

A GUIDE ON HARNESSING THE CONCEPT OF IDENTICAL FACT MATRIX

The Hon'ble Mumbai Bench of the Income-tax Appellate Tribunal in one of its recent rulings¹ deleted the transfer pricing adjustment of a taxpayer following the ruling in its group company's case as a precedent.

A brief background and summary of the said ruling are as below:

- ▶ The taxpayer company had entered into an international transaction of payment of a fixed technical consultancy fee through an agreement that provided for package services to be provided by the foreign associated enterprise ('AE') to the taxpayer as and when required.
- ▶ During the transfer pricing assessment, the Income-tax authorities rejected the benchmarking done by the taxpayer company using the Transactional Net Margin Method and proceeded to apply the Comparable Uncontrolled Price method and determined the arm's length price of the said international transaction as Nil.
- ▶ The taxpayer company in its submissions submitted that such payment of technical consultancy fee was more of a retainer fee paid to the AE which would be getting revised from time to time.
- ▶ In support of the said services being received by the taxpayer company, it furnished various

documents in the form of sample e-mail communications exchanged between the taxpayer company and the AE and various officials involved in the group.

- ▶ The Hon'ble Tribunal noted that the taxpayer company has been making this payment of technical consultancy fees to its AE over the years and the very issue was the subject matter of adjudication by the same Tribunal in the taxpayer company's own case² in one of the previous years.
- ▶ In the taxpayer company's own case in one of the previous years, the transfer pricing adjustment of the payment of technical consultancy fee was deleted by the Tribunal³ by placing reliance on the order passed by the same Tribunal in the taxpayer company's group concern's case.
- ▶ Further, the matter of the taxpayer company's group concern's case was appealed by the Revenue before the Hon'ble Jurisdictional High Court and the Hon'ble Jurisdictional High Court passed an order⁴ refusing to admit the substantial question of law on the issue of facts.
- ▶ The Hon'ble Mumbai Tribunal noted that the facts prevailing in the case of group concern and facts of the taxpayer company are identical and no contrary evidence has been brought on record by the Revenue to suggest that the aforesaid ruling of

¹ [TS-55-ITAT-2023(Mum)-TP] ³ [TS-143-ITAT-2016(Mum)-TP]
² [TS-1059-ITAT-2019(Mum)-TP] ⁴ [TS-973-HC-2019(BOM)-TP]

group concern is not applicable to the facts of the taxpayer company's case. Accordingly, directed the Learned Transfer Pricing Officer to delete the TP adjustment in respect of the payment of the technical consultancy fee.

Furthermore, recently, the Hon'ble Delhi Tribunal, in the case of Daawat Foods Ltd⁵, observed that the facts in the taxpayer's case and the facts in its group concern's case as almost identical and followed the co-ordinate bench order in the case of its group company, deleted the transfer pricing adjustment made on account of receivables.

The above decisions of the Hon'ble Tribunals opened the window of opportunities for taxpayers to consider the concept of the identical factual matrix at the time of transfer pricing representations.

When a similar transaction is undertaken by the foreign AE with two or more of its Indian counterparts, while each Indian taxpayer would have otherwise had to redo the whole activity of individually furnishing a similar line of documents and information to evidence the same fact, the above judicial precedents provide a re-affirmation that when the appellate authorities have ruled once on a subject matter based on thorough court proceedings in one of the group entities, unless the facts of the case change, the said ruling can be *pari-materia* applied to other group entities.

However, one of the important points to be noted is that the mere existence of a favourable ruling in a group company's case does not allow the taxpayer to plead for following precedence, but the

taxpayer should also be able to furnish and bring to the evidence of the authorities that the facts are identical.

Some of the instances where the above ruling would assist the taxpayers in claiming the benefit of an identical factual matrix in transfer pricing matters is listed below:

- ▶ Where two or more Indian taxpayers of the same group are availing the similar shared/management services from its foreign AE and the cost allocation methodology for the management charges by the foreign AE to the subsidiaries is similar;
- ▶ Where two or more Indian taxpayers of the same group are bearing the charge of expenses such as employee stock options etc. in a similar methodology/allocation;
- ▶ Where two or more Indian taxpayers of the same group are part of a network providing integrated services along with other AEs, and the remuneration for the said services is based on the proportionate functions, assets and risks assumed by each service provider;
- ▶ Where two or more Indian taxpayers of the same group are paying a royalty for intangibles, a fee for corporate guarantee to the same foreign AE based on similar circumstances/agreement;
- ▶ Where two or more Indian taxpayers of the same group are paying interest to the same AE for a similar loan arrangement entered by the Indian taxpayers with the same AE.

Conclusion

While taxpayers having any favourable precedents of any of its domestic fellow subsidiaries would be inclined to argue that the identical factual matrix should be applied to give benefit to the taxpayer, the taxpayer should clearly keep in mind that the onus of proving the identical facts is with the taxpayer and that the taxpayer is independently able to prove the same before the authorities with the corroborative documentation.

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⁵ [TS-267-ITAT-2023(DEL)-TP]