

## TRANSFER PRICING

CA. Bhavya Bansal, CA. Bhavesh Dedhia,  
CA. Shazia Khatri

### Case Law Update

- DRP has no power to condone the delay in filing objections by the Assessee - Lam Research (India) Private Limited [TS-431-ITAT-2021(Bang)-TP]

#### Facts:

- The Assessee faced a Transfer Pricing adjustment and accordingly was served draft Assessment Order at first instance.
- The Assessee preferred to file objections before the DRP, however was delayed by 3 days.
- DRP rejected the objections of the Assessee by stating that the DRP does not have power to condone the delay in filing the objections before the Panel.
- Pursuant to the DRP's rejection of the objections, the AO passed the final assessment order.
- The Assessee filed an appeal before the Hon'ble Tribunal and inter-alia argued that the Final Assessment Order is bared by limitation.

#### Tribunal's Ruling

- Hon'ble Tribunal opined that the DRP does not have powers to condone the delay of filing objections in view of the following:
  - o Section 144C of the Act and Income Tax (Dispute Resolution Panel) Rules, 2009 do not give power to the DRP to condone any delay in filing the objections.
  - o If the Legislature had intended to give such powers, it had been expressly implied as in the case of powers with the CIT(A) under Section 249(3) of the Act and Tribunal under Section 253(5) of the Act.
  - o Reliance was placed on Hon'ble Madras High Court ruling in the case of Inno Estates (P.) Ltd [TS-759-HC-2018(MAD)-TP]
- Regarding the Assessee's argument that the Final Assessment Order is bared by limitation, Hon'ble Tribunal stated that it had no jurisdiction to consider the plea of the Assessee in view of the following:
  - o The DRP had only rejected the objections as non-maintainable and not issued any directions to the AO as contemplated u/s.144C(5) of the Act.
  - o Hence, the final AO order was not pursuant to the direction of DRP as mentioned in Section 253(1)(d) of the Act.
  - o Relying on Hon'ble Madras High Court ruling in the case of Inno Estates (P.) Ltd (Supra) upheld the impugned assessment order though stated as an order under Section 143(3) read with Section 144C(13) of the Act, is not an order in pursuance of the directions of the DRP, but an order of assessment simplicitor under Section 143(3) of the Act.
  - o Held that the correct course open for the Assessee would have been to file an appeal before the CIT(A) and pursue the said issue
- Upholds use of custom databases under CUP Method - TRL Riceland Pvt. Ltd [TS-521-ITAT-2021(DEL)-TP]

#### Facts:

- The Assessee has entered into international transaction of sale of Basmati rice and non-basmati rice and adopted CUP method as the Most appropriate Method for benchmarking;
- The Assessee considered relevant datapoints from of TIPS database maintained by the Customs Department.
- The said method was rejected by the TPO which was further confirmed by the DRP citing CUP method requires high degree of comparability between the controlled and uncontrolled transaction.
- Accordingly, the TPO and the DRP adopted TNMM and proposed a TP adjustment for the said transaction.

#### Tribunal's Ruling

The Hon'ble Tribunal relying on coordinate bench decision in the Assessee's own case deleted the adjustment, upholding following key principles about ALP determination:

- TIPS database maintained by custom department could be considered valid database for comparability under CUP method;
- Product comparability though should be closely examined under CUP, does not require comparables to be exactly the same;
- Generic goods, even under different brand names, do not cease to be comparable with each other unless the impact of brand or other intangibles is so substantial that it distorts the comparison altogether;
- Regarding minor differences and fluctuating prices for the same goods, portfolio approach (containing average of datapoints) should be considered while comparing data at or near to the relevant date.
- Reject use of transaction between the AE and overseas third party under CUP Method citing geographical differences - Mubea Automotive India Private Limited (known as Mubea Automotive Components India Pvt Ltd) [TS-517-ITAT-2021(PUN)-TP]

#### **Facts:**

- The Assessee engaged in manufacturing of car suspension related products had entered into international transaction of purchase of raw material and sale of finished goods.
- The Assessee had adopted CUP method to benchmark its international transaction as under:
  - o Average purchase price of raw material paid to AEs in Spain, USA, China and Germany with price charged by German AE for sale of same / similar product to German based third party;
  - o Average purchase price of finished goods paid to AEs in Germany and Italy with price charged by Italian AE for sale of same / similar product to German based third party.
- The TPO / DRP rejected the CUP Method and adopted TNMM, thus proposing a TP adjustment for the said transactions.

#### **Tribunal's Ruling**

- The Hon'ble Tribunal observed that an uncontrolled transaction can be taken into consideration for comparison only if no differences, inter alia, the varying geographical locations exist and further in case such differences exist reasonable accurate adjustment can be made (Rule 10B(2) read with Rule 10B(3) of the Rules);
- The German / Italian AE's transactions with German based third party are geographically different from the Assessee's transactions with the other entities situated in other countries i.e. Spain, USA, China, Germany supplying raw material / finished goods to the Assessee in India. Particular product commands varying price in different countries due to host of reasons.
- The product similarity is also another sine qua non under the CUP method, the best comparable uncontrolled transactions in the given case would have been the relevant AEs selling similar products to non-AEs in India.
- In view of the above observation, upheld that the view point taken by the TPO / DRP to the effect that the CUP is not the most appropriate method in the facts and circumstances of the case.
- Regarding application of TNMM, based on various rulings, directed to restrict the transfer pricing addition only to the extent of international transaction under consideration.