

TPO rightly determined ALP at Nil if assessee failed to prove that he availed of management services from AE

Summary – The Bangalore ITAT in a recent case of Taegu Tec India (P.) Ltd., (the Assessee) held that where assessee failed to bring any evidence on record showing that it had availed of management services from its AE, TPO was justified in determining value of management fee paid to AE at nil

Facts

- During relevant year, the assessee entered into various international transactions with its AE. In the course of transfer pricing proceedings, the TPO opined that assessee did not derive any tangible benefit while making payment of management fee to its AE. He thus, determined the value of management fee at *nil*. Accordingly, certain addition was made to the assessee's ALP.
- The DRP confirmed the said addition.
- On appeal:

Held

- The only issue that arises for consideration in the present appeal is whether the TPO is justified in making ALP adjustment at *Nil* by holding that there was no necessity of incurring such expenditure and no benefit was derived and there was no proof of actual rendition of services. The TPO treated the transaction of payment of management fee on standalone basis. No doubt the law is quite settled now. It is beyond the powers of the Assessing Officer/TPO to question the necessity of incurring expenditure or deny the deduction on the ground that no benefit out of such expenditure was derived. The TPO/Assessing Officer cannot determine the ALP in such transaction at *Nil*.
- Therefore, the ALP of the management services fee cannot be determined at *Nil* by questioning the necessity or the benefits out of the expenditure incurred. But onus lies on the assessee to furnish the proof of actual receipt of the services from the AE. The Bombay High Court in the case of *Umakant B. Agarwal v. Dy. CIT* [\[2014\] 369 ITR 220/224 Taxman 264/46 taxmann.com 338](#) held that proof of rendition of services is a *sine qua none* for allowability of expenditure in the hands of the recipient of the services. But in the present case, it is not discernible that the assessee made any attempt to furnish the proof of receipt of the services. The assessee also filed an application for admission of this additional evidence, in terms of provisions of rule 29 of the ITAT Rules. No doubt the parties to the appeal are entitled to produce the additional evidence either on *suo moto* direction of the Tribunal on its own in terms of Rule 29 of ITAT Rules, 1964.
- Where the additional evidence is filed by the either party to the appeal, the additional evidence can be admitted by the Tribunal at its discretion only in the event that the party leading the additional evidence satisfied the Tribunal that it was prevented by sufficient cause from leading such evidence and this evidence would have material bearing on the issue which is to be decided by the Tribunal

and ends of justice demand the admission of such evidence. The Tribunal can only admit this evidence after satisfying the above conditions and passing an order to that effect.

- In the present case, the assessee had not explained as to how it was prevented from furnishing evidences before lower authorities and also how this evidence would prove conclusively that AE had rendered the services for which management fee was paid by the assessee. In the circumstances, there is no valuable reason for admission of additional evidence as it does not conclusively prove that the services were actually rendered by the AE.
- Thus, in the absence of proof of actual rendition of services on record, the TPO was justified in making the impugned ALP adjustment.
- As regards the other contention of the assessee that the transaction of management support fee should be aggregated with other transaction and be benchmarked by adopting TNMM, cannot be accepted for the simple reason that when there was no proof of actual rendition of services by AE, the very transaction is a sham transaction and in which event it cannot be said that the transaction can be bundled with other transactions.
- In the result the appeal filed by the assessee is dismissed.