

## No incurrance of exp. on services provided by assessee proved that it had outsourced services to AE; No. TP adjustment

**Summary – The Jaipur ITAT in a recent case of Gillette India Ltd., (the Assessee) held that where assessee was not incurring any expenditure in respect of services claimed to be received from AE, assessee's claim that it was outsourcing services was acceptable and no transfer pricing adjustment was called for**

**Advertisement payment made to resident company is covered under section 194C and not section 195C**

### Facts - I

- The assessee was a public limited listed company engaged in the business of manufacturing and distribution of products for personal care and use including blades, razors, shaving preparations, oral care products, hair epilating devices, electric shavers and other appliances.
- 75.90 per cent shares of assessee were held by the P&G US and its subsidiaries. Out of these 41.02 per cent shares were held by P& G India Holding BV, Netherlands. The balance capital was held by institutional investors and the public.
- During the relevant assessment year the assessee entered into international transactions with its Associated Enterprises (AEs) in the nature of Import of raw material (stores and spares), import and export of finished goods, business services received, *etc.* Hence, the Assessing Officer made a reference to the TPO to determine the ALP of the international transaction entered by the assessee with its AEs.
- TPO accepted the ALP of all international transactions except the payment towards business services received and reimbursement of advertisement expenses from the AE, and proposed adjustment of Rs. 2.56 crores, which were upheld by the DRP.
- On appeal by assessee to the Tribunal:

### Held – I

#### *Payments towards business services received*

- It has not been disputed that assessee did neither employ the requisite manpower nor incur expenditure for services which are outsourced from AE. TPO did not visualise that without such employment and expenditure how assessee's business can be operated. This itself proves that outsourced services were actually rendered and paid for. It is wrongly observed that AE was in no position to provide any support service to India, as the knowledge of local conditions can lie with assessee and not the AE. If this is theoretically believed, then BPO/KPO would not have found place

in India or Philippines or anywhere else in the world. Even the tax department in India has outsourced number of its activities including PAN allocation to NSDL and UTI.

- The services availed are intra-group services in the nature of Accounting and Financial Reporting Services, Employee services *etc.* These are routinely outsourced by number of companies in India and other countries because of their economic and commercial needs and availing of Intra group services are recognized by global business practices and OECD Guidelines. Thus assessee has provided all the information as referred by the TPO in his order: (i) Evidence is furnished that assessee has received the intra group services. (ii) Economic and commercial benefit derived by the assessee from these services by way of reduction in cost as compared to the last year *vis-a-vis* the increase in sales is provided. (iii) There is a mechanism in place to identify the cost incurred by the AE in providing the intra group services and basis of allocation of cost to various AE's as is evident from the documents placed at. (iv) There is no material with the Assessing Officer to hold that a comparable independent enterprise would not have paid for these services in comparable circumstances. In fact the similar services received by other group concern has been accepted by the TPO in those cases. (v) In view of above the ALP of the business services determined by the Assessing Officer on the basis of TPO report by applying CUP method at Rs. NIL is unjustified and uncalled for. Hence the addition made by the Assessing Officer be deleted.

#### *Reimbursement of Advertising Expenses*

- It emerges from the record that assessee submitted following documents :-
  - (1) Business services agreement
  - (2) Detailed break-up of services rendered by Singapore & Philippines.
  - (3) Balance Sheet and Profit & Loss Account of P & G Singapore.
  - (4) Similar services were provided by the AE to other Indian P & G affiliates.
  - (5) Ledger account of the AE (P&G Singapore) and all debit notes and other support evidences.

Besides, the TPO has observed that –

- (a) The assessee is a start up company which is not correct as it was already an established company came into new regime of P & G business consolidation. Similar services have provided by the AE not only to the assessee but to various other units on a uniform business policy.
- (b) The authorities below have not controverted the fact that assessee has not claimed any other expenditure in respect of the services which are claimed to be received from AE. The business operation of the assessee cannot be carried on without these services, for which the expenditure is either to be borne by the assessee directly or the same is to be out sourced. In the absence of any self-incurring of expenditure, the assessee's claim that it is outsourcing the services finds credence. There is merit in the argument of the assessee that in assessment year 2007-08 in the case of one of the other company of P & G Group similar kind of payment of services has been accepted and amount paid also have been held to be ALP.

- Similarly in assessee's own case for assessment year 2011-12 the TPO/Assessing Officer have unhesitatingly accepted these payments and no any ALP adjustments in this behalf are made.
- Further in the case of *CIT v. Cushman and Wakefield India (P.) Ltd.* [1994] 367 ITR 730/46 [taxmann.com](http://taxmann.com) 317 (Delhi) it has been held that commercial wisdom of the assessee cannot be called into question. Therefore, the view adopted by authorities below that these services were not required by the assessee was unacceptable. Such commercial decisions are better left to the business acumen of the assessee and not decided by the Assessing Officer. On perusal of the evidence on record, revenue's own treatment of the same AE and services in associate concern for assessment year 2007-08 and assessee's own case for assessment year 2011-12, the finding of TPO and Assessing Officer that details about rendering of services were not furnished and its benefit on the assessee's business could not be ascertained was not upheld. The details of services provided are mentioned as cited above, besides assessee has not incurred any expenditure on its own in this behalf. It cannot be accepted that assessee will provide even the scratches of information about rendering of services which is otherwise discernible from the facts. The questioned judgment also takes in stride the fact that the quantum of benefit availed by the assessee in terms of its business yields cannot be questioned as in cases it may so happen that the services though availed does not yield into any ostensible benefit. Whereas in this case assessee has been able to demonstrate that there are ostensible benefits. Thus this proposition also fails under the domain business acumen of the assessee. Considering all the facts as narrated above and the case laws, there is no whisper by lower authorities that the ALP work provided by the assessee suffers from any infirmity. It is not proper to go for an ALP ascertainment without finding any fault with the assessee's working. The TP services provide that the Assessing Officer himself first record its objections on the merits of the working of the assessee. Without doing so, the ALP determination becomes a questionable exercise. In the entirety of facts and circumstances the TP adjustment to the ALP as furnished by the assessee is without any justification. The same is deleted.
- Apropos the issue about the reimbursement of business services, an amount of Rs. 31.01 lakhs has been disallowed as the assessee could not produce any evidence except ledger account. There is no infirmity in the orders of the lower authorities. Since assessee has failed to provide any corroborative evidence in this behalf, the adjustment of Rs. 31.01 lakhs made by the lower authorities cannot be found fault with. The same is upheld.