

ITAT remanded case as comparable was rejected on ground that risk adjustment wasn't allowed but same was claimed

Summary – The Chennai ITAT in a recent case of Infac India (P.) Ltd., (the Assessee) held that where assessee company did not submit evidence for service rendered by AE to it, against which payments were made, matter was to be remitted back to file of TPO for fresh considerations

Where assessee's claim of considering a comparable was rejected on ground that assessee in its TP study didn't allow any risk adjustment for itself but in fact adjustment was claimed at rate of 10 per cent, matter was to be re-examined

Facts

- The assessee incurred payments to its A.E, a sum towards the Technical Services Fees.
- The TPO after considering a part of such sum at arm's length on the basis of details of services and various documentary evidences furnished, observed that there were no specific services provided by the AE and the ALP of all services was determined to be *nil* except the service of ECB loan related work.
- The DRP after examining the main features of the 'Technical Assistance Agreement' between the assessee and its AE, held that the claim of the assessee for payment of these expenses under the head 'Technical Development and Production Support' 'Technical Marketing Support' debited in Profit and loss account as Management Service Fees' were beyond the scope of said agreement, consequently not payable and hence, could not have been paid. Hence, he rejected the assessee's claim.
- On appeal:

Held

- Similar issue came before this Tribunal in assessee's own case for the assessment year 2011-12 in IT Appeal No. 633 (Mad.) of 2016 wherein the Tribunal held that since the assessee company has not submitted the evidence for the service rendered by the parent company to the assessee company against which the payments are made to the parent company by the assessee company, the matter was to be remitted back to the file of TPO for fresh considerations.
- From the OECD guidelines 2010, it can be seen that, unless it is shown that how the adjustment would change the result of each comparable and how the same would improve the comparability and unless adequate reasons are given for such adjustments, no adjustment can be allowed to the assessee.