

Allegis Services India Pvt Ltd – ITAT – Bangalore

Outcome: In **favour** of taxpayer

Category: Cost Allocation in transfer pricing

Tax Court rejects cost allocation workings of direct costs submitted by the transfer pricing tax officer which were based on the turnover of the taxpayer's software development & ITeS segment.

Accordingly, the taxpayer allocated its direct costs on actuals basis for the year under consideration, and its indirect costs on the basis of its business segment turnover. However, during the course of assessment proceedings, the transfer pricing tax officer allocated both costs using turnover as a basis of allocation for its respective segments.

The Tax Court accepts taxpayer's allocations and holds the allocation of direct costs on actual basis to be true, instead of allocating entire cost (direct & indirect) in the ratio of turnover.

AT & T Global Network Services (India) Pvt Ltd – ITAT – Delhi

Outcome: In **favour** of taxpayer

Category: Intra-group Services

Tax Court rules in favour of the taxpayer by rejecting the adjustments made by the intermediate tax authorities in relation to 'intra-group' services.

The taxpayer provides wireless, high speed internet access, Wi-Fi, local and long-distance voice solutions. On the other hand, the taxpayer's AE (Associated Enterprise) is into providing support services such as troubleshooting, billing support, network engineering, project management, service delivery and so on. The taxpayer availed such support services from its AE on a cost-plus mark-up basis. The main reason for availing the support services was the lack of taxpayer's specialized knowledge and experience in performing such services which were considered to be crucial for providing efficient services to the ultimate customers. In addition to this, the taxpayer intended to bank on the expertise of its AE and achieve synergy benefits.

The intermediate tax authorities were of the view that the taxpayer did not really benefit out of the intra-group services and there was not any requirement to avail such services.

Consequently, the authorities proposed to add back as a transfer pricing adjustment the entire amount paid by the taxpayer to its AE.

On an in-depth analysis, the Tax Court held that such support services are essential in the industry in which the taxpayer operates. Along with this, it acknowledges the fact that the taxpayer had justified the need of such services to the intermediate tax authorities and mentions that the taxpayer successfully passed the need/benefit test while availing the intra-group services. Thus, the Tax Court rejects the adjustment proposed by the intermediate tax authorities and passes the judgement in favour of the taxpayer.

Ecocat India Pvt Ltd – ITAT – Delhi

Outcome: **Against** taxpayer

Category: TNMM over CUP

Tax Court accepts Revenue's contention for benchmarking import of raw materials from AE using TNMM as the MAM for determining the arm's length price.

While determining its arm's length price, taxpayer compared the prices charged by AE to it and prices charged by AE from third unrelated parties by the Comparable Uncontrolled Price (CUP) method. The transfer pricing tax officer observed that there were significant economic and market condition differences in both countries, along with deviations in product, timing & quantity that made it difficult to find the true comparability. The same officer contended that raw materials sold by AE in Europe cannot be compared with raw materials sold in India, and hence proceeded to apply the TNMM as MAM. However, on taxpayer's appeal, the first appellate authority accepted taxpayer's computation as per CUP. The first appellate authority submitted that the prices paid by taxpayer were lower than prices paid by third parties and further stated that there were no geographical differences as the prices of raw materials were at FOB prices. The Revenue proceeded to appeal, and contended that such application of CUP would not hold good, especially in future assessment years.

Tax Court rejected first appellate authority's observation. It stated that the pollution norms of Europe and India were different, and hence the quality of raw materials (for auto components) would be different and hence cannot be made comparable. Further, due to foreign exchange fluctuations, the prices between the two cannot be compared.

Tax Court holds the market conditions of the two territories to be different, and categorises taxpayer as an independent entrepreneur for other automobile companies in India and upheld TNMM as MAM as per Revenue's contention. Accordingly, rejecting taxpayer's views.

Fresenius Kabi India Pvt Ltd – ITAT – Pune

Outcome: In **favour** of taxpayer
Category: RPM over TNMM

Tax Court holds the use of a Resale Price Method (RPM) over Transactional Net Margin Method (TNMM) for benchmarking taxpayer's distribution activity for its AE.

Transaction: The taxpayer imports finished goods from its AE and resells the same without any value addition, in the domestic market (India). In this process, it incurs selling and marketing expenses. Accordingly, it adopted a resale price model as the most appropriate method (MAM) to test the arm's length of distribution activity.

The tax officer, on the other hand, made a tax adjustment on the premise that taxpayer should not have incurred selling & marketing expenses if it is not making value addition on the finished goods for the resale. Hence, rejecting the resale price approach, it proceeded to adopt a TNMM benchmark based on operating net margins of the taxpayer.

Placing reliance on OECD Guidelines, the Tax Court contended that RPM would be best method in a situation where there is no value addition on the sold product. Accordingly, Tax Court holds resale price method as appropriate for a distributor and deletes any transfer pricing adjustment by the assessing officer arising due to incorrect application of TNMM method.

RECENT NEWS

CBDT provides Form 67 for claiming Foreign Tax Credit

Taxpayers can now claim foreign tax credit online through the recently notified Form 67 that is required to be submitted before filing of income-tax return. This form shall be available for every taxpayer once logged in on the income-tax online portal. A Digital Signature Certificate or Electronic Verification Code is mandatory to file Form 67.

Trending in BEPS Implementation

OECD update on CbCR Guidance

- **Definition of revenues** – Reporting of all revenue, gains, income, inflows as shown in financial statement or income statement in the CbCR template of adopting country. Comprehensive income, revaluations, unrealised gains are not to be included here.
- **Treatment of MNEs with short accounting period** – MNE having short accounting period (less than 1 year) than other constituents of MNE Group may be required to file CbCR as per similar timelines of the MNE Group.
- **Amount of tax accrued & paid to be reported independently** – Any tax accrued in current year should be considered as amount of accrued current tax expense irrespective of whether tax has been paid or not. Refunds on income tax paid can be reported except where refund is treated as revenue of the MNE Group.

OECD enhances tech support for exchange of tax information

To build a technical platform for exchange of tax information policies between Competent Authorities, OECD has released IT tools for Common Reporting Standard (CRS), Country-by-Country (CbC) Reporting & Effective tax rulings (ETR). These comply with the minimum standards of BEPS Project as required by signing countries to adopt in their Multilateral Agreements.

For CbC reporting, a CbC, ETR, CRS XML Schemas and respective User Guides, have been released. The User Guides for CRS & CbCR link to the XML schemas prescribed in the form of specific entity (Constituent Entity for CbCR) information, reportable information of such entity and general particulars forming part of the message header.

The approved schema for ETR provides for timely exchange of tax rulings that must be made available to tax authorities to target risk areas. The rulings exchanged here may be for past or future rulings. Further, 6 categories of rulings have been specified for the exchange between jurisdictions, through the XML schema. They are:

1. Preferential regime rulings;
2. Unilateral APAs or transfer pricing rulings;
3. Rulings with downward adjustment to profits;
4. Permanent Establishment rulings;
5. Conduit rulings; and
6. Any other type of ruling where there are concerns of BEPS leading to harmful tax practice