

Kiara Jewellery P. Limited

Decision Outcome: In favor of the taxpayer

Category: Capacity Utilization and +/- 5% benefit

Summary of decision:

- Taxpayer is a joint venture company of Sapphire Products SA, Switzerland and Shreruj Company Limited India, engaged in manufacturing of diamonds and precious stone studded jewelry
- TPO found that average margin of comparable selected (OP/OC) was 5.31% as against -2.48% of the taxpayer
- Taxpayer argued that it is operating at a 50% capacity and even if the comparables are taken at 75% operating capacity and suitable adjustment is made for capacity utilization the average profits would be 0.93%, that is within +/-5% range of the ALP
- The adjustment undertaken by the taxpayer was not accepted and an adjustment of INR 10 Million was proposed
- The first level appellate authority i.e. CIT (Appeals) rejected the contentions of the taxpayer and therefore the taxpayer is before the tax court
- The tax court (ITAT) relied on the case of Petro Araldite (P) Ltd, where necessary adjustment for capacity was allowed while computing TP adjustment
- The ITAT referred the case back to the Tax officer giving direction to consider such capacity utilization adjustment and if the exact details of utilization for comparable companies are not available in the public domain, the tax officer was directed to obtain the same directly from the concerned party
- The tax court further allows benefit of +/- 5% to the taxpayer relying on Starnet Networks (India) Pvt Ltd ruling of Mumbai ITAT