

Margin of a company having closing year other than of assessee not to be treated as comparable

Summary – The Pune ITAT in a recent case of Dover India (P.) Ltd., (the Assessee) held that Margin of a company having different closing year than assessee, wasn't comparable

Facts

- The assessee provided services in relation to designing of products manufactured by the respective associate enterprise companies. It applied TNMM method to benchmark its international transactions and the PLI applied was OP/OC which worked out to 10 per cent for the year under consideration. It selected certain comparables.
- The TPO rejected the concerns which were selected by the assessee.
- The DRP upheld the TPO's order.
- On appeal:

Held

- The Bombay High Court in *CIT v. PTC Software (I) Pvt. Ltd.* [\[2016\] 75 taxmann.com 31](#) have held that where the concern has different accounting period, then the same cannot be compared as comparable. The Bombay High Court held that provisions of section 10B(4) of the Income Tax Rules, 1962 clearly mandates that the data to be used for comparability analysis should be of the same financial year in which the international transactions were entered into by the tested party. In view thereof, it held that where a concern has different accounting period, then the margins of said concerns are not comparable. Following the same parity of reasoning, it is held that *Rolta India Ltd.* having different year closing than the assessee cannot be selected as comparable and consequently, the Assessing Officer is directed to exclude the margins of the said concern from the mean margins of comparables.
- Another issue which has been raised by the assessee with regard to design engineering services division is that while selecting the KLG Systel Ltd., the TPO has erred in not applying the segmental profits of the said concern while benchmarking the international transactions. There is merit in the plea of the assessee that the margins of the said concerns which are functionally comparable are to be selected and applied and in case any concern is engaged in various activities, then the segmental details of the activity, which is functionally comparable to the assessee are to be applied in order to work out the margins of the said concern. Accordingly, Assessing Officer is directed to re-compute the margins of KLG Systel Ltd.