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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.1051/Del./2016
(Assessment Year : 2011-12)

DCIT, Circle 17 (1), New Delhi.	vs.	M/s. Moet Hennessy (I) Pvt. Ltd., 1903, Tower 2, 19th Floor, India Bulls Financial Centre, Senapati Bapat Road, Mumbai – 400 013.

(PAN : AACCM4079L)

ITA No.1070/Del./2016
(Assessment Year : 2011-12)

M/s. Moet Hennessy (I) Pvt. Ltd., 1903, Tower 2, 19th Floor, India Bulls Financial Centre, Senapati Bapat Road, Mumbai – 400 013.	vs.	DCIT, Circle 17 (1), New Delhi.

(PAN : AACCM4079L)

(APPELLANT) (RESPONDENT)

ASSESSEE BY : Shri Vikas Srivastava, Advocate
Shri Sumit Mangal, Advocate
Shri Saksham Singhal, CA
REVENUE BY : Shri Subha Kant Sahu, Senior DR

Date of Hearing : 07.11.2019
Date of Order : 13.12.2019

<u>O R D E R</u>

<u>PER KULDIP SINGH, JUDICIAL MEMBER</u>

Present cross appeals filed by the assessee as well as by the Revenue are being disposed off by way of composite order to avoid repetition of discussion.

2. The Appellant, M/s. Moet Hennessy (I) Pvt. Ltd. (hereinafter referred to as 'the taxpayer') by filing the present appeal sought to set aside the impugned order dated 30.12.2015 passed by the AO in consonance with the orders passed by the ld. DRP/TPO under section 143 (3) read with section 144C of the Act qua the assessment year 2011-12 on the grounds inter alia that :-

> ***"1. The order dated December 30, 2015 passed by the Learned Assessing Officer ("Ld. AO") under Section 143(3) read with Section 144C of the Income Tax Act, 1961 ("the Act"), pursuant to the directions of the Hon'ble Dispute Resolution Panel ("Hon'ble DRP") dated November 16, 2015, is bad in law and on the facts and circumstances of the case.***
>
> ***2. The Ld. AO and the Hon'ble DRP have erred in disallowing advertisement expenses of Rs.6,64,24,161 incurred by the appellant, under Section 37(1) of the Act.***
>
> ***3. The Ld. AO has committed certain errors while computing the tax demand of Rs.5,08,83,820 against the appellant, and in the computation of interest under Section 234B and Section 234C of the Act."***

2. The Appellant, DCIT, Circle 17 (1), New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the impugned order dated 30.12.2015 passed by the AO in consonance with the orders passed by the ld. DRP/TPO under

section 143 (3) read with section 144C of the Act qua the assessment year 2011-12 on the grounds inter alia that :-

> ***"1. Whether in the facts and circumstances of the case and in law the Ld DRP was right in rejecting comparables accepted by TPO of 'IFB Agro Industry Ltd.' ignoring the fact that it is a good comparable being a part of wine and spirit industry which functionally matches with the assessee's business.***
>
> ***2. Whether in the facts and circumstances of the case and in law the Ld. DRP was right in directing to include Radico Khaitan Ltd. ignoring the fact that it cannot be considered as a good comparable being not functionally identical to that of the assessee's business.***
>
> ***3. Whether in the facts and circumstances of the case and in law the Ld. DRP was right in directing to include SKOL Breweries Ltd. ignoring the fact that it cannot be considered as a good comparable being not functionally identical to that of the assessee's business.***
>
> ***4. Whether in the facts and circumstances of the case and in law the Ld. DRP was right in directing to include Tilaknagar Industries Ltd. ignoring the fact that it can not be considered as a good comparable in absence of corresponding financial data.***
>
> ***5. Whether in the facts and circumstances of the case and in law the Ld. DRP was right in directing to include United Braveries Ltd. ignoring the fact that it can not be considered as a good comparable in absence of corresponding financial data.***
>
> ***6. Whether in the facts and circumstances of the case and in law the Ld. DRP was right in amending the comparables in absence of any concrete or specific reasons given, by only stating that these amended com parables are in the same line of business.***
>
> ***7. Whether in the facts and circumstances of the case and in law the Ld. DRP was right in directing to verify the OP/ sales and intensity of AMP function in absence of any concrete reason and before considering the final set of five comparables selected by DRP.***
>
> ***8. Whether in the facts and circumstances of the case and in law the Ld. DRP was right in directing to exclude routing selling and distribution expenses from the AMP expenses."***

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : M/s. Moet Hennessy (I) Pvt. Ltd., the taxpayer is a wholly owned subsidiary of Moet Hennessy International (MHI), which is a wholly owned subsidiary of LVMH Group. The taxpayer is into the business of importing of wines and spirits from its overseas Associated Enterprises (AEs), and is into the distribution of the same in the Indian market having exclusive distribution rights. During the year under assessment, the taxpayer entered into international transactions with its AEs as under:-

Sr. No.	Nature of transaction	Method used by assessee		Amount	MHIPL's Operating Margin/ Sales
		Method	PLI		
1	Import of finished goods	TNMM	OP/Sales	30,04,27,894	12.77%
2	Sale of finished goods			1,47,87,279	
3	Reimbursement of expenses (paid)	CUP		1,04,40,381	-
4	Recovery of expenses (Received)	CUP		26,19,766	
5	Purchases of assets			3,50,419	
	Total			32,86,25,739	

4, TPO noticed that the taxpayer has incurred huge Advertising, Marketing and Promotion (AMP) expenditure with objective of expanding the reach of the AE brand in India as AE is the legal owner of the brand. TPO also noticed that the AE has thereby created marketing intangibles in favour of the AE.

5. TPO in the backdrop of aforesaid facts and circumstances proceeded to issue a show-cause notice proposing to determine the arm's length price of international transaction of promoting the brand name by the taxpayer by using the Bright Line Test (BLT). TPO compared the AMP expenditure of the taxpayer vis-à-vis AMP expenditure of the comparable companies engaged in the distribution business using AMP to sales ratio in order to benchmark the said transaction.

6. TPO in order to benchmark the international transactions qua AMP expenditure incurred by the taxpayer selected six comparables with average of 3.45% as against average of taxpayer at 11.35%. TPO also noticed that when the taxpayer even does not own the brands, its AMP expenditure is much more than the comparables for similar activities. TPO also added mark-up of 15% of AMP spent and determine the arm's length value of EMP expenditure at Rs.7,10,04,420/-.

7. Pursuant to the TP order, the AO proposed the TP adjustment of Rs.7,10,04,420/- on account of AMP expenditure to which the taxpayer filed objections with the DRP. Ld. DRP allowed the objections of the taxpayer by considering that the taxpayer has better financial performance as compared to

comparables. However, ld. DRP called upon the taxpayer to show cause as to why the AMP expenditure of Rs.6,64,24,161/- be not disallowed under section 37 (1) of the Income-tax Act, 1961 (for short 'the Act') being prohibited by law. By disagreeing with the details furnished by the taxpayer before the ld. DRP regarding allowability of AMP expenditure u/s 37 (1) of the Act, ld. DRP disallowed the same u/s 37(1) of the Act, however with a rider that AO shall allow the taxpayer an opportunity to file its submissions. AO confirmed the disallowance of Rs.6,64,24,161/-. Feeling aggrieved, the taxpayer as well as the Revenue has come up before the Tribunal by way of filing the present appeals.

8. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

GROUNDS NO.1 & 2 OF
TAXPAYER'S APPEAL (ITA NO.1070/DEL/2016)

9. Undisputedly, the TPO has determined the arm's length value of international transactions on account of AMP expenditure by the taxpayer by applying BLT which has otherwise been discarded as a method by the Hon'ble Courts; that ld. DRP however discarded the BLT. It is also not in dispute that in

taxpayer's own case in AYs 2009-10 & 2010-11, identical issue qua AMP expenditure incurred by the taxpayer has been decided by the coordinate Bench of the Tribunal vide order dated 23.08.2018 in ITA No.1906/Del/2014 in AY 2009-10 and order dated 09.04.2019 in ITA No.85/Del/2015 in AY 2010-11. In taxpayer's own case in AYs 2012-13 & 2013-14, identical issue qua AMP expenditure incurred by the taxpayer was also decided in favour of the taxpayer vide order dated 24.04.2019 in ITA Nos.5003/Del/2017 & 5004/Del/2017. It is also not in dispute that though the ld. DRP has discarded the BLT in determining the AMP expenses incurred by the taxpayer qua AMP expenditure but proceeded to confirm the addition entirely on the new ground that these expenses are to be disallowed u/s 37 (1) of the Act.

10. In the backdrop of the aforesaid facts and circumstances of the case, now the sole question arises for determination in this case is :-

> ***"as to whether ld. DRP have erred in disallowing the AMP expenses of Rs.6,64,24,161/- incurred by the taxpayer u/s 37(1) of the Act as it has no power to take up the new issue which has never been agitated/decided by the ld. TPO/AO?"***

11. The ld. AR for the taxpayer further contended that the ld. DRP was not empowered to take up new issue for adjudication which has not been taken up by the AO in draft assessment order

nor any objection has been filed by the taxpayer and relied upon section 144C(8) of the Act. For facility of reference, section 144C(8) is extracted as under :-

> ***"144C. (1) The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on or after the 1st day of October, 2009, any variation in the income or loss returned which is prejudicial to the interest of such assessee.***
> ***…..***
> ***(5) The Dispute Resolution Panel shall, in a case where any objection is received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.***
> ***…..***
> ***(8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order.***
>
> ***Explanation.—For the removal of doubts, it is hereby declared that the power of the Dispute Resolution Panel to enhance the variation shall include and shall be deemed always to have included the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee."***

12. Bare perusal of the aforesaid section makes it clear that the ld. DRP **may confirm, reduce or enhance the variations proposed in the draft order**. Meaning thereby, DRP is not

empowered to set aside any proposed variation or issue any direction under sub-section (5) for further enquiry for passing of the assessment order. So, in the instant case, the ld. DRP has indirectly remanded the case back to the AO by observing that these (AMP) expenses are to be disallowed u/s 37(1) of the Act and directed the AO to allow the taxpayer an opportunity to file its submissions and thereafter to pass final assessment order, which certainly amounts to remand of the case as there was no such observations made by TPO or AO, as the case may be.

13. Moreover, at the same time, AO is not empowered to make fresh determination while passing final assessment order which was not proposed by him in his draft assessment order. So, on these grounds also, disallowance made by the AO u/s 37(1) is not sustainable.

14. Coordinate Bench of the Tribunal while deciding the identical issue in case of ***PGS Geophysical as (Successor of PGS Exploration (Norway) AS) vs. Addl. Director of Income-tax (2014) 50 taxmann.com 392 (Delhi-Trib.)*** held that, *"DRP has no authority either to direct the AO/TPO to make further enquiry and to decide the matter and at the best, the DRP can call for the remand report from the Income-tax authority."*

15. Similarly, coordinate Bench of the Tribunal in ***PGS Geophysical*** (supra) observed that, *"in terms of section 144C (8), DRP does not have power to set aside any proposed variation or issue for further enquiry to the AO*".

16. So, we are of the considered view that disallowance made by the AO u/s 37(1) of the Act pursuant to the directions issued by the DRP is not sustainable in the eyes of law. So, question framed is answered in affirmative.

17. Even on merit, it is the case of the taxpayer that AMP expenses having been incurred by the taxpayer in order to boost its sale/business in India were divided into two categories :

(i) selling and distribution of expenses amounting to Rs.3,55,02,256 which includes expenses in the nature of distribution of Point of sales Material (POSM), free samples, gifts to dealers and retails, trade discounts, custom duty charged on POSM, warehousing charges, travelling and training of market staff etc. duly detailed at page 220 of the paper book which supplied to the ld. DRP vide order dated 03.11.2015; and

(ii) marking and promotion expenses amounting to Rs.3,09,21,635/-, which includes expenses in the

nature of displays at retail outlets, salary of marketing staff, market visit expenses of the marketing staff, expenses incurred on events, incentives paid, visibility charges, etc. also duly detailed at page 220 of the paper book furnished before the ld. DRP vide letter dated 03.11.2015.

18. Challenging the impugned order passed by the ld. DRP/TPO, ld. AR for the taxpayer further contended that AMP expenses are revenue in nature having been incurred for commercial expediency. In AY 2012-13 & 2013-14 in taxpayer's own case, the coordinate Bench of the Tribunal has returned categoric findings that AMP expenditure has been incurred by the taxpayer just to enhance its sales and profits, and cannot be treated as capital in nature by returning following findings :-

> ***"13. In the backdrop of the aforesaid facts and circumstances of the case, arguments addressed by ld. ARs of the parties of the appeals and orders passed by the Revenue authorities, the sole question arises for determination in this case is :-***
>
> > ***"as to whether advertisement and sales promotion expenses incurred by the assessee being an importer and distributor of wine and spirits in India in the forms of gifts, display at retail outlets, discount schemes, custom duty charged on POSM, etc. are revenue in nature as contended by the assessee?"***
>
> ***14. Identical issue has been decided by the Hon'ble High Court of Delhi in case of Monto Motors Ltd. (supra) by returning following findings :-***

> ***"4. In view of the factual matrix which is available on record and as the Assessing Officer has not dealt with the factual matrix in detail we are not inclined to admit the present appeal. The advertisement expenses as per the findings of both the CIT (Appeals) and the Tribunal were not of capital nature. Advertisement expenses when incurred to increase sales of products are usually treated as a revenue expenditure, since the memory of purchasers or customers is short. Advertisement are issued from time to time and the expenditure is incurred periodically, so that the customers remain attracted and do not forget the product and its qualities. The advertisements published/displayed may not be of relevance or significance after lapse of time in a highly competitive market, wherein the products of different companies compete and are available in abundance. Advertisements and sales promotion are conducted to increase sale and their impact is limited and felt for a short duration. No permanent character or advantage is achieved and is palpable, unless special or specific factors are brought on record. Expenses for advertising consumer products generally are a part of the process of profit earning and not in the nature of capital outlay. The expenses in the present case were not incurred once and for all, but were a periodical expenses which had to be incurred continuously in view of the nature of the business. It was an on-going expense. Given the factual matrix, it is difficult to hold that the expenses were incurred for setting the profit earning machinery in motion or not for earning profits."***

15. Similarly, again Hon'ble High Court of Delhi in case of Jubliant Foodworks (P.) Ltd. (supra) decided the identical issue in favour of the assessee by following the decision of Monto Motors Ltd. (supra).

16. When we examine the facts and circumstances of the case in the light of the ratio of Monto Motors Ltd. (supra), it is proved on record that the assessee has incurred periodical expenses on account of advertisement and sales promotion which is to increase the sales of products in order to remind the customer from time to time so that they do not forget the products and its qualities. Hon'ble High Court has held that when the advertisement expenses are incurred to increase the sale of the products, the same are treated as revenue expenditure because the memory of purchasers or customers is short-lived. So, in the instant case, the Revenue has not brought on record any material to prove that advertisement and sales promotion expenses have created long lasting benefits to the assessee, because

advertisement and sales promotion are generally made in order to increase the sales and their impact is limited and felt for a short duration by the customers.

17. Hon'ble Supreme Court in Empire Jute Co. Ltd. (1`980) 3 taxman 69 (SC) held that, "no test is paramount or conclusive to distinguish between capital and revenue expenditure", however held that :-

> ***"When an expenditure is made not only once and for all, but with a view to bringing into existence an asset or an advantage (or the enduring benefit of a trade, there is very good reason (in the absence of special circumstances leading to an opposite conclusion) (or treating such an expenditure as properly attributable not to revenue but to capital.***
>
> ***This test, as the parenthetical clause shows, must yield where there are special circumstances leading to a contrary conclusion and, as pointed out by Lord Radcliffe in CIT v. Nchanga Consolidated Copper Mines Ltd. [1965158 ITR 241 (PC), it would be misleading to suppose that, in all cases, securing a benefit for the business would be prima facie capital expenditure "so long as the benefit is not so transitory as to have no endurance at all". There may be cases where expenditure, even if incurred for obtaining advantage of enduring benefit, may, nonetheless, be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test. What is material to consider is the nature of the advantage in a. commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched the expenditure would be on revenue account even though the advantage may endure for an indefinite future. The test of enduring benefit is, therefore, not a certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case."***

18. Hon'ble Gujarat High Court in case cited as DCIT vs. Core Healthcare Ltd. (2009) 308 ITR 263 (Gujarat) has held that, "even brand promotion expenses are revenue in nature,

> ***hence deductible u/s 37 (1) of the Act because such expenditure do not create any intangible interest and merely because of the fact that expenditure may bring some benefit of enduring nature to the assessee, that factor alone is not sufficient to treat the expenditure as capital expenditure. So, the advertisement expenses even to create the brand image is allowable as a revenue expenditure."***
>
> ***19. So, in this case, assessee has undisputedly incurred advertisement and sales promotion expenses periodically, and not at once just to refresh the product and quality to be sold in the memory of its customers. So, it cannot be held to be in the nature of enduring benefit for a trader.***
>
> ***20. So, we are of the considered view that following the ratio laid down by Hon'ble Supreme Court and Hon'ble High Courts, discussed in the preceding paras, advertisement and sales promotion expenses have been incurred by the assessee just to enhance its sales and profit and cannot be treated as capital in nature. Consequently, advertisement and sales promotion expenses debited by the assessee to the tune of Rs.12,33,64,847/- & Rs.14,69,15,576/- for AYs 2012-13 & 2013-14 are ordered to be treated as revenue in nature and addition made/confirmed by the ld. AO/CIT (A) on this score is ordered to be deleted. Hence, ground no.2 of ITA No.5003/Del/2014 (AY 2012-13) and ITA No.5004/Del/2014 (AY 2013-14) is determined in favour of the assessee".***

19. So, following the aforesaid decision rendered by the coordinate Bench of the Tribunal, we are of the considered view that AMP expenditure cannot be considered as capital expenditure by any stretch of imagination, hence the same are revenue in nature having been incurred for commercial expediency.

20. The next contention raised by the taxpayer is that the expenditure incurred by the taxpayer is not prohibited by law. When we examine the order passed by the ld. DRP it has come on record that ld. DRP/AO have observed that in view of the Cable

Telephone Network Rules and Guidelines in the form of ASCI Code laid down by the Advertising Standards Council of India (ASCI), the AMP expenses incurred by a liquor distributor on advertisement and sales promotion expenses are prohibited by law, hence not allowable u/s 37 (1) of the Act.

21. Perusal of the order passed by the ld. DRP/AO goes to prove that the DRP/AO has taken general view and has not brought the case of the taxpayer under any specific rules & regulations of Cable TV Network Rules/ ASCI nor they have analyzed the nature of expenses. The ld. AR for the taxpayer drew our attention to section 22(2)(c) of the Cable TV Act which lays down that if the products are advertised on national television to whom these rules apply, only then it can be treated in violation of the said rules. There is no finding of facts by the AO/DRP as to how the Cable TV Act has been violated. Furthermore, when we examine ASCI code it is not a profit company u/s 25 of the Companies Act working as a self-regulatory body for protection of the interest of consumers and is not empowered to exercise any legislative powers under central or state statutes, so the violation of ASCI code, if any, is not prohibited by law. Moreover, AO/DRP have not

brought on record to show as to how the taxpayer has violated ASCI code, rather proceeded on the basis of general observations.

22. Furthermore, there is not an iota of evidence on file to prove that the taxpayer has incurred expenditure to advertise its products on television or use minors to conduct its marketing activities and thus, the question of violating Cable Rules or ASCI Code does not arise, as is evident from the detail of expenditure given by the taxpayer at page 220 of the paper book.

23. Moreover, it is undisputed fact on record that the taxpayer has never availed of the services of cable networking and ASCI for incurring AMP expenses and this fact has been brought to the notice of ld. DRP vide letter dated 16.11.2015, available at pages 243 to 248 of the paper book. But the ld. DRP instead of returning findings on the facts decided the issue on the basis of general observations by taking shelter in the Cable TV network and ASCI code which is not sustainable in the eyes of law.

24. Furthermore, in the subsequent years i.e. AYs 2012-13, 2013-14, 2014-15, 2015-16 & 2016-17, AO took diametrically opposite stand qua AMP expenses by disallowing the same u/s 37 of the Act, which has been treated as revenue expenses by the

Tribunal in ***taxpayer's own case in AY 2012-13 & 2013-14*** (supra).

25. Furthermore, when undisputedly identical AMP expenses have been incurred by the taxpayer since 2009-10 and has been allowed by the Tribunal in AYs 2009-10 & 2010-11, converse stand taken by the taxpayer in AY 2011-12 is not sustainable being hit by rule of consistency as has been held by ***Hon'ble Supreme Court in Radhasoami Satsang vs. CIT (1992) 193 ITR 321 (SC) and Municipal Corporation of City of Thane vs. Vidyut Mettalics Ltd. (2007) 8 SCC 688***.

26. In view of what has been discussed above, disallowance made by the AO/DRP on account of AMP expenses to the tune of Rs.6,64,24,161/- is not sustainable, hence ordered to be deleted. So, grounds no.1 & 2 of taxpayer's appeal are determined in favour of the taxpayer.

GROUND NO.3 OF
TAXPAYER'S APPEAL (ITA NO.1070/DEL/2016)

27. The ld. AR for the taxpayer contended that AO has committed error in calculating the interest u/s 234B and 234C of the Act to the tune of Rs.1,94,50,024/- and Rs.9,72,092/- respectively and has come up with the calculation that correct

interest u/s 234B and 234C is Rs.1,68,37,706/- and Rs.5,21,961/- respectively. We are of the considered view that this is a calculation error on the part of the AO and he is directed to correct the same under law by giving credit of TDS etc. Consequently, ground no.3 is determined in favour of the taxpayer.

REVENUE'S APPEAL (ITA NO.1051/DEL/2016)

28. Revenue by filing the cross appeal challenged the order passed by the ld. DRP discarding the Bright Line Test (BLT) applied by the TPO and consequently, rejecting the comparables accepted by the TPO.

29. Undisputedly, there is umpteen number of judgments passed by Hon'ble jurisdictional High Court whereby BLT has held not to be a method having statutory force to determine the AMP expenses. Moreover, identical issue has been decided by the coordinate Bench of the Tribunal in taxpayer's own case vide ***order dated 23.08.2018 in ITA No.1906/Del/2014 in AY 2009-10*** by returning following findings :-

> ***"10. In the present case, no new facts have emerged and all the facts brought to record, during the course of the assessment proceedings, do not indicate legally sustainable basis for coming to the conclusion that there was an internal transaction in respect of AMP expenses incurred by the assessee. We are, therefore, of the considered view that the plea of the assessee, on the peculiar facts of this case, does indeed deserve to be upheld that there is no material on record to hold that there was an***

> ***international transactions, in terms of the provisions of Section 92B, nor any material has been brought on record to even remotely suggest so and, therefore, that there is no good reason to remit the matter to the assessment stage for building a case afresh. Respectfully following the binding judicial precedents, we delete the impugned ALP adjustment which was made solely on the basis of bright line test. The plea of the learned counsel was indeed well taken and merits acceptance. The impugned ALP adjustment of Rs 6,64,70,841, accordingly, stands deleted."***

30. So, following the order passed by the coordinate Bench of the Tribunal in taxpayer's own case for AYs 2009-10 & 2010-11 and following the judicial precedents on the issue, we are of the considered view that the ld. DRP has rightly deleted the ALP adjustment merely on the basis of BLT. The ld. DRP has not brought on record any law and facts contrary to the order passed by the Tribunal in taxpayer's own case for AYs 2009-10 & 2010-11 (supra). Consequently, appeal filed by the Revenue is not sustainable, hence dismissed.

31. Resultantly, the appeal filed by the taxpayer is allowed and the appeal filed by the Revenue is dismissed.

Order pronounced in open court on this 13th day of December, 2019.

Sd/-	**sd/-**
(R.K. PANDA)	**(KULDIP SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated the 13th day of December, 2019
TS

Copy forwarded to:

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

AR, ITAT
NEW DELHI.