INTERNATIONAL LAW AND TRANSFER PRICING ANALYSIS OF LEGAL ASPECTS

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1. Introduction :

The term and definition of Transfer Pricing under international taxation took sea changes in the present scenario due to the impact of globalization and development of International Trade. The origin and sources for Transfer Pricing is international Taxation which deals with tax treaties and international aspects of domestic Tax Laws. The nationals of a State are bound by the obligations of the Taxing structure of the Country. The world wide growth of International Transaction resulted in growth of various legislation resulting Transfer Pricing as one of the most complex tax issue, due to interests of more than one country involved. The concept of *Jurisdictional Right to Tax* is the main theme of international taxation. No international authority exists that can force a country to collect or not to collect a particular tax or apply a particular set of rules on a tax base. Right from the beginning of civilization it is the customary practice of the state to collect revenue by taxing the nationals and citizens of the nation. The great economist Chanukya enshrines the principle of taxation that state or nation has to collect tax from the nationals.

The two cardinal principles of taxation is to charge a person on the basis of Residence and Source. The concept of Taxation extends beyond Residence to Citizenship (domicile).

Every nation has a sovereign right to tax its residents/nationals on their worldwide incomes. As a result the income of a person can get taxed in both countries i. e, in the home country(country of his residence)as well as the host country(country where income is generated)

The principles followed in the Countries like U.S., U.K.,and India is both residents and non residents have to pay tax to the Nation. The principle adopted in

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Residence taxation is "the birth of the taxpayer country or incorporation or effective management"determines the taxability criteria. Whereas the Source doctrine advocates the rule" the real accrual/arise of income of person /the country of a source of activity producing a taxable event has a claim to tax wealth involves or creates or generates within their jurisdiction"

The combination of both *Residency principle and Source Taxation* in most International taxation results in Double Taxation. For example an Indian Doctor residing ordinarily at U.S.A.,on work basis earns money in Dollars and send a portion of the money to the parent country where parents are residing permanently, and the money was deposited by parents in a bank situated in India. The return on that investment accrues in *India is taxable in India and at the same time the interest received becomes part of source of Doctors earnings which is taxed at U.S.A., as income of its residents.*

In the above example elucidates that the assessee has been taxed twice resulting in Double Taxation. *This is the core of the subject of International taxation The Jurisdictional conflict arise not only when there is* Source Vs Residency, but also where residency rules are inconsistent resulting taxpayer being considered a resident of more than one country for the same tax period. The same situation happens when the two countries claim source taxing right to a tax base[1].

To resolve this problem the supra national bodies like the United Nations successor of the League of Nations and OECD emerged and framed international solutions to solve International Trade dispute mechanisms and acted as pacific means of settling the disputes. The various modes of mechanisms are international treaties, customary practices and usages. Among them agreement resolutions played major role in solving the internal differences between the countries. The major role played organ is OECD which created a model in the form of standard outline to help, support efficient agreement resolution form in1963, but this undergone a number of amendments right from 1992 to 2001. This model forms the basis for majority of treaties existed between industrialized countries. The U.N also developed a model basing on the Source countries right to tax revenues.

II. The concept and Meaning of Transfer Pricing

The subject of Transfer Pricing is the most controversial area of international taxation. The main reason is different countries have different rate of taxation and different provisions for taxation. The concept of transfer pricing is often misutilised by the enterprises resorting to minimize the tax liability of the group as whole by maximizing the profits of the associated enterprises operating in a low tax jurisdiction.

1. Mittal D P., *Indian double taxation agreements & tax laws,* Taxmann publication New Delhi Ist ed 2004

The most practicale difficulty is difference of opinion between the tax payer and the Tax administration and also two or more Jurisdiction of taxes creates multiplicity of tax jurisdictions. For example the scrutiny of a *particular assessee results in addition in one country must correspond to downward adjustment of income needs to be done in another country, if this is not done the assessee will be put to injustice and harsher tax liability..*

The term Transfer pricing generally refers to prices of Transactions between associated enterprises which may takes place under conditions differing from those taking place between independent enterprises. Transfer pricing refers to the value attached to transfer of goods or services between related entities and also value attached to transfer between unrelated entities/ parties which are controlled by common entity. The area in which transfer price maxim hit is single enterprises which is widely used by the Multinationals organization which typically involves a parent company domiciled in one country and a number of subsidiary companies operating in other countries.

The prime area of Transfer Pricing is Multinational Corporation may have business transaction with its associated enterprises situated in several other countries having similar or different tax systems. The enterprise may transfer goods to its associated enterprises at price which are not market driven and not comparable with uncontrolled transaction entered between unrelated entities. This may adversely affect the tax base of country having higher rate of taxation to the advantage of another country having lower tax rates.

All over the world ,the tax authorities perceive transfer pricing as one of the key issues of international taxation because of possibility of price manipulation by multinationals. The multinational corporations pay their tax due to the exchequer and not take the advantage of their location in more than one country to by-pass taxation in any particular country. For revenue it is an issue of protecting tax base of the country and curbing tax avoidance from abusive practices. Regarding Multinational enterprises, the pricing decision are generally guided by the "group's objectives" which may differ from the objective of associated enterprises.[2]

III. Historical Background

The legislation relating to Transfer pricing was first introduced in U.K.,in 1915. This was followed by United States in 1917. The legislative provisions were introduced to discourage companies from shifting profit to overseas associates through under or overpricing of cross-border transaction. But it took U turn because the

2. Sangal P S, *National & Multinational companies some legal issues,* N.M. Tripathi publication Mumbai.

legislation was *not so good to bring down or very effective in shifting of profit due to price* manipulation. The period after 60`s and 70`s marked substantial growth in development of Transfer Pricing mechanism. During this period tax authorities paid much interest in development of expertise in Transfer pricing matters and applied prevailing law to deal transaction in respect of Transfer pricing In late 1979 and 1980 the development of OECD reaffirmed faith in Transfer pricing by way of innovation of **Arm`s Length *Principle*[3].** This rule gained importance not only as treaties but also a general rule. It framed three standard methods a) comparable uncontrolled price method, b)resale price c)cost plus method.. Subsequently OECD published in 1990and 1995 a standard guidelines for conducting advanced way of handling issues in Transfer pricing. The most important provisions which are essential from the purview of Transfer pricing are mentioned below

1. provisions relating to definition of permanent establishment[4]
2. provisions relating to business profits[5]
3. provisions relating to permission giving to profit arising of company from transaction with an affiliate company to be adjusted *to arm`s length profit*[6]
4. provision relating to corresponding adjustment or relief to be made in case of affiliate[7]
5. provisions relating to limited relief from tax on income from interest and royalties[8]
6. elimination of double taxation[9]
7. mutual agreement procedure[10]
8. exchange of information between competent authorities[11].

Besides the above provisions Double taxation agreements entered into by India with various other countries incorporates the provisions of Transfer pricing. The other articles which are relevant are elimination of double taxation and mutual agreements procedures. The disputes on mutual agreements can be resolved by making reference to Art 25of the convention/[12]

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3. Wahi v s supra n 1 (O E C D defines Arm`s length price as *"the price which would have been agreed upon between unrelated parties engaged in the same or similar transaction under the same,or similar conditions in the open market")*
4. Art 5 of organization for economic and development relating to transfer pricing document mentioned at Wahi v s supra n 1
5. Art 7 of O E C D supra n 4
6. Art 9(1) of O E C D supra n 4
7. Art 9(2) of O E C D supra n 4
8. Art 11(6) and Art 12(4) of O E C D supra n 4
9. Art 23 of O E C D supra n 4
10. Art 25 of O E C D supra n 4
11. Art 26 O E C D supra n 4
12. Organaisation for economic and development Art 25 mentioned in Wahi v. supra n1

IV. India's Position :

Indian economy earmarked major changes after the opening of early 90`s because during this period economic liberalization resulted in removal of controls on outbound investments.

Indian Income Tax act 1961 provides for levy of income-tax on the income of foreign companies and non-residents to the extent their income sourced from India.. Tax on income which is received or is deemed to be received in India by or on behalf of such person or income accrues or arises or is deemed to accrue or arise to it in India. *Sn 9* clearly specifies certain type of income that are deemed to accrue or arise in India in certain circumstances. These sections earmark the source rule of income taxation in the domestic law. No income of a non-resident can be taxed in India unless it falls within the four corners of Sn 5 read with Sn 9 of the income-tax act.

This source based taxation often gives rise to the problem of double taxation, where the same income could be taxed twice-in India and also in the country of residence of the taxpayer. India entered into Double taxation agreements (DTAAs)with large number of countries, to resolve this problem of double taxation and laid down certain norms regarding which country has a *right to tax income of a resident of the other country which* is sourced from later mentioned country.

In order to regularize or curb tax evasion or to bring uniform level in taxation Indian Govt enacted Transfer pricing law w.e.from Ist April 2001. The sections 92 to 92F were substituted for existing section 92 by finance Act2001 applicable to asst year 2002-.03[13] The New legislation is to curb tax avoidance by abuse of transfer pricing, prevent shifting of profits by manipulating prices charged or paid in International Transactions.

Sn 92---Defines computation of income from International Transactions having Regard to Arm's Length price

Sn 92A—defines the expression associated enterprises

Sn 92B—defines International transaction

Sn 92C---prescribes method for delimitation of Arm`s length price

Sn92D---deals with maintaince,keeping of Information and documents by person entering into international transactions.

Sn 92E---prescribes requirement of obtaining a report from Accountant

Sn 92F—defines various definition clauses used in the sections 92to92F

Apart from this various sections enacted like 271AA,271BA, 271G inserted

13. Ramachandran *editor in chief* Income tax reports a fortnightly report 248 ITR vol 181 Statute of Finance bill 2001

deals with the assesse`s concealed particulars of income or who has furnished Inaccurate particulars in respect of an act added or disallowed. The major guidelines and important role about transfer pricing was given by the OECD which has issued number of guidelines on TP and the same has been accepted widely among its members as well as non-members

The most general consensus among all the OECD countries is TP should be guided by Arm`s Length Rule as elaborated in art 9(relating to associated enterprises)of OECD`s Model Tax convention of avoidance of Double taxation Agreements. According to *Arm`s length* rule a transaction between associated enterprises should be similar to that carried out between two independent enterprises. Art 9 further provides that if a transaction between associated enterprises is not at arm`s length and thereby gives any advantage to one of them, the tax authorities can make suitable adjustment and charge additional tax which would have escaped assessment due to *NON ARM`S LENGTH NATURE OF TRANSACTION.*

V. Arm's Length Price

The Arm`s length principle is the basic principle for determining transfer prices between associated enterprises. It is based on the premise that market forces are the best way to allocate profits. The principle follows the approach of treating associated enterprises of a multinational group operating as independent enterprises rather than as single entity. It is usually applied in cross border transactions between related parties where an attempt is made to determine a price that would be obtainable had the transaction taken place between independent parties in uncontrolled conditions.[14]

In simple words arm`s length can be stated as a transaction between persons or entities which are not forced by way of influence by any special relationship and are acting on terms and conditions as prevailing between independent parties.

Transfer pricing methods concern the methodology for determining the arm`s length price for transfer of goods, services and intangibles in transactions between Associated enterprises. The basic classification of Arm`s length price is

Two methods

1 *TRADITIONAL TRANSACTION METHOD*

2 *PROFIT METHOD*

The traditional transaction method involves different sub methods like

1 The uncontrolled comparable Price method (CUP)

2 Resale price method

3 The cost plus method

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14. Wahi v s supra page 1

The profit method involves the following sub method

1. Profit split method
2. The transactional net margin method
3. Global formulary apportionment method

The various methods mentioned above almost form a hierarchy ringing from the most preferred to least desirable. As per OECD guidelines the Traditional transactional method are preferable over profit methods and later ought to be used as lost resort.

Despite the insistency by the OECD on traditional transaction method there is growing popularity of profit method in certain countries like U.S.A., The main reason behind this is the traditional transaction methods are prone to error on account of considerable amount of subjectivity involved in their use. *Both functional analysis and making adjustments on account of differences in the controlled and the uncontrolled transactions involve certain amount of subjective judgment which can introduce error in determination of transfer price.*

The complex nature of Transfer pricing regulations resulted due to various factors like financial, economic circumstances market functions, dispute and litigation, difference of opinion between tax payer and tax administrator, legislator over the concept of understanding what exactly involved in *arm`s length price for transaction between associated enterprises.*

The various procedures suggested by OECD guidelines for reducing difficulties in dealing with Transfer pricing and also coping with uncertainties are

1) Mutual agreement procedure
2) Corresponding adjustment or compensating adjustment
3) Combined bilateral or multilateral examination
4) Safe harbour principle
5) *Advance pricing agreements* popularly known as ***APA`***

Though most of the above said methods by OECD proved to certain extent reasonable the most accepted principle is APA, wherein an enterprise has to initiate and negotiate an agreement with the tax administration about transfer pricing issues involved in controlled transaction before actually carrying out such transaction an APA can be unilateral or bilateral it eliminates or to certain extent reduce the scope for double taxation and reduce litigation and uncertainty. Bilateral APA`s are even better than unilateral ones, as they provide certainty in both the tax jurisdictions in which the associated enterprises operate.

VI. India's Scenario of Arm's Length Rule

The position of Indian law on this subject states that "any income arising from an international transaction shall be calculated in accordance with the arms

length principle in addition to this, if any cost or expense is allocated or apportioned between two or more associated enterprises, it is to be done at arm`s length prices.[15] Sn 92C deals with the computation of arm`s length price.

India adopts the various method enshrined in the OECD module like

1) CUP Method
2) RPM Method
3) CPM Method
4) PSM Method
5) TNMM Method
6) Such other method prescribed by the board

By and large the various method will not solve the practical problem arising out of Transfer pricing, because the various definition adopted by the Income Tax act like "associated enterprises" does not cover the scope of subject of Transfer Technology by way of copy right, trade mark ,licenses, franchise or any other business of commercial in nature. The definition of international transaction is very wide as per the principles of International Law and it extends the other areas of private right jurisdiction on the matter of taxation.

The right of the individual is much more in the residence status country rather when compared to source country. The provision of Arm`s length principle may not be full proof for objective judgment to the county like India whose economic condition is still under the label MORE DEVELOPING COUNTRY.

The provision of Sn 92CA gives lot of discretionary power to Transfer pricing officer while making an assessment inurn may leads *to unjust.*

In India the provision of Authority for Advance Ruling[16] under 245Q of IT Act deals among transaction between non-residents and notified resident applicants. If TP is brought Under this will definitely results *anomaly in tax treatment in International Taxation.*

Illustration of Practice of Transfer Pricing

Example; Mr X an individual Firm situated at India sells the product of surgical equipments relating to Ophthalmology at a price lower than that prevailing in the Global market to one of its subsidiaries Y located in another country say Thailand. The profit that the firm X makes by selling its goods at reduced price stands lower since the sale is carried out at a low price. As a result of low profit the tax paid by

15. Apporva Anubhuthi , "Transfer pricing an important concept in International taxation"
16. wahi v. supra n 1"An alternative dispute mechanism set up by finance act 1993 with effect from 1st june 1993."

Mr X is stands at low rate. The subsidiary firm Y resells the goods in international market at a competitive price making up for the loss of profit incurred by the Firm `X`, Also with this arrangement the tax paid by Y situated in another country is much less than the tax that would have been paid in effect had the sale been negotiated by `X`in its country having a higher rate of taxation, The impact of this transaction is that lesser tax had been paid by Such arrangement, the Multinational companies registers greater savings. This type of arrangement involves transfer of profits and exists illegitimate arrangement regarding beneficial arrangement ultimately escapes from paying huge tax to countries exchequer.

International tax experts have formulated various ways of transfer pricing with the aim of reducing the overall burden. Some of them are as under

1) Tax heaven
2) Unexplained corporation
3) Profit and loss account
4) Intangible property
5) False invoicing
6) Routing of transaction
7) Paper companies
8) Splitting of transaction

By and large even with all principles the provisions of Transfer pricing were misused by the countries to achieve huge chunk of profits.

Analysis of Cases :

The *analysis of following cases reveals the practices of Transfer pricing*

I Glaxo Group Ltd and Others vs Inland Revenue Commissioner[17]

Facts: M\s Glaxo welcome plc was a parent company owned subsidiary companies in U.K., and Singapore. The parent company transferred the technology to subsidiaries company which according to revenue was not the Arm`s length price. The revenue was of the view that assessment for current year was open an adjustment can be made for difference. However assessments for many year were on dispute.

Held: The court of appeal decided that the Commissioner could make necessary adjustment to increase the assessment at the hearing

II Texaco incorporation and subsidiaries vs commissioner (U.S. Court of 5th Circuit)[18]

Facts: Texaco is a US company engaged in the production, refining and marketing of crude oil and refined products in United states and abroad. The

17. supra n 1 of page 1

company has number of subsidiary corporations including Texaco International Trader Inc which acts as International trading company for the world wide marketing system

The Textrad purchased cr oil from Saudi Govt through Arabian American Oil Company (Aramco) and resold the same to its associated enterprises and unrelated customers. The Saudi Arabia Company permitted Texaco and other participants to buy Saudi Arabian crude oil at below market prices. In order to ensure price regulation the Govt of Saudi Arabia issued a letter no 103/2as per which Textrad and other participants in Aramaco were prohibited from reselling crude at prices higher than the official selling price. During this period in question ,Textrad sold crude to its refining affiliates at below the market price nearly about 20% to unrelated customers also. The company had not made any attempt to distort its true income for tax proposes as pricing policy followed was due to restrictions imposed by the Saudi govt.

Held: The govt of U S increased the taxable income of Textrad was not justifiable as per provisions of the Transfer pricing as the reason prices charged are not as per arm`s length due to govt regulations.

The above said provisions are not applicable to Indian situation as the law in India not recognize any exception where prices are not as per ARM`S LENGTH PRICE.

III Sony India (P)Ltd vs CBDT[19]

Facts: The return of Income filed by the Sony India (p) ltd, was picked up for scrutiny by stating that aggregate value of international transaction exceeds Rs 5 crores stating that Boards instruction no 3 dt 20 mxay 2003 .

Question: Whether the instruction no 3 issued by Board is valid or not *held The impugned instruction cannot be held to violate article 14.*

Justification: The classification was no inconsistent with or contrary to the objective to be achieved by the provisions of Chapter X of the Act. Also it is not *ultra virus because* the classification of International transaction it brings about those value of income exceeds Rs. 5 crores . The reading of the instructions enshrines the discretion given to assessing officer under Sec. 92CA wherein the assessing officer referred the case to TPO for determination of ALP. Once the case has been referred to TPO the assessing officer has not left with option except to accept the decision of TPO as per provisions of Sn 92CA(3). The

18. ibid
19. Avadhesh ojha, (ed.), *The tax referencer,* The Tax publisher Jodhpur weekly VOL 98 issue no 7 DEC 2007

finance act 2997 has been amended the position of Law that assessing officer has to follow the Arm`s length price determined by TPO.

The end result is that the assessing officer shall not make any adjustment to the ALP determined by the taxpayer, if such price is up to 5%more or less as per declaration by taxpayer.

IV Aztec software & Technology service Ltd & ANR Vs ACIT (2007)[20]

Facts: The assesse *soft*ware company AZTEC engaged in the business of exports of software. The software company was entitled to deduction u/s 10A in respect of profits and gains derived from export of software. The assesse filed the return of income for the asst year 2002-2003. The said return was processed under Sn 143(1) and later it was selected for Scrutiny. The assessing officer referred the case to TPO under Sn 92CA for determining of ALP. Later after making necessary adjustment an opportunity u/s 92CA was given to the assessee. The assessee challenged the order of TPO on two grounds

1) TPO was required to determine ALP only and could not make any adjustment
2) The said order not obtained prior approval of the Commissioner before referring the same to computation of ALP..

Held: Determination of ALP not justified and were unsustainable No legal requirement for assessing officer to come to the conclusion regarding tax avoidance before invoking the provisions of Transfer Pricing Law.

The ratio decidendi of the above case is that the "opinion of the assessing officer to refer the computation of ALP by TPO is quasi judicial act and therefore such opinion must be objective and nor mere subjective. To refer the case to TPO there must be sufficient material or information having nexus .The commissioner has to apply his mind to satisfy himself that the assessing officer in all probabilities exercised discretion correctly.

V *Mentor Graphics (NOIDA) Ltd Vs Dy.Cit*

In the above case Delhi Tribunal held "in strict sense Transfer pricing is not an exact science, evaluation of transaction through which the process of determination is carried is an art where mathematical certainty is indeed not possible and some approximation cannot be ruled out, yet it has to be shown that analysis carried out was `judicial and was done after taking into account all the relevant facts and circumstances of the case"

20. *ibid* (Decision of Bangalore Tribunal)

The minimum requirement was the controlled international transaction was properly examined,compared,and ALP fixed objectively, honestly and in a bonafide manner as required by the statutory regulation.[21]

VII. CONCLUSION

The issue concerning Transfer Pricing are of importance to all countries, because of its impact on tax revenues and economic activities. When enterprise of group have business activities in different countries, they can determine the level of taxation in a particular country by adjusting the price mechanism by combining the available resources and such other components like costs , research and development expenses.

The subject of Transfer pricing is in the nascent stage so far as India is concerned. The rule and regulations relating TPO is a concept to be digested both *science as well as art. There is no water tight compartment that there exist only Arithmetic mean* to calculate The Arm`s Length Price. The analysis of the decision given by the various Tribunals clearly emphasise that there must be *objectiveness while coming to the conclusion about fixing or determining the exactness about the method adopted while making comparativeness about the uncontrolled transaction with controlled transaction.*

There are no precedent as there is no judicial determination at the level of Supreme court Even at International level also judicial cases are very few, basing on the existence of the legislation, strict obligation for the maintenance of information and documents is ***sine-qua non*** for the taxpayer to prove the arm`s length nature of the transaction. Various provision of penalty in case of non-corporation, inadequate or wrong or non maintenance of the required and statutorily provided information and document would made MNC`s more and extra careful while opting for TP norms.[22]

India being a large federal, or quasi-federal, country potential of becoming one of the largest common markets in the world. With the increase in the size of the market there can be greater division of labour,which means greater specialization and in general, larger economies of scale. A theoretically perfect tax structure would be of no avail if it could not be effectively administered or would induce its administrators to act contrary to the intention of the tax designers[23].

The concept of taxing on the basis of both the source of income and the residence of the person earning that income. Here source of the income concept plays a major role in international taxation, since the country of source

21. Aiyar A N Income tax Reports vol 294 2007
22. Mittal D P, "Transfer pricing and related issues- Indian law "
23. Chellaiah Raja J. *Towards sustainable growth essays in Fiscal and Financial sector Reforms in India Oxford India paperbacks,* Oxford University Press.

generally avoid double taxation through either credit system or exemption system.[24]

The major difficulty arises in settling the proper price in international transaction. The principle of "arm`s length" prices of "cost plus" is that cost of production plus a margin for each supplier within the network of the corporation, allows an appraisal of the profitability of each branch. This principle will not always be a cake walk. There may. Grey areas wherein this principle works, suits to the condition *various external and internal factors motivated the success of adopting the transfer pricing mechanism.*

The controversy of assessing officer vs Transfer pricing officer w.e.f 1st June 2007 is no more . The order of TPO is binding on the assessing officer who now has no choice but to pass an order in conformity with the order of the TPO. The decision of the Special Bench is noteworthy to be cherished in the memories "The assessing officer should be extra careful while exercise of judicious of discretion while referring the case to TPO".

"The assessing officer cannot make a reference for some ulterior motive or for the sake of mere pleasure or in a mechanical manner. The assessing officer should have some material with him to justify reference to TPO. Availability of some material on record is essential to obtain approval of the commissioner for his action. It is settled that the commissioner cannot grant approval in a mechanical manner, and this provision is clearly understood to provide some check on arbitrary exercise of power by the Assessing officer. also, there is no gainsaying that power conferred on an authority particularly a discretionary power, cannot be exercised mechanically. what is necessary or expedient will depend on the facts and circumstances of every case and the satisfaction of the assessing officer in this regard will have to be based on some objective criteria"

The above reasoning gives clear picture how the discretionary may lead to injustice to the assessee. The decision is reminder to all assessee at once to er-evaluate his or her transfer pricing documentation as to reassure that it falls in line with the several criteria and legal guidelines provided by the Tribunal, and once the processes of identifying the possession of facts and material by the assessee in respect of determination of of Arm`s Length Price. *By and large the computation of Arm`s Length Price is really a factual exercise and each case depends on its own peculiar facts and circumstances. The selection of the Most appropriate method is based on the nature of transaction, the availability of relevant data and possibility of making appropriate adjustment. There is no water-tight compartment in determination of Arm`s Length Price. As per scientific norms*

24. Gopalakrishnan k c and Aruna kanthi *Taxation of electronic commerce,* Snow white publication1

certain facts which are very essential while fixing the Arm`s length price are as under

1) market value
2) risk analysis
3) functional analysis
4) situation of the international transaction
5) comparability at broad functional level
6) characteristics of open market value
7) physical feature of property, tangible intangible, quality reliability
8) controlled transaction which are likely to affect its open market value
9) assets of uncontrolled transactions and comparison is carried with characteristics of the controlled transaction
10) the comparison reliability
11) the guidelines given by OECD include manufacturing, assembling research development, servicing, purchasing, distribution, marketing, advertising, transportation, financial and management activities.
12) While making adjustment the factors like working capital adjustment risk and growth adjustment of R&D expenses to be considered.
13) Any other suitable environment that can be compared

All these factors definitely contribute in determining judicious way of quantifying the actual basis of Arm`s Length Price, while determining and assessing the concept of Transfer Pricing in real strict sense to the justice. The above mentioned facts are inclusive facts and not exclusive.