

Canon India Private Ltd- High Court- Delhi

The Delhi High Court ('HC') has admitted the case considering 5 questions of law as regards "marketing intangibles" as follows:

- Whether Transfer Pricing officer ('TPO') in India can make adjustment on international transactions of Advertisement Marketing and Promotion ('AMP') in India by subsidiary of the foreign associated enterprise?
- Whether TPO could have examined AMP expenses in his report, and if not, then whether findings of Assessing officer ('AO') pursuant to order of Dispute Resolution Committee are legal and valid?
- Whether adjustments can be made applying Bright Line Test?
- What items and expenses can be included under AMP in India?
- Whether directions given in the order of remit for benchmarking and comparables relating to AMP were non-routine?

It is imperative to monitor the development in the case, as the same may have far reaching effects on the rulings by other HC and also on the future transfer pricing assessments.

Safe Harbour Rules shall not be a benchmark for regular TP audits: CBDT announcement

Rule 10TD read with section 92CB of the Income-tax Act, 1961, details out safe harbor rules which governs acceptance of transaction values as declared by taxpayer as Arm's Length on fulfillment of prescribed conditions for certain specified transactions.

In relation to safe harbor rules, CBDT came out with a communiqué that states the following:

- TPO shall not adopt safe harbor margins in regular Transfer Pricing audits where it has not been claimed by taxpayer
- Assessing Officer ('AO') shall verify the eligibility of taxpayer who is opting for safe harbor benefit and declaring lower profit margins which would have otherwise been subject to adjustment by tax authorities
- AO shall communicate to taxpayer's safe harbor application within two months else it shall be considered a deemed approval and shall stay in force for a period of five years