

## **Larsen & Toubro Limited vs. UOI (Bombay High Court)**

**Reluctance of AOs to comply with binding Court judgements leads to negative reactions amongst business entities doing business in India and hurts National pride and image. Hereafter non-compliance with orders would visit officials with individual penalties, including forfeiture of salaries**

No officer is acting independently and following judgments of this Court, but waiting for the superiors to give them a nod. Even the superiors are reluctant given the status of the assessee and the quantum of the demand or the refund claim. We are sure that some day we would be required to step in and order action against such officers who refuse to comply with the Court judgments and which are binding on them as they fear drastic consequences or unless their superiors have given them the green signal. If there is such reluctance, then, we do not find any enthusiasm much less encouragement for business entities to do business in India or with Indian business entities. Such negative reactions / responses hurt eventually the National pride and image. It is time that the officers inculcate in them a habit of following and implementing judicial orders which bind them and unmindful of the response of their superiors. That would generate the right support from all, including those who come forward to pay taxes and sometimes voluntarily. Hereafter if such orders are not withdrawn despite binding Division Bench judgments of this Court that would visit the officials with individual penalties, including forfeiture of their salaries until they take a corrective action

## **ITO vs. Intertoll ICS India Private Limited (ITAT Mumbai)**

**Transfer Pricing: Arbitrary action of the AO in treating the payment by the assessee to the AE as "excessive/unreasonable" deplored. Whims and fancies of an AO cannot decide tax liability of an assessee. Either the AO was ignorant of the TP provisions or he was adamant to make the disallowance at any cost. Either way, his action cannot be endorsed**

It is said that rights and duties are two sides of the same coin. In other words, rights demand that a person using his rights should also observe his duties. In taxation matters discretionary powers have been given to the AO's but they are expected to use the power in a fair and just manner. State as an institution can levy and collect only due taxes from its subjects. So, if the AOs determine the tax liability in an unfair manner and if the demand is not of the DUE taxes appellate authorities are expected to allow relief to the assessee. He very well knew that the assessee had objected to the ad hoc disallowance and rejection of the CUP method. But, he stuck to his guns while submitting the remand report and supported the estimated disallowance. His approach goes against the very basis of the TP provisions. Either he was ignorant of the TP provisions or he was adamant to make the disallowance at any cost. But, his action cannot be endorsed. Why was the transaction entered in to by the AE with MIT Hungary could not be a basis for arriving at ALP was never discussed by the AO. The assessee has discharged his burden of proof. After that onus had shifted to the assessee and in our opinion he has failed miserably to prove that his action of making disallowance was supported by any logical argument or scientific basis. Whims and fancies of an AO cannot decide tax liability of an assessee

## **Bayer CropScience Limited vs. ACIT (ITAT Mumbai)**

**S. 37(1): (i) Product Trial expenses of a new product is revenue in nature as it does not provide the assessee with any enduring benefit, (ii) Compensation paid to supplier to ensure goodwill and continued relationship is revenue expenditure**

For allowing / disallowing any expenditure under Section 37 of the Act, the basic thing to be seen as to whether the expenditure was incurred for furtherance of business interest of the Assessee or not. It is a fact that in this case because of the expenditure incurred no new assets came into existence. The expenditure was incurred considering the old relation with the supplier and to avoid future business complications. If an assessee makes payment which is compensatory nature, it has to be allowed. In this case, the payment was made in pursuance of an agreement and that was of compensatory nature [i.e.it](#) was not penal, hence it was to be allowed