Maersk Global Centres (I) P. Ltd: ITAT (SB)- Mum

Decision Outcome: Partially **allowed**

Category: BPO vs. KPO and High margin comparables

Summary of decision:

- Taxpayer is WOS of Maersk GSC Holdings A/S, which is a downstream subsidiary of AP Moller Group
- Taxpayer is in the business of shared service centre and renders transaction processing, data entry, reconciliation of statements and other similar services along with IT support services (All part of ITES)
- Taxpayer categorized the entities as low risk back office BPO, whereas the TPO considered the activities as specialized activities that requires domain expertise and accordingly rejected comparables by the taxpayer and considered new comparables
- Total adjustment proposed was INR 35.48 crores
- The DRP held that the taxpayer is neither a low risk back office support, nor is a high end KPO business. The business of the taxpayer lies in between the two extreme and hence the companies rejected by TPO merely on the grounds of they being low risk BPO needs to be accepted and added to the list of TPO's companies
- **The Special Bench of ITAT ruled on the comparability as follows:**
  - ✓ Line of difference between KPO and BPO is very thin
  - ✓ KPO is an upward shift in the value chain and evolution of BPO
  - ✓ The functionality of the taxpayer falls between KPO and BPO and it would not possible to create a 3rd categorization and there could be a significant overlap in the functions of KPO and BPO
  - ✓ Hence, ITES sector cannot be classified as KPO and BPO for comparability
  - ✓ The first step is to select all the potential ITES companies and apply requisite quantitative filters
  - ✓ As a second step, the potential comparables of ITES sector level can be selected by applying broad functional test and the comparables so selected can be put to further test, depending on facts of each case, by comparing the specific functions performed in the international transactions with that of uncontrolled transactions to attain the relatively equal degree of comparability
  - ✓ Further ITAT held that high margin comparables should not be rejected solely on the basis of abnormal profits. Comparable entity earning high margins should be rejected only if the high margins does not reflect the normal business scenario

Transfer Pricing Adjustment decline 14%

Category: **News Alert**

- After a 54% jump in transfer pricing (TP) adjustments to INR 70,000 crore last year, additions to the income of companies conducting international transactions has dropped by over 14% to INR 60,000 crore in FY14
- TP adjustments have fallen mainly because the orders this year have taken into account concerns raised by the MNCs after some high-pitched adjustments last year
- Some 3,600 cases were taken up for TP audit in FY14 and additions have been made in about half of them. Business recast has emerged as a new issue in the TP orders in the current round
- The IT department, however, has taken a number of steps since then to improve the TP framework as these adjustments were termed as one of the factors spooking investor sentiments. "Special care has been taken to keep TP orders reasonable," said the Official *[Source : Financial Express]*

FM keen on signing APA before polls

Category: **News Alert**

- In an effort to deliver on his promise of offering tax certainty, Finance Minister P Chidambaram is trying to address the transfer pricing woes of multinational companies by inking a few Advance Pricing Agreements (APAs) before a new government is formed
- "We are at an advanced stage in a few APAs. Every effort is being made to close these before March 31. Wherever companies have come forward with data, we are moving ahead," said a finance ministry official
- MNCs have welcomed APAs, with the department receiving 146 applications last year, of which 117 were for unilateral ones. Of these, 142 applications came in the last 15 days. A similar number, mostly for unilateral APAs, have come this year, too; the last day for applying is March 31 *[Source: Business Standard]*

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