

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

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1980/MUM/2014
(Assessment Year: 2009-10)**

Ingram Micro India Ltd.,

Gate No. 1A, Godrej Industries Complex,
Pirojshanagar, Vikroli (East),
Mumbai - 400079
[PAN: AABCT1296R]

..... **Appellant**

**Deputy Commissioner of Income-tax,
OSD II, Central Range-7, Mumbai,**

Aaykar Bhavan, Maharishi Karve Road,
Mumbai - 400020

Vs
..... **Respondent**

**ITA No. 2268/MUM/2016
(Assessment Year: 2010-11)**

Ingram Micro India Ltd.,

(Now known as Ingram Micro India Private Ltd.),
5th Floor, B Block, Godrej IT Park,
LBS Road, Vikhroli (West),
Mumbai - 400079
[PAN: AABCT1296R]

..... **Appellant**

**The Deputy Commissioner of
Income-tax,**

Central Circle 4(4), Mumbai,
Air India Building, Nariman Point,
Mumbai - 400021

Vs
..... **Respondent**

Appearance

For the Appellant/Assessee : Shri M.M. Golvala
Shri Farquan Ahemad

For the Respondent/Department : Dr. Yogesh Kamat

Date

Conclusion of hearing : 22.02.2023
Pronouncement of order : 28.04.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. These are the two appeals preferred by the Assessee pertaining to Assessment Years 2009-10 and 2010-11 involving common issues. Therefore, the appeals were heard together and are, therefore, being disposed by way of a common order. We would first take up appeal for the Assessment Year 2009-10

ITA No. 1980/Mum/2014 (Assessment Year 2009-10)

2. The present appeal is directed against the Assessment Order dated, 28/01/2014, passed under Section 143(3) read with Section 144C(13) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'], as per directions, dated 11/12/2013, issued by the Dispute Resolution Panel-I, Mumbai (hereinafter referred to as 'the DRP') under Section 144C(5) of the Act pertaining to the Assessment Years 2009-10.
3. The Appellant has raised following grounds of appeal:
 - "1) *The Assessing Officer erred in disallowing the aggregate amount of the additions made to Fixed Assets during the year, amounting to Rs.4,02,60,698/-, by holding that the original bills were not produced for verification despite the Appellant having filed copies of invoices substantiating the fixed assets acquired during the year and having produced the original invoices for verification. Having regard to the facts and circumstances of the case, the Appellant submits that the said disallowance made by the Assessing Officer is erroneous and requires to be deleted.*
 - 2) *Without prejudice to Ground No. 1, even assuming though not conceding that any disallowance is justified, the Assessing Officer failed to abide by the directions of the learned DRP and erred in disallowing aggregate amount of the additions made to Fixed Assets during the year under consideration, amounting to Rs.4,02,60,698/-, instead of disallowing only the depreciation in respect of fixed assets which were not substantiated.*

- 3) *The Assessing Officer erred in disallowing the aggregate amount of commission paid, amounting to Rs.5,66,23,282/- on the ground that original confirmations from the parties had not been produced before him by the Appellant despite the Appellant having filed copies of the confirmations available on record and having produced the original confirmations for verification.. Having regard to the facts and circumstances of the case, the Appellant submits that the commission paid be allowed as a deduction as claimed by the Appellant in its Return of Income.*
- 4) *The Assessing Officer and the learned DRP erred in making an adhoc disallowance of 5% of the total staff welfare expenses incurred by the Appellant, aggregating to Rs.20,32,210/-. Having regard to the facts and circumstances of the case, the Appellant submits that the disallowance is unwarranted and requires to be deleted.*
- 5) *The Assessing Officer and the learned DRP erred in making an adhoc disallowance of 5% of the aggregate miscellaneous expenses, aggregating to Rs.2,79,553/-, incurred by the Appellant Company for the year under consideration. Having regard to the facts and circumstances of the case, the Appellant submits that such expenditure requires to be allowed as claimed by the Appellant in its Return of Income.*
- 6) *The Assessing Officer and the learned DRP erred in making an adhoc disallowance of 20% of the aggregate travelling and conveyance expenses, aggregating to Rs.78,15,374/-, incurred by the Appellant Company for the year under consideration. Having regard to the facts and circumstances of the case, the Appellant submits that such expenditure requires to be allowed as claimed by the Appellant in its Return of Income.*
- 7) *The Assessing Officer and the learned DRP erred in making an adhoc disallowance of 20% of the aggregate repairs and maintenance expenses, aggregating to Rs.16,22,563/-, incurred by the Appellant Company for the year under consideration. Having regard to the facts and circumstances of the case, the Appellant submits that such expenditure requires to be allowed as claimed by the Appellant in its Return of Income.*
- 8) *The Assessing Officer and the learned DRP erred in making an adhoc disallowance of 5% of the total advertisement and sales promotion expenses, aggregating to Rs 27.05,192/- incurred by the Appellant. Further thereto, the Assessing Officer erred in wrongly considering the aggregate advertisement and sales promotion expenses at Rs.5,41,03,846/- as against the correct amount of Rs. 13,84,053/-, Having regard to the facts and*

circumstances of the case, the Appellant submits that the disallowance is unwarranted and requires to be deleted. Without prejudice to the foregoing, even assuming though not conceding that any amount is to be disallowed, the Assessing Officer be directed to consider the correct figure of advertisement and sales promotion expenses incurred during the year by the Appellant.

- 9) *The Assessing Officer erred in not granting credit for tax deducted at source aggregating to Rs 4,00,84,439/-, without assigning any reasons for the non-grant of such credit.*
- 10) *The Appellant objects to the action of the Assessing Officer in initiating penalty proceedings under section 271(1)(b) and 271(1)(c) of the Act."*

Ground No. 1 & 2

4. Ground No. 1 & 2 raised by the Appellant pertain to the addition of INR.4,02,60,698/- made by the Assessing Officer in respect of total additions made to the fixed assets during the relevant previous year.
 - 4.1. During the course of assessment proceedings, the Assessing Officer requested the Appellant-Company to provide the details of additions to fixed assets along with supporting documents/invoices evidencing the purchase of the fixed assets during the relevant previous year. The Appellant contends that all the details of assets purchased along with copies of major invoices were furnished during the assessment proceedings. However, the Assessing Officer, without considering the same, passed the Draft Assessment Order, dated 19/03/2013, proposing an addition of INR 4,02,60,698/-, being the aggregate cost of additions made to the fixed assets during the relevant previous year holding that the Appellant had failed to produced relevant bills/invoices for verification.
 - 4.2. The Appellant filed objections before DRP on this issue. However, the DRP declined to grant relief and therefore, the Assessing Officer passed the Final Assessment Order, 28/01/2014, incorporating the

proposed addition of INR 4,02,60,698/-.

- 4.3. Being aggrieved the Appellant carried the issue in appeal before the Tribunal.
- 4.4. The Learned Authorised Representative for the Appellant appearing before us submitted that the Appellant had furnished the relevant details during the assessment proceedings but the Assessing Officer failed to take cognizance of the same. Further, the Assessing Officer did not seek any clarifications or information during the course of the assessment proceedings and proceeded to make the addition. On the basis of the aforesaid, the Ld. Authorised Representative for the Appellant submitted that the addition of INR 4,02,60,698/- made by the Assessing Officer should be deleted. Without prejudice to the aforesaid, the Ld. Authorised Representative for the Appellant submitted that the Assessing Officer could not have made addition/disallowance of the entire cost of fixed assets because, in any event, as the Appellant had claimed only the depreciation thereon and, therefore, only depreciation of INR 58,04,262/- could have been added back to the income. Thus, the Assessing Officer erred in adding the cost of assets (instead of depreciation claim) to the income of the Appellant.
- 4.5. Per contra, the Learned Departmental Representative supported order passed by the Assessing Officer and submitted that since the Appellant had failed to provide the original invoices related to purchases of fixed assets, the Assessing Officer was justified in making the addition.
- 4.6. We have considered the rival submission and perused the material on record. We find merit in the contention advanced on behalf of the

Appellant that only addition to the extent of depreciation claimed by the Appellant in respect of additions made to the fixed assets during the relevant previous year could have been made by the Assessing Officer. Accordingly, we restrict the addition INR 4,02,60,698/- made by the Assessing Officer to INR 58,04,262/- being the amount of depreciation claimed by the Appellant.

- 4.7. Further, on perusal of the details of additions made to the fixed assets during the relevant previous year (placed at page 149 to 153 of the paper book), we find that the Appellant had furnished invoices pertaining to some of additions made to the fixed assets during the relevant previous year which are placed at 154 to 206 of the paper-book. We are of the view that in case the Appellant is able to produce the original of the photocopied invoices placed at page 154 to 206 of the paper-book for verification before the Assessing Officer, then the Appellant should be permitted to claim depreciation in respect of the same. Accordingly, we direct the Appellant to produce the originals of the aforesaid invoices/documents for verification before the Assessing Officer. Subject to verification as aforesaid, the Assessing Officer shall allow depreciation claimed by the Appellant in respect of the same as per law.
- 4.8. In terms of paragraph 4.6 and 4.7 above, Ground No. 2 raised by the Appellant is allowed whereas Ground No. 1 raised by the Appellant treated as partly allowed for statistical purposes.

Ground No. 3

5. Ground No. 3 raised by the Appellant is directed against the disallowance of deduction in respect of commission payments aggregating to INR 5,66,23,282/-.

- 5.1. In the return of income the Appellant had claimed deduction for expenses aggregating to INR 5,66,23,282/- being commission paid to various third parties during the relevant previous year. The Assessing Officer disallowed the commission expenses primarily on the grounds that the Appellant had failed to provide confirmations, supporting bills & vouchers, and had failed to provide details regarding the nature of the services provided by parties receiving the commission. The Assessing Officer also drew negative inference from the fact that the Appellant did not furnish the relevant agreements.
- 5.2. On objections preferred by the Appellant against the Draft Assessment Order proposing, inter alia, the above disallowance, the DRP, vide order dated 11/12/2013, granted partial relief to the Appellant by following the order passed by DRP in the case of the Appellant for the Assessment Year 2008-09. The DRP observed that the Appellant has failed to provide any cogent reasons for failure to furnish all the confirmations before the Assessing Officer. However, the DRP restricted the disallowance on account of commission to the extent of commission payments in respect of which confirmation were not furnished by the Appellant and the commission payments related to confirmation in respect of which the Assessing Officer had drawn adverse inference.
- 5.3. Pursuant to the directions given by DRP, the Assessing Officer passed the Final Assessment Order, dated 28/01/2014, making a disallowance of INR 5,66,23,282/- in respect of commission expenses. Therefore, the Appellant is in appeal before the Tribunal on this issue challenging the aforesaid disallowance of commission expenses.

5.4. The Ld. Authorised Representative for the Appellant submitted that the Appellant is a trader in computer hardware, software and other office appliances. The Appellant buys various products from manufacturers and with an extensive distribution network, distributes and sells these products across India. These products are technology-reliant items and have a very limited shelf-life due to constant changes in technology and have to be, therefore, sold within a short span of time. The Appellant is dependent on its dealers all over India for sales and distribution. The dealers, which are independent third parties, are given commission and incentives to stock and sell products. Such commission and incentive payments are, therefore, a business necessity. During the relevant previous year that Appellant had paid commission of INR 5,66,23,282/- which constituted only 0.08% of the total sales. The Learned Authorised Representative for Appellant submitted that commission expenses should be allowed to the Appellant as claimed for the reason that during the assessment proceedings the Appellant had furnished complete details including names, addresses & PAN of the parties to whom commission payments were made, along with the details of commission payments and tax deducted at source. The commission was paid to dealers for services rendered, the nature of such services was also explained during the assessment proceedings. The Appellant had also provided account confirmations from major parties/dealers. It was explained to the Assessing Officer that there were no written agreements between the Appellant and the dealers because the commission was payable on a case to case basis depending on the product sold and the area of operation. The Appellant did not want to create a legally binding obligated to pay commission at a fixed rate, and therefore, transaction based

payment were made which acted as an incentive for dealers to procure sales orders, depending on the prevailing market conditions at the time of the transaction. He further submitted that, the Appellant had also requested the Assessing Officer to summon the parties receiving commission for obtaining the required details required. However, the Assessing Officer neither issued any summons, nor called for further details from the Appellant before disallowing the commission expenses. The Learned Authorised Representative for Appellant further submitted that while making the aforesaid disallowance the Assessing Officer relied upon judicial precedents which are distinguishable on facts. In those cases commission expenses were disallowed in view of the fact that no services were provided, or the payments were made to related parties or group concerns. Whereas in the case of the Appellant the commission has been paid to third parties. The complete details of payments made along with tax deducted at source were furnished during the assessment proceedings. In the appeals preferred by the Appellant for the Assessment Year 2005-06 (ITA No. 8794/Mum/2011), 2006-07 (ITA No. 8795/Mum/2011) and 2008-09 (ITA No. 8797/Mum/2011), disposed by way of common order dated 07/06/2021, the Tribunal has, in identical facts and circumstances the, allowed the Appellant's claim of deduction for commission expenses.

- 5.5. The Learned Departmental Representative relied upon the order passed by the Assessing Officer and DRP. He submitted that the Appellant had failed to provide the agreements pursuant to which commission was paid by the Appellant. As noted by the DRP, no reasons were furnished by the Appellant as to why confirmation from all the dealers could not be filed by the Appellant during the

assessment proceedings. In absence of the supporting documents, the Assessing Officer was justified in making the disallowance.

- 5.6. We have considered the rival submission and perused the material on record including the order, dated 07/06/2021, passed by the Tribunal in appeals preferred by the Appellant for the Assessment Year 2005-06, 2006-07 & 2008-09. While allowing Appellant's claim for deduction for commission expenses for the Assessment Year 2005-06, the Tribunal has held as under:

"20. We shall now advert to the disallowance of the commission expenditure of Rs.1,62,05,703/- made by the A.O/DRP. As is discernible from the records, the assessee had during the year under consideration debited Rs.2,25,96,858/- towards commission expenditure, which comprised of viz. (i) commission paid to various parties in excess of an amount of Rs.1 lac per party: Rs. 1,62,05,703/-; and (ii) commission paid to parties below an amount of Rs.1 lac per party: Rs.62,91,155/-. In the course of the assessment proceedings, the assessee furnished details as regards the names, addresses and the amount of commission paid to various parties during the year. The A.O declined to accept the aforesaid claim of expenditure raised by the assessee for multiple reasons viz. (i) that, the assessee had failed to furnish the confirmations from the concerned parties; (ii) that, the PAN Numbers of the parties were not furnished by the assessee; (iii) that, the assessee had failed to satisfy the nature of services rendered by the parties to the assessee ; (iv) that, no details regarding quantum of business procured by the said parties was furnished by the assessee; and (v) that, no details as to whether there was any written agreement between the assessee and the aforesaid parties on the basis of which commission was paid to them was provided by the assessee. Accordingly, the A.O not being satisfied with the aforesaid claim of commission expenditure raised by the assessee proposed to disallow the same in his draft assessment order passed under Sec. 153A/143(3) r.w.s 144C(1), dated 30.12.2010. On objections filed by the assessee, the DRP observed that there was no scope to make an adhoc disallowance of the commission expenditure, as was so done by the A.O. However, at the same time, the DRP directed the assessee to furnish with the A.O the confirmations from all the parties to whom commission of Rs.1 lac and above was paid during the year. In fact, the DRP on the basis of his

aforesaid observations directed the A.O to disallow the commission expenditure of Rs. 1 lac and above, in respect of those parties whose confirmation was not furnished by the assessee. As the assessee was unable to furnish the confirmations of the parties to whom commission of Rs.1 lac and above, was paid, therefore, the A.O disallowed commission expenditure of Rs.1,62,05,703/-.

21. We have perused the orders of the lower authorities in context of the issue under consideration. Our indulgence has been sought by the assessee to adjudicate, as to whether, the A.O is right in law and the facts of the case in disallowing the commission expenditure of Rs.1,62,05,703/-. We find that the DRP in context of the aforesaid disallowance of commission expenditure, had observed as under:

"6.3 DRP has considered the AO's observation and findings and the details submissions filed by the assessee. The DRP is of the view that the commission payments are incurred wholly and exclusively for the purpose of business, dictated by business needs and allowable as deduction in principle, as TDS also was made on such payments as application. The commission paid is not high in relation to the sales made during the year. The names and addresses were furnished earlier to the A.O and such details alongwith PAN of dealers where commission payments exceeded Rs.1,00,000/- is now furnished (a copy of the same is enclosed to this order of DRP). Considering the totality of facts and circumstances of the case, there is not scope to disallow the commission payments, in an ad hoc manner as was done by A.O. The assessee should now furnish confirmation from all the parties where commission paid is Rs. One lakh and above, within a week from the receipt of directions/order of DRP sue motto, Thereafter, A.O can disallow commission paid in respect of parties from whom no confirmation was furnished. In respect of commission payments below Rs. One lakh in each case there is no need to disallow claim without verification as assessee furnished all the relevant details. Hence, the disallowance as proposed by the A.O is not approved. A.O is directed to modify/restrict the disallowance as per directions given herein above.

A perusal of the aforesaid observations reveals that, the DRP was convinced that as the commission expenditure was wholly and exclusively incurred by the assessee for the purpose of its

business, therefore, the same was not liable to be disallowed. However, the DRP after so concluding, had directed the assessee to file with the A.O the confirmations from the parties to whom commission of Rs. 1 lac and above was paid during the year, failing which the same was to be disallowed by the A.O. We may herein observe, that the aforesaid observations of the DRP regarding the genuineness and allowability of the commission expenditure and, conclusion therein arrived at by him are not found to be befitting. In our considered view, the satisfaction recorded by the DRP that the commission expenditure was incurred by the assessee wholly and exclusively for the purpose of its business, was sufficient for allowing the assessee's claim of the said expenditure. Be that as it may, we shall advert to the sustainability of the aforesaid disallowance made by the A.O/DRP on merits. As is discernible from the order of the DRP, the assessee in order to dispel any doubt as regards the authenticity of its claim of expenditure as regards commission exceeding Rs. 1 lac that was paid by it during the year, had thus, in the course of the proceedings before him furnished the name and addresses, PAN details, amount of commission paid, amount of TDS etc., pertaining to the parties to whom such commission was paid, as under:

<i>Particulars</i>	<i>Address</i>	<i>Amount (Rs.)</i>	<i>TDS</i>
<i>A Team Computers</i>	<i>S.K.s. Buildings, Perundurair Road, Erode</i>	<i>110,124</i>	<i>6,178</i>
<i>Acme Dignitek Solutions Pvt. Ltd.</i>	<i>Rohit Bhawan, II Floor, 4, Sapru Marg, Lucknow</i>	<i>124,237</i>	<i>6,491</i>
<i>xx</i>			
<i>xx</i>			
<i>Vidur & Co. Pvt. Ltd.</i>	<i>35/F2 Sanjay place Agra 282002</i>	<i>243,276</i>	<i>12,718</i>
<i>Wysetek Systems Technologies P. Ltd.</i>	<i>6-7, Udoyog Mandir, Off Piambar, Lane Mahim, Mumbai - 400016</i>	<i>142,334</i>	<i>7,295</i>

As can be gathered from the aforesaid information that was furnished by the assessee, we find, that the complete details of the parties to whom commission of Rs. 1 lac and above was paid during the year, along with their respective addresses, amount of

commission paid and, the TDS on the said respective payments was furnished by the assessee with the A.O. At this stage, we may herein observe, that the payments made by the assessee to the abovementioned parties for the period ended 31.12.2004, pertained to a period of about 7 years ago in context of the date of passing of the assessment order by the A.O under Sec. 153A/143(3) r.w.s. 144C(13), dated 31.10.2011. Accordingly, we find force in the contention advanced by the Id. A.R, that keeping in view the aforesaid substantial time gap of 7 years, it was practically not possible on its part to have obtained the confirmations of the said parties. In our considered view, now when the assessee had furnished complete details along with income tax credentials viz. PAN Numbers of the aforesaid parties with the lower authorities, therefore, merely for the stand alone reason that the confirmations of the said parties for transactions pertaining to a period relating to 7 years ago were not filed by the assessee with the A.O, would not justify disallowance of the commission expenditure so claimed by it. Interestingly, we find that on the basis of similar details filed by the assessee in respect of the parties to whom commission below Rs. 1 lac per party, aggregating to Rs. 62,91,155/-, was paid, the claim of the assessee towards commission expenditure to the said extent was accepted by the DRP. In fact, we find that the order of the DRP allowing the assessee's claim of commission expenditure of Rs. 62,91,155/- without any qualification, had been accepted by the revenue and had not been assailed any further. In our considered view, if on the basis of the same set of documentary evidence the A.O/DRP had accepted the assessee's claim for commission expenditure of Rs. 62,91,155/-, then there could have been no justifiable reason for the said authorities to have adopted a different yardstick for considering the allowability of the balance commission expenditure of Rs. 1,62,05,703/-. As a matter of fact, as can be gathered from the DRP order, though the assessee had furnished with it the PAN details of the parties to whom commission of Rs. one lac and above was paid during the year, however, no such details were ever filed as regards the remaining parties. Accordingly, we are of the considered view, that keeping in view the aforesaid facts, it would not have been permissible for the lower authorities to have adopted an inconsistent approach while considering the allowability of the commission paid by the assessee to various parties. Apart there from, our view that failure on the part of an assessee to file the

confirmations of parties on account of substantial time gap that had lapsed since the date of transaction entered into by the assessee with them, cannot on the said stand alone basis justify drawing of adverse inferences as regards the veracity of such claim of expenditure raised by the assessee, is fortified by the judgment of the Hon'ble High Court of Calcutta in the case of Mather & Platt (India) Ltd. Vs. CIT (1987) 168 ITR 493 (Cal). In the aforementioned case, one of the ground which had weighed in the minds of the A.O while disallowing the assessee's claim of commission expenditure, was that the summons issued under Sec.131 to the agents after expiry of a period of 4 years from the date when the transactions were entered by the assessee with them, were returned back by the postal authorities with the remarks „not known“. On the basis of the aforesaid facts, it was observed by the revenue authorities that the assessee had failed to discharge the onus as regards establishing the identity of the agents to whom the commission was paid. On appeal, it was observed by the Hon'ble High Court, that in the backdrop of the evidence placed on record by the assessee, it would be unreasonable to hold that the assessee had failed to establish the identity of the commission agents, for the reason, that the said persons were not found available at their respective addresses after an expiry of a period of 4 years from the date of the transactions under consideration. Now, in the case before us, it is an admitted factual position, as is discernible from the order of the DRP and, had not been assailed by the revenue before us viz. (i) that, the commission expenditure was incurred by the assessee wholly and exclusively for the purpose of its business, which was dictated by business needs and was allowable; (ii) that, the fact that the assessee had deducted tax at source on the aforesaid commission payments substantiated the genuineness of the said expenditure; (iii) that, the commission paid by the assessee was not high in relation to the sales made during the year; (iv) that, the names and address of the parties, to whom commission was claimed by the assessee to have been paid was furnished with the A.O and (v) that, the details along with the PAN numbers of the dealers to whom commission in excess of Rs. 1 lac was paid was furnished by the assessee in the course of the DRP proceedings, therefore, we are of the considered view, that the genuineness of the aforesaid commission expenditure and, the fact that the said expenditure was incurred wholly and exclusively for the purpose of the

business of the assessee, admittedly stands established beyond any scope of doubt. Apart there from, we are also of the considered view, that now when on the basis of similar details filed by the assessee the commission expenditure of less than Rs. 1 lac per party, aggregating to Rs. 62,91,155/-, had been accepted by the A.O/DRP, therefore, a different yardstick could not have been adopted by them for verifying the veracity of the balance commission expenditure of Rs.1,62,05,703/-. On the basis of our aforesaid observations, we are of a strong conviction that now when the assessee had placed on record substantial material to substantiate the genuineness and veracity of the commission expenditure, which has already been accepted by the DRP while disposing off the objections of the assessee, therefore, there was no justifiable reason for disallowing the aforesaid commission expenditure of Rs. 1,62,05,703/-. Accordingly, we vacate the disallowance of commission expenditure of Rs, 1,62,05,703/- made by the A.O. The Ground of appeal No. 2 is allowed."

In the backdrop of our aforesaid deliberations, we are of the considered view that in the totality of the facts involved in the case before us, viz. material placed on record by the assessee to substantiate the authenticity of the commission expenses; that confirmations from all the dealers could not be obtained after lapse of a substantial period of 5 years (aprox); the PAN Nos. of majority of the parties were furnished by the assessee; commission expense of Rs. 1.099 crores incurred by the assessee against its sales of Rs. 3,176.56 crores worked out at a miniscule figure of 0.03% of its sales; the assessee had duly demonstrated before the DRP the reason and justification for incurring the commission expenditure; and allowability of a similar claim of commission expenses in the past; and respectfully following the aforesaid order of the Tribunal in the assessee"s own case, we find no justification in disallowance of a similarly placed assessee"s claim for deduction of commission expenses of Rs. 1,09,93,307/-. We, thus, in terms of our aforesaid observations direct the A.O to vacate the disallowance of commission expenses of Rs. 1,09,93,307/-. The Ground of appeal No. 3 is allowed in terms of our aforesaid observations." (Emphasis Supplied)

- 5.7. The facts and circumstances prevailing during the Assessment Year 2009-10 are identical to Assessment Year 2005-06, 2006-07 and

2008-09 as there is no change in the business of the Appellant or its arrangement with the dealers. Further, Appellant's justification for incurring commission expenses on account of business necessity and the reasoning for not having written agreements with the dealers was accepted by the Tribunal in the common order, dated 07/06/2021, passed in appeals for the Assessment Year 2005-06, 2006-07 and 2008-09. For the assessment year under consideration also the Appellant has furnished complete details of the dealers (i.e. name, address & PAN), amount of commission paid and tax deducted at source (placed at pages 213 to 222 of the paper-book) along with Letter, dated 15.02.2013, filed before the Assessing Officer during the assessment proceedings. Confirmations in respect of 56 major dealers pertaining to the aggregate commission of INR.3,43,57,708/- were also filed with the Assessing Officer (placed at 223 to 280 of the paper-book). The commission expenses claimed by the Appellant were only 0.085% of the total sales. The Appellant had furnished complete details relating to the commission payments made to the dealers. However, the Assessing Officer failed to carry out any independent inquiry, even on sample basis, before denying the deduction for entire commission expenses claimed as deduction by the Appellant. It is not the case of the Revenue that the commission payments were made to related parties or group concerns.

- 5.8. Thus, in view of the above, respectfully following the above common order, dated 07/06/2021, passed in the case of the Assessee for the Assessment Year 2005-06, 2006-07 and 2008-09, we allow deduction for commission expenses as claimed by the Appellant and delete the addition of INR 5,66,23,282/-. Ground No. 3 raised by the Appellant is allowed.

Ground No. 4 to 8

6. Ground No. 4 to 8 raised by the Appellant are directed against ad-hoc disallowance of expenses claimed by the Appellant under different account heads.
- 6.1. While computing income chargeable to tax, the Appellant had claimed deduction for various expenses debited to the Profit & Loss Account. The ad-hoc disallowances were made by the Assessing Officer as a percentage expenses claimed by the Appellant under different heads. In the Objection preferred before DRP, the percentage of disallowance made by the Assessing Officer was confirmed/reduced by the DRP. The Assessing Officer passed the Final Assessment Order making disallowance of expense as per the directions of DRP. Being aggrieved the Assessee has challenged the disallowances of expenses sustained by the DRP and made in the Final Assessment Order. The details of the disallowances of various expenses are as under:

Ground No.	Nature of expenses	Disallowance proposed in Draft Assessment Order	Disallowance as per directions of DRP	Disallowance in the Final Assessment Order (INR)
4	Staff Welfare Expenses	25%	5%	20,32,210/-
5	Miscellaneous Expenses	25%	5%	2,79,553/-
6	Travailing & Conveyance Expenses	20%	20%	78,15,374/-
7	Repair & Maintenance Expenses	20%	20%	16,22,563/-
8	Advertisement & Sales Promotion Expenses	20%	5%	27,05,192/-

- 6.2. We have heard the rival submissions and perused the material on record. We find that the Assessing Officer had made adhoc disallowance of expenditure primarily on the ground that the Appellant had failed to provide details and/or furnished supporting bills, vouchers and other documents during the assessment proceedings. DRP reduce the disallowance in case of Staff Welfare Expenses, Miscellaneous Expenses and Advertisement & Sales Promotion Expenses to 5% of the expenses by placing reliance on the order passed by the Commissioner of Income Tax (Appeals) in appeals preferred by the Assessee against the Assessment Order for Assessment Year 2002-03 to 2004-05 and the order passed by DRP for the Assessment Years 2005-06 to Assessment Year 2008-09. As regards, Travelling & Conveyance Expenses and Repair & Maintenance Expenses, the DRP confirmed the disallowance made by the Assessing Officer holding that the Appellant had failed to furnish relevant details and supporting documents even before the DRP.
- 6.3. However, on perusal of record we find that the Appellant had provided the following details/information/documents relating to the expenses during the course of assessment proceedings:
- Statement given details of travelling and conveyance vide letter dated 21/02/2013 (placed at page 283 of the paper-book)
 - Statement given details of staff welfare expenses vide letter dated 26/02/2013 (placed at page 286 & 287 of the paper-book)
 - Statement given details of advertisement and sales promotion vide letter dated 26/02/2013 (placed at page 288 of the paper-book)
 - Statement given details of Miscellaneous Expenses vide letter dated 28/02/2013 (placed at page 295 of the paper-book)

- Details of Repairs & Maintenance (Plant & Machinery) (placed at page 308 of the paper-book)

6.4. Further, on perusal of letter, dated 26/02/2013, filed by the Appellant during the course of assessment proceedings (placed at page 296 to 301 of the paper-book) we find that certain documents/details along with supporting documents for verification were furnished by the Appellant. The relevant extract of the aforesaid letter dated 26/02/2013 read as under:

" Ingram Micro India Ltd. (IMIL) is the largest distributor for Information Technology (IT) Products in the Country with an annual Turnover of Rs 6675 Crores during FY 2008-09. The Company has been doing business in India now for more than 15 years. The Company procures goods and services from more than 50 top IT/Telecom vendors for distributing their Products in India. Some of our key vendors include HP, Samsung, IBM, Microsoft, Apple, Intel, CISCO, Lenovo, Acer, Seagate, Adobe, Autodesk, Symantech, Toshiba, Sony Ericsson etc. These supplies are amongst the world's top notch manufacturers of information technology products with significant market share. Our distribution business works in terms of us procuring the goods from the vendors and holding the inventory in warehouses, selling the products and services to the resellers, wholesalers and other system integrators across the country. We have a complex procurement system since we deal in all sorts of computer hardware, software, & mobility products some of which are imported or procured locally. All these transactions for purchases are monitored and tracked through the robust material and logistics management system. Our ERP System and Internal Control take care of all purchases right from indenting to purchases order to material receipt, dispatches, payments to vendor, raising various claim/ discounts and related transactions. We make purchases with not less than 5 lakhs invoices in a year. All such purchases have tax implications for which we are filing periodical returns and information to various Tax authorities like Customs/Service Tax/VAT.

Based on the business activities of the Company, the expenses incurred by the company are mainly purchases made for the goods sold, salary paid to the employees, warehouse rent, freight paid for the goods transported from one warehouse to another warehouse as well as freight paid on imported goods and others. The expenses also include Credit insurance, Property insurance, Marine insurance, Repairs and maintenance of IT system,

Employee welfare etc. These expenses are incurred during the course of the business out of business expediency and these are allowable expenses u/s. 37 of the Income tax Act 1961. During the course of Assessments we have provide detail of expenses like Rent expenses along with amount of TDS deducted, Legal and professional charges, security charges, Travelling & conveyance, Staff welfare, Rates and Taxes, Salary & wages, creditors list along with address. We have a staff of around 1000 on our pay roll. The Salaries are paid through the banking system in terms of Bank credit to the employees account. Similarly all the expenses are paid by bank payments and the sample payment register for the month of July'08 has been submitted to you for your perusal. We have strong internal control process of Vendor empanelment wherein we obtain three quotes for the expenses, details of tax registration nos. of the vendors before we engage in the services. The travel expenses are basically towards ticket and lodging and boarding expense incurred for the purpose of sales and marketing and other business activities. You will further appreciate that the nature of expenses are similar to the previous year's expenses and the increases if any are due to inflation and increase in volume of business. Thus any disallowance of these expenses incurred for the purpose of business is unwarranted. Moreover we have given the details of expenses including Rent agreements etc. for your perusal. In terms of sales commission these are amounts paid to the dealers for procuring the business orders for us. The confirmations and details of tax deduction at source and credit note copies etc. have already been provided to your Honour.

Further to our submission above we have submitted the following accounting records generated from our IT system maintained by us:

1. Purchase Register
2. Sales Register
3. Payment Register
4. Expense Register
5. Sale invoices of Mumbai branch of approx. 1,000 invoices
6. Purchase invoices of July 08
7. Bill of Entry copy
8. Expense bills.

From the purchase register for the month of July 2008 you will appreciate the volume of transactions involved as it contains 5000 purchase line items and runs into 140 pages.

We have proper system and process to record entire sale activity right from quoting price to the customers/Receipt of order/material dispatch/receipt of payment/ issuing credit note for their claims etc. We need to collect taxes like VAT/ Service Tax/ Entry Tax/ Octroi etc. From the copy of sale register for the month of July 2008 it can be noted that it runs into approximately 1,28,000 line items and runs into 1900 pages. The number of Invoices generated in a single day is in excess of 1000.

We keep the Original Sale invoice copy at our branches/warehouse as per the legal requirement of respective VAT authorities. You will appreciate that producing all invoices for Sales approximating to Rs.6500 crores is immense in terms of volume and these will have to be collected from various branches. These will not only consume time and energy for obtaining these records but it also will reflect that the audit reports, systems (elaborated above) and the taxes paid to the Government for the transactions are not considered as evidence for the activities conducted by the company. In any case we are submitting the sample sale Invoice copies for the month of July 2008 containing 8 box files for your perusal to appreciate the magnitude of the information solicited.

The distribution model of IMIL business entails high turnover & low margins necessitating fiscal discipline and tight control on Receivables & Inventory along with usage of online systems to boost productivity. We need to keep a strict watch on our expenses.

Thus we are having robust book keeping Internal Control System to maintain proper books of accounts and hold control on the activities carried on by the organization. The books of our organization is periodically audited by the Statutory Auditors, Internal Auditors and also subjected to Internal Audit/ control by our parent company. We are a Global Business Entity our Books of Accounts needs to be consolidated with the parent company in USA. Our Parent company being one of listed entity in United State of America are required to fulfill the compliance of SOX Audit and control process and other legal requirements of United States.

As per the provisions of the Income Tax Act, we are required to file the Tax Audit report which is to be certified by Chartered Accountant, a copy whereof has been filed with your Honour. The Transfer pricing audit and Assessment also been completed for year under consideration and the order has been furnished to your Honour.

We have produced the information as requested and have also explained our business model in detail so as to enable your Honour to understand the complexity and volume of transactions of the business conducted by us including the various compliances and reports submitted to the respective regulatory authorities. We are sure this will enable you to appreciate that the company has maintained proper books of account and records and has an adequate internal control system as certified by our auditors in their audit report. You will further appreciate that if you would still like to review all the records including the invoices, bills and vouchers for all the transactions of Rs. 6500 crores we undertake to provide the same on hearing from you."
(Emphasis Supplied)

- 6.5. On perusal of the above, it can be seen that during the assessment proceedings, the Appellant had explained the nature of business and submitted that the details/documents called for by the Assessing Officer were voluminous in nature and, therefore, had furnished the relevant details and produced supporting documents (included expenses register and expense bills) on sample basis.
- 6.6. We find that the authorities below failed to point out any specific defect in the details/documents furnished by the Appellant. No further clarification or specific information/documents were called for by the authorities below. Without pointing out any specific expenses, which according to the authorities below were not allowable as deduction, an ad-hoc disallowance was made by the Assessing Officer and sustained by the DRP.
- 6.7. In our view the claim of deduction of expenses made by the Appellant could not have been dislodged by the authorities below without any basis. We are guided in our view by the common order dated 07/06/2021 passed by the Tribunal in appeal for Assessment Year 2005-06, 2006-07 and 2008-09 (ITA No. 8794, 8795 & 8797/Mum/2011). In the aforesaid decision, the Tribunal had, in identical facts and circumstances, allowed the grounds raised by the

Appellant and deleted the adhoc disallowance of Staff Welfare Expenses, Miscellaneous Expenses and Advertisement & Sales Promotion Expenses to the extent confirmed by the DRP, and allowed the Appellant's claim for deduction of expenses.

- 6.8. In view of the above, we hold that the authorities below erred in making ad-hoc disallowance of expenses. Accordingly we deleted the ad-hoc disallowance of (a) Staff Welfare Expenses of INR 20,32,210/, (b) Miscellaneous Expenses of INR 2,79,553/-, (c) Travelling & Conveyance Expenses of INR 78,15,374/-, (d) Repair & Maintenance Expenses of INR 16,22,563/- and (e) Advertisement & Sales Promotion Expenses of INR 27,05,192/-. Ground No. 4 to 8 raised by the Appellant are, therefore, allowed.

Ground No. 9

7. Ground No. 9 raised by the Appellant is directed against non-granting of credit of tax deducted at source aggregating to INR 4,00,84,439/-. In order to address the grievance of the Appellant we direct the Assessing Officer to verify the amount of tax deducted at source in the case of the Appellant and provide credit for the same as per law. With the aforesaid directions, Ground No. 9 raised by the Appellant is allowed for statistical purposes.

Ground No. 10

8. Ground No. 10 raised by the Appellant pertains to initiation of penalty proceedings under Section 271(1)(b) and 271(1)(c) of the Act. The penalty proceedings are separate and distinct from the assessment proceedings. The Appellant's challenge to initiation of penalty proceedings is premature and therefore, Ground No. 10 raised by the Appellant is dismissed.

ITA No. 2268/Mum/2016 (Assessment Year 2010-11)

9. We would now take up appeal for the Assessment Year 2010-11

10. Appellant has raised following grounds of appeal:

- 1.) *The learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing Officer in disallowing commission payments during the year to the extent of Rs.1,96,83,801/-. Having regard to the facts and circumstances of the case. the Appellant submits that the disallowance is unwarranted and requires to be deleted.*
- 2) *The learned Commissioner of Income Tax (Appeals) erred in making an adhoc disallowance of Rs. 15,77,052/-, being 5% of the total staff welfare expenses incurred by the Appellant. Having regard to the facts and circumstances of the case, the Appellant submits that the disallowance is unwarranted and requires to be deleted.*
- 3) *The learned Commissioner of Income Tax (Appeals) erred in making an adhoc disallowance of Rs.8,35,722, being 5% of the aggregate miscellaneous expenses incurred by the Appellant Company for the year under consideration. Having regard to the facts and circumstances of the case, the Appellant submits that such expenditure requires to be allowed as claimed by the Appellant in its Return of Income*
- 4) *The learned Commissioner of Income Tax (Appeals) erred in making an adhoc disallowance of Rs.19.776/-, being 5% of the total advertisement and sales promotion expenses incurred by the Appellant. Having regard to the facts and circumstances of [the case, the Appellant submits that the disallowance is unwarranted and requires to be deleted.*
- 5) *The learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing Officer in making an adhoc disallowance of Rs.54,38,609/-, being 20% of the aggregate travelling and conveyance expenses incurred by the Appellant Company for the year under consideration. Having regard to the facts and circumstances of the case, the Appellant submits that such expenditure requires to be allowed as claimed by the Appellant in its Return of Income.*
- 6) *The learned Commissioner of Income Tax (Appeals) erred in*

confirming the action of the Assessing Officer in making an adhoc disallowance of Rs.25,56,212, being 20% of the aggregate repairs and maintenance expenses incurred by the Appellant Company for the year under consideration. Having regard to the facts and circumstances of the case, the Appellant submits that such expenditure requires to be allowed as claimed by the Appellant in its Return of Income.

- 7) *The learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing Officer in making an adhoc disallowance of Rs.65.88,803, being 20% of the aggregate communication expenses incurred by the Appellant Company for the year under consideration. Having regard to the facts and circumstances of the case. the Appellant submits that such expenditure requires to be allowed as claimed by the Appellant in its Return of Income.*
- 8) *The learned Commissioner of Income Tax (Appeals) erred in making an adhoc disallowance of Rs. 51,10,998-, being 10% of the total cash discounts offered by the Appellant. Having regard to the facts and circumstances of the case, the Appellant submits that the disallowance is unwarranted and requires to be deleted."*

11. The relevant facts in brief are that the Appellant filed return income for the Assessment Year 2010-11 on 27/09/2010 declaring total income of INR 166,90,17,153/-. During the assessment proceedings reference was made to the Transfer Pricing Officer who passed order, dated 24/01/2014, under Section 92CA(3) of the Act accepting the arm's length price determined by the Appellant for international transactions. Thereafter, assessment order, dated 20/03/2014, was passed under Section 143(3) of the Act determining total income at INR 1,82,12,64,770/- after making, inter alia, disallowance of commission expenses and disallowance of percentage of various expenses on ad-hoc basis primarily on the ground that the Appellant had failed to produce necessary details along with the supporting bills/documents for verification during the assessment proceedings.

11.1. Being aggrieved, the Appellant carried the issue in appeal before the CIT(A). Vide order dated 26/02/2014, the CIT(A) granted some relief

to the Appellant by restricting the disallowance of commission expenses to the expenses in respect of which confirmation was not furnished and the expenses in respect of which confirmation furnished were not accepted by the Assessing Officer, and by reducing the percentage of ad-hoc disallowance pertaining to some of the expenses claimed by the Appellant by placing reliance of the order passed by the DRP for the Assessment Year 2009-10.

- 11.2. Seeking further relief, the Appellant has filed the present appeal against the order passed by the CIT(A), dated 26/02/2014, challenging disallowance of commission expenses and other expenses to the extent confirmed by the CIT(A).

Ground No.1

12. Both the sides agreed that Ground 1 pertaining to disallowance of commission expenses raised in appeal for the Assessment Year 2010-11 is identical to Ground No. 3 raised in appeal for the Assessment Year 2009-10. Since the facts and circumstances prevailing in Assessment Year 2009-10 are identical to the facts and circumstances prevailing in appeal for the Assessment Year 2010-11, our finding/adjudication on Ground No.3 raised in appeal for the Assessment Year 2009-10 shall apply mutatis mutandis to the Ground No. 1 raised in appeal for the Assessment Year 2010-11. Accordingly, in view of paragraph 5 to 5.8 above, deduction for commission expenses as claimed by the Appellant is allowed and addition of INR 1,96,82,801/- is deleted. Ground No. 1 raised on appeal for the Assessment Year 2010-11 is allowed.

Ground No. 2 to 6, and 7&8

13. Ground 2 to 8 pertain to ad-hoc disallowance of the expenses

claimed by the Appellant.

13.1. The details of the disallowances of various expenses are as under:

Ground No.	Nature of expenses	Disallowance in Assessment Order under Section 143(3) of the Act	Disallowance as per CIT(A)	Amount of disallowance challenged in the appeal (INR)
2	Staff Welfare Expenses	25%	5%	15,77,052/-
3	Miscellaneous Expenses	25%	5%	8,35,722/-
4	Travailing & Conveyance Expenses	20%	20%	54,38,609/-
5	Repair & Maintenance Expenses	20%	20%	25,56,212/-
6	Advertisement & Sales Promotion Expenses	20%	5%	19,776/-
7	Communication Expenses	20%	20%	65,88,803/-
8	Cash Discount	100%	10%	51,10,998/-

13.2. The Learned Authorised Representative appearing before us submitted Ground No. 2 to 6 pertaining to ad-hoc disallowance of various expenses raised in appeal for the Assessment Year 2010-11 are identical to Ground No. 4 to 8 raised in appeal for the Assessment Year 2009-10. Further, Ground 7&8 raised in appeal for the Assessment Year 2010-11 also pertain to ad-hoc disallowance communication expenses and Cash-discount. He adopted the submission made for the Assessment Year 2009-10 and submitted that in the identical facts and circumstances the disallowance of similar expenses made for the preceding assessment years have been deleted by the Tribunal.

13.3. Per contra, though the Learned Departmental Representative relied

upon the order passed by the Assessing Officer and the CIT(A), he agreed the disallowances have been made in similar facts and circumstances and for similar reasons.

- 13.4. We have perused the material on record. We find that the facts and circumstances prevailing in Assessment Year 2009-10 are identical to the facts and circumstances prevailing in appeal for the Assessment Year 2010-11 as agreed by both the sides. The CIT(A) had also relied upon the order passed by the DRP for the Assessment Year 2009-10 while passing the order. Accordingly our findings, reasoning and adjudication on grounds raised in appeal for the Assessment Year 2009-10 shall apply mutatis mutandis to the corresponding grounds raised in appeal for the Assessment Year 2010-11. Further, we find that the
- 13.5. Accordingly, in view of paragraph 6 to 6.8 above, ad-hoc disallowance (a) Staff Welfare Expenses of INR 15,77,052/-, (b) Miscellaneous Expenses of INR 8,35,722/-, (c) Travelling & Conveyance Expenses of INR 54,38,609/-, (d) Repair & Maintenance Expenses of INR 25,56,212/- and (e) Advertisement & Sales Promotion Expenses of INR 19,776/- stand deleted. As a result, Ground 2 to 6 raised in appeal for the Assessment Year 2010-11 are allowed.
- 13.6. As regards communication expenses and cash – discount expenses, we find that the relevant details and sample documents were furnished by the Appellant (placed at Page 198 to 202 and 19 to 197 in the duplicate copy of paper-book filed on 20.02.2023). Therefore, adopting the reasoning given in paragraph 6 to 6.8 above for deleting ad-hoc disallowance of expenses, Ground No. 7 pertaining to

ad-hoc disallowance of Communication Expenses of INR 65,88,803/- & Ground No. 8 pertaining to ad-hoc disallowance of 51,10,998/- pertaining to cash discount raised by the Appellant are also allowed and the corresponding additions deleted.

14. In result, Appeal preferred by the Assessee for the Assessment Year 2009-10 is partly allowed, whereas the Appeal for the Assessment Year 2010-2011 is allowed.

Order pronounced on 28.04.2023.

Sd/-

**(Prashant Maharishi)
Accountant Member**

Sd/-

**(Rahul Chaudhary)
Judicial Member**

मुंबई Mumbai; दिनांक Dated : 28.04.2023
Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai