

## In case of difference in level of capacity utilization by assessee, capacity adjustment was necessary as per Rule 10B

**Summary – The High Court of Bombay in a recent case of Petro Araldite (P.) Ltd., (the Assessee) held that in case of difference in level of capacity utilization by assessee, capacity adjustment was necessary as per Rule 10B**

### Facts

- In the course of appellate proceedings, the Tribunal held that the Assessing Officer had to take into consideration the adjustment of capacity utilization factor even though it was not prescribed in section 92CA read with rules 10AB, 10B, 10C of the 1962 Rules.
- On revenue's appeal:

### Held

- In the order of the ITAT it was held that the difference in capacity utilization would affect the profit margin of a manufacturing concern since the fixed overheads of any manufacturing concern will be constant, irrespective of the capacity utilization.
- If there is a difference in the level of capacity utilization of the assessee viz its comparables, then adjustment would be required to be made to the profit margin of the comparable on account of difference in capacity utilization in terms of rule 10B(e)(iii) of 1962 Rules.
- Therefore, this question does not give rise to any substantial question of law as rule 10B(1)(e)(iii) of the rule is self evident.
- In the result reassessment appeal is dismissed.