

TransPrice Times

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Panasonic Industrial Asia Pvt. Ltd. – Delhi ITAT

Outcome: Against the taxpayer

Category: Allocation of expenditure for comparable

The Taxpayer is a manufacturer of electronic components like electromechanical, switches, optics components, wiring board, sensors, power supplies, semiconductors, etc. The Taxpayer had filed an appeal against the Transfer Pricing Officer's ('TPO') order with regard to non-allocation of the depreciation expense in business segment of the one comparable company i.e. ICC International Agencies Ltd. in the Tax Court.

The Tax Court remanded the issue back to the TPO to recheck the nature of common expenses which were unallocated to the business segment of the comparable company. The Taxpayer was unable to justify before the TPO the reasons and documentation for allocation of such expenditure. Further, on the inspection of additional information, with regard to the depreciation expense it was stated that the expense falls under un-allocable expenditure head and the same has not been not specifically incurred for commission and service activity. Accordingly, the Tax Court concluded that TPO's contention as correct.

Kenametal India Ltd. – Bangalore ITAT

Outcome: In favour of the taxpayer

Category: Non-speaking Order

The Taxpayer is engaged in the business of manufacturing sintered products, dies and wear parts, round tools, carrier bodies, end mills, conforma clad and machine tools. The Taxpayer operates in two segments i.e. manufacturing and trading segment, where the TPO made a Transfer Pricing adjustment with respect to the manufacturing segment.

The Taxpayer benchmarked the manufacturing segment in which it claimed capacity under-utilization adjustment. This adjustment was not approved by the TPO and further the DRP did not formally address this claim of taxpayer, nor did it formally address the issue relating to selection of the Profit Level Indicator ('PLI').

The Tax Court, on the above issue, directed the DRP to pass a speaking order in respect of the matters of the Taxpayer and set aside the TP adjustment.

Parametrics Technology Pvt. Ltd.– Bangalore ITAT

Outcome: In favour of the taxpayer

Category: Aggregation of transaction

The Taxpayer is engaged in marketing of software licenses, provision of sales support services, maintenance of software, consulting and training activities. It had entered into an international transaction with its Associated Enterprise ('AE') in the nature of distribution of software licenses. The Taxpayer, along with distribution of software licenses, also entered into maintenance services contract with the customers who have purchased the software licenses of the AE. The Taxpayer benchmarks the international transaction of provision of maintenance services along with distribution of software licences on aggregation basis under TNMM.

TPO opined that the transaction of provision of maintenance services is in the nature of provision of technical services and should be benchmarked separately. After analysing the functions performed with respect to provision of maintenance services by the Taxpayer and the AE, the TPO applied the Profit Split Method and determined that revenue from maintenance services should be allocated between the Taxpayer and AE in the ratio of 90:10 respectively.

The Tax Court analysed the contentions of both the sides and concluded that the international transaction

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of provision of maintenance services should be aggregated with the international transaction of distribution of software licenses. The Tax Court also took the view that the taxpayer consistently paid 40% of revenue from maintenance services to its AE, and it was accepted to be at ALP under TNMM on a year on year basis. As a result, the case was held in the favour of Taxpayer.

Teradata India Pvt. Ltd. – Delhi ITAT

Outcome: In **favour** of the taxpayer

Category: Intra-group services

The Taxpayer is engaged in the business of providing data warehousing solutions in the nature of sales support and services of electronic data warehouse, hardware and software. The Taxpayer is a limited risk distributor for its Associated Enterprise ('AE') and earns minimum assured operating profit margin for its distribution activity and payment of subvention fee is made by AE, in case the Taxpayer earns below assured margin threshold.

The Taxpayer benchmarks the international transactions with its AE on aggregation basis under Transactional Net Margin Method ('TNMM'). The TPO accepted the Taxpayer's application of TNMM, however, opined that, since the taxpayer operates in multiple business segments, the comparison should be made between the comparable companies and the relevant business segments of the Taxpayer. As the Taxpayer was unable to submit segmental details, the

TPO computed margins of BPO segment, Software segment and Distribution segment separately and derived weighted average margin of the entity and compared the same with comparable companies and made a TP adjustment. The subvention fee income received from AE by the taxpayer was considered under BPO segment by the TPO, even though the same was received for shortfall in assured threshold margin under Distribution segment. The DRP ordered to include subvention fee income from its AE under Distribution activities segment of the taxpayer. Further, the Taxpayer had availed intra-group services from its AE on which the TPO held the ALP to be nil and made a TP adjustment. The DRP held in favour of the Taxpayer that the adjustment should be deleted on the grounds of double addition.

It held that the subvention income under Distribution activity segment of the Taxpayer was correctly considered by the DRP and upheld the DRP direction. Further, with respect to the TP adjustment for availing intra-group services from its AE, the Tax Court observed that the cost incurred by the Taxpayer for availing shared services from group entities forms part of the cost base under cost plus arrangement with its AE for provision of intra-group services and any TP adjustment will lead to double adjustment and accordingly upheld the DRP directions.

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Global actions on Transfer Pricing due to Covid-19

While the Globe is fighting with Covid-19 pandemic, many multinational entities (MNEs) are experiencing a massive decline in turnover and capacity utilization which leads to profit erosion. The impact of this pandemic is not only devastating operationally and financially, but also have impact around liquidity, supply chain management, value chain analysis and existing legal obligations entered during pre- Covid-19.

A quick economic recovery is on everybody's mind and many governments worldwide have made record-breaking stimulus packages available to help avoid a prolonged recession. Along with various packages, many countries have issued guidance to MNEs operating in their respective jurisdictions. Some of the measures that can be undertaken by the MNEs to adjust their existing transfer pricing, thereby better positioning themselves in 2020 and helping them defend their transfer pricing position for COVID-19 affected years are:

1. Improving Liquidity
2. Managing Supply Chain Disruption Impact on TP,
3. Reviewing Value Chain Analysis,
4. Reviewing and adjusting related party arrangements where necessary,
5. Review of existing intercompany and third-party contracts,
6. Review of both on-going and concluded APAs.

Reliefs relating to APAs: -

Countries like UK, USA, New Zealand have already indicated that they would assist companies in managing pandemic-related impacts on advance pricing agreements. Many countries like Canada, Hong Kong which have been providing limited services during the virus outbreak are expected to delay the process of case review and negotiations.

▪ USA

The Internal Revenue Service Advance Pricing and Mutual Agreement Program in the U.S. has provided companies consultation service about challenges faced by them before making decisions. The Internal Revenue Service (IRS) is focusing on having communication with companies and helping them to take appropriate actions instead of unilateral actions on their own. IRS has also clarified that APAs with possible technical violations are

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not required to renegotiate their agreements. The IRS has also shown flexibility in dealing with issues related to related party transaction.

The Deputy Commissioner, Services and Enforcement (DCSE) has issued temporary guidance clarifying procedures for filing MAP requests and APA requests and APA annual reports. Through the above temporary guidance the DCSE clarified that this filings could be filed electronically and can be supported by the either of scanned signature and electronic signature.

The Advance Pricing and Mutual Agreement Program of IRS is vigorously assisting the taxpayers to solve the substantive and procedural issues. Taxpayers are given opportunity to contact appropriate APMA Assistant Director to discuss and solve other general issues.

▪ New Zealand

New Zealand's Inland Revenue offered flexibility to companies by allowing companies to take business decisions that resulting into APA breach without consulting with tax authority, as it was necessary under the terms of an APA previously. As per New Zealand's Inland Revenue, these breaches in APAs would need to be addressed in the annual compliance report when it is filed with the Inland Revenue. Further, New Zealand's Inland Revenue has also stated that review of the annual compliance reports will be done keeping in mind the implications of COVID-19 for the business.

▪ Australia

The Australian Taxation Office spokesman clarified that where a technical breach results from factors that are pandemic-related and outside a Taxpayer's control, the Australian Taxation Office would assist the taxpayer to come to an agreement that allows the taxpayer to continue to have the benefit of the APA.

▪ Israel

The Israeli government has published temporary regulations through which it extended the time limit of Tax authorities to answer the Taxpayers request for advanced pricing agreements.

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- **Extension in reporting deadlines :**

Many countries like Hong Kong, Denmark, Poland, Malaysia & Portugal from World have taken decision to extend the deadlines of transfer pricing documentations and compliance procedures. Specifically, Poland tax authorities has extended deadlines for issuing a binding ruling and also extended due date for filing a transfer pricing return, while Malaysia has extended deadline for submitting country-by-country (CbC) reports and CbC notifications in response to the coronavirus (COVID-19) pandemic.

According to the Inland Revenue release of Hong Kong, the companies would be deemed to be complied with country-by-country (CbC) reporting, if it is filed on or before 1 June 2020, while the Danish Minister for Taxation has extended due dates of tax return vis-à-vis transfer pricing documentation due dates stands extended, as transfer pricing documentation is prepared contemporaneously with tax returns.

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Amendments in Annual Consolidated Credit Statement (26AS)

The notification 30 of 2020 issued by the CBDT has extended the scope of form 26AS. This amendment is a next step to section 285BB of the Income Tax Act, 1961 introduced in the Finance Act, 2020, through which taxpayer's information can be uploaded on Taxpayers' registered account.

To upload the information as per the above-mentioned section, CBDT announced new rule 114I of the Income tax Rules, 1962, which will assist the taxpayer to get the details of the information to be uploaded in the system. The notification also specified that the information uploaded by the taxpayer will be reflected in form 26AS, which will be known as Annual information Statement under rule 114-I. The information received by the tax authority is required to be uploaded within 3 months from the end of the month in which the information is received.

The newly introduced form 26AS, have two parts namely part A and B.

Part A of the form will reflect following details of the Taxpayer:

1. Permanent Account Number
2. Name
3. Date of Birth/incorporation
4. Aadhaar number
5. Mobile no
6. E-mail
7. Address

Part B of the form will reflect details relating to following natures of information:

1. Information relating to Tax deducted or Collected at source
2. Information relating to specified financial transaction
3. Information relating to payment of taxes
4. Information relating to demand and refund
5. Information relating to pending proceedings
6. Information relating to completed proceedings
7. Any other information related to sub-rule (2) of rule 114-I

This amendment is a kind of assistance in the model of pre filled Income Tax Return pronounced by Hon'ble Finance Minister and it will also assist the Income Tax Department to accelerate the processing of tax returns.