

## Virginia Transformer India Private Limited – ITAT – Delhi

**Outcome:** In **favour** of taxpayer  
**Category:** Foreign Exchange Gain

Tax Court accepts taxpayer's views in respect of foreign exchange gains by considering it a part of taxpayer's operating income.

The taxpayer exported certain services to its Associated Enterprise ('AE') and received remuneration from the AE, which included a foreign exchange gain on account of exchange fluctuations. Considering the above as part and parcel of business with AE, the taxpayer considered such gain as 'operating income'. Further, it included the amount to compute its own margins for benchmarking the transactions and find the arm's length price.

The intermediate tax authorities contended that no proper definitions of 'operating revenue' and 'operating cost' are given in the relevant transfer pricing provisions or rules. Hence, they asserted that reliance should be placed on Rule 10TA of the Income Tax Rules, 1962. (Rule 10TA speaks about Definitions contained in Safe Harbour Rules for International Transactions.) As per Rule 10TA, gain on account of foreign exchange fluctuation cannot form a part of 'operating cost' and 'operating revenue'.

Taxpayer claims that the foreign exchange gain as part of its operating cost/ revenue is on account of AE receivables forming part and parcel of taxpayer's business. The Tax Court accepted this view and rules in favour of the taxpayer. Tax Court rejects Revenue's view on Rule 10TA and states that the definitions contained in this Rule serve a specific purpose i.e. to avoid uncertainties in fixing price under an advance pricing agreement which is not adopted in the present case for calculating actual margins of the taxpayer.

## Dimension Data India Private Limited – ITAT – Mumbai

**Outcome:** In **favour** of taxpayer  
**Category:** Intra-group Services

Tax Court rules in favour of taxpayer and removes tax adjustment made on non-availing of agreed intra-group services from AE.

Taxpayer entered into an agreement with its AE which entitled it to avail services in 6 segments from the AE. However, during the year under

consideration, it availed only three out of the six services as mentioned in the agreement.

The intermediate tax authorities proceed to apply a tax adjustment on the ground that taxpayer did not avail majority of agreed services.

Tax Court held that availing only a few services out of the bouquet of services offered by an AE cannot be a rational reason for rejecting the transfer pricing study of the taxpayer. In order to reject the transfer pricing study, the tax authorities shall be required to prove that the transactions in respect of the availed services were not at arm's length. Further, ruling in favour of taxpayer, Tax Court opined that non-availing of services cannot be a reason for rejection.

## Akzo Nobel Car Refinishes India Private Limited – ITAT – Delhi

**Outcome:** In **favour** of taxpayer  
**Category:** RPM as Most Appropriate Method

Tax Court accepts the method of computing arm's length computation selected by taxpayer i.e. Resale Price Method – RPM over other methods.

**Issue:** Taxpayer purchased finished goods from AE for resale to customers in India. The intermediate authorities rejected RPM method due to lack of value addition by taxpayer on goods purchased and absence of appropriate comparability. Instead, to establish closer comparability of finished goods, a Transactional Net Margin Method (TNMM) was adopted by authorities.

Tax Court mentions that the basic condition to follow RPM is that 'the property purchased by the enterprise from an AE should be re-sold/ provided to an independent entity without any value addition.' Value addition here means any activity that result in an increase in the ultimate utility of the property or goods. It is held that the taxpayer meets the basic condition of RPM. Along with this, the Tax Court maintained that other methods such as TNMM based on net margins of taxpayer would be a method of last resort.

## Recent News

### India and Mauritius – all set to revisit the DTAA provisions.

Owing to the commitment for preventing treaty abuse, Mauritius and India are reportedly in talks to amend existing tax treaty provisions.