

TransPrice Times

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Kusum Healthcare Pvt Ltd – Delhi High Court

Outcome: In **favour** of the taxpayer
Category: Inter-company receivables

The taxpayer is engaged in the business of manufacturing and marketing pharmaceutical products. While the taxpayer applied the Transactional Net Margin Method (‘TNMM’) to benchmark its exports to Associated Enterprises (‘AEs’), the Transfer Pricing Officer (‘TPO’) noted that the credit allowed to the AEs was unconstrained vis-a-vis the credit period ceded in respect of sales to unrelated parties. The TPO considered such AE receivables as an international transaction and proposed notional interest on the same. On this matter, the Tax Court noted that the taxpayer had considered all aspects of credit given to receivables that had an impact on the pricing and profitability of comparable companies, by way of working capital adjustment. The Revenue countered by citing that the definition of ‘international transaction’ includes “receivables”, and hence, argued that the TPO’s action ought to be upheld.

The High Court opined that by virtue of the definition, any AE receivables appearing in the accounts of an entity would not automatically imply an international transaction. Such balances would need a case-to-case analysis, including factual considerations on the impact on working capital as well, before inferring them to be international transactions. Further, the High court also opined that the resultant outcome, having factored the impact of the receivables on working capital and profitability, depicted that the taxpayer’s margins were higher as compared to the comparables’ adjusted margins. Hence, any further adjustment was unwarranted and dismissed the matter.

Subsequently, the Revenue approached the Supreme Court through a Special Leave Petition (‘SLP’). However, the Supreme Court dismissed the SLP due to low tax impact, but also by confirming the Order of the High Court in favour of the taxpayer.

Isagro (Asia) Agrochemicals Pvt Ltd – Mumbai ITAT

Outcome: In **favour** of the taxpayer
Category: Internal TNMM; Product Similarity

The taxpayer is a manufacturer of agrochemical products and had exported generics and formulations mainly used for crop protection to its AE as well as to third parties. During the course of Transfer Pricing assessment proceedings, the taxpayer backed the application of the Internal TNMM to benchmark the international transaction and furnished its audited segmental Profit & Loss Account stating the appropriations for costs with regard to its AE and non-AE transactions to the TPO. These audited segmental accounts were accepted by the TPO along with a generic noting of dissatisfaction about the appropriation basis for certain expenses. Before the Tax Court, the Revenue also argued that product similitude should be maintained for application of internal TNMM.

The Tax Court opined that product comparability does not hold vital significance under TNMM unlike under the Comparable Uncontrolled Price method, since the net operating margins of controlled as well as uncontrolled transactions having functional similarity are compared under TNMM. Further, the Tribunal agreed with the application of the Internal TNMM because relevant segmental information was available. Thus, the decision was ruled favouring the taxpayer.

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