

Only international transactions entered by assessee with its AE can be subjected to adjustment

Summary – The High Court of Bombay in a recent case of Visteon Engineering Centre (India) (P.) Ltd., (the Assessee) held that only international transactions entered by assessee with its AE can be subjected to adjustment

Facts

- During relevant year, the assessee was providing IT based engineering services to AE. In transfer pricing proceedings, TPO applied TNMM to determine the Arms Length Price (ALP) of the services rendered to its AE. For the aforesaid, the TPO had included a functionally different company as a comparable and made certain adjustment to assessee's ALP.
- The Tribunal, however, excluded this company on ground that it was functionally different.
- The revenue filed instant appeal contending that the comparable company (even if functionally different) was chosen as comparable by assessee itself, therefore, it would be bound by its selection and could not urge to the contrary.

Held

- The HC stated that Transfer Pricing Regime is not based on the premises that the tax payer's price with its AE is not the actual price. After having accepted the price declared by the assessee, it proceeds to determine the Bench Mark price of such a transaction to determine the ALP of a transaction with an AE. Thus, the entire exercise of the Transfer Pricing provision is not adversarial in that sense but an enquiry to determine a bench mark price by finding the price of an identical transaction between unrelated parties. Thus, there is no merit in the primary submission on behalf of the revenue.
- On merits of the present case, once it is noted that the comparable is not functionally similar, it should be excluded and this finding has not been shown to be perverse in any manner by the revenue.
- In the above view, the question as proposed does not give rise to any substantial question of law.