyo Mitsubishi UFJ Ltd [TS-233-ITAT-2021(DEL)-TP]

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 counter guarantee which is under dispute.
- The Assessee issues guarantees to the unrelated beneficiaries in India, based on the counter guarantees provided by the AE in favour of the Assessee. For performing limited functions, the Assessee receives counter guarantee commission from its AE.
- The Assessee applied internal CUP wherein it compared the international transaction with guarantee commission received from various customers. Also, secondary analysis under TNMM using aggregation approach was submitted during the proceedings.
- The TPO however rejected the both said analysis' and considered the mean of the bank guarantee charged by the various banks for benchmarking under external CUP method.
- DRP deleted the said adjustment in view of functional analysis and judicial precedence.
- Revenue preferred appeal before Hon'ble Tribunal.

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 risks involved therein.
- Further, considering judicial precedence in Assessee's own case, Hon'ble Tribunal observed "...benchmarking of bundle of international transactions by the taxpayer with its AE by applying combined approach and TNMM has been used and margin shown by the taxpayer has otherwise been accepted, in these circumstances, the international transactions qua receipt of counter

guarantee commission by the AE cannot be segregated from other international transactions undertaken by the taxpayer as has been held by the Id. TPO/DRP, the margin of combined approach has been accepted at arm's length, hence addition made by the TPO is not sustainable and as such is ordered to be deleted"

Oversight error / reporting of net income in Form no. 3CEB do not amounts to income concealment. Deletes addition - Arysta LifeScience India Limited [TS-245-ITAT-2021(Mum)-TP]

Facts:

- CIT(A) while adjudicating Assessee's appeal, observed from the financials that the Assessee earned management fees of INR 14.8 crs from its AEs. However, the said amount was reflected as INR10 crs in Form no. 3CEB filed along with the return of income.
- CIT(A) alleged that the Assessee has concealed its income as it has not reported the correct income in its Form no. 3CEB. Accordingly CIT(A) enhanced the income of the Assessee for the differential amount.

Tribunal's Ruling:

Hon'ble Tribunal deleted the said addition observing as under:

- Correct amount of income (INR 14.89 crs) has been credited in Assessee's Profit & Loss Account as other operating revenues under the head revenue from operations. The same has already been considered while computing Assessee's income.
- The Assessee has debited inter-company service fees expense of INR 4.8 crs which is evident from Notes forming part of the Balance Sheet.
- The figures in Form No.3CEB has been reported on 'net basis' which at the most, could be an inadvertent / bona-fide / oversight error.

Deletes penalty under Section 271AA of the Act as the definition of "relative" under Section 56(2)(v) is not relevant while determining SDT (i.e. transactions u/s.40A(2)(b)) - Smt. Anita Sunil Mahajan [TS-282-ITAT-2021(PUN)-TP]

Facts:

- The Assessee, an individual reported four payments totaling INR 19.6 crs in the tax audit report, as having been made to persons specified under Section 40A(2)(b) of the Act. The Assessee contented that transactions were with such persons who were not covered within the definition of 'relative' and therefore SDT provisions are not applicable.
- The AO held that since the Assessee had herself reported transactions under Section 40A(2)(b) of the Act in the tax audit report and further there was no admission of error by the auditor, the Assessee was liable to be visited with Penalty under Section 271AA of the Act for not complying with the provisions of Sections 92E and 92D.
- CIT(A) affirmed the imposition of the penalty by specifically noting the definition of the term 'relative' as given by Explanation to Section 56(2)(v) of the Act.

Hon'ble Tribunal's Ruling:

- At the outset, Hon'ble Tribunal noted "there can be no estoppel against the provisions of the Act. If a particular transaction does not fall within the ambit of a specific provision, the same cannot be considered as so falling merely because the assessee took a mistaken view on that score."
- Thereafter on merit Hon'ble Tribunal proceeded to analyze whether the transactions reported in tax audit report were actually transactions with person under Section 40A(2)(b) of the Act.
- Hon'ble Tribunal stated that the ambit of the term 'relative' as given in Section 2(41) of the Act, will prevail for understanding the connotation of the term 'relative' under Section 40A(2)(b) over the one given in the Explanation to Section 56(2)(v), as has been taken cognizance by the CIT(A) i.e. only the transactions with husband, wife, brother or sister or any lineal ascendant or descendant of the individual will get enveloped for the purpose of Section 40A(2)(b) of the Act.
- It is pertinent to note that in the opening part of the Explanation giving definition of the term 'relative' reads 'For the purposes of this clause' only.
- Considering nature of transactions reported in tax audit report as Section 40A(2)(b) payments, Hon'ble Tribunal noted that only the transaction of payment of rent of INR 1.8 lakhs to Assessee's husband would fall within the ambit of Section 40A(2)(b) of the Act.
- Accordingly, Hon'ble Tribunal deleted the penalty under Section 271AA.

Computation of Working Capital Adjustment - advances to suppliers / from customers are integral part for adjustment and cannot be ignored. - GL&V India Private Limited [TS-255-ITAT-2021(PUN)-TP]

Hon'ble Tribunal's Ruling:

Holding that advances to suppliers / from customers are integral part for computation of working capital adjustment and cannot be ignored., the Hon'ble Tribunal observed as under:

"Higher amount of advances to suppliers indicates that an assessee-buyer made more advance payments and made cheap purchases. There is no qualitative difference between a situation of higher amount of advances to suppliers and a situation of lower amount of trade payables insofar as its impact on the profit margin is concerned. Both the situations affect the profitability and the working capital in the same manner. In the like scenario, higher amount of advances from customers deciphers that an assessee seller made cheap sales. Again, there is no qualitative difference between the higher amount of advances from customers and lower amount of trade receivables insofar as its impact on the profit margin is concerned. Thus, advances to suppliers and advances from customers are integral part of working capital adjustment in the same way in which there are trade receivables and trade creditors. Such advances, ergo, cannot be excluded in computing the working capital adjustment. Reference to trade receivables and trade payables in the example given in Annexure to Chapter III of the OECD transfer pricing Guidelines, 2010 should be construed as including advances to suppliers and advances from customers. It is only for simplification purpose that the example refers to trade receivables and trade payables to the exclusion of advances to suppliers and advances from customers."