

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "K" MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 2101/MUM/2016  
Assessment Year: 2011-12**

DCIT-7(1)-2  
Room No. 130, First  
Floor, Aayakar Bhavan,  
M.K. Road  
Mumbai-400020

**PAN No. AAACH0667B  
Appellant**

M/s Heinz India Pvt. Ltd.  
D-Shiv Sagar Estate, 7<sup>th</sup>  
Vs. floor, Dr. Annie Besant  
Road Worli,  
Mumbai-400018

**Respondent**

Revenue by : Mr. Jayant Kumar, DR  
Assessee by : Mr. Nishant Thakkar, AR

Date of Hearing : 10/08/2017  
Date of pronouncement : 06/11/2017

**ORDER**

**PER N.K. PRADHAN, A.M.**

This is an appeal filed by the Revenue. The relevant assessment year is 2011-12. The appeal is directed against the order of the Dispute Resolution Panel (DRP)-1, Mumbai passed u/s 144C(5) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the Revenue read as under:

1. Whether on the facts and in the circumstances of the case and in law, the Hon'ble DRP was justified in deleting the addition of Rs.92.85 crore in

respect of advertising and market research and management services without appreciating the facts that the assessee company is not an economic owner of the brand and the cost incurred by the assessee company for developing, promoting, maintaining the brand, is on account of the registered owner of the brand.

2. Whether on the facts and in the circumstances of the case and in law, the Hon'ble DRP was justified in deleting the addition of Rs.92.85 crore in respect of Advertising and market research and management services (AMP) expenditure without appreciating the facts that the Bright line test is tool to identify the comparable uncontrolled expenses on AMP.
3. Whether on the facts and in the circumstances of the case and in law, the Hon'ble DRP was justified in deleting the addition of Rs.92.85 crore in respect of AMP expenditure without appreciating the facts that the TPO/AO has conducted exercise to determine the expenditure incurred by other entities on AMP in respect of own brands/brand not owned by foreign principals to determine the level of expected expenditure on AMP in uncontrolled transactions by similarly placed parties.
4. Whether on the facts and in the circumstances of the case and in law, the Hon'ble DRP was justified in holding that there existed to agreement or understanding or arrangement between the assessee and the AE. In view of the clause 2.3(ii) and (iii) of trademark license agreement dated 25.06.1995 as per which the assessee was required to create, maintain and increase the market for the products and promote the products.
5. Whether on the facts and in the circumstances of the case and in law, the Hon'ble DRP was justified in holding that the TPO has not shown anything except BLT to benchmark the AMP expenditure in view of the clause 2.3(ii) and (iii) of trademark license agreement dated 26.06.1995.
6. The appellant prays that the Directions of the Ld. DRP-1, Mumbai on the above grounds be set aside to the file of the A.O. or confirm the order of the AO.

3. Briefly stated, the facts of the case are that the assessee, Heinz India Pvt. Ltd., is a wholly owned subsidiary of Heinz Italia S.r.l. It is engaged in manufacture and sale of well-known beverage and instant food products under the brand names Heinz Ketchup, Complian, Glucon D, Nycil and Sampriti ghee. The assessee also acts as a distributor for trading goods, but the sales in this segment are much less than in the manufacturing segment.

The Assessing Officer (AO) forwarded a draft assessment order dated 18.03.2014 for the impugned assessment year to the DRP u/s 144C(1). The assessee also filed objections before the DRP along with Form No. 35A in respect of variations proposed to be made by the AO in the draft order.

The DRP found that the assessee is a manufacture of goods. It has also distributed goods of its Associated Enterprise (AE) in India, but the import of such goods is only Rs.2.73 crores as against its turnover of around Rs.1,200/- crores. During the course of proceedings, the assessee furnished before the DRP its agreement with the AE Heinz Italia S.p.A (Heinz Italy) and H.J. Heinz Company (Heinz USA). The DRP observed that nothing is discernible from the said documents that can be construed as an agreement between the assessee and the AEs for AMP expenses on behalf of AEs. The Transfer Pricing Officer (TPO) has also not brought out anything on record that can be held to be an understanding or arrangement between the assessee and its AEs for AMP expenses. The DRP having gone through the judgment of the Hon'ble Delhi High Court in *Maruti Suzuki 64 taxmann.com 150, Bausch*

*and Lomb Eyecare (India) Pvt. Ltd.* 65 taxmann.com 141 and *Whirlpool of India Ltd.* 64 taxmann.com 324 held as under:

“On the basis of all these judgments of Delhi High Court, it emerges that unless there exists an agreement or arrangement or understanding between the assessee and its AE for AMP expenses, any international transaction cannot be said to have been undertaken. Bright Line Test has no statutory sanction to benchmark any international transaction including AMP. There is also no other machinery provision to quantify AMP expenses as international transaction. Since on facts of this case it cannot be said that there exist any agreement or understanding or arrangement between the assessee and the AE and the TPO has not shown anything except BLT to benchmark the alleged excess AMP expenses, the adjustment made by the TPO in this regard is therefore directed to be deleted. The objections of the assessee this respect are therefore accepted.”

4. Before us, the Ld. DR relies on the order of the TPO. On the other hand, the Ld. counsel of the assessee supports the order passed by the DRP and also relies on the order of the ITAT ‘K’ Bench, Mumbai in the case of the assessee for the AY 2008-09, AY 2009-10 and AY 2010-11.

5. We have heard the rival submissions and perused the relevant materials on record. We agree with the DRP that in the instant case there is no agreement between the assessee and the AEs for sharing the AMP expenses. We find that the same issue arose before the ITAT ‘K’ Bench, Mumbai in the case of the assessee for the AY 2008-09 (ITA No. 7732/Mum/2010), AY 2009-10 (ITA No. 1210/Mum/2014) and AY 2010-11 (ITA No. 393/Mum/2015). The Co-ordinate Bench, following the judgment of the Hon’ble Delhi High in *Bausch and Lomb Eyecare (India) Pvt. Ltd* held that the transaction in question was not an

international transaction and that the TPO has wrongly invoked the provisions of Chapter X of the Act for the said transaction.

6. Facts being similar, we follow the order of the Co-ordinate Bench mentioned above and uphold the order of the DRP.

7. In the result, the appeal is dismissed.

**Order pronounced in the open Court on 06/11/2017.**

Sd/-  
(MAHAVIR SINGH)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 06/11/2017.

*Rahul Sharma, Sr. P.S.*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**