

# TransPrice Times

Edition: 15<sup>th</sup> – 30<sup>th</sup> June 2020

## Tivo Tech Pvt. Ltd. [Formerly Veveo (India) Pvt. Ltd.] - Bangalore ITAT

**Outcome:** In **favour** of the taxpayer

**Category:** Working Capital Adjustment

The taxpayer is a wholly owned subsidiary of Veveo Inc., USA and is engaged in provision of software development services to its Associated Enterprise ('AE'), Veveo Inc. The taxpayer had applied the Transactional Net Margin Method ('TNMM') to benchmark the international transaction of provision of software development services to its AE. The Transfer Pricing Officer ('TPO') accepted the TNMM method as Most Appropriate Method ('MAM') applied by the taxpayer for benchmarking the international transaction with its AE. However, the TPO chose to reject few of the comparable companies selected by the taxpayer and inserted new comparable companies to the study to arrive at an Average Arithmetic Mean mark-up. Further, the TPO made negative working capital adjustment to the arithmetic mean mark-up of the comparable companies to obtain arm's length price/margin. The Dispute Resolution Panel ('DRP') also confirmed the negative working capital adjustment made by the TPO and deleted few comparable companies selected by the TPO.

The judgement of DRP was appealed by the taxpayer before the Tax Court. The Tax Court observed that the taxpayer was not an entrepreneur but a captive service provider, providing software development services to its AE only on a total cost plus model. Thus, the Tax Court stated that the taxpayer runs business without any working capital risks, hence no negative working capital adjustment should be made to the operating margin of the taxpayer. Further, the Tax Court directed the tax authorities to make the negative working capital adjustment to comparable companies, to undertake comparability analysis with the taxpayer's business.

Thus, the Tax Court held that no application of negative working capital adjustment shall be done to the arithmetic mean margin of the comparables and held the case in favour of the taxpayer.

## Exxon Mobil Lubricants Pvt. Ltd. – Delhi ITAT

**Outcome:** In **favour** of the taxpayer

**Category:** Most Appropriate Method

The taxpayer is engaged in the business of manufacturing and trading of a range of lubricants in India and it operates as a 100% subsidiary of Mobil Petroleum Company Inc., USA. The taxpayer had entered into international transactions with its AE that were in the nature of import of base oil, resale of pre-packaged lubricants, payment of services fees, etc. The taxpayer had benchmarked the International transactions of import of base oil and resale of pre-packaged lubricants with AE using Cost Plus Method on aggregation basis and benchmarked the payment of services fees using TNMM. The Transfer Pricing Officer ('TPO')

# TransPrice Times

Edition: 15<sup>th</sup> – 30<sup>th</sup> June 2020

---

had directed the taxpayer to apply entity level TNMM to benchmark the above International Transactions with AE.

Further, the judgement of the TPO was appealed to the intermediate tax authorities. The intermediate tax authorities directed the TPO to benchmark each International Transaction separately. In respect of International transaction of import of base oil, the taxpayer demonstrated that sale of similar items were made by the AE of the taxpayer located in Singapore to unrelated third parties in India at a price higher than the price at which the same has been sold to the Taxpayer. Hence, the intermediate tax authorities accepted the Taxpayer's contention to use Internal CUP to benchmark the International Transaction. Further, in respect of international transaction of resale of pre-packaged lubricants, the taxpayer submitted that it merely imports the lubricants and resells it further to unrelated parties and it does not add any value to the products imported and merely acts as a buy-sell agent and hence, it considers the international transaction with respect to import of lubricants to be benchmarked using Resale Price Method ('RPM') to determine the arm's length price. The intermediate tax authorities accepted the Taxpayer's contention in respect of benchmarking the transaction of resale of lubricant transaction using segmental RPM. In respect of the international transaction of payment of service charges, the intermediate tax authorities accepted the Taxpayer's contention to benchmark the payment of service charges transaction by using TNMM considering the foreign AE as the tested party.

The judgement of intermediate tax authorities was appealed by the TPO before the Tax Court. The Tax Court observed that in respect of the international transaction of import of base oil, only partial details of import purchases from AE were furnished. The Tax Court holds that in the scenario if only part details provided, the CUP method could not be applied as the most appropriate method for benchmarking the import of base oil from AEs and hence, TPO's application of TNMM is approved. Further, the Tax Court observes that in respect of resale of lubricants purchased from AEs to third parties, the taxpayer had not applied segmental RPM in the original study and had only opted before the intermediate tax authorities. Hence, the Tax Court held that, for the acceptance of application of segmental RPM to benchmark the international transaction, the TPO should be provided an opportunity for analysis of cost base of comparables, segmental details and benchmarking process. In respect of the international transaction of payment of service fee, the Tax Court notes that taxpayer failed to prove that the foreign AE is the least complex party and that the relevant data should be available in public domain or the taxpayer makes available the same for consideration. Considering the above, the Tax Court reversed the decision of the intermediate tax authorities and remitted the above issue to the tax officer/transfer pricing officer for fresh consideration.

**Suggested Read:** <https://transprice.blog>