

## **Margins of both on-site and off-site services could not be aggregated while computing ALP: ITAT**

**Summary – The Pune ITAT in a recent case of SAS Research & Development (India) (P.) Ltd., (the Assessee) held that where assessee-company was providing both on-site and off-site services to its associate enterprises, margins of both on-site and off-site services could not be aggregated while computing arm's length price of international transaction**

**Company providing Software development services to its associate enterprises stand on a different footing from company engaged in ITES services**

### **Facts - I**

- The assessee-company was engaged in providing software development services to SAS group entities. It was providing software development services on-site and software consultancy services off-site to its associated enterprises. The assessee in its transfer pricing report had prepared segmental profitability in respect of both these services and applied TNMM method using operating margin over operating cost as the Profit Level Indicator (PLI), in order to test the arm's length nature of its international transactions.
- The TPO rejected many of the comparable companies selected by the assessee and re-worked the arithmetic mean of margins of balance comparable companies.
- On appeal, the Commissioner (Appeals) directed the Assessing Officer to consider the aggregate margins of assessee both from onsite and offshore services while computing arm's length price of international transaction.
- On revenue's appeal:

### **Held - I**

- Similar issue of aggregation of margins of assessee from onsite and offshore services arose before the Tribunal in assessee's own case in assessment year 2004-05 and the Tribunal held that : In view of proposition that the company providing off-shore services to its associate enterprises stand on a different footing from the company rendering on-site services to its clients, then even in a case where one company itself providing both the said services, the same have to be considered separately while benchmarking the international transactions.
- Following the same parity of reasoning, this aspect of transfer pricing adjustment is remitted back to the file of Assessing Officer/TPO to adopt only the margins of software consultancy services *i.e.* offshore services in order to compute addition, if any, on account of transfer pricing adjustment. The Assessing Officer is directed to follow the directions in assessment year 2004-05 to compute the adjustment, if any, in the hands of assessee.

**Facts – II**

- The assessee was wholly owned subsidiary of SAS Institute Inc, USA and was engaged in software development and providing software development services to SAS group of companies overseas. For benchmarking the international transaction undertaken by the assessee, the assessee initially had selected certain companies while applying TNNM method which were not accepted by the TPO.
- On appeal, the Commissioner (Appeals) directed the Assessing Officer to include the margins of certain comparables selected by assessee in the final set of comparables in order to benchmark the international transaction.
- On revenue's appeal:

**Held - II**

***Goldstone Technologies Ltd.***

- It may be pointed out at the outset that the said concern was rejected by the Bangalore Bench of Tribunal in *Trilogy E-Business Software India (P.) Ltd. v. Dy. CIT* [\[2013\] 29 taxmann.com 310/140 ITD 540 \(Bang. - Trib.\)](#) while deciding the issue of benchmarking the international transaction of concern engaged in IT services relating to assessment year 2007-08. It was held in the said case, that Goldstone
- Technologies Ltd. was engaged in ITES services. The assessee has drawn a distinction that the year under appeal is assessment year 2005-06 and also pointed out that the said concern has shown income as software development. It may be pointed out that assessment year 2005-06 was initial year of transfer pricing and the law had not developed but the reporting and analyzing of transaction has undergone sea change. In the interest of justice and following the principle of *audi alteram partem*, this issue is remitted back to the file of Assessing Officer to verify whether Goldstone Technologies Ltd. is engaged in ITES services or is in software services. The High Court of Delhi in *Rampgreen Solutions (P.) Ltd. v. CIT* [\[2015\] 60 taxmann.com 355/234 Taxman 573/377 ITR 533](#) while benchmarking the international transaction has laid down the proposition that both IT and ITES work on different footing and the same are not comparable. The assessee is captive service provider and is providing services to its principal associate enterprises and is receiving markup on its services. Accordingly, the Assessing Officer is directed to decide the issue in accordance with law and the settled principles after affording reasonable opportunity of hearing to the assessee.

***VJIL Consulting Ltd.***

- The other concern VJIL Consulting Ltd., has shown an inventory and has also paid VAT on its sales. The contention of assessee in this regard is that inventory is almost same as in the last year and the inventory of consumables in computer software, where the said concern was developing software and is engaged in similar business as in the earlier years. He also contended that the said concern was selected as comparable in assessment year 2004-05 in assessee's own case. There is no merit in

the said contention of assessee as each year is an independent year. The data which was initially available in the earlier years was on a limited scale but now with the passing of years complete data is available. Since these factual aspects were not considered by the Assessing Officer/TPO while applying transfer pricing provisions, in the interest of justice, this issue of verification is remitted back to the file of Assessing Officer, who shall decide the same after verifying the functional profile of the said concern VJIL Consulting Ltd.