

## Fiserv India Pvt Ltd – HC – Delhi

**Outcome:** In favour taxpayer

**Category:** Foreign exchange fluctuations

Hon'ble High Court rejects Revenue's questioning on treatment of foreign exchange fluctuation as operating income/ expenses. Further, upholds taxpayer's views with regard to inapplicability of Safe Harbour to consider exchange fluctuations as non-operating in year under assessment. It is clarified that safe harbour rules will be applicable prospectively and not apply for the year in question where the rules were not in existence.

## GE Money Financial Services Pvt Ltd – ITAT - Delhi

**Outcome:** Against taxpayer

**Category:** Selection of Tested party

Tax Court rejects taxpayer's selection of its foreign AE as tested party on the ground that comparison of profits realised between Indian and foreign AE entity cannot hold good in law for benchmarking intra-group services. Additionally, it is held that the argument of least-complex entity cannot be valid for adopting foreign entity as tested party unless there is an evidence proving the same.

## Daksh Business Process Services Pvt Ltd – ITAT – Delhi

**Outcome:** In favour taxpayer

**Category:** Royalty transaction

Tax Court rules in favour of taxpayer with regard to selection of Transactional Net Margin Method (TNMM) as the most appropriate method for royalty payment. Further, reliance was placed on the Cadbury India Ltd ruling [TS-314-ITAT-2013(Mum)-TP] where TNMM was applied for benchmarking royalty and rejects Department's adoption of Comparable Uncontrolled Price (CUP) method due to lack of relevant information.

## Abott Medical Optics Private Limited – ITAT – Bangalore

**Outcome:** Against taxpayer

**Category:** Royalty transaction

Tax Court rules in favour of revenue with regard to adoption of TNMM over Resale Price Method (RPM) for trading activity carried out by taxpayer. It is considered for RPM to hold true, trading activity of taxpayer and comparables must be similar. Additionally, taxpayer incurs huge expenditure on sales, distribution and sales promotion for goods imported from AE thus rendering taxpayer's business model to be functionally dissimilar from the comparables.

## Recent News:

### OECD releases discussion draft on Group Ratio Rule

OECD invites public comments in its discussion draft on BEPS Action Plan 4 (limiting interest deductions) recommending design and operation of a 'fixed ratio rule'. A fixed ratio rule restricts an entity's net interest deductions to a fixed percentage of its EBITDA. For the purposes of this rule following approaches are considered:

- to calculate group's net third party interest expense;
- to define group-EBITDA and;
- to address the impact of losses on the operation of the group ratio rule

### OECD releases discussion draft on PE-profit attribution & revised guidance on profit-splits

OECD expands on guidance provided in BEPS Action Plan 7 (Preventing the Artificial Avoidance of Permanent Establishment Status) with regard to attribution of profits of the following:

- Dependent agent PE
- Fixed place warehouses

Further, revised guidance on profit-splits is provided to bring clarity in respect of global value chains by adopting two approaches of splitting profits: actual profits and anticipated profits.