

1. **In course of transfer pricing proceedings, while computing operating cost, abnormal costs incurred on account of start up of business like salary, rent and depreciation etc. have to be excluded.** The assessee's case was that during the previous year 2002-03, the assessee was a start up enterprise and thus, due adjustment ought to be made of the start-up/one-time costs incurred, which inevitably led to losses. It was further submitted that operating profit/loss of the assessee was required to be adjusted to exclude items of abnormal cost/short fall in revenue to determine the normal profit that could have been earned by it for the purpose of benchmarking with other companies which were not in start-up stage. The TPO having rejected assessee's explanation, made certain adjustment to assessee's ALP on basis of mean margin earned by comparables selected by him. There is force in the argument of assessee that while calculating operating cost, the abnormal cost incurred on account of start-up should be excluded. Thus, the TPO/Assessing Officer has to be directed to adjust operating cost by excluding abnormal cost incurred on account of start-up company like salary, rent and depreciation. This matter is restored to the file of TPO/Assessing Officer to re-determine the operating cost on the above lines to arrive at operating profit. **HCL Technologies BPO Services Ltd. v. Assistant Commissioner of Income-tax, [2015] 69 SOT 571 (Delhi –Trib).**
2. **When in view of series of judgments of jurisdictional High Court, amendment brought to section 40(a)(ia) is only clarificatory in nature having retrospective effect from 1-4-2005, such law binds lower judicial authorities and as such orders of lower judicial authorities can be rectified on basis of subsequent binding judicial precedents.** It is not in dispute in the light of a series of judgments of jurisdictional High Court that the amendment brought to section 40(a)(ia), is only clarificatory in nature and it will also apply to the assessment years prior to the assessment year 2010-11 as well. Therefore, declining rectification under section 154, was contrary to the law settled by the jurisdictional High Court. Once the jurisdictional High Court holds that an amendment will have retrospective effect from 1-4-2005, there cannot be any two opinions on the issue at least so far as in the jurisdiction of this High Court. It is also elementary that when High Court interprets a legal provision in a particular manner, it is not from the date of that decision that legal position is so settled; it is to be deemed to be the correct legal position right from the time the law came into force. As observed by a Punjab & Haryana High Court, in the case of *CIT v. Smt. Aruna Luthara* [\[2001\] 252 ITR 76](#), 'when a Court interprets a provision, it decides as to what is the meaning and effect of the words used by the legislature. It is a declaration regarding the statute. In other words, the judgment declares as to what the legislature had said at the time of the promulgation of the law. The declaration is - This was the law. This is how the provision shall be construed.' In the case of *Asstt. CIT v. Saurashtra Kutch Stock Exchange Ltd.* [\[2008\] 305 ITR 227](#) Supreme Court has stated this principle. **Jigna Construction v. ITO [2015] 69 SOT 552 (Ahemdabad –Trib).**