

TransPrice Times

Edition: September 2018

Acusis Software India Pvt. Ltd. – Karnataka High Court

Outcome: **Against** taxpayer
Category: Turnover filter range

The Tax Court has earlier upheld exclusion of certain companies on the basis of turnover of comparables being more than 10 times of that of the taxpayer.

The taxpayer appealed to the High Court against the decision of the Tax Court. The High Court upheld the Tax Court's decision on the basis that the factual decision by the Tax Court was extensively researched and depends on circumstances of the case. At High Court, no fact finding appeal can sustain and the last fact finding authority is the Tax Court. There was no question of law in the instant case.

Stryker India Pvt. Ltd. – Delhi High Court

Outcome: **Partially in favour** of both, taxpayer and Revenue
Category: Transfer Pricing Assessment

The taxpayer's transfer pricing matter pertaining to advertisement, promotion and marketing expenses was referred to the Transfer Pricing Officer ('TPO') who then passed an order proposing adjustments. The intermediate tax authorities, on their part proceeded to pass a final order, without issuing a draft order.

On an appeal made by the taxpayer on the grounds that such an order was bad in law, the High Court looked at its co-ordinate bench's

decision in the case of JCB India Limited ('JCB') and accordingly held that pronouncing a final order without a draft order is a nullity. It is noted that non-expression of anything further by the High Court in the matter of JCB, indicates that the tax authorities have the liberty to opt for fresh proceedings thereby implying that the case got concluded favouring both partially.

Microsoft India (R&D) Pvt. Ltd. – ITAT – Delhi

Outcome: **Against** taxpayer
Category: Functional Classification – Contract Research & Development (R&D)

The Tax Court mentions that a thorough analysis of the functional profile of the taxpayer is essential to determine the comparable companies. In the case of the taxpayer, it was earlier contended that it acts as a routine software developer for its Associated Enterprise ('AE') – Microsoft USA.

Although the taxpayer had maintained all the primary evidences, it was reluctant to produce any of these evidences to the tax authorities. In view of this, the Tax Court demanded to look into all the relevant material and observed that R&D services were provided by the taxpayer only when an approval was received from the AE. It further went on to observe that R&D work was carried out purely as per the specifications of the AE.

The above findings helped the Tax Court to conclude that the taxpayer is a 'contract R&D service provider' by whom the 113 patentable inventions (which are registered in the USA) were carried out for its AE.