

TransPrice Times

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Softbrands India Pvt Ltd (Now INfore Banga-lore Pvt Ltd) – ITAT – Bangalore

Outcome: In **favour** of taxpayer

Category: Use of Multiple year data

Tax Court rejects the Department's appeal in respect of tax adjustment made to taxpayer's transaction of software development services provided to its holding company i.e. the AE.

The Department contended that two years data prior to current year be used in determining the transfer price of the international transaction, while benchmarking the same in an uncontrolled scenario. The relevant transfer pricing rules provide that the prior year or multiple year data can be utilized only on the condition that such data reveals facts which have an influence on the determination of transfer prices in relation to transaction being compared, in the current year.

Accordingly, the first appellate authority rejected the application of tax adjustment by the tax officer on the grounds that the tax officer was not able to justify the taxpayer's pricing pattern to be influenced by market conditions/business cycle etc.

On appeal by the Department, Tax Court quoted the transfer pricing rules provided in Rule 10B(4) of the Income-tax Rules, 1962 which provide that the comparable data in an uncontrolled transaction shall be the data of the relevant financial year in which the international transaction was entered into. It further stated that the multiple year data cannot be used as a matter of right, and should depend on circumstances surrounding the events in the current year for the use of multiple year data. Therefore, such use of 2 years data can be

applied only if the pricing pattern of the taxpayer for the relevant financial year had been influenced by the market conditions/business cycle/product life cycle of the relevant financial year.

Further, the onus in the present case is on the tax officer to bring out such factor/market conditions that influence the determination of transfer price for the international transaction.

Accordingly, since the tax officer could not justify the presence of any influential pricing pattern adopted by the taxpayer in the relevant financial year, the Tax Court accepted the deletion of tax adjustment by the first appellate authority and rejected the contentions of the Department.

B.C. Management Services Private Limited – HC – Delhi

Outcome: In **favour** of taxpayer

Category: Foreign exchange gain/loss

Tax Court has once again upheld that foreign exchange gain or loss arising from business operations to be classified as operating in nature.

Haworth (India) Private Limited – ITAT – Pune

Outcome: In **favour** of taxpayer

Category: Segregation of Interlink Activity

Tax Court holds in favour of taxpayer by rejecting tax authority's contention of segregating interlinked distribution activity from Marketing Support Service (MSS) based on change in method for remunerating each activity.

Taxpayer's business activity is divided into two business segments i.e. MSS including distribution activity and manufacturing segment. During year under consideration, taxpayer entered into a new agreement for remuneration of distribution segment from commission to cost plus mark-up.

Based on change in basis of remuneration for distribution segment, the tax officer proceeded to segregate the interlinked distribution segment from MSS, and made an adjustment to the international transaction with AE though the tax officer has accepted distribution activity as part of MSS segment in the earlier years.

Accordingly, Tax Court holds that change in method of remuneration from commission to cost plus mark-up, would not change the nature of services/activities carried out by the assessee in respect of distribution/trading segment.

AVL India Private Limited – ITAT – Delhi

Outcome: In **favour** of taxpayer

Category: Outstanding receivables & netting off

Tax Court follows aggregation approach by clubbing the taxpayer's outstanding receivables from 3 of its AEs as an international transaction.

Accordingly, finds that outstanding receivables from AEs prior to 2012 were for more than the reasonable business period, and were liable for interest adjustment in view of retrospective amendment to section 92B of the Income-tax Act 1961 vide Finance Act 2012.

Tax Court allows the netting off outstanding receivable with outstanding payable of its 3 AEs, belonging to the same class of transaction.

RECENT NEWS

OECD releases 2017 Model Tax Convention incorporating BEPS changes

OECD releases condensed version of 2017 edition of the OECD Model Tax Convention incorporating significant BEPS changes. The 2017 edition of the OECD Model mainly reflects a consolidation of the treaty-related measures resulting from the work on the OECD/G20 BEPS Project under Action 2 (Neutralizing the Effects of Hybrid Mismatch Arrangements), Action 6 (Preventing the Granting of Treaty Benefits in Inappropriate Circumstances), Action 7 (Preventing the Artificial Avoidance of Permanent Establishment Status) and Action 14 (Making Dispute Resolution More Effective).

Further, press release also states that full version of the OECD Model Tax Convention, including the Articles, Commentaries, non-member economies positions, and historical notes is set to be published next year.