

Vodafone India Services Pvt Ltd

Outcome: Favour of Taxpayer

Category: Issue of Shares

Background: The taxpayer, a wholly owned subsidiary of Mauritian entity, issued additional shares in the year under consideration.

Tax authorities enhanced the valuation per share to INR 53,775, after considering preceding year's transfer pricing adjustment in the Net Asset Value (NAV) computation. The difference in the valuation was treated as a deemed loan chargeable at a notional interest of 13.5 per cent per annum. Adjustment to income was made at INR 13.97 billion considering capital financing as international transaction as per the amended definition. The dispute before Hon. High Court was to decide if such issue of shares are considered as international taxation for the purpose of transfer pricing provisions.

High Court Decision: High Court held that transfer pricing regulations are not a complete code, but machinery provision to arrive at arm's length price. The transaction related to issue of shares was on capital account and does not give rise to income unless specifically provided by law. Relying on the above interpretation the Hon.High Court opined that Section 92 is inapplicable to share issue.

Mitsubishi Corporation (I) P. Ltd

Outcome: Favour of Taxpayer

Category: Use of Berry Ratio

Delhi ITAT- Summary: The taxpayer is a wholly owned subsidiary of Mitsubishi Corporation Japan (AE). It carried out transaction of provision of services, purchase of goods and various other transactions (Sogo Shosha companies). The decision provides important principles around use of Berry ratio for Shogo Shosha companies.

ITAT declined tax authorities contention to remand back the case to be decided as per earlier years, giving the reason of investor friendliness and certainty, and discharge of judicial functions in comprehensive rather than superficial manner.

Sogo Shosha companies means companies that undertake business like a low risk trader however in reality functions closer to a service provider for procurement of goods or services or indents sales for its group companies.

The tax court held that Sogo Shosha companies have activities closer to a trader than a commission agent and inventory level is one crucial differentiating factor. The tax payer recorded cost of sales in financials; however the same was not shown as a part of transfer pricing analysis. Tax court held that transfer pricing is an exercise based on economic principles and the same could differ from accounting principles.

On the use of Berry ratio, tax court held that Income-tax Act, 1961 does not prohibit use of such ratios and the utility of Berry ratio could also be understood from the guidance provided in OECD guidelines.

In case of traders like the taxpayer, who neither assumes inventory risk nor employ any significant asset, use of Berry ratio could be relevant.

This ruling would open gates to appropriateness of benchmarking analysis for intending, sourcing and low risk trading companies

Recent News:

Major new steps to boost international cooperation against tax evasion: The OECD/G20 standard on automatic exchange of information was endorsed by all OECD and G20 countries as well as major financial centres participating in the annual meeting of the Global Forum on Transparency and Exchange of Information for Tax Purposes in Berlin. India backs out, as 51 countries sign historic Automatic Info exchange agreement due to its concern on confidentiality clause that will prevent disclosure of information received.

Price over profit recommends policy makers: Policy makers at TP Minds Transfer Pricing Summit debate on appropriateness of arm's length standard under BEPS. Dr Shome, Chairman of Indian Tax Administration Reforms Commission stated that "price and not profit" should be the criteria for applying transfer pricing, as transfer pricing can play an important role in addressing many BEPS concerns.

PM Modi's Next Reform: FDI Norms Eased in Construction. The minimum built up area requirement for FDI in construction projects has been relaxed to 20,000 sq. mtrs from existing 50,000 sq. mtrs and minimum capital requirements has also been brought down to USD 5 million from USD 10 million.