

TransPrice Times

Edition: 1st – 15th July 2020

Mann and Hummel Filter Pvt. Ltd. – Bangalore ITAT

Outcome: In **favour** of the taxpayer

Category: Right to choose intermediate appeal route or DRP route

The taxpayer had appealed to the intermediate appellate authorities against the final assessment order received, and had not filed objections before the Dispute Resolution Panel ('DRP'). The intermediate appellate authorities dismissed the contentions on the transfer pricing matters and stated that the order of the transfer pricing officer ('TPO') would hold good, since the taxpayer had not raised objections to the draft order, thereby was not permitted to prefer appeal before the intermediate appellate authorities.

The taxpayer contended that the provision for objecting to the draft order before the DRP provides an option to either put forth its objections before the DRP in respect of the draft order, or to receive a final assessment order and prefer an appeal against the same before the intermediate appellate authorities. Further, preferring the second option does not imply a taxpayer's acceptance of adjustments made in the draft order.

The Tax Court appreciated the taxpayer's contentions and also took note of the intent of the provision of raising objections before the DRP, including the substance of the provision clarified in a circular issued by the Central Board of Direct Taxes ('CBDT'). Such clarification indicates that these are alternative channels or mechanisms. Thus, the Tax Court remitted the matter for fresh consideration on merits, to the intermediate appellate authorities.

Ashish Subodhchandra Shah (HUF) – Ahmedabad ITAT

Outcome: In **favour** of the taxpayer

Category: Revisionary powers vis-à-vis applicability of relevant base provisions

The Tax Court, quashing the revisionary order passed by the Revenue officials, held that the tax officer not referring matters to TPO, would not indicate the original order to be erroneous/ prejudicial to Revenue's interest (a pre-requisite for initiating revision proceedings by the Revenue officials). Further, it noted that the taxpayer made 'sales' to its sister concern, which are clearly outside the purview of the definition of specified domestic transactions which only subjects 'expenditure' transactions with domestic related parties to transfer pricing. Other limbs of the definition were also inapplicable, as per the facts. The Tax Court opined that mere submission of prescribed transfer pricing audit certificate would not warrant arduous enquiries where the taxpayer, establishes prima facie that the relevant provisions of law subjecting the matter to transfer pricing are entirely inapplicable. It further observed that the revisionary powers conferred on Revenue officials are wide-reaching and stem from the objective to address justifiable Revenue risks, and absence of prior enquiry would enforce such revisionary powers only when the relevant provisions and related conditions eliciting investigation were applicable to the taxpayer in the first place.

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Novo Nordisk India Pvt. Ltd. – Bangalore ITAT

Outcome: In **favour** of the taxpayer

Category: Withdrawal of appeal being matter subject to APA

The taxpayer had appealed to the Tax Court against the order of the tax officer passed in accordance with the directions of the DRP. Thereafter, the taxpayer requested for withdrawal of the appeal pursuant to signing of Advance Pricing Agreement ('APA'), in light of the fact that the taxpayer had entered into Bilateral as well as Unilateral APAs with the CBDT. The tenure of the APA applied to 5 consecutive years and 4 rollback years. Further, the taxpayer stated that as per the prescribed rules, if any appeal is undecided for any rollback year on points which form the subject matter of APA, then such appeal would be withdrawn to such extent of covered issues. Thus, considering the above, and not receiving objections from the Revenue, the Tax Court held the appeal to be withdrawn and dismissed.

Dania Oro Jewellery Pvt. Ltd. – Mumbai ITAT

Outcome: In **favour** of the taxpayer

Category: Inter-company receivables

The taxpayer is engaged in manufacturing gold & silver and exporting of studded jewellery. It undertook international transactions of sales and purchases with its Associated Enterprises ('AEs'). While computing the Arm's Length Price for such transactions, the TPO also proposed adjustment for notional interest on resulting receivable inter-company balances. When the matter was heard by the DRP, it was directed to calculate the interest basis the rate of interest on loan borrowed by AEs. This led to a final order being passed by the tax officer, where the adjustment was increased, by revising the calculation to be in accordance with the directions of the DRP.

The Tax Court noted that the taxpayer's contentions that the credit period availed by the AE amounted to 138 days, while that availed by non-AEs was 146 days. Further, it was observed that the taxpayer had been consistent and uniform since it did not charge interest for both - AEs and non-AEs. This factual narrative was undisputed even by the Revenue. Thus, the Tax Court, held in favour of the taxpayer, also following the co-ordinate bench rulings in prior cases of the taxpayer, where notional interest was not sustainable given the uniformity in treatment by non-charging of interest to controlled as well uncontrolled transactions, situations being similar.

RECENT NEWS

Apple-Ireland state-aid case - Annulment of ruling by the European Union ('EU') General Court
European Commission ('EC') had given directions to the Irish Government to recover EUR 13 billion in taxes plus interest, holding that 2 tax rulings issued by Irish Revenue and favourable to 2 Apple's Irish subsidiaries, ceded a 'selective advantage'. However, EU General Court annulled such ruling given by EC.

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