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

BEFORE,
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

ITA No.7440/Del/2017
(ASSESSMENT YEAR 2012-13)

ACIT Circle-27(2) Room No. 194B, C. R. Building, I. P. Estate, Phase-III, New Delhi	Vs.	Wrigley India Pvt. Ltd. 206, 2nd Floor, Okhla Industrial Estate, Phase-III, New Delhi **PAN:- AAACW1789P**
(Appellant)		**(Respondent)**

Appellant by	Sh. Ravi Sharma, Adv, Ms. Shruti Khimta & Kashish Gupta, AR
Respondent by	Shri Rajesh Kumar, CIT(DR)

Date of Hearing	20/06/2024
Date of Pronouncement	24/07/2024

ORDER

PER YOGESH KUMAR U.S.JM:

The present Appeal has been filed by the Department for Assessment Year 2012-13 passed by the Commissioner of Income Tax (Appeals)-44, New Delhi.

2. The grounds of appeal are as under:-

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) was right in holding that AMP

expenses do not constitute an international transaction and hence it does not lead to the creation of marketing intangibles?

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) was right in law in stating that the existence of an international transaction cannot be arrived at from the clauses of an intercompany arrangement?

3. Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) was right in law in holding that the IT Act does not have machinery provision to benchmark the international transaction arising from AMP expenses.

4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in law in rejecting the BLT to benchmark the AMP transaction.

5. Whether on the facts and circumstances of the case, the Ld. CIT (A) was right in law in observing that the benefit to the AE due to AMP expenditure is only incidental and not international?

6. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in law in observing that if on application of TNMM the transactions are found to be at Arm's Length then no adjustment is warranted ignoring the fact that a separate bench marking of each international transaction is permitted as per IT Act and international guidance?

7. The appellant craves leave to add, alter, amend or forgo any ground(s) of appeal either before or at the time of hearing of the appeal."

3. Brief facts of the case are that, the assessee filed return of income for Assessment Year 2012-13 by declaring loss of Rs.

28,40,16,874/- which was processed u/s 143(1) of the Act. Subsequently, revised return was filed by the assessee declaring the loss of Rs. 28,81,28,864/-. The case was selected for scrutiny u/s 143(2) of the Act. From the record, it is found by the A.O. that the assessee had entered into international transaction with its Associates Enterprises during the year. During the course of the assessment proceedings the case was referred to Transfer Pricing Officer, ('TPO') as the assessee had shown international transaction with its AE of Rs. 39.19 crores. The Ld. TPO deliberated upon the value of international transactions shown by the assessee and found that the transfer pricing report furnished by the assessee to be erroneous. Accordingly, the TPO determined the Arms Length Price of the international transaction relating to purchases, sales, interest and allocation of cost etc and directed the A.O. to enhance the Assessee's income by Rs. 11,66,20,841/- on account of advertising and publicity expenses and sales & promotion expenses. The draft assessment order has been passed on 17/03/2016 u/s 142(3) red with Section 144C(1) of the Act by assessing the loss of the assessee at Rs. 17,15,08,023/-. The final assessment order came to be passed on 27/04/2016 u/s 143(3) of the Act read with

Section 144C of the act by making the very same addition of Rs. 11,66,20,841/- and assessed the income of the assessee at Rs. 17,15,08,023/-.

4. As against the assessment order dated 27/04/2016, the assessee preferred an Appeal before the CIT(A), the Ld. CIT(A) vide order dated 29/09/2016, allowed the Appeal of the assessee by deleting the addition made by the A.O. by relying on the decisions of the Tribunal in Assessee's own case for Assessment Year 2007-08, 2008-09 & 2009-10. Aggrieved by the order of the Ld. CIT (A) dated 29/09/2017, the Department of Revenue preferred the present Appeal on the Grounds mentioned above.

5. The Ld. Departmental Representative relying on the order of the TPO and final assessment order sought for allowing the Grounds of Appeal of the Revenue and brought the relevant facts to our notice.

6. Per contra, the Ld. Assessee's Representative submitted that the Ld. CIT(A) has relied on the decisions of the Tribunal in Assessee's own case for Assessment Year 2007-08 to 2009-10 and

submitted that by following the consistency, the Ld. CIT(A) deleted the addition which requires no interference at the hands of the Tribunal. Therefore, prayed for dismissal of the Appeal filed by the Revenue.

7. We have heard both the parties and perused the material available on record. The Ld. CIT(A) while deleting the addition, relied on the orders of Assessee's own case for Assessment Year 2007-08 to 2009-10 in ITA No. 4346/Del/2021, ITA No. 6475/Del/2012 and 826/Del/2014 in following manners:-

> *"11. The appellant has stated that Hon'ble ITAT, Delhi Bench in its own case for AYS 2007-08, 2008-09 and 2009-10 in ITA No. 4346/Del/2011; ITA NO. 6475/Del/2012 and ITA No. 826/Del/2014 dated 31.01.2017 has observed as follows:-*
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> *"9. Having gone through the cited decisions of the Hon'ble Jurisdictional High court of Delhi in the case of Maruti Suzuki India Ltd. (supra), we find that an identical issue was raised before the Hon'ble High Court. The Hon'ble High Court after discussing issue in detail has come to the conclusion that AMP expenses incurred by the appellant therein, cannot be treated and categorized as an international transaction u/s 92B of the Act. Thus, the issue has been decided in favour of the assessee. The Hon'ble Court in view of the above decision further held that the question of TPO making any transfer pricing adjustment in respect of such transaction under Chapter X does not arise. The Hon'ble High Court has followed its*

earlier decision in the case of Sony Ericsson Mobile Communication India Pvt. Ltd. vs. CIT (2015) 374 ITR 118 (Del). Respectfully following the ratio laid down in the cited decision of the Hon'ble High Court in the case of Maruti Suzuki India Ltd. (supra), we hold that AMP expenses incurred by the appellant cannot be treated and categorized as an international transaction u/s 92B of the Act, and in view of this finding the TPO was not justified in making any transfer pricing adjustment in respect of such transaction under Chapter X of the Act. The Ground No. 5 TO 14 is thus allowed in favour of the assessee. The Ground No. 15 is an alternative ground with this contention that the Ld AO/TPO has erred by not adhering to the principles of comparability and in using inappropriate comparables to determine the Bright Line Limit. In view of the findings on the issue raised in ground no. 5 to 14, the alternative issue raised in ground no. 15 does not stand. This ground is accordingly disposed off."

11.1 The Hon'ble Tribunal relied on the order of the jurisdictional High Court in the case of Maruti Suzuki India Ltd. (supra) where the Hon'ble High Court had concluded that AMP expenses incurred by the taxpayer could not be treated and categorized as an international transaction u/s 92B of the Act. On the basis of the above ruling the Hon'ble Tribunal had held that the issue had been decided in favour of the appellant. It was also stated that the Hon'ble Court in view of the above decision further held that the question of TPO making any transfer pricing adjustment in respect of such transaction under Chapter X did not arise. The Hon'ble High Court had followed its earlier decision in the case of Sony Ericsson Mobile Communication India Pvt. Ltd. vs. CIT (2015) 374 ITR 118 (Del).

11.2 In accordance with the principle of consistency and respectfully, following the aforementioned decision of

Hon'ble ITAT, Delhi Bench for AY 2007-08 to 2009-10, the transfer pricing adjustment of Rs 524,440,465 is deleted. In view of the categorical observations of the Hon'ble Tribunal, the transfer pricing adjustment of Rs. 116,620,841 made on account of alternative approach also does not stand. The grounds of appeal filed by the appellant are accordingly disposed off."

8. Further the Hon'ble Jurisdictional High Court in the case of Maruti Suzuki India Ltd. Vs. CIT (2016) 237 Taxman 256 (Del) held that the AMP expenses incurred could not be characterized as an international transaction under the provision of Section 92B of the Act and deleted the addition.

9. Considering the above facts and circumstances and by following the principals of consistency, we find no merit in the Grounds of appeal filed by the Revenue. Accordingly, the Appeal filed by the Revenue is dismissed.

Order pronounced in open Court on 24th JULY, 2024

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

Dated: 24/07/2024
R.N, Sr.ps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI