

## **Rejection of assessee's benchmarking of royalty payment by TPO without any basis is unsustainable**

**Summary – The Mumbai ITAT in a recent case of Kellogg India (P.) Ltd., (the Assessee) held that Rejection of assessee's benchmarking of royalty payment by TPO without any basis is unsustainable**

### **Facts**

- The assessee-company was a 100% subsidiary of a US company and was engaged in the manufacturing and sale of ready-to-eat cereal products in India. During the year, the assessee entered into various international transactions with its Associated Enterprise (AE). After making a detailed analysis of the international transactions with the AE in the Transfer Pricing Study Report (TPSR), the assessee found them to be at arm's length price.
- The Transfer Pricing Officer (TPO), after examining the TPSR as well as the other materials on record, issued a show-cause notice to the assessee to explain why the Arm's Length Price (ALP) of the AMP expenditure should not be determined. In reply, the assessee stated that, since, the AMP expenditure was in respect of products manufactured and sold in India, it could not be treated as an international transaction under section 92B. However, the TPO did not find merit in the submissions made by the assessee and proceeded to determine the ALP of the AMP expenditure.
- On the assessee's appeal before the Tribunal:

### **Held**

- The ITAT observed that the Transfer Pricing Officer has agreed with the assessee that the AMP expenditure was incurred with the third parties in India, hence, same do not constitute international transaction. The Transfer Pricing Officer has however inferred that there is an arrangement between the assessee and the AE with regard to promotion of the brand of the AE by incurring AMP expenditure but has not provided any factual basis on which he has drawn such inference.
- The ITAT thus concluded that the AMP expenditure incurred by the assessee in India cannot come within the purview of the international transaction and the adjustment made by the Transfer Pricing Officer should be deleted.