

TRANSFER PRICING

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Lintas India Pvt Ltd vs. ACIT 148 Taxmann.com 482 {Mumbai ITAT}

Lintas India Pvt Ltd ("the assessee") an Indian entity, engaged in advertising business, paid GIS service charges to its overseas AE and benchmarked the same using CUP method. The TP officer refused to accept the benchmarking concluding that the assessee failed to satisfy the 'need test' of services availed and hence determined cost as Nil.

The Mumbai tax tribunal rejected the view of TP officer by reviewing the robust documentation submitted and thus held that:

- a. services are required for business of Indian entity and thus was requested to overseas AE;
- b. Indian entity has been benefitted on availing the services;
- c. adopted reasonableness allocation keys;
- d. proper agreement between Indian entity & its AE

Accordingly, the Tribunal instructed to do proper benchmarking by examining the documents placed by Indian entity. Therefore, the tribunal held that cost of intra-group services cannot be considered "Nil" if documentation is robust.

SAP Labs India Pvt. Ltd. & Others [TS-225-SC-2023-TP]

Under the Indian Income-tax Act (ITA), an appeal against an order of an Income-tax Appellate Tribunal (Tribunal), which is the second-level appellate forum in the hierarchy of appellate authorities, can be made to the jurisdictional HC. However, an HC can only admit an appeal if it is satisfied that the case involves a "substantial question of law." In the case of Softbrands India Private Ltd. The Karnataka HC ruled that the Tribunal is the final fact-finding authority and the jurisdiction to consider the factual nature of issues is with the Tribunal. As long as there is no unreasonableness in the order of the Tribunal in the findings of the fact, the same does not qualify to be a "substantial question of law." The HC also held that issues pertaining to selection of comparable data and criteria for comparability while undertaking an economic analysis in a TP study do not give rise to a "substantial question of law."

In this case of SAP Labs India Pvt Ltd the SC has reversed the order of the HC and ruled that in an appeal involving TP issues it is always open for a HC to examine in each case whether the provisions of the ITA dealing with TP have been followed or not and whether there is any perversity in the findings recorded by the Tribunal while determining the ALP.

- **Quashes final assessment-order holding Assessee as 'ineligible since TPO-order barred by limitation - Teleperformance Global Services Private Limited [TS-181-ITAT-2023(Mum)-TP]**

Facts

- The Id. TPO passed an order u/s.92CA(3) of the Act on 01/11/2019 for AY 201-17 making ALP adjustments in respect of provision of IT enabled services; interest on loan given to AE; and provision of guarantee.
- The draft assessment order was passed by the AO under Section 143(3) r.w.s. 144C of the Act on 27/12/2019 determining the total income of the Assessee at Rs.259,58,34,100/- which includes the addition made by the TPO towards ALP; disallowance of depreciation on intangible asset; and disallowance u/s.14A of the Act.
- The Assessee preferred objections before the DRP. The DRP issued directions u/s.144C(5) of the Act on 20/03/2021. Pursuant to the directions of the DRP, the AO passed the final assessment order under Section 143(3) r.w.s. 144C(13) of the Act on 17/04/2021.

Hon'ble Tribunal's Order

- Hon'ble Tribunal observes that Section 92CA(3A) mandates the TPO to pass order at any time before 60 days prior to the date on which period of limitation under Section 153 for making the order of assessment or re-assessment expires, i.e., TPO is bound to pass an order for AY 2016-17 on or before 31.10.2019. However, noting that TPO passed order dated 01.11.2019, Hon'ble Tribunal holds that the same is barred by limitation - Relies on Hon'ble Madras HC Single Bench decision in *Pfizer Healthcare India (P.) Ltd 433 ITR 28 (Madras)* and Division Bench decision in case of *Saint Gobain India (P) Ltd 444 ITR 636 (Madras)*.

- With regard to the Assessee's additional ground on AO's draft assessment order dated 27.12.2019 consequently being barred by limitation, upholds as under:
 - o Since TPO's order is barred by limitation, then the Assessee would be outside the ambit of becoming "eligible assessee" u/s.144C(15)(b)(i) of the Act;
 - o If there is no eligible Assessee, the very foundation for proceeding to pass the draft assessment order does not survive, meaning thereby, that the draft assessment order passed in the instant case becomes legally invalid and hence, all consequential proceedings on the basis of the said order fail.
 - o Relies on coordinate bench ruling in case of *Atos India Pvt. Ltd. vs. DCIT (ITA No.1795/Mum/2017)* and *Mondelez India Foods Pvt. Ltd (ITA No.1492/Mum/2015)*

In view of the above, Hon'ble Tribunal concludes as under:

"... we hold that the order of the ld. TPO dated 01/11/2019 and draft assessment order dated 27/12/2019 as barred by limitation, thereby resulting in assessee not being an eligible assessee u/s.144C(15)(b)(i) of the Act and consequentially the final assessment order dated 17/04/2021 is also bad in law. Accordingly, the ground No.2 of original grounds and additional grounds raised by the assessee are hereby allowed.

5. Since the entire assessment proceedings are quashed as void ab initio, the other grounds raised by the assessee on merits of the additions need not be gone into and they are left open."

- Holds Special loan transaction distinct from Normal loan transaction – arm's length pricing / approach would accordingly defer - Tata Chemicals Limited [TS-200-ITAT-2023(Mum)-TP]

Facts:

- Home Field International Pvt. Ltd. (HIPL) in Mauritius is 100 percent subsidiary of the Assessee formed with a view to make investments globally. The Assessee was bidding for acquisition of Egyptian Fertiliser Company through HIPL With a view to fulfil the pre-bid condition of 'Proof of funds letter' from an international banker, the Assessee had lent USD 110 million to HIPL to show availability of funds with them. The said funds were placed by HIPL as short term fixed deposits with Barclays Bank.
- Since, the bid was unsuccessful the funds were returned back. Interest earned by HIPL on such deposits of USD 3,76,247 has been paid as interest to the Assessee after reducing bank charges of USD 105.
- Apart from this, the Assessee had also advanced regular loans to its AE which were benchmarked by the Assessee by applying LIBOR + 200 basis points as the ALP rate.
- The TPO concluded that the interest rate at LIBOR + 200 basis points becomes a CUP available with the Assessee and accordingly determined the ALP of the international transaction of lending of USD 110 million also by applying LIBOR + 200 basis points and made the transfer pricing adjustment.
- DRP upheld the approach of the TPO.

Hon'ble Tribunal's Order

- Considering the purpose for which this USD 110 million was given to its AE by the Assessee and also considering the fact that the AE could not utilize the monies received from the Assessee for any other purpose other than for the purpose of participation in the bid, the Hon'ble Tribunal opined that the lending of USD 110 million should be construed as a special purpose lending and accordingly to be treated as separate and distinct from loan simplicitor.
- The TPO in the order had observed that since the Assessee had included this USD 110 million in Form 3CEB along with all other loans by stating that it had benchmarked at LIBOR + 200 basis points, the TPO concluded that the interest rate at LIBOR + 200 basis points becomes a CUP available with the Assessee. In this regard, the Hon'ble Tribunal noted that the Assessee had erroneously stated in form no. 3CEB, however the fact on record clearly proves that Assessee has not received interest @LIBOR + 200 basis points on the special purpose lending of USD 110 million from its AE. The fact is Assessee has actually received interest at an average interest rate of 3% from its AE
- In view of the above and following the decision *Bennett Coleman And Co. Ltd vs. DCIT reported in 129 taxmann.com 398 (Mumbai Trib)*, the Hon'ble Tribunal noted

"The only distinguishing feature of the assessee's case with that of the facts prevailing in Bennett Coleman And Co. Ltd supra is that, in that case, special purpose lending was given for the purpose of participation in the bid and the bid was successful, whereas in the instant case, the bid was not successful. Barring this, all the facts are identical. Hence, ratio laid down by the Co-ordinate Bench of this Tribunal supra would be squarely applicable to the facts of the instant case before us.

2.6. In view of the aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, we have no hesitation in directing the Id. TPO / AO to delete the transfer pricing adjustment made in respect of special purpose loan of USD 110 million."

- Benefit of tolerance-range available even with a single comparable - Philips India Limited [TS-192-ITAT-2023(Kol)-TP]

Facts:

- After giving effect to the directions of the DRP only one comparable namely Tata Elexi remained in the comparable set in respect of benchmarking for software development service segment for which an upward adjustment has been made by the TPO.
- The adjusted margin of the comparable being the arm's length price is computed at 13.61 percent vis-à-vis the Assessee margin of 10.53 percent.
- Before the Hon'ble Tribunal, the Assessee contested the claim of benefit of tolerance limit under the second proviso to Section 92C(2) of the Act.

Hon'ble Tribunal's Order

Adjudicating on Applicability of second proviso to Section 92C(2) of the Act in a situation where only one comparable is available for Benchmarking, Hon'ble Tribunal observed as under:

"11. Applicability of second proviso to Section 92C(2) of the Act in a situation where only one comparable is available for benchmarking was considered by the Coordinate Bench of ITAT, Mumbai in the case of The Development Bank of Singapore (supra), wherein it was held that the second proviso has to be read distinctly from the 1st proviso and the words "so determined" in the 2nd proviso should apply to ALP determined under the main sub-section (2) by which the tolerance band also becomes available where only one price is determined as ALP."

"12. Considering the facts of the case and the difference in the benchmark margin of 13.61% vis-à-vis 10.53% of the assessee which falls within the tolerance limit of +/- 5% as contained in Section 92C(2) of the Act and the decision of the Coordinate Bench of ITAT, Mumbai, we hold that the benefit of tolerance limit under 2nd proviso to Section 92(C)(2) of the Act is available to the assessee in the present case where only one comparable of Tata Elexsi is considered for the purpose of benchmarking. Accordingly, the upward adjustment made by the Ld. TPO in the software development segment is deleted."

- Upholds computation of working capital adjustment basis FCY interest rates - M/s. Rampgreen Solutions Pvt. Ltd. [I.T.A No. 1404/Del/2016]

The Hon'ble Tribunal inter-alia has upheld the Assessee's claim for computation of working capital adjustment basis Foreign Currency interest rates (USD Interest rate in given case) as against the Bank PLR. Hon'ble Tribunal has relied on Hon'ble Delhi High Court decision in case of *Cotton Natural Pvt. Ltd. (2015) 276 CTR 445* wherein it has been held that interest rates are dependent on the currency of lending and accepted Assessee's argument that since Assessee is receiving only in USD and therefore interest rate applicable to USD currency to be used.