

TPO should apply same formula to compute operating profit of assessee and its comparables, rules HC

Summary – The High Court of Allahabad in a recent case of Mirza International Ltd., (the Assessee) held that Arm's Length Price would have to be computed by treating case of assessee and comparable instances on same footing by according same treatment to export incentives

Facts

- The assessee made export sales to its AE.
- The TPO made TP adjustments to said transaction.
- The Commissioner (Appeals) observed that the TPO computed the difference of the operating margin by excluding export incentives but while evaluating the comparable instances, the export incentives were included by the TPO. In this background, the Commissioner (Appeals) observed that for making any comparison, the same parameters will have to be adopted. The Assessing Officer was directed to recompute the disallowance based on similar status and comparables either with or without export incentives.
- Said order had been affirmed by the Tribunal.
- On appeal:

Held

- The assessee has stated that as a matter of fact the order of the Commissioner (Appeals) has been duly given effect to by an order of the Assistant Commissioner. The order of the Assessing Officer notes that after the order of the Commissioner (Appeals) 30-1-2012 directing the TPO to compute the arm's length price, the TPO agreed with the opinion of the Commissioner (Appeals) and stated that the correct arm's length price would have to be computed by treating the case of the assessee and comparable instances on the same footing by according the same treatment to export incentives. Accordingly, the international transaction of the assessee was considered to reflect the arm's length price. On this basis the revised income of the assessee has been computed.
- Since the order of the Commissioner (Appeals) which was confirmed by the Tribunal has since been duly implemented 27-12-2013, this appeal cannot be entertained.