

INTERNATIONAL TAX **CASE SUMMARY**

INDIA VS AON CONSULTING

FEBRUARY 2025

ACADEMY OF TAX LAW

PUBLISHING SERVICES

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First Edition Published on 13 March 2025

Published by Academy Of Tax Law

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HEAD OF ACADEMICS



Welcome to the Academy of Tax Law's case and judgment summaries. These documents have been carefully curated to support professionals, students, and researchers navigating the complex landscape of international tax and transfer pricing. At the Academy, we understand that tax law is ever-evolving, with key rulings continuously shaping its practice.

Each summary you'll find here is designed to provide not just the facts, but the context and implications of pivotal legal decisions. These case summaries are created to serve as a valuable resource for legal teams, multinationals, revenue authorities, and academics, offering insights that go beyond the surface. Our goal is to ensure you remain informed and prepared, whether you are dealing with tax planning, dispute resolution, or risk management.

We believe that knowledge is the foundation of sound decision-making, and with these resources, we hope to empower you in your professional journey. As you delve into the analysis, remember that staying ahead in tax law requires not just understanding the rules but how to apply them in a dynamic, global environment.

Thank you for choosing the Academy of Tax Law as your partner in this ongoing learning experience.

Sincerely,
Dr. Daniel N Erasmus

PART 1

SUMMARY

JUDGEMENT SUMMARY

CASE OVERVIEW

Court:	High Court of Delhi
Case No:	ITA 244/2024
Applicant:	AON Consulting Pvt. Ltd. (Successor Entity of AON Services (I) Pvt. Ltd.)
Defendant:	Principal Commissioner of Income Tax – 1 and Others
Judgment Date:	6 February 2025
Full Judgment:	CLICK FOR FULL JUDGMENT
View Online:	CLICK TO VIEW SUMMARY ONLINE

JUDGMENT SUMMARY

The High Court of Delhi, in its ruling on AON Consulting Pvt. Ltd. v. Principal Commissioner of Income Tax – 1 and Ors. (ITA 244/2024), addressed a crucial transfer pricing dispute concerning the application of Mutual Agreement Procedure (MAP) to transactions not covered under the agreement. The judgment clarifies that MAP-based TP adjustments, which are negotiated between competent authorities of contracting states, cannot be unilaterally extended to transactions beyond their scope.

The case originated from a TP adjustment made by the Transfer Pricing Officer (TPO) in respect of international transactions of Hewitt Associates (India) Pvt. Ltd., later merged into AON Consulting Pvt. Ltd. The TPO had initially made an upward TP adjustment of ₹44,06,38,092, consisting of:

- ₹41,79,89,294 for US Transactions, which were settled through the MAP process under Article 27 of the India-US Double Taxation Avoidance Agreement (DTAA).
- ₹2,26,48,798 for Non-US Transactions, which remained disputed.

The Income Tax Appellate Tribunal (ITAT), while hearing the case, ruled in favour of the Revenue and remanded the Non-US Transactions to the TPO, directing that the same framework agreed upon under MAP for US Transactions be applied to Non-US Transactions as well.

AON Consulting challenged this order before the High Court of Delhi, arguing that MAP is a consensual dispute resolution mechanism between two contracting states, and its

principles cannot be imposed unilaterally on transactions outside its purview. The core issue was whether the TP framework settled between the US and Indian tax authorities under MAP could be extended to unrelated Non-US Transactions.

The High Court ruled in favour of AON Consulting, holding that:

MAP settlements are voluntary, case-specific, and dependent on negotiations between competent authorities.

The ITAT's decision to extend MAP principles to Non-US Transactions was legally flawed as there was no agreement with other jurisdictions for such an application.

Transfer pricing adjustments must be determined independently under Section 92C of the Income Tax Act, 1961, and Rule 10B of the Income Tax Rules, 1962.

The court emphasised that MAP settlements cannot be used as a binding precedent for unrelated transactions, especially when there is no bilateral agreement with the tax authorities of the respective Non-US jurisdictions. The Revenue's approach, which sought to impose a negotiated MAP outcome onto transactions outside its jurisdiction, was rejected.

As a result, the High Court overturned the ITAT's order and restored AON Consulting's appeal, directing the ITAT to assess the TP adjustments independently, without relying on the MAP framework used for US Transactions.

KEY POINTS OF THE JUDGMENT

BACKGROUND

AON Consulting Pvt. Ltd. (formerly Hewitt Associates (India) Pvt. Ltd.) is a wholly owned subsidiary of AON PLC, an Ireland-based multinational engaged in human resources consulting, payroll processing, business process outsourcing, and software development services. During Assessment Year (AY) 2008-09, the company engaged in international transactions with its Associated Enterprises (AEs), leading to a transfer pricing dispute with Indian tax authorities.

The Assessee declared total income of ₹9,46,63,523 in its return for AY 2008-09. Since the volume of international transactions exceeded the prescribed threshold, the case was referred to the Transfer Pricing Officer (TPO) under Section 92CA of the Income Tax Act, 1961. The TPO subsequently determined an upward TP adjustment of ₹44,06,38,092, of which:

- ₹41,79,89,294 related to transactions with AEs in the US. These transactions were later resolved under the MAP between the

competent authorities of the US and India under Article 27 of the Indo-US DTAA.

- ₹2,26,48,798 related to Non-US Transactions, which remained contested and were not covered by MAP.

The Assessee had applied the Transactional Net Margin Method (TNMM) as the most appropriate TP method. However, the TPO rejected the Assessee's economic analysis, selected different comparables, and determined a higher profit level indicator (PLI), leading to the TP adjustment.

The Assessee challenged the TP adjustment before the ITAT. The ITAT, while considering the case, remanded the matter to the TPO, directing that the MAP-based framework used for US Transactions also be applied to Non-US Transactions. AON Consulting appealed this order before the High Court of Delhi, arguing that MAP agreements are negotiated and specific, and cannot be unilaterally extended to transactions outside their scope.

KEY POINTS

OF THE JUDGMENT

CORE DISPUTE

The primary dispute in this case revolved around the applicability of the MAP settlement framework to Non-US Transactions, which were not covered under the MAP process.

AON Consulting Pvt. Ltd. (the Assessee) engaged in international transactions with both US-based and Non-US-based Associated Enterprises (AEs). The Transfer Pricing Officer (TPO) had determined a total upward transfer pricing (TP) adjustment of ₹44,06,38,092, of which:

- ₹41,79,89,294 related to transactions with AEs in the United States. These transactions were resolved under the MAP process between the competent authorities of the US and India, as per Article 27 of the Indo-US Double Taxation Avoidance Agreement (DTAA).
- ₹2,26,48,798 related to Non-US Transactions, which remained disputed and outside the scope of the MAP resolution.

The ITAT, while hearing the appeal, directed the TPO to apply the same MAP framework agreed for US Transactions to the Non-US

Transactions, arguing that this would ensure uniformity in transfer pricing assessments.

AON Consulting challenged this decision, arguing that:

The MAP process is a consensual dispute resolution mechanism that applies only to the contracting states involved in the agreement. No similar agreement existed for Non-US Transactions, making the application of MAP inappropriate.

Transfer pricing adjustments must be determined independently under domestic tax law and OECD guidelines.

The ITAT's approach was legally flawed, as it overrode the established transfer pricing assessment process under Section 92C of the Income Tax Act, 1961, and Rule 10B of the Income Tax Rules, 1962.

The core legal issue before the High Court was whether a MAP-based settlement, negotiated between two specific jurisdictions (India and the US), could be extended unilaterally to transactions with entities from other jurisdictions.

KEY POINTS

OF THE JUDGMENT

COURT FINDINGS

The High Court of Delhi ruled in favour of AON Consulting Pvt. Ltd., holding that the ITAT erred in directing the TPO to apply the MAP-based framework to Non-US Transactions. The court found that MAP settlements are jurisdiction-specific and cannot be extended unilaterally to transactions involving other countries.

Key Findings

MAP Agreements Are Bilateral and Cannot Be Extended Unilaterally

- The MAP under Article 27 of the Indo-US DTAA is a negotiated dispute resolution mechanism between the competent authorities of two contracting states.
- The High Court emphasized that MAP outcomes are based on a mutual consensus between tax authorities and are not legally binding on transactions involving third-party jurisdictions.
- Non-US Transactions were not covered under MAP, making the ITAT's direction

to apply the same framework legally unsound.

Transfer Pricing Adjustments Must Be Made Under Domestic Law

- Transfer pricing adjustments for Non-US Transactions must be determined independently in accordance with:
- Section 92C of the Income Tax Act, 1961
- Rule 10B of the Income Tax Rules, 1962
- Applying MAP principles beyond their negotiated scope would bypass statutory TP assessment procedures.

ITAT's Direction Was Beyond Its Jurisdiction

- The court held that ITAT acted beyond its jurisdiction by imposing a consensual MAP resolution onto transactions that had not been negotiated under the procedure.
- A taxpayer's acceptance of a MAP resolution in one jurisdiction does not waive its right to contest TP adjustments in unrelated transactions.

KEY POINTS

OF THE JUDGMENT

OUTCOME

The High Court of Delhi ruled in favour of AON Consulting Pvt. Ltd., overturning the Income Tax Appellate Tribunal (ITAT)'s decision to apply the Mutual Agreement Procedure (MAP) framework to Non-US Transactions. The court restored the Assessee's appeal and directed the ITAT to reassess the TP adjustments independently under the applicable domestic laws.

Key Aspects of the Judgment Outcome

1. ITAT's Direction Was Legally Unsustainable

- The High Court held that ITAT erred in directing the Transfer Pricing Officer (TPO) to apply the MAP-based framework to transactions not covered under the MAP settlement.
- MAP resolutions are specific to the jurisdictions involved (India and the US in this case) and cannot be automatically extended to Non-US Transactions.

2. Transfer Pricing Adjustments Must Follow Statutory Provisions

- The court reaffirmed that transfer pricing (TP) adjustments must be determined in accordance with Section 92C of the

Income Tax Act, 1961, and Rule 10B of the Income Tax Rules, 1962.

- The MAP agreement applied only to the TP adjustments for US Transactions, and Non-US Transactions required a separate, independent TP assessment.

3. Assessee's Rights Were Upheld

- The court rejected the Revenue's contention that applying the MAP framework to Non-US Transactions was justified for uniformity.
- It emphasized that AON Consulting was entitled to contest TP adjustments for Non-US Transactions without being bound by the MAP resolution for US Transactions.

Final Decision

- The ITAT's decision was overturned, and the case was remanded back for reassessment.
- The High Court clarified that MAP resolutions must remain jurisdiction-specific and cannot be unilaterally applied to unrelated TP disputes.
- This judgment sets a significant precedent for taxpayers challenging unilateral application of MAP principles in TP cases.

TP METHOD

HIGHLIGHTED (IF ANY)

The Transactional Net Margin Method (TNMM) was adopted as the most appropriate transfer pricing method by both the Assessee and the Transfer Pricing Officer (TPO) in this case.

Application of TNMM by the Assessee

- AON Consulting (formerly Hewitt Associates India Pvt. Ltd.) applied TNMM to determine the arm's length price (ALP) for its international transactions.
- It selected comparable companies based on specific filters and calculated the Profit Level Indicator (PLI) as Operating Profit to Total Cost (OP/TC).
- The average PLI of comparable companies selected by the Assessee was 13.06%, while its own PLI stood at 15.69%, demonstrating that the transactions were at arm's length.

Rejection of Assessee's Comparability Analysis by the TPO

- The TPO rejected the Assessee's analysis, claiming that the selection of comparable

companies was flawed.

- The TPO applied different comparability filters and removed certain low-margin entities, leading to an inflated PLI benchmark.
- New comparable companies selected by the TPO resulted in a higher mean PLI of 26.2% for software development services and 29.16% for IT-enabled services.
- Consequently, an upward TP adjustment of ₹44,06,38,092 was made, with ₹2,26,48,798 attributed to Non-US Transactions.

High Court's View on the TP Methodology

- The High Court did not dispute the use of TNMM as the most appropriate method but criticised the ITAT for directing the TPO to apply MAP-based adjustments to Non-US Transactions.
- The court emphasized that the TP adjustment for Non-US Transactions must be determined independently under the Income Tax Act, 1961 and OECD guidelines, without reference to the MAP framework agreed for US Transactions.

PART 2

SIGNIFICANCE

MAJOR ISSUES

AREAS OF CONTENTION

This case raised several significant legal and procedural issues in the context of transfer pricing adjustments and the application of the Mutual Agreement Procedure (MAP).

1. Whether MAP Settlements Can Be Unilaterally Applied to Non-US Transactions

- The core dispute in this case was whether the Income Tax Appellate Tribunal erred in directing the TPO to apply the MAP-based framework for US Transactions to Non-US Transactions.
- The Assessee argued that MAP agreements are bilateral, voluntary, and jurisdiction-specific, negotiated between two contracting states (India and the US in this case).
- The High Court ruled in favour of AON Consulting, stating that MAP cannot be extended beyond its negotiated scope.

2. Rejection of Assessee's Transfer Pricing Analysis

- The Assessee had applied the Transactional Net Margin Method and selected comparables that resulted in a mean PLI of 13.06%.
- The TPO rejected the Assessee's comparability analysis, selecting high-margin comparables, which inflated the ALP and resulted in a higher TP adjustment.
- The court found that the ITAT should have assessed the correctness of the TPO's adjustments independently instead of applying MAP principles to unrelated transactions.

3. Legal Basis for Transfer Pricing Adjustments

- The Revenue's approach implied that MAP resolutions could override the statutory provisions of the Income Tax Act, 1961, and Rule 10B of the Income Tax Rules, 1962.
- The High Court clarified that transfer pricing adjustments for Non-US Transactions must be determined under domestic tax law and OECD guidelines, not by extrapolating MAP outcomes.
- These contentions highlighted the legal limitations of MAP and reinforced the requirement for independent TP assessments.

EXPECTED OR CONTROVERSIAL?

The High Court's decision was expected, given the clear legal principles governing MAP settlements and transfer pricing assessments. However, the case remains significant in the field of international tax law, as it directly challenges Revenue's attempt to unilaterally extend MAP outcomes to unrelated transactions.

Why Was This Decision Expected?

1. MAP Settlements Are Not Universally Applicable
 - The Mutual Agreement Procedure (MAP) is a consensual dispute resolution mechanism between the competent authorities of contracting states.
 - The High Court correctly ruled that MAP settlements cannot be extended unilaterally to transactions with non-US entities, as no corresponding agreements existed with those jurisdictions.
2. Legal Precedent Supports Independent TP Assessments
 - Indian courts have consistently held that transfer pricing adjustments must be determined independently based on OECD guidelines and domestic tax law.
 - The High Court's ruling reinforced this principle, preventing tax authorities

from imposing MAP-based TP adjustments outside the negotiated framework.

Why Was This Decision Significant?

1. Potential Policy Shift for Revenue Authorities
 - The Revenue's attempt to apply MAP principles broadly could have had major implications for multinationals, especially those with complex international transactions involving multiple jurisdictions.
 - The ruling prevents revenue authorities from using MAP as a tool to override domestic TP assessment mechanisms.
2. Implications for Future MAP Cases
 - This decision clarifies the limitations of MAP agreements, preventing arbitrary extensions beyond their jurisdictional scope.
 - Multinational enterprises (MNEs) can now challenge any unilateral attempts to apply MAP-based adjustments to unrelated transactions.

While not controversial from a legal standpoint, the decision sends a strong message to tax authorities that MAP settlements cannot be used as a blanket mechanism for all TP disputes.

SIGNIFICANCE FOR MULTINATIONALS

The High Court's ruling in favour of AON Consulting Pvt. Ltd. has significant implications for multinational enterprises, particularly those engaged in cross-border transactions and transfer pricing disputes. The judgment reinforces key principles that protect MNEs from arbitrary TP adjustments and improper application of Mutual Agreement Procedure (MAP) settlements.

1. Protection Against Unilateral TP Adjustments

- The ruling ensures that MNEs are not subject to transfer pricing adjustments based on MAP settlements that they did not negotiate or agree to.
- It prevents tax authorities from applying MAP principles to unrelated transactions, giving MNEs more certainty in managing TP disputes.

2. Reinforcement of Independent TP Assessments

- The judgment clarifies that TP adjustments must be determined based on domestic tax laws and OECD guidelines, rather than MAP settlements from unrelated jurisdictions.
- This means MNEs can challenge any TP

adjustments that do not align with their independent economic and functional analysis.

3. Strengthened Legal Position in Future TP Disputes

- The case provides a strong legal precedent for MNEs facing similar disputes, reinforcing their right to demand jurisdiction-specific TP assessments.
- It reduces the risk of revenue authorities imposing MAP-based adjustments to transactions that were not part of the original MAP negotiation.

4. More Strategic MAP Engagement

- MNEs will now approach MAP negotiations more strategically, ensuring that they clearly define the scope of their agreements and prevent their extension to unrelated transactions.

This ruling strengthens the position of MNEs in global transfer pricing matters, ensuring that their TP policies and MAP agreements remain jurisdiction-specific and legally sound.

SIGNIFICANCE

FOR REVENUE SERVICES

The High Court's ruling in AON Consulting Pvt. Ltd. v. PCIT has critical implications for tax authorities and revenue services, particularly regarding the scope and application of MAP settlements in transfer pricing disputes.

1. Limits on the Use of MAP for Transfer Pricing Adjustments

- The ruling clarifies that MAP settlements cannot be used as a universal standard for TP adjustments, particularly when transactions fall outside the agreed framework of the MAP negotiation.
- Revenue services must now ensure that each TP adjustment is independently assessed under domestic tax laws, rather than extending MAP-based principles to unrelated jurisdictions.

2. Necessity for More Detailed Transfer Pricing Examinations

- Tax authorities must conduct thorough economic and functional analyses for TP adjustments, rather than applying a MAP-based approach without justification.
- This decision emphasizes that proper comparability analysis, selection of tested parties, and application of the arm's length principle must align

with OECD guidelines and domestic legislation.

3. Impact on Future MAP Negotiations

- The ruling prevents tax authorities from using MAP as a broad enforcement tool and reinforces its intended purpose as a dispute resolution mechanism between two contracting states.
- Revenue services will need to define the scope of MAP settlements more precisely and ensure that taxpayers clearly understand the limitations of such agreements.

4. Strengthening of Taxpayer Rights

- The judgment affirms that MNEs have the right to contest TP adjustments that do not conform to statutory provisions.
- Revenue services must now approach TP disputes with greater procedural integrity, ensuring that adjustments are based on legally valid methodologies rather than MAP extensions.

This ruling sets a precedent for future transfer pricing cases, reinforcing that MAP settlements must remain within their negotiated boundaries and cannot override independent TP assessments.

RELEVANT CASES

COCA COLA INDIA VS INDIA

In this case, Coca-Cola India Pvt. Ltd. challenged the TPO's rejection of its comparability analysis, which resulted in an inflated transfer pricing (TP) adjustment. The Delhi High Court ruled that TP assessments must be conducted independently and that tax authorities cannot arbitrarily select high-profit comparables to justify an upward adjustment. This case aligns with AON Consulting Pvt. Ltd. v. PCIT, as both reinforce the principle that TP adjustments should be based on objective economic analysis rather than external benchmarks, such as MAP settlements or forced comparability adjustments.

3M INDIA VS INDIA

3M India Ltd. entered into a MAP settlement for transactions involving US-based Associated Enterprises (AEs), but the Revenue attempted to apply the MAP framework to non-US transactions as well. The Karnataka High Court ruled that MAP resolutions cannot be extended unilaterally beyond their agreed jurisdiction. This mirrors AON Consulting Pvt. Ltd. v. PCIT, where the Delhi High Court prevented the application of a MAP-based framework to transactions that were not covered under the agreement.

MARUTI SUZUKI VS INDIA

In this case, the Revenue imposed a TP adjustment on Maruti Suzuki India for alleged "marketing intangibles" created for its foreign parent company. The Supreme Court of India ruled that TP adjustments must reflect economic substance rather than assumptions or arbitrary calculations. Similarly, in AON Consulting Pvt. Ltd. v. PCIT, the High Court ruled that TP adjustments for Non-US Transactions must be independently assessed rather than being imposed through an unrelated MAP framework.

[Click here to read our summary of this case](#)

PART 3

PREVENTION

The ruling in AON Consulting Pvt. Ltd. v. PCIT highlights the complexity of international transfer pricing disputes and the risks of unilateral tax adjustments. Given the rapidly evolving global tax landscape, multinational enterprises must engage with international tax experts to ensure compliance, effective risk management, and strategic dispute resolution.

1. Navigating Complex TP Regulations

- Transfer pricing laws differ across jurisdictions, requiring MNEs to comply with both domestic and international standards such as the OECD guidelines and BEPS framework.
- International tax experts help MNEs develop robust TP policies that withstand scrutiny from multiple tax authorities.

2. Managing MAP and Dispute Resolution

- As seen in this case, MAP settlements

are jurisdiction-specific and do not always provide a universal solution.

- Tax advisors help MNEs negotiate MAP settlements strategically, ensuring that agreements are limited to intended transactions and not misapplied to unrelated disputes.

3. Preventing Unilateral TP Adjustments

- Revenue authorities often challenge TP policies and impose upward adjustments, as in AON Consulting Pvt. Ltd. v. PCIT.
- Engaging international tax professionals ensures that MNEs proactively document their TP strategies and defend their positions effectively.

By partnering with international tax experts, MNEs can mitigate risks, ensure compliance, and avoid costly litigation, securing a stable and predictable tax environment for their global operations.

PREVENTATIVE

MEASURES TO AVOID SIMILAR CASES

The judgment in *AON Consulting Pvt. Ltd. v. PCIT* underscores the importance of proactive tax risk management strategies to prevent disputes over transfer pricing adjustments. MNEs must implement structured compliance frameworks, such as tax steering committees and robust TP documentation, to minimize litigation risks and regulatory challenges.

Tax Risk Management Framework:

- Establish policies to ensure compliance with domestic and international tax laws.
- Conduct regular audits to identify and address potential vulnerabilities, such as treaty reliance without adequate substance.

Engaging in Proactive Dispute Resolution

- Pre-filing agreements, Advance Pricing Agreements (APAs), and early engagement with tax authorities can reduce the risk of unilateral TP adjustments.

- Seeking early resolution mechanisms prevents costly litigation and retrospective tax adjustments.

Strengthening Transfer Pricing Documentation

- Tax authorities often challenge the selection of comparables, as seen in this case.
- MNEs must regularly update their TP studies and apply defensible economic analysis, ensuring that comparables meet OECD and local tax authority standards.

By implementing a structured tax risk management framework, MNEs can reduce transfer pricing disputes, enhance compliance, and mitigate financial risks—ensuring a stable and predictable international tax environment.

DOWNLOAD FREE BOOK

[TAX INTELLIGENCE: THE 7 HABITUAL TAX MISTAKES MADE BY COMPANIES](#)

Tax Intelligence: The 7 Habitual Tax Mistakes Made by Companies” by Dr. Daniel N. Erasmus is a must-read for businesses seeking to navigate the intricate world of tax compliance and risk management. By highlighting common pitfalls and offering strategic solutions, Erasmus equips companies with the knowledge to improve their tax practices and secure financial stability.

PREVENTATIVE

MEASURES TO AVOID SIMILAR CASES

TAX STEERING COMMITTEE

Establishing a tax steering committee can help ensure that tax policies are aligned with the broader business strategy and that transactions are vetted for both commercial and tax implications. A tax steering committee can:

- A Tax Steering Committee ensures that transfer pricing decisions align with OECD guidelines and local regulations.
- A well-structured committee:
 - Reviews intra-group transactions

proactively.

- Conducts risk assessments before audits arise.
- Coordinates with external tax advisors and legal teams.
- Had such a framework been in place, RR Donnelley Czech could have strengthened its position by preemptively challenging the tax authorities’ benchmarking approach.

DOWNLOAD FREE E-BOOK

[DRIVING TAX COMPLIANCE: THE ESSENTIAL ROLE OF THE TAX STEERING COMMITTEE](#)

The eBook “Driving Tax Compliance: The Essential Role of a Tax Steering Committee” by Prof. Dr. Daniel N. Erasmus, Renier van Rensburg, and Gilbert Ferreira, emphasizes the critical importance of establishing a Tax Steering Committee (TSC) within multinational corporations to ensure tax compliance and manage tax-related risks effectively.

INTERNATIONAL TAX
CASE SUMMARY

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