TP adjustment set aside as footwear sold from old stock by 'Adidas' were treated to be from new stock by TPO

Summary – The Delhi ITAT in a recent case of Adidas India Marketing (P.) Ltd., (the Assessee) held that where assessee-company claimed that part of goods exported to AE were part of old stock and T.P.O. made T.P. addition treating export as of normal stock, but himself had not disputed classification of goods as old stocks, addition made was to be deleted

Facts

- The assessee-company was set up to source distribution and marketing of sportswear, sports footwear and sports equipment under the brand name 'Adidas'. AI Pvt. Ltd. provided license technology to the assessee company. As per the agreement AI was to provide exclusive non-transferable rights to manufacture, distribute and sell the licensed products in India, AI so as to compete with the assessee-company. The assessee produced two invoices to show that the goods were exported to the overseas entity (buyer) in two lots and one lot was of fresh stock and other lot contained old items.
- While determining ALP of sale of goods, the Transfer Pricing Officer had noticed that there was nothing on record to show that the articles sold to the overseas associate was old and slow moving inventory.
- The TPO opined that the assessee had not sold any old stock and the sale was simply out of the normal stock. Moreover, no mention of the same was found in any of the invoices raised on the overseas AE. In view of the same, the market value of the inventory had to be seen in economic reality. The value of stock sold by the assessee to parent company was determined at the price which the fresh stock would have fetched in realization by application of CUP method. In the light of the above observations of the TPO, the arm's length price of sale of goods was determined at the book value of the international transactions.
- The Commissioner (Appeals) deleted said addition.

Held

- The contention of the department that the assessee instead of selling old stock through AE has directly sold the same to the third party is not correct. The Commissioner (Appeals) gave finding after considering all the aspects to that effect. It is found that the said stock was part of old stock and the sale was also through the AE as well. The goods sold were exactly the same, as the goods were dispatched from the warehouse of the assessee to the ultimate buyer who was an independent entity. The time gap between the sale of the assessee and the sale of the AE are negligible because it has happened within the same month. The gross profit earned by the assessee is in India. TPO had not disputed the classification of goods as slow moving or as old stock. Therefore, the Commissioner (Appeals) has rightly held in favour of the assessee.