

A Co. can't be excluded from list of comparables merely on ground of low turnover

Summary – The Delhi ITAT in a recent case of American Express (India) (P.) Ltd., (the Assessee) held that A company cannot be excluded from list of comparables on ground of its lower turnover as quantum of turnover can be no reason for exclusion of a company, which is otherwise comparable

Facts

- The assessee-company rendered services to its group companies outside India in the nature of data management, information analysis and control activities. It followed 'cost plus' business model.
- The TPO excluded certain companies from the assessee's list of comparables and he shortlisted 8 companies and accordingly, proposed transfer pricing adjustment.
- Assessee carried matter before DRP. Taking into consideration the fresh directions given by the DRP, the Assessing Officer had finally reduced the amount of addition on account of transfer pricing adjustment.
- The grievance of the assessee was restricted in seeking exclusion of two companies, and inclusion of two companies.

Held

Comparables Nucleus Netsoft and GIS (India) Ltd.

- The assessee has not disputed the functional dissimilarity of this company. The only reason taken by the assessee in seeking its exclusion is the amalgamation of another company with it during the year. This fact is borne out from the annual report of this company. It is clear from the annual report that the amalgamation took place in the year in question and the financial results of this company include those of the amalgamating company as well. The factor of amalgamation or merger or acquisitions, etc., has its own implications on the financial results of a company as these are abnormal financial characteristics which distort the normal profitability. In view of the fact that there was a merger by way of amalgamation during the year itself, Nucleus Netsoft and GIS (India) Ltd. cannot be considered as comparable due to this extraordinary financial event. Accordingly, this company should be excluded from the final set of comparables.

Comparable Vishal Information Technology Ltd.

- The annual report of this company showed that it has outsourced its manual activities. As against outsourcing costs at 65.98 per cent of this company, the assessee's outsourcing cost is roughly 8 per cent. This is an important factor which has its impact on the overall profitability of a company. Several Benches of the Tribunal across the board have unanimously held this factor to be a relevant

one in deciding the question of exclusion of a particular company from the list of comparables. In view of different business model adopted by Vishal Information Technology Ltd. (now know as Coral Hub Ltd.) *vis-a-vis* the assessee, the omission of this company from the list of comparables is ordered.

Comparables Computer Services Ltd. and Mercury Outsourcing Management Ltd.

- The quantum of turnover can be no reason for the exclusion of a company, which is otherwise comparable. The same applies with full force in the converse manner as well to a low turnover/low profit company. Therefore, a company cannot be excluded from the list of comparables on the ground of its low turnover. In principle, the inclusion of the relevant segment of these companies in the list of comparables is directed. The TPO is directed to include the operating profit/operating costs of the ITES segment of these companies in the final set of comparables, after due verification of the necessary figures for determination of their operating profit margin *etc.*