

## **When applying CUP method international transaction can be compared with actual transaction and not with mere 'quotation'**

**Summary – The Delhi ITAT in a recent case of Noble Resources & Trading India (P.) Ltd., (the Assessee) held that CUP is most appropriate method in case of trading transactions provided uncontrolled transactions relied by assessee are really comparable and necessary data requiring adjustments, if any, is available.**

### **Facts**

- The assessee was a part of 'N' Group which offered a range of highly diversified agricultural commodity products and technical services in connection therewith.
- The assessee entered into two sets of international transactions, viz., 'Sale of traded goods' and 'Purchase of traded goods'.
- The assessee benchmarked those international transactions by using Comparable Uncontrolled Price (CUP) method as the most appropriate method. 'Sale of traded goods' comprised of export of soyabean meal, sesame seed, Iron ore and Edible Oil. 'Purchase of Trade goods' consisted of import of Edible Oil. The assessee contended that the import and export made by it were at ALP.
- In support of its contention, the assessee relied on price publications of Solvent Extractor's Association of India; Price publications of DBL Trade Corporation; and certain third party contracts.
- The TPO noted that CUP data furnished by the assessee did not contain certain relevant factors necessary for determination of ALP such as payment terms, credit period and certain parties invoicing at CIF basis whereas CUP was available at FOB.
- The TPO thus held that CUP method was not applicable and the ALP was required to be computed under Transactional Net Martin Method (TNMM). He computed the assessee's PLI of OP/Sales at (-) 5.10%. Certain comparables were chosen whose mean of OP/Sales was worked out at 3.09%. Accordingly, an addition of Rs. 7.23 crores was made towards the international transactions of sale and purchase of traded goods.
- The DRP upheld the addition proposed in the draft order.
- On appeal:

### **Held**

- The foremost point of difference between the assessee and the revenue is the application of the most appropriate method and then the selection of comparables under TNMM. Whereas the assessee adopted CUP as the most appropriate method, the revenue rejected it and insisted on the application of TNMM.
- The viewpoint canvassed by the revenue in such rejection is that the necessary details required for the application of CUP method were not forthcoming from the assessee's side. Several Benches of

the Tribunal have held that CUP is the most appropriate method in case of trading transactions provided the uncontrolled transactions relied by the assessee are really comparable and necessary data requiring adjustments, if any, is available.

- Internal CUP has been held as more appropriate than the external CUP. The net effect of this discussion is that if the assessee's similar transactions with non-associated enterprises are available then it is always better to go by such internally comparable uncontrolled transactions for benchmarking the price charged/paid from/to its associated enterprises in comparable transactions.
- At the same time, it is relevant to observe that if complete data of such comparable uncontrolled transaction is not available, then the revenue is at liberty to discard the CUP method and resort to any other suitable method.
- Adverting to the facts of the case, major transactions are of export to AE in Singapore and few transactions are of export to its AE in Indonesia. The assessee also supplied similar products to its non-AE in Singapore. Similarly, the details regarding export of sesame seed made to its AEs is available on record, for which the assessee contended that though no actual comparable uncontrolled transactions was available but the assessee could show the price actually charged by comparables.
- As regards the export of Iron ore to its AEs, the assessee tried to show that its invoices to its AE were comparable with that charged from non-AEs. In the like manner the assessee tried to show that the comparable data of non-AEs was very much available, which the authorities below have refused to look into.
- From the order passed by the DRP, it is found that there is no worthwhile discussion about the objections taken by the assessee in Form no. 35A. It can be seen from the DRP's order that it is summary of the view canvassed by the AO/TPO for making addition of Rs. 7.23 crores without properly noting or dealing with the objections raised by the assessee.
- The assessee contended that it has full details to satisfy the authorities below as regards the application of CUP method and hence the matter should be restored to the file of TPO instead of DRP, who had also failed to appreciate the contentions made before him.
- It was noted from the order of the TPO as well that though detailed submissions were filed before him, but those have not been appropriately considered while proposing the addition of Rs. 7.23 crores. Considering the entire conspectus of the case, it is held that the ends of justice would meet adequately if the impugned order is set aside and the matter is restored to the file of TPO.
- However, one does not approve, in principle, the contention of the assessee that quotations etc. or the price as per some publications could be considered for benchmarking the assessee's international transactions under the CUP method. The comparison was required to be done with the actual uncontrolled transactions and not quotations etc.
- If the assessee succeeds in providing appropriate data relevant for comparison under the CUP method, then the TPO should determine the ALP under the CUP method. If however, it turns out

that necessary details furnished by the assessee are incomplete or not relevant, then the TPO may proceed with any other appropriate method.

- In the result, the appeal of the assessee is allowed for statistical purposes.