

## TRANSFER PRICING

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### **MTU India Private Limited ITA 157/Pun/2018- Pune ITAT**

The assessee, MTU India Private Limited, is a subsidiary of Tognum Asia Pte Ltd., Singapore (formerly known as MTU Asia Pte Ltd) and is engaged in the business of marketing and distribution of MTU, Detroit Diesel and Mercedes Benz (Off highway) diesel engines and spare parts including associated equipment.

The TPO observed from the assessee's final accounts that Commission revenue on indent sales included prior period income of Rs.5.65 crores and held that such prior period income was not liable to be included in the operating revenue of the assessee for benchmarking purposes. Accordingly, the TPO computed assessee's PLI at (-) 2.95% which led to TP-adjustment of Rs.4.80 crores. Assessee challenged the working done by the TPO before DRP. Certain directions were given by the DRP, however, no relief was allowed on the question of exclusion of prior period commission income of Rs.5.65 crore. While giving effect to the directions, the TPO, worked out the amount of TP-adjustment at Rs.4.28 crore. Aggrieved, assessee filed appeal before the ITAT urging, inter alia, that prior period commission income ought to have been included in the operating revenues of the assessee.

### **ITAT Ruling**

Pune ITAT held that commission income should be included in the operating revenue base as 'Prior period income' for determining ALP of marketing support services for the assessee.

ITAT explained that any item of operating revenue, which is not in relation to the international transaction, goes out of the ambit in the ALP determination. It was noted that one can determine whether or not a particular item of operating revenue is in relation to the concerned international transaction by identifying the scope of the international transaction. ITAT clarified that "when the international transaction gets concluded in year two, then the costs/revenue of the international transaction from year one also qualify for consideration in determining the ALP even though characterized as 'Prior period costs/revenue'". The said commission income was earned by assessee on transactions of rendering marketing services for which the credit notes were issued by the AEs during the given AY, but invoices were raised in earlier year(s), ITAT stated that to determine its inclusion/exclusion, "we need to examine if it is in relation to the international transaction under consideration".