

TransPrice Times

Edition: 1st – 15th April 2020

Nissin Brake India Pvt Ltd – Punjab & Haryana High Court

Outcome: In **favour** of the taxpayer

Category: MAM for royalty & product development fee

The taxpayer is engaged in the manufacturing and trading of all types of brake and aluminium components, spare parts and other related accessories. In the given case, in order to benchmark the taxpayer's international transactions of payment of royalty, receipts of product development services and technical support services, the taxpayer applied the Transactional Net Margin Method ('TNMM'). The Transfer Pricing Officer ('TPO') rejected the TNMM which had been applied on year to year basis and instead, applied the Comparable Uncontrolled Price ('CUP') method in an abrupt manner without assigning any reason.

The Tax Court opined that since royalty and product development fee are inextricably linked with the production and sales operational business, arm's length price ('ALP') can be determined only as per TNMM. The TPO's action of considering CUP and determining the ALP as nil as per the benefit test, disregarding the documentary evidences given by the taxpayer.

The High Court observed that no reason was provided by the TPO to justify the deviation from the TNMM being followed in earlier years without any indication of change in circumstances of the taxpayer from the previous years. Also, the application of CUP by the TPO without sound proof of it being more appropriate was noted. Accordingly, the High Court dismissed the Revenue's appeal against Tax Court's order by concluding that the invocation of the CUP was

unjustified, without reason for departure from past practice.

Nympha Developers Pvt Ltd – Delhi ITAT

Outcome: In **favour** of the taxpayer

Category: ALP Determination

The taxpayer is engaged in the business of real estate activities in development of project under collaboration. The taxpayer applied the other method as most appropriate method for its specified domestic transaction ('SDT') of collaboration expenses paid to its associated enterprise. However, the TPO considered the value of the SDT as nil while citing unavailability of reliable data, rather than benchmarking the SDT in accordance with the law.

The Tax Court opines that the TPO ought to have collected data available in public domain and if the same is not available, then, ought to issue notice and collect from private domain. Then, the same should be confronted to the taxpayer and then determine the ALP of SDT. It further mentioned that the next alternative in case of no data available is to accept the taxpayer's determination of ALP. The Tax Court also observed that the TPO has not followed procedure of ALP determination as per law and has no authority to hold that the SDT should not have undertaken. Thus, the Tax Court rejected ALP determined at nil by the TPO for SDT of collaboration expenses and remitted the matter back to TPO for afresh decision.

RECENT NEWS

Release of Stage 2 Action 14 implementation peer-review monitoring reports by OECD for Austria, France, Germany, Italy, Liechtenstein, Luxembourg and Sweden

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