

## Akon Electronics India Private Limited – ITAT – Delhi

**Outcome:** **Against** taxpayer  
**Category:** Pass through costs

Tax Court rejects taxpayer's claim for considering raw material cost as part of its gross margin.

Accordingly, taxpayer received raw material from AE for performing assembling and testing which were then re-exported to AE. Tax Court illustrates the nature of pass through costs, where a particular cost is not recoverable and some profit element is involved, then, it is required to be included in the cost base.

Tax Court holds that taxpayer's responsibility was restricted to assembling and testing the raw material to be ultimately used by the AE, and hence no question of profit element would be involved. Therefore, concluding the purchase of raw material to be classified as pass through cost, that would be excluded from taxpayer's gross margin.

## Nipro India Corporation Private Limited – ITAT – Delhi

**Outcome:** **Against** taxpayer  
**Category:** Profit attribution

Tax Court rules against application of 'Force of attraction' rule for determining taxpayer's total income taxable in India.

It is noted that, taxpayer is operating in India through a branch office (BO), directly involved in sales and marketing activities for head office (HO), with distributors and direct customers. Tax Court finds that, such services by the BO, (a permanent establishment of HO), cannot be classified under 'force of attraction' rule, as the efficacy of such marketing services towards directing sales by HO in India should fall within 'profit attribution' without any doubt.

Hence, total income of taxpayer would be attributable as computation of marketing services rendered by BO to HO for making direct sales in India.

## Recent News:

### India's amended treaty with Singapore takes effect

Singapore IRAS ratifies third protocol amending the India-Singapore treaty with effect from February 27, 2017.

In our January bulletin of TransPrice Times (<https://www.transprice.in/pdf/TransPrice-Times-1st-15th-January-2017.pdf>) we gave a snapshot of the amended India-Singapore treaty, an aftermath of India revising its treaties with Mauritius and Cyprus.

### Amended India-Israel Treaty now notified by CBDT

Amid the newly inserted Limitation Of Benefit (LOB) clause, following revisions hold effective –

- Treaty benefit unavailable where main purpose or one of main purpose of transaction undertaken, was to take benefit under the DTAA that would not otherwise be available
- Test of 'Beneficial Owner' applicable for availing benefits.
- Domestic GAAR provisions permitted where there is tax evasion or tax avoidance causing treaty misuse.
- Tax credit on dividend income (15%) and interest income (10%) is now removed under Paragraph 3 & 4 of Article 24 (Elimination of Double Taxation) respectively. Hence, while the earlier limit of 15% (and 10%) goes away, a limit equal to corporate taxes paid in Israel kicks in, which would be available in India directly or as a deduction.
- Notified treaty now covers effective exchange of information on tax matters including bank information, to avoid any domestic tax conflict.

### Place Of Effective Management (POEM) threshold clarified

CBDT clarifies turnover threshold for POEM applicability for companies other than an Indian company. Such companies would have a POEM in India, only if turnover or gross receipts exceed Rs. 50 crores during a financial year. This threshold is applicable for the current financial year 2016-17.