

## Rate of royalty is at ALP if it is approved by RBI and Ministry of Industry: Mumbai ITAT

**Summary – The Mumbai ITAT in a recent case of Dow Agrosiences India (P.) Ltd., (the Assessee) held that Where royalties paid by assessee to its AE were in terms of approval granted by SIA as also in terms of Reserve Bank of India, royalties paid at rate of 8 per cent on export and 5 per cent on domestic sales were to be considered as at arm's length rate**

### Facts

- The assessee-company paid royalty to 'Dow Netherland' for receiving a non-assignable and non-exclusive licence to use the process utilizing technology at its manufacturing plant to manufacture Chloropyrifos ('CHP') and also for export of CHP and its formulations. The assessee-company paid royalty to its associated enterprise at the rate of 5 per cent on net domestic sale of CHP and 8 per cent on net export sales of CHP. The assessee adopted the Comparable Uncontrolled Price (CUP) method as the most appropriate method to benchmark its international transaction of royalty and the rate approved by the Central Government was used as a reliable CUP data.
- The TPO noted that another associated enterprise of the assessee ('Dow UK') was also paying royalty to Dow Netherlands, which was at lower rates. Based on the above, the TPO determined that the royalty paid by Dow UK was a comparable transaction and, accordingly, he determined the arm's length royalty payment at 3 per cent for domestic as well as 5 per cent for gross export sale.
- The assessee submitted that the rate of royalty payments having been approved by the Government of India, such rates constituted a valid CUP data and no further adjustment was required to be made to the stated value of the royalties paid and that rate of royalty approved by the Central Government as also by the Reserve Bank of India constituted a valid CUP data had been affirmed by the Bombay High Court in the case of *CIT v. SGS India (P.) Ltd.* [IT Appeal No. 1807 of 2013, dated 18-11-2015].

### Held

- Following the judgment of the Bombay High Court in the case of *SGS India (P.) Ltd. (supra)*, the payment of royalty by the assessee to its associated enterprise, at the rate of 5 per cent on domestic sales and 8 per cent on export sales is liable to be considered as at an arm's length rate in view of Circular No. 5 dated 21-7-2003. Therefore, the addition made by the Assessing Officer on this count is unsustainable.