

## Manufacturer of printer's toners couldn't be a comparable for co. engaged in manufacturing of printing inks

**Summary – The Jaipur ITAT in a recent case of Sankata Inx (India) Ltd., (the Assessee) held that Manufacturer of printer's toners couldn't be a comparable for co. engaged in manufacturing of printing inks**

### Facts

- The assessee 'S' India was a wholly owned subsidiary of 'S' Japan. 'S' India was incorporated in 1994. In the year in question, the company was engaged in the manufacturing and selling printing inks and resins and had developed high quality printing inks.
- According to the Assessing Officer, during the year the assessee undertook certain international transactions with its Associated Enterprise.
- Reference under section 92CA was made to the TPO for calculating the ALP. The TPO during its T.P. analysis rejected six comparables offered by the assessee and at the same time applied new six comparables which according to the assessee were not applicable to its case.
- The Assessing Officer accepting the TPO's order issued a draft assessment order which was carried by the assessee to DRP which also confirmed the recommendations of the TPO by holding that assessee's contentions to be not acceptable.
- Consequent to DRP directions under section 144C, the Assessing Officer passed final assessment whereby TP adjustments of Rs. 1.38 crores on AE transactions were worked out.
- On appeal to Tribunal the assessee raised following objections to the comparables adopted by the TPO beyond the list of assessee's comparables:

#### ***Asahi Songwon Colours Ltd.***

- The assessee contended that this company was not available in the search results carried out by it at the time of preparation of transfer pricing documentation. The TPO has not provided any valid justification as to how this company was identified as comparable when it did not appear in the search undertaken by the assessee. The TPO has not rejected the search process or the parameters/filters utilized by the assessee in undertaking the search process.

#### ***Dynemic Products Ltd.***

- The assessee contended that this company is engaged in manufacture of dye intermediate and various types of food colours. The aim of the company is to support and train constantly food industry in the correct selection and application of colours and to explore new applications of the colours. The products of the appellant are not in the category of food colours. The assessee in the transfer pricing documentation has rejected all food colour companies.

#### ***Indian Toners & Developers Ltd.(ITDL)***

- The Tribunal in assessment year 2005-06 and Commissioner(Appeals) in assessment year 2005-06 and assessment year 2007-08 has rejected this company as a comparable to the assessee. Raw

material, manufacturing technology, market dynamics, value of the product and customers for toners are nowhere related with ink. Also, physical property of the products manufactured by the assessee and ITDL is not same as toner is a powder and ink is in liquid form. The excise tariff code for Sakata India are covered under chapter 32, whereas, ITDL products are covered under chapter 37 of the tariff under imaging products. The NIC Code (1998 and 2004 versions) for printing ink is 24223 whereas as per TPO's order ITDL is covered under 24222

**Kiri Dyes & Chemicals Ltd.**

- This company was not available in the search results carried out by the assessee at the time of preparation of transfer pricing documentation. The TPO has not provided any valid justification as to how this company was identified as comparable when it did not appear in the search undertaken by the assessee. The TPO has not rejected the search process or the parameters/filters utilized by the assessee in undertaking the search process.

**Mazda Colours Ltd.**

- The company manufactures pigments and therefore the products are comparable.

**Micro Inks Ltd.**

- The company was considered as non-comparable by the assessee for financial year 2005-06 since it had significant related party transaction during the said year. As per the related party disclosure in the notes to accounts in the annual report of the company for financial year 2005-06, it can be computed that the company had related party transactions of more than 27 per cent during financial year 2005-06 which is above the threshold (25 per cent) considered by the assessee in transfer pricing documentation.
- It was thus contended that if the comparables adopted by the TPO on his own are excluded then assessee's OP margin will be satisfactory and will fall below (+-5 per cent) safe harbour rule. Similarly, if the comparables as proposed by the assessee are included then no adjustment would be required.

**Held**

- Upon hearing the rival contentions and upon perusal of the materials available on record it is found that in *Asstt. CIT v. Sakata Inx (India) Ltd.* [\[2012\] 53 SOT 165/21 taxmann.com 37 \(JP.\)](#) the Tribunal for assessment year 2005-06 allowed relief to the assessee by holding that where comparables selected by TPO were not found appropriate, impugned adjustment made to ALP on basis of mean profit of those comparables, was to be set aside. It was held that Indian Toners & Developers Ltd. (ITDL) was not a comparable case as there was vast difference in the product manufactured by assessee and those manufactured by ITDL. The assessee manufactured printing inks whereas the comparable company manufactured toners and developers for photocopiers, laser printers and digital printers and hence was not comparable. Further the NIC code of both the companies *i.e.* ITDL and assessee company are different. The assessee company's NIC Code is 24223 whereas Indian Toners & Developers NIC Code is 24222. Therefore, taking into view the above considerations, arm's length price adopted by the TPO on international transactions were not correct.
- In view thereof and looking at the entirety of the facts and circumstances of the case, comparables 1 to 6 as applied by the TPO to the assessee's case cannot be regarded as comparables and they should be excluded from the TPO working. Similarly following the *Sakata Inx (India) (supra)* in

assessee's own case for assessment year 2005-06, all the comparables of Atul Limited and Rainbow Ink & Varnish Mfg. co. Ltd. have been accepted to be comparables to the assessee's case. Therefore, the same should be included in AL working. The Assessing Officer will work out the TP adjustment accordingly, if the adjustment results in (+5 per cent) variation then safe harbour rule of proviso to section 92C(2) will be applicable to the assessee's case. Thus the TPO will work out the AE transactions on these guidelines. Thus grounds raised by assessee are accordingly allowed.