

Govt. co. couldn't be selected as comparable for TP study

Summary – The Delhi ITAT in a recent case of International SOS Services India (P.) Ltd., (the Assessee) held that where Government undertaking cannot be considered as comparable as profit motive is not a relevant consideration in case of Government undertakings

Facts

- During the year under consideration, the assessee entered into international transaction to provide emergency assistance support services to its AE.
- The assessee had chosen 12 companies as comparables with an average margin of 7.10 per cent as against that of assessee at 7.66 per cent and claimed that its international transaction was at arm's length price.
- The TPO rejected 10 comparables from the assessee's set, and selected 5 new comparables. Thus, the TPO selected 7 comparables whose average margin was 27.63 per cent and, accordingly, he proposed certain transfer pricing adjustment.
- The DRP granted part relief by excluding two comparables selected by the TPO.
- On appeal:

Held

- Both the assessee as well as the revenue have stated that comparable companies, performing the same specified support services as that of the assessee company, could not be found, and, hence, only companies which have broad comparative functional profile of undertaking support services in other fields, could be taken as comparables. This is for the reason that the assessee is specialized in providing emergency assistance and support services to the members/clients of AE.
- It is found that Access India Advisors Ltd., provides advisory services, viz: Business advisory; management consultancy; regulatory strategy and contend development. This company was taken as the comparable company, by the assessee and was accepted by the revenue though the nature of services rendered are totally different from the nature of services rendered by the assessee company. This is because both the parties accept that the companies providing specialized support services should be adopted as a comparable company.
- Similarly, IDC (I) Limited is a company providing marketing intelligence, advisory services for the information technology, telecommunication and consumer technology markets. This company has been accepted by both parties as comparable. Hence, companies rendering specialized services, though in functionally different areas, are accepted by both parties as comparable companies.
- With this background, each of the comparable companies in dispute is to be examined.

Educational Consultant India Ltd.

- This company is a 100 per cent Government of India owned company. In the case of *ThyssenKrupp Industries India (P.) Ltd. v. Addl. CIT* [\[2013\] 33 taxmann.com 107 \(Mum.-Trib\)](#), the Co-ordinate Bench of the Mumbai Tribunal, has held that a comparable being 100 per cent. Government of India owned company should not be included in the list of comparables for the reasons that, profit motive is not a relevant consideration in case of Government undertakings. Many Government undertaking operate on losses in furtherance of social obligations of the Government. It is also a matter of common knowledge that works are allotted by the Government to P.S.U on a preferential basis or on different considerations. Following the proposition laid down by the Co-ordinate Bench of the Tribunal in the case of *ThyssenKrupp Industries India (P.) Ltd. (supra)*, the TPO is directed to exclude this company from the list of comparable companies while computing the ALP.

ICRA Management and consulting services Ltd.

- The DRP has upheld the TPO's finding that this company cannot be a comparable *inter alia* on the following grounds:
 - (a) Related party transaction exceeds 25 per cent of total revenues;
 - (b) The assessee is owning intangible asset of Rs. 3.90 crores in the form of technical know-how whereas ICRA has no intangible assets.
- The assessee submitted that the related party transaction actually does not exceed 14 per cent and, hence, the DRP is factually wrong. In any event assessee could not controvert the findings of the DRP, on the fact of ICRA not being in possession of intangible assets. When one company owns intangible assets and the other company does not own intangible assets, both cannot be compared. Thus, the order of the DRP is to be upheld.

Indian Tourism Development Corporation Ltd.

- This company is a 100 per cent Government of India owned company. In the case of *ThyssenKrupp Industries India (P.) Ltd. (supra)*, the Coordinate Bench of the Mumbai Tribunal, has held that a company being 100 per cent. Government of India owned should not be included in the list of comparables for the reasons that profit motive is not the only relevant consideration in case of Government undertakings. Many Government undertaking operate on losses in furtherance of social obligations of the Government. Educational Consultants India was directed to be excluded for the same reason.
- Following the proposition laid down by the Co-ordinate Bench of the ITAT in the case of *ThyssenKrupp Industries India (P.) Ltd. (supra)*, the TPO is directed to exclude this company from the list of comparable companies while computing the ALP.

Global Procurement Consultant Limited.

- This company should be taken as a comparable for the following reasons:
 - (a) This is not a 100 per cent. Government owned company as claimed by the assessee. Under the head 'corporate synergy' it is stated that this company is co-promoted by the Export Import Bank of India as private sector company along with a number of other private companies.
 - (b) The functional profile of this company is rendering of highly specialized procurement support services. The quality of service, the skills are comparable with the quality and skill of support services provided by the assessee, though in functionally different areas. The assessee has accepted that as comparable companies rendering services in the same field as that of the assessee company cannot be found, companies rendering support services in other fields have to be taken as comparables.
 - (c) The claim of the assessee is based on the propositions laid down in *Rampgreen Solutions (P.) Ltd. v. CIT* [2015] 60 taxmann.com 355/234 Taxman 573 (Delhi). If on such an argument, the comparable Global Procurement Consulting Limited is excluded, then all the other comparables cited by the assessee as well as the TPO have to be excluded on the same principle. This will leave with no other comparable. The assessee cannot advance contradictory arguments. As it has been accepted by both the parties that companies having a broad functional profile of rendering skilled professional support services, should be taken as comparable companies, the proposition laid down in *Rampgreen Solutions (P.) Ltd.'s* case (*supra*), cannot be applied to the facts of the case on hand. In view of the above discussion, Global Procurement Consulting Limited has rightly be taken as the comparable by the TPO.

HCCA Business Services Pvt. Ltd.

- HCCA Business Pvt. Limited is engaged in providing payroll processing services to their clients, to manage the internal pay roll operations. The company is a leading service provider in HR operations and administration.
- The claim of the assessee is that this company renders low end BPO services. This is factually incorrect. Thus, as this company is providing professional support services, on the same analogy used while choosing Access India Advisors Ltd., and IDC (I) Ltd. as comparable companies by the assessee, this company is to be included as a comparable.
- In view of above discussion, Educational Consultants (I) Pvt. Ltd., India Tourism Development Corporation Ltd., Apitco Ltd., being 100 per cent. Government organization are to be excluded as comparables. ICRA Management Consulting Services Ltd. is also to be excluded. Global Procurement Consultant Ltd. and HCCA Business Services Pvt. Ltd., are rightly included as comparable companies by the TPO.