

## **Firm Controlled by assessee's brother and his wife couldn't be held as associate enterprise for TP purposes**

**Summary – The High Court of Gujarat in a recent case of Veer Gems, (the Assessee) held that where assessee firm purchased rough diamonds from firm 'B', controlled by close relatives, in view of fact that clauses (i), (j) and (l) of sub-section (2) of section 92A did not apply to assessee's case, both firms could not be regarded as associated enterprises**

### **Facts**

- The assessee firm made substantial purchases of rough diamonds from firm 'B'. The partners of the firm were three brothers and their wives/son, together holding the entire partnership stake. The fourth brother along with his wife and his son controlled the entire share holding of firm 'B', the fourth brother and his son being directors of the firm.
- The revenue authorities opined that both the entities were being controlled by the same family of four brothers and their close relatives and, thus, said entities fell within the parameters of clauses (j), (k) and (m) of sub-section (2) of section 92A.
- The Tribunal examined the provisions of clauses (j), (k) and (l) of sub-section (2) of section 92A to come to the conclusion that none of those provisions would apply in the instant case and, therefore, the assessee and its supplier of rough diamonds i.e. firm 'B' were not associated enterprises.
- On revenue's appeal:

### **Held**

- Clause (i) of section 92A(2) would apply in a case where goods or articles are manufactured or transferred by one enterprise. In the present case, admittedly firm 'B' does not either manufacture or process any articles. It merely purchased rough diamonds from the international markets and supplied to the assessee. Clause (j) would apply when an enterprise is controlled by an individual. In the present case, both the enterprises are partnership firms. There is nothing to suggest that they are controlled by any individuals. Clause (l) would of course apply in a case where the enterprise is a partnership firm. However, for applicability of the said clause, there has to be an enterprise in the nature of a firm and another enterprise who holds not less than 10 per cent interest in such firms. Such facts are also not applicable in the present case. The Tribunal therefore committed no error in holding that the assessee and firm 'B' not being associate enterprises, there was no question of applying transfer pricing formula in instant case.
- In the result, revenue's appeal is dismissed.