

Technocraft Industries (India) Ltd – ITAT - Mumbai

Decision Outcome: **Against** the taxpayer

Category: **Guarantee fees**

Summary of decision:

- Tax authorities disallowed guarantee fee payment made by taxpayer to its bank and made adjustment to taxpayer's income on the ground that taxpayer had not recovered guarantee fee from its associated enterprise ('AE') on similar guarantee provided on behalf of AE
- Further, tax authorities also emphasized that interest receivable adjustment, on account of outstanding guarantee fee receivable from AE, should also be made to taxpayer's income
- Subsequently, guarantee fee receivable adjustment at average guarantee fee rate available of various banks along with interest receivable was made to taxpayer's income
- Taxpayer contended only on the ground that disallowance be restricted to the extent of guarantee fee payment made by it to its bank
- Tax court observed that taxpayer did not deny the fact of non-charging of guarantee fee from its AE neither did it oppose interest receivable adjustment made and thus dismissed case on this ground without commenting on taxpayer's contention

Whirlpool India Ltd – ITAT - Delhi

Decision Outcome: In favour of the taxpayer

Category: Marketing intangibles

Summary of decision:

- Taxpayer incurred advertising, marketing and promotion (AMP) expenses and provided some extra trade discount to its distributors, in respect of both of which tax authority made marketing intangible adjustment
- Simultaneously, tax authority made a disallowance of AMP expenses under section 37 over and above transfer pricing adjustment of the same amount leading to a double addition
- Tax court upheld tax authority's jurisdiction to make marketing intangible adjustment in respect of AMP expenses
- Tax court held that if an amount is a discount not being direct expenses for AMP, it is outside the purview ALP determination and relying on LG Electronics Special Bench ruling excluded such amount from computation of marketing intangible adjustment
- Tax court also held that transfer pricing provision would prevail over other regular provisions governing deductibility of expenses and concluded that once total AMP expenses is processed with the aim of making transfer pricing adjustment, the same cannot be subject to disallowance under section 37
- It was held that tax authorities were not justified in observing alternate disallowance under section 37