IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'I-1' NEW DELHI

BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A. No. 381/DEL/2015 (A.Y 2009-10)

Johnson & Johnson Ltd. (On behalf of Synthes Medical Pvt. Ltd. Since Merged with Johnson & Johnson Ltd.) Plot No. 118, Sector-44, Institutional Area Gurgaon AAACJ0866E **(APPELLANT)**	Vs	DCIT Circle-22(2) New Delhi. **(RESPONDENT)**

ITA No. 124/DEL/2015 (A.Y 2010-11)

DCIT Circle-11(1) C. R. Building New Delhi. **(APPELLANT)**	Vs	Synthes Medical Pvt. Ltd. 207, Essel House, 10, Asaf Ali Road New Delhi AAACM3591K **(RESPONDENT)**

Appellant by	**Sh. Gautam Jain & Piyush Kumar Kamal, Advs. Sh. Mukesh Gupta, & Ms. Neha Gupta, CAs**
Respondent by	**Sh. Sanjay. I. Bara, CIT-DR**

Date of Hearing	**18.10.2018**
Date of Pronouncement	**21.12.2018**

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee and the Revenue against the order dated 5/11/2014 passed by DCIT, Circle-7 (1), New Delhi u/s 143(3) read with u/s 144C of the Act for Assessment Year 2010-11.

2. The grounds of appeal are as under:-

I.T.A. No. 381/DEL/2015

"1. That the learned Deputy Commissioner of Income Tax, Circle-7(1), New Delhi has erred both in law and on facts in determining the income of the appellant at Rs. 35,96,36,200/- as against returned total income of Rs. 20,04,81,143/- in an order of assessment dated 5.11.2014 u/s 143(3) read with section 144C of the Act in pursuance to directions issued by learned Dispute Resolution Panel-Ill, New Delhi (hereinafter referred to as "DRP") in an order dated 20.10.2014 u/s 144C(5) of the Act. The additions made aggregating to Rs. 15,91,55,055/- are highly unjustified, arbitrary and untenable.

2. That the learned DRP has committed gross errors in confirming the adjustment aggregating to Rs. 7,88,19,769/- by mechanically confirming the transfer pricing adjustment proposed by the learned Joint Director of Income Tax, Transfer Pricing Officer-II(2), New Delhi (hereinafter referred to as the "TPO") under section 92CA of the Act.

2.1 That the learned TPO/AO/DRP has erred both on facts and in law in holding advertising, marketing and promotion (hereinafter referred to as "AMP") expenditure as a separate international transaction under Section 92B of the Act, without appreciating the functional profile of the appellant according to which incurring of AMP expenses was part of the appellant's roles and responsibilities as a manufacturer-cum-distributor and the appellant's remuneration was fixed accordingly.

2.2. That the learned TPO/AO/DRP has failed to appreciate that according to its compensation model, the appellant was already remunerated at arm's length in relation to all the functions and risks undertaken by it (including AMP activity) and benchmarking of the same separately again, has in effect, led to double taxation

2.3. That the learned TPO/AO/DRP has failed to appreciate that once Transactional Net Margin Method ('TNMM') has been accepted as the most appropriate method, then an analysis of the individual elements of "cost" is inconsistent with the tenents of application of TNMM as per Rule 10B(l)(e) of

the Income Tax Rules' 1962 ("hereunder referred to as "Rules").

2.4. That the conclusion that the AE, being the legal owner of the brand, should have compensated the assessee for alleged excessive AMP incurred as the AE derives benefit from such expenses through the creation of marketing intangible is factually and legally misconceived and therefore unsustainable.

2.5 That the learned TPO/AO/DRP has overlooked the corroborative analysis using Resale Price Method undertaken by the assessee during the TP assessment proceedings and also ignoring the fact that comparables of similar functional intensity have been selected.

2.6 That the learned TPO/AO/DRP has erred in failing to appreciate the international guidance in relation to the 'marketing intangibles' and 'bright line test' as given in OECD guidelines and OECD discussion draft on intangibles and Australian Tax Officer guidelines in context of a distributor.

2.7 That the learned TPO/AO/DRP has failed to appreciate that 'bright line test' is simply a computational tool and not a method prescribed under the Act read with the Income Tax Rules, 1962 ('the Rules') and hence the arithmetic mean of the AMP expenses of comparable companies should not be considered for computing the impugned TP adjustment.

2.8 That the learned TPO/AO/DRP has failed to appreciate that in absence of any change in facts and circumstances in the year under consideration, no adjustment was warranted in the instant year on the principle of consistency as during the earlier years identical international transactions were found to be at arm's length.

2.9 That the learned TPO/AO/DRP has further erred both in law and on facts in

a) incorrectly computing the AMP expenses/sales ratio of the assessee by taking into account the items like selling commission of Rs. 5,22,19,479/- selling expenses of Rs. 2,34,35,961/- and conference & seminar expenses of Rs. 3,36,19,859/- without appreciating that these expenses have been incurred by the assessee considering the nuances of the orthopedic industry;

b) not taking cognizance of the ruling pronounced by the Hon'ble

Income Tax Appellate Tribunal ("TAT"), Delhi Bench in the case of distributor namely BMW India (P) Ltd. (BMW India") for Assessment Year(AY) 2008-09 which was submitted before the TPO wherein Hon'ble ITAT had adjudged that if a distributor is sufficiently compensated by the AE through the pricing of products, i.e. through higher margins, the same would have catered to extra AMP expenses spent by the distributor as compared to the comparables; accordingly, no separate compensation in the form of reimbursement of excess AMP expenses was required from the AEs

c) incorrectly holding the AMP expenses incurred by the assessee to be "excessive" on the basis of a "bright line limit" arrived at by the deriving a arbitrary set of 4 comparables with the pre-conceived approach to make a case of bright line for the assessee

d) erroneously applying a mark-up of 12.25% in respect of assessee's "alleged excessive" AMP expenses as per TP order.

3. That the learned DCIT/DRP has erred both in law and on facts in making a disallowance of a sum of Rs. 4,54,56,549/- by restricting the claim of deduction in respect of loaner and demo sets at Rs. 2,68,48,473/- instead of claim of Rs. 7,23,05,022/- by the appellant company.

3.1 That the learned DCIT/DRP has failed to appreciate that loaner and demo sets given to hospitals/doctors on returnable basis for use of products sold by the appellant company are part of "inventory" of appellant company having an estimated useful life of thirty six months and as such deduction claimed was allowable on such sets in accordance with Accounting Standard-2 issued by the Institute of Chartered Accountants of India.

3.2. That further more the finding that such assets are "capital assets" eligible for depreciation is based on fundamental misconception of facts and provisions of law and hence otherwise untenable.

3.3. That disallowance made by the learned DCIT/DRP is otherwise contrary to the principle of consistency upheld by the Apex Court in the case of CIT vs. Excel Industries Ltd. reported in 395 ITR 295 more particularly

since identical claim of deduction had been allowed from assessment years 2002-03 to 2006-07 in assessments framed u/s 143(3) of the Act.

3.4. That in any case thelearned DCIT/DRP has failed to appreciate that expenditure claimed was eligible revenue expenditure incurred wholly and exclusively for the purpose of business and as such eligible for deduction u/s 37(1) of the Act.

3.5. That without prejudiceto the aforesaid and in the alternative the learned DCIT/DRP ought to have directed that depreciation be allowed the capitalized value of asset in the succeeding years.

4 That the learned DCIT/DRP has further erred both in law and on facts in making a disallowance of sum of Rs. 12,58,878/- out of expenditure incurred of Rs. 25,17,756/- under the head advertisement and sales promotional expenses incurred by the appellant company

4.1. That the finding of the learned Deputy Commissioner of Income Tax that "expenses incurred by the assessee separately under various heads which are directly relating to the increase in sale of the assessee and enhancing its profitability, the expenses incurred on advertisement and sales promotion amounting to Rs. 25,17,756/- are being amortized over a period of two years and hence only 1/2 of the expenditure shall be allowed in this year" is factually incorrect, legally untenable and hence unsustainable.

4.2 That each of the basis stated by the learned DCIT/DRP to make the disallowance of eligible business expenditure incurred and claimed by the appellant is wholly misconceived, misplaced and also contrary to the orders in preceding years.

5. That the learned DCIT/DRP has erred both in law and on facts in making a disallowance of Rs. 3,36,19,859/- representing expenditure incurred under the head seminar and conference's by the appellant company by invoking section 40(a)(ia) of the Act.

5.1 That the learned DCIT/DRP has failed to appreciate that such expenditure was incurred towards conventions, education support, OPR

courses and symposium expenses in the nature of seminar and conference (both in India and Overseas) wholly and exclusively for the business of the assessee company

5.2 That the finding of the learned DCIT/DRP that appellant was obliged to deduct TDS u/s 194H of the Act on such payments since sum incurred were indirect form of commission/incentives for increasing sale of products is factually and legally misconceived and therefore unsustainable.

5.3. That the learned DCIT/DRP has failed to appreciate that such expenditure was incurred towards conventions, education support, OPR courses and symposium expenses in the nature of seminar and conference (both in India and Overseas) does not fall in the scope of prohibitions covered by Indian Medical Council under Professional conduct etiquette & ethics regulation 2002 or CBDT circular 5/2012 as such factually and legally misconceived and therefore unsustainable.

6. That the learned DCIT has further erred both in law and on facts in levying interest under section 234B of the Act and under section 234D of the Act which are not leviable on the facts of the instant case.

It is therefore prayed that, adjustments and disallowances made by the Learned TPO/DCIT/DRP along with interest levied in the impugned order of assessment u/s 143(3)/144C of the Act be deleted and, appeal of the appellant company be allowed."

ITA No. 124/DEL/2015

"1. On the facts and in the circumstances of the case the Hon'ble DRP-III erred in law and on facts in deleting the additions to Rs.41,07,645/- on account of Recruitment and Training expenses made by the A.O in the Draft Assessment Order."

3. The Synthes group is one of the world's leading medical device group, specializing in the development, production marketing and sale of instrument, implants and biomaterials for the surgical fixation, correction and regeneration

of the human skeleton and its soft tissues. Synthes Medical Pvt. Ltd. is a subsidiary of Synthes Holding AG, Switzerland and has been operating in India since 1992 and is primarily engaged in the sales distribution and marketing in India of medical implants in the area of orthopedic Trauma & Spine, Tools and equipment imported from other Group Company. A draft assessment order u/s. 144C dated 24/02/2014 was passed and sent to assessee by speed post on 26/02/2014. The assessee preferred objections before the Dispute Resolution Panel-Ill, New Delhi. The directions of the Dispute Resolution Penal u/s. 144C(5) of the Income Tax Act 1961 passed vide order dated 20/10/2014 were received in this office on 05/11/2014. The final assessment order is accordingly passed after incorporating the directions of the Dispute Resolution Panel.

4. During the course of assessment proceedings, the case was referred to TPO u/s 92CA for computation of Arms Length Price with prior approval of CIT-3 Delhi. As per order of TPO passed u/s 92CA of the Act and addition of Rs.7,88,19,769/- was made on account of Transfer Pricing Adjustment. Thus, the Assessing Officer made an addition of Rs.7,88,19,769/- towards Transfer Pricing Issues. The Assessing Officer also made addition towards corporate issues. Thus, the Assessing Officer made disallowance on account of amortization of loaners sets amounting to Rs.4,54,56,549/-. The Assessing Officer also made disallowance of advertisement and sale promotions for Rs. 12,58,878/- as well as disallowance of conference expense of Rs.3,36,19,859/-.

5. Aggrieved by the assessment order, the Revenue as well as the assessee are before us.

6. The Ld. AR submitted that as regards Ground No. 2 to 2.9, the same is relating to transfer price adjustment of Rs. 7,88,19,769/- on account of Advertising, Marketing & Promotion. The Ld. AR submitted that AMP

Expenditure is not a separate International Transaction u/s 92B of the Act. AMP Expenditure was incurred by the assessee with sole objective of creating a technical sales spot and thereby increasing awareness about usage and characteristics of the products distributed by the assessee, therefore, such expenses were part of rolling and responsibilities of the assessee as distributor. The Ld. AR further submitted that expenses, therefore, incurred by the assessee with sole purpose of increasing its sales and none of the expenditure was incurred by the assessee to promote brand of its AEs. Furthermore, their exist a distinction between a function and transaction, every expenditure forming part of function cannot be constituted as transaction. The Ld. AR relied upon the following decisions:-

(i) Maruti Suzuki Ltd. Vs. CIT 381 ITR 117 (Del)

(ii) Baush & Lomb Eyecare (India) (P) Ltd. Vs. Addl. CIT 381 ITR 227 (Del)

(iii)CIT Vs. Whirlpool of India Ltd.381 ITR 154 (Del)

(iv)Toshiba India (P) Ltd. Vs. DCIT ITA No. 944/D/2016

(v) Hyundai Motors India Ltd. Vs. DCIT 187 TTJ 97 (Chennai)

(vi) India Medtronic (P) Ltd. Vs. DCIT ITA No. 1246/M/2016

7. The Ld. AR further submitted that BLT cannot be used to find out value of international transaction to determine ALP of AMP Expenses. The Ld. AR submitted that without prejudice to this, even if AMP Expenditure is held to be a separate international transaction; ALP of the same is liable to be determine as per the six methods explicitly provided in Rule 10B of the Rules, where BLT is not method specified under Rule 10B of Rules for determination of ALP. The Ld. AR further submitted that India's position in United Nation practical manual on TP for Developing Countries (2017) does not mention BLT as a method to determine Arm's Length Compensation for functions performed, assets used and risk assumed by Indian entity. The Ld. AR relied upon the following decisions:-

i) Sony Ericsson Mobile Communications (P) Ltd. Vs. CIT 374 ITR 118 (Del)

ii) Honda Siel Products Ltd Vs. DCIT 283 CTR 322 (Del)

iii) Diageo India (P) Ltd. Vs. Dy CIT ITA No. 7545/M/2012
iv) Nivea India (P) Ltd. Vs. ACIT 92 Taxmann.com 165 (Mum)
v) Fuji Film Corporation Vs. ITO 92 TAxmann.com 411 (Del)

8. The Ld. AR further submitted that inclusion of selling commission, selling expenses and conference expenses under Advertising & Promotion Expenses are purely linked to sales and are not in nature of Advertisement & Promotion activities. The assessee is engaged in sale of technology related products, were its primary customers and Doctors who are not influence by brand products, but rather by utility of the products. Therefore, in order to make the Doctors aware about the products, Company products in house remuneration, workshops and conference. The expenses incurred on such conference and remunerations do not have any purported nexus with Advertising and Brand Promotion Activities, they were incurred solely for the purpose of increasing sale of the assessee. The Selling Commission and Selling Expenses are purely linked to sales and are not in nature of Advertisement and Promotion Activities. The Ld. AR relied upon the following decisions:-

i) Fuji Film Corporation Vs. ITO 92 Taxmann.com 411 (Del)
ii) DCIT Vs. M/s Mary Kay Cosmetic (P) Ltd ITA No. 4882/D/2014
iii) Daikin Air-conditioning India (P) Ltd. Vs. DCIT 92 Taxmann.com 112 (Del)
iv) Perfetti Van Melle India (P) Ltd. Vs. DCIT 166 ITR 229 (Del)
v) Panasonic Consumer India (P) Ltd. Vs. DCIT 61 Taxmann.com 336 (Del)
vi) Haier Appliances India (P) Ltd. Vs. Dy. CIT 65 Taxmann.com 74 (Del)
vii) Canon India (P) Ltd. Vs. DCIT ITA No. 4602/D/2010

9. The Ld. AR further submitted that Selling Commission and Selling Expenses have been excluded from AMP Expenses in case of the assessee in previous years and subsequent years which was considered by the Tribunal for Assessment Year 2009-10 and 2011-12 in favour of the assessee. The Ld. AR relied upon the following decisions in respect of principle of consistency.

i) CIT vs. Excel Industries 358 ITR 295 (SC)

ii) Radhasoami Satsang Saomi Bagh v. CIT 193 ITR 321 (SC)

iii) CIT vs. M/s. Malibu Estate P. Ltd. ITA 213/2015 & CM No.4961/2015 (Del)

10. The Ld. AR further submitted that the Delhi Tribunal in the assessee's own case in ITA No. 1855/Del/2014 for Assessment Year 2009-10 decided the issue of inclusion of Selling Expenses & Selling Commission under AMP Expenses in favour of the assessee.

11. The Ld. AR further submitted that position after exclusion of selling commission, other selling expenses and conference and seminar expenses from AMP expenses:-

Sr. No.	Particulars	Amount (Rs.)
i)	Total Sales	99,93,98,992
ii)	Arms Length Level of AMP (% of sales) - TPO	4.16%
iii)	ALP of AMP – by TPO	4,15,74,998
iv)	Amount actually spent on AMP exp – Advertisement Expenses	25,17,756
v)	Amount spent in excess of "bright line" on creation of marketing intangibles	-
vi)	Mark Up @ 12.25%	-
vii)	Adjustment	-

The Ld. AR submitted that even otherwise, assessee satisfies the "bright line test" relied by the TPO as AMP expenses incurred by assessee company as a proportion of net sales are less that ALP of AMP computed by the TPO, thereby warranting no adjustment on account of AMP expenses. The Ld. AR further submitted that the assessee was already remunerated at ALP in relation to all functions and risks undertaken by it. There was no brand promotion activity carried out in absence of which there was no requirement to additionally compensate appellant company as selling expenses and sales commission were

paid to consignment agents and dealers in connection with the sales made by them. The Ld. AR emphasized that assessee and its AE's have not entered into any contract for brand building services, thus AE cannot be said to have benefited at the expense of assessee. The Ld. AR relied upon the following judicial pronouncements

i. L'Oreal India (P) Ltd vs. DCIT 49 ITR (T) 473).
ii. Mondelez India Foods (P) Ltd vs. CIT ITA No 5470/M/2012
iii. Dieago India (P) Ltd vs. DCIT ITA No 7545/M/2012
iv. Dy CIT vs. Mattel Toys (India) (P) Ltd 183 TTJ 81 (Mum)
v. Thomas Cook vs. DCIT 49 ITR (T) 178 (Mum)
vi. Heinz India (P) Ltd vs. ACIT ITA No 7732/M/2012
vii. Nivea India (P) Ltd vs. ACIT ITA No 7744/M/2012 dated 21.3.2018

12. The Ld. DR relied upon the order of the TPO and Assessment Order.

13. We have heard both the parties and perused the material available on record. This issue is already decided in assessee's own case by the Tribunal for A.Y. 2009-10. The Tribunal held as under:

"25. Hon'ble jurisdictional High Court in the case Maruti Suzuki Ltd. (supra) held that when there being no international transaction in AMP spend with an ascertainable price, neither substantive nor machinery provision of Chapter – X were applicable to transfer pricing adjustment exercise. In Bausch & Lamb Eyecare (India) (P) Ltd. (supra), Hon'ble jurisdictional High Court held that in the absence of an international transaction involving AMP expenses between assessee and its AE, addition is not sustainable. Similarly, in Whirlpool of India Ltd. (supra) case also, Hon'ble Court held that merely because there is an incidental benefit to AE, it cannot be said that AMP expenses incurred by the Indian entity are for promoting brand of its AE.

26. In the instant case, the Revenue has not brought on record any material that brand loyalty has been generated by making payment on account of selling commission and selling expenses by the assessee company. Furthermore, the assessee has made payment under AMP head to its independent parties for promotion of its own business which excludes this transaction from the definition of international transaction particularly in the face of the fact that there is no agreement between the assessee and its AE

for sharing AMP expenses. When we examine all these facts in the light of the fact that no such adjustment has been made by the Revenue in earlier years, the details of which is given in tabulated form by the assessee in its synopsis as hereunder :-

AY	*Total Turnover (Rs. Lacs)*	*Expenditure in nature of AMP incurred claimed Rs. Lacs)*	*Adjustment in ALP for AMPO expenses by TPO/AO (Rs. Lacs)*	*Assessment u/s*	*Remarks*
2003-04	*2,164.22*	*Yes*	*Nil*	*143(3)*	*NA*
2004-05	*2,101.04*	*Yes*	*Nil*	*143(3)*	*NA*
2005-06	*2,557.92*	*Yes*	*Nil*	*143(3)*	*NA*
2006-07	*3,186.01*	*Yes*	*Nil*	*143(3)*	*NA*
2007-08	*4,204.15*	*Yes*	*Nil*	*143(3)*	*NA*
2008-09	*5,204.54*	*Yes*	*Nil*	*143(3)*	*NA*
2009-10	*7,646.64*	*Yes*	*628.01*	*143(3)*	*Disputed in appeal*

This adjustment made by TPO in not sustainable in the eyes of law.

27. So, in the given circumstances, we are of the considered view that addition made by TPO/AO/DRP by wrongly computing AMP expenses by including selling commission of Rs 4,99,32,478/- and selling expenses of Rs. 1,47,72,866/- as part of total turnover during the year under assessment is not sustainable in the eyes of the law. So, Grounds No. 2,2.1, 2.2, 2.3 2.4, 2.5, 2.6, 2.7, 2.8, 3.0 & 3.1 are determined in favour of the assessee and the TPO/AO are directed to benchmark the international transactions in the light of the findings returned herein above."

The factual aspect has not been distinguished by the Ld. DR in the present assessment year which is before us. Thus, the issue is squarely covered in favour of the assessee by the Tribunal's decision in assessee's own case for A.Y. 2009-10. Therefore, Ground No. 2 to 2.9 are allowed.

14. As regards Ground No. 3 to 3.5 relating to disallowance by restricting the claim of deduction on amortization of loaner and demo sets at Rs. 2,68,48,473/- out of claim of Rs. 7,23,05,022/-, the Ld. AR submitted that this issue is also covered by the order of Tribunal for Assessment Years 2007-08

(ITA No. 6005/D/2013) and Assessment Years 2008-09 (ITA No. 6006/D/2013 as well as Assessment Years 2009-10 (ITA No. 1855/D/2014 and 979/Del/2014).

15. The Ld. DR relied upon the order of the TPO and Assessment Order.

16. We have heard both the parties and perused the material available on record. The Tribunal in A.Y. 2009-10 held as under:

> *"32. Following the decision rendered by the coordinate Bench of the Tribunal in assessee's own case for AYs 2007-08 and 2008-09 (supra) and by following the rule of consistency, when there is no change in the facts and circumstances, we are of the considered view that disallowance of an amount of Rs. 2,98,34,660/- made by the AO is not sustainable, hence disallowance of Rs. 2,98,34,660/- is ordered to be deleted. Consequently, Grounds No. 4, 4.1, 4.2, 4.3, 5 & 6 are determined in favour of the assessee."*

The Ld. DR could not distinguish the factual aspect in the present assessment year and that of the earlier assessment years. Therefore, the issue is squarely covered in favour of the assessee. Ground Nos. 3 to 3.5 are allowed.

17. As regards ground No. 4 to 4.2, relating to part disallowance out of total expenditure of Rs. 25,17,756/- incurred under the head advertisement and sales promotional expenses, the Ld. AR submitted that this issue is covered by the order of Tribunal in assessee's own case in Assessment Years 2007-08 (ITA No. 6005/D/2013) and Assessment Years 2008-09 (ITA No. 6006/D/2013) as well as in Assessment Years 2009-10 (ITA No. 1855/D/2014 and 979/D/2014)

18. The Ld. DR relied upon the order of the TPO and Assessment Order.

19. We have heard both the parties and perused the material available on record. The Tribunal in A.Y. 2009-10 held as under:

> *"36. In the face of the fact that the Revenue has not disputed the expenses incurred on advertisement and sales promotion, which are revenue*

in nature, the same cannot be deferred as has already been held by Hon'ble Apex Court in the case of Taparia Tools Ltd. vs. JCIT - 372 ITR 605 (SC). In the judgment in Taparia Tools Ltd. (supra), it is held by the Hon'ble Apex Court that there is no concept of deferred revenue expenditure which can only be deferred at the instance of the assessee. Bare perusal of the findings returned by AO as well as DRP disallowing the 50% of the expenditure incurred by the assessee on advertisement and promotional expenses go to prove that the same had been made on the basis of conjecture and surmises. When genuineness of the expenditure incurred by the assessee in the course of its business has not been disputed, the addition made on account of disallowance of expenses is not sustainable. Moreover, when the Revenue has consistently accepted the genuineness of the expenditure in question as revenue expenditure in the preceding years in the similar set of facts and circumstances, the disallowance during the year under assessment is wholly untenable, hence disallowance made by the AO to the tune of Rs. 6,16,568/- is ordered to be deleted. Consequently, Grounds No. 7, 7.1 & 7.2 of ITA No. 1855/Del/2014 are determined in favour of the assessee and Ground No. 2 of ITA No. 979/Del/2014 is determined against the Revenue."

The Ld. DR could not distinguish the factual aspect in the present assessment year and that of the earlier assessment years. Therefore, the issue is squarely covered in favour of the assessee. Ground Nos. 4 to 4.2 are allowed.

20. As regards Ground No. 5 to 5.3, relating to disallowance of expenditure incurred under the head seminar and conference by invoking Section 40(a)(ia) of the Act, the Ld. AR submitted that this issue was remanded back to the Assessing Officer for examination of nature of Seminar in Assessment Year 2009-10 (ITA No. 1855/D/2014 and 979/D/2014). The Ld. AR requested that in the present year as well the issue needs to be examined, therefore, be remanded back to the file of the Assessing Officer.

21. The Ld. DR relied upon the Assessment Order.

22. We have heard both the parties and perused the material available on record. The Tribunal in A.Y. 2009-10 held as under:

"43. Identical issue was dealt with by the coordinate Bench of the Tribunal in assessee's own case in AY 2008-09. AO at page 16 of his order observed that, "Even if the assessee contends that meeting of conference expenses was just to increase the knowledge of doctors about latest product, than it is also important to justify as how the expense is claimed as expense under section 37(1) of the IT Act."

44. AO has not called upon any detail of the expenses from the assessee nor has brought on record curriculum of the seminar and conferences to work out if expenses are covered u/s 37(1)of the Act. Assessee himself has not offered to bring on record the complete facts. Even ld. DRP has followed the order passed by the CIT(A) in assessee's own case for AY 2008-09 without calling the requisite detail. When we examine the order passed by the coordinate Bench in AY 2008-09, though the identical issue, the complete details of expenses was brought on record and examined by the Tribunal. So, in these circumstances, we feel it necessary to restore the issue back to the AO to decide afresh. Assessee s at liberty to bring on record the necessary evidence in support of its claim. Consequently, grounds no. 8 & 8.1 are determined in favour of the assessee for statistical purposes."

Since this issue is remanded back to the file of the Assessing Officer in the earlier Assessment Year i.e. A.Y. 2009-10 by the Tribunal, it will be appropriate to remand back this issue to the file of the Assessing Officer for examining the same. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Ground Nos. 5 to 5.3 are partly allowed for statistical purpose.

23. As regards Ground No. 6 relating to interest levied u/s 234 B and 234D of the Act, the same is consequential in nature, hence not adjudicated upon at this juncture.

24. As regards to Revenue's appeal is concerned, the revenue is contesting deletion of addition of Rs. 41,07,645/- on account of recruitment and Training Expenditure. The Ld. AR submitted that the same has been allowed by the Tribunal in favour of the assessee in Assessment Year 2008-09 being ITA Nos. 6006/Del/2013, 5807/Del/2013. The Tribunal has also allowed this issue in

favour of the assessee for Assessment Year 2009-10 being ITA No. 1855/Del/2014 and 979/Del/2014.

25. The Ld. DR relied upon the Assessment Order.

26. We have heard both the parties and perused the material available on record. The Tribunal in A.Y. 2009-10 held as under:

> *"40. Following the decision rendered by coordinate Bench in the similar set of facts and circumstances and the fact that in the globalised set up though the employees frequently changes their jobs but their training is necessary to compete in the business and such training do not create any enduring benefits in favour of the assessee, we find no ground to interfere into the findings returned by ld. DRP deleting the addition of Rs.1,21,71,558/-, hence ground no. 1 of ITA No.979/Del/2014 is determined against the Revenue."*

The Ld. DR could not distinguish the factual aspect in the present assessment year and that of the earlier assessment years. Therefore, the issue is squarely covered in favour of the assessee. Ground No. 1 of Revenue's appeal is dismissed.

27. In result, appeal of the assessee being ITA No. 381/Del/2015 is partly allowed for statistical purpose and appeal of the revenue being ITA No. 124/Del/2014 is dismissed.

Order pronounced in the Open Court on 21st December, 2018.

Sd/-	Sd/-
(N. K. BILLAIYA) **ACCOUNTANT MEMBER**	**(SUCHITRA KAMBLE)** **JUDICIAL MEMBER**

Dated: 21/12/2018
*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	29 .10.2018
Date on which the typed draft is placed before the dictating Member	29 .10.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	21.12.2018
Date on which the final order is uploaded on the website of ITAT	21.12.2018
Date on which the file goes to the Bench Clerk	21.12.2018
Date on which the file goes to the Head Clerk	