

## Knorr Bremse India Private Limited – ITAT – Delhi

**Outcome:** In favour of taxpayer  
**Category:** Intra-group services

Tax Court upholds taxpayer's views on professional consultancy and management support fees paid to its Associated Enterprise (AE). As per facts, this expense is paid by taxpayer to employees of AE. It is understood that the AE had charged only salary and other related costs of the employees without any mark-up and treats transaction as reimbursement of expenses.

Accordingly, tax court rules that although the expenses incurred are paid directly to employees of AE, these employees would be considered as third party in this case where it is difficult to assign revenue and costs to each employee. Further, Tax Court upholds transaction as not a related party payment and proceeds to delete any adjustment.

## Lason India Pvt Ltd – ITAT – Chennai

**Outcome:** Against taxpayer  
**Category:** Pass-through

Tax Court holds payment for outsourcing data entry work to domestic subsidiary and other independent units by taxpayer (Indian) as not pass through cost while benchmarking transactions between taxpayer and overseas AE.

The taxpayer receives fixed percentage of mark-up on pass through cost from overseas AE and argued 'no nexus' with actual operating income and expenses for mere outsourcing payment made to domestic subsidiary. Further, the taxpayer includes pass through cost in its profit and loss account. Accordingly, Tax Court rejects this contention as payment is made on taxpayer's account and not on behalf of the AEs and rules that such payment cannot be pass through as it is not from overseas AE to subsidiary of taxpayer.

## Sara Lee TTK Ltd – ITAT – Mumbai

**Outcome:** Against taxpayer  
**Category:** Valid CUP

The Tax Court holds that RBI approval/ FIPB approval is not conclusive evidence of arm's length and cannot be considered to be a valid CUP. It is clarified that such approvals are meant for facilitating 'ease of doing business' and not related to determining arm's length.

## Copal Research India Pvt Ltd – ITAT – Delhi

**Outcome:** Against taxpayer  
**Category:** Functions, Assets and Risks (FAR)

The Tax Court admonishes the lackadaisical approach by taxpayer or tax authorities in conducting fundamental FAR analysis at primary stages. It is observed that this practise results in a breakdown at appellate level when challenged.

Accordingly, the Tax Court directs the tax officer to redo entire FAR analysis properly before selecting comparables for ITES services provided to AE.

## New Delhi Television Ltd – ITAT – Delhi

**Outcome:** In favour of taxpayer  
**Category:** International Transaction

Tax Court rules that the expenses incurred by taxpayer before incorporation of its overseas AE represents 'shareholder activity'. It is inferred that when AE was not in existence, then pre-incorporation expenses cannot be classified as an international transaction as per Section 92B of Income-tax Act 1961.

Further, reference is placed on definition of shareholder activity in OECD TP Guidelines.

## Winergy Drive Systems India Pvt Ltd – ITAT – Chennai

**Outcome:** In favour of taxpayer  
**Category:** External Commercial Borrowing (ECB)

Tax Court rejects tax officer's determination of interest rate based on 'unadjusted industrial average' as per 'India's External Debt Status Report – 2008' on loan in Euros from AE.