

CUP method not applicable where assessee made purchases from AEs and non-AEs with huge difference in quantities and price

Summary – The Mumbai ITAT in a recent case of SI Group India Ltd., (the Assessee) held that CUP method is not applicable where assessee made purchases from AEs and non-AEs with huge difference in quantities and price

Facts

- The assessee imported raw materials from AE as well as from third parties and was following TNMM method for benchmarking.
- The TPO noticed that assessee purchased this product from its AE at higher price than the average price at which the assessee had imported from third parties. Thus, the TPO made an adjustment.
- On appeal, the Commissioner (Appeals) upheld the adjustment made by the TPO.
- On appeal to ITAT.

Held

- The ITAT observed that during the assessment proceedings the assessee submitted that the most appropriate method for benchmarking the international transaction of the imports should be considered as TNMM as the CUP method adopted by the assessee fails. However, the TPO has not gone into this aspect at all.
- Following the above decisions, it is to be held that as the assessee made purchases from AE and non-AEs from various geographical locations with huge difference in quantities, the price at which the assessee purchased from AEs and the price at which the assessee purchased from the non-AEs cannot be compared and, thus, CUP method fails. However, since the TPO has not examined the contentions of the assessee that the most appropriate method should be TNMM method for benchmarking the international transactions this issue is to be restored to the TPO for benchmarking the transactions under TNMM method and recompute the adjustment, if any, in respect of the imports.