

## Benefit of $\pm 5$ per cent only a tolerance range- not a standard deduction for computing ALP

**Summary – The Mumbai ITAT in a recent case of Vershraj Export (P.) Ltd., (the Assessee) held that Benefit of  $\pm 5$  per cent is only a tolerance range, and not a standard deduction, for computing arm's length price.**

- Cross appeals had been filed with ITAT and were directed against the order dated 23.9.2011 of Commissioner of Income Tax (Appeals) for the assessment year 2005-06.
- No one appeared on behalf of the assessee when the appeal was called for hearing despite the notice of the hearing duly served upon the assessee vide acknowledgement.
- Since there was no appearance on behalf of the assessee, the ITAT held that assessee is not interested in prosecuting the appeal filed by it and accordingly dismissed the appeal as not admitted by following the decisions of the Hon'ble Madhya Pradesh High Court in the case of *Estate of Late Tukojirao Holkar v. CWT* [1997] 223 ITR 480 and order of the Delhi Bench of the Tribunal in the case of *CIT v. Multiplan (India) (P.) Ltd.* [1991] 38 ITD 320.
- The Revenue had raised the following grounds in this appeal:

*"On the facts and circumstances of the case and in law, the Ld. CIT(A) failed to interpret the provisions of Section 92C(2) of the Income Tax Act, 1961, in its right perspective and true meaning.*

*On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the benefit of -5% relief to the extent of Rs. 18,86,736/- without appreciating the fact that the benefit of -5% is not available under the Income Tax Act, 1961."*

- The ITAT after having heard the Ld. DR held that the benefit under the proviso to Section 92C(2) is only in the nature of tolerance range of 5% and not standard deduction. By virtue of retrospective amendment in the proviso to Section 92C(2) of the Income Tax Act, the legislature has made it clear that the benefit of  $\pm 5\%$  is only a tolerance range and therefore it is available only when the prices of international transaction is within the range of 5% of the arithmetic mean of more than one comparable prices.
- In the result, the appeal of the assessee is dismissed and appeal of the revenue is allowed.