

## Transfer Pricing Alert

### 1. Summary of Case Laws

SL. No.	Case Law	Outcome
a.	Deputy Commissioner of Income-tax, Circle-11 (1), Bengaluru v. Adcock Ingram Ltd	The value of license fee and management charges cannot be nil. The transaction should be view from business point not from tax revenue point of view.
b.	Assistant Commissioner of Income Tax, Mumbai v. Billion Wealth Minerals (P.) Ltd	CUP price adopted by the TPO was rejected as the prices compared where are not exactly comparable to the transaction.
c.	CEVA Freight India (P.) Ltd v. Deputy Commissioner of Income Tax, Circle-11 (1), New Delhi	Comparable company cannot be rejected that it has low margins or losses for two out of three years.
d.	CSR Technology (India) (P.) Ltd v. Assistant Commissioner of Income Tax, Circle- 6 (2), New Delhi	Segmental data cannot be rejected because the same was not audited.
e.	Cyient Ltd v. Deputy Commissioner of Income tax, Circle 2(1), Hyderabad	TPO to pass draft assessment order when the case is remanded by the ITAT for fresh adjudication.
f.	Deputy Commissioner of Income-tax, Circle-8(1), Kolkata v. EIH Ltd	Corporate guarantee is outside the purview of international transaction. Interest free loan to AE is not appropriate.
g.	Deputy Commissioner of Income tax, Circle-9, Pune v. Kalyani Hayes Lemmerz Ltd	Royalty payment was at arm's length as there was not change in the terms of the agreement even before the parties becoming AEs
h.	Intervet India (P.) Ltd v. Deputy Commissioner of Income Tax, Circle-1 (2), Pune	CUP adopted by the TPO cannot be accepted as there are difference in volumes and place of delivery.
i.	Schlumberger India Technology Centre (P.) Ltd v. Deputy Director of Income-tax (IT)-II, Pune	Companies engaged in different activity cannot be accepted.
j.	Software Paradigms Infotech (P.) Ltd v. Assistant Commissioner of Income Tax, Circle-1 (2), Mysore	AO passing the order without giving effect to the DPR directions was quashed.
k.	Srini Pharmaceuticals Ltd v. Deputy Commissioner of Income-Tax, Circle-3 (2), Hyderabad	Segmental data cannot be rejected and effect of idle capacity should be given effect.

## Case Laws

**a. Deputy Commissioner of Income-tax, Circle-11 (1), Bengaluru v. Adcock Ingram Ltd AY 2009-10 & 2010-11 Bengaluru Tribunal**

**Facts of the case:**

The company is engaged in manufacture of pharmaceutical formulations, the company has entered into license fee agreement and management charges agreement with its AEs. The TPO during the assessment proceedings rejected the said transactions and concluded that the transactions are at nil value and made transfer pricing adjustments. The assessee filed an appeal before the CIT(A) and the CIT(A) agreed with the contention of the assessee as the transactions are aggregated with other transactions and the net margin is higher than the comparable transactions it can be concluded that the transactions are at arm's length. The department aggrieved with the said order has appealed before ITAT.

**Held**

The ITAT considering the rival arguments of the appellant and the department has held that the approach of the TPO wherein the value of license fee and management fee transactions is at nil is not tenable. It observed that the TPO has not provided any comparable transactions wherein the said transactions can be concluded to be nil. Hence, the approach adopted by the TPO is not correct, further it is also required to view the value of said transactions from the view of the businessman and not from the tax revenue aspect.

The ITAT further also observed that though there has been argument on aggregation of transactions, the tax authorities has not validated whether the net margins calculated in the segmental data was correct. Hence case remanded for verification to the file of CIT(A).

**b. Assistant Commissioner of Income Tax, Mumbai v. Billion Wealth Minerals (P.) Ltd AY 2010-11 Mumbai Tribunal**

**Facts of the case:**

The company was engaged in export of Iron ores to both AE and Non AEs and the prices charged to AE were lower in certain cases. The TPO considered the prices from the TIPS data and made transfer pricing adjustments. The assessee appealed before the DRP. The DRP observed that the prices considered by the TPO did not provide the complete details and hence considered the gross profit margins from both AE and Non AE and directed the TPO to conclude on the same. The tax department aggrieved by the same has appealed before the ITAT.

### **Held**

The ITAT considering the rival arguments held that the prices considered by the TPO does not give a correct comparable price as the iron content in ores were varying and the export were made from different ports. Hence ITAT agreed with the approach of DRP and held in the favour of the assessee.

**c. CEVA Freight India (P.) Ltd v. Deputy Commissioner of Income Tax, Circle-11 (1), New Delhi AY 2006-07 Delhi Tribunal**

### **Facts of the case:**

The company is engaged in providing freight, forwarding and logistics services, the TPO during the assessment proceedings has rejected certain comparable companies and the segmental data provided by the assessee, the DRP has confirmed the same. The ITAT had rejected the matter for fresh adjudication on the segmental data. The DRP has not given any relief and the assessee is in appeal before the ITAT.

### **Held**

The ITAT considering the rival arguments of the appellant and the department has held as follows:

- a. The arguments relating to the segmental details is not pressed, hence the same is not adjudicated;
- b. The ITAT has mentioned that just because a comparable company is selected the same cannot be considered automatically for other years and it is to analyse the comparability for each of the years and has held as follows:
  - i. Rejected as it has various other activities - Balmer Lawrie Cot Ltd, ABC India Ltd, SERI Ltd, TCI Ltd, Delhi Assam Roadways Corporation Ltd;
  - ii. Company cannot be rejected because a company has different lease rent ratio – Premier Road Carriers Ltd;
  - iii. Company cannot be rejected because it has low margins or losses for two years out of three – Roadways India Ltd & Skypack Service Specialist Ltd;
- c. Transfer Pricing adjustments cannot be made on Non AE transactions.

**d. CSR Technology (India) (P.) Ltd v. Assistant Commissioner of Income Tax, Circle- 6 (2), New Delhi – AY 2012-13 Delhi ITAT**

### **Facts of the case:**

The company was engaged in Software development services and had transactions with both AE and Non AEs. The assessee submitted the segmental data for the same before the TPO, the TPO rejected the data on the premise that the same was not audited. The DRP upheld the actions of the TPO. The assessee is in appeal before the ITAT.

### **Held**

The ITAT observed that just because the segmental data is not audited the same cannot be rejected and the case was remanded to check the correct of the segmental data and accept the same.

**e. Cyient Ltd v. Deputy Commissioner of Income tax, Circle 2(1), Hyderabad – AY 2004-05, 2006-7 & 2007-08 Hyderabad ITAT**

### **Facts of the case**

In the present case the ITAT has remanded the case back to the TPO for fresh assessment. The TPO has passed the final assessment order after the case was remanded back to the TPO. The assessee argued that the draft order to be passed and not the final order with tax demand.

### **Held**

The ITAT considering the rival arguments held that the Assessing Officer ought to have passed the draft assessment order as provided in the provisions and not the final assessment order, as the setting aside of the case result in afresh consideration of the facts of the case and not mere arithmetical corrections.

**f. Deputy Commissioner of Income-tax, Circle-8(1), Kolkata v. EIH Ltd – AY 2011-12 Kolkata Tribunal**

### **Facts of the case:**

The company has extended a corporate guarantee to its subsidiary in Mauritius, however it had not charged any guarantee fee to its AE. The TPO has concluded that the same needs to be charged with guarantee fee of 3%. Further, the company had extended interest free loan to its subsidiary. The TPO applied interest rate of 17.5% on the same. The assessee appealed before the DRP, the DRP upheld the adjustments made by the TPO. The assessee is in appeal before the ITAT.

### **Held**

The ITAT considering the argument has held as follows:

- a. The issuance of corporate guarantee by the assessee to its AE would have 'influence on the profits, incomes, losses or assets of enterprise' but not necessarily have 'any impact on the profits, incomes, losses or assets' as admittedly no consideration was received by the assessee in respect of this corporate guarantee from its AE. Hence it will be outside the purview of international transactions.
- b. In respect of interest free loans, it was held that the interest to be applied at LIBOR+200 bps.

**g. Deputy Commissioner of Income tax, Circle-9, Pune v. Kalyani Hayes Lemmerz Ltd – Pune Tribunal**

**Facts of the case:**

In the present case the company was engaged in manufacture of automobile wheel rims and had entered into a technology license agreement with the overseas entity in the year 1995 and the same was in effect until 2002. Subsequently, the assessee became an AE to the overseas entity and has entered into new agreement with effect from 2005 and was required to pay a royalty at the rate of 2%. The TPO has rejected the payment of royalty and determined to be nil value. The assessee is in appeal before ITAT as there was no relief by the DRP.

**Held**

The ITAT observed that the terms of the agreement were similar even before the overseas entity was an AE and there was no record brought by the department that how the subsequent agreement was different from the earlier agreement. Further, the TPO has accepted the arm's length price of the royalty transaction in the subsequent years. Hence, the payment of royalty was considered to be at arm's length price.

**h. Intervet India (P.) Ltd v. Deputy Commissioner of Income Tax, Circle-1 (2), Pune AY 2003-04 Pune Tribunal**

**Facts of the case:**

The company was engaged in manufacture of biological vaccines and veterinary pharmaceutical products, in determining the arm's length price the company has applied TNMM. The TPO during the assessment proceedings has accepted the method, however identified certain transactions wherein the prices charged to AE was lower than the Non AEs and made adjustments for the same. On further appeal the CIT(A) confirmed the order. The assessee further appealed before the ITAT.

**Held**

The ITAT observed that the TPO has accepted majority of the transactions to be at arm's length price and only made adjustment on the smaller portion. It was noted that the price difference on similar products for difference in volumes and different geographical locations. Hence it was held that as there is difference in other parameters CUP cannot be accepted to benchmark the transactions and adjustments was set aside.

**i. Schlumberger India Technology Centre (P.) Ltd v. Deputy Director of Income-tax (IT)-II, Pune – AY 2010-11 Pune Tribunal**

**Facts of the case**

The company was engaged in providing technical support services, the net operating margin of the company was at 5.30%. The TPO during the assessment proceedings considered a different set of comparable companies and arrived at a margin of 26.35% and made transfer pricing adjustments of INR 1.90 CR. The assessee appealed before the DRP, the DRP confirmed the order of the Assessing Officer. The company has further appealed before the ITAT.

**Held**

The ITAT considering the rival submission on the issues of comparable companies, has held as follows:

- a. Company cannot be rejected when considered as appropriate comparable company for earlier year and cannot be considered a consistent loss making after applying working capital adjustments – CG VAK
- b. Comparable company has different financial year cannot be considered as comparable – Jindal Telecom & Coral Hub
- c. Companies outsourcing major portion of activities is working in a different model hence to rejected – Cosmic Global
- d. Functionally dissimilar – Accentia Technologies & e4e Healthcare business

After exclusion of the above companies, the comparable net margins was within +/- 5%.

**j. Software Paradigms Infotech (P.) Ltd v. Assistant Commissioner of Income Tax, Circle-1 (2), Mysore – AY 2009-10 Bangalore Tribunal**

**Facts of the case:**

In the present case the company is engaged in software development services, the TPO has made transfer pricing adjustments and according the AO has passed the draft order. The assessee appealed before the DRP, the Assessing Officer while passing the final assessment order has not passed in conformity with the DRP directions and has just passed the order in line with the original draft order. The main argument of the assessee is that as the order is not in conformity of the provision the same needs to be quashed. The departmental representative appealed to give opportunity to pass a fresh order by the AO.

### **Held**

The ITAT considering the rival arguments has held that the AO has just passed the original draft order without passing any reference to the DRP directions. Hence the same needs to be quashed and there no need to consider other grounds of appeal.

**k. Srini Pharmaceuticals Ltd v. Deputy Commissioner of Income-Tax, Circle-3 (2), Hyderabad AY 2010-11 Hyderabad Tribunal**

### **Facts of the case:**

The company is engaged in manufacture of pharmaceuticals, the company main transactions was with AE which is around 93% and around 7% of the transactions was with Non AEs. The assessee has compared the lower net margin earned from AE transactions and losses from the Non AE segment and compared the margins using internal TNMM. The TPO during the assessment proceedings rejected the segmental data and proposed a fresh set of comparable companies and made transfer pricing adjustments of INR 10.49 cr. The case was further appealed before the DRP, the DRP has not provided any relief. Hence, the appeal is made before the ITAT.

### **Held**

The AR for the assessee pleaded before the ITAT that there is no reason why the segmental data should be rejected and the departmental representative argued that the allocation was improper. It was observed by the ITAT that the company has earned margins from AE and Non AE segment. Hence, it directed that internal comparison would be more appropriate and directed the assessee to submit the margins from AE, Non AE and impact of idle capacity and the same needs to be considered by the tax authorities.