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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

ITA No. 910/DEL/2015
[A.Y 2007-08]

M/s Pernod Ricard [India] Pvt Ltd, [Formerly known as Seagram India Pvt Ltd 104, Ashoka Estate, Barakhamba Road New Delhi PAN: AAACS 4781 P (Applicant)	Vs.	The Dy. C.I.T Central Circle -31 New Delhi (Respondent)

Assessee By	:	Shri Deepak Chopra, Adv Smt. Rashi Khanna, Adv. Shri Yojit Pareek, Adv.
Department By	:	Shri Sanjay I Bara, CIT-DR

Date of Hearing	**:**	**13.03.2019**
Date of Pronouncement	**:**	**15.03.2019**

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

With this appeal, the assessee the assessee has challenged the correctness of the order dated 04.02.2015 framed u/s 153A r.w.s

144C(13) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] pertaining to A.Y 2007-08.

2. Ground Nos 1 to 4 are general in nature and need no separate adjudication.

3. Vide Ground Nos. 5 and 6, the assessee has challenged the jurisdictional issues, but the same were not seriously contested.

4. Ground Nos. 7 to 8.8 relates to Transfer Pricing adjustment of Rs. 52.05 crores made on account of Advertisement, Marketing and Sales Promotion Expenses [AMP].

5. The appellant company is engaged in the business of manufacture and sale of alcoholic beverages in India. Furthermore, the appellant also has a distribution agreement with PR Group and is engaged in the distribution activity of Bottled in Origin [BOI] products imported from PR Group into India. Brands that are imported by the appellant are Chivasa Regal, Marteli, Royal Salute, Absolult, Jacobs Creek etc while the brands bottled in India primarily include Blenders Pride, Imperial Blue, Royal Stag, etc. Primarily the appellant is organized in two

business segments in India viz. Manufacturing [Class I] and Distribution [Class II].

6. Under Class I - Manufacturing, the appellant is manufacturer of alcoholic beverages and bears normal risks associated with its operation. The appellant is characterised as 'manufacturer of alcoholic beverages' under Class I. Under the distribution segment, the appellant entered into a Distributor Agreement with PR Group and is engaged in the business activity of distribution of BIO products imported from PR Group into India. The appellant has been characterised as 'limited risk distributor' for BIO products.

7. The international transactions undertaken by the assessee company with its Associated Enterprise [AEs] are summarised as under:

S No.	*Nature of transaction*	*Method*	*Value of transaction*
1	*Import of raw material*	*TNMM*	*17,79,44,109*
2	*Export of finished goods*	*TNMM*	*13,85,42,150*
3	*Reimbursement of expenses by PRIPL*	*TNMM*	*27,85,658*
4	*Import of finished goods*	*TNMM*	*3,69,08,306*
5	*Provision of marketing support services*	*TNMM*	*4,65,37,700*
6	*Reimbursement of expenses to PRIPL*	*CUP*	*11,70,97,697*

8. The assessee incurred the following AMP expenditure:

Sl No	*Name of expenditure*	*Amount (Rs.)*
1.	*Advertising, Sales Promotion and rebates*	*114,22,82,000*
2	*Commission on Sales*	*5,69,83,000"*
3	*Reimbursement from AE*	*11,70,97,697*
	TOTAL	*131,63,62,697*

9. The Assessing Officer found that on the gross sales of Rs. 5,76,48,29,000/-, AMP expenditure of the assessee accounts for 22.83% of income as compared to AMP expenditure to sales ratio of 5% in the case of comparables finally selected by the TPO. The TPO/Assessing Officer formed a belief that the assessee had incurred huge non-routine expenditure to promote the brand of the AE and to promote the marketing intangible for the AE. According to the Assessing Officer, for incurring this non-routine AMP expenditure, the AE should have been reimbursed and since the same was not done, the assessee was show caused to explain as to why bench marking should not be done by applying Bright Line Test [BLT].

10. After considering the assessee's submissions, the TPO/Assessing Officer proceeded by comparing the average AMP/sales ratio of the following comparables:

Company Name	Sales	AMP	AMP%
Amber Distilleries Ltd	8.1	0.02	0.25
Amrut Distilleries Ltd.	162.6	11.48	7.06
Associated Alcohols & Breweries Ltd.	80.96	0.00	0.00
Associated Distilleries Ltd	54.16	3.90	7.20
B D A Pvt. Ltd.	34.31	11.84	34.51
Bhagat Industrial Corpn. Ltd.	35.42	1.28	3.61
Brihan Maharashtra Sugar Syndicate Ltd.	211.93	5.10	2.41
Daurala Foods & Beverages Pvt. Ltd.	26.11	3.45	13.21
G M Breweries Ltd	448	0.30	0.07
Globus Spirits Ltd.	116.67	1.76	1.51
Hindustan Spirits Ltd	6.28	0.03	0.48
Jagatjit Industries Ltd.	635.94	58.37	9.18
John Distiliehes Pvt. Ltd	429	15.24	3.55
Khemani Distiliehes Pvt. Ltd.	93.35	1.93	2.07
Khoday India Ltd	159.29	4.17	2.62
Lords Distillery Ltd	190.45	1.73	0.91
Mohan Rocky Sprngwater Breweries Ltd	75.64	0.12	0.16
Pioneer Distiliehes Ltd	53.33	0.06	0.11
Radico Khaitan Ltd.	977.68	84.79	8.67
Rangar Brewehes Ltd.	34.22	1.98	5.79
Ravikumar Distiliehes Ltd.	64.99	2.23	3.43
Shaw Wallace & Co. Ltd. (Merged]	249.15	0.10	0.04
Shiva Distiliehes Ltd.	735.89	0.11	0.01
Southern Aghfurane Inds. Ltd.	370.84	20.43	5.51
Tilaknagar Industries Ltd.	112.43	18.41	16.37
United Spihts Ltd.	4678.74	398.69	8.52
Vindhyachal Distilleries Pvt. Ltd.	25	0.11	0.44
Average			3.97

11. According to the Assessing Officer, the mean of the expenditure incurred on AMP/sales of such comparable companies is Brightline and any expenditure in excess of the Brightline is for the development of the marketing intangible that needs to be suitably compensated by the AE.

12. AMP/sales ratio in the case of the assessee is computed as under:

Advertising, Sales Promotion and rebates	*: Rs. 1,142,282,000/-*
Commission on Sales	*: Rs. 56,983,000/-*
Expenditure incurred on behalf of AE	*: Rs. 117,097,697/-*
Total AMP Expenditure	*: Rs. 1,316,362.697*
Net Sales	: Rs. 482,97,02,000/-
AMP/Sales ratio of PRIPL	*: Rs. 27.25%*

13. Accordingly, the ALP of this international transaction was proposed to be worked out as under:

Total Sales	:	Rs. 482,97,02,000/-
Arm's length level of AMP expense (3.97% of sales)	:	Rs. 19,17,39,169/-
AMP expense actually incurred	:	Rs. 131,63,62,697/-
AMP Expenditure which should have been reimbursed	:	Rs. 112,46,23,528/-

14. And after adding up the mark up, the ALP is determined as under:

Amount spent on creation of marketing intangible which should have been reimbursed	Rs. 12,46,23,528/-
Add: Mark-up @ 21.94%	Rs. 24,67,42,402/-
Arm's length price of international transaction	Rs.137,13,65,930/-
Less: Price reimbursed by the assessee	Rs. 11,70,97,697/-
Proposed adjustment u/s 92CA	Rs. 125,42,68,233/-

15. The assessee raised objections before the DRP and the DRP vide its directions dated 17.12.2014 directed the TPO for recomputation of the adjustment. The relevant directions read as under:

> "6.11. In objection 6.9,. the assessee has stated that the sales of the third bottlers should be included while computing the ratio of AMP expenditure / sales of the assessee. DRP has considered this argument and of the opinion that the TP order dated 27.10.2010 which was not incorporated in the assessment order due to the abatement of proceedings needs to be followed in this regard. As brought out by the IPO in that order, the AMP expenditure also promotes the sales made in the market on behalf of the assessee by its third party bottlers.

The assessee was incurring AMP expenditure on behalf of the bottlers also. DRP has considered this issue and directs the TPO to calculate the AMP / Sales ratio of the assessee by incorporating the third party sales. The assessee is directed to provide the information regarding the sales by third party bottlers for the AY 2007-08 to 2011-12 before the IPO which shall be incorporated while calculating this ratio.

6.12 In objection 6.10, the assessee has pointed out that the AMP sales ratio was not calculated based on annual financial statement of the comparable companies. DR1[3] directs the TPO to re-compute the margin of the comparables based on the annual financial statement of the comparables. The assessee is directed to produce the annual financial statement as well as the calculation before the TPO who will verify> the same and recompute the AMP/ Sales margin of the comparables. "

3.3 In view of the same, Ld. TPO initially recalculated the AMP adjustment on the basis of the directions of the DRP which was intimated to this office vide letter dated 30.12.2014, which was subsequently revised on 06.01.2015 recalculating the transfer pricing adjustment to be made. The same is reproduced below:-

Sl. No	Company Name	Revised AMP/Sales %
1	Amber Distilleries Ltd.	0.24
2	Bhagat Industrial Corpn. Ltd.	3.61
3	Jagatjit Industries Ltd.	9.85
4	John Distilleries Pvt. Ltd.	3.59
5	Globus Spirits Ltd.	0.46

6	Khoday India Ltd.	2.62
7	Mohan Rocky Spring water Breweries Ltd.	0.16
8	Radico Khaitan Ltd.	9.50
9	Shaw Wallace & Co. Ltd. [Merged]	0
10	Southern Agrifurane Inds.	5.51
11	Tilak Nagar Industries Ltd.	24.06
12	United Spirits Ltd.	9.09
	Average	**5.73**

16. Accordingly, adjustment was recalculated on the basis of directions of the DRP as under:

Particulars	*A.Y. 2007-08*
Advertising, Marketing and Sales Promotion	*1.19,92,65,000*
Reimbursement from AE (B)	*11,70,97,697*
Total expenditure on AMP (C)— (A) +(B)	*1,31,63,62,697*
Gross Sales of assessee (D)	*5,76,48,29,000*
Add: Sales made by Third party Bottlers (E)	*2,85,06,87,558*
Total sales for AMP/Sales (F)-(D) +(E)	*8,61,55,16,558*
AMP % of assessee G-C/F	*15.28%*
Arm's Length level of AMP% (Revised) (H)	*5.73%*
Arm's length level of AMP expenses (I)-(D)(H)*	*33,03,24,702*
Difference (J)=(G)-(H)	*9.55%*
Amount spent in excess of bright line' and on creation of marketing intangibles (K)=(D)(J)*	*55,04,82,131*
Markup (L)	*15.84%*
The amount by which the assessee company should have been reimbursed byA.E. (M—	*63,76,78,500*
Less: Reimbursement received (N)	*11,70,97,697*
Total Revised adjustment post DRP directions (0)=(M)-N)	*52,05,80,803*

17. Aggrieved by this, the assessee is before us.

18. At the very outset, the ld. AR stated that the BLT has been discarded by the Hon'ble High Court of Delhi in the case of Sony Ericsson Mobile Limited 374 ITR 118. It is the say of the ld. AR that since the BLT has been negated, the subject addition deserves to be quashed. Reliance was also placed on the decision of the Tribunal in ITA No. 19.09.2018 in the case of M/s Sennheiser Electronics India Ltd. ITA No. 7574/DEL/2017. The ld. AR further placed reliance on the decision of the Hon'ble Jurisdictional High Court of Delhi in the case of Maruti Suzuki India Ltd 110/2014, Whirlpool of India Limited 228/2015, Honda Seil Power Products Ltd 346/2015. It is the say of the ld. AR that while making adjustment on this account, the Assessing Officer/TPO has only considered the assessee as a manufacturer.

19. Per contra, the ld. DR strongly supported the findings of the TPO. It is the say of the ld. DR that though the AMP expenditure has been treated as an independent international transaction, operating margin of the appellant should be considered excluding the AMP expense to which the ld. AR retorted that the same treatment should also be given to the comparables.

20. We have given a thoughtful consideration to the orders of the authorities below qua the issue. The co-ordinate bench in the case of L.G. Electronics India Pvt. Ltd ITA No. 6253/DEL/2012 has held as under:

> *"10. At the outset, we have to state that the Hon'ble High Court of Delhi in the case of Sony Ericsson Mobile Communications India Pvt Ltd vs CIT 374 ITR 118 has discarded the BLT. The Hon'ble High Court, at para 120 held as under:*
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> > *"120. Notwithstanding the above position, the argument of the Revenue goes beyond adequate and fair compensation and the ratio of the majority decision mandates that in each case where an Indian subsidiary of a foreign AE incurs AMP expenditure should be subjected to the bright line test on the basis of comparables mentioned in paragraph 17.4. Any excess expenditure beyond the bright line should be regarded as a separate international transaction of brand building. Such a broad-brush universal approach is unwarranted and would amount to judicial legislation. During the course of arguments, it was accepted by the Revenue that the TPOs/Assessing Officers have universally applied bright line test to decipher and compute value of international transaction and thereafter applied Cost Plus Method or Cost Method to compute the arm's length price. The said approach is not mandated and stipulated in the Act or the Rules. The list of parameters for ascertaining the comparables for applying bright line test in paragraph 17.4 and, thereafter, the assertion in paragraph 17.6*

> *that comparison can be only made by choosing comparable of domestic cases not using any foreign brand, is contrary to the Rules. It amounts to writing and prescribing a mandatory procedure or test which is not stipulated in the Act or the Rules. This is beyond what the statute in Chapter X postulates. Rules also do not so stipulate."*

11. Respectfully following the judgment of the Hon'ble High Court of Delhi [supra], we hold that BLT has no mandate under the Act and accordingly, the same cannot be resorted to for the purpose of ascertaining if there exists an international transaction of brand promotion services between the assessee and the AE.

12. In our considered opinion, while dealing with the issue of bench marking of AMP expenses, the Revenue needs to establish the existence of international transaction before undertaking bench marking of AMP expenses and such transaction cannot be inferred merely on the basis of BLT. For this proposition, we draw support from the judgment of the Hon'ble Delhi High Court in the case of Maruti Suzuki India Ltd 381 ITR 117.

13. In this case, the Hon'ble High Court held that existence of an international transaction needs to be established de hors the Bright Line Test. The relevant finding of the Hon'ble High Court reads as under:

"43. Secondly, the cases which were disposed of by the judgment, i.e. of the three Assessees Canon, Reebok and Sony Ericsson were all of distributors of products manufactured by foreign AEs. The said Assessees were themselves not manufacturers. In any event, none of them appeared to have questioned the existence of an international transaction involving the concerned foreign AE. It was also not disputed that the said international transaction of incurring of AMP expenses could be made subject matter of transfer pricing adjustment in terms of Section 92 of the Act.

44. However, in the present appeals, the very existence of an international transaction is in issue. The specific case of MSIL is that the Revenue has failed to show the existence of any agreement, understanding or arrangement between MSIL and SMC regarding the AMP spend of MSIL. It is pointed out that the BLT has been applied to the AMP spend by MSIL to (a) deduce the existence of an international transaction involving SMC and (b) to make a quantitative 'adjustment' to the ALP to the extent that the expenditure exceeds the expenditure by comparable entities. It is submitted that with the decision in ***Sony Ericsson*** *having disapproved of BLT as a legitimate means of determining the ALP of an international transaction involving AMP expenses, the very basis of the Revenue's case is negated.*

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51. The result of the above discussion is that in the considered view of the Court the Revenue has failed to demonstrate the existence of an international transaction only on account of the

quantum of AMP expenditure by MSIL. Secondly, the Court is of the view that the decision in ***Sony Ericsson*** *holding that there is an international transaction as a result of the AMP expenses cannot be held to have answered the issue as far as the present Assessee MSIL is concerned since finding in* ***Sony Ericsson*** *to the above effect is in the context of those Assessees whose cases have been disposed of by that judgment and who did not dispute the existence of an international transaction regarding AMP expenses.*

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60. As far as clause (a) is concerned, SMC is a non-resident. It has, since 2002, a substantial share holding in MSIL and can, therefore, be construed to be a non-resident AE of MSIL. While it does have a number of 'transactions' with MSIL on the issue of licensing of IPRs, supply of raw materials, etc. the question remains whether it has any 'transaction' concerning the AMP expenditure. That brings us to clauses (b) and (c). They cannot be read disjunctively. Even if resort is had to the residuary part of clause (b) to contend that the AMP spend of MSIL is "any other transaction having a bearing" on its "profits, incomes or losses", for a 'transaction' there has to be two parties. Therefore for the purposes of the 'means' part of clause (b) and the 'includes' part of clause (c), the Revenue has to show that there exists an 'agreement' or 'arrangement' or 'understanding' between MSIL and SMC whereby MSIL is obliged to spend excessively on AMP in order to promote the brand of SMC. As far as the legislative intent is concerned, it is seen that certain transactions listed in the Explanation under clauses (i) (a) to (e) to Section 92B are described as 'international transaction'.

This might be only an illustrative list, but significantly it does not list AMP spending as one such transaction.

61. The submission of the Revenue in this regard is: "The mere fact that the service or benefit has been provided by one party to the other would by itself constitute a transaction irrespective of whether the consideration for the same has been paid or remains payable or there is a mutual agreement to not charge any compensation for the service or benefit." Even if the word 'transaction' is given its widest connotation, and need not involve any transfer of money or a written agreement as suggested by the Revenue, and even if resort is had to Section 92F (v) which defines 'transaction' to include 'arrangement', 'understanding' or 'action in concert', 'whether formal or in writing', it is still incumbent on the Revenue to show the existence of an 'understanding' or an 'arrangement' or 'action in concert' between MSIL and SMC as regards AMP spend for brand promotion. In other words, for both the 'means' part and the 'includes' part of Section 92B (1) what has to be definitely shown is the existence of transaction whereby MSIL has been obliged to incur AMP of a certain level for SMC for the purposes of promoting the brand of SMC.

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68………………..In other words, it emphasises that where the price is something other than what would be paid or charged by one entity from another in uncontrolled situations then that would be the ALP. The Court does not see this as a machinery provision particularly in light of the fact that the BLT has been expressly negatived by the

> *Court in Sony Ericsson. Therefore, the existence of an international transaction will have to be established de hors the BLT."*

14. In the light of the aforesaid finding of the Hon'ble High Court, before embarking upon a benchmarking analysis, the Revenue needs to demonstrate on the basis of tangible material or evidence that there exists an international transaction between the assessee and the AE. Needless to mention, that the existence of such a transaction cannot be a matter of inference.

15. The Hon'ble Delhi High Court in case of Whirlpool of India Ltd vs DCIT 381 ITR 154 has held that there should be some tangible evidence on record to demonstrate that there exists an international transaction in relation with incurring of AMP expenses for development of brand owned by the AE. In our considered opinion, in the absence of such demonstration, there is no question of undertaking any benchmarking of AMP expenses. The relevant findings of the Hon'ble High Court in the case of Whirlpool of India Ltd [supra] read as under:

> *"32. Under Sections 92B to 92F, the pre-requisite for commencing the TP exercise is to show the existence of an international transaction. The next step is to determine the price of such transaction. The third step would be to determine the ALP by applying one of the five price discovery methods specified in Section 92C. The fourth step would be to compare the price of the transaction that is shown to exist with that of the ALP*

and make the TP adjustment by substituting the ALP for the contract price.

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34. The TP adjustment is not expected to be made by deducing from the difference between the 'excessive' AMP expenditure incurred by the Assessee and the AMP expenditure of a comparable entity that an international transaction exists and then proceed to make the adjustment of the difference in order to determine the value of such AMP expenditure incurred for the AE.

35. It is for the above reason that the BLT has been rejected as a valid method for either determining the existence of international transaction or for the determination of ALP of such transaction. Although, under Section 92B read with Section 92F (v), an international transaction could include an arrangement, understanding or action in concert, this cannot be a matter of inference. There has to be some tangible evidence on record to show that two parties have "acted in concert".

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37. The provisions under Chapter X do envisage a 'separate entity concept'. In other words, there cannot be a presumption that in the present case since WOIL is a subsidiary of Whirlpool USA, all the activities of WOIL are in fact dictated by Whirlpool USA. Merely because Whirlpool USA has a financial interest, it cannot be presumed that AMP expense incurred by the WOIL are at the instance or on behalf of Whirlpool USA. There is merit in the contention of the Assessee that the initial onus is on the Revenue to demonstrate through some tangible material that the two parties acted in concert and further that there

was an agreement to enter into an international transaction concerning AMP expenses.

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39. It is in this context that it is submitted, and rightly, by the Assessee that there must be a machinery provision in the Act to bring an international transaction involving AMP expense under the tax radar. In the absence of any clear statutory provision giving guidance as to how the existence of an international transaction involving AMP expense, in the absence of an express agreement in that behalf, should be ascertained and further how the ALP of such a transaction should be ascertained, it cannot be left entirely to surmises and conjectures of the TPO.

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47. For the aforementioned reasons, the Court is of the view that as far as the present appeals are concerned, the Revenue has been unable to demonstrate by some tangible material that there is an international transaction involving AMP expenses between WOIL and Whirlpool USA. In the absence of that first step, the question of determining the ALP of such a transaction does not arise. In any event, in the absence of a machinery provision it would be hazardous for any TPO to proceed to determine the ALP of such a transaction since BLT has been negatived by this Court as a valid method of determining the existence of an international transaction and thereafter its ALP."

19. We do not find any force in the aforesaid contentions of the ld. DR. As mentioned elsewhere, the Revenue needs to establish on the basis of some tangible material or evidence that there exists an international transaction of provisions of brand building service between the assessee and the AE. We find

support from the decision of the Hon'ble Delhi High Court in the case of Honda Seil Power Products Ltd vs DCIT ITA No 346/2015.

20. The Hon'ble Delhi Court in its recent decision in the case of CIT vs Mary Kay Cosmetic Pvt Ltd (ITA No.1010/2018), too, dismissed the Revenue's appeal, following the law laid down in its earlier decision (supra) and held as under:

> *"We have examined the assessment order and do not find any good ground and reason given therein to treat advertisement and sales promotion expenses as a separate and independent international transaction and not to regard and treat the said activity as a function performed by the respondent-assessee, who was engaged in marketing and distribution. Further, while segregating / debundling and treating advertisement and sales promotion as an independent and separate international transaction, the assessing officer did not apportion the operating profit/ income as declared and accepted in respect of the international transactions."*

21. In our understanding of the facts and law, mere agreement or arrangement for allowing use of their brand name by the AE on products does not lead to an inference that there is an "action in concert" or the parties were acting together to incur higher expenditure on AMP in order to render a service of brand building. Such inference would be in the realm of assumption/surmise. In our considered opinion, for assumption of jurisdiction u/s 92 of the Act, the condition precedent is an international transaction has to exist in the first place. The TPO is not

permitted to embark upon the bench marking analysis of allocating AMP expenses as attributed to the AE without there being an 'agreement' or 'arrangement' for incurring such AMP expenses.

22. The aforesaid view that existence of an international transaction is a sine qua non for invoking the transfer pricing provisions contained in Chapter X of the Act, can be further supported by analysis of section 92(1) of the Act, which seeks to benchmark income / expenditure arising from an international transaction, having regard to the arm's length price. The income / expenditure must arise qua an international transaction, meaning thereby that the (i) income has accrued to the Indian tax payer under an international transaction entered into with an associated enterprise; or (ii) expenditure payable by the Indian enterprise has accrued / arisen under an international transaction with the foreign AE. The scheme of Chapter X of the Act is not to benchmark transactions between the Indian enterprise and unrelated third parties in India, where there is no income arising to the Indian enterprise from the foreign payee or there is no payment of expense by the Indian enterprise to the associated enterprise. Conversely, transfer pricing provisions enshrined in Chapter X of the Act do not seek to benchmark transactions between two Indian enterprises.

31. The Revenue has strongly objected for the aggregated bench marking analysis for the AMP. According to the Revenue, the assessee company has not been able to demonstrate that there is any logic or rationale for aggregation or that the transactions of advertisement

expenditure and the other transactions in the distribution activity are inter-dependent, the clubbing of transactions cannot be allowed. According to the Revenue, bench marking of AMP transaction is to be carried out using segregated approach and for determination of ALP of such transactions, Bright Line is used as the tool.

32. This contention of the Revenue is no more good as BLT has been discarded by the Hon'ble High Court of Delhi as mentioned elsewhere. The Hon'ble High Court of Delhi in the case of Sony Ericsson Mobile Communications India Pvt Ltd in Tax Appeal NO. 16 of 2014 has held that if the Indian entity has satisfied Transactional Net Margin Method (TNMM), i.e., as long as the operating margins of the Indian enterprise are higher than the operating margins of comparable companies, no further separate compensation for AMP expenses is warranted. The Hon'ble Court held as under:

> *"101. However, once the Assessing Officer/TPO accepts and adopts TNM Method, but then chooses to treat a particular expenditure like AMP as a separate international transaction without bifurcation/segregation, it would as noticed above, lead to unusual and incongruous results as AMP expenses is the cost or expense and is not diverse. It is factored in the net profit of the inter-linked transaction. This would be also in consonance with Rule 10B(1)(e), which mandates only arriving at the net profit margin by comparing the profits and loss account of the tested party with the comparable. The TNM Method proceeds on the assumption that*

functions, assets and risk being broadly similar and once suitable adjustments have been made, all things get taken into account and stand reconciled when computing the net profit margin. Once the comparables pass the functional analysis test and adjustments have been made, then the profit margin as declared when matches with the comparables would result in affirmation of the transfer price as the arm's length price. Then to make a comparison of a horizontal item without segregation would be impermissible."

21. In light of the aforementioned discussion, we find that the TPO has considered this at length and has submitted a report dated 26.2.2019. The said report can be summarised in the following chart:

S.no	Asst Year	Assessee				Comparables	
		Operating margins including ail operating expenses	Operating margins excluding AMP expenses	Operating margins excluding AMP & Selling and distribution expenses	Operating margins including all operating expenses	Operating margins excluding AMP expenses	Operating margins excluding AMP & Selling and Distribution expenses
1	2007-08	7.04%	27.04%	28.03%	5.11%	6.63%	10.60
2	2008-09	23.56%	42.08%	42.90%	5.83%	9.64%	12.75
3	2009-10	19.31%	34.05%	34.04%	3.65%	5.86%	8.10
4	2010-11	17.57%	23.50%	31.23%	6.73%	8.40%	11.49
5	2011-12	15.08%	20.37%	28.14%	3.31%	5.60%	8.19

22. The aforesaid chart clearly decides the quarrel in favour of the assessee and against the revenue. It can be seen that the operating margin excluding AMP and selling and distribution expenses of the assessee for the year under consideration is 28.03% whereas that of the comparables is 10.60% which is much much higher and if the operating margin including all the operating expenses is taken, the same is 7.04% in the case of the appellant and 5.11% in the case of comparables. The margin excluding AMP expenses only is 27.04% in the case of the appellant and 6.63% in the case of comparables. In the light of the decisions of the Hon'ble High Court discussed elsewhere and in the light of the factual matrix exhibited hereinabove, we are of the considered opinion that the impugned addition on account of AMP expenditure is uncalled for and deserves to be deleted. Ground Nos. 7 to 8.8, taken together, are allowed.

23. Ground Nos. 9 to 9.2 relates to disallowance of Rs. 8,21,29,536/- u/s u/s 37(1) of the Act being 20% of the brand expenses.

24. During the course of scrutiny assessment proceedings, the A.O observed that the assessee has debited brand expenses of Rs. 70,58,03,632/- under the head “Advertisement and Sales Promotion”.

The Assessing Officer observed that in the preceding years, a portion of the same has been held to be capital in nature and has been disallowed by his predecessors. Past history of disallowance of brand expenses as considered by the Assessing Officer is as under:

AY	Brand expenses debited in P& LA/c	%age of disallowance	Brand expenses disallowed, being capital nature	Brand expenses disallowed in TP	Total brand expenses disallowed	CIT(A)/DRP	ITAT
2002-03	311,818,080	10%	31,181,808	NIL	31,181,808	Addition Deleted	Appeals pending at ITAT
2003-04	377,548,605	20%	75,509,720	NIL	75,509,720		
2004-05	389,550,709	10%	38,955,070	132,400,000	171,355,070		
2005-06	467,342,660	10%	46,734,266	89,395,976	136,130,242		
2006-07	529,677,093	10%	52,967,709	59,991,091	112,958,800	DRP (stands abated)	

25. Taking a leaf out of the past history of the assessee, the Assessing Officer disallowed Rs. 8,21,29,536/- following the directions of the DRP.

26. Before us, the ld. counsel for the assessee, at the very outset, stated that this issue has been settled in favour of the assessee and

against the revenue by the order of the Hon'ble jurisdictional High Court of Delhi and the Tribunal in earlier assessment years.

27. Per contra, the ld. DR could not bring any distinguishing decision in favour of the revenue.

28. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below. We find force in the contention of the ld. counsel for the assessee. The Hon'ble High Court in ITA No. 885/2016 was, inter alia, seized with the following substantial question of law:

> *"Whether advertisement and promotion expenses incurred by the assessee have an enduring benefit to the assessee as it creates tangible asset being goodwill, reputation and credibility and if yes, whether it s be treated as capital expenditure."*

29. The Hon'ble High Court answered as under:

> *"So far as Question No. 3 – Advertising and Promotion Expenditure is concerned, the issue has been concluded in an identical case in the case in the matter of another group company in Principal CIT vs. M/s Seagram Distilleries Pvt Ltd ITA*

Nos. 224-225/2016 decided on 6.4.2016. Therefore, question No. 3 does not arise for consideration."

30. The Tribunal in assessee's own case for assessment year 2004-05 and 2005-06 in ITA No. 3525/DEL/2009 and 2770/DEL/2011 has held as under:

"8.0 The last issue involved in the present batch of appeals raised by the revenue pertains to deletion of addition of Rs. 3,89,55,070/- in AY 2004-05 and Rs. 4,67,32,266/- being 10% of brand expenses made by the AO treating the same as being capital in nature.

8.1 The brief facts involved therein are that the assessee company had claimed brand expenses amounting to Rs. 38,95,50,709/- for AY 2004-05 and Rs. 46,73,42,660/- for AY 2005-06. These expenses comprised of expenditure on event management, business promotion, merchandising, printing of brochures/mailers, market research etc. to determine the consumer reaction to company's products. The AO vide order dated 28.12.2006 for AY 2004-05 and vide order dated 08.12.2008 for AY 2005-06 disallowed 10% of such expenditure as being capital in nature on the premise that the benefit of such expenditure is enduring in nature and available to the assessee over a period of time than being restricted to the relevant previous year alone in which it was incurred, thereby leading to creation of a tangible

asset being goodwill, reputation and credibility. However, the Ld. CIT (A) vide order dated 29.06.2009 for AY 2004-05 and vide order dated 28.02.2011 for AY 2005-06 deleted the said disallowance while relying upon his predecessor's order in earlier years and noting that expenditure on sales and marketing was required to refresh the memory of the consumer of the products manufactured by the assessee and hence there was no enduring benefit. The Revenue is aggrieved by this finding of the Ld. CIT (A).

8.2 During the course of proceedings, the Ld. AR. pointed out that the issue was squarely covered in favour of the assessee vide this Tribunal's order dated 14.03.2016 passed in Assesse's own case for the immediately preceding years, i.e., AY 2002-03 and 2003-04. It was further pointed out that the aforesaid issue had also been decided in favour of the assessee by Hon'ble High Court of Delhi vide order dated 6.04.2016 passed in ITA No. 224/2016 and 225/2016 in the case of assessee's sister concern, viz., M/s Seagram Distilleries Pvt Ltd.. The Ld. AR also cited Hindustan Aluminium Corporation Limited v. CIT: 159 ITR 673, CIT v. Berger Paints (India) Ltd. (254 ITR 503), CIT v. Salora International (308 ITR 199) (Del.), CIT v. Casio India Ltd. (335 ITR 196) (Del) and CIT v. Adidas India Marketing Ltd. (195 Taxman 256) (Del.) to support his contentions.

8.3 The Ld. CIT (DR) supported the order of the Ld. TPO/AO.

8.4 We have heard the rival contentions and perused the orders of the jurisdictional High Court and that of the co-ordinate

> benches. We find force in the arguments of the Ld. Counsel that the issue is squarely covered in favour of the assessee as there is a clear finding that such expenditure does not result in any enduring benefit. Hence, these grounds of the revenue are dismissed and the order of the Ld. CIT (A) is confirmed."

31. Respectfully following the findings of the Hon'ble High Court and the co-ordinate bench, we direct for deletion of addition of Rs. 8,21,29,536/-.

32. Ground No. 10 to 10.4 relates to disallowance of Rs. 1,12,16,288/- made on account of provision for transit breakages.

33. During the course of scrutiny assessment proceedings, the A.O found that the assessee has claimed deduction on account of provision for transit breakages amounting to Rs. 1,12,16,288/-.

34. At the very outset, the ld. counsel for the assessee fairly stated that such disallowance has been upheld by the Hon'ble High Court of Delhi vide order dated 23.10.2015 in ITA No. 237/2015 Seagram Distilleries Pvt Ltd in assessee's own case for assessment year 2001-02. The ld. counsel for the assessee further stated that the order passed by the jurisdictional High Court of Delhi has been confirmed by the

Hon'ble Supreme Court vide order dated 11.07.2016. However, it is the say of the ld. counsel for the assessee that in order to avoid double taxation, any reversals in the provision has to be considered.

35. The ld. DR fairly conceded to this submission of the ld. counsel for the assessee.

36. Having considered the decision of the Hon'ble High Court [supra], we are of the view that any reversals in the provision and the actual amount have to be allowed as a deduction. We, therefore, restore this issue to the file of the Assessing Officer/TPO with the direction to verify the reversals of provision and only the actual amount to be allowed as deduction.

37. This is in line with the findings of the Hon'ble High Court and the same read as under:

> *"28. It is clarified that while giving an appeal effect to this order, the AO shall allow the actual transit breakages for AY 2001-02 as revenue expenditure consistent with the settled legal position. The Assessees would also be permitted to get the*

benefit of the reversal of the provision for transit breakages made in the AYs in question accordance with law."

38. The Assessing Officer is directed to examine the issue in light of the findings of the Hon'ble High Court [supra]. Accordingly, Ground No. 10 to 10.4 is treated as allowed for statistical purposes.

39. Ground Nos. 11 to 11.2 relate the disallowance of Rs. 6,35,40,939/- made u/s 40(a)(ia) of the Act.

40. During the course of scrutiny assessment proceedings, the A.O noticed that the assessee has disbursed an amount of Rs. 6,35,40,939/- on account of reimbursement of trade schemes through sales promoters to various retailers.

41. The Assessing Officer asked the assessee to explain the same and the assessee submitted that the trade incentives and schemes are provided by the assessee to its customers to boost the sale of the assessee's products and in certain cases, trade schemes are given through independent third parties [sales promoters] as per instructions of the assessee company with a view to promote its sales.

42. After considering the submissions of the assessee, the Assessing Officer found that in assessment year 2006-07, his predecessor has treated the same as commission and since the assessee has not deducted tax at source, applying the provisions of section 40(A)(ia) of the Act, the Assessing Officer made the disallowance.

43. The assessee raised objections before the DRP but without any success.

44. Before us, the ld. counsel for the assessee stated that in assessee's sister concern Seagram Distilleries [supra] for assessment year 2005-06 to 2009-10, the first appellate authority has allowed the ground on principle basis that withholding tax obligations do not arise in the case of pure reimbursements and the matter was set aside to the Assessing Officer to verify whether the payments made by the assessee were in the nature of reimbursements and while giving effect to the order of the first appellate authority and after verification, the Assessing Officer was convinced that the impugned disbursement were in the nature of reimbursements and allowed the entire amount claimed by the assessee.

45. In our considered opinion, verification needs to be done in the case of the appellant. We, accordingly, set aside this issue to the file of the Assessing Officer/TPO with a direction to examine the documentary evidences to be filed by the assessee and verify whether the impugned disbursements are reimbursement and if found so, the same be allowed as deduction. Thus, ground No. 11 to 11.2 is accordingly allowed for statistical purposes.

46. Ground No. 12 to 12.3 relates to the disallowance of Rs. 12.68,781/- u/s 14A of the Act.

47. At the very outset, we have to state that the assessment year under consideration is assessment year 2007-08 and, therefore, Rule 8D of the Income tax Rules, 1962 does not apply, but at the same time, we find that there is no exempt income claimed by the assessee during the year under consideration. Therefore, the ratio laid down by the Hon'ble High Court of Delhi in the case of Cheminvest Ltd 378 ITR 33 and CIT Vs. Holcim 272 CTR 282 squarely apply wherein the Hon'ble High Court has held that where there is no exempt income, there cannot be any disallowance u/s 14A of the Act. Respectfully following the same, we direct the Assessing Officer to delete the disallowance of

Rs. 12,68,781/-. Accordingly, Ground No. 12 with all its sub grounds is allowed.

48. Ground No.13 to 13.3 relates to the disallowance of Rs. 10.80 lakhs as unexplained expenses.

49. Facts on record show that during the course of search conducted on the premises of the assessee on 15.02.2011, a diary belonging to Shri Purwez Patel, EVP Manufacturing was seized. In this diary, some projected cost of investments in Shaiv Distilleries, Goa has been drawn/computed for some discussion with its director. On perusing the said diary, the Assessing Officer was of the opinion that the assessee is making payment of Rs. 15000/- p.m. to the Excise Inspector and Rs. 75,000/- as licence fees. The Assessing Officer formed a belief that the appellant has not discharged the onus cast upon it by section 292C of the Act and accordingly, made disallowance of Rs. 10.80 lakhs.

50. Objection of the assessee did not result in any relief.

51. Before us, the ld. counsel for the assessee drew our attention to the decision of the Tribunal in ITA Nos 3847 & 3848/DEL/2017 wherein the Tribunal has deleted the disallowance.

52. Per contra, the ld. DR could not bring any distinguishing decision in favour of the revenue.

53. We have carefully perused the order of the authorities below and have considered the decision of the Tribunal and the same reads as under:

> "10. Similarly, *as per the details filed by the assessee, we find the addition of Rs.14,70,300/- made u/s 14A, addition of Rs.1,31,54,527/- on account of disallowance of Brand Registration Expenses u/s 37(1) and addition of Rs.2,83,63,949/- on account of disallowance of reimbursement of Trade Scheme to Promoters are not based on any incriminating material found during the course of search. So far as addition of Rs.10,80,000/- on account of Payment to ITA Nos.3847 & 3848/Del/2017 Officials is concerned, the same was made by the Assessing Officer on the ground that the expenses of Rs.15,000/- per month were paid to Excise Officials for getting the licence and fee of Rs.75,000/- per month needed to be paid. It is the submission of the ld. counsel for the assessee that the sheet of paper which were recovered during the course of search conducted on 15.02.2011 pertained to assessment year*

2002-03 and, therefore, the same is outside the purview of section 153A proceedings for the impugned assessment years. It is also his submission that the observations made by the Assessing Officer were based on isolated reading of all the pages instead of reading of altogether. We find merit in the above argument of the ld. counsel for the assessee. The submission of the ld. counsel for the assessee that the paper relates to assessment year 2002-03 could not be controvert by the ld. DR. We find the Assessing Officer on the basis of the seized paper relating to assessment year 2002-03 presumed that similar expenditure must have been incurred by the assessee for which he made additions in both the years under appeal. We find the issue is now settled in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of CIT vs. Sinhagad Technical Education Society in Civil Appeal No.11081/2017 order dated 29.08.2017, wherein the Hon'ble Supreme Court has observed that the seized material must have a co-relation with the assessment year to which they pertain to and therefore invoking jurisdiction u/s 153C for an assessment year that had no relation to the seized material is bad in law."

54. In light of the above, we direct the Assessing Officer to delete the impugned addition. Ground No. 13 is allowed.

55. Ground No. 14 relates to the disallowance of Rs. 45,000/- u/s 40A(3) of the Act.

56. Facts show that on the basis of search conducted on the premises of the N.V. Distilleries, Ambala and its proprietor Shri Samir Goyal, some document was found and seized. On reading the said document, the Assessing Officer formed a belief that the assessee has paid cash payment of Rs. 45,000/- to Excise Official. The Assessing Officer was of the firm belief that the provision of section 40A(3) of the Act squarely applied and accordingly made the addition of Rs. 45,000/-.

57. Before us, the ld. counsel for the assessee drew our attention to the said seized document which was seized from the premises of Shri Samir Goyal and pointed out that the said document does not contain any date nor any year. Therefore, it is unlawful to consider the same for the year under consideration. On perusal of the said document, the ld. DR also could not point out any date or year.

58. We have considered the seized document which is reproduced as under:

COMPARISON - DEPOT EXPENSES SEAGRAM VS. NV			
		SEAGRAM	NV
S.No.	Particulars	AMOUNT in Rs.	: AMOUNT IN RS.
' 1	Delivery Charges	12.00	14.60
2	Unloading charges	0.50	
3	EXCISE EXPENSES		
	Inspection		30000.00
	Guard	6000.00	10000.00
	Office	10000.00	10000.00
	Miscellaneous	10000-00	10000.00
	Four departments		10000.00
	Total -5	46030.00	70000.00
4	Rent	160000.03-	175000.00
5	OFFICE OVERHEAD		
	Telephone	20000.00	30000.00;
	Electricity/Generator	20000.00	30000.00
	Stationery	20000.00	25030.00
	Staff Welfare	6000.00	6030.00
	Misc Office expenses	0.00	39500.00
	Total - 5	6500.00	129500.00
6	Salaries	289000.00	570500.00

59. A perusal of the same shows that it is nothing but a dumb document which requires no consideration. Moreover, it is an undisputed fact that the documents were seized from the premises of

Samir Goyal and, therefore, any relevance to be deduced from the same has to be in the case of Samir Goyal and not the assessee keeping in mind that the assessment has been framed u/s 153A of the Act. We, accordingly, do not find any merit in the addition and direct the Assessing Officer to delete the same. Ground No. 14 is allowed.

60. Ground No. 15 relates to the disallowance of Rs. 40,61,565/- made u/s 40A(3) of the Act.

61. From a perusal of the seized material, the Assessing Officer found that the assessee has made cash payments of Rs. 91.98 lakhs from June/July 2006 to April 2008, most of which exceeded Rs. 20,000/-. The assessee was asked to explain as to why the same should not be disallowed u/s 40A(3) of the Act.

61. The assessee filed a detailed reply with necessary documentary evidences claiming that the payments have not been made in cash. The detailed reply of the assessee did not find any favour with the Assessing Officer and the Assessing Officer proceeded by making addition of Rs. 40.61 lakhs u/s 40A(3) of the Act.

62. Objection was raised before the DRP but the same was dismissed.

63. Before us, the ld. counsel for the assessee drew our attention to the chart exhibited at page 16 of the paper book and pointed out that the payments have been made in terms of the consulting agreement in respect of variable component payment by way of account payee cheques/RTGS. It is the say of the ld. counsel for the assessee that on such payment, tax has been deducted at source at applicable rates. It is the say of the ld. counsel for the assessee that the Assessing Officer has been carried away by nomenclature given to the file being cash.xls. Reliance was placed on the judgment of the Hon'ble High Court of Delhi in the case of Anand Swarup Khandelval 177 Taxman 450.

64. Per contra, the ld. DR strongly supported the findings of the Assessing Officer and reiterated that the name of the file was cash.xls and therefore, the impugned payments must have been made in cash.

65. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below. It is true that the disallowance is based on the file cash.xls. It is equally true that the

payments have been made by way of account payee cheques/RTGS. In our considered opinion, such payments do not attract the provisions of section 40A(3) of the Act. Moreover, the assessee has also furnished the ledger account of M/s Sky View in the books of the assessee for the period 01.04.2007 to 31.03.2011. It appears that the Assessing Officer has not examined the details from correct perspective. In the interest of justice and fair play, we restore this issue to the file of the Assessing Officer. The Assessing Officer is directed to verify from the ledger account of Sky View and verify whether payments have been made by A/c payee cheques/RTGS and after satisfying himself, no addition need be made u/s 40A(3) of the Act. Ground No. 15 with all its sub grounds is treated as allowed for statistical purposes.

66. Ground No. 16 relates to disallowance of Rs. 7,16,79,359/- u/s 37(1) of the Act for want of verification /non-production in respect of payments made to certain parties.

67. During the course of investigation proceedings, some parties were identified with whom the assessee had transactions during the year. The name of the parties are as under:

(a) M/s Classic Alcobev Pvt. Ltd
(b) M/s Classic Distributor Company.

(c) M/s Jaiswal Traders

(d) M/s Monarch enterprises

(e) M/s Ramp Edge
(f) M/s Nucleus Advertising & Communications

(g) M/s Mission Xcellence

(h) M/s Ghaio Mai & Sons

(i) M/s Paras Enterprise
(j) M/s Fairdeal Agencies

(k) BTB Advertising
(l) M/s S.S. Enterprises

(m) M/s Concern Event Promotions Pvt Ltd
(n) M/s Studio Print Art
(o) M.s Excel Advertising Agency
(p) M/s Dilip Print House

68. The assessee was asked to furnish evidences of transactions with the above parties. The assessee filed detailed reply vide submissions dated 18.02.2014, 25.02.2014 and 28.02.2014.

69. After considering the submissions of the assessee, the Assessing Officer issued notice u/s 133(6) of the Act to the respective parties separately to furnish relevant details. Notices sent to M/s Monarch Enterprises, M/s Ramp Edge, M/s BTB Marketing and M/s Paras Enterprises returned back unserved. Some other parties requested for more time to respond and thereafter, some of the parties filed their responses, which, according to the Assessing Officer, were not complete. The Assessing Officer further observed that the assessee has failed to produce the parties and, accordingly, made disallowance of Rs. 7,16,79,359/- which was confirmed by the DRP.

70. Before us, the ld. counsel for the assessee submitted the details of payments made to 16 parties and the nature of payment and the same read as under:

M/s Classic Alcobev Pvt. Ltd	NIL
M/s Classic Distributor Company.	a) Commission - Rs. 54,475 b) Non-Trade Scheme reimbursements , Other
M/s Jaiswal Traders	a) Commission - Rs.9,30,117 b) Non-Trade Scheme reimbursements / Other Reimbursements - Rs. 11,12,167

M/s Monarch enterprises	Marketing and Sales promotion expenses - Rs. 41,00,827
M/s Ramp Edge	Marketing and Sales promotion expenses - Rs. 3,09,883
M/s Nucleus Advertising & Communications	a) Marketing and Sales promotion expenses -Rs. 1,20,34,023 b) Purchase of marketing
M/s Mission Xcellence	a) Marketing and Sales promotion expenses -Rs. 14,33,692 b) Purchase of marketing
M/s Ghaio Mai & Sons	a) Commission - Rs.2,99,77,531 b) Non-Trade Scheme reimbursements / Other
M/s Paras Enterprise	NIL
M/s Fairdeal Agencies	a) Commission - Rs.2,01,084 b) Non-Trade Scheme
BTB Advertising	NIL
M/s S.S. Enterprises	NIL
M/s Concern Event Promotions Pvt. Ltd.	Marketing and Sales promotion expenses - Rs. 20,74,305
M/s Studio Print Art	NIL
M/s Excel Advertising Agency	Marketing and Sales promotion expenses - Rs. 14,310
M/s Dilip Print House	Marketing and Sales promotion expenses - Rs. 5,12,505
Total	7,16,79,359

71. The ld. counsel for the assessee further stated that the assessee has provided the PAN details and updated addresses of parties as available with the assessee. It was further pointed out by the ld. counsel for the assessee that when some of the parties to whom notices were sent u/s 133(6) of the Act, no transactions were entered into by the assessee. It is the say of the ld. counsel for the assessee that vide submissions dated 28.02.2014, the assessee has furnished additional documents being agreement entered into with the parties, details of transaction entered into with these parties, copies of ledger account, invoices and CST registration certificates. The ld. counsel for the assessee concluded by saying that in spite of the direct evidences, the Assessing Officer has made additions, which is uncalled for.

72. Per contra, the ld. DR strongly supported the findings of the lower authorities.

73. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below. As per details in the chart furnished by the ld. counsel for the assessee, it can be seen that in respect of four parties, the assessee has done no transaction.

Therefore, there is no point in issuing notice u/s 133(6) of the Act to these parties.

74. In respect of other parties, since the assessee has furnished complete details in the form of invoice, agreement, CST registration certificates and copies of ledger account, the Assessing Officer should have pointed out specific errors/defects in these direct evidences. In our considered opinion, assessment has been framed without proper verification. We, therefore, restore this issue to the file of the Assessing Officer with the direction to examine the documentary evidences furnished by the assessee and if necessary, can verify the transaction from the recipient parties. Needless to mention, the Assessing Officer shall afford reasonable opportunity of being heard to the assessee. Ground No. 16 is allowed for statistical purposes.

75. Ground No. 17 relates to initiation of penalty proceedings u/s 271(1)(c) of the Act.

76. This ground is premature and hence dismissed.

77. In the result, the appeal of the assessee in ITA No. 910/DEL/2015 is allowed in part and in part for statistical purposes.

The order is pronounced in the open court on 15.03.2019.

Sd/-	Sd/-
[SANDEEP GOSAIN**]** **JUDICIAL MEMBER**	**[N.K. BILLAIYA]** **ACCOUNTANT MEMBER**

Dated: 15th March, 2019

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
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	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	