# INTERNATIONAL TRANSFER PRICING – PEJORATIVE EFFECT ON REVENUE GENERATION

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**ABSTRACT****

*The term 'transfer pricing' has been given a negative connotation and the cause for such pejorative attribution to the term is analysed in the present paper. This paper examines the effects of transfer pricing and its impact on revenue generation in a developing nation such as India. The endeavour in the paper is to understand the concept of transfer pricing and to explore how developing nations are drained of their legitimate revenue by multinational corporations. The journey of transfer pricing has been chronicled. The paper tries to know why transfer pricing has become a dominant factor in international taxation and why multinational corporations resort to transfer pricing. The rationale behind the need of multinational corporations to shift profits to low-tax jurisdictions has been analysed. The development of legislation to curb the phenomenon and adoption of methods to curb transfer pricing in Indian fiscal statutes has been analysed in the paper. The intention of the legislature in enacting such methods and the judicial interpretation of the phenomenon has also been considered. The paper seeks to find out whether the pejorative interpretation is justified and whether a developing nation such as India needs a stricter fiscal framework to curb transfer pricing. The methodology used in the paper is doctrinal and the method adopted in the paper is a combination of descriptive, explanatory, historical and analytical methods.*

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** The views expressed in this article are those of the author and do not reflect the official policy or position of the Centre for Regulatory Studies, Governance and Public Policy, WBNUJS, Kolkata.

## 1. Introduction

The twentieth century bears testimony to the integration of global economy on a scale which was unprecedented and that led to the emergence of a global economy where one nation and its finances or revenue could not be discounted from that of another. Development in the myriad fields of technology, speed and reliability in communication and transport catalysed this process of globalisation. To begin with, historically, international trade was mainly concerned with the import and export of raw materials and finished goods. However, with the passage of time and with the development of communication, as the movement of labour and capital became easier, it became more compelling, cost-effective and more viable for a business to undertake its activities in a location where labour and capital could be invested to earn the best possible return. Thus, the rise of Multinational enterprises (MNEs) with associates (both fully and partially owned) in different parts of the world was observed in the wake of booming trade and globalisation for carrying on business activities form different jurisdictions on a large scale which was till then, unknown. The growth of the MNEs cannot be catalogued to indicate the precise date of their emergence. It can be fairly estimated that with the advent of the European Colonial Trading Companies, the concept of trading through MNEs gained precedence.[1]

However, it is considered by some that MNEs evolved in the mid-nineteenth century as this was the period when modern technologies, manufacturing and management processes developed and with such developments, a possibility was created for a genuine international division of production by firms.[2] It was realised by the manufacturing and trading concerns that trading by MNEs with associated enterprises may be beneficial as the finances can be controlled to regulate the profits and in turn the liability for payment of taxes may be controlled.

In recent years, considering the factors which have provided an impetus to the MNEs, the MNEs have a dominant role in international trade, and account for more than half of the international transactions which are undertaken worldwide.

[1] Peter Muchlinski, *Multinational enterprises and the law*, (2nd edn, Oxford University Press, 2007) 1-20.
[2] Ibid.

Contemporaneous with the growth of MNEs, intra-firm trade has also increased. It is a striking feature that the graph of growth of intra-firm trade is on the rise and accounts for almost 60% of the total basket of international transactions.[3] It is no longer left to imagination that with the exponential growth of MNEs, the transactions between the MNEs and their associated enterprises are no longer guided by market forces. The forces which have replaced market forces are often the common interests of entities of the group.

The management of MNEs were aware that market forces would no longer guide the transactions between related or associated enterprises and as such, prices for intra-group transactions had to be fixed in such a manner that the incidence of taxation is lowered. The price which was fixed in the process by the managers of MNEs is known as 'transfer price'. 'Transfer Pricing' can be defined as the price at which goods or intangible properties are transferred or services are rendered between the related enterprises and which do not represent true, normal, natural and real market prices of the transactions.[4] The transfer pricing manipulation is done with the primary intention of enhancement of total after-tax profit of the MNEs (business profit and profit repatriated from subsidiaries) and reduction of before-tax declared profit, to enhance the real income of the MNEs.[5] In fact, transfer pricing is one of the most debated and contentious issues in taxation. The *Ruding Report, 1992* declared transfer pricing as the one of the most important areas for future in international taxation and the internal market (EU).[6]

The transfer price is usually compared with the market price which is guided by market forces or arm's length price which is the price of a similar transaction between unrelated associations which are guided by market forces and are not regulated transactions.[7]

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[3] Deloitte, *Transfer Pricing Law and Practice in India A fine print analysis* (CCH a Wolters Kluwer India Pvt. Ltd, 2008) 2.

[4] OECD, *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*, (2001) 3 <http://www.oecd.org/tax/transfer-pricing/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-20769717.htm>accessed 16 March 2018.

[5] Walter A. Chudson, 'Intra Firm Trade and Transfer Pricing', Robin Murray (ed), Multinationals Beyond the Market, Intra-Firm Trade and the Control of Transfer Pricing' (The Harvester Press 1981) 17.

[6] European Commission, *Company Taxation in the Internal Market, European Commission,* (2002) 331 <https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/company_tax_study_en.pdf> accessed 15 March 2018.

[7] Brian J. Arnold and Michael J. McIntyre, *International Tax Primer* (2nd edn, Kluwer Law International 2002) 55.

Transfer pricing often includes transactions which involve, *inter alia*, transfer of tangible goods, capital assets and other such tangible assets, transfer of intangible property and property rights, rendering of services, provision of finance or revenue or income like property rental and from other sources, leasing arrangements, etc.[8]

## 2. The Concept of Transfer Pricing further Elucidated

The majority of transactions in international trade takes place between related entities within MNEs, which do not have the occasion of standing the test of market forces. This, in turn, enables such enterprises to fix internal prices of their goods and services according to their own convenience and motives in respect of transactions between themselves in order to maximise the profits after taxation. These prices, which are manipulated between related associates of the parent enterprises, are called transfer prices.

Let us now understand transfer pricing from a more pragmatic standpoint. For example, a multinational corporation has its base in country 'X' and earns a profit of 'A'. The corporation has another subsidiary in country 'Y'. Country 'Y' has a lower tax rate but does not have resources as country 'X'. In such a situation, the multinational corporation utilises the resources of country 'X' for development of its business but shifts the profits artificially to country 'Y' through its subsidiary, in order to increase its overall profit, after tax profit. Such shifting of profits could take place by various methods. In one case the shifting may be by selling in country 'Y', the product manufactured in country 'X'. The taxable income of the subsidiary would be determined by the reselling price of the manufactured product, expenses paid for the inputs and expenses incurred for purchasing the products. The corporation which would have had to pay tax to the tune of say (A/3) in country 'X' will have to pay tax at the rate say (A/10) in country 'Y'. In such a situation, the transfer pricing would erode the tax base of country 'X'. Transfer pricing in the instant example would be - [A/3 (-) A/10].

The United Nations' Practical Manual on Transfer Pricing for Developing Countries[9] is relevant and it is explained therein that 'transfer pricing' may be described as a

[8] Roy Rohatgi *The Basic International Taxation*, (Kluwer Law International 2002) 412-413.
[9] <http://www.un.org/esa/ffd/documents/UN_Manual_TransferPricing.pdf> accessed 14 March 2018.

phenomenon by which profits of a multinational corporation is shifted from a jurisdiction with higher tax rates to a jurisdiction with lower tax rates through associated enterprises by changing the policy of pricing at which the transactions amongst the related entities take place.

## 3. Rationale Behind Transfer Pricing

(a) Tax avoidance

Transfer of goods or services, as aforesaid, is not dictated by the market forces but is controlled by the consideration of shifting taxable profits or duties or of arranging the direction of cash flow to maximise the profits of the MNEs after deduction of taxes. Avoidance of tax is the most important factor behind transfer pricing. The artificial reduction of profits or losses caused in a specific country through manipulation is often the aim as well as the result of transfer pricing.[10]

(b) Exchange control and foreign investment

The developing countries have stringent restrictions in regard to remittances of profits from their jurisdiction to other jurisdictions. However, in order to secure access to foreign technologies, expertise, technical know-how, capital goods and components for their industrial development, they are often more liberal with respect to payments for these technologies and other benefits and make favourable and liberal exchange control regulations which facilitate tax avoidance. These so-called liberal regulations are often used and the restrictions in regard to such remittance of profits are often circumvented or dogged, when a foreign company charges a price which is not commensurate with the market prices but is more than the market value as consideration for imparting technologies, services and other tangibles. It is for such endeavours that transfer pricing is resorted to by MNEs.

(c) Withdrawal of profits in the form of royalties, etc.

The policies of the MNEs have changed in developing countries, where they have modified their investment and technical collaboration policies to control the ultimate profits. They drain off the profits and eventually reduce them through payment of excessive royalties,

[10] D. P. Mittal, *Law of Transfer Pricing in India: An Introduction* (4th edn, Taxmann 2014) 8-10.

high technical and management fees and over invoicing of imported components[11]. These expenditures result in reduction of profits earned by the associates of MNEs or related enterprises. The profits so earned are, thus, withdrawn before they are shared by the local participants, the revenue department and the MNE, through transfer pricing techniques which bordered in the boundary of tax avoidance.

(d) Hedging against political and economic uncertainties

Unpredictability about the political and economic stability of a nation may necessitate and warrant flight of capital or profit from a country with an unstable future to a country with a more stable fiscal or political regime. This is achieved by applying the myriad methods of transfer pricing.[12]

(e) Transfer pricing - characterisation of income

Transfer prices are not merely manipulated by shifting profits but also by placing incomes or revenues generated under various heads of income. Such manipulations in related transactions are difficult to be caught and established because the revenue authorities cannot investigate beyond its jurisdiction and the same can only be perused if the countries have such a treaty with the other country which seeks to gain from such transactions.

(f) Shifting of business profits from high-tax countries to low-tax countries

An MNE is at the helm of affairs of its subsidiaries or related enterprises. An MNE can modify its profit margins and that attributable to its subsidiaries through transfer pricing. Overpricing by an MNE results in high and low profit for the parent company and its subsidiaries respectively and it is so done depending on where does the subsidiary and the parent enterprise is situated. Under-pricing by the parent company has just opposite effect and would also be a part of transfer pricing. This enables an MNE to shift the profit to a country where rate of taxation is lower, resulting in reduction of overall tax liability without altering its overall business profit.[13]

[11] Ibid.
[12] ibid 10.
[13] Sylvain R. F. Plasschaert, *Transfer Pricing and Multinational Companies-An Overview of Concepts, Mechanisms and Regulations* (Saxon House 1979) 48-49.

## 4. Factors responsible for making transfer pricing a dominant issue in international taxation

Transfer prices are essentially set within a single enterprise as against market prices which are set in transactions between independent enterprises, in markets which are not guided by monopolistic measures, where only ‘market’ is the sole guiding factor. Some of the factors responsible for making transfer pricing a dominant issue in international taxation are as follows:

i. The associated enterprises within the structure of an MNE system are guided by the “group’s objectives”, which may differ from the objectives of the associated enterprises. This makes transfer pricing a complex exercise.

ii. Considering the complexities involved in intra-firm transactions, tax authorities often find examination of transfer prices a difficult exercise in the absence of concrete or crystallised figures.

iii. Transfer pricing provides enormous flexibility to a multinational corporation for shifting funds and profits from one tax jurisdiction to another for lowering the end tax payable by the corporation.

iv. Transfer pricing helps multinational corporations to avoid the restrictions on transfer of profits and other checks which are put in place by tax jurisdictions to avoid seepage of revenue.

v. It can be used to under-cut shares of local shareholders which is an after-effect of the shifting of profits to other jurisdictions.

vi. The cynosure which is garnered by huge profits and the unwanted attention from competitors is often hedged by transfer pricing and the obligation to pay dividends on such profits also shifts bases.

It would render to oversimplification of issues to explain that deviation of transfer prices from arm’s length prices is done with the sole object of avoiding tax but the said reason stands to be the primary motive as the other reasons are an aftermath of the said process and the process would have domino effect which would be beneficial to the MNEs and its associated enterprises.

## 5. Transfer Pricing and Role of Developing Countries

In the last few decades, involvement of MNEs in the economy of developing countries has resulted in substantial improvement and strengthening of such economies-in terms of both quality and quantity. The developing countries are no longer seen merely as sources of raw material, but as big markets for the products of MNEs and there market presence, being substantial, can no longer be ignored by such MNEs.

(a) With the advent of globalisation, the developing nations of the world have undergone metamorphosis from being mere suppliers of raw materials to nations which attract substantial foreign direct investment. The advent of globalisation has rendered the world as a global village and the developing nations can no longer be ignored when it comes to development of trade and supplies. The tax regime of developing nations is favourable for multinational corporations as such nations provide cheap labour and also cheap raw materials.[14]

(b) The transfer pricing impacts the revenue generation of developing nations adversely although their impact on developed nations may not be substantial. The regulations which are in place to curb the menace of transfer pricing are often used and manipulated by the multinational corporations to find loopholes and are used to the advantage of the multinational corporations. This often creates a wide chasm between tax avoidance and tax evasion.

(c) The fiscal regime of a developing nation needs to be effective for controlling transfer pricing by multinational corporations. An effective statute can reduce the negative impact of transfer pricing in a developing nation. The dilemma which the developing nations often face is that a stringent tax regime would reduce investments and a tax regime which could be dubbed as lenient could be a catalyst for tax avoidance which would adversely impact the revenue generation of the nation.

(d) The relation between MNEs and a developing nation is symbiotic as the MNEs cannot ignore developing nations as it is in these markets that the highest transactions take place and ignoring these may force the MNEs out of the competitive markets. Nor can the developing nations ignore the foreign direct

[14] V. S. Wahi, *Transfer Pricing, Law, Procedure and Documentation- an Indian and Global Analysis* (6th edn, Snow White July, 2015).

investments which are brought in by the MNEs. The development of the Gross Domestic Product of a nation depends upon the balance between the two factors.

(e) The advent of liberalisation of the Indian Economy and lifting of compulsory controls catalysed the impetus for a comprehensive regime for regulation of transfer pricing. The opening of the Indian economy goaded fiscal changes which were necessitated to curb the tax avoidance practised through transfer pricing by MNEs and the development has been discussed herein below.

## 6. Development of Legislation to Curb Transfer Pricing Abuses

The phenomenon of transfer pricing has been practised since the days of inter-country trading. However, the fiscal statues of various nations were not aptly armed to deal with the problem till 1900s. In 1915, the first recorded piece of legislation against transfer pricing was introduced in the United Kingdom and suit was soon followed by the United States in the year 1917. These legislation were not complete success but were nevertheless a point of beginning which could determine the prognosis of future (laws on the subject) across the world.

Though transfer pricing, in the period till 1950s was more concentrated with overvaluing or under-pricing of cross-border transactions, to increase profit margins of associated enterprises or related entities, the phenomenon was never considered to be a real threat till 1960s.

Post 1960s, the growth of international trade increased many fold and there was a corresponding exponential growth of multinational corporations across the nations. The countries across the globe were alive to the fact of erosion of tax base due to such corporations and the methods under the garb of transfer pricing were well recognised. The artificial profit sharing was the moot point which had to be plugged to control the phenomenon. Article 9(1) of the OECD draft[15] which related to associate enterprises was at

[15] Article 9 of the OECD Model Tax convention reads as " where (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other contracting State, or
(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of Contracting State and an enterprise of the other contracting state,And in either case conditions are made or imposed between the two enterprises in their commercialor financial relations which differ from those which would be made between independententerprises, then any profits which would, but for those conditions, have accrued to one of theenterprises, but, by reason of those conditions, have not so accrued, may be included in the profitsof that enterprise and taxed accordingly.

the helm of the fiscal changes which the countries were looking at and aspiring to achieve. The draft provided the guiding light for nations which wanted to put in place an effective fiscal regime to curb transfer pricing. The fiscal provisions estimate the profits which a multinational company might have earned had the transaction been guided by market forces.

Globalisation posed new challenges for policy making in relation to transfer prices and also opened new opportunities for the multinational corporations as the said corporations, with their presence in jurisdictions with varied tax regimes, could shift their profits and base such profits in jurisdictions with lower tax regimes.[16] The International Monetary Fund cautioned that one of the effects of globalisation is the impetus to problems of taxation which would primarily involve use and misuse of transfer pricing.[17]

The developed nations were not hedged from the effects of transfer pricing and the effects were felt in the 1970s when substantial erosion of the tax base in developed nations were steadily observed.

In 1979, the Organization for Economic Cooperation and Development (OECD) published a report titled "Transfer pricing and Multinational Enterprises." The report is considered to be one of the early treatises on transfer pricing with thorough analysis of the provisions.

There has always been a debate on the approach which is more apt for arriving at the original price of a transaction which is not guided by market forces. The arm's length principle (ALP) was re-christened in the said report as a principle which was suitable for arriving at the original price of the transaction. It was in this report that the methods of arriving at the arm's length price were elucidated. The said methods are as follows:

(a) comparable un-controlled price method
(b) resale price method
(c) cost plus method

[16] Prem Sikka & Hugh Wilmott, "The Dark Side of Transfer Pricing: Its Role in Tax Avoidance and Wealth Retentiveness Critical perspectives on Accounting" (2010) 21(4) 342- 356 < http://repository.essex.ac.uk/8098/1/WP2010-1%20-%20PSikka%20Transfer%20Pricing%20Paper.pdf> accessed on 18 February 2017.

[17] Vito Tanzi "Globalization, technological developments, and the work of fiscal termites" (2000) IMF Working Paper WP/00/181<https://www.imf.org/external/pubs/ft/wp/2000/wp00181.pdf> accessed 17 February 2018.

The report cautioned about the dangers of using other methods for arriving at the arm's length price as the same could be faulty. The report did not advocate the cause of one of the methods in precedence to the other methods and opined that the methods could be used in conjunction with one another.[18]

In another report titled *"*Transfer Pricing and Multinational Enterprises Three Taxation Issues,*"* published by OECD in 1984, the analysis of intra-bank interests was done as the same were often resorted to by multinational corporations for eroding tax base of a nation to its advantage.[19]

A new anti-avoidance legislation was introduced in the United Kingdom, in 1984, titled *"The Controlled Foreign Corporation (CFC) Rules"* with the objective to check the use of tax havens by corporations to shift their profits to such jurisdictions although the resources of nations with higher tax rates would be used by such corporations.

Thereafter, reports were published by OECD in the years 1987, 1988 and 1994 and a wide gamut of issues varying from thin capitalisation to taxation effects of gains or losses in foreign exchanges were analysed.

Subsequent reports were published by OECD in the years 1995, 1996, 1997 and 1999. This temporal frame was witness to the exponential growth of multinational corporations and as a result of which, many developed and developing nations started giving more attention to the issue of transfer pricing. The countries in wake of such growth of the phenomenon, introduced comprehensive legislations to curb the phenomenon.

## 7. Legislative Framework to Deal with Tax Avoidance Through Transfer Pricing

There are two broad approaches, applied worldwide, which deal with shifting of profits from one jurisdiction to another. The approaches are as follows:

(a) Global Formulary Apportionment method: Under this method, the global consolidated profit of a multinational group is distributed among the related enterprises which base out of in various countries on the basis of a formula. This

[18] V. S. Wahi, *Transfer pricing law procedure and documentation an Indian and Global Analysis* (5th edn, Snow White Publication 2013) 296.
[19] ibid *(*296).

formula takes into account costs of products, assets, salaries of employees, sales and the figures thereof, etc. Scope for manipulation by enterprises often increase exponentially and the same is achieved by shifting of factors, which include but is not limited to, manipulating capitals and sale figures to jurisdictions which have low tax rates The method may often turn out to be oblivious to market forces and practical facts which guide a transaction;[20] or

(b) Arm's Length Principle of transfer pricing Adjustments approach: This method, which has been elucidated in Article 9 of the OECD Model Tax Convention, supports avoidance of double taxation in transactions between nations. In terms of this principle, a transaction between two related entities should be treated at par with a similar transaction between unrelated parties where the transaction would be guided by market forces.

In the first method, the entire corporate group is taxed as a whole and the global profits are allocated amongst the associated enterprises in different countries on the basis of a pre-determined formula. In the other method, associated enterprises are taxed as separate entities as if they are at arm's length from one another. The second method is the most adopted method, because corporate laws recognise independent status. In *Iljin Automotive Private Ltd v The Asst. CIT*,[21] both the alternative legal approaches to deal with transfer pricing were discussed.

## 8. History of Transfer Pricing Legislation in India

(a) Development of transfer pricing legislation in India

There was no comprehensive provision in the Indian Income Tax Act, 1961 (IT Act), to deal with transfer pricing. The lack of comprehensive provisions would not, however, mean to suggest that there was no provision at all to deal with the issue. There were scattered provisions in the fiscal statute which if interpreted, would curb the menace of transfer pricing. These included Section 40A(2), which empowered the assessing officer to examine the propriety of expenditure incurred where the payment was made to specified related parties.

[20] [2001] 116 Taxman 251 (ART).
[21] [2012] 16 ITR(T) 481 (Chennai-Trib).

Moreover, Section 92 of the un-amended IT Act had provided for the calculation of profits which could be expected to be derived by a resident when such residents undertake cross-border transactions with related parties.

India has entered into various Double Taxation Avoidance Agreements with several countries and such treaties usually incorporate provisions which deal with cross-border transactions with related parties which are in line with OECD's or UN's Model Tax Convention Treaty. Article 9 of OECD guidelines usually addresses a wide gamut of transfer pricing issues, but the effect of such provisions was diluted by the then existing provisions of fiscal statute. As a result, an amendment was felt for by incorporating specific provisions in the fiscal statute.

An amendment was brought in by the Finance Act, 2001 by incorporating Sections 92, 92A, 92B, 92C, 92D, 92E and 92F in the IT Act to plug in the loopholes for dealing with transfer pricing. The amendment was effective from April 1, 2001 which related to the assessment years 2002-2003.

The draft Transfer Pricing Rules were issued by the Central Board of Direct Taxes on August 21, 2001. Rules 10A to 10E of the Income Tax Rules, 1962 and Sections 271 (1)(c), 271 AA, 271 BA and 271G of the IT Act are the relevant provisions for dealing with transfer pricing.

(b) Intention of the Legislature

The legislative intent behind the Amendment of 2001 is aptly captured in the following words:

> '*The basic intention underlying the new transfer pricing regulations is to prevent shifting out of profits by manipulating prices charged or paid in international transactions, thereby eroding the Country's tax base.*'[22]

The transfer pricing regulations of India are broadly based on the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ('OECD Guidelines'). The methods which are prescribed to be followed along with the penalties

[22] Para 55.6 of CBDT Circular No. 14/2001.

which are to be levied have an independent flavour though the essence is derived from the OECD guidelines.

The regulatory framework of transfer pricing encapsulates within its gamut: (i) the anti-avoidance provisions[23] and penalty provisions[24] (ii) provisions as incorporated in the Income-tax Rules, 1962[25] and (iii) departmental guidelines.[26]

(c) Transfer pricing Legislation through judicial interpretation

In *Gharda Chemicals Ltd.* v *DCIT*,[27] it was held that the rationale behind the transfer pricing provisions is to curtail the avoidance of tax in India. It was stated by the Tribunal that the intent and purpose of the provisions was to make certain that the transactions between the associated enterprises should not be artificially manipulated in a manner that the ultimate tax payable in India is reduced. In *Serdia Pharmaceuticals (India) Private Limited v Assistant Commissioner of Income Tax,*[28] it was observed that in situations where associated enterprises enter into a transaction which is not guided by market forces, the differences between the guided and the independent conditions in financial and commercial terms are attributed to their relationship and such impact is sought to be neutralised by the fiscal regulations. In *Iljin Automotive Private Ltd v The Asst. CIT*,[29] the Tribunal observed that Arm’s Length Price has been conceptualised to hypothetically arrive at the price of transaction between unrelated parties to prevent evasion of tax.

(d) Analysis of the Pejorative Terminology

The term ‘transfer pricing’ is dominant in international taxation and has a pejorative connotation associated with its use. It is the phenomenon which robs nations of their legitimate revenue dues and affects the growth of nations. The phrase has rightfully earned its epithet of being pejorative as it is a method of tax avoidance which has crossed the boundary and is classified as tax evasion. If the phenomenon is not handled properly, transfer pricing disputes could become a major impediment in the growth of international trade by eroding

[23] Sections 92-92F of Income Tax Act, 1961.
[24] Sections 271(1) (c), 271AA, 271BA, 271G of Income Tax Act, 1961.
[25] Rules 10A to 10D of Income Tax Rules, 1962.
[26] CBDT Circular No. 12/2001, dated 23 August 2001 and Instruction No. 3 of 2003, dated 20 May 2003..
[27] [2010] 130 TTJ 556 (Mumbai).
[28] [2011] 44 SOT 391 (Mumbai).
[29] Supra n 21.

the revenue base of nations which fail to device appropriate and efficient measures for handling the menace.

Transfer pricing is a phenomenon which has now occupied a prime position in international taxation and the same has a domino effect on other nations. The effect of applying transfer pricing by multinational companies comes with a caveat. The phenomenon often runs the risk of invoking a catalytic effect amongst the various jurisdictions to come up with more liberal fiscal regimes for attracting foreign direct investments. Such incentives are dangerous and should be checked as the same are self-destructive measures.

## 9. Conclusion

The revenue generation and transfer pricing regulations are balanced delicately in a developing nation such as India. The balance needs to be delicately treaded upon so that the strict laws do not impact revenue generation of the Country or weak laws do not embolden mammoth manipulation of transfer prices to erode the tax base of the nation. The pejorative meaning which is attributed to transfer pricing is the effect of the artificial manipulation by overzealous corporations who seek to maximise their profits by depriving jurisdictions of their legitimate dues. Transfer pricing is often a misnomer and the term should have been transfer 'mis-pricing'. The artificial pricing results in erosion of tax base of a nation and have implications which are far and wide for a social welfare state like India. The effects of erosion of tax base are felt by individuals of the nation. The Government has lower financial capability to invest in welfare activities and the same is detrimental to the development of a developing nation. However, a strict regime against transfer pricing is detrimental to the development as the multinational corporations would then not invest in such jurisdictions. The same would mean lack of foreign direct investments which would, in turn, hurt the developing nations such as India. The challenge lies in curbing the transfer mispricing while catalysing the growth trajectory of the nation. Transfer pricing needs to be checked without harming the prospect of investment by multinational corporations. The fiscal framework of India is delicately balanced and aptly arranged to plug statutory loopholes and also to encourage investment by multinational corporations which paves the way for placing our nation in the league of developed nations of the world.