

# TransPrice Times

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## Vodafone Essar Digilink Ltd. – ITAT – Delhi

**Outcome:** **Against** taxpayer  
**Category:** Foreign comparable

**Transaction:** Royalty payment to AE for use of brand name.

**History:** Taxpayer started making royalty payments of 0.15% & 0.30% of respective net revenues to AEs for use of brand name. To benchmark the transaction, taxpayer compared the royalty payment with royalty paid by a US company (Forward Industries Inc) to another US company (Motorola Inc.) which was royalty @7% of net sale for trademark license of use of Motorola signature and logo.

**Facts and contentions:** As royalty paid by taxpayer was significantly lower than that of external foreign comparable taxpayer considered the same to be at arm's length. Tax officer accepted methodology used, however did not consider the royalty payments to be functionally similar. The arm's length was determined at NIL by tax officer on the basis that no benefit was availed by taxpayer and no royalty was paid in the past.

**Ruling:** Tax Court rejected use of foreign comparable by taxpayer for benchmarking royalty on the premise that a foreign transaction cannot be compared with a transaction involving Indian tested party selected for transfer pricing analysis. However, Tax Court did not accept approach adopted by tax officer who had used a benefit test to determine that no benefit had accrued to taxpayer.

## Blue Scope Steel India Private Limited – ITAT – Delhi

**Outcome:** **In favour** of taxpayer  
**Category:** Reimbursement of employee salary

**Transaction:** Business support services to AE (holding company) and reimbursement of salary cost (being expense) to AE. Taxpayer also provided project services to 3rd party.

**History:** Taxpayer followed cost-plus 7.5% pricing model for business support services. AE incurred salary expenses for employees seconded to the taxpayer, for which taxpayer reimbursed to the AE without charging mark-up. Entire project work was sold to third party, however taxpayer continued providing project services. Tax officer accepted Indian component of salary paid to employees but denied deduction of foreign component & determined arm's length of reimbursement of salary as NIL.

**Facts and contention:** No agreement made between taxpayer and AE for secondment of employees for business support services. Expats were employees of AE but after project sale to 3<sup>rd</sup> party, services were also provided to 3<sup>rd</sup> party through taxpayer for which role of seconded employees could not be determined. Tax officer considered the transaction as arrangement & not service. Taxpayer submitted that expats were on its payroll.

**Ruling:** Accepts taxpayer's view that seconded employees were on its payroll. Just because seconded employees were involved in business support services and project services there was no need to allow only local expenditure of expats and deny foreign component of salary paid by AE.

## Amphenol Interconnect India Private Limited – HC – Bombay

**Outcome:** In **favour** of taxpayer  
**Category:** Most Appropriate Method

**Transaction:** Export sale of goods & sales commission to AEs.

**History:** Tax officer applied the CUP method to determine arm's length for above transaction. However, Tax Court negated this stand by stating that goods were customised and there were geographical & volume differences in terms of sales commission. Instead, it applied Transactional Net Margin Method (TNMM) methodology based on comparable profit margins of taxpayer against similar companies.

**Facts and contentions:** Department, on appeal contended that the Functions, Assets & Risks analysis of taxpayer with respect to transaction was not considered to determine applicability of TNMM. Further, it was also argued that since a fixed percentage of could not be rejected on the basis of geographical, volume, timing, risk and functional difference for sales commission.

**Ruling:** High Court rejected Revenue's appeal stating that the Tax Court carried out the FAR analysis by comparing risks and functional differences in finished goods sold to AEs against those sold to third parties. Regarding sales commission part, it was ruled that there were differences in function and geography hence not being question of law to be discussed.

## Tieto IT Services India Pvt Ltd

**Outcome:** In **favour** of taxpayer  
**Category:** Segmental results V. Entity results

**Transaction:** Software services provided to AE

**History:** Taxpayer while benchmarking transaction compared operating margins of external comparable companies with operating margins of its AE segment. Tax officer rejected segmental approach and benchmarked transaction considering entity level profitability.

**Facts and contention:** Taxpayer contended that it applied man-hour rates for allocation of expenses in AE segment which was found acceptable even in its Advance Pricing Authority (APA) proceedings.

**Ruling:** Tax Court upholds taxpayer's views on benchmarking transaction comparing segmental results of AE and not entity wide results, keeping in line with APA.

## Omni Active Health Technologies Limited – ITAT – Mumbai

**Outcome:** **Against** taxpayer  
**Category:** Reference to TPO

**Legality:** Taxpayer contended that assessing officer (AO) made reference to transfer pricing officer (TPO) without giving an opportunity of being heard u/s 92CA of Income-tax Act 1961.

**Ruling:** U/s 92CA(1) AO may with appropriate approval, refer the matter to TPO. Rejects taxpayer's views and relies on Bombay High Court ruling in Vodafone India Services P. Ltd (WP No. 1877-2013) where opportunity of being heard was granted when Chapter-X of Income-tax Act was challenged by taxpayer. Since in present case taxpayer did not have any objection of Chapter-X hence the additional ground should be rejected.