

TP adjustment couldn't be made just because assessee had availed only certain services out of bunch of services

Summary – The Mumbai ITAT in a recent case of Dimension Data India (P.) Ltd., (the Assessee) held that TP adjustment cannot be made if an assessee avails only certain services out of bunch of services mentioned in an agreement specially when TPO does not doubt arm's length price of availed services

Facts

- The assessee-company was part of the dimension Data Group and was a subsidiary of company (Dimension Data Asia Pacific). The Group was a dealer for CISCO Networking Product. As per the agreement entered into between the assessee and its AE, the assessee was to be rendered services by its AE, under ten different heads, but during the year, the assessee had not availed services under the heads (i) Corporate communication & brand management services, (ii) Human resources services and (iii) Sales and marketing services though as per the agreement, the assessee was entitled to avail all the services. It paid management fee to its AE.
- The TPO had held that payments made by the assessee under the head Finance and specific support services, Information technology services and Strategy execution and business development services were at arm's length, but he had suggested adjustment with regard to three heads, namely, Corporate communication & brand management services, (ii) Human resources services and (iii) Sales and marketing services on ground that the assessee had not provided details called for by the TPO, and had not explained as to how the services were charged.
- The DRP upheld said order.
- On appeal:

Held

- While deciding the ALP of umbrella of services what has to considered is the right of assessee that it is entitled to avail. If it avails only a few services out of the bouquet of services the TPO should not reject the TP study of the assessee on the ground that it did not avail all the services or the majority of services as mentioned in the agreement. Availing selected services from a composite agreement is sufficient for claiming the deduction. For rejecting the TP study of the assessee the TPO should prove that price shown by the assessee from the services availed was not at arm's length. Non-availing of services cannot be the basis for rejecting the claim. These are two different things and are fundamentally separate. In the case under consideration the TPO or the DRP had not stated that payment made by the assessee to its AE were not at Arm's length. Therefore, TP adjustment cannot be made if an assessee avails only certain services out of the bunch of services mentioned in an agreement specially when TPO does not doubt arm's length price of availed services.