

TransPrice Times

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Sami-Sabinsa Group Ltd – Bangalore ITAT

Outcome: In **favour** of the taxpayer

Category: Internal vs external comparables

The tax court concluded that support must be drawn from external comparables only in case of insufficiency of internal comparable data. The assessment was wholly remanded back to the AO/TPO for fresh consideration of the matter.

Giesecke & Devrient (India) Pvt Ltd – Delhi HC

Outcome: In **favour** of the taxpayer

Category: Penalty provisions

The tax court repudiated the penalty initiated by the lower tax authorities in relation to claims made by the taxpayer for the use of multiple year data and grant of capacity utilization adjustment. The tax court adjudged that just the claims not being substantiable in law was not a sufficient ground to initiate penalty proceedings under the Act. Initiation of penalty proceedings requires concealment of particulars of income and the furnishing of inaccurate particulars by the taxpayer. Relying on a case adjudicated by the higher tax court, it was emphasized that merely because the taxpayer had claimed an expenditure that was not acceptable to the tax authorities would not attract penalty provisions. Accordingly, no substantial question of law arose in the present appeal by the lower tax authorities.

Hero MotoCorp Ltd – Delhi ITAT

Outcome: In **favour** of the taxpayer

Category: ALP computation | Specified Domestic Transactions ('SDT')

The tax court in connection with the inter-unit cost-to-cost transfer of goods from non-eligible to eligible units ('NEUs and EUs'), which are qualified for a profit linked deduction, rejected the addition made by lower tax authorities. The lower tax authorities claimed that the taxpayer shifted profits from NEUs to EUs in order to claim a higher deduction (by the EUs) and added a markup to the purchase price charged by the NEUs.

The tax court adjudicated that the NEUs resold goods to the EU procured from third parties due to the proximity of such units to third parties. Further, these were subsequently transferred to the EU without any value addition. Held that no further substitution of such price was warranted and the transaction was a genuine business transaction borne out of commercial expediency.

Biocon Ltd – Bangalore ITAT

Outcome: **Against** the taxpayer

Category: Non-charging of interest on grounds of the moratorium

The taxpayer in the instant case extended a loan to its subsidiary together with a moratorium of 11 months during the first year of operation of the subsidiary. The moratorium was substantiated by placing reliance on a separate tax court ruling on a similar issue and the RBI circular on the moratorium.

During the course of the assessment proceedings, the taxpayer asserted that a correct comparison would be between the effective interest rate computed using the interest from the entire loan agreement over the tenure of the loan and the weighted average LIBOR as per agreement. Further, the taxpayer argued that since the effective interest rate was higher as

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compared to the benchmark, the transaction should be concluded to be at ALP.

In the instant case, the tax court denied the taxpayer's plea citing that they had placed reliance on a ruling where taxpayer was the borrowing party. Therefore, their plea of non-charging of interest was denied and the tax court also stated that the moratorium as per RBI's circular was for specific loans (i.e., for industrial projects, agricultural plantations, etc.) which did not apply to the taxpayer's case. Further, the tax court held that any delay in realization of trading debt would be considered as a separate 'international transaction' and appropriate transfer pricing adjustments would be given effect based on the provisions of the Act.

Hence, the tax court upheld benchmarking of the aforementioned transaction using an appropriate method as per the Income-Tax Rules, 1962.

Kimberly-Clark Lever Private Limited – Pune ITAT

Outcome: Partially in **favour** of the taxpayer
Category: AMP adjustment | ALP determination

The tax court with regard to consideration of excessive advertising, marketing and promotion ('AMP') expenses incurred as an international transaction, relied on taxpayers' own case for the preceding year wherein it was concluded that the existence of an international transaction cannot be inferred by the lower tax authorities in the absence of any actual transaction. Held that in the absence of any agreement between the taxpayer and the foreign associated enterprise ('AE') to incur any AMP expenses to the benefit of the foreign AE, the presumption of the

existence of an international transaction is incorrect.

Concerning the transaction of import of raw materials, the taxpayer and its AEs through a global sourcing agreement with third party vendors, could procure raw materials from third parties at a discounted price. The taxpayer benchmarked the afore-mentioned international transaction by selecting the Comparable Uncontrollable Price method ('CUP') which was rejected by the lower tax authorities on the ground that deemed international transactions being tainted in nature cannot be used as a benchmark to compare the price charged in an international transaction.

However, in light of the additional evidence provided by the taxpayer in the form of a price list obtained from the third parties demonstrating the prices that would be charged by these third parties to unrelated third parties, the tax court remitted the matter back to the lower authorities to carry out benchmarking of the transaction and restrict the adjustment solely to the transactions with related parties.

Oracle Financial Services Software Ltd – Bombay HC

Outcome: In **favour** of the taxpayer
Category: Re-assessment

The tax court pronounced that a mere change in opinion did not constitute a 'reason to believe' that income had escaped assessment in a case where the original assessment order was passed by the Assessing Officer ('AO') after taking cognizance of the Transfer Pricing Officer's ('TPO') order. Various rulings of the higher tax court on the identical issue were relied upon and ultimately, re-assessment proceedings and

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orders disposing off the objections of the taxpayer were rendered invalid.

Vaibhav Global Limited – Rajasthan HC

Outcome: In **favour** of the taxpayer

Category: Substantial question of law

The tax court disregarded the appeal by the lower tax authorities, in relation to acknowledgement of a 'higher rate of guarantee commission' to be charged by the taxpayer from its AE as a substantial question of law. Reliance was placed on a division bench ruling for an earlier year on identical facts to conclude that a mere reduction of corporate guarantee fee per se does not result in a question of law. Accordingly, the appeal of the revenue was dismissed.

DHR Holding India Pvt Ltd – Delhi ITAT

Outcome: In **favour** of the taxpayer

Category: NIL ALP computation | Outstanding receivables

The tax court rejected lower tax authorities NIL arm's length price determination in relation to the purchase of medical equipment by the taxpayer which was capitalized in the books of the taxpayer. It was held that ALP for purchase of capital goods could be lower or higher but could be not 'NIL'. It was adjudicated that the same products purchased from the same AE, for the same price, in the same year cannot be held to be at arm's length for trading goods and not at arm's length for goods capitalized at the same time and in the same breath.

Separately, in relation to interest on outstanding receivables, the tax court opined that working

capital adjustment has been provided by the lower tax authorities which takes into consideration the outstanding receivables. Furthermore, the taxpayer has not charged any interest from third parties for the delay in payment and the average collection period of receivables during the year was much lower than the credit period as per normal business practice.

Accordingly, the addition made on account of NIL ALP determination and interest on outstanding receivables was precluded.

Automark Industries (India) Pvt Ltd – Nagpur ITAT

Outcome: In **favour** of the taxpayer

Category: Revision u/s 263 w.r.t transfer pricing | SDT

The tax court quashed the order passed by the Principal Commissioner of Income-tax ('Pr. CIT') considering the same as void and legally invalid. The proceedings were initiated by the Pr. CIT on the ground that the AO concluded the assessment without referring the SDTs to the TPO and it was alleged that such order passed by the AO was erroneous and prejudicial to the interest of the revenue.

The tax court discovered that the issue involved in the present appeal was amended by the legislature wherein, clause (i) of Section 92BA was struck off from the statute, retrospectively. Further, identical issue had been dealt with by the co-ordinate bench of this tax court and along those lines, appeal of the taxpayer was allowed.

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