

Assessee offering marketing and support services to AEs to be held as service provider and not distributor by TPO

Summary – The Pune ITAT in a recent case of Haworth (India) (P.) Ltd., (the Assessee) held that where assessee provided marketing and installation support services to its associated enterprises it was held to be a service provider and not a distributor.

Facts

- The assessee-company, a 100 per cent subsidiary of 'H', a leading furniture manufacturer in USA, was incorporated to provide marketing and installation support services to its associated enterprises in Thailand and Singapore.
- In order to benchmark its international transactions with the associated enterprises, assessee selected the Transactional Net Margin (TNM) method as the most appropriate method in its Transfer Pricing Study. The Profit Level Indicator (i.e. PLI) was computed with reference to Operating profits /Total costs and since the PLI of the assessee was 30.32 per cent and the average of PLIs of the comparable cases selected was 2.32 per cent, international transactions of the assessee with its associated enterprises on account of Provision of marketing and installation services was considered at an arm's length price.
- The Transfer Pricing Officer (TPO) disagreed with the assessee and according to the TPO, assessee was acting as a full-fledged distributor of 'H' products in India and therefore the correct transfer pricing approach would be to examine the international transactions from the perspective of an independent distributor and not from the stand point of a service provider. The said stand of the TPO was in line with similar stand taken by the revenue for the immediately preceding assessment year 2004-05.
- The TPO changed the PLI from Operating profits/ Total costs taken by the assessee to Operating profit/ Sales. The TPO also chose 5 comparables out of 8 selected by the assessee in its Transfer Pricing Study and accordingly, the arm's length price of the international transactions was arrived at by making an upward adjustment of Rs.11.28 crores.
- On appeal, the Commissioner (Appeals) deleted the same following his own order for the assessment year 2004-05 in the assessee's own case on identical issue. He held that the characterization of the assessee as a service provider was justified and accordingly the stand of the TPO was negated. The action of the TPO in changing the PLI from Operating Profits/ Total cost to Operating Profit/ sales was also negated having regard to the nature of assessee's international transactions being that of a service provider.
- On further appeal by revenue to the Tribunal:

Held

- The dispute in relation to the arm's length price of the international transactions of Provision of marketing support services to the associated enterprises stands on similar footing as in the preceding assessment year 2004-05. Since the Tribunal had considered a similar dispute in the assessee's own case for assessment year 2004-05 *vide* its order dated 27-2-2013 the aforesaid appeal is accordingly decided in the same light.
- Thus, following the order of the Tribunal dated 27-2-2013 whereby the similar findings of the Commissioner (Appeals) have been affirmed, in this year also the order of the Commissioner (Appeals) was to be confirmed.
- In the result, the appeal of the Revenue is dismissed.