

## TP adjustment restricting transactions with AEs only and excluding transaction with non-AEs set aside

**Summary – The Pune ITAT in a recent case of Sandvik Asia (P.) Ltd., (the Assessee) held that while computing income arising from international transaction, adjustment is to be limited to international transaction with AE's; same do not include transaction with non AEs entire segments.**

### Facts

- The assessee considered five comparable cases in its TP study.
- The Assessing Officer accepted three of them and excluded two namely Rajasthan Udyog and Tools Limited ('RU') and Hittco Tools Limited ('HT') on ground that these comparable suffered continuous losses and lack of functional comparability.

### Held

#### *Rajasthan Udyog as comparable*

- The Tools manufacturing segment of the assessee is engaged in the manufacture of cemented carbide and high speed steel tools for metalworking applications and tools for mining and construction. M/s Rajasthan Udyog & Tools Limited is engaged in the manufacturing of diamonds tools, castings and cutting machines stone edge and spare parts. It has primarily three segments - Diamond Tools and Gang Saw Blades, Stone Cutting Machines and Diaga Mono Blade Cranes. The assessee considered the Diamond Tools and Gang Saw Blades segment as comparable for the purpose of benchmarking of its international transactions in Tools manufacturing segment. A similar position has been taken by the assessee in its TP Study for assessment year 2006-07 as well as for assessment year 2007-08, whereby the Diamond Tools and Gang Saw Blades segment of the said concern was considered as comparable for purpose of benchmarking the international transactions carried out in its Tools manufacturing segment. In the Paper Book filed before Court, assessee has furnished copies of orders passed by the TPO for assessment years 2006-07 and 2007-08 under section 92CA(3) dated 30-10-2009 and 29-10-2010 respectively whereby no adjustments with respect to the international transactions in the Tools manufacturing segment have been made. In other words, the adoption of segmental result of M/s Rajasthan Udyog & Tools Limited as a comparable case has been accepted. In the current year too, the functional analysis of the said concern made in the TP study, copy of which has been placed in the Paper Book, is similar to what was considered by the assessee in the other two assessment years 2006-07 and 2007-08.
- In considered opinion, the proposition Commissioner cannot be faulted because for the purpose of determination of ALP, an international transaction has to be compared with uncontrolled and unrelated transactions by using the data relating to the financial year in which the international

transaction has been entered into. In other words, the contemporaneous information and documents are liable to be considered as far as possible for the purposes of comparing uncontrolled transactions with the international transactions sought to be tested. So, however, it is also to be noted in the present case, that the revenue has not made out any case as to in what manner, the Diamond Tools and Gang Saw Blades segment of M/s Rajasthan Udyog & Tools Limited is carrying out different activities than those carried out in assessment years 2006-07 and 2007-08. The aforesaid aspect becomes important because factually speaking in the assessment years 2006-07 and 2007-08, the said concerns Diamond Tools and Gang Saw Blades segment has been accepted as functionally comparable to assessee's Tools manufacturing segment. From the impugned orders of the lower authorities, we do not find any such distinction being brought out. On the basis of the material on record, it is evident that the assertion of the TPO that the said concern is functionally incomparable is a mere bald assertion devoid of factual support. Therefore, the action of the TPO in excluding the said concern, in our view, is not well founded and is liable to be set aside.

***Hittco Tools as comparable***

- The other dispute is with regard to the exclusion of M/s Hittco Tools Limited from the list of comparables. The said concern is said to be engaged in the manufacturing of drill bits and for the said reason assessee treated it as a comparable for the purposes of transfer pricing analysis of its Tools manufacturing segment. The assessee pointed out that initially assessee had made an error while stating the operating margins of the said concern but it rectified its mistake in the course of proceedings before the TPO. The learned counsel submitted that the said concern was making profits in assessment year 2006-07 and it is not a case where it was making losses continuously. The assessee pointed out that even for the assessment year under consideration, assessee corrected the error by making an appropriate adjustment to the figure of profit of M/s Hittco Tools Limited so as to exclude the extraordinary profits on account of write-back of loans waived by banks. It was therefore, contended that the said concern has been rejected on mere surmises without appreciating the correct factual position. It was further contended that even in the assessment years 2006-07 and 2007-08 the said concern has been taken as a comparable case and the same has not been disputed by the Assessing Officer /TPO.
- It is found that no cogent reasons have been advanced by the TPO to exclude the said concern from the list of comparables. Ostensibly, the said concern was accepted as functionally comparable in assessment years 2006-07 and 2007-08 and there is no material to depart from the said proposition especially when no case has been made out that in the instant assessment year that the activities of the said concern have undergone any change. The other point made by the TPO to the effect that the said concern is consistently loss making is also not borne out of the record. It is only in 2004 and 2005 that the said concern had losses but it had profits in 2006 and also for the subsequent years ending on 31-3-2010 and 31-3-2011 the said concern is making profits, as per the material placed in the Paper Book. Therefore, it cannot be said that the said concern is consistently loss-making and,

accordingly, we do not find enough reasons to sustain the action of the TPO in excluding the said concern from the list of comparable.