

International transactions of payment of FTS to be benchmarked by applying TNMM as most appropriate method

Summary – The Mumbai ITAT in a recent case of CWT India (P.) Ltd., (the Assessee) held that International transactions of payment of FTS should be benchmarked by applying TNMM as most appropriate method

Facts

- The assessee-company entered into international transaction with its Associate Enterprises (AEs) on account of fees paid for technical services.
- The TPO benchmarked said services rendered by foreign AEs at *Nil* following Comparable Uncontrolled Price (CUP) method and suggested the upward adjustment.
- The DRP upheld the upward adjustment/addition suggested by the TPO.
- On the assessee's appeal before the Tribunal:

Held

- The ITAT held that since the AE has provided aforesaid services to the assessee, the assessee has selected it as tested party. The assessee has further demonstrated that the functional analysis of the controlled transaction is in accordance with Rule 10B. The assessee has also demonstrated as to why the foreign AE should be selected as tested party in its TP study. Under these circumstances, there is merit in the contention of the assessee that the assessee has rightly selected its AE as tested party for benchmarking the transaction.
- Thus, there is no justification of rejecting TNMM method adopted by the assessee. The TPO has wrongly applied CUP method and determined the arm's length price at *Nil*.
- Considering the order of the Tribunal in appeal for assessment years 2011-12 and 2012-13 on identical grounds of appeal, the grounds of appeal raised by the assessee in the year under consideration is also to be restored to the file of Assessing Officer/TPO with the similar directions and the pass the order afresh in accordance with law.