Cables & Wireless (I) Ltd. – ITAT- Mumbai

Decision Outcome: In favour of the taxpayer

Category: Internal TNMM vs. External TNMM

Summary of decision:

- Taxpayer engaged in providing ancillary telecom sector comprising network design, project implementation, private network management and maintenance
- Taxpayer selected 5 comparables arriving at an average margin of 7.89% based on a 3 year data (External TNMM)
- The Internal TNMM was submitted during the TP proceedings which indicated transactions with Independent parties (Non AEs) at (-) 49.2% as against 8% profit margin for the transactions with Associated Parties (AEs)
- The Transfer Pricing Officer (TPO) rejected 2 comparables and determined the arm's length margin at 23.79% using External TNMM
- The tax court held that Internal TNMM should get a precedence over external TNMM, reliance placed on Technimont ICB ruling. Further, the taxpayer directed to furnish details of Internal TNMM before the TPO for fresh examination
- The case was dismissed in favour of taxpayer

Sumi Motherson Innovative Engineering Ltd- ITAT- Delhi

Decision Outcome: Against the taxpayer

Category: Cash Profits vs. Operating (Net) Profits

Summary of decision:

- Taxpayer engaged in manufacture of molds, dies and molded components. For FY 2003-04, the operating segments were Components , Tooling and corporate divisions
- For tooling division, the taxpayer used PLI as Cash Profits/ Sales instead of Net Profits/ Sales
- Cash profits arrived after adding back Depreciation and Tools written off from operating profits, making cash profit's PLI at 20% which was higher than the comparables at 13%
- The TPO substituted Operating Profits for Cash Profits and arrived at a loss of Rs 66.71 Lakhs and made an adjustment of Rs 16.12 Crores
- CIT(Appeals) deleted the TP addition and hence, the revenue was in appeal before ITAT
- Tax Court gave the decision in favour of revenue and held as follows:
  - ✓ Rule 10(B)(1)(e) of the Income- tax Rules, 1962 indicated that the starting point of TNMM analysis is net profit and not cash profits. Net profits can be determined by excluding non –operating and extraordinary incomes and expenses
  - ✓ Adjustment of higher depreciation rates can be made by comparing the percentage of depreciation charged to the quantum of depreciable assets employed and not on sales
  - ✓ Higher amount of particular expenditure per se cannot be a reason to claim adjustment in profit ratio
- On the basic of above summary observations, the tax court held the case in favour of revenue

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