

TransPrice Times

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Sava Healthcare Limited - Pune ITAT

Outcome: In **favour** of taxpayer

Category: TPO and POEM

The taxpayer is engaged in the activity of exporting third-party medicines to different countries worldwide through an online pharmacy and also a manufacturer.

The transfer pricing officer ('TPO') observed that, in order to avoid taxes in India, on the huge profits earned in the business, the transactions of the group had been so arranged such that global purchase activities were routed through its Associated Enterprises ('AEs') situated in Dubai and Mauritius (Free Trade Zones), and warehousing through Singapore AE, thus earning these AEs huge income compared to the Indian taxpayer entity. The TPO went on to conclude that the management and control of entire global business of group was situated wholly in India. Thus, the TPO contended that the correct profitability of transactions entered by the taxpayer could not be determined under TNMM and applied the Profit Split Method to benchmark the same allocating 70% of the group profits to the taxpayer.

The taxpayer contended that the whole jurisdiction exercised by the TPO was inappropriate since testing the control and management of AEs i.e. place of effective management ('POEM') testing, was not within the powers of the TPO, and that such test would determine the 'residential status' of the taxpayer under the relevant provisions, and cannot be applied by the TPO under the Transfer Pricing provisions.

The Tax tribunal held that the entire transfer pricing proceedings is in violation of the transfer pricing law and hence, illegal. Further, concurs with taxpayer that for determination of an ALP of an international transaction a question of residence is irrelevant. Accordingly, concluded that the TPO does not have jurisdiction to determine taxpayer's POEM.

Wockhardt Limited – Mumbai ITAT

Outcome: In **favour** of taxpayer

Category: Corporate Guarantee

The taxpayer is engaged in the manufacturing and trading of pharmaceutical products. The taxpayer has provided corporate guarantee to its Associated Enterprise ('AE') in the United Kingdom ('UK') and has charged 0.75% per annum as guarantee fee, based on the quotation obtained from a bank. The transfer pricing authorities rejected the same and determined the arm's length guarantee commission at 2.08% and proposed a consequent adjustment.

The intermediate tax authorities considered the bank quotation as a valid external Comparable Uncontrolled Price ('CUP') while benchmarking the corporate guarantee fee and accordingly, held that the guarantee fee charged by the taxpayer is at arm's length.

The Tribunal upheld the decision in favour of the taxpayer, also mentioning that, in various precedents, the Tax Court has held that ALP for guarantee fee can reasonably be fixed at 0.5%.

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