

## Canon India Private Limited – HC - Delhi

**Outcome:** In favour of taxpayer

**Category:** Unutilized subsidy

The Hon'ble High Court upheld the principle of matching concept and ruled that an unutilised subsidy received for a specific purpose would be credited to profit and loss only when corresponding expenditure is recognised.

## Claas India Pvt Ltd – ITAT - Delhi

**Outcome:** In partial favour of taxpayer

**Category:** Capacity Utilisation

The Tax Court provides guidance on treatment of adjustment on capacity utilisation. It mainly tackles two questions:

### 1) Capacity adjustment to be allowed in whose hands?

The tax court held that in case there are differences between comparable and the tax payer, the effect of such differences should be ironed out by making suitable adjustment to the operating margins of the comparable and not the tax payer.

### 2) How to compute capacity utilisation under TNMM

- No mechanism given under the act
- First step is to determine capacity utilisation of the taxpayer and the comparable
- Next step is adjusting the operating profit of comparable on one by one basis
- Adjustment is to be made on fixed or semi-fixed operating cost (only fixed component)
- Variable cost need not be considered for computing capacity utilisation adjustment

## Recent News:

### Sony seeks clarification issues in Marketing Intangibles case

Sony Ericsson recently filed an application seeking clarification on issues in Marketing Intangibles. It seeks clarification on the HC conclusion that Advertising Marketing Promotion (AMP) transaction is to be subsumed in main international transaction of import and benchmarked accordingly, whereas Tax Court has ruled that AMP and distribution business are separate and hence, AMP is a separate transaction

### CBDT signs first rollback Advance Pricing Agreement (APA)

CBDT recently signed its first unilateral rollback APA with a US multinational company. As per the recently notified APA rollback scheme, APA is applicable for prior 4 years and future 5 years.

### Framework Agreement signed between India and USA under the Mutual Agreement Procedure (MAP)

A Framework Agreement was recently signed with the United States under the MAP provision of the India-US Double Taxation Avoidance Convention. This is a major positive development. This leads to expectation of around 200 transfer pricing disputes in IT- ITeS segments being resolved during the current year. Approximately 35 disputes have been resolved and another 100 are likely to be resolved in the next three months. This opens the door for signing of bilateral APA with the US. The MAP programs with other countries like Japan and UK are also progressing very well with regular meetings and resolution of past disputes. These initiatives will go a long way in providing stable tax environment to foreign investors doing business in India.