TransPrice

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Supportsoft India Pvt. Ltd. – ITAT – Bangalore

Outcome: Partially in favour of taxpayer.

Category: Risk adjustment and comparables.

Background: The taxpayer is a subsidiary of Supportsoft INC, engaged in the business of software development and market support services ('MSS'). Revenue models - (1) Software Development: Cost + 8% and (2) MSS: Cost + 5%.

TPO accepted MSS transfer prices however rejected cost plus method for software development and considered TNMM as most appropriate method ('MAM'). Fresh search conducted by the TPO with average mean of 26.59% with net margin on cost at 23.39% and proposed an adjustment of Rs. 1.34 crore.

CIT (Appeals) upheld TNMM, applied turnover filter of Rs. 200 crore and modified RPT filter (1% RPT instead of 25%) applied by the TPO to reject 13 out of 17 companies selected by the TPO.

ITAT's Decision:

RPT filter to be applied at 25%. The tax court referred to rulings in Actis Advisers P. Ltd and 24X7 Customer.com P. Ltd wherein RPT of 25% was upheld.

Companies making super profits not to be excluded just because that are high profit making companies. A strong justification of the differences in functions to be brought out to reject such companies as comparables.

Upheld application of turnover filter of Rs. 200 crore.

With respect to the risk of serving only one customer, ITAT held that a single customer risk is only an anticipated risk whereas the risk attributed to the comparable companies were existing risk and in such situations, TPO needs to give appropriate risk adjustments, so as to make the comparables in par with the taxpayer.

Panasonic Sales & Services (I) Company Ltd. – ITAT - Chennai

Outcome: In favour of taxpayer

Category: Treatment of Cash discounts and outward freight while using Resale Price Method ('RPM').

Background: Taxpayer is engaged in importing consumer electronic products from its AE in Japan for sale through retail chains, individual shops and brand shops.

Taxpayer purchased goods from its AE worth Rs.62.02 crores and used RPM as MAM. The TPO while calculating Gross Profit Margin ('GP'), reduced cash discount and outward freight from the sales to bring down the RPM results.

ITAT's Decision:

The tax court observed that cash discounts were in the nature of financial charges since they were offered to the debtors for early realisation of payments. Freight cost also are in the nature of cost of packing and transportation of goods from warehouse to the customers. It was held that only purchase related expenses to be reduced from the sale price for computation of GP margin for application of RPM.

Transfer Pricing amendments in Budget – 2014

The budget showcased 4 major amendments that brings the Indian transfer pricing regulations closer to the globally accepted principles and an aim towards reducing the litigation. The proposals and the speech of Hon Finance Minister indicated that transfer pricing is one of the most important areas in the international law and needs appropriate attention by the corporates and the revenue department. This is an important tool that will go a long way to restore investor's faith in India as an economy that sees fair taxes as a principle rather than aggressive tax regime. The 4 changes in the transfer pricing arena are as follows:

1. Roll back of Advance pricing Agreements ('APA') w.e.f 1 October 2014 for preceding 4 financial years;
2. Introduction of concept of range replacing the arithmetic mean with some exceptions;
3. Use of multiple year data now to be permitted for performing a benchmark analysis;
4. Deemed international transactions under Section 92B(2) now to cover transactions between non- residents as well as resident tax payers.

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