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TransPrice Times

Edition: 1st April – 31st May 2022

Sodexo India Services Pvt Ltd – Bombay HC

Outcome: In favour of the taxpayer

Category: Re-assessment notice based on audit opinion quashed

The tax court quashed the re-assessment notice issued by lower tax authorities, the assessment for which was already concluded. The tax court notes the contention of the taxpayers that a re-assessment notice was issued by the lower tax authorities acting on the dictates of the revenue audit. The taxpayer stressed that the opinion rendered by the audit party in regard to the law cannot be the basis for re-opening the case of the taxpayer. The tax court draws support from various rulings that state that the reason to believe that income has escaped assessment cannot be based on borrowed information. The audit party could bring in relevant aspects, however, the decision of the tax officer to re-open the case must be independent. In consideration of the same, the case was held in favour of the taxpayer.

Biocon Biologics Limited – Bangalore ITAT

Outcome: Against the taxpayer

Category: Extended credit period to AE

The tax court pronounced that the extended credit period given to AE was a separate international transaction for the taxpayer. The argument of the taxpayer stating that TNMM combined with the working capital adjustment would take care of the loss, if any, arising from the extended credit period, was disregarded by the tax court. It was held that working capital adjustment is made to the working results of the comparable companies as the transaction between the taxpayer and its AE is risk-free. Further opined that the price of the transaction with AE is determined in advance, while the comparable companies carrying on uncontrolled transactions have the leverage to increase the price of product/services depending on the credit period granted to its customers. This higher pricing results in higher profit margins. Hence, the working capital adjustment is made to the margins of comparable companies to eliminate this difference. Accordingly, it was concluded that the lower tax authorities were correct in considering the extended credit period as a separate international transaction.

Tech Mahindra Limited – Mumbai ITAT

Outcome: In favour of the taxpayer

Category: Extended credit period Vs Loan

The taxpayer in the instant case extended trade credit to support its under-performing and loss-making subsidiary during the year. There was no interest charged by the taxpayer for extending the trade credit as it was to enable the AE to tide over a temporary liquidity situation. Further, the taxpayer also granted an extended credit period to non-AEs without charging any interest on delayed payments. The lower tax authorities, however, imputed interest of 10% on the trade credit made to the AE. The tax court observed that a loan invariably and compulsorily will carry an interest amount while there was no compulsion in charging trade credit. Further, it was also noted that no such adjustment was made on account of similar arrangements made by the taxpayer in prior years. Accordingly, the case was settled in favour of the taxpayer.

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Olympus Medical Systems India Pvt Ltd – Delhi ITAT

Outcome: Against the taxpayer

Category: Acting in 'concert' for AMP expenses

The tax court on perusal of the TPSR of the taxpayer, it was discovered that the taxpayer was not the exclusive distributor of AE's products and the customers could also directly approach AE to purchase the products. The TPSR further reflected that products were imported from the AE for demonstration purposes in India. Reliance was also placed on various rulings and it was held by the tax court that the test of 'acting in concert' was a question of facts and circumstances of the case rather than the legal rights of the parties and on verification of material on record, it was concluded that the taxpayer and the AE acted in concert for carrying out advertising, marketing and promotional ('AMP') expenses.

Concerning the contention of the taxpayer regarding the absence of an agreement for such AMP expenses, the tax court holds that there is no mandatory requirement of an executed agreement between the parties in the present case as the lower tax authorities had proved that both the parties had acted in concert. Further, the tax court relied on taxpayers own case in a prior year wherein multiple factors directed towards benefit derived by the AE and the taxpayer was to be suitably remunerated for incurring the AMP expenses. Accordingly, the tax court upheld the claim of lower tax authorities of the existance of an international transaction relating to AMP undertaken by the taxpayer.

R P Comtrade Ltd – Kolkata ITAT

Outcome: In favour of the taxpayer

Category: Changing the MAM selected in TPSR

The tax court relied on a special bench decision on a similar issue and stated that the taxpayer cannot be precluded from changing the benchmarking methodology adopted in the Transfer Pricing Study Report ('TPSR') from the Transactional Net Margin Method ('TNMM') to the Comparable Uncontrolled Price method ('CUP') and establishing that the former was wrongly considered as the most appropriate method ('MAM') in the TPSR.

Eaton Technologies Pvt. Ltd – Pune ITAT

Outcome: In favour of the taxpayer

Category: Relevance of OP/OC

The taxpayer in the present case contended that the lower tax authorities did not appreciate the fact that where Arm's Length Price ('ALP') of the international transactions was concluded as per the transfer pricing provisions, special provisions for establishments in the special economic zone cannot be invoked basis that the taxpayer had earned more than ordinary profits by way of operating profit/ operating cost ('OP/OC') computation. The tax court opined that the aforementioned reasoning for disallowance by the lower tax authorities and concluding that the taxpayer earned super-normal profits was only relevant for comparability for TP analysis and the same could not be used for holding the taxpayer to have earned super-normal profits in carrying on its business. Further, the tax court brought to notice, the absence of any arrangement enabling the taxpayer to earn super-profits.

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Texas Instruments (India) Private Limited – Bangalore ITAT

Outcome: In favour of the taxpayer
Category: Application of US AE MAP margins to Non-US AE transactions

In the present case, the taxpayer entered into a Mutual Agreement Procedure ('MAP') with its US-based AE for the ITeS segment. The taxpayer emphasised that owing to the similar nature of transactions entered with the non-US AE's, the arm's length margin as per MAP with the US AE shall also hold good for the non-US AE. Further, neither the lower tax authorities nor the taxpayer had made any distinction between the US and non-US AE transactions. In view of the above and based on past precedent in relation to a similar case, the tax court adjudicated that the margin accepted in MAP with the US AE shall also have to be regarded as the arm's length margin for the non-US AE.

Bostik India Private Limited – Bangalore ITAT

Outcome: In favour of the taxpayer
Category: TNMM vs. 'Hypothetical' CUP

With regards to the international transaction of management fee and technology license fee paid by the taxpayer, the tax court rejected the application of 'hypothetical' CUP over TNMM (as adopted by the taxpayer), by lower tax authorities. Held that the lower tax authorities erred in determining the ALP of the transactions at 'NIL' value without following the due procedures and further, there are no provisions in the Indian jurisprudence to construct a 'hypothetical' CUP. It was also observed that evidence in relation to a cost-benefit analysis submitted by the taxpayer was not considered by the lower tax authorities. As the transactions undertaken were closely linked and integral to the main business activity of the taxpayer in the manufacturing business, TNMM was upheld as MAM by the tax court.

RECENT NEWS

Tax dispute | Italian tax court Vs. Netflix

The long-drawn dispute between the Italian Tax police (Guardia di Finanza) and the streaming giant, Netflix based in the United States has come to an end with Netflix agreeing to settle the dispute for a total sum of USD 59 million including interest and penalties for tax years years 2015-2019. The prosecutors alleged that the streaming giant ought to have paid taxes in Italy as it relied on digital infrastructure (cables and computer servers) to stream content to 2 million users in the Country. In addition to settling the tax dispute, Netflix had also agreed to set up a physical presence in the form of an office in Italy, hiring over 40 employees.

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