

## Transaction of trading can't be compared with transaction of selling goods on commission basis under TP study

**Summary – The High Court of Delhi in a recent case of Sumitomo Corporation India (P.) Ltd., (the Assessee) held that indenting transaction being different from trading transactions to AEs, commission percentage from AE transactions should be benchmarked on basis of commission rate earned from non-AE transactions under 'Indenting business' only**

### Facts

- The assessee was engaged in facilitating the import and export activities both directly and indirectly on behalf of various customers - domestic and overseas. It had two distinct business segments, *i.e.*, commission business derived on FOB value sold/purchased by the customers, and trading activities undertaken by it.
- TPO did not accept the assessee's report clubbing both the transactions for the purpose of ALP determination. TPO determined the ALP in respect of indenting business by applying profit percentage earned by the assessee from non-AE transactions under the 'Trading business segment'.
- On appeal, the Tribunal held that 'indenting transactions' were different from 'Trading transactions' in terms of functional differences, risks undertaken and assets employed and, hence, both could not be considered as uniform and that the commission earned by the assessee from its AEs under the 'Indenting segment' was required to be benchmarked on the basis of commission earned by the assessee from non-AEs under 'Indenting segment' only.
- On appeal :

### Held

- Having clubbed the transactions for the purpose of ALP determination whether the TPO/Assessing Officer could have refused to follow the logic and consider the comparable profits from non-AE transactions in both segments is issue for consideration. All that the Tribunal did was to cure this defect or anomaly and direct the Assessing Officer to consider the margin of commission in each segment while determining the ALP. At the same time, it is clarified that the Assessing Officer - who is now directed to carry out the exercise shall do so by applying principles in rule 10(B) of the Income Tax Rules.