

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: 'I-1', NEW DELHI**

**BEFORE SHRI G.D.AGRAWAL, VICE PRESIDENT AND  
SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA No. 3727/Del/2014**

**AY: 2006-07**

Adidas India Marketing Pvt.Ltd. Office No.6, 2 <sup>nd</sup> Floor, Sector B Pocket No.7, Plot No.11 Vasant Kunj New Delhi 110 070 PAN: AAACA5313P	<b>vs.</b>	ITO, Co.Ward 1(2) New Delhi
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**ITA No. 2770/Del/2012**

**AY: 2007-08**

ITO, Co.Ward 1(2) New Delhi	<b>vs.</b>	Adidas India Marketing Pvt.Ltd. Office No.6, 2 <sup>nd</sup> Floor, Sector B Pocket No.7, Plot No.11 Vasant Kunj New Delhi 110 070
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**Cross Objection No.85/Del/2013**

**(In ITA No. 2770/Del/2012)**

**AY: 2007-08**

Adidas India Marketing Pvt.Ltd. Office No.6, 2 <sup>nd</sup> Floor, Sector B Pocket No.7, Plot No.11 Vasant Kunj New Delhi 110 070	<b>vs.</b>	ITO, Co.Ward 1(2) New Delhi
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**ITA No. 29/Del/2014**

**AY: 2008-09**

Adidas India Marketing Pvt.Ltd. New Delhi 110 070	<b>vs.</b>	ITO, Co.Ward 1(2) New Delhi
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**(Appellant)**

**(Respondent)**

**Assessee by :** Shri Ajay Vohra, Sr.Adv.  
Sh. Neeraj Jain, Adv. &  
Sh. Sahil Sharma, C.A.

**Department by :** Sh. Sanjay I Bara, CIT, D.R.

**Date of Hearing :** 19/03/2019  
**Date of Pronouncement:** 27/05/2019

### ORDER

#### PER BEENA A PILLAI, JUDICIAL MEMBER

Present appeals are filed by assessee, arising out of following impugned orders.

Sl. No.	A.Y.	Impugned Order passed by	Date of order	Appeal filed by
1.	2006-07	ITO, Ward 1(2) u/s 143(3)(ii) r.w.s.144C(13)	30/04/2014	Assessee
2.	2007-08	CIT(A)-XX	30/03/12	Assessee & Revenue
3.	2008-09	CIT(A)-XX	25/10/2013	Assessee

**1.1.** It is observed that appeal for A.Y. 2006-07 arises as a consequence of order of this Tribunal wherein, issues were set aside to file of DRP/AO, vide order dated 14.12.2012 in ITA No.2889/Del/2010 by making following observations in para 7:

*"If we look at the order of Ld.DRP extracted (supra) in the light of above proposition, it will reveal that DRP has not applied its mind. The assessee had filed objections running into several pages and not a single objection has been discussed by the Ld.DRP. Therefore, we*

*set aside the order of Ld.DRP and remit the issue back to the file of Ld.DRP for re-adjudication.”*

**1.2.** Post the set aside by this Tribunal, DRP passed the order subsequent to which Ld.AO vide order dated 30/04/14 passed impugned order against which assessee filed appeal on following grounds of appeal:

**A.Y. 2006-07 (Assessee's appeal)**

*1. That assessing officer erred on facts and in law in completing the assessment under section 144C read with section 143(3) of the Income-tax Act (the Act) at an income of Rs. 13,39,58,727 as against the returned income of Rs.4,18,18,258.*

*2. That the assessing officer erred on facts and in law in making addition to the income of the appellant to the extent of Rs. 9,10,91,932 on account of the alleged difference in the arm's length price of international transactions resulting from the advertisement, marketing and sales promotion expenses (hereinafter referred to as 'the AMP expenses') incurred by the appellant on the basis of the order passed by the TPO under section 92CA(3) of the Act.*

*2.1. That the assessing officer/DRP erred on facts and in law in not appreciating that expenditure on advertisement and brand promotion, unilaterally incurred by the appellant, could not be regarded as a 'transaction' in the absence of any understanding / arrangement between the appellant and the associated enterprise.*

*2.2. The Dispute Resolution Panel (DRP)/TPO erred on facts and in law in not holding that the Indian company had incurred expenditure on advertisement of the products in India and merely because the AMP expenses incurred by the taxpayer, were proportionately higher than those incurred by comparable cases taken by the TPO, did not*

lead to the inference of "transaction" between the taxpayer and the foreign AE for creating marketing intangibles on behalf of the later.

2.3. The DRP/TPO erred on facts and in law in not appreciating that the only Transfer Pricing adjustment permitted by Chapter X of the Act was in respect of the difference between the arm's length price (ALP) and the contract or declared price, but the said provision could not be invoked to determine the 'quantum' / extent of business expenditure.

2.4. The DRP erred on facts and in law in not appreciating that the Transfer Pricing adjustment sought to be made by the TPO in the present case was a mere quantitative adjustment, on the footing that the appellant had incurred excessive amount of AMP expenditure and consequently that such Transfer Pricing adjustment was not at all permitted or authorized by Chapter X of the Act.

2.5. The DRP/TPO erred on facts and in law in holding that expenditure incurred by the appellant which incidentally resulted in brand building for the foreign AE, was a transaction of creating and improving marketing intangibles for and on behalf of its foreign AE and further that such a transaction was in the nature of provision of a service by the appellant to the AE.

2.6. That the DRP/TPO erred on facts and in law in holding that AMP expenses incurred by the appellant resulted in promotion of brand owned by the associated enterprise, thereby creating marketing intangibles whose ultimate benefit inured to the associated enterprise.

2.7. That TPO / DRP erred on facts and in law by questioning the commercial expediency of AMP expenditure incurred by the appellant and assuming that benefit has accrued to AE on account of AMP expenses incurred by the appellant in India.

2.8. The DRP/TPO erred on facts and in law in not appreciating that the advertisement and marketing expenses were incurred by the

*appellant wholly and exclusively for purposes of its business and not on behalf of or for the benefit of the AE; any benefit to the AE being only incidental.*

*2.9. That the DRP/TPO erred on facts and in law in not appreciating that the characterization of the appellant being that of a full fledged manufacturer and / or distributor performing all functions and bearing all risks, is the sole beneficiary of the AMP expenditure incurred by it, justified the conduct of the appellant in incurring and bearing the cost of AMP expenditure.*

*2.10. Without prejudice, TPO/DRP erred on facts and in law in not appreciating that even if marketing intangible has been created then the appellant is the economic owner of the benefit of such intangible.*

*2.11. That the DRP erred on facts and in law by holding that incurring of AMP expenses in India by the appellant is excessive being over and above the commission paid to aSiS Enterprise, an associated enterprise, for providing marketing services at the rate of 8.25% of the value of imported goods.*

*2.12. That the DRP erred on facts and in law in allegedly concluding that the marketing plan of the taxpayer is identified by the AE and reviewed by the AE merely on the basis that the appellant is making payment of commission on the marketing services provided to aSiS Limited.*

*2.13. The DRP/TPO erred on facts and in law in applying Bright Line Test ("BLT") for computing adjustment on account of expenditure on advertisement and brand promotion expenses, without appreciating that in absence of specific provision in the Transfer Pricing statutory provisions in India., adjustment on account of the arm's length price of the advertisement and brand promotion expenses could not be made.*

*2.14. The DRP/TPO erred on facts and in law in not appreciating that*

such a Transfer Pricing adjustment cannot at all be made in law without determining the Arm's Length Price ("ALP") by applying one of the methods specified in section 92C of the Act.

2.15. That the DRP erred on facts and in law in holding that, "bright line is a line drawn within the overall amount of AMP expenses incurred for the normal business of the assessee and the remaining amount on the other side is the value of the international transaction representing the amount of AMP expenses incurred for and on behalf of the foreign AE towards creating its marketing intangible".

2.16. Without prejudice that the assessing officer erred on facts and in law in ignoring the fact that, since the appellant earns return commensurate with other brand owners, the appellant is adequately compensated for its functions and AMP expenses.

2.17. Without prejudice that the assessing officer erred on facts and in law in considering selling and distribution expenses amounting to Rs 12,00,57,999 for the purpose of calculating alleged AMP expenditure of the appellant.

2.18. Without prejudice that the DRPTPO erred on facts and in law in not following the principle laid down by the Special Bench in case of LG Electronics Private Limited of excluding selling and distribution expenses amounting to Rs 12,00,57,999 while computing the alleged AMP adjustment of the appellant.

2.19. Without prejudice that the DRP/TPO erred on facts and in law in not appreciating that the associated enterprise has also incurred AMP expenditure from which the appellant has derived benefit and a corresponding reimbursement of AMP expenditure should be made by the appellant to the associated enterprise.

2.20. Without prejudice that the DRP/TPO erred on facts and in law in not considering appropriate set of comparables for undertaking benchmarking analysis of the alleged international transaction arising out of AMP expenditure incurred by the appellant.

2.21. Without prejudice that the assessing officer/ DRP erred on facts

and in law in considering the following companies as comparable for benchmarking advertisement and publicity expenses, without appreciating that product similarity is essential for benchmarking AMP expenses:

<i>Name of company</i>	<i>AMP/sales</i>
<i>Arintex Global Limited</i>	<i>0.59%</i>
<i>Bhartiya Global Marketing Ltd.</i>	<i>4.24%</i>
<i>Koffee Break Pictures Ltd.</i>	<i>0.00%</i>
<i>Century Knitters India Ltd.</i>	<i>0.00%</i>
<i>Pokarna Fashions Ltd.</i>	<i>5.57%</i>
<i>Creatnet Services Ltd.</i>	<i>11.29%</i>
<i>Mean</i>	<i>3.60%</i>

2.22. Without prejudice that the assessing officer/ DRP erred on facts and in law in not considering the fresh search of comparable companies as per the criteria laid down by the Special Bench of the Tribunal in LG's case, submitted by the appellant as additional evidence.

2.23. That the DRP erred on facts and in law in holding that the DRP cannot become a forum for raising items and comparables which were not before the AO/TPO lest it becomes a forum for thrashing out the primary facts.

2.24. That the assessing officer /DRP erred in not appreciating that no royalty is being paid by the appellant for the use of brand name Adidas'.

3. That the assessing officer / DRP erred on facts and law in making transfer pricing adjustment amounting to Rs. 10,48,537 in relation to international transaction of exports of goods made by the appellant to its AE.

3.1. *The DRP erred on facts and in law in upholding the Transfer Pricing adjustment of Rs.10,48,537 made in relation to international transaction of export of goods allegedly on the ground that the appellant did not follow uniform approach for benchmarking of international transaction.*

3.2. *That the assessing officer /DRP erred in law and facts in disregarding the CUP data provided by the appellant to benchmark the international transaction of export of goods allegedly holding that the appellant has not applied CUP method on all the transaction of export of goods.*

3.3. *That the assessing officer / DRP erred in law and facts in not appreciating that the appellant has distribution rights only in territory of India and the exports of outdated/ slow moving stock to AE is made due to business necessity / commercial reasons.*

4. *That the assessing officer / DRP erred on facts and law in not allowing the claim of bad debts written off during the year by the appellant amounting to Rs 71,88,979 on the ground that the assessing officer could not entertain the claim unless it is made in the return / revised return of income.*

5. *That the assessing officer erred on facts and in law in levying interest under Section 234B and Section 234C of the Act.*

*The appellant craves leave to add, amend, alter or vary, any of the aforesaid grounds of appeal before or at the time of hearing of the appeal and consider each of the grounds as without prejudice to the other grounds of appeal."*

For A.Y. 2007-08, Assessee as well as Revenue are in appeal before us, which arises out of order dated 30/03/12 passed by Ld. CIT (A)-20 on following grounds of appeal:

ITA 2770/Del/2012 A.Y. 2007-08 Revenue's appeal)

1. *The Ld.CIT(A) has erred on facts and in law in deleting addition of Rs.15,56,02,591/- made on account of Arm's length price.*
2. *The Ld.CIT(A) has erred on facts and in law in deleting addition of Rs.15,70,657/- made on account of disallowance of interest expenditure.*
3. *The Ld.CIT(A) has erred on facts and in law in deleting addition of Rs.3,64,952/- made on account of disallowance of extra depreciation on computer peripherals.*
  
4. *The appellant craves leave for reserving the right to amend, modify, alter, add or forego any grounds of appeal at any time before or during hearing of this appeal."*

C.O. 85/Del/2013 A.Y. 2007-08 (Assessee's Cross Objection)

1. *That the Ld.CIT(A) grossly erred on facts and in law, in confirming the decision of TPO, holding AMP expenditure incurred by the assessee to be an international transaction within the meaning of Section 92B of Income Tax Act.*
2. *That, the Ld. CIT (A) having held that assessee to be "A high risk distributor/de facto manufacturer", and having rejected the case of TPO and the comparables relied upon by him, ought to have accepted the comparables given by the cross objector assessee holding that the transactions relating to AMP expenses are at arm's length.*
3. *That, the Ld. CIT (A) having held that assessee to be "A high risk distributor/de facto manufacturer", and having rejected the case of*

*TPO and the comparable relied upon by him, ought to have passed a speaking order for rejecting the comparable selected by the TPO.*

*4. That, the order of Ld. CIT(A) is totally silent and fails to adjudicate the arguments of the cross objector assessee that, in the determination of the addition made by the TPO on AMP expenses, there has to be a reduction on account of comparative benefits and advantage of the global advertisements of the parent company AE for the period .*

*5. That, the order of Ld. CIT(A) is totally silent and fails to adjudicate the arguments of the cross objector assessee that, in the determination of the addition made by the TPO on AMP expenses, there has to be a reduction on the savings made by the cross objector assessee due to waiver of*

ITA 29/Del/14 A.Y. 2008-09 (Assessee's appeal)

*1. On the facts and in the circumstances of the case, the learned CIT(A)/Assessing Officer / TPO has erred both in law and facts in disallowing sum of Rs 7,23,41,946 out of advertisement, Marketing and Promotion expenses (AMP) on the ground that they have been incurred for developing the intangibles.*

*2. On the facts and in the circumstances of the case, the learned CIT(A)/Assessing Officer / TPO has erred both in law and facts in treating the AMP expenditure of Rs.17,69,96,000 as an International Transaction within the meaning of section 92B(1) of the Income Tax act, 1961.*

*3. a) On the facts and in the circumstances of the case, the learned CIT(A)/Assessing Officer / TPO has erred both in law and facts in treating the AMP expenditure of Rs. 17,69,96,000 as an expenditure incurred for Brand Promotion of AE which has resulted in creation of Market Intangibles for AE.*

b) *On the facts and in the circumstances of the case, the learned CIT (A)/Assessing Officer / TPO has erred both in law and facts in coming to conclusion that the appellant is a distributor and marketer of the AE.*

c) *On the facts and in the circumstances of the case, the learned CIT (A)/Assessing Officer / TPO has erred both in law and facts in coming to conclusion that the appellant was a limited risk distributor and is selling the products manufactured by AE.*

d) *On the facts and in the circumstances of the case, the learned CIT (A)/Assessing Officer / TPO has erred both in law and facts in coming to conclusion that loss of the assessee due to non-reimbursement of the AMP expenditure and the AMP expenditure resulted in increased sale of products manufactured by adidas group.*

e) *Without prejudice to the above, the learned CIT (A)/ AO/TPO erred in computing the AMP expenditure attributable to AE at Rs. 10,46,54,054 instead of taking the AMP expenditure proportionate to purchases from AE to total sales of the assessee.*

4. a) *On the facts and in the circumstances of the case, the learned CIT (A)/Assessing Officer / TPO has erred both in law and facts in rejecting the Internal CUP given by the assessee to justify the AMP expenditure as being at arm's length.*

b) *On the facts and in the circumstances of the case, the learned CIT (A)/Assessing Officer / TPO has erred both in law and facts in coming to conclusion that the promotion of brand in different market and geographies are not comparable with India for CUP method.*

c) *On the facts and circumstances of the case the learned CIT (A) has erred in coming to conclusion that the CUP is being rejected as the case is covered by the judgment of Hon'ble Special Bench in LG Electronics India Private Limited.*

d) *On the facts and circumstances of the case the learned CIT (A)/TPO/AO has erred in not giving credit for excess AMP expenditure being incurred by AE as compared to assessee especially since the benefit of the same has been received by assessee in the form of global advertisement and sponsorships.*

5. a) *Without prejudice the above, the AO/TPO erred in rejecting the comparables submitted by the appellant.*

b) *On the facts and circumstances of the case the learned CIT (A)/Assessing Officer/TPO erred in rejecting all Indian Comparables which were promoting Indian Brands.*

6. a) *Without prejudice the above, the CIT (A)/Assessing Officer/TPO erred in substituting his own comparable for benchmarking which are erroneous.*

b) *On the facts and in the circumstances of the case, the learned CIT (A)/ Assessing Officer / TPO has erred both in law and facts in not considering various reasons given by assessee against the comparables given by AO/TPO.*

c) *On the facts and in the circumstances of the case, the learned CIT (A)/Assessing Officer / TPO erred in coming to the conclusion that the only comparable chosen by them namely 'Kitex Limited' is functionally similar to the Assessee and is comparable.*

d) *On the facts and in the circumstances of the case, the learned CIT (A)/Assessing Officer / TPO erred in not taking segment results of Kitex Ltd for the purpose of arriving Bright Line Percentage.*

7. *On the facts and in the circumstances of the case, the learned CIT (A)/Assessing Officer / TPO erred in using AMP/Sales as a method for determining the arms length expenditure.*

8.a) *On the facts and in the circumstances of the case, the learned CIT (A)/Assessing Officer / TPO has erred both in law and facts in not reducing the savings made by assessee on account of*

*waiver/reduction of Interest and Royalty by AE from the adjustment made by the TPO/AO.*

*b) On the facts and in the circumstances of the case, the learned CIT (A)/TPO/Assessing Officer erred in coming to conclusion that only expenditures actually debited in P &L Account can be basis for savings.*

*c) On the facts and in the circumstances of the case, the learned CIT (A)/TPO/Assessing Officer erred in coming to conclusion that no setting off is permitted under Indian TP Regulations.*

*9). Without prejudice the above grounds, On the facts and in the circumstances of the case, the learned CIT(A)/Assessing Officer / TPO has erred both in law and facts in not allowing depreciation on amounts of Rs 7,23,41,946 held to be expenditure incurred for developing intangibles.*

*10) On the facts and in the circumstances of the case, the learned CIT (A) has erred in not excluding the expenditure of the appellant towards Market Research of Rs. 47 Lacs and sample expenses which are in nature of selling expenses to the tune of Rs. 309.39 Lacs (Total Rs. 356.39 Lacs) out of AMP Expenditure.*

*11) On the facts and in the circumstances of the case, the learned CIT (A)/Assessing Officer / TPO has determined Arms Length on mark up on AMP , a transaction not referred to him by the AO and therefore the adjustment made is without jurisdiction.*

*12) a) On the facts and in the circumstances of the case, the learned CIT (A)/Assessing Officer has erred in making addition on notional basis mark-up of 15% on expenditure incurred for developing the intangible of Rs. 7,23,41,946 amounting to Rs.1,08,51,292.*

*b) On the facts and in the circumstances of the case, the learned CIT (A)/TPO/Assessing Officer erred in not allowing set off of savings on*

*account of Interest when the mark up has been calculated at equivalent interest rate of 15 %.*

*c) On the facts and in the circumstances of the case, the learned CIT (A)/Assessing Officer / TPO has erred both in law and facts in coming to conclusion that the assessee had rendered intra group services to its AEs.*

*13) On the facts and in the circumstances of the case, the learned CIT (A)/Assessing Officer has erred is not granting the benefit of +/- 5% of range as envisaged by the proviso to Sec. 92C (2) of the Income Tax Act 1961.*

*14). The appellant craves for grant of permission to add, alter and delete any ground of objection at or any time during the hearing."*

**2.** Both parties submitted that facts and circumstances of these appeals are similar and issues to be decided are common. We are therefore deciding these appeals by way of common order.

**3.** Brief facts of case are as under:

Ld.Counsel submitted that the assessee is subsidiary company of Adidas Saloman AG (AAG). The assessee engages third party contract manufacturers in India who manufacture goods on basis of design and drawings provided by assessee. Goods are manufactured by contract manufacturers under instructions and directions of assessee. Assessee also undertakes distribution of goods imported from Associated Enterprises. Assessee operates both, as a full risk bearing distributor and manufacturer in Indian market.

**3.1.** Ld.TPO proceeded to undertake bench marking analysis of advertisement, marketing and sales promotion (AMP) expenses aggregating to Rs.12,00,57,999/-, by applying Bright Line Test. Ld.TPO held that, AMP expenses to that extent were incurred for creating marketing intangible of Adidas brand, which belonged to Associated Enterprise (AE) and, therefore, requires compensation along with mark-up for brand promotion services, for applying Bright Line Test. Ld.TPO compared AMP expenditure incurred by assessee with an average AMP expenditure of following comparables:

Sl.No.	Name of the Company	AMP/Sales Ratio (%)
1.	Arintex Global Ltd.	0.59
2.	Bharitya Global Marketing Ltd.	4.24
3.	Brandhouse Retails Ltd.	2.01
4.	Century Knitters (India) Ltd.	0
5.	Keygien Global Ltd.	3.29
6.	Pokama Fashions Ltd.	5.57
	<b>Arithmetic Mean</b>	<b>2.62</b>

**3.2.** Ld. TPO thus was of opinion that AMP expenses of sales in case of assessee was at 8.43% which was higher than average AMP expenses incurred by comparables, thereby making an adjustment of difference which resulted in creation of marketing intangibles on account of promotion and development of brand "Adidas" legally owned by Associated Enterprise.

**3.3.** Ld.TPO thus held AMP expenditure to be an international transaction within the meaning of section 90 2B (1) of the Income Tax Act, 1961 (the Act).

**4.** Aggrieved by order of Ld. AO, assessee is in appeal before us now.

**5.** At the outset, Ld.Counsel submitted that **Ground No. 1** raised by assessee is general in nature, and therefore do not require any adjudication. **Accordingly the same is dismissed.**

**6. Ground No. 2 to 2.29** have been raised against adjustment made by Ld.AO on account of alleged excessive AMP expenses amounting to Rs.243.85 crores. It has been submitted by Ld.Counsel that said issue now stands squarely covered in case of Whirlpool India Ltd. Vs. DCIT reported in (2014) 42 taxmann.com 553, which is upheld by Hon'ble Delhi High Court reported in (2015) 64 taxmann.com 324 .

At this juncture, Ld.Sr.DR submitted that against order of Hon'ble Delhi High Court, revenue preferred appeal before Hon'ble Supreme Court which is pending for final hearing. He submitted that till disposal of matter by Hon'ble Supreme Court, issue may be kept in abeyance.

**7.** We have considered rival contentions of both sides in light of records and orders passed on this issue by Coordinate Benches of this Tribunal as well as Hon'ble Delhi High Court.

**7.1.** From records placed before us, it is observed that, undisputedly Ld.TPO proposed adjustment on account of AMP expenses by applying Bright Line Test. It is observed that Ld.TPO as

well as DRP treated AMP expenses as international transaction by applying ratio laid down by *Special Bench* decision of this *Tribunal* in case of *LG Electronics India Pvt. Ltd., vs. ACIT* reported in (2013) 29 *Taxmann.com* 300, which stands over ruled by decision of *Hon'ble Delhi High Court* in case of *Sony Ericson India Pvt.Ltd vs. CIT* reported in (2015) 55 *Taxmann.com* 240. *Hon'ble Court* while deciding *Sony Ericson India Pvt.Ltd (supra)* categorically held that *Bright Line Test* is not an appropriate yardstick for determining existence of an international transaction for calculating arm's length price.

**7.2.** *Hon'ble Delhi High Court* while deciding question of law raised for Assessment Year 2008-09 held as under:

*"Conclusion*

*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 negated by this Court as a valid method of determining the existence of an international transaction and thereafter its ALP.*

*48. Question (i) in the Assessee's appeal viz., "Was there an international transaction between WOIL and its AE involving the AMP expenses within the meaning of Section 92B of the Act read with Section 92F(v) of the Act?" is answered in the negative, i.e., in favour of the Assessee and against the Revenue. Consequently Question (ii) in the Assessee's appeal is not required to be answered. Further, the only question framed in the Revenue's Appeal viz., "Whether the ITAT erred in deleting the addition of Rs. 180,73,10,769 made by the AO/TPO on account of AMP expenses under Section 37 of the Act?" is*

*answered in the negative, i.e. in favour of the Assessee and against the Revenue.*

*49. The impugned order of the ITAT and the corresponding orders of the DRP and the TPO, on the above issues are hereby set aside. The appeal of the Assessee, ITA No. 228 of 2015 is allowed and the appeal of the Revenue, ITA No. 610 of 2014 is dismissed in the above terms, but in the circumstances with no orders as to costs."*

**7.3.** On perusal of orders passed by Ld.TPO/AO/DRP for year under consideration, it is observed that AMP expenditure has been considered to be international transaction by applying Bright Line Test, whereby Ld.TPO proposed an adjustment of 243.8 crores.

**7.4.** Ld.Sr.DR preferred adjournment application on the ground that issue involved in present appeal is in respect of AMP adjustment. He submitted that consistent stand has been taken by revenue before this Tribunal to request for adjournment in all appeals, where AMP adjustment has been disputed by either parties on ground that *Hon'ble Supreme Court* is seized with the matter.

**7.5.** During course of argument Ld.Sr.DR sought permission from the Bench to file written submission regarding issues raised by assessee which was granted. Accordingly, on 10/01/2019 a detailed written submission has been filed by revenue in respect of issues raised by assessee for all years under consideration which is taken on record.

**7.6.** Plea taken by revenue in written submission to justify AMP adjustment proposed by Ld.TPO that assessee has been working for benefit of foreign AE and deserves suitable remuneration. Heavy reliance has been placed by Ld.Sr.DR on BEPS Guidelines, provided

for Transfer Pricing of intangibles, under Action Plan 8-10 of GE 20/OECD BEPS project in support of adjustment.

**7.7.** It has further been alleged by Ld.Sr.DR that, there is mutual agreement/arrangement between assessee and its AE, for discharge of function of marketing and market development in addition to agreement/arrangement for sale and distribution of goods purchased from its AE, for which cost has been borne by AE. Ld.TPO has also rejected claim that assessee is a full risk bearing manufacturer/distributor, as there is no supporting ground for the same.

**8.** In our considered opinion, since basis on which adjustment has been made being Bright Line Test itself has been rejected by *Hon'ble Delhi High Court* in case of Sony Ericson India P.Ltd. (supra) and no further interference is called for at this stage. Further reliance placed by Ld.Sr.DR on BEPS guidelines and Action Plan 8-10 cannot be applied as the same is yet to be implemented. We, therefore, reject application of Bright Line Test, respectfully following decision of Hon'ble Delhi High Court in case of Soney Ericson India P Ltd. (supra).

**8.1.** On perusal of TP order, at page 6, it is observed that Ld.TPO made an effort to analyse whether AMP expenditure is an international transaction or not. It is very interesting to note that Ld.TPO observes that assessee has been licensed the brand "Adidas" by its domestic AE (Adidas India Pvt. Ltd). He also reproduces relevant extract from the agreement, wherein it is recorded that Adidas India Pvt. Limited is the exclusive owner of

trademark "Adidas" and enjoys all proprietary rights related thereto. It is observed that relevant clauses reproduced in Transfer Pricing order is an extract from the trademark agreement dated 14/02/1997. Further in para 5.2 at page 7 of TPO order Ld.TPO records as under:

*" 5.2. .... A closer examination of the facts of the case has revealed that assessee's case is in fact no different from other cases wherein the Indian entity licenses the brand directly from its overseas AE. In assessee's case, a domestic AE (Adidas India private limited) has been interposed merely as a planning device and with no economic substance. ...."*

*5.3. The assessee was asked to furnish the audited financial statement of its immediate holding company in India with Adidas India private limited. On perusal of the same, it is quite clear that the holding company is just a shell company that does nothing else apart from holding investment in the assessee. ...."*

**8.1.1.** If we appreciate implication by Ld.TPO, then since holding company has been opined by Ld.TPO to be shell company, in same breath, assessee would also amount to be shell company being its holding company. It is observed that Ld.TPO loosely used phrase 'lifting of corporate Veil', without understanding attributes that needs to be established by way of cogent materials/evidences to prove, a benefit of revenue having accrued to assessee.

**8.1.2.** We don't deny that there would be incidental benefit to foreign AE, being, Adidas-Saloman AG, which is ultimate parent of assessee. However, expenditure towards advertisement and marketing incurred by assessee in India is mainly for its own benefit to market products manufactured by it in India. Main purpose of incurring of such huge AMP expenses has largely benefited assessee in India, with an incidental benefit arising to foreign AE. Unless Ld.TPO can establish direct benefit accruing to foreign AE, it is very difficult to accept existence of international transaction, under present facts of the case. We rely upon decision of *Hon'ble Delhi High Court* in case of *Sony Ericson Mobile Communication India Pvt.Ltd (supra)* in support of aforesaid observations.

**8.2.** Further it has been submitted by both sides that facts and circumstances in present appeal are no manner different with that of *Maruti Suzuki India Ltd.* Reported in 381 ITR 117; and *Sony Ericson Mobile Communications (supra)*, wherein *Hon'ble High Court* has held that existence of international transaction must be established de hors the Bright Line Test before undertaking bench marking of AMP expenses. We therefore respectfully follow the view taken by this *Hon'ble Delhi High Court* in *Sony Ericson Mobile Communications (supra)*, and delete adjustment made in respect of AMP expenses.

**8.3.** However, we appreciate the concern raised by Ld.Sr.DR that decision of *Hon'ble Supreme Court* will be binding upon assessee as well as revenue.

"19. After considering the legal position as discussed in the preceding paragraphs, we are of the considered opinion that the ALP of an international transaction involving AMP expenses, the adjustment made by the TPO/DRP/AO is not sustainable in the eyes of law. At the same time, we cannot ignore the submission of the learned DR that the matter is pending before Hon'ble Apex Court and the decision of Hon'ble Apex Court would be binding upon all the authorities. In view of the above, we set aside the orders of authorities below and restore the matter to the file of the Assessing Officer. We hold that as per the facts of the case and the legal position as of now and discussed above in this order, the adjustment made by the TPO/DRP/AO in respect of AMP expenses is not sustainable. However, if the above decisions of Hon'ble Jurisdictional High Court which is under consideration before the Hon'ble Apex Court is modified or reversed by the Hon'ble Apex Court, then the Assessing Officer would pass the order afresh considering the decision of Hon'ble Apex Court. In those circumstances, he will also allow opportunity of being heard to the assessee."

**Accordingly Grounds 2 to 2.24 stand allowed for statistical purposes.**

**9. Ground No. 3-3.3** have been raised by assessee against Transfer Pricing adjustment with relation to export of goods.

**10.** Ld.Counsel submitted that assessee had to minimise excess stock and had to sell off outdated stock without dilutes being its stand in the domestic market. As assessee could not sell the same by offering additional discount and clearing through discount shop,

assessee exported the goods to AE Adidas Solomon Sourcing Ltd, Hong Kong. Ld.Counsel submitted that assessee used CUP method for benchmarking the transaction and produced copies of invoices of the products further sold by AE to Bonnie Blair. Ld.Counsel submitted that AE made gross profit of 23% on the transaction.

**10.1.** He submitted that it is policy of group to minimise excess stock and to sell off outdated stock at reasonable margins by following any of the following process:

- One is to clear such stock in domestic market, by way of offering additional discounts to local customers;
- another one is clearing stock through own factory outlets;
- if the two avenues do not suffice then regional head office offers assistance as the AE avails of a couple of dedicated clearance customers such as SIMO and Bonnie Blair who are able to purchase, sell and market said surplus stock in a way that the relevant domestic market do not unnecessarily suffer from stock clearance activities.

**10.2.** Ld.Counsel submitted that these clearance customers usually have a customer base in underdeveloped countries such as Cambodia or Africa where the stock can be dropped without adverse effect on market which are considered more important from a strategic perspective such as India.

**10.3.** On a question being put up to Ld.Counsel regarding why the goods are not sold directly by assessee to the third parties, it

was submitted by Ld.Counsel that assessee has distribution rights only within territory of India which includes Nepal and therefore assessee could neither directly sell nor it has a customer relationship with Bonnie Blair or SIMO.

**10.4.** Ld.Counsel further submitted that this issue stands squarely covered by order of this Tribunal in assessee's own case for assessment year 2005-06 in ITA No. 3922/Del/2011

**11.** On the contrary LdCIT,DR placed reliance upon order passed by authorities below.

**12.** We have perused submissions advanced by both sides in the light of the records placed before us.

**13.** It has been submitted that assessee follows consistent approach in dealing with slow-moving stock which is in consonance with company policy as has been explained by Ld.Counsel in his argument. Nothing on record has been placed before us by Ld.Sr.DR or by authorities below pointing out any fault or error in the company policy of disposing off seconded goods. Moreover assessee has discretion to decide how its business needs to be conducted. It is observed that Ld.TPO proposed adjustment as in his opinion assessee could have directly sold these goods to third parties. Ld.A.O. was of the opinion assessee sold the goods through AE and part of the profits has been shifted to the A.E.

**13.1.** It is observed that assessee bench marked the transaction of sale to AEs by using internal CUP.

From records placed before us it is observed that assessee sold finished goods to following AEs amounting to Rs.45,64,209/-:

(a) Adidas Solomon Sourcing Ltd.: Rs.44,05,621/-;

(b) Adidas New Zealand : Rs.67,760/-;

(c) Adidas Latin America: Rs.90,828/-

In paper book at page 321 vide submission dated 21/02/2014 assessee submitted that, in order to capture the imagination of the buyer, every season, assessee deals in more than 100 new styles of products and it is likely that all styles and products are not popular and well accepted by customers. It has been submitted that, under such circumstances generally 10-20% of styles are not liked by the customers, which are classified as slow moving or obsolete.

**13.2.** From the records placed before us, it is observed that assessee had imported finished goods amounting to Rs.13,76,26,854/- out of which, goods worth Rs.45,64,209/- has been exported back due to its slow moving nature. The percentage of goods exported is approximately 3.3%. In our opinion as the percentage of goods that was returned back as slow moving is within the permissible limits of less than 10%. Even otherwise the gross margin earned by assessee from imported goods is in excess of 40% vis-à-vis the margin earned by assessee from imported

goods is in excess of 40% vis-à-vis the margin earned by AE from sale with third party in case of slow moving goods exported by assessee.

We are therefore of considered opinion that no adjustment is called for in this regard.

**13.3. Accordingly this ground raised by assessee stands allowed.**

**14. Ground No. 4** is in respect of deduction on account of bad debts written off amounting to Rs.71,88,979/-, being disallowed by Ld.AO.

**15.** Ld.Counsel submitted that during year under consideration assessee had written off a sum of Rs.71,88,979/- as bad debts during year under consideration, out of total provision for bad debt account. He submitted that though said amount reflected in audited accounts, however, inadvertently in return of income such bad debt written off during year under consideration was not claimed. Ld.Counsel submitted that subsequently during assessment proceedings assessee vide letter dated 26/10/09 claimed deduction of such bad debts written off as per section 36 (1) (vii) read with section 36 (2) of the Act.

**15.1.** He submitted that Ld.AO as well as DRP upheld disallowance by holding that assessee had made revised claim beyond statutory time period provided under section 139(4) of the

Act by way of filing revised return, placing reliance upon *Hon'ble Supreme Court* in case of *Goetze India Ltd* reported in 284 ITR 323.

**15.2.** Ld.Counsel submitted that in case of *Goetze India Ltd* (supra), *Hon'ble Supreme Court* dealt with the issue of power of Assessing Officer to admit a claim which was not raised in the return of income and does not incline on the power of appellate authority. Instead placing reliance upon the decision of *Hon'ble Supreme Court* in case of *TRF Ltd vs CIT* reported in 323 ITR 397, Ld.Counsel submitted that it is not necessary for assessee to establish that the debt in fact had become irrecoverable and it was enough if bad debts is written off as irrecoverable in the accounts of assessee.

**16.** Ld.CIT, DR placed reliance upon the order of authorities below.

**17.** We have perused submissions advanced by both sides in the light of records placed before us.

**18.** In our considered opinion there are plethora of decisions by various Courts and *Hon'ble Supreme Court* wherein it has been held that a legitimate claim of assessee should be allowed even if it is raised during assessment proceedings.

**18.1.** There is no dispute with the Department that said amount has been written off in accounts of assessee. However merely because it was not claimed in return of income, will not vitiate right of assessee to claim it during pendency of assessment

proceedings. Ld.TPO is directed to allow the claim of assessee as per law.

**18.2.** We therefore are inclined to set aside this issue to Ld.A>O.

**Accordingly this ground raised by assessee stands allowed for statistical purposes.**

**19. Ground No. 5** raised by assessee is consequential in nature and therefore do not require any adjudication.

**20. Accordingly appeal filed by assessee for assessment year 2006-07 stands allowed for statistical purposes.**

**21. Assessment year 2007-08.**

**ITA No. 2770/Del/2012 ( Revenue's appeal)**

**22.** Ground No. 1 raised by revenue is in respect of deleting sum of Rs.15,56,02,591/-on account of AMP expenses by Ld.CIT(A).

**23.** We have already set aside this issue to Ld.AO with certain direction while deciding the same issue in assessee's appeal for Assessment Year 2006-07. Both parties agree that facts and circumstances of the case for year under consideration is similar and there is no change in the nature of expenses incurred by assessee.

**23.1.** On the basis of aforestated submissions and looking into the similarity of facts in respect of this issue for year under consideration with that of assessment year 2006-07 we are inclined to follow our view taken hereinabove as under:

*"8. In our considered opinion, since basis on which adjustment has been made being Bright Line Test itself has been rejected by Hon'ble Delhi High Court in case of Sony Ericson India P.Ltd. (supra) and no further interference is called for at this stage. Further reliance placed by Ld.Sr.DR on BEPS guidelines and Action Plan 8-10 cannot be applied as the same is yet to be implemented. We, therefore, reject application of Bright Line Test, respectfully following decision of Hon'ble Delhi High Court in case of Sony Ericson India P Ltd. (supra).*

*8.1. On perusal of TP order, at page 6, it is observed that Ld.TPO made an effort to analyse whether AMP expenditure is an international transaction or not. It is very interesting to note that Ld.TPO observes that assessee has been licensed the brand "Adidas" by its domestic AE (Adidas India Pvt. Ltd). He also reproduces relevant extract from the agreement, wherein it is recorded that Adidas India Pvt. Limited is the exclusive owner of trademark "Adidas" and enjoys all proprietary rights related thereto. It is observed that relevant clauses reproduced in Transfer Pricing order is an extract from the trademark agreement dated 14/02/1997. Further in para 5.2 at page 7 of TPO order Ld.TPO records as under:*

*" 5.2. .... A closer examination of the facts of the case has revealed that assessee's case is in fact no different from other cases wherein the Indian entity licenses the brand directly from its overseas AE. In assessee's case, a domestic AE (Adidas India private limited) has been interposed merely as a planning device and with no economic substance. ....*

5.3. The assessee was asked to furnish the audited financial statement of its immediate holding company in India with Adidas India private limited. On perusal of the same, it is quite clear that the holding company is just a shell company that does nothing else apart from holding investment in the assessee. ....”

**8.1.1.** If we appreciate implication by Ld.TPO, then since holding company has been opined by Ld.TPO to be shell company, in same breath, assessee would also amount to be shell company being its holding company. It is observed that Ld.TPO loosely used phrase ‘lifting of corporate Veil’, without understanding attributes that needs to be established by way of cogent materials/evidences to prove, a benefit of revenue having accrued to assessee.

**8.1.2.** We don’t deny that there would be incidental benefit to foreign AE, being, Adidas-Saloman AG, which is ultimate parent of assessee. However, expenditure towards advertisement and marketing incurred by assessee in India is mainly for its own benefit to market products manufactured by it in India. Main purpose of incurring of such huge AMP expenses has largely benefited assessee in India, with an incidental benefit arising to foreign AE. Unless Ld.TPO can establish direct benefit accruing to foreign AE, it is very difficult to accept existence of international transaction, under present facts of the case. We rely upon decision of Hon’ble Delhi High Court in case of Sony Ericson Mobile Communication India Pvt.Ltd (supra) in support of aforestated observations.

**8.2.** Further it has been submitted by both sides that facts and circumstances in present appeal are no manner different with that of Maruti Suzuki Inida Ltd. Reported in 381 ITR 117; and Soney Ericson Mobile Communications (supra), wherein Hon'ble High Court has held that existence of international transaction must be established de hors the Bright Line Test before undertaking bench marking of AMP expenses. We are therefore inclined to follow view taken by this Hon'ble Delhi High Court in Sony Ericson Mobile Communications (supra), and delete adjustment made in respect of AMP expenses.

**8.3.** However, we appreciate the concern raised by Ld.Sr.DR that decision of Hon'ble Supreme Court will be binding upon assessee as well as revenue. We are therefore, inclined to set aside this issue to Ld.AO/TPO to pass fresh order considering decision of Hon'ble Supreme Court. Needless to say that proper opportunity shall be granted to assessee of being heard."

**23.2.** Respectfully following the same we set aside this issue to Ld. AO/TPO to pass fresh order considering decision of Hon'ble Supreme Court after giving proper opportunity to assessee.

**23.3. Accordingly this ground raised by revenue stands allowed for statistical purposes.**

**24. Ground No. 2** has been raised by revenue against deleting disallowance of Rs.15,70,657/- on account of interest expenditure.

**25.** Ld.Counsel submitted that during assessment year under consideration Assessing Officer disallowed interest of Rs.15,70,657/- under section 36 (1) (iii) of the Act. He submitted

that Ld. AO made addition in the hands of assessee on the ground that assessee granted loan to Associated Enterprises at 'nil' rate of interest from borrowed funds, on which, assessee paid interest. Ld. Counsel submitted that there was no loan that was given by assessee to its AE. Instead sum of Rs.2,08,31,000/-, was recoverable from AE as on 31/03/07. It has been submitted that this amount is coming as due since 2000-01 and no addition of this amount was made during A.Y. 2000-01 to 2003-04. Ld.Counsel submitted that for first time for A.Y. 2004-05 Ld.AO made a disallowance by treating it as paid for non business purpose.

**25.1.** Ld.Counsel in the written submissions placed reliance upon order dated 07/01/2011 by this Tribunal in assessee's own case in ITA No.1889/Del/2010 for A.Y. 2004-05, wherein the sole issue for consideration was regarding disallowance out of the interest payment made by assessee during relevant year.

**25.2.** Ld.CIT,DR placed reliance on orders of authorities below.

**26.** We have perused submissions advanced by both sides and perused records placed before us.

**27.** It is observed that identical issue had been decided in A.Y. 2004-05 (supra) as under:

*"8. We have heard both the parties and have carefully perused the orders of the authorities below. We have also gone through various documents and papers placed in the Paper Book filed by the assessee. We have also deliberated upon the position of law explained in this regard by both the parties.*

9. From the orders of the authorities below and materials on record, it is clear that no amount was actually paid by the assessee to its holding company. The amount remaining outstanding against the holding company is on account of advertisement and brand promotion expenses which have been incurred by the assessee but debited to the account of the holding company. It is also not in dispute that the assessee company is an hundred per cent subsidiary of its holding company. The holding company and the assessee company had entered into a Technical Assistance Agreement whereby the holding company was to provide exclusive, non-transferable, non-assignable right to manufacture, distribute and sell the licensed products in India, Nepal and Bhutan on payment of royalty @ 5% of the sales effective of the licensed products in the aforesaid territories. The assessee had incurred expenditure on advertisement and promotion of its brand name. The assessee had debited part of the expenditure on advertisement to its own profit and loss account also. In the assessment year 1997-98 the 7 advertisement expenditure incurred by the assessee to popularize the products was disallowed by the AO but ultimately found to be admissible by the Tribunal and the order of the Tribunal has been confirmed by the Hon'ble High Court. In that year, it was observed that merely because the assessee was paying royalty @ 5% to its holding company would not mean that the assessee could not incur the expenditure on advertisement to popularize the products dealt with by it in Indian market. No doubt, brand name of Adidas is already a well-known brand which belongs to the parent company of the assessee. However, to popularize the said product in India and to promote its sale in Indian territories, it became necessary to incur expenditure on advertising to propagate the aforesaid brand name. The benefit thereof has to necessarily accrue to the assessee as the main purpose of the advertisement was to augment the sales. The fact that the advertisement expenditure was incurred based on commercial practice and commercial expediency was accepted by the Tribunal. It is, therefore, clear that the advertisement expenditure

even if debited by the assessee to its own profit and loss account could have been allowed as admissible expenditure in the hands of the assessee within the meaning of sec. 37 of the Act as so allowed in the assessment year 1997-98. In the present assessment year under consideration the part of the advertisement expenditure was agreed to be borne by holding company. The assessee had incurred expenditure on advertisement and debited the same to the account of holding company. The act to incur expenditure on advertisement to promote the brand name is undoubtedly based on business interest and commercial expediency. Further, the assessee has been benefited by not paying the royalty @ 5% of the sales during the year under consideration which was required to be paid by the assessee as per Technical Assistance Agreement dated 14.02.1997 and therefore, the amount debited to the account of the holding company remained outstanding, otherwise the same would have been adjusted against the royalty payable, by the assessee company to the holding company. Further, no actual amount has been paid by the assessee to the holding company during the year under consideration. There was outstanding opening balance of Rs.1,87,36,555/- at the opening of the year, which has been reduced to Rs.1,81,06,555/- at the end of the year, which goes to show that no further amount has actually been given by the assessee to its holding company. In the course of hearing, it has been pointed out by the learned counsel for the assessee that the identical addition made by the Assessing Officer in the assessment year 2003-04 has been deleted by the CIT(A) vide order dated 22.10.2010 by applying the principle laid down by the Hon'ble Supreme Court in the case of S.A. Builders Ltd. Vs. CIT (2007) 288 ITR 19 (SC) and in that respect, the learned counsel for the assessee relied upon the aforesaid decision of the Hon'ble Supreme Court. In the case of S.A. Builders (supra), the Hon'ble Supreme Court has observed that the expression "for the purpose of business" includes expenditure voluntarily incurred for commercial expediency and it is immaterial if a third party also benefits thereby. The Hon'ble Supreme Court further observed that

*the expression "commercial expediency" is an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation but yet it is allowable as business expenditure if it was incurred on grounds of commercial expediency. In the present case, the expenditure incurred towards advertisement for and on behalf of holding company are undoubtedly on grounds of commercial expediency inasmuch as the assessee undoubtedly would be benefited by making advertisement of the brand name Adidas to augment and promote sale effected by the assessee in the notified territories.*

*10. In the light of the reasons given above, we therefore, hold that the CIT(A) was not justified in confirming the Assessing Officer's action in disallowing the sum of Rs.21,72,787/- out of the interest paid by the assessee during the year. The orders of the authorities below are therefore, reversed 10 and the ground raised by the assessee is allowed being decided in favour of the assessee. The Assessing Officer shall modify the assessment order accordingly."*

**27.1.** On perusal of assessment order dated 28/12/2010, it is observed that Ld.AO while making disallowance placed reliance on assessment order passed for A.Y. 2004-05, wherein identical disallowance was made.

**27.2.** Assessee has submitted that during year under consideration a sum of Rs.2,08,31,000/- was shown recoverable as opening balance as on 01/04/2006 from AE.

**27.3.** It is observed that Ld.AO blindly made addition without appreciating the fact that interest was not charged due to commercial expediency.

**27.4.** Respectfully applying ratio laid down by Hon'ble Supreme Court in case of S.A.Builders vs. CIT (supra) we do not find any infirmity in the view taken by Ld.CIT(A) and the same is upheld.

**Accordingly this ground raised by revenue stands allowed.**

**28.** **Ground No.3** is in respect of deleting Rs.3,64,952/- disallowance of extra depreciation on computer peripherals.

**28.1.** Both the sides admit to the fact that the issue now stands squarely covered by the decision of *Hon'ble Delhi High Court* in case of *CIT vs BSESE Yamuna Power Ltd* reported in 358 ITR 47.

In lieu of the above submissions, we are inclined to uphold the view of Ld. CIT (A).

**Accordingly this ground raised by revenue stands dismissed.**

**29.** In the result appeal filed by Revenue for A.Y. 2007-08 stands partly allowed for statistical purposes.

**30.** **Cross Objection No.85/Del/15(Assessee) AY 2007-08**

In the Cross Objection filed by assessee in support of only issue raised is in respect of AMP expenditure in support of view by Ld.CIT(A).

**31.** Both parties admit that facts and circumstances of this issue is similar to that of A.Ys considered hereinabove.

Respectfully following the same, we are of considered opinion that no AMP adjustment deserves to be made. However, keeping in view the request made by Ld.CIT, DR the issue is set aside to Ld.TPO to pass fresh order after considering decision of *Hon'ble Supreme Court*. Needless to say that proper opportunity must be given to assessee.

**32. In the result the Cross Objection filed by assessee stands partly allowed for statistical purposes.**

**33. ITA No.29/Del/2014 A.Y. 2008-09 (Assessee's appeal)**

The only issue raised by assessee in this appeal is in respect of adjustment on account of AMP expenses amounting to Rs.8,31,93,238/-. Ld.Counsel has filed their submissions dated 19.3.2019 in respect of this issue being ground nos. 2 to 4.

**33.1.** Both parties admit that facts and circumstances of this issue is similar to that of A.Ys considered hereinabove.

**34.** Respectfully following the same, we are of considered opinion that no AMP adjustment deserves to be made. However, keeping in view the request made by Ld.CIT, DR the issue is set aside to Ld.TPO to pass fresh order after considering decision of *Hon'ble Supreme Court*. Needless to say that proper opportunity must be given to assessee.

**35.** As regards ground nos. 5-13 is concerned, separate arguments have not been raised by both sides. Accordingly the same stand dismissed.

**36.** In the result appeal filed by assessee for AY 2008-09 stands partly allowed for statistical purposes.

37. In the result, appeal filed by assessee for A.Y. 2006-07 stands allowed for statistical purposes, appeal filed by Revenue for A.Y. 2007-08 stands partly allowed for statistical purposes, Cross Objection filed by assessee for A.Y. 2007-08 stands allowed for statistical purposes and appeal filed by assessee for A.Y. 2008-09 stands partly allowed for statistical purposes.

Order pronounced in the open court on 27<sup>th</sup> May, 2019.

Sd/-

( G.D.AGRAWAL)  
VICE PRESIDENT

Sd/-

(BEENA A PILLAI)  
JUDICIAL MEMBER

Dt. 27<sup>th</sup> May, 2019

*\*GMV*

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

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By Order,

**ASSISTANT REGISTRAR**  
ITAT Delhi Benches

S.No.	Details	Date
1	Draft dictated on Dragon	25/03/19 01/05/19 03/05/19
2	Draft placed before author	28/03/19 01/05/19 03/05/19 14/05/19 20/05/19
3	Draft proposed & placed before the Second Member	27/05/19
4	Draft discussed/approved by Second Member	27/05/19
5	Approved Draft comes to the Sr. PS/PS	27/05/19
6	Kept for pronouncement	27/05/19
7.	Order uploaded on	
8	File sent to Bench Clerk	
9	Date on which the file goes to Head Clerk	
10	Date on which file goes to A.R.	
11	Date of Dispatch of order	