TransPrice Times

Hinduja Ventures Ltd – Mumbai ITAT

Outcome: In favour of Taxpayer
Category: Benchmarking of transactions

The intermediate tax authorities proposed a Transfer Pricing ('TP') adjustment by benchmarking the taxpayer's current year's controlled transaction, considering the controlled transaction in the preceding year as Internal Comparable Uncontrolled Price ('CUP'). The Tax Court denied the TP adjustment with the contention that only uncontrolled transactions can be used as comparables while determining the Arm's Length Price ('ALP').

TransPrice Comments:

While determining ALP using CUP method, the basic contention is to compare the controlled transaction with an uncontrolled transaction. Therefore, in this case Internal-CUP cannot be applied to determine ALP and hence, the transfer pricing adjustment was overruled by the Tax Court.

Sony Mobile Communication India P. Ltd – Delhi ITAT

Outcome: In favour of Taxpayer
Category: AMP adjustment

The intermediate tax authorities proposed TP adjustment by applying the Bright Line Test ('BLT') to benchmark the international transaction for marketing and development of marketing services for its Associated Enterprise ('AE') as it was not adequately compensated.
However, the Tax Court so held that the benefit caused to the AE due to Advertisement, Marketing & Promotion ('AMP') expenses incurred by the taxpayer was only incidental. Hence, the taxpayer was not required to compensate its AE.

TransPrice Comments:

Tax Court has repudiated TP adjustment by applying the principle of 'substance over form', wherein the benefit reaped by AE is signified, rather than BLT. It also held that applying BLT is not a statutory mandate.

Dow Chemical International P. Ltd – Mumbai ITAT

Outcome: Partially in favour of Taxpayer
Category: Most Appropriate Method ('MAM')

The taxpayer could not provide sufficient evidence or reasons depicting whether the services have actually been rendered by the foreign AE. Hence, the intermediate tax authorities rejected the Transactional Net Margin Method used by the taxpayer and instead applied the CUP method and the ALP was determined to be Nil as independent parties would not pay if no services were rendered. The Tax Court has recommended a fresh examination of the case, considering that the intermediate tax authorities had not examined the applicability of the other methods.

TransPrice Comments:

Whether services have actually been rendered to the recipient entity, is a vital factor to be considered while selecting the most appropriate method to determine the ALP of an international transaction.

Vodafone India Ltd – Delhi ITAT

Outcome: Partially in favour of Taxpayer
Category: Selection of comparables under CUP

The taxpayer had benchmarked its international transaction using only one foreign comparable under the CUP method. The Tax Court rejected the comparable because of the functional dissimilarity and there being a huge margin between the

comparable price stated by the taxpayer and the actual international transactions entered into by the taxpayer and remanded the matter back to the intermediate tax authorities and directed a limited analysis. Also, the taxpayer had not opted for an appropriate database to select the comparables and had narrowed down the comparability analysis to reach at a single transaction for benchmarking purpose.

TransPrice's Comments:

Pre-requisite for application of the CUP method is that there must be a complete identity between the international transaction and the uncontrolled transaction, with which comparison is sought to be made. It is an accepted fact that even minor change in the properties of the products, circumstances of the trade may have a significant effect on the comparable prices.

A taxpayer must opt for an appropriate database on the basis of the nature of the international transaction. The search for the comparables must be broadened in order to include all the potential comparables to be considered for benchmarking the international transaction at ALP.

Shree Ram Dass Rice & General Mills – Chandigarh ITAT

Outcome: In favour of Taxpayer
Category: Penalty for non-filing of Form 3CEB

The taxpayer had inadvertently failed in uploading the Form 3CEB (Transfer Pricing Certification Report) as per section 92E of the Income-tax Act ('the Act') on the e-portal. Section 273B of the Act encompasses that certain penalties, including those under section 271BA of the Act 'shall' not be imposed in cases where reasonable cause is successfully pleaded. Also, the Tax Court considered the failure as a bonafide mistake as the taxpayer could promptly produce the Form 3CEB during the assessment proceedings.

Hence, the Tax Court rejected the imposition of penalty u/s 271BA of the Act on the taxpayer.

TransPrice's Comments:

In order to avoid assessment proceedings and heavy penalties, a taxpayer must ensure sufficient, appropriate and timely compliance of transfer pricing.

RECENT NEWS

Signing of Bilateral Agreement for exchange of Country-by-Country ('CbC') Reports between India and USA on or before 31 March 2019:
As a result of Bilateral Competent Authority Arrangement for exchange of CbC Reports between India and the USA, Indian constituent entities of international groups headquartered in USA, who have already filed CbC Reports in the USA, would not be required to file CbC Reports of their international groups in India.

Transfer Pricing being introduced in Botswana in July 2019:
After relying on the anti-avoidance rules prescribed in the Income Tax Act for many years, the Botswana Unified Revenue Service (BURS) plans to introduce Transfer Pricing in July 2019 to scrutinise transactions between related parties.

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