TransPrice

TransPrice Times

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Google India Pvt. Ltd – ITAT – Bangalore

Outcome: In favour of Taxpayer
Category: Adjustment for Capacity Utilisation

Background – The taxpayer is engaged in providing IT and ITES services. Taxpayer adopted TNMM selecting 13 companies with operating profit (OP)/ Total Cost (TC). During audit, tax authority selected 27 companies as comparables with average OP/TC of 30.21 percent proposing an adjustment of INR 125 Mio. Taxpayer contended, if capacity utilization adjustment is allowed (which was allowed by DRP earlier) then the transactions of the tax payer would be at ALP.

ITAT's Decision – Tax Court allowed adjustment for unutilized capacity with respect to Google's ITES segment. It had upheld the tax payer's stand by stating that costs relating to unutilized capacity was reimbursed by AE along with mark-up and hence adjustment was required while comparing its margin with independent companies. Based on tax payers own case tax court allowed capacity adjustment at 80% utilisation level of comparables thus excluding three companies which has different business models and functions.

Hughes Systique India Pvt Ltd – ITAT – Delhi

Outcome: In favour of Taxpayer
Category: Selection of Methods

Background – The taxpayer rendered software development services to its AE. Taxpayer benchmarked its international transaction by selecting Comparable Uncontrolled Price (CUP) method as the most appropriated method and a corroborative internal Transactional Net Margin Method (TNMM).
Tax authority rejected CUP stating that taxpayer had international transaction with its four AEs, whereas tax payer had supplied details of transactions with only one of such four AEs. Tax authority also rejected TNMM holding that separate accounts were not maintained in respect of transactions with AEs and non-AEs. Tax authority thus proposed an addition of INR 85 Mio by applying external TNMM.

ITAT's Decision – Tax court, based on ruling of taxpayer's own case, held that "the internal CUP should be applied and if, for any reasons the CUP method cannot be applied, then TNMM should be resorted to" and this rule should prevail over anything.
Tax court directed taxpayer to file all necessary information (agreements, invoices, etc.) for the remaining three AEs and other relevant details for CUP.

Tool tech Global Engineering Limited – Delhi

Outcome: Against the Taxpayer
Category: Interest free loans

Background – The taxpayer is engaged in the business of engineering design and development services. Taxpayer provided advance and loans to its AE without any interest contending commercial expediency.

ITAT's Decisions – Tax Court, based on bench ruling of Petro systems TSI (I) Ltd, had held that loans/advances to AEs is an international transaction and hence subject to TP provisions.

The Tax Court observed that since the transactions were between two cross-border entities in foreign currency, LIBOR rates would be appropriate and not domestic rates. The court had held that outstanding sundry debtors converted into interest-free loans contributes to the character of a lending transaction, thus liable for interest adjustment. It further held that share application money cannot be re- characterised as loan therefore deleted the adjustment for the same.

Tupperware India Pvt. Ltd – ITAT – Delhi

Outcome: In Favour of Taxpayer
Category: Most Appropriate Method.

Background – The taxpayer is engaged in the business of distributing plastic food storage and serving containers and sub-contracted the manufacturing activity to contract manufacturers. Taxpayer used RPM as the most appropriate method (MAM) for benchmarking, as against TNMM selected by TPO. Taxpayer contended that it did not add value to the products and carried out the functions of pure reseller.

ITAT's Decision – Tax court held that Ld. CIT(A) has elaborately dealt with the issue and has decided the issue in favour of the assessee by following the judgment of IL Jin Electronics India Pvt. Ltd. The order passed by Ld. CIT(A) is elaborate and reasoned one and we do not see any infirmity in the same.

India Invites Foreign Direct Investments (FDI)

Narendra Modi's breakfast diplomacy with 17 top US CEO's, presiding over 10 trillion dollars in assets or revenues, would soon set the cash registers ringing at India's FDI front desk. Accepting Modi's proposal for investment in India, Investment Management Company BlackRock will be hosting global investment meet in India, early in 2015. Laurence D Fink, CEO at one of the world's largest investment management firms BlackRock which oversees US $ 4.32 trillion in assets assured the prime minister that the firm could facilitate investments worth over US$ 6 billion into the country by early next year. One of the CEO also met PM told that his firm is looking to invest over half a billion dollars in a short while to set up a big manufacturing facility in India for inject able drugs. Some of them talked about wanting to invest in India's food chain and agriculture related sectors while others were eager to invest in infrastructure and energy. PM assured CEO, that he was committed for stable tax regime and it was his conviction that this investment must flow.

This initiative aims at turning the country into global manufacturing hub and, in turn, facilitates the inflow of new technology and capital, while creating millions of jobs. The sales pitch for the ambitious plan will likely be made to the world's top 3000 companies .To create jobs, the country needs to move away from services driven growth model to labour intensive manufacturing driven growth. The economist added, if India succeeds it would prove to be a major turning point in the lives of 1.2 billion people and would have very significant ramifications for the world economy. To accomplish goal of 10% manufacturing growth per year, the government will have to move quickly to address some issues like Ease of doing business, Investments, Infrastructure, Urbanization, Labour law reform.

Central Government to invest in Road Building

The Centre plans to initially invest INR 300 Billion for the construction of 10,141 km of roads in the region. Those associated with the road sector welcomed the move but added that ministry should ensure its effective functioning.

OECD guidance on transfer pricing documentation

Suggests 3 tiered structure consisting the following:

1. A **master file** containing standardized information for all relevant MNE members

2. A **local file** referring specifically to material transactions of local taxpayer

3. A **country by country** reporting including all tax jurisdiction regardless of size of business operations in any tax jurisdiction

The above documentation process aims towards increased transparency and calls for the need to create and maintain appropriate substance at all levels of operations by the MNE group.

Transfer Pricing: Government maintains 1%/3% 'tolerance range' for FY 2014-15 and introduces definition of wholesale trading

Transfer pricing tolerance range remain unchanged for FY 2014-15 i.e. 1% for wholesale traders and 3% to all other taxpayers

Following conditions to be fulfilled to be categorized as wholesale trader:

1. Purchase of finished goods is 80% or more of total cost of trading activities
2. Average monthly inventory of such goods is 10% or less of trading sales

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