

Maruti Suzuki India Ltd - High Court (HC) - Delhi

Outcome: In favour of taxpayer
Category: Marketing Intangibles

The Hon'ble Delhi HC upheld taxpayer's contention that the Advertisement Marketing Promotion (AMP) expenses incurred was not an international transaction. For identification of AMP as international transaction, The Hon'ble HC **distinguishes the decision placed in Sony Ericsson ruling and held that the ruling was delivered in context of taxpayer's who were distributors of products manufactured by foreign Associate Enterprise (AE) and not manufacturers themselves like taxpayer in the given case.**

The Hon'ble HC observed that in absence of Bright Line Test, there is no machinery provision to determine existence of international transaction.

Micro Ink Limited – ITAT - Delhi

Outcome: In favour of taxpayer
Category: Corporate guarantee

The tax court upheld taxpayer's view that the corporate guarantees issued by taxpayer on behalf of its AE was in the nature of 'shareholder's activities'/ 'quasi capital' and thus cannot be included within the ambit of 'provision of services' under definition of international transaction under Section 92B.

Further, tax court held that though there could be activities which benefit group entities but these activities may not necessarily be provision of services. As there is no express reference to 'benefit test' in the main definition of 'international transaction' under the Act (though recognized by Organisation of Economic Co-operation and Development) (OECD), department cannot seek to widen the net of transfer pricing legislation by taking refuge of the best practices recognized by the OECD work.

Reference was placed on the decision in **Bharti Airtel Limited v ACIT** wherein it was held that corporate guarantee issued for benefit of AE, **not involving any cost to taxpayer and not having any**

bearing on profits, income, losses or assets of enterprise are required to be kept outside the ambit of international transaction.

Cox and Kings Ltd – ITAT - Mumbai

Outcome: In favour of taxpayer
Category: Interest Rate benchmark

The Tax Court upheld taxpayer's contention for benchmarking interest in case of interest free foreign currency loan granted to AE, the London Interbank Offered Rate (LIBOR) should be considered to determine Arm's Length Price (ALP). Tax Court held that the **interest of current year in which transaction has taken place should be considered while calculating loan granted in foreign currency.**

Reliance was placed on plethora of decisions of the **Hon'ble Bombay HC in Tata Autocomp Systems Limited and the Delhi HC in the case of Cotton Natural (India) Pvt Ltd.**

Gartner India Research and Advisory Services Pvt Ltd – High Court - Bombay

Outcome: In favour of taxpayer
Category: Rule of Consistency

The Hon'ble Bombay HC upheld taxpayer's Contention that the **Tax Court's decision in case of M/s. Frost and Sullivan was not followed even when it carried out same activity.**

The Hon'ble HC observed that **'One of the essential elements of Rule of Law is equality of treatment to persons identically situated'**. Further, The Hon'ble HC sets aside the Tax Court's order in case of transfer pricing issue and stated that there has to be good cause for not following a decision of the Co-ordinate Bench on the same issue.

Copal Research India Pvt Ltd – ITAT - Delhi

Outcome: **In favour** of taxpayer
Category: Tax officer's power

The tax court **agreed with taxpayer's views that tax officer cannot vary margins as computed by TPO in his order**, unless Dispute Resolution Panel (DRP) gives any specific direction for altering ALP as determined by TPO.

Further, the tax court held that once reference has been made by Tax officer, then in view of provisions of Section 92CA (4), the tax officer is required to compute the total income of taxpayer in conformity with ALP as determined by TPO. Therefore, unless the DRP has given any specific direction altering the ALP as determined by TPO, the Tax officer does not have power to alter the same.

Recent News

Protocol signed to amend India-Japan Double Tax Avoidance Agreement (DTAA) to include standard for automatic exchange of information

The Government of India and the Government of Japan signed a Protocol for **amending the existing DTAA with respect to taxes on income**. The Protocol provides for internationally accepted standards for effective exchange of information on tax matters including bank information and information without domestic interest. It further provides following things that information received from Japan in respect of resident of India can be shared with other law enforcement agencies with authorisation of competent authority of Japan and vice versa. It also provides that both India and Japan shall lend assistance to each other in collection of revenue claims, and for exemption of interest income from taxation in source country with respect to debts-claims insured by Government.

New Memorandum of Understanding (MoU) signed between India and Korea

A new MoU **on suspension of collection of taxes during pendency of Mutual Agreement Procedure (MAP) was signed**. This MoU will relieve the burden of double taxation for the taxpayer in both the countries during the pendency of MAP proceedings. Further, both sides noted that transfer pricing dispute cases will be taken up for MAP under the revised DTAA between India and Korea. This is a step towards ease of doing business in India for Korean companies as it will relieve economic double taxation and promote cross border trade and investment.

India Switzerland improve cooperation on tax matters

With India stepping up efforts to bring back funds illegally sashed abroad, Switzerland has said that both sides have improved their cooperation on tax matters following several high meetings. Over the past few months, both countries have been working on mutual administrative assistance.

SEBI-registered Foreign Portfolio Investors (FPI's) get I-T filing relief

After giving relief to FPI over the issue of minimum alternate tax (MAT), the Income tax department gave them more reason to cheer over the filing of income tax defective returns. The CBDT clarified that incomplete or deficient returns filed by FPI's would not be treated as 'defective' if the entities were registered with SEBI and do not have permanent base in India. This would provide relief to 500 FPI's.