

## Watson Pharma Pvt Ltd– ITAT - Mumbai.

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

**Category:** Location Savings

**ITAT’s decision:** The tax court deletes location savings adjustment for taxpayer engaged in contract manufacturing and research & development.

As no super profit arose to AE or taxpayer, location saving advantages could not be established. Further, both the parties existed in perfectly competitive market. Reliance was also placed on Action 8 of BEPS stating that location savings are not intangibles unless specific benefits are being owned or controlled by individual enterprise. TPO’s reliance on UN TP Manual has been rejected, as being view of Indian tax administration and also rejected reliance on an old US Tax Court case.

**Comments:** It is worthwhile to consider the reference made to the work of OECD under Action 8 of BEPS and the willingness of the tax court to understand and comprehend such complex concept giving due regards to business scenario and creating conducive environment for the investments.

## Wrigley India Pvt Ltd– ITAT- Mumbai.

**Category:** Comparability

**ITAT’s Decisions:** The tax court set aside tax officers order that adopted cost plus method for comparing sales made to AE with sales made to independent parties. The tax court ruled that a contract manufacturer (Sales made to AE) cannot be compared with an entrepreneur (Sales made to independent domestic parties)

The tax court heavily criticizes the quality of transfer pricing documentation maintained by the consultants on behalf of the client.

**Comments:** As per our view, it is high time that the industry realises the importance of Transfer Pricing documentation and the possible impact that it could have on the operations of company and group as a whole. It is imperative to bring

out business realities and practical scenarios than submitting or maintaining standard piece of documentation.

## Rockwell Automation India Pvt Ltd – ITAT–Delhi.

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

**Category:** Management fees.

**ITAT’s Decisions:** The tax court held that TPO cannot determine arm’s length price of the management fees paid by taxpayer to its AE at ‘nil value’ by adopting CUP method for the reason that no benefit has been received from the service rendered by AE and no independent party would have made similar payments in an uncontrolled environment. Similarly, tax court placed rejection on TPO’s view that taxpayer had management experts on its rolls and therefore global oversight services were not needed.

**Comments:** Provision of service and valuation are the two main aspects for management fees. It is important to document such benefit accrued in an appropriate manner. For e.g. ‘cost benefit analysis or expert certificate’

## Prolific Corporation Limited- ITAT- Hyderabad.

**Outcome:** In **favour** of Revenue.

**Category:** Financial transactions

**ITAT Decisions:** In case of loan provided to its subsidiary, Tax Court opined that interest should be charged on any amount of loan provided to subsidiary whether as a direct loan or reimbursable initial credit. Further, approves interest adjustment proposed by TPO stating that commercial consideration advanced by taxpayer cannot be considered for determining ALP. In case of corporate guarantee, Tax Court held that provision of guarantee always involved risk and there was service rendered to AE in increasing the creditworthiness in obtaining loans and therefore upheld the adjustment made on guarantee commission.

**Comments:** It is a settled position in law post 2012, that any type of outstanding debt or risk undertaken by an entity for a corporate guarantee is an international transaction and need to be benchmarked at ALP.

## Tata Motor European Technical centre Plc (TMETC) -ITAT-Mumbai.

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

**Category:** Foreign Comparable

**ITAT Decisions:** Tax court allows selection of foreign comparable for UK based taxpayer having service PE in India rendering design services to holding company. Further, held that all the cost attributable to PE were incurred in UK and thereby Indian PE was influenced by economic conditions of UK. Held that, if tested party is foreign based and services rendered is specific for which Indian comparable are not available or functionally not comparable then foreign comparable can be taken for benchmarking purpose.

**Comments:** Indian Transfer Pricing regulations prescribe that for application of TNMM, enterprise could be either resident or non-resident. As a general rule, tested party is one to which transfer pricing method can be applied in most reliable manner and for which most reliable comparable can be found. Thus from analysis, conclusion can be drawn that selection of foreign AE as tested party is not prohibited under Indian taxation law.

## Bhansali and Company - ITAT-Mumbai.

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

**Category:** Foreign interest rate.

**ITAT Decisions:** Tax Court held that Libor is the correct benchmark for interest received on loan advanced in foreign currency and also accepts taxpayer mode of benchmarking interest at Libor plus 200 basis points to be at arm's length price. Tax court rejected the contention of TPO

who benchmarked interest @ Libor plus 500 basis points.

**Comments:** Due regards needs to be given to the theory that no 'interest rate arbitrage' is possible in economic scenarios. Any interest rate differences have a strong relevance to the foreign exchange currency fluctuation and strength of the currency. Hence, using of foreign interest rates for loan advanced in foreign currency would be giving correct analysis to the theory.

## Recent Rulings and Amendments in Dispute Resolution Panel (DRP):

CBDT appoints 15 commissioners for 5 DRP panels as follows:

- 2 at Delhi
- 2 at Mumbai
- 1 at Bangalore.

As per the amendment, CBDT has reduced the number of cities for DRP constitution. The rationale behind reducing the number of cities for DRP constitution is for efficient functioning and reducing the work load. Unlike an additional charge, each panel member shall be responsible. The above change would also ensure regular hearings and provides more time for hearings and disposals which are evenly spread across.