Indian Income Tax Tribunal rules TP provision inapplicable for divestment of shares, deletes TP adjustment

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The Indian Income Tax Appellate Tribunal deleted a TP adjustment pertaining to the divestment of shares held by the assessee (Value Labs LLP) for Assessment Year 2015-16 (equivalent to Financial Year 2014-15).

The assessee had challenged the TP adjustment with respect to the divestment of shares held in Value Labs India, Value Labs Sweden, VLIT Services BV, Netherlands and Value Labs UK Ltd, to Value Labs Global Solutions Pte. Ltd.

Singapore: The assessee had transferred the aforementioned 100,000, 50,000 and 65,000 shares at face value of EUR 1, SEK 1 and GBP 1 each, respectively. Revenue (Indian Income Tax Department) treated the said share divestment transaction as an international transaction and made necessary reference to the Transfer Pricing Officer (TPO). Subsequently, the TPO passed an order proposing a TP adjustment of INR 10.6 million using the discounted cash flow method. The Tribunal opined that the instant issue as to whether such a transaction forms part of the assessee's capital account and its exigibility to the Indian Income Tax Act had previously been decided on by Courts of India and, hence, is not *res integra* anymore. Further, the Tribunal relied on the Indian State High Court decision, which in turn relied on a Tax Circular issued by the Indian Tax Administration that such a capital account transaction does not give rise to income on the revenue count and, hence, cannot be treated as an international transaction for TP purposes. Based on this, the Tribunal directed the deletion of the impugned TP adjustment of INR 10.6 million.