

TransPrice Times

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BMW India Private Limited – Delhi ITAT

Outcome: In favour of Taxpayer
Category: Marketing adjustment

Tax Court deletes transfer pricing adjustment on Advertising, Marketing & Promotion (AMP) expenditure incurred by taxpayer without tangible evidence. Rejects tax authorities' views that such cost was incurred for the benefit & services provided to Associated Enterprises (AE).

Taxpayer operates its business on its own account & on own risk. It imports & distributes BMW CBUs & parts/accessories under an Importation Agreement and is responsible for promoting sales in India. The tax authorities levied an adjustment by way of attributing AMP expenses to the AEs.

Tax Court holds that mere agreement/arrangement for allowing use of brand name by AE does not lead to inference that the parties were acting together to incur high AMP expenditure in India for brand building service. Rejecting such inference, further holds that the transfer pricing officer cannot benchmark AMP expenses by allocating to AEs without there being an agreement or arrangement for incurring such AMP expenses.

Whirlpool of India Ltd – Delhi ITAT

Outcome: In favour of Taxpayer
Category: AMP Adjustment

Tax Court removes AMP adjustment on taxpayer's marketing functions and rejects tax authorities' reliance on BEPS Action Plan 8-10.

Taxpayer a subsidiary of USA holding entity produces, sells & distributes Whirlpool appliances in India. Tax authorities contended that there a mutual agreement/arrangement existed with regard to taxpayer's marketing & market development & AMP expenses benefitted the AE. Rejecting taxpayer as a full risk bearing manufacturer/distributor & relying on Action Plan 8-10, AMP adjustment was made.

Tax Court rejects tax authorities' views and states that Action Plan 8-10 cannot be applied as it has not been implemented yet.

CLSA India Private Limited – Mumbai ITAT

Outcome: In favour of Taxpayer
Category: Ad-hoc adjustment

Tax Court deletes ad-hoc transfer pricing adjustment applied on estimation basis instead of using the prescribed methods for transfer pricing u/s 92C(1) of the Income-tax Act 1961.

Taxpayer is engaged in the business of equity broking and availed intra-group services from its AE. The services were related to the main business activity of the taxpayer and the same was benchmarked using the Transactional Net Margin Method (TNMM). Tax officers rejected the TNMM stating that the services were general & taxpayer could not prove the cost element incurred by AE in rendering services to taxpayer.

Tax Court accepts TNMM and rejects ad-hoc adjustment by tax authorities' since the transfer pricing officer did not determine the arm's length price as per the law.

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