

## **No TP adjustment when it was held that foreign entity should have charged higher amount from Indian entities**

**Summary – The Pune ITAT in a recent case of Cummins Inc., (the Assessee) held that where assessee, a foreign company, was recipient of internet mail charges and desktop/laptop service charges from Indian entities, then in a situation where it was held that assessee should have charged higher amounts from Indian entities, same would result in reduction of overall tax base of India, and, in such circumstances, transfer pricing provisions could not be applied**

### **Facts**

- The assessee, a foreign company, provided services to the Indian entities and received charges in respect of desktop/laptop software licence and internet mail. The assessee determined the value of transactions by allocating cost based on cost estimates.
- However, the TPO adopted the actual cost incurred by the assessee in order to determine the adjustment, if any, to be made on account of international transactions.
- In appellate proceedings, assessee raised a plea that cost allocation based on cost estimates was an accepted method for the purpose of determining the arm's length price and if the actual cost allocation resulted in any erosion of overall base of India, then no adjustment was required to be made to the value of international transaction.

### **Held**

- The plea raised by assessee has to be seen from the angle that where the assessee is a foreign company and is recipient of internet mail charges and desktop/laptop service charges from Indian entities, then in cases where it was held that assessee should have charged higher amounts from Indian entities, same would result in reduction of overall tax base of India. In such circumstances, the Indian Transfer Pricing provisions are not to be applied. The DRP in assessment year 2007-08 and the Assessing Officer in assessment year 2009-10 has not made any adjustment in the hands of assessee on account of internet mail service charges and desktop/laptop service charges though identical international transactions were carried out in the later years also. In the totality of the above said facts and circumstances of the case, the AO is directed to delete the impugned addition.
- In the result, appeal of assessee is allowed.