

**IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI KULDIP SINGH, JM

**ITA Nos. 3890 & 3889/Mum/2017**

(Assessment Years 2011-12 & 2012-13)

DCIT

Circle 14(3)(1)  
455 Aaykar Bhavan,  
4<sup>th</sup> Floor,  
M.K. Marg,  
Mumbai-400 020

Vs.

Komli Wedia India P. Ltd.  
Crystal Plaza, 158, rdkalina  
Santacruz (E),  
Mumbai-400 098

**(Appellant)**

**(Respondent)**

**PAN No. AADCK 5576 H**

**Assessee by** : None

**Revenue by** : Shri Samruddhi D Hande, DR

**Date of hearing:** 28.07.2022

**Date of pronouncement :** 28.07.2022

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. These are the two appeals filed by the learned Assessing Officer in case of Komli India Pvt. Ltd for A.Ys. 2011-12 and 2012-13 on identical issue against the order passed by the learned Commissioner of income-tax (Appeal)-56, Mumbai [the learned CIT(A)] dated 15<sup>th</sup> February, 2017 for both the years.
02. The learned Assessing Officer has raised following grounds of appeal for A.Y. 2011-12:

*"1. On the facts and in the circumstances of the case and in law, the Ld.CIT (A) erred in holding that the*

*Resale Price Method (RPM) was the most appropriate method for determining the arm's length price of the assessee's international transaction in respect of purchase and sale of online advertisement space ignoring the fact and the legal principle that as per Rule 10B(1)(b)(i), RPM can be used for determining the arm's length price of the assessee's international transactions in respect of only purchases from AE whereas the assessee has sale transaction also with its AE.*

*2. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in holding that the Resale Price Method (RPM) was the most appropriate method for determining the arm's length price of the assessee's international transaction in respect of purchase and sale of online advertisement space ignoring the fact that the assessee was providing value added services; that the assessee was helping in creating intangibles like brand value of AE by incurring advertisement and publicity expenses; that services rendered by comparable companies chosen by the assessee are not similar to that of the assessee.*

*3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the assessee does not provide value added services without giving any reason for such finding.*

*4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the assessee incurred advertisement, publicity and*

*business development expenses in order to increase its valuation and are not at all related to function pertaining to purchase and sale of online media transaction undertaken by the assessee with its AE ignoring the fact that by incurring such expenses, the assessee was helping in creating AE's intangibles like brand value.*

*5. The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal.*

*6. The appellant prays that the order of CIT(A) on the above ground be set-aside and that of the assessing officer be restored.”*

03. The fact shows that assessee is a company engaged in the business of resale of online advertisement space. It filed its return of income on 21<sup>st</sup> November, 2011 at a loss of Rs. 11,25,89,061/-. The case of the assessee was selected for scrutiny. As assessee has entered into international transaction, the matter was referred to Dy. Commissioner of Income Tax, Transfer Pricing Officer 1(3)(1), Mumbai (the learned Assessing Officer) for examination of the arm's length price of same. The learned Transfer Pricing Officer made an adjustment to the arm's length price of international transaction of purchase and sale of online advertisement space by Rs. 77,18,471/-. Fact shows that the assessee has entered into the transaction with its associate enterprises in US for purchase and sale of online advertisement space. Assessee adopted the resale price

method as the most appropriate method taking the profit level indicator of GP ratio and itself as tested party identified four different comparables. The margin of the comparables was determined at arithmetic mean of 14.73% and margin of the assessee was computed at 18% and submitted that the transaction is at arm's length price.

04. For the justification of Resale Price Method (RPM) as most appropriate method, assessee submitted that it performs only distribution function and does not add any significant value to the products. It does not own any intangibles.
05. The learned Transfer Pricing Officer rejected the RPM as the most appropriate method for the reason that according to the learned Transfer Pricing Officer by incurring huge employee cost assessee is providing value added services and further it has also incurred advertisement, business development expenditures. Therefore, he adopted TNMM as the most appropriate method. The learned Transfer Pricing Officer proposed an adjustment of Rs. 77,18,471/-. Certain other disallowance were also made by the learned Assessing Officer and after incorporating the above adjustments, assessment order was passed under Section 143(3) read with section 144C(13) of the Act on 5<sup>th</sup> May, 2015 determining the total loss of the assessee at Rs. 10,42,15,730/-.
06. Assessee preferred the appeal before the learned CIT(A), wherein he directed the learned Transfer Pricing Officer to adopt resale price method as the most appropriate



method. The total addition was deleted. Therefore, the learned Assessing Officer aggrieved and preferred this appeal.

07. The learned Departmental Representative vehemently supported the order of the learned Transfer Pricing Officer and submitted that more than distribution functions; the assessee is providing value added services in its international transactions. Therefore, resale price method cannot be taken as most appropriate method. She submitted that in such circumstances only Transactional Net Margin Method should be adopted. Therefore, she submitted that the order of the learned CIT(A) suffers from infirmity.
08. Despite notice to the assessee, none appeared. This is the fate of earlier notices also. In view of this, appeal is decided in absence of the assessee as per information available on record and on the merits of its facts.
09. We have carefully considered the rival contentions of the learned Departmental Representative and perused the orders of the lower authorities. The assessee is primarily in the business of buying and selling of online advertisement space and act as a distributor. The Function, Assets and Risk ("FAR") analysis placed before the lower authorities also show that assessee is acting as a distributor. Therefore, resale price method generally should have been adopted as the most appropriate method. The learned Transfer Pricing Officer because of the level of expenses incurred by assessee came to

conclusion that assessee is providing value added services however, no such services were identified by the learned Transfer Pricing Officer. The learned CIT(A) following the decision of Hon'ble Bombay High Court in case of CIT vs. L'Oreal India Pvt. Ltd. in ITA No. 1046 of 2012, confirmed that in case of assessee, resale price method is the most appropriate method for benchmarking of international transaction. A categorical finding was given that the advertisement publicity and business development expenses are not at all related to the distributor function of purchase and sale of online media transaction. The finding was also given that assessee is a startup company and is expanding its operations in India, therefore, It incurred such expenses for increasing its valuation. The above findings are not controverted by the Revenue authorities. We also do not find any infirmity in the order of the learned CIT(A) and therefore, we confirm his order. Accordingly, ground no.1 to 4 of the appeal of learned Assessing Officer is dismissed.

010. In the result, ITA No.3889/Mum/2017 for A.Y. 2011-12 filed by the learned Assessing Officer is dismissed.

011. ITA No.3890/Mum/2017 for A.Y. 2012-13 is also challenged before us raising identical grounds. The learned Departmental Representative confirmed that there is no change in the facts and circumstances of the case.

012. On careful consideration, we also find that the facts in the case of the assessee for A.Y. 2012-13 are also identical to the facts of 2011-12. The dispute is also with respect to



most appropriate method adopted for determination of arm's length price. As for A.Y. 2011-12, we have already confirmed the order of the learned CIT(A) holding that resale price method is the most appropriate method for benchmarking arms length price of distributor function of the assessee. Accordingly, for the reason given by us therein, we dismiss the appeal of the learned Assessing Officer.

013. In the result, the appeal of the learned Assessing Officer for A.Y. 2012-13 is also dismissed.

014. In the result, both the appeals are dismissed

Order pronounced in the open court on 28.07.2022.

Sd/-  
(KULDIP SINGH)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 28.07. 2022

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai