

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

IT(TP)A No.1697/Bang/2017
Assessment year: 2013-14

Transitions Optical Distribution Pvt. Ltd., [erstwhile Transitions Optical India Pvt. Ltd.], 71/54, S.C. Road, Brigade Plaza, 5 th Floor, Unit No.5-502, Anand Rao Circle, Gandhinagar, Bangalore – 560 009. PAN: AABCT 2529D	Vs.	The Deputy Commissioner of Income Tax, Circle 7(1)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ramakrishnan B., AR
Respondent by	:	Shri Manjunath Karkihalli, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	09.02.2022
Date of Pronouncement	:	09.02.2022

ORDER

Per Chandra Poojari, Accountant Member

This appeal is by the assessee company directed against the final assessment order dated 13.6.2017 passed by the Assessing Officer for the assessment year 2013-14.

2. Though various grounds of appeal are raised by the assessee in its appeal, however, the entire main issue in this appeal is with regard to Advertisement, Marketing & Promotion (AMP) Expenses.

3. The assessee company is a subsidiary of Transitions Optical Holding B.V, Netherlands and functions as a distributor of Transitions Groups' products in India. It is engaged in the business of trading of plastic photo chromic spectacle lenses wherein Transitions India imports products from Transitions group companies and sells in the Indian market.

4. The assessee for the purposes of its distribution activity purchases finished goods from Transitions Group companies and sells in the Indian market. Based on the functions, assets and risks ('FAR') analysis undertaken, it performed procurement, supervision, training, inventory, advertising and logistics functions and assumed market, price, credit, product liability, inventory and foreign exchange fluctuation risks. Based on the FAR analysis, the assessee is characterized as a full-fledged distributor.

5. The assessee as an independent distributor, is responsible for marketing and promotion of the products and development of market share in India. It is responsible for the formulation of strategies, the types of customer incentives, selecting the media mix and advertisement contents. The activities undertaken also include identifying the customers, obtaining sales orders, entering into sales contracts, invoicing customers and is also responsible for collection of payments from customers.

6. During AY 2013-14, the assessee earned an Operating Profit Margin ('OPM') of 23.43% whereas the three year weighted average mean OPM earned by broadly comparable independent companies is 4.66%. Based thereon the assessee's international transactions related to import of finished goods were concluded to be at arm's length.

7. The Ld. TPO compared the 'AMP' expenses to sales ratio of the assessee against the comparable companies' AMP expenses to sales ratio

using the Bright Line Test ('BLT') Method. Based on such comparison, the TPO held that the assessee's higher AMP expenses benefitted the AE as the 'Transitions' brand is owned by the AE. The TPO proceeded to determine the arm's length price (ALP) of the alleged excess AMP expenses and added a markup of 11.27% to such 'excess AMP expenses'. The summary of the adjustment computation is tabulated below:-

Table 1: Computation of AMP Adjustment

Reference	Particulars	Amount (in INR Crores)
A	AMP expense of the Appellant	10.42%
B	AMP expense of the comparables	2.05%
C = A-B	Excess AMP expense (in %)	8.37%
D	Gross Sales	58.38
E = DXB	Expected AMP expense	1.19
F	Actual AMP expense	6.08
G = F-E	Difference to be adjusted	4.89
H = G*11.27%	Add: Mark-up @ 11.27%	0.55
I = G+H	Total AMP adjustment	5.44

8. Against this, the assessee is in appeal before us on this count.

9. At the time of hearing, both the parties agreed that similar issue came up for consideration before this Tribunal in assessee's own case for the AY 2012-13 in IT(TP)A No.2208/Bang/2016 and vide order dated 22.11.2017 the Tribunal held as follows:-

“19.

In the present case also, the appellant had not furnished TP study giving FAR analysis of the functions of advertising, marketing

and promotions undertaken by the appellant. Even the TPO had not made any detailed analysis of these functions. In that scenario, there would be a need for detailed examination of the agreement between the appellant and its AE in order to ascertain if any part of advertising, marketing and promotions expenditure is for the purpose of creating or promoting marketing intangibles of its AE of the appellant. It is only after international transaction involving the appellant and its AE in relation to advertising, marketing and promotions expenditure is shown to exist then only the further question of determining ALP of international transaction arises. Therefore, this matter requires remand to the AO/TPO for fresh determination of existence of international transaction between appellant and its AE involving advertising, marketing and promotions expenses and further question of determination of ALP. Accordingly, we remand the matter back to the AO/TPO for *de novo* adjudication of the issue.”

10. Being so, in view of the above order of the Tribunal in assessee's own case for the AY 2012-13 and taking a consistent view, we remit this issue to the AO/TPO with similar directions.

11. The appeal of the assessee is partly allowed for statistical purposes.

Pronounced in the open court on this 9th day of February, 2022.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 9th February, 2022.

/Desai S Murthy/

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.