

TransPrice Times

Edition: 1st – 30th September 2020

Thyssenkrupp Industries India Pvt Ltd – Mumbai ITAT

Outcome: In **favour** of the taxpayer
Category: Comparability and Royalty

The tax authorities are in appeal in respect of issues relating to government company as a comparable and benchmarking of payment of royalty, project engineering and manufacturing drawings services. The taxpayer represented before the Tax Court that the issues raised by the tax authority has already been covered in the taxpayer's own case and hence pleaded before the Tax Court to dismiss the case.

The Tax Court remarked that the Government company generally operates on social obligations and not on a profit motive. Further, the government company earns from the projects of the other government undertakings and thus the related party transactions ('RPT') filter of 25%, might have been breached. Hence, the Tax Court rejected the inclusion of Government company as a comparable. In respect of the second issue, the Tax Court observed that the taxpayer made payment of royalty for obtaining knowhow and for availing manufacturing drawings and project engineering services under the agreement approved by the RBI. The Tax Court noticed that the deemed approval has already been granted by the RBI under the automatic approval scheme and hence, the Tax Court considered the international transaction to be at Arm's Length Price ('ALP') and ordered to delete the proposed the Transfer Pricing ('TP') adjustment.

Kellogg India Private Limited – Mumbai ITAT

Outcome: In **favour** of the taxpayer
Category: AMP

The taxpayer had incurred Advertisement, Marketing & Promotional ('AMP') expenditure on account of Television Advertising, Agency fees, Radio, Newspaper, etc. The Transfer Pricing Officer ('TPO') remarked that the AMP expenditure incurred by the taxpayer was to promote the products of the AE in India. The TPO contended that under the guidance of the Associated Enterprise ('AE'), the marketing and brand development strategy was undertaken and hence the AE was deriving the profits. The TPO benchmarked the AMP expenditure incurred by

selecting Any Other Method as the most appropriate method and proposed TP adjustment by using Bright Line Test ('BLT') i.e. taking the ratio of AMP expenditure incurred to Sales of two comparable entities. The taxpayer represented that the payment of AMP expenditure incurred to third parties does not qualify as an International transaction and hence, the determination of ALP is not required and filed an appeal to Tax Court.

The Tax Court relied on the ruling of the co-ordinate Tax Court in the preceding Assessment Year ('AY') of the taxpayer. The Tax Court observed that the taxpayer does not act as a distributor of the AE, rather under the license of the AE, it undertakes manufacturing of the AE's products and incurs AMP expenditure to promote the sales of its manufactured products. Further, the Tax Court was not able to find any arrangement/ technical collaboration agreement between the taxpayer and the AE to promote the brand of the AE. The Tax Court found the TPO's approach misleading and also did not approve the BLT as the valid method of benchmarking the international transaction relating to AMP expenditure. Hence, the Tax Court ordered to delete the proposed TP Adjustment and ruled in the favour of the taxpayer.

M/s. Value Labs Technologies – Hyderabad ITAT

Outcome: In **favour** of the taxpayer
Category: Interest on outstanding AE Receivables

The TPO had proposed a TP Adjustment in the nature of Interest on outstanding receivables from AE. The taxpayer had outstanding receivables from its AE which were delayed. The Taxpayer contended that the delay in outstanding receivables from AE is less than the industry acceptable average period. Further, the taxpayer apprised the Tax Court that the company is a debt-free and hence does not charge any interest on receivables, as it does not bear any liability for interest payments to its creditors. The taxpayer had benchmarked the international transaction on Transactional Net Margin method ('TNMM') basis and the operating margin of the company exceeds arm's length range of the comparable companies and hence, the company is at ALP. Hence, the taxpayer plead before the Tax Court to delete the proposed TP adjustment.

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The Tax Court observed that TPO had not mentioned in its order regarding the period of delay in receivables from AE. Further, the Tax Court placed its reliance on co-ordinate bench ruling in the taxpayer's case. The Co-ordinate bench in the taxpayer's case had held that delay in outstanding receivable from AE beyond the stipulated period as mentioned in the inter-company agreement between the taxpayer and the AE, cannot be a valid reason to hold it as a separate international transaction. Further, the co-ordinate bench had observed that the average industry acceptable credit period was more than the delay in outstanding receivables from the AE. Hence, the Tax Court by placing its reliance on co-ordinate bench ruling in the taxpayer's case of precedent AY, deleted proposed TP adjustment.

Towers Watson India Ltd – Delhi ITAT

Outcome: In **favour** of the taxpayer

Category: Internal CUP vs TNMM

The taxpayer is engaged in the international transaction of provision of consulting services to AEs. The taxpayer had benchmarked the transaction on Internal CUP basis, comparing the per hour rates of employees engaged in provision of consultancy services charged to AEs and Non-AEs. The TPO rejected the taxpayer's Internal CUP Method specifying the reasons ranging from the transaction with group entities used as Internal CUP, contrasting geographical locations of the AEs and the Non-AEs, consideration of CUP details on sample basis and non-furnishing of the nature and technical description of the services rendered to AE and Non-AEs. The TPO benchmarked the transaction by applying external TNMM and determined the ALP margin and proposed TP adjustment. The Intermediate Tax Authorities upheld the proposed TP adjustment. The taxpayer appealed against the decision of the intermediate tax authorities to the Tax Court.

The Tax Court placed reliance on the co-ordinate bench ruling in the taxpayer's own case in precedent AY. The Tax Court observed that both the AEs and Non-AE are charged on hourly rate basis on the time spent by the respective employee for provision of consultancy services. Hence, geographical location of the service recipient does not matter. Further, the Tax Court also relied on OECD guidelines of July 2010

which advocated for Internal CUP in comparison over other methods, since it bears a more direct and closer relationship to the transaction under review. Hence, by placing the reliance on the co-ordinate bench's ruling, the Tax Court considered the CUP method as MAM to benchmark the international transaction with the AEs.

KEC International Ltd.– Mumbai ITAT

Outcome: In **favour** of the taxpayer

Category: Advances to JV

The taxpayer had entered in to an international transaction in the nature of business advances to its AE. The taxpayer represented that the advances were made on commercial prudence and expediency as the AE was facing huge cash crunch due to operating losses the AE had suffered. The taxpayer further contended that being 50% partner, the company advanced funds to protect its business and no interest was charged. The taxpayer proposed to benchmark the transaction considering Internal CUP as the MAM and the AE as a tested party. The taxpayer proposed to benchmark with the Interest rates charged by the UK Bank to the AE on the loan advanced at 3 months Libor plus 120 bps. The Tax Officer observed that the internal CUP details provided by the taxpayer were secured loans and guaranteed by the taxpayer himself and therefore, rejected and benchmarked the transaction using LIBOR plus some spread applicable on fixed rates loan derived from Bloomberg database.

The taxpayer reiterated its stand before intermediate tax authorities and the Tax Court. Further, the Tax Court observed that the funds advanced by the taxpayer were disclosed under Joint Venture partners' account which further reiterates the taxpayer's arguments that the fund advances were in the nature of capital contribution to protect the AE's business. The Tax Court remarked that it could not be noticed that the AE derived benefits out of such advances but rather it was the taxpayer who would eventually benefit by continuing with the success of project. Hence, the Tax Court ordered to delete the proposed TP adjustment.

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