

Co. rendering agency services to its foreign Head Office had to allocate exp. on basis of GP ratio instead of turnover

Summary – The Delhi ITAT in a recent case of Corning SAS India Branch Office, Gurgaon., (the Assessee) held that In case of assessee, rendering agency and distribution services to its Head Office located abroad, allocation of expenses had to be done on basis of ratio of gross profit and not in proportion of turnover

Facts

- The assessee-company was a branch office of a French company, namely, Corning S.A. France which was a leading manufacturer of very high-grade ophthalmic and non-ophthalmic glass products in the world.
- The assessee had entered into various 'international transactions' with the head office in France in respect of distribution and agency service activities.
- In order to benchmark its international transactions, the assessee adopted TNMM.
- In transfer pricing proceedings, the TPO segregated agency service activity and distribution activity for computation of arm's length price and consequently made an upward adjustment, re-computing the arm's length price in respect of the agency activities.
- The DRP confirmed said addition.
- In appellate proceedings, the assessee disputed the allocation of expenses relating to agency service activity in proportion to the turnover by the TPO as it was inconsistent with the accepted accounting principles of matching.

Held

- It was noted that the Tribunal in the assessee's own case for the assessment year 2003-04, upheld the action of the Commissioner (Appeals) and directed the TPO to allocate common expenses in the ratio of gross profit.
- Following the decision for the assessment year 2003-04, it is held that aggregate indirect expenses common to both the functions should be done on the basis of gross margin of distribution function and commission income receipts and not on the basis of sales, as adopted by the TPO. Allocation of expenses in proportion to sales would amount to give equal weightage in terms of functions performed, assets utilized and risks assumed to both distribution function as well as agency service activity, which otherwise involves much lesser functions and utilization of assets and risk.
- In the result, the appeal filed by the assessee is allowed for statistical purpose.