

M/s Livingstones – ITAT Mumbai

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

Industry: Diamond and Precious stones

Category: (1) Application of CUP; (2) Notional interest on sales receivable

Pertains to AY 2007-08: Cross Appeal

1. **By taxpayer:** Addition of Rs. 51.32 Lacs – use of CUP method over TNMM
2. **By revenue:** (a) Deletion of adjustment of Rs. 1.28 Crores on basis of facts and (b) Deletion of adjustment of Rs. 4.65 Crores on account of notional interest on sales receivable

Background:

- Taxpayer adopted TNMM: PLI (Comparables) : 4.53% vis-a vis PLI (Taxpayer) : 8.22%
- TPO considered CUP method and arrived at ALP at Rs. 1.79 crores and TPO made an adjustment of Rs. 4.65 Crores for delayed realization from AEs.
- The taxpayer argued that CUP method cannot be applied due to factors like quality of diamonds, size per carat, shape, color, grades etc.
- Additional evidence: Letter from Non AE that it had not purchased the diamonds but forwarded the said consignment to the AE of the taxpayer, hence the CUP cannot be used for the same

Summary of decision:

- ITAT Agrees: CUP method is not an idle method for comparing transactions involving diamonds
- However in current factual situation, similar transactions were undertaken between AE and non AE, direct method (CUP) gets a preference over TNMM
- Additional evidence upheld in favour of the Taxpayer & adjustment of Rs. 1.28 Crores dismissed
- After considering various adjustments in the transactions, the ITAT deleted Rs. 51.32 Lacs as confirmed by the CIT(Appeals)
- The taxpayer did not charge any interest to unrelated parties when the outstanding receivables (300-400 days) from unrelated parties were much more than the average of related parties. In such case notional interest cannot be charged for the purpose of making an adjustment.

TransPrice Comments:

The ITAT mentioned that direct method like CUP is preferable than the method like TNMM. However, as per the Indian regulations, one has to determine the ALP as per Most Appropriate Method and not Most Preferred Method and there is no classification of preference of direct methods on other methods. Although, the case has been in favour of the taxpayer, the principle on which ITAT has given a decision needs to be relooked.