

An event management co. can't be compared with a co. rendering marketing support services

Summary – The Mumbai ITAT in a recent case of RGA Services India (P.) Ltd., (the Assessee) held that In case of assessee rendering software development services and market support services to its AE, a company primarily engaged in event management, could not be accepted as valid comparable while determining ALP

Facts

- The assessee, an Indian company, was engaged in the business of providing marketing support and business support services and software development services in relation to re-insurance, underwriting and actuarial activities to its associated enterprises overseas.
- During the relevant previous year, assessee had entered into international transactions with its Associated Enterprises (A.E.) on account of provision of software development and I.T. Services and provision of business and market support services.
- In order to benchmark its international transactions, assessee adopted TNMM with operating profit to operating cost as PLI.
- The assessee short listed twenty one companies as comparables with arithmetic mean margin of 11.26 per cent. As operating margin of the assessee was shown at 12 per cent, the transactions with the AE's were considered to be at arm's length.
- The TPO noted that software development and I.T. support services segment was only 4 per cent of the total turnover of the assessee. He thus aggregated both the segments, *i.e.*, business support services and software development services by treating it as single segment and proceeded to benchmark the ALP of the international transaction independently.
- The average arithmetic mean of the comparables selected by the TPO was 19.73 per cent as against the assessee's operating margin computed at 10.21 per cent. Accordingly, the TPO made certain addition to assessee's ALP.
- The DRP directed the Assessing Officer to remove Asian Business Exhibition and Conferences Limited from the list of comparables. Since, DRP found that after removal of said comparable assessee's margin came within +/- 5 per cent of other comparables, matter relating to adjustment, if any, to assessee's ALP, was remanded back for disposal afresh.
- On revenue's appeal:

Held

- On perusal of the order passed by the TPO it is noticed that the TPO while dealing with assessee's objection with regard to selection of Asian Business Exhibition and Conferences Limited as a comparable has admitted that the nature of function performed by this company is event management. Further, on perusal of annual report of this company, it is apparent that, the main operation is organizing exhibition and events. Further, schedule 12 of the profit and loss account as

well as notes to the accounts reveals, revenue earned by the company is from sponsorship, delegates attending conferences, events and entry fees charged from visitors for visiting exhibition, sale of stall place etc.

- Thus, on overall analysis of facts and materials placed on record it is very much clear that the business models of the assessee and Asian Business Exhibition and Conferences Limited are totally different. While assessee undoubtedly is providing support services to its overseas AE's, Asian Business Exhibition and Conferences Limited is primarily and fundamentally engaged in event management. Thus, under no circumstances it can be considered as a comparable to the assessee. Therefore, for the aforesaid reasons the DRP was justified in excluding this company as a comparable.
- As far as objection of revenue that assessee itself has selected this company as a comparable, that cannot be the sole criteria to reject assessee's objection with regard to selection of a comparable. At the time of preparing T.P. study report assessee had selected some comparables by considering multiple year data and information available at the relevant time. However, if subsequently on the basis of information available in public domain it is found on the basis of functionality or some other reason a company is not at all comparable, assessee cannot be precluded from objecting to selection of the company as a comparable. In view of the aforesaid no infirmity was found in the directions of DRP in excluding Asian Business Exhibition and Conferences Limited as a comparable. The ground raised is therefore dismissed.
- In the result department's appeal is dismissed.