

TransPrice Times

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Red Fort Shahjahan Properties Pvt. Ltd – Delhi ITAT

Outcome: **Against** the taxpayer

Category: **Benchmarking of interest on Fully & Compulsorily Convertible Debentures**

The Tribunal observed that a FCCD is a hybrid element of loan and equity. Further, the Safe Harbour Rules which apply only to a transaction of loan, cannot be applied to FCCD since the FCCD do not constitute the character of only a loan. The Tribunal mentioned that under Comparable Uncontrolled Price Method of benchmarking, the product comparability is significant i.e. the interest paid on FCCD, should be compared with FCCDs of similar quantity, amount and tenure issued by any other company having similar credit rating. As a result, it remanded the case back to the transfer pricing authorities to determine the arm's length interest on such FCCDs.

Skoda Auto India Pvt Ltd - Pune ITAT

Outcome: In **favour** of taxpayer

Category:

- 1) **Validity of Draft Assessment Order issued with Demand and Penalty;**
- 2) **Capacity Adjustment**

The Tribunal ruled in favour of the taxpayer by stating that the draft assessment order was void ab initio, as such order was issued in conjunction with issue of notices of demand and penalty. It quashed such draft assessment order since it was passed in contravention of the procedure of option available to the taxpayer to file objections against the draft assessment order, enshrined under the Dispute Resolution Panel provisions.

The Indian transfer pricing regulations call for factoring in the market conditions in which tested party and comparables operate, for appropriate comparability. In line with the same and also considering the fact that established entities have higher capacity utilization, the Tribunal held that capacity utilization adjustment be applied.

IIML Assets Advisors Ltd – Mumbai ITAT

Outcome: In **favour** of taxpayer

Category: **Whether merchant bankers comparable for investment advisors**

The taxpayer has provided investment advisory services to its Associated Enterprises ('AEs') for the latter's adequate provision of services to the funds, benchmarking it under the Transactional Net Margin Method. The tax officers selected a comparable named Ladderup Corporate Advisory Pvt. Ltd. ('Ladderup') as well as Motilal Oswal Advisors Pvt. Ltd. ('Motilal').

The Tribunal held in favour of the taxpayer stating that Ladderup and Motilal, being registered with SEBI as Category-I merchant bankers providing services in relation to investment banking and debt capital, are not functionally comparable to an entity providing investment advisory services.

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<https://transprice.in/pdf/article/Union-Budget-2019-TP-and-key-tax.pdf>

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