

TransPrice Times

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Hyundai Rotem Company - Delhi ITAT

Outcome: In **favour** of the taxpayer

Category: Functional characterization

The non-resident taxpayer is engaged in manufacturing and supply of components of rail system throughout the world. The non-resident taxpayer has established 5 project offices ('POs') in India for carrying out liaising and coordination activities on behalf of the non-resident taxpayer's group in India. The same has been documented in the transfer pricing study report ('TPSR') describing the POs as low/limited risk service providers engaged in provision of administrative and coordinated services. In some cases, the POs had been engaged in providing testing and commissioning, logistics support supervision etc. However, testing and commissioning has been stated to be routine technical matter which occurs on a daily basis under the technical guidance of the non-resident taxpayer, and the actual significant testing and commissioning activity is performed by the non-resident taxpayer itself.

In the given case, the transfer pricing officer ('TPO') characterized functional profile of POs to be technical in nature. The POs were considered as engineering support service provider by TPO and proposed an adjustment relating to same.

The Tax Court noted from the functional analysis in the TPSR, that the POs are risk alleviated entity and is protected from various kinds of risk and the POs are functioning as a capital service provider. The Tax Court agreed with such functional profile of the POs. The Tax Court stated that it is essential to understand and evaluate the functional profile of the POs while testing the FAR and the comparability analysis.

The Tax Court preached that if there are no changes in functions and material facts of the POs, the functional profile cannot be changed.

TE Connectivity India Pvt Ltd - Bangalore ITAT

Outcome: In **favour** of the taxpayer

Category: Non-speaking Order

The taxpayer is a part of Tyco Group and is engaged in the business of licensed manufacture of connectors and cable interconnects. There were various transfer pricing issues discussed during the proceedings.

One of the matters was where the taxpayer argued that the proposed adjustment on interest on external commercial borrowing should have been imposed on the basis of the daily outstanding loans and not as done by the TPO only on the opening and closing balances. The Dispute Resolution Panel ('DRP') refused to evaluate the TPO's decision by holding that the TPO had adequately dealt with the matter.

The Tax Court, on the above issue, directed the DRP pass a speaking order in respect of the matters of the taxpayer and not to dismiss the plea without proper consideration and granting of opportunity of being heard.

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