

KTC Ferro Alloys Pvt. Ltd. – ITAT- Visakhapatnam

Decision Outcome: In favour of the taxpayer

Category: Applicability of external quotations to justify CUP – Rule 10 AB

Summary of decision:

- Taxpayer's AE supplied raw material, used in the manufacture of molybdenum **concentrate oxide, to taxpayer at a cost-plus mark up, as AE purchased it from third parties** in its country
- Taxpayer adopted internal Comparable Uncontrolled Price method ('CUP') as most appropriate method (MAM) to benchmark the above transaction with its AE, on the basis of price paid by AE to third parties and price at which supplied to taxpayer
- Additionally, taxpayer corroborated price paid to its AE with reference to quotations from Asian Metal Market as external CUP
- Tax officer rejected CUP as MAM and also external quotations of Asian Metal Market and went ahead to adopt TNMM as MAM resulting to a huge adjustment to taxpayer's income
- Tax court held that AE made an appropriate mark-up on its sales to taxpayer and tax office had accepted CUP applicability in case of taxpayer for subsequent years
- Tax court also held that CUP was the MAM in this case and relying on CBDT notification on Income-tax (6th amendment) Rules, 2012- insertion of Rule 10AB, held that even quotations and estimates can be considered as external CUPs
- It was held tax authority was wrong in applying TNMM as well as not giving taxpayer the benefit of +/-5% on the ALP and the matter was restored for fresh consideration

TNS India Pvt Ltd – ITAT - Hyderabad

Decision Outcome: In favour of the taxpayer

Category: Determination of management fees

Summary of decision:

- Taxpayer exclusively rendered services to its AEs and tax authority determined ALP of management fees (group overhead allocation cost) at Rs. NIL on the ground that taxpayer did not produce concrete evidence in support of rendering such services
- However, tax authority accepted other transactions to be at ALP such as provision of data processing services, payment of interest, etc.
- Tax court observed that on the basis of agreement entered by taxpayer with its AE, management fee was not arising for the first time in the relevant AY and tax authority was not justified in determining its ALP at Rs. NIL
- Tax court also noted that although providing concrete evidence with reference to specific activities was difficult, taxpayer had submitted detailed write-up of services provided and benefits obtained which were not contradicted by tax authority
- Tax court ruled that the management fees paid to AEs in USA and Hong Kong by taxpayer was within norms framed for payment of fees to other AEs for similar services and held that tax authority's jurisdiction is limited to determining ALP and not outright denial of payment
- Tax court also held that mere disallowance under transfer pricing does not attract penalty under section 271(1)(c) and the matter was remitted to tax officer to examine on quantification aspect only and directed tax officer to delete penalty levied