

TransPrice Times

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EXL Service.com (India) Pvt. Ltd. – Delhi ITAT

Outcome: In **favour** of the taxpayer

Category: Receivable and TP Adjustment

The taxpayer is engaged in the business of rendering transaction processing services, internet and voice-based customer care services. The taxpayer applied the Transactional Net Margin Method ('TNMM') to benchmark its international transaction of provision of ITES services to Associated Enterprises ('AEs'). The international transaction of the taxpayer was found to be at Arm's Length by undertaking the working capital adjustment to the average operating profit margins of the comparables of the taxpayer. The Transfer Pricing Officer ('TPO') noted that the credit allowed to the AEs in some cases was not as per the agreed period and treated it as the separate international transaction in the nature of short-term loans/advances. The TPO proposed the TP adjustment by computing notional interest on outstanding receivables for period of delay at the base rate of interest of State Bank of India. The Intermediate Tax Authorities upheld the proposed TP adjustment but reduced the same by computing notional interest at LIBOR plus 400 basis point. The taxpayer filed an appeal with the Tax Court (ITAT) against the order pertaining to interest on outstanding receivables.

On this matter, the Tax Court opined that outstanding receivables forms part of the working capital of the taxpayer. 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. Accordingly, the Tax Court concluded that the taxpayer's contention as correct and concluded that no separate benchmarking of is required and ordered to delete the TP adjustment.

Jabil Circuit India Pvt. Ltd. – Mumbai ITAT

Outcome: In **favour** of the taxpayer

Category: Cost Allocations for Intra-group Services

The taxpayer is engaged in the business of manufacturing of assembly and customisation of Printed Circuit Boards. It had entered into an international transaction with its AE in the nature of receipt of business support services, in respect of which specific costs were allocated to the taxpayer on the basis of proportion of the assets of the taxpayer to Group's global assets and direct selling, general and administration costs (SG&A) were allocated on the basis of proportion of the assets of the taxpayer to Group's global assets of the Asia Pacific region. The TPO rejected the allocation methodology applied for direct SG&A by the Taxpayer and instead, allocated the direct SG&A costs on the proportion of the assets of the taxpayer to Group's global assets, against which the Taxpayer has filed an appeal in the Tax Court.

The Tax Court analysed the documentary evidences submitted by the taxpayer and observed that the benefit of direct SG&A cost was reaped by the entities in the Asia Pacific Region only and hence, accepted the taxpayer's contention of the allocation methodology applied by the taxpayer for allocation of direct SG&A costs. Hence, the Tax Court ordered the TPO/Tax Officer to delete the TP adjustment made.

VVF Ltd. – Mumbai ITAT

Outcome: In **partially favour** of the taxpayer

Category: Corporate Guarantee, Foreign Currency Loan and Recharacterization of Payment of Share Application Money.

The taxpayer is engaged in the business of production and export of chemicals. The TPO had proposed TP adjustment to the international transactions of the taxpayer in the nature of issue of corporate guarantee, foreign currency loan and payment of share application money. The TPO treated the issue of corporate guarantee to AE as a separate international transaction and proposed corporate guarantee fees of 1.75% based on the bank rates. Further, the TPO characterized the payment of share application money as loan and charged interest. The Taxpayer had approached Intermediate Tax Authorities against the decision of the TPO. The Intermediate Tax Authorities ordered to levy interest at the rate of Libor plus 3% on foreign currency loan. Further, the Intermediate Tax Authorities upheld the TP adjustment on account of corporate guarantee fees and in respect of re-

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characterization of the transaction of payment of share application money into loan and directing that interest on the above loan should also be charged at Libor plus 3%. The taxpayer had filed an appeal in the Tax Court against the above proposed TP adjustment.

The Tax Court approved the decision of the intermediate tax authorities of treating the issue of corporate guarantee to AE as a separate international transaction. Further, the Tax Court accepted the contention of the taxpayer of charging fees on the basis of internal CUP available for the current financial year. The Tax Court also approved the taxpayer's application of internal cup i.e. 1.68% available for that current financial year for the calculation of interest on the loan/advances to the AE. In respect of the international transaction of share application money paid to AE, the Tax Court observed that the no shares have been allotted against the share application money paid by the taxpayer and money has been refunded back to the taxpayer. The Tax Court remanded the issue back to the Tax Officer for further verification of the genuine-ness of the taxpayer's contentions and the submissions made by the taxpayer.

Optum Global Solutions (India) Pvt. Ltd. (Formerly known as United Health Group Information Services Pvt. Ltd.) – Delhi ITAT

Outcome: In **favour** of the taxpayer
Category: Operating Expenses

The taxpayer operates in two business segments i.e. Software and ITES. The taxpayer had benchmarked its international transaction of software and ITES segments with its AEs under TNMM. The Intermediate Tax Authority had directed the TPO to consider forex income, bank charges and provision for doubtful debts in the computation of operating margin of the taxpayer, against which the tax officer has filed an appeal in the Tax Court.

The Tax Court noticed that the tax officer had not considered forex income, bank charges and provision

for doubtful debts in the computation of operating margin of the taxpayer by following Safe Harbour rules. Further, the Tax Court noticed that Safe Harbour Rules were not into force at the time of current assessment year. The Tax Court opined that forex income, bank charges and provision for doubtful debts are related to the business operations of the taxpayer and should be considered in the computation of operating margin of the taxpayer and hence, dismissed the appeal of the tax officer.

Metal One Corporation India Pvt. Ltd. – Delhi ITAT

Outcome: In **favour** of the taxpayer
Category: Resolution under APA

The taxpayer is engaged in the business of import of steel and allied products from its AEs. The taxpayer had entered in to an international transaction in the nature of provision of sales support services to its AE, in respect of which the TP adjustment was proposed to be made. On this transaction, the TP adjustment was proposed by TPO by re-determining the Arm's length range through selecting fresh set of comparables. The Intermediate Tax Authorities re-determined the proposed TP adjustment by rectifying the operating margin of set of comparable companies selected by the TPO.

The taxpayer filed an appeal in the Tax Court against the TP adjustment proposed. The taxpayer raised an additional ground in the appeal filed before the Tax Court to apply the conclusions reached in the APA proceedings for subsequent years. The taxpayer pointed out that under similar facts and circumstances and FAR, the conclusions reached in the APA proceedings for subsequent years needs to be applied to the current assessment year. The Tax Court accepted the contention of the taxpayer and hence, the Tax Court ruled in the favour of the taxpayer and Tax Court ordered the Tax Officer/TPO to not to make TP adjustments in the above case.

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