IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BANGALORE

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

IT(TP)A No. 762/Bang/2024
Assessment Years : 2018-19

Amazon Seller Services Pvt. Ltd., No.26/1, 8th Floor, World Trade Center, Brigade Gateway, Dr. Rajkumar Road, Malleswaram (W), Bengaluru – 560 055. **PAN – AAICA 3918 J**	Vs.	The Commissioner of Income Tax (TP), Bengaluru – 1, Bengaluru. .
APPELLANT		RESPONDENT

IT(IP)A No. 795/Bang/2024
Assessment Years : 2018-19

Amazon Development Centre (India) Pvt. Ltd., No.26/1, `th Floor, World Trade Center, Brigade Gateway, Dr. Rajkumar Road, Malleswaram (W), Bengaluru – 560 055. **PAN – AAECA 7705 P**	Vs.	The Commissioner of Income Tax (TP), Bengaluru – 1, Bengaluru. .
APPELLANT		RESPONDENT

Assessee by	:	Shri Ajay Vohra, Sr. Advocate & Ms. Deepashree Rao, Advocate
Revenue by	:	Ms. Neera Malhotra, CIT (DR)

Date of hearing	:	25.07.2024
Date of Pronouncement	:	22.10.2024

O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the CIT(TP), Bengaluru - 1 dated 01/03/2024 in DIN No. ITBA/COM/F /17/2023-24/1061833576(1) dated 29/02/2024 in DIN No. ITBA/COM/F /17/2023-24/1061771186(1) for the assessment year 2018-19.

IT(TP)A No. 762/Bang/2024 for the Asst. Year 2018-19

2. The only effective issue raised by the assessee is that the learned CIT-TP erred in revising the assessment order by holding the TPO order as erroneous insofar prejudicial to the interest of revenue under the provisions of section 263 of the Act.

3. The facts in brief are that the assessee, a private company and among other activities, is engaged in the business of online trading, online services for e-trading/commerce, marketing support services etc. The assessee for purpose of financial information has broadly divided its activities into 3 different segments detailed as under:

1. Marketplace Segment
2. Wholesale segment
3. Marketing support services segment

4. The assessee for determining ALP of international services has computed PLI of each segment independently and accordingly computed the PLI of Marketing support services segment being OP/OC at 14% which was accepted by the TPO in the assessment proceeding.

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5. Subsequently, the learned CIT-TP from assessment records noticed that the ultimate parent company of the assessee company namely Amazon.com Inc. has announced stock-based award/incentive for selected employee of the amazon group on a specific future date subject to specified service term. Because of such share/stock-based award, the assessee company has recognized expenses of share-based compensation of Rs. 2271 million in the profit and loss account under the head employees benefit expenses. The learned CIT-TP was of the view that impugned expenses of share-based compensation is prima facie an operating expense, however, the same was excluded from operating expenses by the assessee while computing the PLI of its segments. However, the TPO without making necessary inquiry or verification allowed the exclusion of impugned expenses from operating expenses. As per the ld. CIT-TP, the TPO further failed to verify or examine the total expenses in proportion to revenue including share-based compensation, depreciation, amortization.

5.1 Besides on the above, the learned CIT-TP further observed that the assessee has carried out the function of advertisement, marketing, and sales promotion (AMP) for the brand of Amazon group. The TPO opined that the expenses incurred on AMP function has resulted in creation of marketing intangible for amazon group, therefore the assessee company should be compensated by the AEs. Accordingly, the TPO worked out the adjustment on account of AMP expenses in upward direction. However, the learned CIT-TP was of the view that the assessee has also incurred delivery and warranty expenses which will ultimately create goodwill and marketing intangible for the amazon group, therefore, applying the AMP logics, the assessee should also be

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compensated for delivery and warranty cost. However, the TPO failed to make adjustment on the same.

6. In view of the above, the learned CIT-TP exercised his power conferred under section 263 of the Act and proposed to revise the assessment order/ TPO as erroneous insofar prejudicial to the interest of the revenue on account of lack of necessary verification and examination.

7. The assessee in response to such notice submitted that the revisionary power under section 263 of the Act should be exercised objectively not subjectively. As such, to initiate the revisionary proceedings, there should be some material suggesting that there was an error committed causing prejudice to the revenue. The CIT-TP cannot revise assessment order merely for difference of his and AO opinion. The assessee claimed that as per the CBDT instruction No. 3/2016 dated 10th March 2016 procedurally every Transfer Pricing order is passed after necessary approval form CIT-TP. As such, in the present case too, the Transfer Pricing order was passed after getting approval from learned CIT-TP but the learned CIT-TP proposed to revise the same order which was passed after his approval, thus such an action tantamount to review of own approval which is not desirable under the provision of section 263 of the Act and same is against the use of power conferred under the Act.

8. The assessee also submitted that the share-based compensation is notional expense and recognized in the books only for disclosure purpose as required under IndAS-102 issued by the ICAI. There was no

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amount paid to or levied by the AE in this regard and same was also disallowed while computing income under the Act under normal computation of income. Further, enough inquiries were conducted by the TPO during the proceedings with respect to shares-based compensation and thereafter, the TPO after due application of mind accepted the exclusion of the same from operating expense. Thus, it cannot be said that there was no enquiry conducted by the TPO during the proceedings.

9. Likewise, the assessee regarding the delivery charges and the warranty expenses submitted that these expenses are incurred by the assessee after execution of the sale of the products which is normal day to day business expenses and therefore such expense has nothing to do with the AMP. Accordingly, such expenses should not be considered while calculating the ALP of the AMP expenses. Furthermore, the TPO during the proceedings raised specific question about inclusion of delivery and warranty expenses as part of AMP for computation of ALP determination vide SCN dated 9th July 2021 which was duly explained in the submission made in response to impugned notice. Thus, the TPO after making necessary inquiry and application of mind on the submission made, left the delivery and warranty charges from AMP. Hence, the order of the TPO cannot be held erroneous in the given facts and circumstances.

10. However, the learned CIT-TP disagreed with the contentions of the assessee and set aside the assessment order as erroneous and prejudicial to the interest of revenue for necessary inquiry with respect to the issues discussed above. The relevant observation of the learned CIT-TP is extracted as under:

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Shares Based Compensation and allocation of amortization and depreciation allowance:

"15. In the present case, the draft order a99JCA of the Act passed by DCIT (TP)-1(1)(1), Bangalore was approved by the Addl. CIT (TP)-1(1), Bangalore on 27.07.2021 in accordance with the aforesaid instruction. The power of any revision thereof duly lies with the Commissioner to whom the said authorities are subordinate.

16. As regards the issue relating to share-based compensation in the form of ESOP cost, the assessee submitted that during TP proceedings, the TPO had raised query in the showcause notice as regards the computation of segmented profitability. In the determination of ALP of the MSS segment under TNMM adopted by the TPO, the computation of operating cost base and mark-up thereon is integral to the determination of the arm's length margin. As such, it is incumbent upon the TPO to carefully examine and verify each and every relevant item to determine its inclusion or otherwise in the cost base. It is seen that at page 4 of the said order u/s 92CA(3), the TPO referred to the entity level segmented PLI of the assessee for the year as per the TP report filed by the assessee. The TPO accepted the total operating expense computed by the assessee which excluded share based compensation of Rs. 2,272 million. Subsequently, at page 30 of the order, the TPO accepted the arm's length mean for the Marketing Support Services segment as it was within the +/-3% variation range. No inquiries which were required to be made were made by the TPO including at the showcause stage about details of the share-based compensation, correctness of the segmental allocation thereof and basis for exclusion of such ESOP cost from the operating cost base.

17. As regards depreciation and amortisation, it is incumbent upon the TPO to arrive at the correct segments allocation of all relevant operating items including depreciation and amortisation and share based compensation pursuant to a detailed inquiry / verification of the basis of allocation such as allocation keys etc., which has not been done in the present case. Hence, this is not a case where the TPO has allow a claim after satisfied with the explanation by the assessee, but a case where the TPO accepted the operating cost base computation of the assessee and segmental PLI there from without verifying material items, which are prima facie likely to have a significant bearing on the determination of the arm's length price. An 'enquiry' of general nature, if any, is distinct from the mandatory requirement of 'inquiry' in as much as the latter requires detailed examination / verification of a claim before it is allowed.

18. The present case is not one of substitution of the TPO's opinion by the CIT's opinion as contended by the assessee since the TPO had not formed any informed and well-examined opinion in the first place on inclusion or otherwise of share-based compensation in the operating cotpursuant to detailed examination / verification. The acceptance of the operating cost computation and segmental allocation of the assessee by the TPO without examining the specific items which had been excluded by the assessee to arrive at such computation constitutes an

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erroneous assumption of facts and incorrect application of the TP law, which makes the said order u/s 92CA(3) dated 27.07.2021 erroneous and prejudicial to the interests of revenue.

19. The assessee's submissions that the said cost was debited in the profit and loss account only on account of Ind-AS requirements and that the cost was a notional expense was perused. It is seen from the financial statements that the said expenses having been incurred by the parent AE Amazon.com Inc., on shares granted to the assessee's employees as part of their remuneration has been considered as an expense relating to such employees by way of debit to the profit and loss account for this FY. Regardless of Ind-AS requirements, various judicial decisions have held that share-based compensation in the form of ESOP cost is not notional expenditure or contingent liability but represent ascertained liability and actual expenditure for the employer. The same has been held in Commissioner of Income Tax v. Biocon Ltd., ITA No. 653 of 2013 (Karnataka HC affirming the decision in 35 Taxmann.com 335 (Bangalore — ITAT) (SB). These rulings have held that ESOP costs are in the nature of incentive/ compensation paid to the employees of the assessee company, who form part of its business and are involved in carrying out day-to-day business operations/management and the same forms part of their remuneration and employee cost incurred by the company. Vide order dated 03.10.2022, Hon'ble Bangalore ITAT has held in Hewlett Packard (India) Software Operation Pvt. Ltd. Vs DCIT[IT(TP)A No. 213/Bang/2021 that ESOP expenditure incurred is a compensation/incentive to the employee and has direct nexus with his/her employment. Such compensation to the employees in the form of ESOP is included In the salary of the employees under Section 17 of the Income Tax Act, 1961.

20. Such expense, being incurred for the purposes of business by the employer assessee company, would, prima facie, be of the nature of operating expenditure for the assessee company for the purpose of arm's length determination under the TP provisions, unless demonstrated to the Contrary by the assessee during TP proceedings. However, necessary verification I Inquiries to ascertain the same were not conducted during TP proceedings.

21. For the purpose of relevant guidance, Tribunals have referred to the definitions in provided in the safe harbour provisions under Rule IOTA of Income Tax Rules, :?62 as in the case of Sitel India Pvt Ltd. Vs,, PCIT (TS-400-ITAT2019(Mum). TP]. It has been held by Hon'ble ITAT Delhi Sench In DCIT Vs. Minda Acoustic ".,,.a (ITA No. 1759/Del/2015) that the safe harbour rules can be taken as guidance as -

"The assessee though has not applied for the Safe Harbor rules, but It always be adopted as guidance for interpretation of such items specifically when they have not he-9h defined anywhere in law..."

22. In this context, it is useful to note that under Rule 1OTA of Income Tax Rules, 1962, w.e.f. AY 2017-18, the term n 'operating expenses' is defined in clause (1) thereof to, inter alia, mean "that Posts incurred in the previous year WOO assessee in relation to the international transaction during the course of its normal operations including costs relating to Employee Stock Option Plan or similar stock-based compensation providers for by the associated enterprises of the assessee to the employees of the assessee, reimbursement to associated enterprises of expenses incurred by the associated enterprises on behalf of the assessee, amounts recovered from associated enterprises on account of

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expenses incurred by the assessee on behalf of those associated enterprises and which relate to normal operations of the assessee and depreciation and amortization expenses relating to the assets used by the assessee. " (Emphasis supplied;).

23. The safe harbour provisions clarify that costs relating to Employee Stock Option Plan or similar stock-based compensation provided for by the AEs of the assessee to the employees of the assessee constitute operating expense, regardless of whether any payment thereto has been made by the assessee to the AE. The assessee's contention that the said expense was not incurred by it and hence the expense cannot be included in the operating expense base does not align with the above clarification in the safe harbour rules, absent any other definition in the TP rules. None of the above was examined by the TPO before allowing the assessee's claim.

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"34. The decision on whether the ESOP costs are to be included in the operating cost or not is an issue to be decided on merits by the TPO after due inquiries verification by giving opportunity to the assessee to produce all relevant documents as may be called for. At the stage of proceedings u/s 263, the issue remains open-ended in as much as the direction to the TPO as detailed at Para 27 of said order u/s 263 of the CIT dated 29.03.2023 was to pass the consequential order u/s 92CA.r.w.s. 263 only after making inquiries / verification which should have been made but was not made at the time of the original order. The decisions relied upon by the assessee before the Hon'ble Tribunal namely, i2 Technologies Software (P) Ltd vs. CIT(A) 983 Taxmann 143 (Bang-Trib.) and HOV Services Vs. JCIT (73 Taxmann 311 (Pune I Trib.) were not in respect of proceedings and order u/s 263 Act. Instead, the issue which is pertinent at the stage of proceedings u/s 263 is whether in the opinion of the CIT, the TPO has conducted the necessary inquiries and verification in order to arrive at an informed and reasoned decision to allow the claim of the assessee on ESOP costs, which was not done in the present case. It is seen that the fact of non-finality of the issue at the stage of proceedings u/s 263 and any decision at this stage on merits being pre-mature in terms of the purpose of proceedings u/s 263 of the Act were not brought up for discussion and examination before the Hon'ble Tribunal. In the context of order u/s 263 of the Act dated. 29.03.20,23, Hon'ble Supreme Court in Civil Appeal no. 6126 in CIT Vs M/s Paville Projects Pvt Ltd (6 April 2023) has held as under:-

> *"7.2 Thus, even as observed in paragraph 9 by this Court in the case of Malabar Industrial Co. Ltd. (supra) that the scheme of the Act is to levy and collect tax in accordance with the provisions of he Act and this task is entrusted to the Revenue. It is further observed that if due to an erroneous order of the Income Tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue."*

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Delivery and warranty charges being in the nature of AMP expenses:

"28. The TPO proposed therein to make TP adjustments on excess amount of AMP expenditure incurred by the assessee for brand promotion and on the markup on such AMP expenses. The assessee filed its reply to the said showcause notice on11.01.2021, wherein it gave its submissions on the AMP issue including on why warranty expenses and delivery charges do not constitute AMP expenses. However, it is seen that from Paras 12-20, the TPO rejected all the assessee's contentions on the issue of AMP, but only considered selling expenditure as part of AMP at Para 21 and proceeded to benchmark the said AMP transaction from Para 22 onwards. The chronology clearly shows that while on the one hand, the TPO rejected the assessee's submissions dated 22.07.2021 in totality, which included the assessee's averments on warranty expenses and delivery charges as not being AMP expenses, on the other hand, the TPO only considered advertising and sales promotion expenses amounting to Rs. 2,109 million in the ALP"` determination while failing to include warranty expenses and delivery charges.

29.This is not a case where the TPO duly examined the assessee's submissions on delivery charges and warranty expenses. The contentions of the assessee on the entire AMP issue were rejected by the TPO in totality. As a consequence thereof, the TPO was required to include all the three relevant items of discussion namely advertising and selling expenses, delivery charges and warranty expenses to arrive at the AMP adjustment, but failed to do so. The said claim was allowed without any inquiry or verification of the correctness or otherwise of the assessee's submissions. Considering that the TPO rejected the entire submissions, the assessee's contention that the TPO perused the detailed response made by the assessee and based on his informed opinion partially accepted the contentions of the assessee on delivery and warranty cost while partially rejecting the same on advertising and sales promotion expenses is not borne from the foregoing facts on record. The above failure squarely falls within the meaning and scope of the Explanation 2 above to section 263 of the Act.

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"38. At the stage of proceedings u/s 263-the Act, there is / can be no finding of fact on the actual merits of the issue which can ot4y be ascertained by the TPO after thorough inquiries / verification. The mere fact that ,a-general query was made by the TPO at showcause stage while simultaneously accepting the TP computation of the assessee in the same show cause notice only confirms the fact that the TP order was passed without making detailed inquiries or verification which should have been made as required within the meaning and scope of clause (a) of the said Explanation. Copies of the relevant share compensation agreements and inter-company agreements with the AEs were not examined to verify the allowability or otherwise of the assessee's claim.

39.The above legal position on the restricted scope of finality of an issue in proceedings u/s 263 of the Act, prior to and for the purpose of consequent

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actual verification by the TPO based on evidence called from the assessee, was not brought up for discussion and examination before the Hon'ble Tribunal while deciding the question of share-based compensation. Accordingly, in line with the principles laid down in the above referred rulings which clearly apply to the facts and circumstances of this case and in the absence of verification in the manner required under the Act by the TPO as detailed in the foregoing paragraphs, I hold that the order u/s 92CA(3) of the Act dated 27.07.2021 for AY 2018-19 is erroneous in so far as it is prejudicial to the interest of the revenue. The above failure falls within the meaning and scope of clauses (a) and (b) of the said Explanation 2 above to section 263 of the Act. The said order is therefore set aside for necessary verification of (a) share-based compensation in the form of ESOP cost, depreciation and amortisation in the Operating Expense base computation along with correct segmental allocation thereof and (b) Delivery charges and warranty expenses in AMP expenditure computation along with correct segmental allocation thereof. The TPO is directed to pass the order for AY 2018-19on the same by carrying out necessary inquiries / verification under the TP provisions after giving adequate opportunity of being heard to the assessee.

11. Being aggrieved by the order of the learned CIT-TP, the assessee is in appeal before us.

12. The learned AR before us filed the return note having 16 pages along with the paper book running from pages 1 to 1042 and contended that the proper verification was carried out by the AO during the assessment proceedings. Therefore, there cannot be pointed out any fault in the assessment order on account of non-verification.

12.1 The learned AR further submitted that the issues involved on hand have already been considered by the ITAT in the group case of the assessee whereby it was held that there is no error in the assessment requiring to invoke the provisions of section 263 of the Act.

12.2 The learned AR also submitted that the assessee has not adopted safe harbour rules for the year under consideration, therefore there cannot be any application of rule 10 TA of the Income Tax Rules.

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13. On the other hand, the learned DR before us vehemently supported the order of the ld. CIT passed under section 263 of the Act.

14. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the issue revolves that the TPO has not carried out necessary verification during the proceedings which ought to have been done before passing the order under section 92CA of the Act. Thus, the order has been passed by the TPO without proper application of mind. The disputes raised by the learned CIT-TP under section 263 of the Act involves the issues as detailed under:

i. Non-application of mind by the TPO properly with respect to the exclusion of share shares-based compensation from operating profit as claimed by the assessee in the computation of PLI i.e. Op/Oc.

ii. Non-application of mind by the TPO properly for the allocation of depreciation and amortization of expenses to the different segments.

iii. Non-application of mind by the TPO for not making the adjustment with respect to warranty and delivery expenses incurred by the assessee.

14.1 Regarding the share-based compensation claimed by the assessee, it is pertinent to note that the inquiries have been carried out by the TPO during the proceedings under section 92CA of the Act which is evident from the questions raised by the TPO vide notice dated 1st March 2021 & 9th July 2021 and the replies made by the assessee dated 18th March 2021 & 20th July 2021 respectively, available on pages 287 to 859 and 860 to 887 of the paper book. However, this fact was also

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accepted by the learned CIT-TP that the inquiries have been conducted by the TPO during the proceedings under section 92CA of the Act, but the allegation of the learned CIT-TP is that the TPO has just raised the question and received the reply from the assessee without conducting further inquiries which ought to have been made during the proceedings. According to the learned CIT-TP, the share-based compensation is an operating expense in pursuance to the income tax rule 10TA of Income Tax Rule. Likewise, these expenses being share-based compensation are actual expenses incurred by the assessee which can't be treated as notional in nature. However, the TPO during the proceedings under section 92CA of the Act has not looked into all these aspects and admitted the contention of the assessee that share-based compensation is an expense of non-operating nature and therefore the same was not considered while calculating the PLI of the assessee.

14.2 Before we proceed to adjudicate the issue on hand, it is necessary to note that similar issue was also there in the own case of the assessee for the immediately preceding assessment year in IT(TP)A No. 418/Bang/2023 for the assessment year 2017-18 where the Tribunal has decided the issue in favour of the assessee vide order dated 20th February 2024. The relevant extract of the order is reproduced as under:

> *7. After considering the rival submissions and perusing the material on record, we note that in regard to first issue for excluding the SBC as non-operating cost while calculating the OP/OC. This issue is covered in favour of the assessee in its group company as relied by the ld. AR of the assessee noted supra in the case of Amazon Development Centre(India) Pvt. Ltd. in IT(TP)A No. 417/Bang/2023 order dated 25.10.2023 and the other case law relied by the ld. AR of the assessee supports the case of the assessee. In the case cited above the similar issue has been decided by the co-ordinate bench in the proceeding initiated by the ld. CIT u/s 263 in favour of the assessee. In view of this, respectfully following the above judgment we hold that this issue is in favour of the assessee.*

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14.3 The question arises whether the issue on hand is covered issue by the order of the ITAT in the own case of the assessee as discussed above. In this regard, it is necessary to take a note of the amendment brought under the Income Tax Amendment Rule 2017, where under rule 10TA in the definition of operating expense, share based compensation has been included in the definition of operating expenses and such amendment was applicable from 1st April 2017 with prospective effect. Such amendment was not available or applicable in the earlier years and therefore there is every possibility that the ITAT has taken a view holding share-based compensation as non-operating in nature as there existed no provision regarding the same under the statute. Regarding the applicability of rule 10T, we note that such rule is applicable if the assessee opts for safe harbour rules. But in the present sent case, the assessee has not opted such rule, therefore the impugned transaction of share-based compensation cannot be treated as operating expenses in the year under consideration in terms of such rule.

14.4 Regarding the basis of allocation of depreciation and amortization allowance, we note that admittedly there was no enquiry conducted by the TPO during the assessment proceedings as far as the allocation of such expenses to the concerned division being marketing support services for calculating the PLI. The learned AR of the assessee claimed that there was similar issue in own case of the assessee for assessment year 2017-18 (supra) wherein the ITAT held that even if such expenses are included as operating in nature, yet the adjustment will fall within variation of 3% and therefore there was no prejudice to the revenue on account of such as adjustment. However, in our considered opinion the facts of the earlier year viz-a-viz the facts of the year under

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consideration are different so far in the earlier the issue was whether the depreciation and amortization allowance to be treated as operating or non-operating expenses whereas in the year under consideration the issue is allocation of impugned allowances to different segment. Therefore, we are of the view that the issue on hand is not covered issue by the order of ITAT for the assessment year 2017-18 in the own case of the assessee.

14.5 Admittedly, there is no ambiguity to the fact that the assessee has considered the depreciation and amortization allowance as part of operating expenses. Undeniably, the assessee has several segments and certain cost have been allocated on certain basis to all these segments including the allowance of amortization and depreciation. But what has been pointed out by the learned CIT-TP is that the basis of allocation of amortization and depreciation allowances among the several segments of the assessee has not been verified. If the assessee allocates more expenses or allowance of amortization and appreciation to the segments in dispute, it is certainly going to have a bearing to the transfer pricing adjustment. Thus, we are of the view that the TPO was required to verify the basis of allocation of amortization and depreciation allowances among the units. Accordingly, we do not find any infirmity in the order of learned CIT-TP passed under section 263 of the Act to this extent.

14.6 Moving further, regarding the issue of warranty and delivery charges whether to be included as part of AMP so as to compensate the assessee by making the adjustment as made in the case of AMP expenses by the TPO, in this regard, we note that there was similar issue in the own case of the assessee in the earlier assessment year

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2017-18 which was decided by the ITAT in favour of the assessee in IT(TP)A 418/Bang/2023 dated 20-02-2024. The relevant extract of the judgment is reproduced as under:

> *9. Issue No.3 : Delivery and warranty expenses not part of AMP expenses. Considering the rival submissions, we note that the TPO had issued notice dated 26.12.2020 seeking to make adjustment to include warranty expenses amounting 0.91 million and delivery cost amounting to Rs.15,095 million as part of AMP expenses. The assessee duly replied on 11.1.2021 and submitted that the delivery cost and warranty expenses is incurred only when sales are concluded therefore the same cannot be part of AMP expenditure incurred for the purpose of development of brand. The TPO agreed and did not make any adjustment. As per the ld. CIT(TP), these two expenses are part of the AMP expenditure. We note that during the course of TP proceedings, the TPO had made detailed enquiry on these issues and it was not considered as part of AMP expenditure. After going through the detailed submissions and case law relied by the ld. AR of the assessee these expenditure cannot be regarded as having been incurred for the purpose of development of brand since these are post sales activities and part of sales expenditure. It is also not a case of lack of enquiry. Considering the entire facts, we hold that the delivery cost and warranty expenses are not part of AMP expenditure. Therefore, the ld. CIT(TP) is not justified for revising the order on this issue u/s. 263 of the Act. The assessee succeeds on this issue.*

14.7 The facts of the case on hand are identical to the facts of the case discussed above, therefore respectfully following the same, we do not find any merit in the order passed by the learned CIT-TP under section 263 of the Act as far as the issue of treating warranty and delivery expenses as AMP is concerned.

14.8 In view of the above and after considering the facts in totally, we sustain the order of the ld. CIT-TP in part in the manner discussed above. Hence, the ground of appeal of the assessee is partly allowed.

15. In the result, the appeal filed by the assessee is partly allowed.

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Coming to IT(IP)A No. 795/Bang/2024 for the Asst. Year 2018-19

16. The facts of the case on hand are identical to the facts of the case discussed in IT(TP)A No. 762/Bang/2024 for the Asst. Year 2018-19, therefore, respectfully following the same, we sustain the order of the ld. CIT-TP in part in the manner discussed above. Hence, the ground of appeal of the assessee is partly allowed.

17. In the result, the appeal filed by the assessee is partly allowed.

18. In the combined result, both the appeals filed by the assessee are partly allowed.

Order pronounced in court on 22nd day of October, 2024

Sd/- Sd/-

(KESHAV DUBEY) **(WASEEM AHMED)**
Judicial Member Accountant Member

Bangalore
Dated, 22nd October, 2024
/ vms /
Copy to:
1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

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