

## **Palm Grove Beach Hotels Private Limited – ITAT – Mumbai**

**Outcome:** In **favour** of taxpayer  
**Category:** Associated Enterprise

Tax Court concludes the case in favour of taxpayer by removing the penalty imposed for failure to furnish Form No. 3CEB (Accountant's report) for reporting its international transactions.

Accordingly, the taxpayer in good faith felt no reason to believe that it fell under the definition of "Associated Enterprise" as per the provisions of Section 92A(2) of Income-tax Act 1961 ('the Act'). Therefore, it did not maintain any transfer pricing documentation. Taxpayer contended that the sub-proviso (2) and sub-proviso (1) of Section 92A cannot be looked at separately, but in combination for becoming an associated concern.

Tax Court accepts taxpayer's submissions and joint reading of sub-provision (1) and (2) of Section 92A of the Act; holds that taxpayer would need to satisfy both sub-provisos and its conditions together to become an AE. Further, maintains that a penalty shall not be levied if a taxpayer is successful in proving that there was a reasonable cause for such a failure. Consequently, the Tax Court rules in favour of the taxpayer.

## **Fujitsu India Private Limited – HC – Delhi**

**Outcome:** In **favour** of taxpayer  
**Category:** Cost allocations

Hon'ble High Court admits taxpayer's appeal against allocation of common un-allocable costs among 3 business segments of taxpayer based on gross profit margins.

Taxpayer is engaged in 3 segments i.e. marketing support services, trading and domestic segment. Accordingly, the main segment being the services segment for which taxpayer claims that the calculation of gross profit cannot be done for allocating common un-allocable expenses as gross profit margin is not a suitable allocation key.

Previously, taxpayer apportioned the common un-allocable costs, to its 3 segments on the basis of individual headcount. The tax officer rejected this approach and apportioned the un-allocable cost on the basis of gross revenue from the 3 segments

and added a transfer pricing adjustment. However, Tax Court while rejecting tax officer's approach, proceeded to apportion the costs on the basis of 3 segments' gross profit margins instead.

The Hon'ble High Court has admitted the taxpayer's appeal regarding gross profit margin not being the correct allocation key in law for apportioning common un-allocable costs.

## **Cable & Wireless Networks India Private Limited – ITAT – Bangalore**

**Outcome:** **Against** taxpayer  
**Category:** Most appropriate method

Tax Court rejects taxpayer's application of transfer pricing methodology based on entity-level net margins for provision of telecommunication networking services to its AE for connecting Indian network with the global network of AE.

The taxpayer performed an entity level benchmarking based on revenue earned from both international and domestic clients. Further, the taxpayer is a leaseholder of the network owned by Tata Communications. However, before taxpayer was incorporated and providing services to AE, the AE received the same services from Tata Communications directly.

Tax Court observes that the entity level benchmarking constitutes of international and domestic transactions for the purposes of finding the comparable price of the international transactions at arm's length price. Thus, rejecting the application of entity level benchmarking conducted by taxpayer, Tax Court holds that CUP (Controlled Unit Price) method to be appropriate.

Further, the AE received same services from Tata Communications before taxpayer started providing the same services, where taxpayer used the same network bandwidth as that of Tata Communications. Tax Court rejects taxpayer's claim of its quality of services being different from Tata Communications and refers back the matter to the assessing officer for determination of arm's length based on CUP.