

TransPrice Times

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IKA India Pvt Ltd – Bangalore

ITAT

Outcome: In favour of Taxpayer

Category: Economic Adjustments

Bangalore Tax Court upholds many controversial stands taken by the Tax Office - Grants Capacity Utilisation adjustment, Grants working capital adjustments, treats foreign exchange as operating in nature, upholds adjustment only on international transaction.

TransPrice Comments: All the above adjustments are purely based on the factual representation of the taxpayer along with conceptual understanding of the TP law. There could be conditions where a taxpayer may not be in line with the general comparable profitability due to various other reasons but not due to transfer pricing. In such a case, the law allows the taxpayer to make adjustments; however with the adjustments the burden of proof to prove such adjustments is with the taxpayer himself and therefore it is imperative to have all analysis done and documentation maintained which would support the adjustment in substance

Jaso India P Ltd - Kolkatta ITAT

Outcome: Against taxpayer

Category: Foreign Tested Party

Foreign AE is rejected as a tested party. While the concept of acceptance of foreign tested party was not negated, the taxpayer is said to change its stand at various levels on determination of the tested party. This sent confusing and complicating signals to the tax bench which made the case go against the taxpayer.

TransPrice Comments: The concept of tested party is basic pillar to transfer pricing. When the pillar itself is not decided, the entire built up of study is often questioned. Transfer pricing setting mechanism is crucial to address such conflicts. If an answer would have been provided as to the fixation methodology, things could have been simpler. We generally assume transfer pricing to be complex and often forget on the basics of price fixation. Effective supply chain management and profit pegging could be an effective means to avoid such conflicts.

Siegwerk India Pvt Ltd - Delhi

ITAT

Outcome: In favour of Taxpayer

Category: Interest Benchmarking

The Tax Court dismissed revenue's appeal against the DRP order where a Loan given to the AE by the Indian company in Foreign currency was benchmarked by the tax authorities against Indian SBI PLR plus 7.50% instead of the benchmark used by the taxpayer of EURIBOR plus 0.25%. The Tax Court upholds the principle that where a loan is advanced in the foreign currency and the interest payments are made in the foreign currency a foreign benchmark needs to be used representing the market conditions in the country of borrower entity.

Important Update:

CBDT has amended Form No. 36 for filing appeal before the ITAT and also Form No. 36A for filing cross objections. Form No. 36B for filing appeal in cases which are to be filed after DRP's order, would be substituted by Form No. 36.

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