

TransPrice Times

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Ingersoll-Rand Technologies and Services Pvt Ltd – Bangalore ITAT

Outcome: In **favour** of the taxpayer

Category: Cost contribution adjustment

The tax court relied on the taxpayer's group entity's case on a similar issue wherein the adjustment towards cost contribution charges ('CCCs') was deleted by the tax court. Taxpayer had applied the Transactional Net Margin Method ('TNMM') for payments linked to its core business which it demonstrated through details of services and benefits received. Further, the cost allocation was carried out using a uniform allocation policy/key. However, lower tax authorities applied the Comparable Uncontrolled Price Method ('CUP') considering the CCCs as a separate class of transaction as there are no restrictions in place to benchmark transactions solely at the entity level.

Considering that the taxpayer's group entity's case containing similar facts was adjudicated in favour of the petitioner and having regard to the fact that a similar cost is getting allocated to the taxpayer's group entity in India, the same allocation methodology was upheld and adjustment was deleted.

Virgo Valves & Controls Ltd – Mumbai ITAT

Outcome: Partially in **favour** of the taxpayer

Category: Pledge of shares against loan | LIBOR vs. Indian PLR

The tax court held that pledging shares against a loan for the benefit of AE would fall under the definition of 'transaction' under the Act and shall be construed as an international transaction. Opined that it is akin to a corporate guarantee and shall be benchmarked as such. Reliance was

placed on the ruling by a high court in regards to the rate at which the transaction would be benchmarked, consequent to which the adjustment was scaled down to 0.5% of the correct value of shares for the actual pledge period from 2.5% of the book value of pledged shares.

In connection with the issue of LIBOR vs Indian PLR, the tax court held that the issue was no longer a new matter. Further, the tax court leveraged on rulings where it was observed that the lower tax authorities did not challenge the decisions in which PLR was rejected for benchmarking interest on loans advanced to AE and LIBOR was upheld. The tax court also discovered that there had been a mark-up on the Euro and USD denominated LIBOR, rather than LIBOR simpliciter in the above pronouncements. Accordingly, taxpayers benchmarking based on LIBOR was upheld.

Trigyn Technologies Ltd. – Mumbai ITAT

Outcome: In **favour** of the taxpayer

Category: Restricting adjustment to margin retained by the AE

In the present case, the taxpayer entered into a consultancy agreement with its AE wherein the AE retains a share of revenue from the customers vide the agreement terms and the balance is remitted to the taxpayer. In this regard, the lower tax authorities made an adjustment wherein the resultant revenue post-adjustment was higher than the amount billed to the customers. Following precedence of tax courts in similar cases, the tax court opined that adjustment on account of ALP of international transactions cannot exceed the difference

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between the amount received by the AE from the customer and the actual value of international transactions.

Romax Solutions Pvt Ltd – Pune ITAT

Outcome: In **favour** of the taxpayer

Category: Actual profit vs. Arm's length profit

The tax court adjudicated that tax officer's calculation of excessive deduction availed by the taxpayer was based on the arm's length profit vis-à-vis taxpayer's actual profit from rendering services to its AE. It was recognized that the AE of the taxpayer was not chargeable to tax in India and hence the taxpayer on its own accord offered higher income in its hands. The taxpayer as a 100% export oriented unit is eligible to take benefit of profit-linked deduction under the Act. Accordingly, the profits from rendering services by the taxpayer were claimed as a deduction however, a corresponding benefit in terms of higher deduction of expenditure was not passed on to the AE. Ruling in a similar case of excessive deduction was brought to notice of the tax court where the claim of the tax officer was disapproved. Following the precedent, the case was settled in favour of the taxpayer.

RECENT NEWS

The signing of 62 APAs by CBDT in FY 2021-22

On 31 March 2022, the Central Board of Direct Taxes made a press release communicating that 62 APAs (including 13 bilateral and 49 unilateral APAs) have been entered into with the Indian taxpayers. On account of the same, the total number of signed APAs since inception have soared to 421.

This was despite the socio-economic disruption caused by the COVID-19 pandemic in the first half of the financial year. The number of APAs signed are relatively better than in the preceding two years with 31 APAs signed in FY 2020-21 and 57 APAs in FY 2019-20.

OECD commentary on pillar two GloBE rules

On 14 March 2022, OECD released a 228 pages commentary along with 49 pages of illustrations that explain the application and practical implementation of Global Anti-Base Erosion Model Rules under Pillar Two released in December 2021. The GloBE Rules ensure that multinationals with revenues above EUR 750 million pay at least a minimum level of 15% taxes on the income arising in each of the jurisdictions in which they operate.

The OCED further initiated a public consultation seeking input from interested parties on the implementation framework, which shall facilitate the coordinated implementation and administration of the GloBE rules, to be provided by April 11, 2022.

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