1. **Salary of employees seconded to India to render services to Indian companies under supervision and control of Board of Directors of Indian companies is taxable in India as per article 12(4) of India - USA DTAA.** In the instant case, one is proceeding on the premise that the seconded employees are the real employees of the assessee who have come to India to render services and once they are rendering services on behalf of assessee in India then, they constitute service PE in India. Such an establishment of PE under these circumstances have been dealt by the Supreme Court in the case of *DIT (IT)* v. *Morgan Stanley & Co.* [2007] 292 ITR 416/162 Taxman 165. The Supreme Court held that the employees of overseas entities to the Indian entity constitute services PE in India. Thus, from the aforesaid decision it is amply clear that such deputed employees if continued to be on pay rolls of overseas entities or they continue to have their lien with jobs with overseas entities and are rendering their services in India, service PE will emerge. It is therefore, held that the seconded employees or deputationist working in India for the Indian entity will constitute a service PE in India. If one accepts this concept that, by virtue of deputing seconded employees in India, the assessee has established a service PE, then whether such a payment made by Indian entity to the assessee (even though it is reimbursement of salary cost), would be taxable under Article 12(4) of India-US DTAA. **Morgan Stanley International Incorporated *v.* Deputy Director of Income-tax, [2015] 153 ITD 403 (Mumbai - Trib.)**

2. **Whether transfer pricing adjustment are applicable to AMP expenses by assessee towards promotion of brand legally owned by foreign AE – Held Yes.** It is noticed that the Special Bench of the Tribunal in *L.G. Electronics India (P.) Ltd.* v. *Asstt. CIT* [2013] 140 ITD 41, by majority decision, has *inter alia* held that incurring of AMP expenses towards promotion of brand, legally owned by the foreign AE, constitutes a 'transaction'. The contention that no disallowance could be made out of AMP expenses by benchmarking them separately when the overall net profit rate declared by the assessee was higher than other comparable cases, also came to be specifically rejected by the Special Bench. Resultantly, the transfer pricing adjustment in relation to such AMP expenses was held to be sustainable in principle. It can be seen that the TPO did not have the benefit of the Special Bench order in the case of *L.G. Electronics India (P.) Ltd.* (*supra*) and the DRP failed to apply it correctly to the facts of the case, by making sweeping observations generally without considering the effect of relevant factors laid down by the Special Bench. In such circumstances, the ends of justice would meet adequately if the impugned order on this issue is set aside and the matter is restored to the file of the Assessing Officer/TPO for a fresh determination of disallowance, if any, on account of Transfer pricing adjustment for AMP expenses in the light of the decision of the Special Bench in the case of *L.G. Electronics India (P.) Ltd.* (*supra*). **Yum Restaurants (India) (P.) Ltd. *v.* ITO, [2015] 152 ITD 773 (Delhi - Trib.)**