

Incentives to subscribers for generating additional revenue is a 'selling exp.' to be excluded from AMP expenses.

Summary – The Delhi ITAT in a recent case of Amadeus India (P.) Ltd., (the Assessee) held that Revenue generated by assessee from bookings done by subscribers was major source of assessee's income from its AE and such 'Incentive' to subscribers could not be viewed as anything other than 'Selling expense' which was liable to excluded from total AMP expenses.

Facts

- The assessee was engaged in the business of providing data processing and related services to its Associated Enterprises (AEs). It was responsible for providing software access to the 'Subscribers' of the 'A' products and computer database within the Indian sub-continent. The main activity of the assessee was to provide connectivity to host system by creation/modification/up-gradation of computer programmes online. The assessee had a data processing centre which provided services to its A.Es through subscribers (mostly travel agents).
- The assessee reported international transactions towards receipts and payments for services provided/received. The revenue generated from bookings done by the subscribers was the major source of assessee's income from its AE. In the computation of total income, the assessee, claimed deduction inter alia, designated as 'Selling expenses'. The largest constituent of such 'Selling expenses' was a sum with the nomenclature of 'Incentive'.
- The TPO initially proposed adjustment on account of AMP expenses. Pursuant to the Direction given by the Dispute Resolution Panel (DRP), the amount of such adjustment was reduced by the TPO. It was this amount of which the Assessing Officer made addition. The assessee was aggrieved against this addition on account of transfer pricing adjustment.
- On appeal:

Held

- From order of TPO it was found that the assessee stated that a sum of Rs. 54.75 crore was incurred on 'Incentive' which was passed on to the subscribers. The nature of this incentive has not been disputed by the TPO or for that matter by the DRP. The TPO himself observed that; 'The nature and purpose of providing incentive to subscribers is to generate more revenue from Amadeus Global'. The nature of this incentive has also been discussed by the DRP in its order by observing that it was towards incentive to travel agents. In the light of the above facts, the position which emerges is that the assessee paid a sum of Rs. 54.75 crore to the subscribers who actually got made bookings for their customers through the network of 'A' group. But for the payment of such incentive, the subscribers had no interest in dealing with the assessee. As the revenue generated from bookings done by the subscribers is the major source of the assessee's income from its A.E, such 'Incentive' to

the subscribers cannot be viewed as anything other than 'Selling expense' which is liable to be excluded from the total AMP expenses as per the decision given by the special bench in *LG Electronics India (P.) Ltd. v. Asstt. CIT* [2013] 140 ITD 41/29 taxmann.com 300 (Delhi)(SB).

- It was further noticed that the facts and circumstances of the instant case are more or less similar to those in the case of *Whirlpool India (P.) Ltd. v. Dy. CIT* (IT Appeal No. 426 (Delhi) of 2013, dated 13-1-2014 wherein it has been held that the discount and incentive passed by the assessee to its dealers and distributors on effecting the sales was required to be excluded from the total AMP expenses for the purposes of determination of ALP in respect of AMP expenses. Thus, it was held that incentive amounting to Rs. 54.75 crores should be deducted from total AMP expenses of Rs. 58.66 crores and the remaining amount of Rs. 3.91 crores should be considered by the Assessing Officer for a fresh determination of its ALP as per the guidelines laid down in *LG Electronics India (P.) Ltd. (supra)*.
- Further, the contentions raised by assessee in the present appeal that there is no 'transaction' on account of AMP expenses and if it is a 'transaction', then it is not an 'international transaction', stand rejected in the light of the mandate of the special bench order. The further contention about the application of 'Bright Line Test' as a method for determining the ALP is also misconceived which is hereby repelled in view of the decision in *LG Electronics India (P.) Ltd. (supra)*. Respectfully following the special bench decision, the impugned order was set aside and matter was remitted back to the file of Assessing Officer/TPO with a direction to redo the determination of TP adjustment, if any, on account of AMP expenses by considering the relevant factors as noted in such order.
- In the result, the appeal of the assessee is partly allowed.