

TransPrice Times

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Wipro Limited – Bangalore ITAT

Outcome: In **favour** of the taxpayer

Category: Specified domestic transaction (SDT)

The taxpayer is engaged in providing software and IT services through its units located in SEZ or other places. The units of the taxpayers are categorised into eligible units claiming 100% or 50% deduction under the Income Tax Act, 1961 ('The Act') and non-eligible units. The Transfer Pricing Officer ('TPO') observed that there was a significant variation in the net margins disclosed by the eligible and non-eligible units. Hence, the TPO proposed TP adjustment by reducing the margins of the eligible units on lines of Arm's length margin and treated excess profits as a TP adjustment. The Intermediate Tax Authorities asked for remand report from the TPO. The remand report ('Report') stated that the Arm's length price ('ALP') had to be established for all the transactions between inter-units of the taxpayer including the transactions between SEZ units. The Report further mentioned that the deduction/ exemption under The Act is not available in respect of proposed TP adjustment. The Report further highlighted that the significant volume of transactions between units signify clear transfer of profits between eligible unit and non-eligible units and between eligible units also. Hence, the Intermediate Tax Authorities upheld the TPO's decision the against which the taxpayer approached the Tax Court.

The Tax Court ruled that the ALP determination should be undertaken for the transactions between eligible and non-eligible units only. Further, the Tax Court also held that the procedure for ALP determination need not be undertaken for transactions between eligible units claiming different rate of deduction under Section 10AA of the Act. The Tax Court contended that for the purpose of the computation of the total income of the units, the Arm's length value of the inter-unit transactions determined needs to be considered.

Microsoft Corporation (India) Pvt Ltd. – Delhi ITAT

Outcome: In **favour** of the taxpayer

Category: Working Capital Adjustment

The taxpayer is engaged in rendering Marketing Support Services (MSS) to its Associated Enterprises (AEs). The facts of the case are that the TPO and

Intermediate Tax Authorities disallowed the working capital adjustments, not taking into consideration the differences in the working capital employed between the taxpayer and the comparables. The taxpayer claimed that it is a captive service provider entity and risk-free entity and is entitled to suitable working capital adjustments to account for differences in the risk profile vis-à-vis the comparables. The TPO argued that the working capital adjustment was not appropriate in the case of a service company and the Intermediate Tax Authorities upholds the decision of the TPO. The taxpayer approached the Tax Court against the above decision.

The Intermediate Tax Authorities apprised the Tax Court that the working capital adjustment was applicable in the scenario of inventory remaining tied up or receivables being held up. Further, the Intermediate Tax Authorities notified the Tax Court of the direction of the Intermediate Tax Authorities that the working capital adjustment was required only when the varying levels of capital deployed made difference to the margins earned by the taxpayer and the comparables and the situation was not applicable in the case of a service industry Company. The taxpayer brought to the attention of the Tax Court, that the co-ordinate bench had ruled in the favour of the taxpayer in preceding AY. Further, the taxpayer held that the Tax Court had a consistent stand on allowing working capital adjustment for the purpose of objective comparability analysis. The Tax Court rejected TPO and Intermediate Tax Authorities contention by placing the reliance on coordinate bench ruling wherein working capital adjustment was granted on actuals and taxpayer's own case for precedent Assessment Year (AY) where working capital adjustment was allowed to taxpayer. Hence, the Tax Court directed the working capital adjustment to be computed and to be allowed as per actuals and ruled in the favour of the taxpayer.

American Express Services India Private Limited – Delhi ITAT

Outcome: In **favour** of the taxpayer

Category: Comparables and Safe Harbour Rules

The taxpayer operates in ITeS and provision of marketing services segments. The TPO proposed TP adjustment by revisiting the filters in the selection of comparable companies in ITeS segment to benchmark

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the international transaction. The Intermediate Tax Authorities upheld the proposed TP adjustment in the ITeS segment. Further, the Intermediate Tax Authorities directed the TPO to rectify the margins of the comparable chosen by the TPO using principles laid down in the Safe Harbour Rules. The taxpayer approached the Tax Court.

The Tax Court following past precedents, ruled that the companies cannot be accepted on ground such as owning significant intangible assets, extra-ordinary event of amalgamation, high turnover etc. Further, Tax Court ruled that companies cannot be excluded as comparable on the grounds of having different financial year-ends. The Tax Court placing its reliance on the co-ordinate bench ruling, directed that the data needs to be made available by the taxpayer in relation to results for the financial year as that of the tested party and directed the TPO to verify the same and include the said companies in the final list. The Tax Court placing its reliance on High Court (HC) Ruling, denied the Intermediate Tax Authorities' contention of retrospective application of Safe Harbour rules on the belief of not being applicable in the given AY.

Basell Polyolefins India Pvt Ltd – Mumbai ITAT

Outcome: In **favour** of the taxpayer

Category: Source of Financial Data

The taxpayer is engaged in the rendering project, engineering and polyolefins product related services. The TPO had proposed the TP adjustment to the operating income of the taxpayer. The taxpayer brought to the notice of the Tax Court that at the time of preparation of TP study report, the operating margin of the comparable companies were computed on the basis of the financial data available on the prowest database as the Audited Financial Statements were not available in public domain. The taxpayer furnished to the TPO and submitted before the Intermediate Tax Authorities to consider and calculate the operating margin based on financial data in Audited Financial Statements. The Intermediate Tax Authorities failed to address and hence, the taxpayer approached the Tax Court.

The Tax Court opined that the data reported in the Audited Financial Statements of a company would be more reliable and authentic in comparison to the data reported in the prowest database. Further, the Tax Court remarked that the financial data reported in the prowest database involves classification of items of income or expenses as per its own standard format, therefore, the calculation data base may differ from the OP/OC margin as per the Audited Financial Statements. Hence, the Tax Court directed the TPO to recompute the operating margin of the comparable companies based on Audited Financial Statements.

Dharampal Satyapal Ltd– Delhi ITAT

Outcome: In **favour** of the taxpayer

Category: Interest on Advances

The taxpayer had advanced loan to its AE in foreign denominated currency and charged interest rate at 3%. The taxpayer had benchmarked the same using the Swiss LIBOR rates prevailing in the international market. The TPO contended that the interest transaction should be benchmarked on the basis of SBI Prime Lender Rate (PLR) +300 Basis Points to test the transaction that it satisfies arm's length test. Hence, the TPO proposed the TP Adjustment against which taxpayer approached the Tax Court.

The Tax Court by placing its reliance on Gujarat HC ruling that there has to be justification or strong reason for applying PLR for outbound loan transactions where Indian taxpayer had advanced loan to an AE abroad and ruled in the favour of the taxpayer. Further, the Tax Court rejected the Intermediate Tax Authorities arguments of adoption of PLR for computation of arm's length rate of interest, contending that there was not any disclosure regarding any stipulation about repayment currency in loan agreement and the Tax Court was not able to conclude that the loan was required to be repaid in Indian currency.

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