

TP adjustment on royalty was valid as assessee was unable to justify aggregation of royalty with other transaction

Summary – The Bangalore ITAT in a recent case of Kaypee Electronics & Associates (P.) Ltd., (the Assessee) held that Onus always lies on assessee-company to establish justification for clubbing and aggregation of transaction of payment of royalty with other transactions

Facts

- The assessee was engaged in the business of manufacturing of Magnetic based Electronic Coils, transformers and inductors.
- The assessee-company entered into agreement with its AE Falco for manufacturing electronic components by using its technology, expertise and know-how and marketing and selling components under the brand name of Falco in India as well as abroad. In consideration of same, royalty at the rate of 8 per cent of sales was paid by the assessee to Falco.
- TPO had accepted the ALP determined by assessee under TNMM in respect of all international transactions including payment of royalty at the enterprise level, but he had made adjustment in respect of royalty payment separately.
- The assessee filed an objection before the DRP contending that the TPO was not justified in rejecting the TP study and further contended that when the TNMM had been adopted at entity level including payment of royalty, there was no need of separate benchmarking in respect of royalty payment.
- DRP confirmed said order.
- On appeal:

Held

- But in the present case, the TPO had not applied TNMM at entity level. The TP study report submitted by the assessee company had been rejected by the TPO. This action of the TPO is confirmed by the DRP. But the TPO proceeded to bench mark the transaction of the royalty payment on stand alone basis. In the process, the cost of production or other transactions are not subjected to bench marking by the TPO. Therefore the contention of the assessee that when the TNMM was applied at the entity level, there was no necessity of separate benchmarking in respect of royalty transactions, cannot be accepted. This submission made by the assessee-company is factually incorrect. On mere perusal of order of the TPO it is manifest that the TPO had picked up the transaction of royalty alone for the purpose of benchmarking. The statement made by the assessee is nothing but attempt to mislead the Court. This conduct is highly deplorable. It is a fundamental

duty of an advocate of assessee to assist the court in adjudicating the matter before the court in accordance with the law. It is highly unbecoming of counsel to mislead the court.

- Now on the issue of benchmarking the transaction of royalty the assessee chosen not to point out any fallacies in the reasoning of the TPO or of the ALP analysis in the working of the ALP adjustment. The assessee also failed to establish that the transaction royalty payment was closely linked with the other transactions carried out with AE. It is trite law that a justification should be shown for clubbing the transactions. In the absence of such justification clubbing other transactions is not possible. The onus always lies on the assessee-company to establish the justification for clubbing and aggregation of the transaction of payment of royalty with other transactions. The assessee-company had failed to discharge such onus. In the circumstances the orders of the lower authorities in this respect of ALP adjustment on payment of royalty is confirmed.