

ITAT lays down litmus test to determine 'closely linked' transactions for TP purposes and for their clubbing

Summary – The Mumbai ITAT in a recent case of Boskalis International Dredging International CV., (the Assessee) held that when the transactions are influenced by each other, particularly in determining the price/profit involved in the transactions then those transactions would be regarded as 'closely linked' transactions. Transactions of hiring of equipment to be used for execution of a project to be clubbed only to the extent of number of transactions with each AE.

Facts

- (a) The assessee, a Dutch based firm, entered into dredging contract with Indian Oil Corporation. It had international transactions with its AEs (in respect of hiring of vessels/equipments on leasing basis) for purposes of execution of contract.
- (b) The assessee had clubbed various leasing transactions with AEs for purpose of determining the ALP. The TPO rejected the claim of assessee on the ground that all transactions were not closely linked or continuous, therefore, ALP needed to be determined on transaction-by-transaction basis.
- (c) Thus, the issue arose for consideration of Tribunal was:

"Whether the CIT(A) had erred in adopting a vessel-by-vessel approach in determining the lease rentals of vessels paid to Associated Enterprises ('AEs') without following 'class of transactions' approach (i.e., clubbing) in respect of closely linked transactions?"

The Tribunal held as under:

- (1) If a number of transactions are closely linked and are arising from continuous transactions of supply of amenity or services, they can be deemed as closely linked transactions for the purpose of Transfer Pricing in terms of Rule 10A(d);
- (2) Aggregation/clubbing of the closely linked transaction are permitted under the Income-tax Rules and Transfer Pricing guidelines of OECD also support this approach;
- (3) In order to examine whether the number of transactions are closely linked or continuous so as to aggregate then for the purpose of evaluation it is to be considered that one transaction is follow-on of the earlier transaction and then the subsequent transaction is

carried out and is dependent wholly or substantially on the earlier transaction;

- (4) Therefore, when the transactions are influenced by each other, particularly in determining the price and profit involved in the transactions then those transactions can safely be regarded as closely linked transactions;
- (4) In the instant case, the assessee had taken a number of dredging equipments from more than one AE. In the business decisions when number of transactions were entered into between two parties then it was very important to consider a portfolio approach rather than the individual transaction approach for determination of price of the transactions between the parties.
- (6) Therefore, the hiring of various equipments to be used for execution of a project could be aggregated for the purpose of determination of ALP only to the extent of number of transactions with each AE;
- (7) The transactions carried out with different AEs could not be clubbed or aggregated, because they could not be termed as closely linked so as to influence the price in aggregate or the profit of the parties arising from transactions;
- (8) Thus, the AO/TPO was to be directed to determine the ALP by aggregating the various transactions between the assessee and each AE separately and not by clubbing the transactions with all AEs.