

Hitachi Home and Life Solutions (India) Ltd. Income tax Appellate Tribunal ('ITAT') – Ahmadabad

Decision Outcome: In favour of the taxpayer

The Taxpayer applied a royalty rate of 3.75% after reducing various expenses from the sale value of the products. Due to the above computation, the effective rate of royalty was worked out at 2.3% on sales that was lower than 3% royalty paid by others to the parent company. The tax office contended that the rate of 3.75% should be considered instead of effective rate of 2.3% on the net sales. It was held by the ITAT that while benchmarking the royalty percentage, only stated rate is not decisive and an effective rate of royalty has to be considered for comparison and computation of ALP. Royalty adjustment deleted.

Sitara Diamond Pvt. Ltd. Bombay High Court

Outcome: Write petition rejected

The HC dismisses the writ petition challenging reassessment initiated after 4 years. Held that in absence of Form 3CEB furnished by the taxpayer, the AO or TPO does not have material information to form any opinion on Arms Length Price ('ALP'). Consequently there is no question on change of opinion. Assessment order of the subsequent years can be sufficient basis for reopening the case.

TransPrice Comments: Emphasis on filing and maintaining of appropriate documentation at the time of filing the return as well as at time of assessments. Future year's negative order is sufficient basis to reopen the earlier year's assessments.

Agnity India Pvt. Ltd. ITAT – Delhi

Outcome: In favour, follows High Court ruling in Taxpayer's own case

Taxpayer provides services to the parent in USA and is remunerated at cost + 15%. The company is virtually safeguarded against all risks. Companies like, Infosys and other giants are full fledged risk bearers and functionally dissimilar to a captive software service provider. Hence, the same are not comparable in the case of the taxpayer which is a captive service provider.

TransPrice Comments: A welcome decision that may please many captive service providers. Due to the large outsourced captive industry in India, guidance around this principle should form a part of law to avoid any further possible litigation.