

## Shell India Markets Pvt. Ltd – High Court – Bombay

**Outcome:** In **favour** of Taxpayer

**Category:** Pre condition for invoking Chapter X.

**Background** –The taxpayer had issued equity shares to its Associate Enterprise at face value. Since, the taxpayer believed that no income arose from this transaction; it did not report the same in Form 3CEB.

During the course of transfer pricing assessment proceedings, the tax authorities noticed the transaction of issuance of shares and alleged short receipt of consideration for issue of shares thereby making an adjustment of amount for the difference i.e. between Arm’s Length Price (ALP) as computed by tax authority and the consideration received by tax payer. The interest was charged on short receipt of consideration. Adjustment amounted to INR. 152.2 billion Considering it to be international transaction. The taxpayer filed writ petition before Hon. High court against tax authorities. As matter of abundant caution, taxpayer also filed objection against draft assessment order before Dispute Resolution Panel (DRP) on issue of jurisdiction.

**High Court’s Decision** – The HC has held that non-disclosure of transaction of issuance of shares to its AE in form 3CEB is a position which has been upheld by HC in Vodafone case. Further, the High Court held that Chapter X of the act would occasion only when income arises out of international transaction and such income is chargeable to tax. The HC had set aside the draft assessment order to the extent it sought to bring to tax ALP on issuance of shares to its AE and also deemed interest on short receipt.

## Toll Global Forwarding India Pvt Ltd – ITAT–Delhi

**Outcome:** In **favour** of taxpayer

**Category:** CUP Method preferred over TNMM.

**Background** – The taxpayer is engaged in the business of freight forwarding through air and ocean transportation. The taxpayer enters into two types of international transaction i.e. arranging import of cargo, arranging export of cargo by air and sea transportation for delivery

to consignees through associated enterprise .In case of both the transaction, the taxpayer followed 50:50 business model of sharing residual profits. To benchmark its international transaction, taxpayer adopted CUP method as most appropriate method. However tax authorities rejected business model along with method as adopted earlier by stating that taxpayer failed to demonstrate the actual amount charged for comparable services which should be same as uncontrolled transaction. Therefore due to reason of ‘absent prices’, tax authorities considered TNMM as most appropriate method and thereby made an adjustment of INR 20.9 million which was confirmed by DRP. The taxpayer filed appeal before ITAT.

**ITAT’s Decisions** – Tax Court, held that in case of taxpayer’s industry it was standard practice to share profits in 50:50 ratio and also upholds CUP to be most appropriate method .Tax Court rejects tax authorities stand of ‘absent prices’ by clarifying and signifying that the term Price as per rule 10B(1)(e) includes not only monetary amount but also mechanism in terms of formulae to arrive at consideration.

## Castrol India Limited – ITAT-Bombay.

**Outcome:** In **favour** of taxpayer

**Category:** Royalty-Transfer pricing adjustment.

**Background** – The taxpayer is engaged in business of manufacturing, distribution of lubricating oil, grease, break fluids etc. The taxpayer paid royalty for the technical knowhow services received from its AE which amounted to 3.5% of net ex-factory sale price. The above rate was considered to be at Arm’s length price as the arithmetic mean of comparable companies was 4.75% for this transaction. During the assessment proceedings, tax authorities observed that the royalty on export and other income paid by taxpayer was not allowable as per approval of Secretariat for Industrial Assistance (SIA) and therefore made transfer pricing addition.

**ITAT’s Decisions** – Tax Court deletes transfer pricing addition on royalty and also states that

tax authorities was not justified in adopting SIA approval for determining arm's length price.

Narendra Modi to attract foreign investments to South Asian nation and turn into manufacturing hub.

## **L'oreal India Pvt Limited – High Court-Bombay**

With reference to earlier ruling, the Bombay High court affirmed a tribunal decision accepting taxpayer's use of Resale Price Method for determining arm's length price of international transaction with respect to distribution activities.

### **Recent News:**

#### **PM Modi proposes special facility for funding SAARC infrastructure projects:**

Seeking to strengthen economic ties within the SAARC region, Prime Minister Narendra Modi proposed a Special Purpose Facility to finance infrastructure project in the region and called for common standards to speed up trade activities.

Currently, less than 5% of the region's global trade takes place and less than 10% of the region's internal trade takes place under SAARC Free Trade Area. Hence it is necessary to shrink the distance between the producers and consumer and use the most direct routes to trade effectively resulting into simple procedures.

#### **Attorney General not in favour of appeal in Vodafone tax case.**

Attorney General Mukul Rohatgi has asked Income Tax Department to desist from filing appeal against the Bombay High Court ruling that Vodafone is not liable to pay an income – tax demand of INR. 32 billions in relation to transfer pricing.

#### **Indian Court Rules in Shell's Favour in \$ 1.4 billion tax dispute**

The Bombay HC ruled in favour of the Indian unit of Royal Dutch Shell (RDSA) Plc, Europe's largest oil producer, in a \$ 1.4 billion tax dispute, bolstering sentiment among overseas investors. The ruling is a boost to efforts by