TRANSFER PRICING JURISPRUDENCE

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Overview

With the advent of the New Economic Policy of 1991 and as part of globalization, many foreign investors entered the Indian market in the 1990s and early 2000s which led to an integration of domestic companies into multinational entities and consequent surge in the intra-MNE transactions. Whilst the growing involvement of multinational groups in India's economic activities gave the economy a much-needed boost, it came with its share of challenges.

One such challenge was in the form of capital erosion and profit shifting as multinational groups often manipulated intra-group pricing to artificially reduce the profits reported by their Indian entities, thereby significantly eroding the tax revenues.

This necessitated the introduction of 'Transfer Pricing regulations' – a statutory framework which could monitor the intra-group transactions and ensure the computation of reasonable, fair and equitable profits and tax in India in respect of such intra-group transactions.

*This article traces the trajectory of **Indian Transfer Pricing jurisprudence** from the post-1991 era of globalization to the modern mandates of Income-tax Act, 2025. It specifically analyses **three critical "litigative minefields"**: the shifting definition of Associated Enterprises, the collision of conflicting regulatory regimes such as FEMA, Customs, and Tax, and the ever-evolving rigorous scrutiny of Intra-Group Services.*

I. Introduction

The introduction of Chapter X under the Income-tax Act, 1961 ("ITA 1961") viz. the 'Transfer Pricing regulations' via the Finance Act, 2001, marked a turning point in India's tax history, designed to prevent profit shifting and ensure fair taxation in transactions within multinational groups. Over the past twenty years, this regulatory landscape has matured significantly, shaped by a continuous cycle of statutory amendments and robust judicial scrutiny.

This article delves into the relevant provisions of ITA 1961, its history and the nuances surrounding certain critical facets of transfer pricing litigation.

II. Associated Enterprise – a tumultuous past and an uncertain future

Background

The basic premise of Chapter X of ITA 1961 is that "any income arising from an international transaction entered into between two or more associated enterprises shall be computed having regard to the arm's length price."

While almost each term mentioned above has seen some form or the other of litigation, one of the most controversial topic in transfer pricing jurisprudence is the interpretation of "associated enterprise". This term assumes importance as it is only such international transactions which are entered into between the 'associated enterprises', that would be subjected to the provisions of Chapter X.

The term 'associated enterprise' is defined under section 92A of the ITA 1961 which is divided into two sub-sections.

- Sub-section (1) thereof *(which is infact in line with sub-paragraphs 1(a) and 1(b) of Article 9 of the OECD Model Tax Convention*) provides that two enterprises are 'associated enterprises' if one of the enterprises participates directly or indirectly in the management, control, or capital of the other or if the same persons participate directly or indirectly in the management, control, or capital of both enterprises (viz. if both enterprises are under common control).

- Section 92A(2) on the other hand, originally provided that two enterprises shall also be deemed to be associated enterprises if, at any time during the previous year, the enterprises satisfied one of the thirteen criteria specified in the said section.

Sub-section (2) was then retrospectively amended by Finance Act, 2002 to clarify that the mere fact of participation by one enterprise in the management or control or capital of the other enterprise, or the participation of one or more persons in the management or control or capital of both the enterprises would not make them associated enterprises, unless the criteria specified in sub-section (2) are fulfilled[1]. It is in light of this amendment that the interpretation of 'associated enterprise' has led to litigation before the Courts.

Controversies settled in litigation

One of the first cases where section 92A was examined in depth was in the decision of ***Diageo India (P.) Ltd***[2], where the Hon'ble Mumbai Tribunal held that the definition of 'associated enterprise' contained in section 92A(1)(a) and (b) is the "basic rule" and in terms of this basic rule, whether one enterprise controls the decision making of the other or whether decision making of two or more enterprises are controlled by same interests, these enterprises are required to be treated as 'associated enterprise'. The Tribunal further held that all clauses of deeming fiction set out in section 92A(2) are only illustrations of the manner in which the de facto control on decision making exists, which are required to be interpreted in a manner so as to make them workable.

1. *Explanatory Memorandum to Finance Bill 2002*
2. *[2011] 13 taxmann.com 62 (Mumbai)*

The foregoing principle that – sections 92A(1) and (2) of ITA 1961 are required to be read together and both the sub-sections cannot be read independently, has yet again been followed by the Hon'ble Special Bench of Tribunal in the case of TBEA Shenyang Transformer Group Company Limited

In the subsequent decision of ***Kaybee (P.) Ltd v. ITO***[3], the Hon'ble Mumbai Tribunal has categorically held that sub-section (1) of section 92A is "not subjected to" sub-section (2), which in turn is a deeming fiction that enlarges the scope and meaning of expression 'associated enterprise' provided under sub-section (1) of section 92A. The Tribunal hence concluded that if the conditions provided in clause (a) and (b) of section 92A(1) are independently satisfied, then the two enterprises would be treated as associated enterprises. From this decision, it may be inferred that so long as conditions of section 92A(1) are satisfied, provisions of section 92A(2) need not be looked at.

However, a contrary view was expressed in the case of ***Page Industries Ltd v. DCIT***[4] wherein the intention of the 2002 amendment (*supra*) was taken into consideration and it was unequivocally held by the Hon'ble Bangalore Tribunal that in order to constitute relationship of an 'associated enterprise', the parameters laid down in both sub-sections (1) and (2) of section 92A should be fulfilled. The Tribunal went on to further hold that interpreting the aforesaid provisions in any other manner whatsoever would render them otiose. This ruling was also followed by the Hon'ble Ahmedabad Tribunal[5] which held that as long as the provisions of one of the clauses in section 92A(2) are not satisfied, even if an enterprise has a de facto participation in capital, management or control over the other enterprises, the two enterprises cannot be said to be associated enterprises. It may be appreciated that over the years, both the above-mentioned decisions have been approved by the respective High Courts[6] and SLPs filed by the revenue authorities dismissed by the Supreme Court[7].

The foregoing principle that – sections 92A(1) and (2) of ITA 1961 are required to be read together and both the sub-sections cannot be read independently, has yet again been followed by the Hon'ble Special Bench of Tribunal in the case of TBEA Shenyang Transformer Group Company Limited[8]. Recently, a connected issue arose for adjudication in ***Neovantage Innovation Park Private Limited v. ITO***[9]. In this case, the legislative intent of using the expression "at any time" in section 92A(2) was elaborately discussed and it was held that the fulfilment of conditions of section 92A(2) may happen either before or after the relevant transactions.

To summarize, as on date under the ITA 1961, when an assessee has participated in control, capital or management of the other enterprise in terms of section 92A(1), the assessee would not be treated as an 'associated enterprise' of

3. *[2015] 43 ITR(T) 234 (Mumbai)*
4. *[2016] 71 taxmann.com 172 (Bangalore - Trib.)*
5. *ACIT v. Veer Gems [2017] 77 taxmann.com 127 (Ahmedabad - Trib.)*
6. *PCIT v. Page Industries Ltd. [2021] 431 ITR 409 (Karnataka); PCIT v. Veer Gems [2018] 407 ITR 639 (Gujarat)*
7. *Special Leave to Appeal (C) No(s). 11465/2021; SLP (Civil) Diary No(s). 37719 of 2017*
8. *ITA No. 581/Ahd/2017, order dated November 11, 2024*
9. *ITA Nos. 923 And 924/Hyd/2024, order dated September 10, 2025*

such other enterprise unless the conditions set out in one of the clauses of section 92A(2) are satisfied at any time during the year – before or after entering into the transaction.

Expectations from future

With the primary aim to simplify the language and remove redundant provisions, Income-Tax Bill, 2025 ("IT Bill 2025") was introduced in Lok Sabha on February 13, 2025, which sought to replace ITA 1961. The IT Bill 2025 essentially retained the existing provisions of ITA 1961, albeit with a simplified language.

Clause 162 of IT Bill 2025 defined 'associated enterprise' in a similar fashion as that to section 92A of ITA 1961, except for one glaring difference viz. change in the language of sub-section (2). The opening words of section 92A(2) reads as "*For the purposes of sub-section (1)…..*" which has been held by the Courts to be read together with sub-section (1) in order to determine the existence of 'associated enterprise'. On the other hand, sub-clause (2) of clause 162 of the IT Bill 2025 starts as "*Without affecting the generality of the provisions of sub-section (1)….*". These wordings, though meant to be simple to understand, would have redefined the already settled position of law on this aspect i.e. giving rise to yet again the old interpretation that both sub-clauses of clause 162 are to be read independently of each other.

Having regard to the possible litigation which may arise as a result of the altered language, the Select Committee in its report presented to Lok Sabha on July 21, 2025, inter alia, recommended to reinstate the earlier phrase "for the purposes of sub-section (1)" in the opening line of sub-clause (2) of clause 162 of the IT Bill 2025 in place of the proposed phrase "Without affecting the generality of the provisions of sub-section (1)".

Under Income-tax Act, 2025 ("ITA 2025") enacted on August 21, 2025, section 162 was completely revised such that the clauses in the erstwhile section 92A(2) have now been subsumed under section 162(1) while simultaneously making all but one clause mutually exclusive from the condition of one enterprise exercising *de facto* participation in capital, management or control over the other enterprise. Only clause (a) of section 162(1) now requires satisfaction of the condition of one enterprise exercising direct or indirect participation in the capital, management or control over the other enterprise. As a sequitur, clauses (b) through (l), which enumerate scenarios such as advancing of loan, provision of guarantee, supplying of raw material, usage of technical know-how owned by another enterprise, etc. would now have to pass the 'AE' test even without any participation in the capital, management or control.

To explain with an example, under ITA 1961, if a Foreign Bank advances a loan to an enterprise i.e. Company A such that it constitutes minimum 51% of the book value of the total assets of the company, the said Foreign Bank would become the AE of Company A only when the condition of direct or indirect participation in capital, management or control is also fulfilled [section 92A(2)(c) r.w.s. 92A(1)]. However, now as per clause (b) of section 162(1) of ITA 2025, what appears is that the Foreign Bank, even without any direct or indirect participation in the management or control or capital, would become the AE of Company A if the loan advanced to it constitutes minimum 51% of the book value of its total assets. If this interpretation is indeed true, the Indian banking industry faces a staggering new reality: thousands of routine lending relationships and guarantees arrangements scattered globally could overnight be reclassified as 'AE' transactions!

A similar difficulty may be faced by a manufacturer sourcing 90% of its raw materials from a single vendor—whether driven by decades of trust, competitive pricing, or logistical convenience—automatically creating an AE relationship [section 162(1)(g) of ITA 2025]. Even the global procurement of crude oil for refineries could inadvertently trigger these provisions. In monopolistic or highly concentrated industries, businesses that are forced to source nearly all their raw materials from a single dominant player would now find that player identified as an 'AE'. This would create a paradoxical situation where a purely arms-length, 'take-it-or-leave-it' commercial relationship with a monopolist is treated as an AE transaction for tax purposes – for both the supplier and buyer.

Therefore, under ITA 2025, ostensibly the commercial threshold alone would be enough. This shift would definitely lead to the bizarre reality where third-party lenders or vendors may become AEs overnight based purely on balance sheet fluctuations and the volume of business, regardless of participation or lack thereof in the management, capital and control. Constant monitoring of asset portfolios and supply chains is now a compliance necessity to identify "accidental" AEs that previously wouldn't have qualified!

If one goes by the intent of ITA 2025, then despite the way in which section 162 has been worded, the dual condition viz. control/management/capital coupled with the other conditions contained in the respective clauses would have to be satisfied for an enterprise to be considered as an 'AE'. However, if one simply goes by the language of section 162(1), it appears that the condition of control/management/capital is restricted qua the clause of holding of shares carrying not less than 26% of voting power and not the remaining 11 clauses – clauses (b) to (l). Given these altered provisions, has the legislature purposefully widened the ambit of 'AE' or should the interpretation continue to be guided by the Court precedents?

Another interesting aspect is that because the DTAA's criteria for direct or indirect participation in management, capital, or control may be more favourable than section 162 of ITA 2025, it is debatable whether taxpayers can use these treaties to move entirely outside the ambit of Transfer Pricing provisions.

Conclusion

Whilst the jurisprudence on this issue seemed to have been fairly settled under the ITA 1961, the differing language used in the new and simplified ITA 2025 may lead to its own set of litigation – the one thing which was sought to be avoided under the new ITA 2025 – thereby pushing everyone into a new era of uncertainty.

III. Valuations and Limits prescribed by other laws – whether an implicit safe harbour in the benchmarking exercise?

Background

The cross-border transactions entered into with AEs compel satisfaction of not only the arm's length principle under ITA 1961 but also compliance with other laws such as Foreign Exchange Management Act, 1999 ("FEMA") and Customs Valuation:

- Transfer Pricing under ITA 1961 prevents base erosion and profit shifting in intra-group transactions by ensuring that the transactions are carried out at a price determined between unrelated parties i.e. at 'arm's length price';

- Under the Customs law, the import transactions between related parties are subjected to an investigation by the Special Valuation Branch to ensure that the declared values for imported goods reflect true market conditions, thereby preventing undervaluation and safeguarding revenue;

- While facilitating seamless international trade, FEMA acts as a gatekeeper for India's capital accounts, ensuring that external commercial borrowings and cross-border payments remain within statutory safeguards against illicit activity.

Although these frameworks govern distinct domains, their intersection significantly influences the pricing, regulatory posture, and tax liability of cross-border transactions. This often creates a compliance paradox: adherence to one statute may not invariably ensure reciprocal compliance with the others. Classic instances of this paradox include royalty payments, ECB interest rates and Customs valuation.

Litigative history of Conflicting Regulatory Mandates

As regards royalty payments, the upper limit of which is governed by FEMA (erstwhile FERA/FIPB), the Tribunal in ***SKOL Breweries Ltd. v. ACIT***[10] has held that FDI policy permitting certain percentage of payment of royalty is only for remittance of amount in foreign exchange and therefore, such permission given in an entirely different context and purpose cannot be considered as relevant for determination of ALP under provisions of ITA 1961.

On a similar footing, it was held that the rates of payment of royalty approved by the RBI or by the FIPB (relying upon the rates allowed by RBI under automatic route) would not become *per se* or conclusively or *ipso facto* ALP rates. Both of the legislations operate into different fields. The whole thrust of the income tax proceedings and transfer pricing regulations is to ensure that taxable profit earned by an Indian entity are not shifted to foreign tax jurisdiction without payment of legitimate share of tax due in India. Therefore, independent exercise of determination of ALP is needed to be done to find out if payment of royalty has been done in line with arm's length price or not[11]. This principle finds place in the decision of Delhi High Court[12] wherein it has been held that the grant of permission by RBI for payment of royalty is not sacrosanct as the purposes for which the permission is given is totally different than the ITA 1961.

However, in ***DCIT v. Owens Corning Industries (India) (P.) Ltd***[13], the Tribunal held that RBI approval of royalty rates itself implies that payments are at arm's length; hence, transactions made under royalty agreement approved by RBI are at arm's length. In other decisions as well, it has been held that approval of RBI for royalty could be a reasonable CUP input and thus, impliedly, the royalty payments were at ALP[14].

10. *[2013] 29 taxmann.com 111 (Mumbai - Trib.)*
11. *A.W. Faber Castell (India) (P.) Ltd. v. DCIT [2017] 81 taxmann.com 35 (Mumbai); Gruner India (P.) Ltd. v. DCIT [2016] 159 ITD 772 (Delhi - Trib.); LG Electronics India (P.) Ltd. v. ACIT [2015] 153 ITD 591 (Delhi - Trib.)*
12. *CIT v. Nestle India Ltd. [2011] 337 ITR 103*
13. *[2014] 51 taxmann.com 276 (Hyderabad - Trib.)*
14. *DCIT v. Invida India Pvt. Ltd [2024 (6) TMI 96] (Ahmd. ITAT); Thyssenkrupp Industries India Pvt Ltd v. DCIT [ITA No. 1886/Mum/2017, order dated March 27, 2023]; SI Group-India Ltd. v. DCIT [2016] 68 taxmann.com 158 (Mumbai - Trib.); ACIT v. Dow Agrosciences India (P.) Ltd [2016] 76 taxmann.com 124 (Mumbai - Trib.)*

Even though in the realm of royalty payments there have been divergent views as regards the adoption of RBI rates in the computation of ALP, interestingly, such is not the case when it comes to adoption of RBI prescribed maximum all-in-cost ceilings on the External Commercial Borrowings ("ECBs").

Therefore, the treatment of royalty payments under TP remains unsettled due to two conflicting perspectives. The first asserts that RBI and Income-tax frameworks serve separate purposes, requiring independent TP benchmarking regardless of external approvals. The second argues that RBI-sanctioned rates should inherently meet the ALP criteria. Until this conflict is resolved, taxpayers must navigate a landscape of high uncertainty and dual-compliance requirements!

Even though in the realm of royalty payments there have been divergent views as regards the adoption of RBI rates in the computation of ALP, interestingly, such is not the case when it comes to adoption of RBI prescribed maximum all-in-cost ceilings on the External Commercial Borrowings ("ECBs").

In the undermentioned decisions[15] rendered by co-ordinate benches of the Tribunal, it has been consistently held that following the guidelines of RBI appears to be the correct approach for benchmarking the interest on ECBs availed or provided to the AEs. The Tribunal in ***DCIT v. Geodesic Ltd***[16] has also observed that the RBI prescribed all-in-cost ceiling rate would ideally be sufficient enough to cover the premium warranted to bridge the gap between a secured and unsecured loan and hence, would be a suitable benchmark. This principle has since received the blessing of the Karnataka High Court in ***CIT v. GE India Technology Centre (P.) Ltd***[17], which has held that the approval given by RBI with regard to rate of interest is a relevant factor while determination of the rate of interest.

The benchmarking of import transactions by adopting valuation carried out by custom authorities has also long been a point of contention, centred on two diverging legal theories. In Panasonic India (P.) Ltd[18], it has been categorically held that Customs valuation and Chapter X of the ITA 1961 (which is a self-contained code) serve altogether different purposes and as different criteria are being used in both the laws, the customs valuation cannot be used as a 'guiding factor' for the TPO while making adjustment on account of ALP. In another case as well[19], the Tribunal has held that valuations made by the Customs authority on the import of raw material for the purpose of levy of Customs duty should not be taken as a proper comparable for the reason that the purpose of valuation by the Customs authority is to determine undervaluation and by its very nature, it would not fit with the scheme of TP analysis under the ITA 1961. Even in Fuchs Lubricants (India) (P.) Ltd[20], the Tribunal has held that the value of raw material imported accepted

15. *[2017] 80 taxmann.com 58 (Hyderabad - Trib.); [2017] 87 taxmann.com 62 (Bangalore - Trib.); [2025] 174 taxmann.com 427 (Hyderabad - Trib.); [2025] 175 taxmann.com 577 (Hyderabad - Trib.); (ITA-TP Nos.130 & 447/Hyd/2022, order dated January 21, 2026)*
16. *[2015] 62 taxmann.com 383 (Mumbai - Trib.)*
17. *[2021] 125 taxmann.com 168 (Karnataka)*
18. *[2011] 43 SOT 68 (Delhi)*
19. *Mobis India Ltd v. DCIT [2014] 61 SOT 40 (Chennai - Trib.)*
20. *[2014] 44 taxmann.com 284 (Mumbai - Trib.)*

by the custom authorities cannot be accepted as the ALP for the ITA 1961. These rulings underscore the clear divide between customs valuation and TP rules, noting their divergent purposes and separate evaluation standards.

In contrast, in the undernoted cases[21], the customs data being Government notified data has been duly accepted so as to provide a reasonable basis for arriving at comparable prices, especially where the taxpayer is unable to furnish any comparable data apart from its own internationally generated price. This inconsistency places taxpayers in a difficult position – managing divergent standards for the same imported goods and thus, signals a potential need for higher judicial clarification.

Interestingly, the OECD Transfer Pricing Guidelines 2022 highlight that while the ALP is a "common thread" for both tax and customs, the underlying methodologies often pull taxpayers in opposite directions. To resolve this structural friction, the OECD recommends that administrations synchronize their insights. By combining Customs' real-time transaction data with robust TP documentation, authorities can reduce inconsistencies, ultimately leading to a more streamlined and certain environment for international trade.

In a significant development for cross-border businesses, the long-standing structural friction between Income-tax and Customs regulations has finally gained high-level recognition in the Economic Survey 2025-26[22]. The Survey underscores that India's integration into 'Global Value Chains' is contingent upon reconciling these 'parallel regulatory worlds.' By breaking down the silos between Transfer Pricing and Customs Valuation, the government acknowledges that a unified methodology, anchored in the Arm's Length Principle, is the key to safeguarding revenue while slashing the transaction costs and litigation, thereby enhancing transparency in cross-border trade.

Conclusion

To truly facilitate 'Ease of Doing Business', a collaborative and converged regulatory framework must be developed. Reconciling the disparate requirements of tax, customs and foreign exchange laws would provide much-needed clarity, reduce the friction of multi-compliance and ensure that regulatory hurdles do not stifle international investment. By aligning the standards of ITA 1961/2025, Customs law and FEMA, a more predictable environment can be fostered which balances investor certainty with the expansion of cross-border trade, ultimately easing the compliance burden and mitigating protracted tax litigation.

IV. The "Rendition-Need-Benefit" Paradox: Navigating the Minefield of Intra-Group Services

Background

Given the broad institutional setup of modern MNEs, the centralization of services – ranging from HR and IT to strategic management – is a cornerstone of operational efficiency. While the taxpayer views these as essential support functions, the Revenue often perceives them as a tool for base erosion. Unlike raw

21. *[2023] 150 taxmann.com 392 (Delhi - Trib.); [2019] 112 taxmann.com 90 (Mumbai - Trib.); [2014] 42 taxmann.com 400 (Delhi – Trib.); [2011] 12 taxmann.com 355 (Chennai)*
22. *Paras 4.47 to 4.49 of Chapter 4 – 'External Sector: Playing the Long Game'*

materials or finished goods, you cannot see, touch, or easily weigh the value of an "intra-group service" (IGS). This intangibility is exactly why the Tax Authority remains its fiercest critic. The core of the litigation lies in the "Rendition-Need-Benefit Test" for which taxpayers are increasingly required to demonstrate – whether or not the services were actually rendered? what is the "proof of receipt of service"? whether an independent enterprise would have paid for them in a similar context? whether cost for similar services already form part of the P&L?

Legacy of continuing litigation

The litigation surrounding the issue of IGS may be said to have emerged over a decade ago when on one hand, the Bangalore Tribunal[23] upheld the TPO's decision, emphasizing a "benefit-centric" approach, requiring taxpayers to prove that management fees resulted in commensurate commercial gains. On the other hand, the Mumbai Tribunal[24] held that determination of ALP should be focused on what an independent entity would pay for the service, regardless of the eventual benefit.

The Delhi High Court[25] eventually curtailed the TPO's authority to value services at "Nil" based on a lack of perceived benefit. Following this principle, in certain decisions[26], it has been held that 'benefit test' cannot be considered as a pre-requisite to justify the ALP of a transaction where a taxpayer has received certain services from its AE. Similarly, it has also been held[27] that demonstration of receipt of services by way of agreement, invoices, email communications, etc. have to be considered *de hors* the 'benefit test'.

However, recent rulings suggest that the burden of proof has reached an all-time high. Tribunal benches require a deep-dive into the documentation maintained for the transaction of IGS. Taxpayers can no longer rely on "generic" documentation like inter-company agreements or simple invoices[28] as these are viewed as "insufficient to prove the actual receipt of specific services". Success in recent Tribunal cases[29] has hinged on granular transparency, where in order to fulfil the "rendition-need-benefit" test, evidences in the form of process note of cost allocation and backup working thereof, timesheet of

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23. *ITA No. 352/Bang/2009*
24. *[2011] 13 taxmann.com 82 (Mumbai)*
25. *EKL Appliances (345 ITR 241); Cushman & Wakefield (India) Pvt. Ltd. (46 taxmann.com 317)*
26. *Merck Ltd. v. Dy. CIT (179 TTJ 121) (Mum.); Regus Business Centre (P.) Ltd. v. ITO (118 taxmann.com 203) (Mum.); DCIT v. US Technology Resources (P.) Ltd. (97 taxmann.com 490) (Cochin Trib.); UT Worldwide India (P.) Ltd. v. DCIT (103 taxmann.com 422) (Mumbai - Trib.)*
27. *Metalsa India Pvt Ltd (ITA No. 449/Del/2019); Jones Lang LaSalle Property Consultants (India) (P.) Ltd. v. ACIT (113 taxmann.com 270) (Delhi - Trib.); Corning Technologies India (P.) Ltd. v. DCIT (132 taxmann.com 72) (Delhi - Trib.); Henkel Chembond Surface Technologies Ltd. v. ACIT (125 taxmann.com 68) (Mumbai - Trib.)*
28. *O.C. Tanner India Pvt. Ltd v. DCIT (ITA No. 5785/MUM/2024); OSG (India) Pvt. Ltd. v. DCIT [2026 (2) TMI 362]*
29. *IAC International Automotive India Pvt. Ltd (ITA No. 749/PUN/2022); Sempertrans India (P.) Ltd. [2025] 180 taxmann.com 632 (Pune - Trib.); FCB Ulka Advertising Pvt. Ltd [2019] 109 taxmann.com 70 (Mumbai - Trib.)*

the AE employees rendering the services and service-specific email communications were provided.

Path for future – documentation is the key to survive the "triple test"

Interestingly, to drive home the aspect of intangibility of IGS in the nature of day-to-day advisory and proof of its rendition, the Hyderabad Tribunal in TNS India (P.) Ltd[30] had drawn a parallel to the role of an anaesthesiologist in a surgery – "*providing a concrete evidence with reference to the services in the nature of specific activities is difficult, like proving the role of an anesthesian in an operation conducted by a surgeon.*"

Despite this acknowledgment of intangibility, the need of the hour for taxpayers is a rigorous adherence to the "triple test" of "rendition-need-benefit". It is now imperative to maintain an extensive evidentiary trail. This ranges from foundational documents – such as basic agreement, invoices and cost allocations – to granular data including detailed cost structure of the AE, email correspondences demonstrating scope and nature of services, details of AE's personnel and their qualifications to establish commercial necessity of AE support. Ultimately these records must demonstrate that a tangible benefit has been derived by the Indian taxpayer from the IGS, ensuring alignment with Rule 10D of IT Rules, 1962 (proposed Rule 84 of IT Rules 2026) and the OECD Transfer Pricing Guidelines 2022.

■

30. *[2015] 152 ITD 123 (Hyderabad - Trib.)*