

Foreign comparable couldn't be chosen for foreign co. rendering services to Indian AE

Summary – The Mumbai ITAT in a recent case of Tata Motors European Technical Centre Plc., (the Assessee) held that where assessee, a UK based company, having its PE in India, rendered design and engineering services to Indian AE, foreign comparables i.e. UK based comparables, could be taken into consideration while determining ALP of services so rendered

Facts

- The assessee was a Permanent Establishment ('PE') of 'TMETC-UK' incorporated in the UK and a wholly owned subsidiary of Tata Motors Ltd., India ('TML').
- It was engaged in providing automobile design engineering services to its sole customer 'T' Ltd. TML and TMETC-UK had entered into a design and engineering service agreement, for rendering services on a continuous basis to 'T' Ltd. and in this regard several employees of TMETC were sent to India.
- In its TP study, the assessee worked out its operating profit (OP/TC per cent) at 6.65 per cent. The assessee undertook a search in the Amadeus database in the European region to identify comparable and chose 5 comparable companies in the European region engaged in the rendering of design and engineering services to the automobile industry.
- Working out the three years weighted average of said comparables at 4.53 per cent, the assessee was of the view that since its margin at 6.5 per cent was greater, its international transactions were at arm's length.
- The TPO rejected the assessee's TP study as he was of the view that since the PE was an Indian establishment of a foreign company, only Indian companies were to be adopted as comparables. The TPO thus selected his own set of four companies earning mean margin of 14.72 per cent. Accordingly, the TPO made addition to assessee's ALP.
- The DRP upheld the order of TPO.
- On appeal:

Held

- The Co-ordinate Bench of the Tribunal in *Tata Motors European Technical Centre PLC v. Asstt. DIT* [[2015\] 153 ITD 73/\[2014\] 52 taxmann.com 411 \(Mum.\)](#), has accepted the contentions of the assessee that foreign comparables can be used to benchmark the assessee's international transactions in the provisioning of services.
- Following the aforesaid decision of the Co-ordinate Bench of this Tribunal for assessment years 2008-09 and 2009-10 (*supra*), it is held that the facts and circumstances of the case in the year under consideration being similar to those of the earlier assessment years 2008-09 and 2009-10, foreign comparables (*i.e.*, UK comparables) can be taken into account for carrying out FAR analysis

and benchmarking of the assessee's international transactions with its Associated Enterprises's for determining the arm's length price.

- In view of the fact that the TPO has not examined the comparability of the UK comparables chosen by the assessee, he is directed to do so and if the assessee's comparables do not stand the test of comparability, the TPO may carry out his own search for fresh comparables and select the same. With these observations, the matter of the transfer pricing adjustment of provision of services is restored to the file of the Assessing Officer/TPO.