



## Taxpayer to be given an opportunity to cross-examine authorised-personnel of companies, who has provided unaudited segmental data to the transfer pricing officer

The Delhi High Court, in the case of Cashedge India Private Limited<sup>1</sup> (the taxpayer), allowed its writ petition against the order passed by the transfer pricing officer (TPO). In the instant case, the TPO utilised purported segmental data of several companies, which did not form part of these companies' audited accounts, to determine the Arms' Length price (ALP) and accordingly passed an order. Aggrieved by the said order of the TPO, the taxpayer filed a writ before the High Court.

The taxpayer's grievance was that, despite seeking an opportunity to cross-examine the authorised personnel of the said companies, whose data had been relied upon by the TPO, the opportunity had not been granted to the taxpayer. Thus, the segmental data of those companies could not have been relied upon, as that would be against the principles of natural justice.

The tax department argued that since all the data was made available to the taxpayer, sufficient opportunity was granted to the taxpayer. However, it was admitted by the tax department that no opportunity of cross-examination of the authorised personnel, who had provided the segmental data, was granted to the taxpayer.

The High Court observed that in the instant case since the reliance is placed on the data provided by different parties, the taxpayer would have had no opportunity of rebutting the data unless the persons, who submitted the data, were subjected to cross-examination. This is all the more so because the data that was submitted was not part of the audited accounts.

In light of the above facts and observations of the High Court, the impugned order of the TPO was set aside and the matter was remitted back to the TPO to pass a fresh order after providing the taxpayer an opportunity of cross-examination of the authorised personnel of the said companies, who submitted the segmental data, which was relied upon by the TPO.

### Our comments

There are various Tribunal rulings<sup>2</sup> stating that the TPO is required to furnish all the information sought to be used against the taxpayer and provide an opportunity to cross-examine the parties whose replies were sought to be used against the taxpayer. However, this decision of Delhi High Court shall help in setting a precedent for similar matters which may be open before various appellate authorities.

<sup>1</sup> Cashedge India Private Limited [TS-445-HC-2016(DEL)-TP]

<sup>2</sup> Genisys Integrated Systems India P. Ltd v. DCIT [ITA No. 1231/Bang/2010]  
Kodiak Networks (India) P. Ltd v. ACIT [ITA No. 1413/Bang/2010]  
Centillum India Pvt. Ltd v. DCIT [ITA No. 1354/Bang/2010]

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