Newsflash

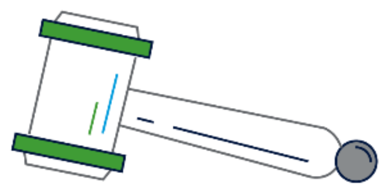
Mumbai ITAT upholds Aggregation Approach and Selection of Foreign Associate Enterprise as Tested Party; deletes Rs. 72.85 crore Transfer Pricing Adjustment

For Circulation Only
01 September 2026

1.0 Background

1.1 Determination of the arm's length price ('ALP') of intra-group services and the appropriate selection of the foreign company as 'tested party' continue to be among the most litigated aspects of transfer pricing ('TP') in India. Another contentious issue is aggregation of closely linked transactions wherein Transfer Pricing Officers ('TPO') seeks to de-segregate such transactions.

1.2 In the recent case of ***Indus Valley Partners (India) Private Limited vs. DCIT [ITA No. 6243/Mum/2024, Assessment Year 2021-22]***, the Mumbai Income Tax Appellate Tribunal ('Hon'ble Tribunal'), examined aggregation of closely linked transactions, determination of a nil ALP for intra-group services, selection of a foreign Associated Enterprise (AE) as the tested party, use of CA-certified segmental information, consistency across assessment years and potentially duplicative adjustments. Based on the facts, the Tribunal deleted the entire TP adjustment of Rs. 72.85 crore.



1.3 In this Newsflash, we provide a brief overview of the case and examine the key transfer-pricing principles arising from the Tribunal's ruling..

2.0 Facts of the Case

2.1 **Indus Valley Partners (India) Private Limited** ('IVP India' or 'the Assessee') is engaged in the business of development of software products and related activities, including sale of software licenses and provision of software-related services, i.e. software implementation, managed services and IT Consulting services to IVP Corporation ('IVP US' or 'AE').

2.2 IVP US is the customer-contracting and customer-facing entity on account of its onsite presence in the US. IVP US distributes the software to customers, provides onsite support, maintains customer relationships and generates business leads.

2.3 **The Assessee's integrated business model operates as follows:**

- where a contract is entered into between customer and IVP US for sale of software and provision of related services:

- IVP India provides software development, software sale and related support services to IVP US,
- IVP US interfaces with and provides services to the end customers in the US.

➢ On the other hand, where IVP India directly contracts with customers based outside the US/ UK:
  - IVP India avails marketing support, onsite support, managed services and IT consulting support from IVP US, since IVP India's employees are based in India and do not have onsite presence in the US.

2.4 Considering the close linkage between the transactions undertaken and the integrated nature of the business model, the Assessee benchmarked the following international transactions on an "aggregated basis" in the year under consideration, aligned with the TP approach followed in previous years, applying TNMM as the most appropriate method and selecting foreign AE, i.e., IVP US, as the tested party:

- Sale of software to IVP US
- Availing of marketing support services from IVP US
- Availing of support/managed/IT consulting services from IVP US
- Provision of support/IT consulting/managed services to IVP US.

2.5 Further, during the year under consideration, the erstwhile Indus Infotech Private Limited merged with the Assessee with effect from 01.10.2020, vide NCLT order dated 18.10.2022, and the name of the merged entity was changed to Indus Valley Partners (India) Private Limited. Pursuant to NCLT order, the Assessee has filed a modified return under section 170A of the Act on 30 April 2023 for the relevant six-month period from 1 April 2020 to 30 September 2020, substituting the original return filed on 14.03.2022.

2.6 The Transfer Pricing Officer ('TPO') rejected the Assessee's aggregation approach and the selection of IVP US as the tested party, **principally on the ground that the data of the foreign AE and its comparables could not be independently verified**, that audited segmental accounts of IVP US were not furnished, and that the Assessee had failed to demonstrate the actual rendition of, and benefit derived from, the intra-group services. The TPO accordingly:

- Rejected IVP US as the tested party and adopted IVP India as the tested party instead and
- Determined the ALP of intragroup services from IVP US at Nil, by applying 'Other Method' and
- Compared IVP India's six-month margin (for the period 01.04.2020 to 30.09.2020, consequent to the merger) with the twelve-month data of the comparable companies.

Based on the above approach, the draft assessment order proposed Transfer Pricing adjustments ('TP adjustment') aggregating to approximately Rs. 72.56 crores. The DRP substantially upheld the TPO's approach while issuing limited directions on certain benchmarking matters. After giving effect to the

DRP's directions, the final assessment order reflected an aggregate TP adjustment of approximately Rs. 72.85 crore.

In the final assessment order ('FAO'), the TP adjustment of Rs. 72.85 crore was added while computing book profit under section 115JB of the Act. The Appellant further contended that the Assessing Officer ('AO') had proceeded on the basis of the income disclosed in the original return instead of considering the modified return filed consequent to the merger. Aggrieved by the said final assessment order, the Appellant preferred an appeal before the Hon'ble ITAT.

3.0 Contention of the Revenue

3.1 Returned Income and Book profit

The learned DR ('Departmental Representative') relied on the orders of the AO and the DRP and did not place any independent material on record to controvert the merger or the filing of the modified return under section 170A of the Act.

3.2 Aggregation Approach for Benchmarking

The Revenue submitted that aggregation cannot be accepted merely because the transactions are with the same AE; the outright sale of software could not be aggregated with receipt of intra-group services, as the Assessee had not established that the transactions fell within the circumstances under Rule 10A(d), which permits aggregation of only closely linked transactions.

Reliance was placed on ***Knorr-Bremse India (P.) Ltd. vs. ACIT [380 ITR 307] and Faurecia Automotive Seating India (P.) Ltd. vs. ACIT [141 taxmann.com 126]*** wherein it was held that the aggregation is permissible where transactions are closely linked and cannot be reliably evaluated on a standalone basis.

3.3 Nil ALP of intra-group services and need-benefit-rendition test

The Revenue submitted that the Assessee failed to establish the need for, actual rendition of and the benefit derived from the intra-group services. According to the Revenue, the marketing services and other support services, managed services and IT Consulting services were rendered by Assessee' own employees and directors and not by IVP US.

The Revenue also relied on the abnormal increase in intra-group service expenditure in a year in which revenue had declined by 6% and submitted that this constituted a material change in facts from earlier years, thereby justifying rejection of aggregation of intra-group services and a departure from the approach accepted in those years.

The Revenue further submitted that each assessment year constitutes a separate unit of assessment and the arm's length price is required to be determined with reference to the facts, documents, comparables and evidence relevant for the year concerned. Accordingly, the benchmarking approach accepted in an earlier year could not, by itself, govern the year under consideration.

3.4 Selection of Foreign AE as Tested party

The Revenue submitted that the foreign AE could not be accepted as the tested party because the financial data of the foreign comparables could not be independently verified, audited segmental accounts of the AE were not furnished, and back-to-back invoices evidencing IVP US's resale margin on software were not provided. Therefore, the TPO was justified in rejecting the benchmarking based on foreign AE as the tested party and in determining the ALP by adopting the Assessee as tested party, using entity-level margins, since transaction-level segmental margins of the Assessee were unavailable.

4.0 Contention of the Appellant

4.1 Erroneous Consideration of the original returned income despite filing of a modified return under section 170A

The Assessee contended that the AO erred in assessing total income by considering the original returned income instead of the modified return filed consequent to the NCLT-approved merger with effect from 01.10.2020. It was submitted that the merger was not in dispute, was duly recorded in the draft assessment order, and had been intimated to the jurisdictional Aos of both the amalgamating and amalgamated companies, as well as to the CBDT.

4.2 Book profit under section 115JB

The Assessee submitted that this ground was partly consequential as book profit ought to have been computed with reference to the modified return and not the original return. Without prejudice, it was submitted that even on the AO's own basis, there was a computational error.

The Assessee placed reliance on the judgement of ***Innovative Textiles Limited vs. DCIT [ITA No. 1160/Del/2022, order dated 24.09.2025]***, wherein it was held that TP adjustment made in the regular computation cannot be added while determining book profit under section 115JB of the Act.

4.3 Aggregation approach

The Assessee submitted that, considering the close linkage between the transactions and the integrated nature of the business model, the assessee had adopted an aggregation approach and benchmarked the transactions by applying TNMM by selecting IVP US as tested party, being the least complex entity.

4.4 Need-Benefit-Rendition Test

The Assessee submitted that the AO/TPO/DRP erred in alleging that it had failed to demonstrate the business model, receipt of services, benefit derived, without appreciating the detailed submissions and documentary evidence filed, including the Transfer Pricing Study Report, FAR analysis, inter-company agreements, segmental financials, invoices, e-mail communications, timesheets, customer-related documents and other supporting evidence.

It was submitted that the marketing support services and other support services, managed services and IT Consulting service, were rendered by the employees of IVP US (as evidenced by Form W-2 records) and not of IVP India.

It was also contended that the TPO/DRP arbitrarily rejected the Assessee's TNMM-based benchmarking and the selection of the foreign AE as tested party, ignoring that the AE, being the distributor of software and the least complex entity, was rightly adopted as tested party. Reliance was placed on ***CIT vs. Cushman and Wakefield (India) (P.) Ltd*. *[[2014] 46 taxmann.com 317 (Delhi)]*,** for the proposition that the TPO's authority is restricted to determine the ALP and does not extend to questioning whether a service was rendered or whether the Assessee benefited from it.

4.5 Selection of Foreign AE i.e IVP US as a Tested party (intra-group services)

The Assessee submitted that IVP India is characterized as an entrepreneurial entity engaged in the development and sale of software, owns or uses the core software intangibles and bears entrepreneurial risks. On the other hand, IVP US is characterized as a distributor of software and performs comparatively less complex functions, i.e. customer-facing, market support, distribution and support functions. Accordingly, it was selected as the Tested party.

It was also submitted that the same benchmarking approach (including aggregation and selection of the foreign AE as Tested party) had been accepted by the TPO in preceding and subsequent assessment years i.e., in AY 2018-19 and AY 2022-23.

4.6 Benchmarking undertaken by TPO in relation to sale of software/support services

The Assessee contended that the AO/TPO/DRP erred in rejecting IVP US as tested party for the sale of software and provision of support/IT consulting/managed services, and instead adopting the Assessee as tested party.

The TPO compared the Assessee's margin for the six-month pre-merger period from 1 April 2020 to 30 September 2020 with the twelve-month data of the comparable companies, without making a suitable period adjustment. The Assessee contended that this distorted the comparability analysis. It also objected to the use of entity-level margins instead of the segmental data available for the relevant period.

5.0 Decision of the Hon'ble Mumbai Tribunal

5.1 Modified return under section 170A and Computation of Book profit under section 115JB

The Hon'ble Tribunal held that once a valid modified return is filed under section 170A of the Act following the NCLT-approved merger, and such return is in accordance with and limited to the order of the NCLT, the AO is required to give effect to the same while computing total income.

Relying on the ***Hon'ble Supreme Court's ruling in Apollo Tyres Limited [255 ITR 273] and the co-ordinate bench ruling in Innovative Textiles Limited (supra)***, wherein the Hon'ble Tribunal held that TP adjustment made in the regular computation cannot be added while determining book profit under section 115JB of the Act.

5.2 Aggregation of sale of software and marketing support services

The Hon'ble Tribunal noted that Rule 10A(d) of the Income-tax Rules permits a 'transaction' to include a number of closely linked transactions, and laid down the following considerations for testing aggregation as whether-

- there is contractual and operational linkage between the transactions
- the transactions serve a common economic objective
- the functions, assets and risks are integrated
- the pricing policy and benchmarking are applied consistently
- separate benchmarking would distort the overall arm's length analysis and
- the transactions have been consistently treated as linked in comparable years.

Applying these factors and relying on the jurisdictional ***Bombay High Court ruling in Cummins India Ltd. (supra),*** the Tribunal observed that once TNMM is accepted as the most appropriate method, the TPO cannot selectively apply a different method to only one element, as this would cause distortion and 'spell chaos'.

The Hon'ble Tribunal upheld the Assessee's aggregation approach and adjudicated that the sale of software and marketing support services availed from IVP US were closely linked, and the TPO could not have selectively de-segregated the marketing support services and benchmarked them at Nil without first establishing that they were independent of the integrated business model.

5.3 Nil ALP of intra-group services and the need-benefit-rendition test

The Hon'ble Tribunal held that the Assessee had produced material far beyond a general assertion of services, including webinar records, client communications, attendee details, customer contracts obtained through IVP US's support, timesheets, invoices, tickets raised on internal systems, e-mails with clients, and Form W-2 records establishing the employment of the concerned personnel with IVP US. These documents show both rendition and business connection.

Relying on the ***Delhi High Court ruling in CIT vs. Cushman and Wakefield (India) (P.) Ltd. (supra) and the principles in Dresser-Rand India (P.) Ltd. [13 taxmann.com 82 (Mum.)] and Faurecia Automotive Seating India (P.) Ltd***. ***(supra)***, the Hon'ble Tribunal reiterated that the authority of the TPO is restricted to determining the ALP, and not to determine whether there was necessity for a service or whether the assessee benefited from such services and accordingly, held that the TPO was not justified in determining the ALP of intra-group services at Nil.

5.4 Selection of Foreign AE as Tested party

Relying on the ***Calcutta High Court rulings in PCIT vs. Almatis Alumina (P.) Ltd. [[2022] 137 taxmann.com 202] and PCIT vs. ITC Infotech India Ltd. [2024] 159 taxmann.com 323]*** wherein the

Hon’ble Tribunal held that the tested party should normally be the least complex party to the controlled transaction and that there is no bar for selection of either local or foreign party. The Court held that neither the Act nor the transfer pricing guidelines prohibit selection of a foreign AE as tested party.

The Hon’ble Tribunal accepted the selection of IVP US as tested party given IVP India is functionally more complex and in the absence of any specific defect shown by the TPO in the CA-certified segmental financial or foreign comparable data.

5.5 Principle of Consistency

The Hon’ble Tribunal held that the principle of consistency does not mean that an incorrect approach must be perpetuated. However, where **there is no material change in the business model**, contractual arrangement, FAR profile, nature of transactions or benchmarking method, **the Revenue must demonstrate a cogent reason** for taking a different view.

The Hon’ble Tribunal rejected the Revenue contention and held that mere financial fluctuation owing to increase in expenditure and decline in revenue would not constitute a change in FAR profile, business model or contractual arrangement. While upholding the earlier year aggregation approach, reliance was placed on ***Cummins India Ltd. (supra).***

5.6 Duplicative adjustment

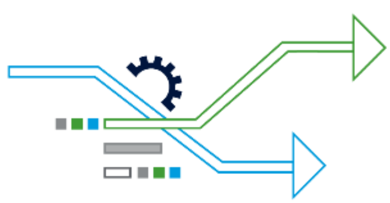
The Hon’ble Tribunal held that once a cost is considered while computing operating margin under TNMM, a separate adjustment by treating the same cost at Nil would result in duplicate adjustment, unless the TPO demonstrates that the cost did not affect the operating margin or that a separate adjustment was otherwise warranted. Since the Tribunal had accepted the aggregation approach and deleted the nil-ALP adjustment, it treated this ground as consequential.

5.7 Sale of software and Six-month margin

The Hon’ble Tribunal further observed that the TPO’s benchmarking suffered from a comparability defect. The Assessee’s six-month margin (period following the merger) had been compared against twelve-month data of comparables without any suitable period adjustment, and entity-level margins had been adopted despite segmental data being available, without pointing out any specific defect therein. Accordingly, following the principle laid in ***Almatis Alumina (supra),*** the use of segmental accounts was affirmed.

6.0 Conclusion

The Hon’ble Mumbai Tribunal partly allowed the appeal and held that:



- Assessse’s Aggregation approach in respect of sale of software and marketing support services is accepted.
- The determination of ALP of intragroup services at Nil by TPO is not justified.
- IVP US (i.e., foreign AE) was rightly selected as the tested party.

- The TPO was not justified in comparing six-month margin with twelve-month comparable data.
- Consequently, the entire TP adjustment of Rs. 72.85 crore was deleted.

The issue concerning the modified return filed under section 170A was restored to the AO for verification. The AO was also directed to recompute the book profit under section 115JB after giving effect to the modified return and to exclude the TP adjustment, if it otherwise survived under the normal provisions.

7.0 Our Comments

The ruling provides useful guidance on the aggregation of closely linked international transactions where their contractual, operational and economic interdependence is established. It also supports the selection of a foreign AE as the tested party where it is less complex and reliable financial and comparable data are available. Segmental results not forming part of audited financial statements may also be considered where their reliability and allocation methodology are satisfactorily demonstrated.

For intra-group services, the TPO may verify whether the services were actually rendered. However, once rendition is supported by evidence, the ALP should not ordinarily be determined at nil merely because the services are considered unnecessary, or their immediate benefit has not been quantified. Any adjustment should be supported by a recognised transfer-pricing method and appropriate comparability analysis.

The Tribunal further observed that a separate nil-ALP adjustment may result in duplication where the same cost has already been considered in the operating margin under TNMM. Acceptance of the same benchmarking approach in other years may also support the taxpayer where there is no material change in facts, although consistency does not require an incorrect approach to be perpetuated.

The decision highlights the importance of maintaining contemporaneous and properly reconciled agreements, FAR analyses, segmental information, correspondence, timesheets, invoices and employment records. Such documentation may strengthen the taxpayer’s position, subject to the facts and evidence of each case.