

Foreign AE cannot be regarded as tested party for ALP determination of transactions between assessee and its AE

Summary – The Pune ITAT in a recent case of Bekaert Industries (P.) Ltd., (the Assessee) held that Foreign AE cannot be regarded as tested party for ALP determination of transactions between assessee and its AE

Facts

- The assessee filed its return and a reference to the TPO was made by AO for determining the Arm's Length price (ALP) of the international transactions.
- The TPO, in the international transaction of Import of raw materials, did not accept the assessee's contention of adopting Foreign/Associated Enterprise as a tested party. He, therefore, selected the assessee itself as tested party to find out certain comparables on the basis of which a transfer pricing adjustment was recommended.
- The DRP also held that foreign/AEs could not legally be considered as tested party.
- The Assessing Officer, pursuant to the order of the TPO and the direction of the Dispute Resolution Panel (DRP), made the transfer pricing addition in the international transaction of Import of raw materials.
- On appeal to the Tribunal:

Held

- The ITAT held that the issue about taking the Foreign/Associated Enterprise as a tested party was already decided against the assessee in an earlier year and the assessee was fair enough to concede the position in this regard. This issue is, therefore, decided against the assessee.