

Matter remanded by Tribunal as TPO rejected CUP method applied by assessee without assigning any reason

Summary – The Bengaluru ITAT in a recent case of KMG Infotech Ltd., (the Assessee) held that where assessee contended that TPO as well as DRP had not assigned any reason as to why CUP method applied by assessee was not most appropriate method in view of nature of transactions assessee-company had with its AE and prayed for re-adjudication, since department had no objection towards same, matter should be reconsidered afresh

Facts

- The assessee-company was engaged in the business of rendering software development services to its Associated Enterprises (AEs) KMG, USA and non-AEs.
- The assessee-company sought to justify the consideration received for international transactions entered into with its AEs to be at arm's length and applied CUP method.
- The TPO rejected TP study report submitted by the assessee-company and also rejected the CUP method adopted by the assessee-company. The TPO computed ALP by adopting TNMM as the most appropriate method and proceeded with different set of comparables. Applying the above filters, TPO passed order under section 92CA.
- The assessee challenged rejection of CUP method by TPO and rejection of internal comparables. The assessee-company also sought for the adjustment on account of under-capacity utilization.
- The DRP held that 6 companies were not comparable with the assessee-company on the application of upper turnover limit of Rs. 200 crores and confirmed the findings of the TPO.
- On appeal:

Held

- The assessee contended that the TPO as well as DRP had not assigned any reason as to why CUP method was not most appropriate method in the nature of transactions assessee-company had with its AE and that TPO had not considered the alternative submissions of the assessee-company that in case TNMM was adopted as the most appropriate method, same should be applied based on internal comparables rather than external comparables. Now, law is quite settled that internal comparables are more preferable to external comparables. Finally, the assessee submitted that the TPO had not considered the submissions of the assessee-company for adjustment towards unutilized capacity. The Assessing Officer also not followed directions of the DRP while passing final assessment order. In the circumstances, it was prayed that the matter may be restored back to the file of the Assessing Officer for *de novo* consideration.

- On the other hand, department had no serious objections for restoring the matter back to the file of the Assessing Officer/TPO for fresh analysis of TP study. In the circumstances, the matter is remitted back to the Assessing Officer to consider the above submissions *de novo* after affording due opportunity of being heard to the assessee-company.