

## ITAT quashed AO's order as ALP of royalty paid for use of brand couldn't be determined as NIL

**Summary – The Delhi ITAT in a recent case of Asahi India Glass Ltd., (the Assessee) held that where AO determined ALP of royalty paid by assessee to its AE for using its reputation and brandname at nil on ground that assessee was a mere contract manufacturer for AE, in view of fact that import of raw materials and sale of finished goods to AE were negligible in total turnover of assessee, impugned order passed by AO deserved to be set aside**

### Facts

- The assessee-company was engaged in manufacturing of high quality automotive glass for the Indian automobile industry. It entered into agreement with its AE for purchase of raw materials and supply of finished goods. The assessee also paid royalty to its AE for use of its trade name having great recognition in market.
- In course of assessment, the Assessing Officer opined that assessee was a contract manufacturer for the limited purposes of exports made to its AE's where the technology was taken from the AE's the raw material was purchased from the AE's the goods were also sold to its AE's and on such goods sold to its AE's royalty was also paid to the AE's. In such circumstances, the Assessing Officer concluded that the transaction was not at arm's length. As a result of this the payment of royalty for exports to AE's was held to be 'nil'.
- The Commissioner (Appeals) however, taking a view that assessee was not a contract manufacturer of its AE, deleted disallowance made by Assessing Officer.
- On revenue's appeal:

### Held

- The sole reason which prevailed with the TPO to hold that the assessee was a contract manufacturer was that since the assessee had paid royalty to its AE where the assessee's business model showed that the purchases were made only from the AE, the products were also exported to AE, the royalty was thus paid for exports made to the AE. In the circumstances, it was disallowed taking the assessee to be a contract manufacturer.
- On facts as it transpired, the inferences of the TPO were not correct. The Commissioner (Appeals) appraising the facts noted that there were negligible purchases of raw material from the AE and the total sales to its AE were also negligible.
- In the facts of the present case, it has not been disputed by the revenue that the total export sales of the assessee to the AE was only 5 per cent of its total sales and the assessee conducts sales to some OEM outside India through the AE to utilize its capacity. Some of these companies are Ford, General Motors, etc. for their production facilities outside India and since the AE of the assessee is a global leader in automotive glass segment, the assessee took advantage of the AE's reputation and

business base 'to have exports on good commercial and price terms with secured payment from the AE for better logistic and best payment through the AE'. In the facts of the present case, the goods produced by the assessee are directly supplied to the OEMs and in the circumstances, out of the total consumption of raw material consumed by the assessee which, it has been noticed, is less than 20 per cent procured from the AE and import of stores and spares from the AE is also 10 per cent of the total consumption. The allegation of the TPO that the assessee has purchased raw material from the AE and is exporting again to the AE in the facts of the present case is misplaced. At the cost of reiteration, the export to the AE was only 5 per cent and royalty paid on sales to the extent of 94 per cent was for sales to non-AE and only 6 per cent sale to the AE. The inferences drawn by the TPO, it is found, were *de hors* facts.

- It is also being claimed on behalf of the assessee that the export turnover of the assessee over the years has been reducing and most of the years, sales made to the AE is less than 2 per cent. Be that as it may, in the facts of the present case, where admittedly from the turnover of Rs. 1,300 crores, the export sales is only Rs. 65 crores and noting the fact that the assessee is domestically selling its product to Maruti Udyog Ltd., Honda Motors, Hyundai, Toyota, Mitsubishi, VoxWagon, General Motors, Skoda and Tata Motors, the appeal of the revenue on facts has to be dismissed.
- In the result, the appeal of the revenue is dismissed.