India to scrap Rs.15 crore threshold for TP Audits

Category: News, The Financial Express (11th April 2014)

- Currently, reference to the TPO is made if the international transactions of the taxpayer are above Rs. 15 crores
- However, the tax department is zeroing on a more focused approach involving risk evaluation in the matters of tax evasion
- Usually risk based approach is more efficient and result oriented than a threshold based audit
- This means that MNE with international transactions less than Rs. 15 crores can come under the limelight if the tax office perceives the company as a risky entity in terms of probable tax avoidance
- The move will also ease of the burden of increasing files at the TP office with more qualitative attention rather than a quantitative scrutiny

Mando India Steering P. Ltd- ITAT Chennai

Decision Outcome: In favour of Taxpayer

Category: Adjustment for Capacity Utilization

- The taxpayer is a wholly owned subsidiary of Mando Corporation, Korea and is engaged in the assembly of steering columns to Original Equipment Manufacturers (OEM) like Hyundai
- Taxpayer adopted CUP method for purchase of machinery and reimbursement of expenses and TNMM for import of finished goods, raw materials and consumables
- In the Transfer Pricing documentation, taxpayer identified 10 comparables by using TNMM and arrived at a mean of 8.4%
- The margin was adjusted for working capital differences at 6.78% which was accepted by the TPO
- Due to the loss position in the company, the TPO proposed a downward adjustments to the import prices amounting to Rs 7.59 crores which was later on upheld and revised by DRP to Rs. 11.39 crores
- The taxpayer argued that as the year under consideration was the first year of operation, the taxpayer had utilized only 15% of its production capacity

- Since the production capacity was under- utilized, the overhead fixed cost was high thus, the taxpayer suffered a loss in the first year
- Subsequently the company started earning operating profits of 6.62% in FY 2010-11
- The Tax Court held that , as the revenue has not denied that the tax payer was in the initial year of production and the overhead cost and fixed overhead remained un-absorbed; under-utilization of capacity is a vital factor which has been ignored by the TPO
- With a direction to consider such under-utilization of capacity, the case was remanded back to the TPO