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Provision written off to be considered as part of operating income for TP purpose

Summary – The Pune ITAT in a recent case of Suessen Asia (P.) Ltd., (the Assessee) held that Provision written off is to be considered as part of operating income

Facts

- The assessee was a subsidiary of German company. It was engaged in manufacturing of Textile spinning machines, parts, components and rendered post-sales service support of these products in India and abroad.
- The assessee had undertaken various international transactions with it's AE's. The TPO noticed that an amount (being the amount written back of deferred credit and import payments pursuant to waiver received from respective companies) was credited by the assessee and was considered as part of operating income observed that aforesaid amount of write back was only an accounting entry and had no relation with the operation of the company for the year under consideration. He thereafter excluded it for working out the margin of the assessee and after considering the margins of the comparables, worked out the operating margin of the assessee at 14.36 per cent.
- The DRP after considering the submissions of the assessee upheld the order of Assessing Officer.
- On appeal:

Held

- The Tribunal in the case of *Sony India (P.) Ltd.* v. *Dy. CIT*[2008] 114 ITD 448 held that the provisions written back as not forming part of operating profit of the taxpayer.
- By placing reliance on said decision it is held that the amounts of write back of Rs. 37.49 crores which is on account of amount written back of expenses/liabilities is to be considered as part of operating income. The assessee also submitted that if the write back amount of Rs. 37.49 crores is included as operating income, the operating margin would work out to 42.94 per cent as against the operating margin of 14.36 per cent of the comparable companies and, therefore, the transactions of the assessee with it's AE's would be at arm's length requiring no adjustment to the income. On this issue there is no finding of the TPO. Therefore for the limited purpose of verifying the aforesaid contention of assessee the issue is remitted to the file of the TPO. If the contention of the assessee that the operating margin is comparable with that of comparable companies is found correct, no adjustment to ALP transaction is required.