VISION: Journal of Indian Taxation
Vol. 3(2), Jul-Dec 2016, pp. 92-104
DOI: 10.17492/vision.v3i2.7902
www.journalpressindia.com/vjit
© 2016 Journal Press India

Benchmarking Marketing Intangibles: Need for Coordinated Transfer Pricing Regimes

*Lakshana Radhakrishnan**

ABSTRACT

Tax competitive policies can be effective in cases of a collaborated cross-border effort with international consensus on minimum thresholds and mechanisms for cross-country cooperation. However, aggressive uncoordinated tax competitiveness destroys value and shrinks the growth and prosperity of the industry. Hence, there is a need for tax certainty and common standards in international transfer pricing. The OECD has provided a framework for countries to move towards universal tax regimes that have common tax policies and coordinated implementation systems. This paper highlights the issue of AMP (advertising, marketing and promotion) costs in transfer pricing and seeks to establish the need for coordination among national tax systems. Ensuring consistency among the tax policies of the world's nations is important for preventing instances of BEPS (base erosion and profit shifting) that are the products of the gaps between elaborately drafted and extremely complicated tax legislations. Creation of universal tax principles and their effective implementation is the only solution to this problem.

Keywords: *Transfer pricing; Market intangibles; Base erosion and profit shifting (BEPS); Arm's length price; AMP costs.*

1.0 Introduction

As the geographic mobility of tax bases has been on a steady increase, tax jurisdictions constantly attempt in vain to reduce base erosion and profit shifting (BEPS) by offering lower tax rates, broadening the tax base and reinforcing anti-avoidance mechanisms and anti-abuse rules. In a quest to become the most attractive destination for foreign direct investment (FDI), India and several other developing counties provide tax incentives and favourable domestic tax rates while they seek to prevent multinational corporations (MNCs) from shifting profits out of the original tax jurisdiction.

**National Academy of Legal Studies and Research (NALSAR), University of Law, Hyderabad, India.(Email: lakshana@outlook.in)*

Tax competitive policies can be effective in cases of a collaborated cross-border effort with international consensus on minimum thresholds and mechanisms for cross-country cooperation. However, aggressive uncoordinated tax competitiveness destroys value and shrinks the growth and prosperity of the industry. Hence, there is a need for tax certainty and common standards in international transfer pricing (Scchriftenreihe, 2014).

The OECD BEPS Project (2013) seeks to address this problem by providing a framework for countries to move towards universal tax regimes that have common tax policies and coordinated implementation systems. India has also taken steps to tighten its Transfer Pricing Regulations (TPR) by introducing General Anti-Avoidance Rules (GAAR), effective from the current assessment year 2017-18 (AY). The GAAR has already generated wide criticism from the market owing to certain controversial provisions that it contains. For instance, GAAR provides for the denial of tax benefits in case the transaction is found to have no commercial purpose except tax avoidance[1].

However, there remain several uncertain areas in international transfer pricing and there is a dire need for clear universal standards. One such issue is the development of marketing intangibles in cross-border transactions. In situations where the Indian taxpayer commercially exploits the intellectual property of the foreign Associated Enterprise (AE), the expenditure incurred on excess Advertising, Marketing and Promotion (AMP) activities by the Indian affiliate can lead to the promotion of the brand of the foreign AE and creation of marketing intangibles for the latter. This would constitute an international transaction u/s.92B and it should be benchmarked at Arm's Length Price (ALP). In case the taxpayer fails to satisfy the Transfer Pricing Officer (TPO) as to the correctness of the ALP of the transaction, the TPO can make adjustments to the reported values.

The transfer pricing regime of marketing intangibles is subject to several problems. The transfer pricing regimes vary across jurisdictions and a certain expenditure that is disallowed in a particular tax base could also be taxed in another jurisdiction. Hence, issues of double taxation become frequent occurrences. Especially in the case of AMP costs, the excessive expenses identified by the authorities needs to be reimbursed by the foreign AE and this creates problems since the foreign AE might have already suffered tax incidence for that income in its home jurisdiction. Hence, adjustments of AMP expenses are an elaborate three-step procedure involving primary adjustment by the TPO, secondary adjustment by the foreign AE and coordinating adjustment by the tax authorities in the jurisdiction of the foreign AE. This long-drawn process is further hindered by the huge inconsistences across national tax laws and complex tax planning.

Further, there exists no clear standard for identifying the amount expended on promotion of the brand of the foreign AE and there exists no dedicated Transfer Pricing Method (TPM) that can be employed to compute the same, despite several case laws in this regard. The Indian TPR have not been amended to answer these questions and case laws have been inconsistent. The researcher shall seek to highlight the issue of AMP costs in transfer pricing in this paper and seek to establish the need for coordination among national tax systems. The paper is organised in four parts. The next section provides a brief account of issues involved in deriving the ALP for AMP costs. It is followed by a detailed analysis of important court decisions. The conclusion sums up the discussion.

2.0 Benchmarking AMP Costs

It has been widely acknowledged that benchmarking of AMP expenditure incurred for the development of marketing intangibles is one of the trickiest areas in transfer pricing (Steve et al., 2006). Like any other business, AMP costs are frequently incurred by Indian subsidiaries who act as manufacturers and/or distributors of the products legally owned by the foreign associated enterprise (AE). Often, during the promotion of its local business, the Indian affiliate creates intangible value for the business of the foreign AE, since the two activities are closely connected. Alternatively, the Indian venture can enter into an agreement with the foreign AE to promote its brand alongside or in addition to the promotional activities undertaken for the Indian business. Such activities amount to a service rendered by the Indian entity to its foreign AE, in certain situations, and it should be scaled at ALP.

ALP refers to the market price at which uncontrolled transactions between unrelated parties is conducted (Markham, 2005). The relevant international instruments with respect to ALP are the 2010 OECD Transfer Pricing Guidelines (OECD, 2010) and the 2013 UN Practical Manual on Transfer Pricing for developing countries (United Nations, 2013). The Indian Transfer Pricing Regulations (TPR) are based on international standards[2] and they were introduced in Chapter X of the Income Tax Act, 1961 in the year 2001. Indian TPR are applicable to an assessee, which engages in an 'international transaction',[3] with an 'associated enterprise (AE)'[4]. Such international transactions between related parties should be conducted at the market price in which unrelated parties would transact i.e. ALP[5].

As per the retrospective amendment to S.92CA brought in via the Finance Act of 2012, the cross-border provision of any service related to the development of market intangibles falls within the scope of an international transaction. Consequently, any arrangement between a foreign AE and an Indian affiliate for the building of market

intangibles should be at arm's length. The assessee is responsible to establish that its international transactions meet the arm's length standard. If the assessee fails to satisfy the tax authorities regarding the same, the TPO has the power to make adjustments to the prices declared by the assessee. The adjustments are made based on the TPO's computation of ALP by applying the most appropriate method of calculation. The adjustments are almost always challenged by the assessee in courts.

The Indian courts have not taken a consistent approach in matters regarding the transfer pricing of AMP expenses. Multiple tests have been applied across cases and the inconsistent judicial pattern begs the question of reconcilability of market intangibles with ALP.

2.1 Bright Line Test (BLT)

In *DHL Corporation & Subsidiaries v. Commissioner of Internal Revenue*[6], the US Tax Court propounded the famous BLT standard. The United Stated had created the Developer-assister Rules in 1968. Under the Rules, the legal and the economic ownership of a marketing intangible were separated. The creator of the marketing intangible in the domestic market was classified as the economic owner and thus the 'developer' of the same vis-à-vis the foreign AE which, as the mere legal owner, would solely remain as 'assister'. In such a situation, the domestic enterprise would not have to compensate the foreign AE for usage of the trademark on account of the principle of equitable ownership on the basis of respective economic expenditure (Wright and Keates, 1999). The BLT creates a distinction between routine and non-routine AMP expenditure. The assessee is only required to be reimbursed by the foreign AE for the non-routine AMP costs incurred by it over and above what is expended by 'comparable companies'.

2.2 Conundrum of Comparables

Problems arise with respect to determination of comparable companies and drawing of a distinction between routine and non-routine expenditure[7]. The Indian courts and TPO have frequently dealt with BLT but there is still no clear test for identifying comparable companies and applying appropriate TPM. The 'comparable company' standard is highly problematic and the selection process is equally debatable. For instance, in *Ford India Pvt. Ltd.*,[8] the TPO had chosen the same comparables- Tata Motors, Mahindra & Mahindra and Hindustan Motors- as accepted by the Delhi High Court in *Maruti India*[9]. Though Ford and Maruti are very similar, the Chennai bench of ITAT ruled that these entities were not comparable to the 'tested party' and that, new

selections have to be made by TPO, or the figures in the same comparables should be substantially adjusted.

2.3 Transfer Pricing Methods (TPM)

Section 92C provides five methods for computation of ALP: comparable uncontrolled price method; resale price method; cost plus method; profit split method; and transactional net margin method. The OECD Report of 2010 lays emphasis on giving preference to comparables-based methods over the profit-based methods and clarifies that the comparables can be determined based on internal data (OECD, 2010). Usually, the Transaction Net Margin Method (TNMM) is employed to compute the ALP when much data is not available since only the net margin is required to be known under this method. The operating margins of the comparable company in a 'similar field', but not the 'same field' is computed by keeping in mind the average business expenditure.

For instance, in *LG India*[10] the selection of 'domestic comparable companies' not using any foreign brand was approved for the purpose of valuing the international transaction. One disadvantage of such selection is that when different operating models are employed in different industries the expenditure may differ; but TNMM adjusts the figures to compensate for these nuances. After corrections, if the expenses of the tested party exceed those of the comparable company, then the surplus amount would be termed as non-routine AMP expenses, which must be TP adjusted.

2.4 Deduction of business expenses

The usual AMP costs are eligible for tax deduction as they amount to business expenses like expenditure on raw materials, payroll, leased commercial space and property taxes. They are considered to be 'expenses incurred in the course of doing business' and the Department cannot interfere with reasonable business expenses u/s.37 (1). In addition, payments which are 'wholly' and 'exclusively' for the purpose of business is allowed u/s.40A (2).

In a transaction where the assessee creates and improves marketing intangibles for and on behalf of its foreign AE, the non-routine AMP expenditure would count as spending for the foreign AE and S.37 would not be applicable since its scope is restricted to taxpayers who spend for the purpose of their own business. Therefore, when the spending in terms of brand promotion was clearly for the sake of the AE, it would not qualify u/s. 37. The issue ultimately boils down to a distinction between expenses- those expenses, which amount to brand promotion and those, which will result in product promotion, a distinction upon which the assessee, the TPO and the courts seem to have huge differences.

3.0 Judicial Precedents on Marketing Intangibles

3.1 Maruti Suzuki India: The beginning

The dispute around marketing intangibles had its origin in India in *Maruti Suzuki*[11]. In response to a writ petition filed in the Delhi High Court, certain guidelines were laid down to calculate the ALP for the international transaction of brand building of the foreign AE. The Delhi High Court decreed that the following should be established before a TP adjustment can be made:

- The AMP expenses incurred by the domestic company should be ‘significantly higher’ than what comparable third party companies incurred for selling the product;
- The usage of the logo of the foreign AE should be compulsory and not merely voluntary; and
- The benefits accrued to the foreign AE should not be merely incidental.

Maruti’s AMP expenses were significantly outside the arm’s length range of comparable entities. The usage of the Suzuki logo was mandatory as per an agreement between the two parties and consequently, it can be said that the benefit received by Suzuki was not incidental. If Suzuki does not compensate the Indian company, it could be seen as piggybacking on Maruti’s renown in India to build its own brand image. Hence, Maruti is liable to be reimbursed for the perceived enhancement of the Suzuki brand name.

Furthermore, the Court distinguished selling expenditure from non-routine AMP costs as those, which are concerned with creating awareness and communicating the strengths, features and price of the product to invoke the interest of potential customers. In these activities, it can be seen that the brand name as such does not gain much value. Similarly, ‘distribution expenses’ which are usually grouped with AMP costs should be analysed separately as a ‘product placement’ expenditure and not that of ‘product promotion’.

The appropriateness of the margin of the Indian AE was also analysed. Herein, it is important to note that the local company would receive adequate remuneration, directly or indirectly, upon an FAR analysis to identify the degree of control, the capacity for independent operational activity, relative costs involved and the location of the development activity, before arriving at a sum.

In some situations, the taxpayer, which has enormously spent on AMP activities can have a profit margin commensurate with other companies performing similar functions owing to internal re-adjustments. If the Tax Authorities insist that separate compensation should be provided for AMP expenses with a mark-up addition, it would be unreasonable and it would lead to Double Taxation. Hence, the concept of basic TP

adjustments (primary and secondary) along with coordinating adjustments has to be applied after fully considering the facts and circumstances of a given case.

Though all of the principles propounded by the Delhi HC were accepted in law, it should be noted that through a SLP, the Apex Court granted leave to the A.O to carry on his duty in accordance with the law without being influenced by the High Court's remarks. Hence, the weightage of the principles is questionable.

3.2 LG India and BMW India: Era of contrary views

In January 2013, a Special Bench of the Delhi ITAT decided upon certain important TP issues in *LG India*[12]. It interpreted the Supreme Court's direction to the Assessing Officer (AO) in Maruti India for *de novo* determination, to inherently affirm the nature of AMP expenses as an international transaction u/s. 92B and to reiterate the AO's jurisdiction in determining the ALP when the matter was not referred to him. Thus, the TPO can examine the arm's length pricing of such international transactions as those, which were not reported by the taxpayer in Form 3CEB[13] nor specifically referred to him by the AO but comes to his notice during the course of the proceedings. The above issues were disputed before the introduction of the retrospective amendment to Section 92CA which has rendered the much needed clarity.

The Chennai Tribunal in *Ford India,* which was decided before *BMW India,* upheld the *LG India* ruling and stated that the Bright Line Test is applicable to compute the TP adjustments subject to the exclusion of selling expenses. Further, the hypothetical brand promotion fee computed at 1% was deleted. In *BMW India*[14] the Delhi ITAT distinguished *LG India* by saying that BMW is a distributor while LG Electronics is a licensed manufacturer and the ratio of *LG India* shouldn't be unnecessarily extended to cover situations that are beyond what its fact scenario can be accommodate.

Further, it was noted that Transfer Pricing is a subjective domain where there can be no straightjacket formula. Particular facts of the business model of the assessee, the details of the arrangement with the foreign AE and a comprehensive FAR analysis are necessitated to appropriately characterise the transactions before making ALP adjustments. For instance, the FAR profile of a distributor is different from that of a licensed manufacturer so benchmarking cannot be done based on a single equation in both cases.

Further, it was held that separate, distinct reimbursement is not required for non-routine AMP costs since the Income Tax Act does not provide so. The distributors could be reimbursed by being given a higher gross margin at ALP or through other internal re-adjustments like residual profit split method. Excessive AMP expenses could also be compensated by the higher premium earned through robust sales. This is in

contravention to LG India wherein it was held that a *"robust profit margin at entity level would not rule out AMP expense adjustment."* The Tribunal also held that when the Indian TPR are inadequate to address a situation, the OECD Transfer Pricing Guidelines (OECD, 2010), the Australian Tax Office (ATO) Guidelines related to Marketing Intangibles and the OECD Discussion Draft on Intangibles could be referred to.

Subsequently, *Casio India Pvt Ltd.*[15] dissented from *BMW India* and relied on *LG India.* Casio India is the wholly owned subsidiary of Casio Japan and it is involved in the distribution of products supplied by the latter. The ITAT held that the AMP expenses of Casio India should be benchmarked separately and upheld the application of *LG India* to all cases regardless of the Functions, Assets & Risks (FAR) profile of the assessee.
Hence, *BMW India* and *Casio India* have interpreted *LG India* differently. The *BMW India* approach was more favourable to the taxpayers since the characterisation of their business would decide the tax liability. The problem with the Casio approach is that segregation of AMP expenses of all classes of entities notwithstanding their FAR character defeats the aim of the whole exercise and makes it mechanical. Even in situations where there is no arrangement to promote the brand of the foreign AE, the TPO could ask the Indian entity to seek compensation for excess AMP costs. Similarly, when the foreign AE had made internal re-adjustments to make up for excessive AMP spends of the Indian affiliate, the former could be asked to reimburse the entity again.

In *Glaxo Smith Kline Consumer Healthcare Ltd.*[16]*,* the assessee was a licensed manufacturer. The Chandigarh Tribunal followed *LG India* and excluded capital expended on consumer market research and the AMP costs incurred on account of various other domestic brands owned by the assessee and ordered no adjustment to be ade in those respects. In *Canon India*[17], the Delhi Tribunal followed LG India and Glaxo Smith Kline to hold "expenses on commission, cash discount, volume rebate, trade discount etc. and AMP subsidy received by the assessee from the parent company should be excluded from the total AMP expenses."

3.3 Sony Ericsson Saga: The unsettling

In *Sony Ericsson Mobile Communications India Pvt. Ltd.*[18] it was held that AMP expense is to be considered a TP Transaction since the date of June 1st, 2002. The Delhi High Court ruled against the bifurcation of AMP costs using the bright-line test as per the OECD Guidelines (OECD, 2010) and the UN Practical Manual (2013). It was held that non-routine AMP cannot be considered a separate transaction since there is no legal basis for the same in the Indian TPR.

The Delhi High Court differentiated the concept of brand-building from simple AMP expenditure. It stated that brand-building does not necessarily result out of the

AMP spend. There are many reputed brands, which do not go in for advertisement with the intention to build brand value, but to increase sales and to earn more profits. The court thus ruled that considering the notion of brand-building as an equivalent of or as a substantial attribute of advertisement and sales promotion campaigns would be mistaken Further, the use of aggregation method was strongly suggested when the transactions are closely linked or are continuous transactions.

The High Court clearly stated that bundling of marketing and distribution functions is the right approach since they are interconnected. This is at contrast to the ruling in *LG India*, which held that purchase of goods is a separate transaction from AMP and it failed to appreciate that AMP is closely linked to the overall activities of sales and distribution. Thus, the Court has held that separate computation of AMP expenses would result in incongruous results. Therefore, after zeroing in on 'comparables', the net margin should be analysed against the corresponding constructed figures of the comparable company as per Transaction Net Margin Method to arrive at the ALP. In addition, 'when the company is only in a single line of business, then there is no prohibition in applying TNMM on an entity wide basis.' However, if suitable comparables cannot be determined, the other methods can be resorted to.

Set-off and internal re-adjustments are permitted unlike the decision in *LG India* wherein separate compensation was necessitated despite clear evidence indicating higher profitability in distribution function. *Sony Ericsson* is in consonance with the dissenting opinion in LG India in so far as the relevance of economic ownership on intangibles is recognised to state that the creator of the market intangible through advertising functions has the right to economically exploit it to realise tangible benefits. Such a reasoning, rules out the question of the Indian venture rendering any 'service' to the foreign AE, which is liable to be compensated. Therefore, in accordance with the majority ruling in *LG India* it was held that marketing, having a direct connection with increasing the volume of selling and distribution expenses, wouldn't constitute AMP costs.

Further, the Court has identified certain factors, which would be relevant in computing the appropriate method to determine the ALP. The first step to be undertaken is an FAR analysis followed by identification of comparables that show sufficient similarity in the economic aspects of uncontrolled transactions when compared against the assessee's transactions. The assessee must be compensated by the foreign AE for its AMP expenses. The reimbursement can be in any form of set-offs or directly paid in funds.

The appropriate methods to calculate the ALP of an international transaction for different business models and arrangements are:

- Transactional Net Margin Method (TNMM) for licensed distributers. Here, the royalty is added to the import value itself and it will be taxable.
- Resale Price Method (RSP) for Limited Risk Distributers. The similarity in the intensity of the functions performed by the 'tested party' and the comparable is crucial to the applicability of this method.
- TNMM for Licensed Manufacturing, producing and selling goods. If value addition is made upon importing the product, then the royalty fee would be allowable.

Thus, in essence, *Sony Ericsson* has recognised that a different principle would apply if the 'tested party' is a dealer or a trader in contrast to a manufacturer.

3.4 Return to Maruti Suzuki?

In May 2016, *L'Oreal India Pvt Ltd*[19] held that not every expenditure on AMP would amount to an international transaction for the purpose of transfer pricing regulations. As a primary condition, it must be proved that a formal or informal agreement existed between the AE and the taxpayer to engage in the promotion of the brand of the AE. L'Oreal India is a distributor and manufacturer of the products produced by L'Oreal SA France. Its AMP costs were subjected to BLT by the TPO despite the clear ruling in *Sony Ericsson.* The Tribunal held that the tax officer is not entitled to automatically assume that the advertising, marketing and production activities undertaken by the taxpayer would have benefitted the AE. The ruling is in consonance with the decision of the Delhi Court in the cases of *Maruti Suzuki*[20], *Honda Siel Power Products*[21], *Whirlpool of India Ltd*[22] and *Bausch & Lomb Pvt Ltd*[23] that in absence of an agreement with the AE, AMP expenditure could not be treated as an international transaction. Hence, we are back to the rigid position of *Maruti Suzuki.*

4.0 Conclusion

There is no tax certainty in international transactions involving marketing intangibles, as demonstrated above. Owing to the gaps in the transfer pricing regimes of different countries, MNCs resort to shifting of profits thereby eroding the tax base. The problem of BEPS is rapidly increasing despite the structural changes wrought by transfer pricing authorities across the world to curb aggressive tax planning by MNEs. A BEPS Action Plan was created in 2013 and country-by-country reporting is underway in response to a request from G20 finance ministers (OECD, 2015). It is a comprehensive call-to-action that identifies actions needed, sets deadlines for implementation and calculates the requisite resources. This is a welcome step in the right direction. It sets the

tone for sharing of Government tax information and it has started the process of revision of tax treaties and the process of making the tax rules more restrictive.

The BEPS Action Plan requires additional compliance by Indian entities beyond what is required under Rule 10D of the Income Tax Rules, 1962 (Grant Thornton India, 2016). This will multiply the costs and the administrative hurdles faced by Indian MNEs and it could make the Indian market less attractive for investment. It requires that several documents be periodically submitted and tax information shared across jurisdictions but fails to discuss any data protection method, leaving open serious questions of confidentiality. The BEPS Action Plan encourages countries to move towards a regime of common standards within the framework of the OECD. However, the OECD Guidelines have their own problems.

The OECD Guidelines do not have the force of sanction. The OECD does not see wide representation and a number of countries perceive it as exclusive. The guidelines have to be amended to suit changing times (Jinyan, 2012). However, for lack of better option, we will have to abide by it. Ensuring consistency among the tax policies of the world's nations is important for preventing instances of BEPS that are the products of the gaps between elaborately drafted and extremely complicated tax legislations. Creation of universal tax principles and their effective implementation is the only solution to this problem.

It will certainly take a long time for universal principles of international taxation to evolve. In the meanwhile, it is important to ensure tax certainty in India. *Sony Ericsson* has done away with the tried and tested BLT. We need to evolve a new method of computing non-routine expenditure in transfer pricing and incorporate the same in the Income Tax Act, 1961. The recently introduced GAAR promise to curb instances of profit shifting routed through shell companies[24]. They will be first applied in the current AY. Only time will tell how effective they prove to be but certain loopholes have already been identified[25].

Further, the usage of Advance Pricing Agreements (APA) should be given some impetus. Several companies have opted for APAs since their introduction through the Finance Act, 2012[26]. Along with Mutually Agreed Procedures (MAPs) it could go a long way in ensuring tax stability and reassuring potential investors about the tax attractiveness of the Indian market. India has signed several bilateral APAs with a number of countries but most of them relate to software services[27]. There is a need for similar arrangements to be made with respect to AMP costs. Hopefully, we will see such positive changes in the Indian international tax landscape very soon.

Endnotes

1. Puneet Puri, GAAR & POEM- Combating Tax Avoidance, The Economic Times blog (2017), http://blogs.economictimes.indiatimes.com/taxable-talk/gaar-poem-combating-tax-avoidance/ (last visited Apr 8, 2017).
2. See OECD, Transfer Pricing and Multinational Enterprises. (1979), http://www.oecd-ilibrary.org/content/book/9789264167773-en (last visited Apr 7, 2017).
3. S. 92B, Income Tax Act, 1961.
4. *Ibid* at S. 92A 1a-b, 2a-m
5. *Ibid* at S. 92C.
6. *DHL Corporation and Subsidiaries v. Commissioner,* TC Memo 1998-46 I, 30 December 1998.
7. 10th Meeting of Ad Hoc Group of Experts on International Cooperation in Tax Matters, *Transfer Pricing, History, State of the Art, Perspectives* 6 (September 2001, Geneva).
8. *Ford India Pvt. Ltd. v. Deputy Commissioner of Income Tax* (ITA No. 2089/Mds./2011).
9. *Maruti Suzuki India Ltd v. Assistant Commissioner of Income Tax* (2010) 328 ITR 210.
10. *L.G. Electronics India Private Limited v. Assistant Commissioner of Income Tax* (ITA No. 5140/Del/2011).
11. Supra note 9.
12. Supra note 10.
13. S. 92CA (2B), Finance Act 2012.
14. *BMW India Ltd v. Assistant Commissioner of Income Tax* (ITA No. 5354/Del./2012).
15. *Casio India Pvt. Ltd. v. Deputy Commissioner of Income Tax* (TS-340-ITAT-2013(DEL)-TP).
16. *Glaxo Smith Kline Consumer Healthcare Ltd. v. Joint Commissioner of Income Tax* (ITA No.208/Chd/2015).
17. *Canon India v. Deputy Commissioner of Income Tax* (2013-TII-96-ITAT-DEL-TP)..
18. *Sony Ericsson Mobile Communication India Pvt. Ltd. v. Commissioner of Income Tax* (2015) 374 I TR 118 (Del).
19. *L'Oreal India Pvt Ltd v. Deputy Commissioner of Income Tax* ITA Nos. 7714, 1119; 976/Mum-2014 and 518, 335/Mum-2015.
20. Supra note 9.
21. *Honda Siel Power Products v. Deputy Commissioner of Income Tax* [2016] 64 Taxmann.com 328 (Del).
22. *Commissioner of Income Tax v. Whirlpool of India Ltd* [2015] 64 Taxmann.com 324 (Del).
23. *Bausch & Lomb Pvt Ltd v. Additional Commissioner of Income Tax* [2015] ITA No. 643 of 2014 (Del).
24. Shashwat Sharma & Ashish Sodhani, *Nishith Desai Associates: India's tax regulator issues clarifications regarding the implementation of the GAAR provision*s, http://www.nishithdesai.com/information/news-storage/news-details/article/indias-tax-

regulator-issues-clarifications-regarding-the-implementation-of-the-gaar-provisions.html (last visited Apr 8, 2017).

25. Reuters, *2 French banks spot a GAAR loophole; here's how they reroute funds via Paris*, THE ECONOMIC TIMES, April 6, 2017.
26. *Advance Pricing Agreement Scheme, Notification no. 36/2012, Central Board of Direct* Taxation (August 30, 2012).
27. *Annual Report 2014-15, Ministry of Finance, Budget Division* 224 (December, 2014).

References

Grant Thornton India. (2016). *Action 13: Transfer Pricing Documentation and Country-by-Country Reporting- India*.

Jinyan, Li. (2012). *Fundamentals of International Transfer Pricing in Law and Economics* (eds. Wolfgang Schön & Kai A. Konrad), Berlin: Springer.

Markham, Michelle. (2005). *The Transfer Pricing of Intangibles*. Kluwer.

OECD. (2010). Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. Retrieved from http://www.oecd-ilibrary.org/content/book/tpg-2010-en (last visited Apr 7, 2017)

OECD. (2015). *OECD/G20 Base Erosion and Profit Shifting Project, Action 13: Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting*.

Schriftenreihe Istr Band. (2014). *Tax Policy Challenges in the 21st Century*. (eds. Karoline Spies & Raffaele Petruzzi).

Steve A, Rahul T, & Deloris R. W. (2006). Sec. 482 Services Regulations: Implications for Multinationals. *International Transfer Pricing Journal*, 13(6): 279-90.

United Nations. (2013). *United Nations Practical Manual on Transfer Pricing for Developing Countries*. UN Committee of Experts on International Cooperation in Tax Matters.

Wright, Deloris R. & Keates, Harry A. (1999). The DHL case: What lessons can be learned? *International Transfer Pricing Journal*, 6 (May/June): 74-78.