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Tax alert: No TP adjustment for revenue-neutral domestic transactions

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We are pleased to share our alert on the recent ruling of the Hon'ble Mumbai Tribunal in the case of JSW Jaigarh Port Ltd., which addresses the transfer pricing implications for specified domestic transactions and reinforces the principle of consistency in the determination of arm's length pricing, where one of the transacting entities has already been accepted to be operating at arm's length.

In a nutshell

The Tribunal held that where both the service provider and service recipient are taxable entities eligible for deduction under section 80-IA, any transfer pricing adjustment in respect of operation and maintenance services would be revenue-neutral and therefore unwarranted.

The Tribunal also held that where a transaction has already been accepted as being at arm's length in the hands of the Associated Enterprise (AE) counterparty, a contrary transfer pricing adjustment in the hands of the Assessee cannot be sustained.

The ruling strengthens the principle that transfer pricing provisions should not be invoked where transactions do not create any tax advantage or revenue loss. The decision also emphasizes the need for consistency in the treatment of identical transactions involving AEs and provides relief from duplicative or contradictory transfer pricing adjustments.

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Background

- JSW Jaigarh Port Ltd. entered into specified domestic transactions with AEs during AY 2016-17.
- These transactions included receipt of operation and maintenance services from JSW Infrastructure Ltd. and sale of port services to JSW Energy Ltd.
- The TPO made corresponding adjustments to both sides of the Profit and Loss Account of the taxpayer by enhancing the costs pertaining to the O&M service transaction and reducing the revenue from the port service transaction, resulting in an aggregate transfer pricing adjustment of INR 22.94 crore.
- CIT(A) deleted both the adjustments. Aggrieved, the Revenue appealed before the Mumbai Tribunal

Decision of the Tribunal

- **Revenue neutrality and domestic transactions**

  The Tribunal observed that both entities were taxable in India and eligible for deduction under section 80-IA. If the taxpayer paid less to its AE, the AE also claimed 80IA deduction on the lower value. Therefore, it was a revenue neutral transaction. Further, the Revenue failed to demonstrate any shifting of profits or erosion of the Indian tax base.

  Relying on the Supreme Court's observations in Glaxo SmithKline Asia Pvt. Ltd., the Tribunal upheld the deletion of the adjustment relating to operation and maintenance services.

- **Mirror transaction principle**

  For the adjustment relating to sale of port services, the Tribunal noted that no transfer pricing adjustment had been made in the hands of the counterparty AE, JSW Energy Ltd.

  Relying on the Hon'ble Karnataka High Court in the case of Pr. CIT v. UE Development India (P.) Ltd., the Tribunal held that once the same transaction had been accepted as arm's length in the hands of one AE, the same has to be accepted to be at arm's length in hands of other AE as it is a mirror transactions of both Indian domestic entities. The Tribunal observed that the principle that corresponding or mirror transactions between AEs cannot ordinarily be treated differently, has consistently received judicial recognition. Once the transaction is accepted to be at arm's length in the hands of one contracting party, any contrary determination in the hands of the other party would lead to incongruous and mutually destructive outcomes.

  Accordingly, the Tribunal affirmed deletion of the TP adjustment relating to sale of port services.

Comments

The ruling is significant for taxpayers involved in specified domestic transactions, particularly where there is no possibility of tax arbitrage and the arrangement is revenue-neutral. The decision also reinforces the judicially accepted principle that corresponding transactions between AEs should receive consistent transfer pricing treatment.

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