

## **Revisional order justified as reference to TPO was mandatory in scrutiny cases selected on TP risk parameters**

**Summary – The Mumbai ITAT in a recent case of Varian Medical Systems International India (P.) Ltd., (the Assessee) held that where assessee's case was selected for scrutiny on transfer pricing risk parameter, same fell under para 3.2 of circular dated 10-3-2016 which required reference to TPO by Assessing Officer mandatorily**

### **Facts**

- During relevant year, assessee entered into various international transactions and its case was selected for scrutiny.
- The Commissioner took a view that issue before the Assessing Officer required reference to TPO, which the Assessing Officer failed to do.
- He thus relying upon Circular No. 3 dated 10-3-2016 passed a revisional order setting aside assessment order.
- On appeal:

### **Held**

- The assessee submitted that the CBDT in the Introduction dated 10-3-2016 had provided in para 3.2 that firstly the cases which are selected for scrutiny on the basis of transfer pricing risk parameters, they have to be referred to the TPO by the Assessing Officer mandatorily. Para 3.3 of the above Circular mentions that the cases which are selected for scrutiny on non transfer pricing risk parameters but also have international transaction or specified domestic transactions shall be referred to the TPO only in a certain circumstances as mentioned above. The grievance of the assessee is that the Principal Commissioner has not specified as to in which of the clause of the said Instruction the assessee's case is falling into. From a reading of the principal Commissioner's order, it is apparent that he has mentioned para 3.2 of the Circular. Hence, the grievance of the assessee is not at all relevant.
- From the record it is evident that the assessee's case was selected for scrutiny for issues which also involve large international transaction (Form 3 CEB) which fall under the transfer pricing risk parameters. Thus, it is simply clear that the case was selected for scrutiny on transfer pricing risk parameters as well as non transfer pricing risk parameters. By no stretch of imagination, it can be said that the case was selected for scrutiny on non transfer pricing risk parameters only. Once it was evident that assessee's case was selected for scrutiny on the transfer pricing risk parameter, same

fell under para 3.2 of circular dated 10-3-2016 which required reference to the TPO by the Assessing Officer mandatorily. There is no exception in this regard.

- Hence, the assessee's grievance that the Commissioner (Appeals) has not specified as to whether the case is falling under para 3.2 and 3.3 of the CBDT Circular is clearly not sustainable. It is amply clear that the case was falling under para 3.2 above and reference to the TPO was mandatory. It is settled law that the CBDT Circulars are binding on revenue authorities. The assessee's contention that in earlier years the matter was referred to the TPO, no transfer pricing adjustment was made, cannot at all be an excuse for the Assessing Officer for not referring the matter to the TPO. As already explained hereinabove there is no discretion to the Assessing Officer in this regard. Once it is so held the assessment order passed is clearly erroneous so as to be prejudicial to the interest of the revenue.
- In the background of the aforesaid discussion, in light of the CBDT Circular above, it was incumbent upon the Assessing Officer to refer the transfer pricing matter to the TPO. The Assessing Officer having failed to do so, the case admittedly falls under the jurisdiction of the Principal Commissioner as an order by the Assessing Officer which is erroneous so as to be prejudicial to the interest of the revenue. In the background of the aforesaid discussion, the order passed by the Principal Commissioner is upheld.
- In the result, the assessee's appeal stands dismissed.