

TransPrice Times

Edition: November 2018

JSL Limited (Now Jindal Stainless Ltd) – Delhi ITAT

Outcome: **Against Taxpayer**
Category: **Comparability Analysis**

Tax Court rules on the benchmarking of international transaction being export of graded stainless steel products to its Chinese Associated Enterprise (AE), also exported to third parties. Accordingly, rejects taxpayer's use of market quotations downloaded from internet without comparability analysis.

Holds that the Comparable Uncontrolled Price (CUP) method can be used to compare prices of exports of same types of stainless steel to unrelated (non-AE) party in China, if market quotations are authentic and reliable, drawing reference to the term 'quoted price' defined in OECD Transfer Pricing Guidelines. Tax Court observed that taxpayer compared monthly average rates between AE & non-AE by aggregating monthly transactions and taking an average of sales to AEs and similarly with third party sales. Where no CUP data was available for a particular grade of steel, taxpayer used internet quotations (Chinese) and used it for testing arm's length price. Tax Court rejected the quotations taken without comparability.

US Technology Resources Pvt. Ltd. – Cochin ITAT

Outcome: **In favour of Taxpayer**
Category: **Management Charges**

Tax Court rejects transfer pricing officer's questioning of commercial expediency on management charges paid by taxpayer to its AE.

Relying on order passed by Chennai Tribunal in Seimens Gamesa & Renewable Power Private Limited (2018), it was noted that benefit is not a precondition for justifying arm's length price & hence the reasonability of payment of management service fees cannot be questioned.

Kehin India Manufacturing Pvt Ltd – Delhi ITAT

Outcome: **In favour of Taxpayer**
Category: **Most Appropriate Method**

Tax Court rejects use of Resale Price Method (RPM) by transfer pricing officer for testing arm's length price of purchase of traded goods from AE on the basis of purchase & sale by taxpayer with related parties. It was held that RPM cannot be applicable when both purchase and resale are with AE. Thus RPM is applicable only when resale is made to unrelated party. If the resale price is tested with AE, it would be impossible to compute arm's length in respect of purchase of property. Tax Court proceeded to accept taxpayer's views of Transactional Net Margin Method (TNMM) as the most appropriate method of benchmarking the transaction based on results from taxpayer's trading segment.

RECENT NEWS

CBDT releases instructional guidance on templates of foreign taxpayer-specific rulings

The below practical guidance will help taxpayers & tax authorities alike to understand the outlook of spontaneous exchange of information relating to tax rulings with other jurisdictions. This may help taxpayers to ensure they keep in line with the expectations of tax authorities in a BEPS reality.

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In line with BEPS Action Plan 5, CBDT has provided broad guidance for types of tax rulings:

- i. **Preferential regime rulings:** Cater to activities such as Shipping, Headquarters, Financing and Leasing, Holding Company regimes, Service Centre and Distribution Centre, Banking and Insurance, Pure equity holding, Fund Management and Miscellaneous regimes. The guidance notes that these activities are geographically mobile, and there is a tendency to set up business in a jurisdiction having preferential regime even though substantial activities generating income are not actually performed in such jurisdictions. Guidance expresses use of template pertaining to preferential ruling received by either ultimate/immediate parent of taxpayer or related party with which foreign resident enters into transaction for which a preferential treatment is granted, who are Indian residents. The information in template may be used to identify and assess extent of economic activity actually reported in India and whether income offered in India matches with the same.
- ii. **Unilateral APAs or cross-border unilateral rulings for transfer pricing:** Guidance states that on receipt of unilateral rulings by the ultimate/immediate parent of taxpayer or related party with which foreign resident enters into transaction covered by APA, who is Indian resident, care must be taken to ensure there are no mismatches in how two ends of transaction are priced and no profits go untaxed resulting in base erosion or profit shifting (BE/PS).
- iii. **Cross-border rulings for downward adjustment of taxable profits:** Under this regime, negative adjustments to profits may lead to no or low taxation or profit shifting.

Without the ruling, the affected country will be unable to determine the reason for such adjustment. On receipt of such rulings by either the ultimate/immediate parent of taxpayer or related party with which foreign resident enters into transaction covered by such ruling, being Indian resident, guidance states that care must be taken to make certain that there are no mismatches in how two ends of a transaction are priced and no profits go untaxed resulting in BE/PS.

- iv. **Permanent Establishment (PE) rulings:** Guidance states that ruling can be received either by ultimate/immediate parent of taxpayer or Head office of taxpayer, who is Indian resident or is an Indian PE. The information of non-existence or attribution of profit to PE in country issuing the ruling may be utilised in assessing the appropriate global profit of the Indian entity.
- v. **Related party conduit rulings:** Such rulings include arrangements making use of transparent entities to claim deduction on interest paid whereas corresponding interest income goes untaxed. Guidance states such ruling where ultimate/immediate parent or related party or ultimate beneficial owner is in India, information on arrangement/structuring including transparent entities may be used to assess profit of Indian entity.
- vi. Miscellaneous rulings included later by the Forum on Harmful Tax Practices

CBDT remarks that any information received by any template may first be examined if required action would be taken on a case-to-case basis. Such information on ruling can also be requested from issuing jurisdiction.

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