

Co. rendering technical service is incomparable with assessee providing ITES Lionbridge

Summary – The Mumbai ITAT in a recent case of Lionbridge Technologies (P.) Ltd., (the Assessee) held that A company rendering technical services such as software testing, verification and validation, is incomparable to assessee engaged in design, development and export of computer software and providing Information technologies enabled services

Facts

- The assessee, a wholly owned subsidiary of LML was engaged in the business of design, development and export of the computer software and providing information technologies enabled services. It entered into international transactions with its AEs during the year under consideration.
- The TPO observed that the assessee had used TNMM as the most appropriate method and operating profit/total cost (OP/OC) as profit level indicator (PLI) for analyzing the international transactions. He further observed that the assessee had identified 18 companies as comparables, and by putting across its OP/TC of 16.66 per cent for financial year 2010-11 as against the 3 year weighted arithmetic mean OP/TC of 17.52 per cent of the aforesaid comparables, therein claimed that its ALP was within the range of 5 per cent of the transaction price. The TPO, however, being of the view that as per rule 10B(4) it was mandatory on the part of the assessee to exclusively use the current year data of the comparables, therefore, required the assessee to furnish the updated OP/TC of comparable companies using data for financial year 2010-11 only, in compliance to which the assessee furnished the arithmetic mean of the PLI of such comparables companies, which worked out at 11.54 per cent. The TPO, thus, observing that the OP/TC of the assessee at 13.60 per cent was less than OP/TC of 25.62 per cent earned by the comparable companies, therein held that the OP/TC of the ITES services rendered by the assessee was outside the 5 per cent range available under the regulations, and, thus, the international transactions of the assessee with its AE's were not at arm's length price. The TPO, thus, on the basis of his aforesaid working therein proposed an upward adjustment.
- The DRP though accepted held the objection of the assessee as regards selection of certain companies as comparable by the TPO and directed the Assessing Officer/TPO to exclude the same from the final list of comparables, however, he did not favour with the contentions of the assessee as regards exclusion of certain other companies which were selected by the TPO as comparables. It further rejected all the other objections raised by the assessee in respect of the upward adjustment carried by the TPO.
- On appeal:

Held

ICSE -Serve Ltd.

- In the case of *Orange Business Services India Solutions (P.) Ltd. v. Dy. CIT [2016] 71 taxmann.com 206 (Delhi - Trib.)* the Tribunal observed that selected company is mainly involved in transaction processing and technology services. It carries on business of providing technology service such as software testing, verification and validation. It also developed a software such as transport management software, therefore, functionally this company is dissimilar to the assessee-company. Thus, selected company has to be excluded from the final list of comparable.

Wipro Technology Services Ltd.

- *Functionally Not Comparable:* It is found that the selected company, which is primarily engaged in providing information technology software solutions, provides diversified services comprising software related support services, primarily information technology software solutions/maintenance and technology support services, unlike the assessee which is engaged in Information technology services only.
- *Non-availability of segmental accounts:* It is found from a perusal of the 'Annual report' of this company that no segmental information is available as regards the IT software solutions/maintenance and technology infrastructure support services provided by the aforesaid company. Said company was engaged in providing software related support services, primarily information technology software solutions/maintenance and technology support services to Citigroup entities, which is considered as one segment, and, therefore, no reportable segments are available.
- *Significant related party transactions:* The coordinate bench of the Tribunal in the case of *Saxo India (P.) Ltd. v. Asstt. CIT [2016] 67 taxmann.com 155 (Delhi-Trib.)* while disposing of the appeal of the assessee before it, had excluded the selected company as a comparable on the ground that the latter had significant related party transactions pursuant to its master services agreement with the Citigroup Inc. The Tribunal observed that the holding company, i.e. Wipro Ltd. had acquired all the interests held by Citigroup Inc. in Citi Technology Services Ltd. (subsequently renamed as Wipro Technology Services Ltd.). That thereafter *Wipro Ltd. (supra)* had entered into a master service agreement with Citigroup Inc. for providing technology infrastructure services and application development services for a period of six years. Thus, it was observed by the Tribunal that income from software development support and maintenance services were earned by Wipro Technology Services Ltd., from Citi Group Inc., by means of matter service agreement entered into between Wipro Ltd., and Citi Group Inc., a third person. It was further observed by the Tribunal that Wipro technology was engaged in providing IT software solutions/maintenance and technology infrastructure support services to Citi Group entities globally, and as the services rendered by Wipro Technology to Citi Group was determined by Wipro Limited and Citigroup Inc., therefore, the

entities to whom services were rendered became deemed associate enterprises, and accordingly, the transactions of rendering of services were to be construed as deemed international transactions as per section 92B(2), and, thus, the Citi group was to be construed as an associated enterprise of Wipro Technology. Thus, the Tribunal is correct as regards substantial related party transactions in the case of the aforesaid company, as a fall out of which the same could not have been taken as a comparable as against the assessee.

- Thus, when the said company is functionally not comparable with the assessee-company; its segmental details are not available, and has substantial related party transactions, therefore, it can safely be concluded that the said company had wrongly been included by the TPO as a comparable.