

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH: 'I' NEW DELHI ]**

**BEFORE SHRI G. S. PANNU, PRESIDENT  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**I.T.A. No. 3091/Del/2019 (A.Y. 2009-10)**

ACIT, Circle : 1 (2) Room No. 368, CR Building, IT Estate, New Delhi. <b>(APPELLANT)</b>	Vs.	Adidas India Marketing Pvt. Ltd., C-2, Ansal Villa Satbar, New Delhi <b>PAN No. AAACA5313P</b> <b>(RESPONDENT)</b>
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<b>Assessee by :</b>	<b>Mr. Rishabh Malhotra, A.R.</b>
<b>Department by:</b>	<b>Shri Vivek Verma, CIT, DR</b>

<b>Date of Hearing</b>	<b>04/07/2022</b>
<b>Date of Pronouncement</b>	<b>02.09.2022</b>

**ORDER**

**PER YOGESH KUMAR U.S., JM**

The present appeal preferred by the Revenue for Assessment Year 2009-10 against the order Ld. Commissioner of Income Tax (Appeals)-42, New Delhi [hereinafter referred to CIT (Appeals)] dated 21/01/2019 New Delhi.

2. Brief facts of the case are that, for the year under consideration, the assessee filed its return of income declaring at income of Rs. 21,14,49,000/-. An order u/s 92 CA (3) of the Act has been passed on 31/03/2009 by the TPO by proposing adjustment of an amount of Rs. 23,90,62,090/-. The assessment order came to be passed on 25/03/2013 u/s 143(3) (ii) read with Section/144C of the Act by making an addition of Rs. 20,73,93,115/- on account of AMP expenses a sum of Rs. 3,16,68,935/- on account of mark up on AMP Expenses, a sum of Rs. 22,55,220/- on account of advance to holding company and a sum of Rs. 5,40,886/- on account of depreciation on computer peripheral.

3. As against the order assessment order dated 25/03/2013, the assessee has preferred an Appeal before CIT (A). The Ld. CIT(A) vide order 21/01/2019 allowed the Appeal filed by the assessee by rejecting TPO's bright line approach in determining the Arm's Length Price for the AMP expenditure incurred by the assessee and deleted disallowance of Rs. 8,12,57,204/-, wherein the Ld.CIT(A) followed the Assessee's own case for Assessment Years 2006-07, 2011-12 & 2012-13 on the similar issues.

4. Aggrieved by the order dated 21/01/2019 passed by CIT(A), the Revenue has filed the present appeal on following grounds:-

*"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in rejecting TPO's bright line approach in determining Arm's Length return for the AMP expenditure incurred by the assessee.*

*2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not accepting the TPO's view that Bright line concept is an internationally accepted economic tool which determines the expenditure incurred by a routine distributor not promoting any marketing intangible.*

3. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in directing the TPO to adopt the same comparables for applying intensity approach which were used by the TPO for Brightline method.*

4. *The Appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this Appeal.*

5. We have heard the parties, perused the materials on record and gave our thoughtful consideration.

6. The Revenue's Grounds of Appeal are in respect of Transfer Pricing Adjustment with respect to AMP expenditure amounting to Rs. 8,12,57,204/- and not accepting the TPO's view that bright line concept is an internationally accepted economic tool which determines the expenditure incurred by a routine distributor not promoting any marketing intangibles.

7. During the course of transfer pricing proceedings, the Ld. TPO of the opinion that, the AMP Expenditures incurred by the assessee are to promote the brand/trade name which are owned by the AE's and expenditure has resulted into brand building and increased awareness of products bearing brand/trading. Accordingly, under the comparability adjustment to determined the excess AMP by identifying the excess intensity of AMP expenditure incurred by the assessee and comparable companies. Thus, made cumulative addition of Rs. 23,90,62,090/-, which has been by the CIT(A) by following the order of the Tribunal passed for Assessment Year 2006-07, 2011-12 and 2012-13.

8. It is not in dispute that in Assessee's own case for the Assessment Year 2006-07, 2011-12 and 2012-13, the very same issue involved in the present appeal has been dealt and decided in favour of the assessee by dismissing the

Appeal of the Revenue in ITA No. 953/Del/2016 & (A.Y 2011-12) and ITA No. 729/Del/2019 (AY 2012-13) vide order dated 31/07/2019, wherein it is held as follows:-

*“6.2 We have heard the submission of the parties and perused the relevant material on record. The issue whether incurring of expenditure on advertisement, marketing and sales promotion by the assessee, amounts to International transaction and determination of its arms length price, has been decided by the Tribunal in assessment year 2006-07 The relevant finding of the Tribunal is reproduced as under:*

*"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 ITA No.953/Del/2016 & 729/Del/2017 M/s. Adidas India Marketing Pvt. Ltd. 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 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. The above ratio laid down by the Coordinate Bench of the Tribunal is squarely applicable to the issue in hand, but the Ld. DR submitted that, the said issue is pending consideration before the Supreme Court and the same is yet to be adjudicated, therefore submitted that, the present Appeal has to be decided against the assessee. In our opinion, mere pendency of the above issue before the Hon'ble Supreme Court cannot be a ground to allow the present appeal filed by the Revenue. By following the rule of consistency and judicial discipline we are inclined to follow the binding precedent orders of the Tribunal Assessee's own case (supra). Accordingly we dismiss the Revenue's Grounds of Appeal.

10. In the result, Appeal filed by the Revenue is dismissed.

Order pronounced in the open court on **02<sup>nd</sup> September , 2022.**

**Sd/-**  
**(G. S. PANNU )**  
**PRESIDENT**

**Sd/-**  
**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

Dated : 02/09/2022

R.N\*Sr. PS

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI