

ITAT remands back matter to enquire into an issue directly relevant to TP adjustments and not dealt with by DRP

Summary – The Mumbai ITAT in a recent case of JM Financial Institutional Securities (P.) Ltd., (the Assessee) held that where assessee raised an additional ground before Tribunal that AEs were independent parties when revenue sharing agreement were entered, therefore, transactions between them should be regarded as carried out under uncontrolled conditions, as the issue went to the very root of TP adjustment, it was to be admitted.

Facts

- The assessee was a joint venture company between J.M. Securities (P.) Ltd. and Morgan Stanley Group. It was engaged in business of investment banking services and had international transactions of providing advisory services and capital market transactions with its AEs.
- The assessee had adopted TNM method by using net cost plus mark-up as the profit level indicator (PLI) and for benchmarking the ALP, the assessee had taken 11 comparables with arithmetic mean of 28.24 per cent.
- The TPO has rejected the two comparables and added five more comparables and the average operating margin of this finally selected 14 comparables was at 47.03 per cent. Accordingly, he made TP adjustment at Rs. 4.5 crore.
- The DRP rejected the objections raised by the assessee.
- On appeal, before the Tribunal the assessee raised an additional ground and submitted that as the associated enterprises are independent of the other joint venture, therefore, the transactions should be regarded as carried out under uncontrolled conditions and hence at arm's length.

Held

- On perusal of the additional grounds it was found that the issue raised therein goes to the very root of the issue as to whether under these facts any adjustment on account of ALP is at all called for or not. This issue has also been raised by the assessee before the DRP in its objection which has not been dealt with by the DRP. Therefore, the additional ground raised is admitted and in the interest of justice the issue is restored back to the file of the DRP to adjudicate this issue afresh and in accordance with law after giving due and effective opportunity of hearing to the assessee.