

TransPrice Times

Edition: 1st to 30th September 2019

Genpact India Pvt. Ltd. – Delhi High Court

Outcome: In **favour** of the taxpayer

Category: Substantive illegality

The Tax Court held that the order passed by the tax authorities in the erstwhile name of the taxpayer, which had in fact amalgamated with another company and hence, no longer existed as on the date of passing of such order, despite having the notice of the above-mentioned amalgamation, was incompetent. Furthermore, the Tax Court relied on a decision of the Apex Court wherein the Apex Court held that the basis of order invoked by the tax authorities was against the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Hence, it was also held by the Apex Court that an assessment on a non-existent entity leads to 'substantive illegality' and hence, the transfer pricing addition should be discarded.

TransPrice comments:

Substantive grounds are those grounds of judicial review that purport to criticise the overall basis or substance of a decision by a public body – while procedural grounds are concerned with addressing flaws in the manner in which a decision by a public body was actually made.

In the instant case, the assessment was held invalid since it violated the substantive grounds.

Electrosteel Castings Ltd – Kolkata ITAT

Outcome: In **favour** of the taxpayer

Category: Internal comparables for Specified Domestic Transaction ('SDT') of transfer of

power from eligible units to manufacturing units

The taxpayer is engaged in the business of manufacture and export of ductile iron pipes, fitting and cast-iron pipes. It also operates Captive Power Plants ('CPP') which provide power to manufacturing units and thereby eligible for the profit-linked deduction and is an SDT. The manufacturing units had also purchased power from the State Electricity Board. Thus, considering the latter as a comparable uncontrolled transaction the Arm's Length Price ('ALP') was determined, being the market value, and the SDT was benchmarked.

The Tax Tribunal ruled in favour of the taxpayer, relying on the Apex Court's ruling in the case of ThiruArooran Sugars Ltd where there has been a detailed discussion on State power distribution mechanism and their regulatory bodies. The Tax Tribunal concluded that the taxpayer's benchmarking exercise was relevant in considering the energy rates charged by the State Electricity Board to the manufacturing units as the most appropriate internal comparable to benchmark the transfer of power by taxpayer's CPP to its manufacturing units.

TransPrice comments:

The tariff regulatory commission fixes the rates for both - sale and purchase - of electricity by a power distributor. Thus, State Electricity Boards are regulated and consider an in-built mechanism to ensure permissible profit to the generating companies as well as the distribution licensees. Thus, these could be taken as valid internal comparables after an appropriate analysis of the facts of such SDTs.

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UE Development India Pvt. Ltd. - Bangalore ITAT

Outcome: In **favour** of Assessee

Category: ALP for mirror transactions

The Tax Tribunal held that if one end of an international transaction is considered to be at arm's length, then transfer pricing adjustment cannot be made on the other related end of the corresponding transaction of the Associated Enterprise. The Tax Tribunal relied on decisions of co-ordinate bench in taxpayer's own case for prior years which were also upheld by the jurisdictional Tax Court.:

TransPrice comments:

In other words, ALP adjustments are not warranted for mirror transactions if one limb is determined to be at ALP.

Goodyear South Asia Tyres Pvt Ltd. - Pune ITAT

Outcome: In **favour** of Assessee

Category: Intra group services

The taxpayer is engaged in the manufacture of various types of Good Year branded Tyres. The taxpayer made payments under a technical assistance and license agreement and under a service agreement for Production and Tyre Performance / Product Resolution. The Regional Service Charges ('RSC') payments were service charges paid towards reimbursement of cost incurred by regional entities in providing assistance to the taxpayer with regard to engineering, quality assurance, safety, etc. while the payments of technical assistance and license fees were towards technology, know-how being

made available to the taxpayer by its AE. The tax authorities were of the view that there was a replication in the nature of payments taking into account that the claimed services and determined the ALP as Nil.

The Tax Tribunal, after a thorough analysis of the documentary evidences, observed that when services have been actually received, as proven by documentary evidences whether as delivery or exchange of information. It further noted that RSC payments by taxpayer were against avilment of services and the tax authorities were incorrect in stating that no services were availed by taxpayer. Thus, the Tax Tribunal concluded the matter in favour of the taxpayer.

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