A company can't be excluded for low turnover when it is otherwise functionally comparable

Summary – The Mumbai ITAT in a recent case of Golawala Diamonds., (the Assessee) held that Difference in turnover is not a valid criteria to exclude a concern from list of comparable so long as it is otherwise functionally comparable

Facts

- The assessee, a partnership firm, was engaged in the business of cutting and polishing of diamonds.
- The Transfer Pricing Officer had examined the international transactions of import and export of diamonds with the associated enterprises and benchmarked the same by selecting the TNM method as the most appropriate method. The Transfer Pricing Officer selected 15 concerns, which were comparable to the assessee and determined their mean profit margin at 11.02 per cent and since assessee's margin was 6.82 per cent, he determined an adjustment which according to him was required to be made in order to compute the arm's length price of the international transactions.
- DRP had passed an order giving certain directions to the Assessing Officer in order to finalize the assessment. One of the directions given the DRP was to the effect that a comparable named Anshuni was not included in the final set of comparables by the Transfer Pricing Officer, and the same be included as a comparable.

Held

- The contention of the revenue seeking to reverse the finding of the DRP to include Anshuni in the final set of comparable is misconceived. In this context, it is notable from the relevant discussion by the DRP that the said concern has been directed to be included on the ground that it is functionally comparable with the assessee. In fact, the Transfer Pricing Officer had excluded it from the final set of comparables on the ground that the said concern was 'not found functionally comparable'. Thus, the objection of the Transfer Pricing Officer with regard to the functional comparability has not been accepted by the DRP, who in turn has held it to be functionally comparable. The said aspect of the controversy is not manifested in the grounds of appeal raised by the revenue, which only encompass a plea that the DRP erred in deciding that the turnover was not a valid criteria in selection of the comparables. Therefore, on this point itself, the present appeal of the revenue is unsustainable.
- Apart from establishing functional comparability with the assessee, the DRP found that the total sales of Anushni was only Rs. 79.80 lakhs, whereas that of the assessee was Rs. 33.32 crores. The DRP noted that such difference in turnover is not a valid criteria to exclude a concern from the list of comparable so long as it is otherwise functionally comparable. The revenue seeks to assail the premise of the DRP that difference in turnover cannot be regarded as a valid criteria in order to

include or exclude a concern from the final set of comparables. In other words, as per the revenue, turnover is a deciding factor in considering whether a concern is comparable or not.

- Quite clearly, economically, the relevant characteristics of a concern in any uncontrolled transaction between independent enterprises must be sufficiently comparable with the tested transactions if the two are to be placed in similar situation.
- Therefore, stand of the revenue seeking exclusion of Anshuni was untenable.