

No disallowance of royalty paid to AE for export of goods by holding that assessee was contract manufacturer

Summary – The Delhi ITAT in a recent case Honda Motorcycle & Scooter India (P.) Ltd., (the Assessee) held that In case of export commission paid by assessee to its AE, it is duty of Assessing Officer to determine whether assessee had derived any benefit from said payment and if any benefit had been derived, only thereupon TPO had to examine whether such payment was commensurate to comparable transaction

Where assessee-company paid certain amount as royalty to its AE in respect of export, TPO could not disallow said payment holding that assessee was a contract manufacturer and benefit of producing components was reaped by AE

Facts - I

- The assessee-company was engaged in manufacturing of two-wheelers by obtaining technology from 'H' Ltd., Japan. It entered into various international transactions with its AE.
- On a reference made by the Assessing Officer, the Transfer Pricing Officer (TPO) held that no service was rendered by the AE to earn export commission and determined the ALP of this international transaction at 'Nil'.
- On appeal :

Held - I

- It was found that similar issues were raised in appeal by the assessee for the assessment year 2008-09, in which the question of determination of ALP in respect of export commission has been restored to the file of Assessing Officer/TPO with certain directions and the payment of royalty for exports to AE has been accepted at arm's length price. No distinguishing feature has been brought to notice in the facts of the instant year *vis-à-vis* those of the above referred assessment year 2008-09. By adopting the same reasons for the year under consideration as well the issue of international transaction of payment of 'export commission' was to be to the file of Assessing Officer/TPO for a fresh determination.

Facts – II

- The assessee-company entered into various international transactions with its AE.
- It paid certain amount as royalty to its AE in respect of export.

- The TPO disallowed said payment of royalty primarily for reason that assessee was a contract manufacturer and benefit of producing components was reaped by AE and held that payment of royalty did not conform to arm's length principle
- On appeal :

Held - II

- It was found that similar issues were raised in appeal by the assessee for the assessment year 2008-09, in which the payment of royalty for exports to AE has been accepted at arm's length price. No distinguishing feature has been brought to notice in the facts of the instant year *vis-à-vis* assessment year 2008-09. By adopting the same reasons for the year under consideration the addition on account of payment of 'royalty' in respect of exports made to the AEs was deleted.