No additions if it was assessee's business decision to share employee cost with sister concerns on cost-to-cost basis

Summary – The Hyderabad ITAT in a recent case of United States Pharmacopeia India (P.) Ltd., (the Assessee) held that where it was business decision of assessee to share employee cost with other sister concerns on cost to cost basis, addition of markup was not warranted as it is normal practice in multinational companies to utilize expertise of various executives in group companies

Facts

- The assessee USP India was engaged in research and analytical testing of pharmacopeia and other related processes.
- During relevant year an employee SS of USP LLC was transferred to the rolls of USP India in June 2010 as a whole time Director. SS had oversight responsibility for scientific business and infrastructure operations of certain USP affiliates (USP China and USP Brazil) while he was employed in USP LLC., SS continued oversight responsibility of these affiliates from USP India. His responsibilities include overseeing the construction process, involvement in staff recruitment, capital procurement, oversight of budgeting, establishing and maintaining relations with key stakeholders etc. USP India recharged the apportioned salary and other direct expenses of SS incurred by USP India to respective USP affiliates on a cost to cost basis.
- The TPO suggested that 10 per cent mark up should be applied as these expenses incurred by the assessee and subsequently reimbursed by AEs were to be added to the operating revenues as well as the operating cost for the purpose of aggregation of transactions and determining arm's length price under TNMM.
- On appeal, the Commissioner (Appeals) upheld the order of the TPO/Assessing Officer by observing that the receipt of reimbursement had not been routed through books of account.
- On appeal to the Tribunal:

Held

- SS, an employee of USP LLC was transferred to the rolls of USP India in June, 2010 as a whole time Director. SS had oversight responsibility for scientific business and infrastructure operations of certain USP affiliates (USP China and USP Brazil) while he was employed in USP India. His responsibilities include overseeing the construction process, involvement in staff recruitment, capital procurement, oversight of budgeting, establishing and maintaining relations with key stakeholders etc. USP India recharged the apportioned salary and other direct expenses of SS incurred by USP India to respective USP affiliates on a cost to cost basis.
- The TPO has suggested that 10 per cent mark up should be applied. The same was upheld by the Commissioner (Appeals) by observing that the receipt of reimbursement has not been routed

through books of account. Since the Commissioner (Appeals) has found that the transaction was not routed through the books, the matter is to be remitted back to the file of the Assessing Officer with a direction to verify the transaction. In case, the transactions are not routed through the books, the action of TPO may be sustained. Otherwise, it is normal practice in the multinational companies to utilize the expertise of the various executives in the group companies. In this case, SS was employed in USP India and his expertise in the management of construction, recruitment, capital procurements, budgeting etc., were utilized by the other sister concerns. Certain portion of his CTC was charged to the other sister concerns. The concept of utilizing the expertise with other independent companies are not heard of in the market nor encouraged in the normal business. Since there are no comparable cases in the market, and also it is the business decision of the assessee to share the employee cost with other sister concerns on cost to cost basis. Accordingly, the addition of markup should be deleted. For the limited purpose of verification of transaction whether the transactions are routed through books, it is remitted to the Assessing Officer. Accordingly, this ground is allowed for statistical purposes.