

Vodafone India Services Pvt Ltd – High Court (HC) - Bombay

Outcome: **In favour** of taxpayer
Category: Call Options

With respect to call options rights, the Hon'ble HC held that **so long as there is no transfer of capital asset, the provisions in Chapter X of the Income-tax Act 1961 are inapplicable** and further observed that Tax Court did not indicate if any of the conditions pertaining to purchase, sale, or lease of tangible and intangible property etc. are met to satisfy the definition of international transaction u/s 92B of the Act.

With respect to sale of call centre business, The Hon'ble HC accepted taxpayer's contention that since the transaction of sale of call centre business was between two resident entities and accordingly the same does not qualify to be 'international transaction' under section 92B of the Act.

Bausch & Lomb Eyecare (India) Pvt Ltd – HC - Delhi

Outcome: **In favour** of taxpayer
Category: Marketing Intangible

With respect to existence of an international transaction involving Advertisement, Marketing, Promotion (AMP), The Hon'ble HC accepted taxpayer's contention that **where existence of an international transaction involving AMP expense with an ascertainable price is unable to be shown to exist, even if such price is Nil, Chapter X provisions cannot be invoked to undertake transfer pricing adjustments**. In the given case, HC held that the **department has been unable to demonstrate with tangible material the existence of international transaction involving AMP expenses between taxpayer and its foreign Associated Enterprise (AE)**.

Reliance was placed on the decision of Daiichi Sankyo Company Ltd v/s Jayaram Chigurupati, wherein the Hon'ble Supreme Court **held that there has to be tangible evidence on record to show that two parties acted in concert**.

Interra Infotech (India) Pvt Ltd - ITAT - Delhi

Outcome: **In favour** of taxpayer
Category: Extent of TP Adjustment

The Tax Court upheld the taxpayer's contention that the **transfer pricing adjustments cannot exceed the total profits earned by group as it would result in taxation of notional income**.

Reliance was placed in this regard on the recent decision of **Delhi Bench of the Tax Court in the case of Global Vantage P Ltd vs DCIT**.

Avnet India Pvt Ltd – ITAT - Bangalore

Outcome: **In favour** of taxpayer
Category: Interest on Receivables

The Tax Court upheld the taxpayer's contention that **interest on delayed realization of sales proceeds from AE was not separate international transaction but an integral part of sales made to AE**.

Further, tax court held that there can be no separate international transaction of 'interest' in the transaction of sale. The 'early' or 'late' realisation of sale proceeds is only incidental to transaction of sale, but not a separate transaction in nature.

e4e Business Solutions India Pvt Ltd – ITAT - Bangalore

Outcome: **In favour** of taxpayer
Category: Operating income

In the given case, Tax Court held that foreign exchange gain/loss from service provided to AE would be part of operating income of taxpayer and consequently it would be part of operating profit for the purpose of determining the ALP in respect of international transactions and further, held that foreign exchange gain/loss would not depend on extraneous factors like market forces.

Inslico Ltd – ITAT - Delhi

Outcome: In favour of taxpayer

Category: Internal v. External Comparables

For computing ALP in respect of transaction of export of goods, The Tax Court accepted taxpayer's submission that internal comparable had been admitted to be in existence by both Dispute Resolution Panel (DRP) and TPO, yet they proceeded to apply external comparable.

Further, Tax Court held that **internal comparable should be preferred over external comparable**

Recent News

India-UK conclude Mutual Agreement Procedure (MAP) on management charges and brand royalty

The MAP conclusion between India and UK is the first such resolution on the issues of management charges, brand royalty.

Draft Guiding Principles for determination of Place of Effective Management (POEM)

Section 6 has been amended vide Finance Act, 2015 to provide that a company shall be considered as resident in India **if it is an Indian company or its POEM in that year is in India.**

CBDT has **issued draft guidelines** for determining POEM for residence of companies under Section 6(3) of the Income-tax Act, 1961.

1. POEM is required to be determined on year to year basis. The process of determination of POEM would be primarily based on the fact as to **whether or not the company is engaged in 'Active Business Outside India'(ABOI).**

2. The company shall be said to be engaged in 'ABOI' if passive income (which includes income

from royalty, purchase sale of goods from associated enterprise, dividend, interest, rental income, capital gain) is not more than **50 per cent of its total income and**

- (i) less than 50 per cent of its total assets are situated in India, and
- (ii) less than 50 per cent of its total number of employees situated in India or are resident in India, and
- (iii) the payroll expenses incurred is less than 50 per cent of total expenditure

For this purpose, average of the data of previous year and two years prior to shall be taken into account.

3. POEM in case of company engaged in ABOI shall be presumed to be outside India if majority of meetings of board of directors are held outside India.

4. Further, it prescribes two-point process for Determining POEM for companies other than those engaged in ABOI, namely -

- (i) identification of persons who take key management and commercial decisions**
- (ii) determining place where these decisions are in fact made**

5. Guidelines clarify that day to day routine operational decisions undertaken by junior and middle management shall not be relevant for the purpose of determination of POEM.

6. The location of company's head office will be a very important factor in the determination of the company's POEM because it represents the place where key company decisions are made.

7. Use of modern technology impacts POEM as it is no longer necessary for the person taking decision to be physically present at particular location. **Therefore, in the given case, where the directors or person taking decision or majority of them usually reside may also be relevant factor.**

8. If the above factors do not lead to clear identification of POEM, then the following secondary factors can be considered i.e. place where main and substantial activity of company is carried or place where the accounting records of the company are kept.