

TPO cannot question justification for purchase of Know-how - he can only determine ALP of the purchase

Summary – The High Court of Bombay in a recent case of SI Group-India Ltd., (the Assessee) held that TPO cannot question justification for purchase of Know-how - he can only determine ALP of the purchase

Facts

- The assessee had made purchase of raw material from associated enterprise, agreeing to pay 2 per cent of the net sale amount by way of royalty.
- On this transaction coming up for consideration before the TPO, the TPO made adjustments primarily on the ground that the assessee had not derived any specific benefits out of such technology nor the assessee had received any incremental benefits on account of payment of such royalty amount.
- On appeal, the Commissioner (Appeals) held that the TPO could not have judged the justification for purchase of the know-how. In the appellate proceedings the assessee had established that such purchase was at Arm's Length Price by producing instances of similar purchases by unrelated parties. The Commissioner (Appeals) accepted the same after calling for remand report and deleted the addition.
- On further appeal, the Tribunal confirmed the view of the Commissioner (Appeals) .
- On appeal to the High Court:

Held

- The HC held that there is no error in view of the Tribunal confirming the decision of the Commissioner (Appeals). The Transfer Pricing Officer could have applied any of the specified methods for determining Arm's Length Price of the transaction, in case he was of the opinion that the purchase of know-how made by the assessee from the associated enterprise was not at Arm's Length. Instead of carrying out any such scientific exercise, the Transfer Pricing Officer went on to the justification of the purchase made in the context of the incremental benefit earned by the assessee out of such know-how. This is clearly not within the purview of the Transfer Pricing Officer. No question of law arises. Income Tax Appeal is dismissed.