Profit Split Method adopted without examining expenses incurred by AE vis-à-vis assessee - issue remitted back

Summary – The Chennai ITAT in a recent case of Bengal Tiger Line India (P.) Ltd., (the Assessee) held that if AO adopts Profit Split Method without examining expenses incurred by AE vis-à-vis assessee the issue should be remitted back

Facts

- The assessee rendered shipping agency services to its Singapore based Associated Enterprise (AE) by acting as a general agent for trans-shipment from/to the Indian ports. In its TP study, the assessee adopted Transactional Net Margin Method (TNMM) as Most Appropriate Method (MAM) to benchmark its international transaction.
- However, the TPO on detailed examination held, that the assessee was not only performing the functions of the general shipping agent, but was also actively participating in the operations of the feeder ship similar to that of AE and concluded that the assessee and its AE are performing similar functions. As a result, the TPO applied the profit margin of 9 per cent using Profit Split Method (PSM) and proposed that 60 per cent of the profit to be attributable to AE and 40 per cent of the profit in relation to assessee.
- The DRP while specifically acknowledging the significant additional functions/assets/risks performed/assumed by AE upheld that the profits should be spilt. However, it modified the profit split percentage in the ratio of 75:25.
- On the assessee's appeal before the Tribunal:

Held

- It is clear that the assessee did not produce financials and agreements of the AE before the TPO. Such documents were obtained by the TPO through exchange of information from Singapore and were used in the TPO order. They were subsequently produced by the assessee before the DRP and the DRP found that shipping profit of the AE were exempt from Income Tax under section 13F of Singapore Income Tax Act. The DRP also held that though the financials of the AE were produced before the DRP, the assessee did not help and could not explain various expenses debited by the AE and the net margin of AE from its India business to rebut TPO's approach of adopting net margin at the rate of 9 per cent. In these circumstances, the DRP upheld the TPO's approach in taking the profit margin at the rate of 9 per cent. The DRP was also of the opinion that the AE has performed additional functions and deployed higher assets on account of hiring of vessels and has assumed corresponding risks. In the profit split ratio adopted by the TPO, though the additional function had been factored in, the other two components *i.e.* higher assets deployed and higher risks taken by the AE are not sufficiently factored in. Accordingly, the DRP directed the Assessing Officer/TPO to adopt a profit split ratio of 75 per cent (AE) and 25 per cent(Assessee). However, from the submission of the assessee, it is clear that the expenses incurred by the AE *vis-a-vis* the assessee and all other aspects have not been properly examined but an *ad hoc* method is adopted in determining the income. Therefore, all these issues are to be remitted to the Assessing Officer/TPO for a fresh examination and due decision. The assessee shall place all the material in support of its contention before the Assessing Officer/ TPO and shall comply with his requirements in accordance with law. The Assessing Officer/ TPO is also at liberty to conduct appropriate enquiry and after affording adequate opportunity to the assessee, the Assessing Officer/ TPO shall decide the issues in accordance with law.