Taxpayer considered as BPO in subsequent years, cannot be considered as KPO in earlier year for providing same services

Background
Recently, the Ahmedabad Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of SNL Financial (India) Pvt. Ltd.¹ (the taxpayer) held that there cannot be a conflict of a stand of the Revenue in different assessment years based on one agreement. In case, where at the time of analysing applicability of Safe Harbour Rules, the Transfer Pricing Officer (TPO) accepted that the activities performed by the taxpayer were low-end services and in the nature of Business Process Outsourcing (BPO), then, on the same agreement, contrary stand cannot be taken for earlier years. In case if the taxpayer is treated as a BPO, then the comparable applicable to Knowledge Process Outsourcing Service Providers (KPO) would not be relevant.

Facts of the case
- The taxpayer is engaged in the business of gathering, collating, organising, arranging, storing and transmitting all types of financial information in written, electronic or any other medium through the database, web applications, and analytical models and to act as the consultant, counselors on all matters relating to finance, trade and industry. It is a wholly owned subsidiary of a U.S. based company.
- During the Assessment Year (AY) 2009-10, the taxpayer entered into an international transaction with its Associate Enterprise (AE) in the nature of rendering of data analysis and data entry services. For the year under consideration, the TPO categorised the taxpayer as a KPO.
- For the same international transactions under the same agreement in AY 2013-14, the taxpayer exercised an option of Safe Harbour Rule. After analysing the facts and the same agreement while examining the applicability of Safe Harbour Rules, the TPO considered the taxpayer as a low-end service provider and categorised the taxpayer as a BPO.
- Objections filed by the taxpayer for AY 2009-10 with the Dispute Resolution Panel (DRP) did not bring any relief, which brought the taxpayer before the Tribunal.

Issue before the Tribunal
Whether for AY 2009-10, the taxpayer has to be categorised as a KPO or a BPO service provider?

Taxpayer’s contentions
- In AY 2013-14, the Safe Harbour Application of the taxpayer was examined by the TPO and post examination the learned TPO has considered the taxpayer as a low-end service provider i.e. a BPO. Hence, the comparable applicable to the KPO cannot be relevant, and the matter should be set aside to the file of the AO for re-adjudication.
- Reliance was placed on the ruling of the Hon’ble Delhi High Court² wherein it was held that activities of the taxpayer shall be examined and accordingly they should be classified as a KPO or a BPO.

¹ SNL Financial (India) Pvt. Ltd. v. DCIT (ITA No. 770/Ahd/2014)
² Rampgreen Solutions P. Ltd v. CIT (ITA No. 102/2015)
Tax department's contentions

- Before the DRP, the taxpayer has categorised itself as a KPO. Therefore, it cannot be pleaded that the taxpayer be treated as a BPO.
- Reliance was also placed on the orders of TPO and DRP.

Tribunal’s ruling

- Taking cognisance of Safe Harbour Rules entered by the taxpayer, the Tribunal held that if under the same agreement, the TPO had accepted the taxpayer’s contention and had categorised it as low-end service providers/BPO, then how for an earlier period, the nature of services would be different? In other words, the same agreement cannot give rise to two types of services, merely on the basis of services being provided at different times.
- The TPO in the proceedings for the purpose of Safe Harbour Rules paid a visit in the office of the taxpayer, and himself/herself collected information regarding nature of services.
- Based on above, the Tribunal held that impugned assessment order is not sustainable including that of the DRP and therefore, restore the issue back to the AO for fresh adjudication. The Tribunal specifically directed the AO to take into consideration the TPO’s order for the purpose of Safe Harbour for AY 2013-14.

Our comments

This is a welcome ruling of the Tribunal, wherein subsequent orders of tax authorities are aiding taxpayers to resolve TP disputes for the earlier years. One of the most important considerations of the Tribunal was that before issuing an order for applicability of Safe Harbour, the TPO has visited the office of the taxpayer and himself/herself collected information regarding nature of services. This evidences that during Safe Harbour and Advance Pricing proceedings when TPOs actually visit the site and see the operations, they themselves are able to appreciate the facts in the right perspective.

Similarly, in connection with Advance Pricing, recently the Delhi Tribunal in the case of Ranbaxy\(^3\) gave due weightage to the Advance Pricing Agreement (APA) signed by Ranbaxy for the subsequent year. These rulings indicate that in the current scenario, Safe Harbour, and APA proceedings are helping taxpayers not only to avoid TP disputes of subsequent years but also helping to resolve disputes of earlier years.

\(^3\) Ranbaxy Laboratories Limited v. ACIT (ITA No. 196/Del/2013)
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