

Asian Paints Ltd – ITAT Mumbai

Decision Outcome: In **favour** of the taxpayer

Industry: Chemicals and Paints

Category: Receipt of Guarantee Commission

Summary of decision:

- The Company had given guarantee to various banks on behalf of its subsidiaries for AY 2006-07
- Commission charged to AE for such guarantee provision @ 0.20%
- Internal CUP considered for the rates charged by Banks to the taxpayer – 0.20% to 0.30%
- The TPO resorted to external CUPs and determined the ALP at 3% based on information available with HSBC bank and Allahabad bank
- Adjustment made : Rs 2.42 Cr and confirmed by the Dispute Resolution Panel ('DRP')
- ITAT held that the rate used by the TPO is obtained without carrying out any comparability analysis and relying on market data and hence, a blanket rate cannot be applied
- Reliance placed on the earlier ruling in the taxpayer's case
- Preference given to Internal CUP over external CUP while holding the case in favour of the taxpayer

TransPrice Comments:

It is a settled fact that the guarantee commission/ fee is an international transaction and needs to be benchmarked. The percentage of guarantee fee has to be decided in consideration to the benefit that has accrued to the subsidiary company, market conditions, credit rating of subsidiary and parent etc. Hence, it is important to perform a detailed analysis and maintain documentation to justify the guarantee commission receipt.