

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

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA Nos.7588 & 7589/De1/2019
Assessment Years: 2009-10 & 2010-11

ACIT, Circle-21(1), New Delhi	Vs.	M/s. Ray Ban Sun Optics India Pvt. Ltd., 7 th Floor, DLF, Building no. 9, Tower-B, Phase-3, DLF Cyber City, Gurgaon
PAN :AAACB2586M		
(Appellant)		(Respondent)

Appellant by	Sh. S. Chakarborty, Advocate Sh. Akshay Uppal, Advocate
Respondent by	Sh. Mrinal Kumar Das, Sr. DR

Date of hearing	16.03.2023
Date of pronouncement	24.03.2023

ORDER

PER SAKTIJIT DEY, JM:

Captioned appeals by the Revenue arise out of two separate orders, both dated 28.06.2019, of learned Commissioner of Income Tax (Appeals)-44, New Delhi, pertaining to assessment years 2009-10 and 2010-11.

2. Grounds raised in both the appeals are identical; hence, the grounds raised in ITA No. 7588/Del/2019 are reproduced hereunder for ease of reference:

1. *That on facts and circumstances of the case, the Ld. CIT(A) has erred in holding the Bright Line Methodology as inappropriate despite the fact that the orders of the jurisdiction High Court, on which Ld. CIT(Appeal) had relied, was not accepted and Department has filed SLP against the aforesaid High Court order."*
2. *"That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in its decision of treating BLT method use protective for AMP adjustment as unsustainable when the matter is sub-judice and is pending with the Apex Court."*
3. *That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that the 'Bright Line Test' was not mandated in law and hence impermissible without considering the fact that BLT was not used as a method to determined the price but only as an economic tool to arrive at the cost of services rendered to the foreign enterprise by the Indian entity and the TPO has the mandate to 'determine' such 'cost' as a primary step in ALP determination as provided under the Rules."*
4. *The appellant craves to be allowed to add any fresh grounds of appeal and/or delete or mend any of the grounds of appeal.*

3. As could seen from the grounds raised, the common dispute in both the appeals relate to deletion of addition made on account of adjustment made to the Arm's Length Price (ALP) of expenditure incurred on Advertisement, Marketing and Promotion (AMP), that too, on protective basis.

3.1 Briefly the facts are, the assessee, a resident corporate entity, is a subsidiary of Ray Ban Holdings Inc. USA. While examining the arm's length nature of international transaction

entered by the assessee with the Associated Enterprises (AEs), the Transfer Pricing Officer (TPO) noticed that the assessee was incurring significant amount of AMP expenditure. Being of the view that the AMP expenditure enures benefit to the AE, the TPO proceeded to benchmark the transaction by applying Bright Line Test (BLT) method and suggested adjustment on protective basis in both the assessment years under dispute. While framing the assessment order, the Assessing Officer incorporated the adjustments suggested by the TPO. Against the addition made on protective basis on account of AMP expenses, the assessee preferred appeals before learned first appellate authority. After considering the submissions of the assessee and relying upon judicial precedents cited before him, learned Commissioner (Appeals) deleted the adjustments made to the AMP expenses on protective basis.

3.2 We have considered rival submissions and perused the materials on record. It is observed, in the first round, the TPO had made adjustment on account of AMP expenditure on substantive basis. While deciding the issue in appeal, the Tribunal restored the matter back to the AO/TPO to examine the following:

- (i) Whether AMP expenditure was an independent international transaction?
- (ii) Whether no separate adjustment was called for on account of AMP expenditure as the margin of the appellant was much higher than that of the comparables in view of the decision of the Hon'ble Delhi High Court in case of Sony Ericsson Mobile Communications India Pvt. Ltd. (supra) and Maruti Suzuki India Ltd. (supra).

3.3 While giving effect to the direction of the Tribunal, the TPO accepted assessee's contention that since the OP/Sales ratio was higher than the OP/Sales margin of the comparables, no adjustment can be made on substantive basis. However, adopting BLT method, the TPO recommended transfer pricing adjustment to AMP expenses on purely protective basis. The issue which arises for consideration is, whether the transaction relating to AMP expenses can be treated as an international transaction and whether adjustment can be made by applying BLT method.

3.4 In our view, there is no infirmity in the decision of learned Commissioner (Appeals) in deleting the protective additions on AMP expenses, keeping in view the fact that as per the ratio

consistently laid down not only by the Hon'ble Delhi High Court but various benches of the Tribunal, no adjustment can be made by applying BLT method. Accordingly, we uphold the decision of learned Commissioner (Appeals) by dismissing the grounds raised.

4. In the result, the appeals are dismissed.

Order pronounced in the open court on 24th March, 2023

Sd/-
(G.S. PANNU)
PRESIDENT

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 24th March, 2023.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi