

Honeywell Turbo India Pvt Ltd – ITAT - Pune

Decision Outcome: Partly in favor of the taxpayer

Category: Jurisdiction of Transfer Pricing Officer ('TPO') and opinion on commercial feasibility

Summary of decision:

- The taxpayer is engaged in the business of manufacturing turbo chargers, providing application for engineering and supply base development services
- Taxpayer paid assignment charges to its holding company situated at Switzerland for assignment of contract secured by Holding company from Tata Motors Ltd
- The assessment was completed in normal course and subsequently, Commissioner observed that the tax officer passed an order without awaiting a report from TPO
- Further, the TPO disregarded the assignment fees based on his own judgment of commercial feasibility
- For non-consideration of TPO's observations the Tax court set aside the issue for fresh adjudication
- The Tax court further held that, the TPO was expected to examine the internal transaction of payment of assignment fee as he actually found it and, then make suitable adjustments, if required in order to determine its arm's length price, but it was impermissible for him to treat the agreement as void based on his own understanding of the commercial feasibility of the transaction

Parle Biscuits Pvt. Ltd.– ITAT - Mumbai

Decision Outcome: In **favor of the taxpayer**

Category: Characterization of share application to loan

Summary of decision:

- The taxpayer is engaged in the business of manufacturing varied range of biscuits
- The taxpayer paid share application money to its AE in Nigeria on 19 August 2005
- Shares allotted on 14 June 2006
- The TPO did not find the taxpayer's explanation for delay acceptable and therefore treated share application money up to the date of allotment as loan and made an adjustment for notional interest
- Similar adjustment was made for investment in Bangladesh
- The CIT(Appeals) concurred with the views of the TPO and upheld the adjustment
- Relying on Delhi ITAT ('Tax Court') ruling in Bharti Airtel Ltd, The Tax Court in Mumbai held that unless the character of the investment is in dispute the investment cannot be treated as loan merely due to delay in allotment of shares
- The tax court deleted the adjustment of notional interest