

आयकर अपीलीय अधिकरण न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
“J” BENCH, MUMBAI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.7269/MUM/2019
निर्धारण वर्ष / Assessment Year :2015-16

M/s Mondelez India Foods Private
Limited (formerly known as
Cadbury India Limited), Mondelez
House, Unit No.2001, 20th Floor
Tower-3 (Wing C) India Bulls
finance Centre), Parel, Mumbai-400 013
PAN : AAAC0460H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income-tax, Range-5(1)(2),
Mumbai, Aayakar Bhavan, M.K. Road
Mumbai-400 020

.....प्रत्यर्थी / Respondent

Assessee by : Shri J.D. Mistri, Sr. Advocate
Shri Hiten Chande

Revenue by : Shri Pankaj Kumar, CIT-DR

सुनवाई की तारीख / Date of Hearing :18.08.2025

घोषणा की तारीख / Date of Pronouncement : 22.08.2025

आदेश / ORDER**PER ARUN KHODPIA, AM:**

The present appeal filed by the assessee company is directed against the order passed by the Dispute Resolution Panel-3 (WZ) (for short 'DRP') passed u/s.144C(5) of the Income-tax Act, 1961 (in short, 'the Act') dated 23.09.2019 which in turn arises from the assessment passed by the Assistant Commissioner of Income-tax, Range-5(1)(2), Mumbai under section 143(3) read with section 144C(1) of the Act, dated 22.12.2018 for A.Y. 2015-16. The issues raised by the assessee for the year under consideration are as tabulated below:-

Grounds No.	Issue
2-21.	Adjustment on account of Advertisement, Marketing and Promotion ('AMP') expenses.
22-27.	Disallowance of payment of royalty on technology paid to Cadbury Enterprises Pte Ltd.
28.	Disallowance of service fees paid to Cadbury Enterprises Pte Ltd. Singapore
29.	Disallowance of service fees paid to Mondelez International Holdings LLC
30-31.	Disallowance under section 14A of the Act read with Rule 8D
32-33.	Allocation of expenditure at Baddi Unit-I & II
34.	Levy of interest u/s.234C of the Act

35.	Non grant of MAT credit
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2. At the very outset, it is noted from the order sheet entries that though the present case has been adjourned on several occasion on account of the decision of the Hon'ble Madras High Court in the case of M/s. ROCA Bathrooms Products Pvt. Ltd., wherein the Department has preferred SLP which has been admitted before the Hon'ble Apex Court. It is also noted from order sheet entry dated 25.06.2025 that the department has sought time for responding to additional ground raised by the assessee challenging the limitation in passing assessment order relying on the decision of the Hon'ble Madras High Court (supra). However, as regards the said additional ground, the Ld. AR did not press for admission of the same, accordingly, not admitted for adjudication for the year under consideration.

3. The assessee Mondelez India Foods Private Ltd (formerly known as Cadbury India Limited) is a subsidiary of Cadbury Overseas Ltd UK which holds 58.63% and Cadbury Mauritius Ltd which holds 38.97% of the equity shareholding while the balance 2.41% equity share holding is held by Indian public company comprising of various shareholders. The assessee was incorporated in the year 1948 as Cadbury Fry (India) Private Limited. The Assessee was initially set up for processing imported

chocolates and Bournvita, over the years, it expanded to cover a range of products in the chocolate, sugar confectionery and malted food drinks segment. The chocolate business contributes about 75% of assessee's turnover whereas, malted food drinks contribute remaining 25%. Assessee operates in food segment of the fast-moving consumer goods industry. The assessee is in the business of manufacturing and marketing of malted food drinks, cake, powder chocolates, toffees, drinking chocolate and sugar confectionery. The assessee has its factories at Thane, Induri in Maharashtra and Malanpur, Buddi and Bangalore and marketing branches at Delhi, Kolkata, Chennai and Mumbai. Assessee exports its products to Bangladesh, Sri Lanka, Middle East, Nigeria, South Africa, USA, Malaysia, West Indies etc. The Assessee is a group company of Cadbury Schweppes Plc., a company incorporated in United Kingdom, having its principal place of business at 25 Berkeley Square, London. The group deals in beverages and confectionery business with presence in more than 200 countries. Cadbury and Schweppes, two different groups, were merged in 1969 to form Cadbury Schweppes Plc.

4. The brief facts in this case are that the assessee company filed the return of income for A.Y. 2015-16 on 30.11.2015 declaring a total income of Rs.1,65,44,29,620/- after claiming deduction under chapter VI-A at Rs.89,80,37,338/- under normal provisions of the Act and declaring book profits u/s.115JB of the Act at Rs.1,49,91,12,121/-. The case was selected

for scrutiny and the statutory notices were duly served on the assessee. A reference to the Transfer Pricing Officer (TPO) was made in order to determine the arm's length price of the international transactions, the assessee is having with its Associated Enterprises (AE). The TPO, vide order dated 30.10.2018 proposed a total adjustment of Rs.319,87,41,472/- as per the break up given below:

Nature of adjustment	Amount (in Rs.)
Adjustment of Advertising and Marketing expenses	287,49,53,229/-
Adjustment of receipt of services from CEPT	10,69,60,319/-
Adjustment of receipt of services from MIHL	21,60,90,172/-
Payment of technical knowhow Royalty to CEPT	7,37,752/-
Total	319,87,41,472/-

5. The Assessing Officer passed the draft assessment order incorporating the TP adjustments. The Assessing Officer, besides the TP adjustment also made additions on the corporate tax front as follows –

(i) Disallowance u/s. 14A r.w. Rule 8D: Rs.14,01,126/-

(ii) Disallowance of by reducing the claim of assessee u/s 80IC of the Act for Baddi Unit-I (Rs. 31,05,89,492/-) and Unit II (Rs. 19,16,54,055/-): Rs.50,22,43,547/-

6. Aggrieved, the assessee filed its objections before the DRP. The DRP confirmed the adjustments/disallowances made by the TPO/Assessing Officer. The assessee, therefore, is in appeal before the Tribunal against the final assessment order passed by the Assessing Officer dated 31.10.2019 pursuant to the DRP directions dated 23.09.2019.

7. The Ld. Counsel for the assessee during the course of hearing presented a chart to submit that all the issues contended for AY 2015-16 have already been considered in the order of the Co-ordinate bench in assessee's own case for A.Y. 2009-10 (ITA No.2214/Mum/2014, A.Y. 2011-12 (ITA No.1240/Mum/2015 and A.Y. 2012-13 (ITA No.1518/Mum/2017) and for A.Y.2013-14 & 2014-15 (ITA No.7104/MUM/2017 and ITA No. 7404/MUM/2018). The Ld. Counsel drew our attention to the findings of the DRP with respect to the issues contended to submit the DRP has relied on its own order in assessee's case for earlier years while adjudicating the issues which goes to prove that the issues in the year under consideration are identical to the earlier years. Accordingly, the Ld. Counsel submitted that the issues are covered by the decision of the coordinate "J" bench of ITAT, Mumbai and prayed for similar directions with regard to the various issues for the year under consideration also.

8. The Ld. CIT-DR though conceded that the similar issues have already been considered by the coordinate bench in assessee's own case,

vehemently argued that each assessment year is separate and therefore the issues cannot be held to be covered by the earlier year's decision.

9. We have heard the parties and perused the material on record. We notice that the issues contended in this appeal are same as in earlier years and that the DRP while considering the various issues has relied on its own orders of the earlier years. Therefore, in our view there is merit in the submissions of the Ld. AR, that the facts pertaining to the issues are identical to earlier years and accordingly covered by the decision of the coordinate bench for AY 2013-14 & 2014-15 (ITA Nos. 7104/MUM/2017 & ITA No. 7404/MUM/2018).

10. In so far as **Grounds of appeal No.2 to 21** concerning the issue of TP adjustment towards Advertisement, marketing and promotion (AMP) expenses, we find that the Co-ordinate Bench of the ITAT, Mumbai in assessee's own case for A.Y.2013-14 & 2014-15, ITA Nos. 7104/MUM/2017 & ITA No. 7404/Mum/2018, dated 20.09.2023, had while considering the same issue has observed as follows:

"10. Grounds No.2 to 22 are with regard to the TP adjustment made by the TPO towards advertisement, marketing and promotion on Cadbury brand in India for the reason that the assessee is not the legal owner of the brand in India, the AMP expenses incurred by the assessee translates into development of AEs brand and, therefore, the assessee needs to be compensated. We find that the co-ordinate bench of the Tribunal in assessee's own case for A.Y. 2011-12 in ITA No.1240/Mum/2016, while considering an identical issue, has followed the order of another order of the co-ordinate bench

[A.Y.2009-10 (ITA No.2214/Mum/2014)] to decide the issue in assessee's favour by holding as under:-

10. We heard the parties and perused the materials on record. We notice that the co-ordinate bench in assessee's own case for A.Y.2009-10 (ITA No.2214/Mum/2014) has considered the similar issue and held that – –23. Considered the rival submission and material placed on record. We notice from the records that the identical ground has already been decided by the Coordinate Bench of ITAT in ITA No. 1512/Mum/2013 for AY 2006-07 in assessee's own case on merits. For the sake of clarity, which is reproduced below:-

14. We have considered rival submissions and perused materials on record. Undisputedly, as could be seen from the material on record, in response to the show cause notice issued by the Transfer Pricing Officer the assessee had specifically submitted that there is no arrangement or agreement with the overseas A.E. for incurring AMP expenditure. It is also apparent the expenditure was wholly and exclusively incurred for marketing assessee's own products and the payment was made to third parties in India. Therefore, it is outside the purview of international transaction as defined under section 92B of the ACT. As could be seen, the Transfer Pricing Officer ignoring the submissions made by the assessee had assumed that a benefit has accrued to the overseas A.E. on account of AMP expenditure incurred by the assessee. The learned Commissioner (Appeals) has upheld the adjustment / addition proposed by the Transfer Pricing Officer simply relying upon his order passed in assessee's own case for assessment year 2005-06. Notably, while deciding assessee's appeal for assessment year 2005-06 the Tribunal vide order passed in ITA no. 5470/Mum./2012, dated 18th May 2016, has decided the issue in favour of the assessee holding as under:- –3.4. We have heard the rival submissions and perused the material before us. Before proceeding further, it would be useful to understand the philosophy and to consider the historical background of the TP provisions. It is said that the purpose and object of introduction of the provisions contained in Chapter X is to prevent an assessee from avoiding payment of tax by transferring income yielding assets to non-residents even while retaining the power to enjoy the fruits of such transactions i.e. the income so generated. As a concept, it is not totally a new idea. A reference to the provisions of section 42(2) to the Indian Income Tax Act, 1922, could be made in this regard-as it was a somewhat similar section and dealt with the trans-border

transactions. The provisions of the said section broadly provided that where a nonresident carried out business with the person resident in the taxable territory and it appeared to the AO that on account of a close connection between such persons the business was so arranged that the business conducted by the resident with the nonresident either yielded no profit or, less than ordinary profit, which may be expected to arise in that business then, the AO was empowered to tax profits which were derived or which may reasonably be deemed to be derived from the business in the hands of a person resident in the taxable territory. Thus, it can safely be concluded that TP provisions were part of tax administration even during the 1922 Act days though at an infant stage. The present provisions were incorporated vide Finance Act, 2001. Same were further amended vide Finance Act, 2002 and are being amended from time to time to meet the new challenges thrown up by the dynamism of the current commercial and business realities. Having regard to the object for which provisions have been enacted, applicability of the said provisions has to be limited to situations where there is diversion of profits out of India or where there may be erosion of tax revenue in intra group transaction. So, intra-group transaction is the first pre-condition for invoking the TP provisions. Calculation of ALP is the next and logical step. But, if the first step itself is missing, the AO cannot go to the second stage. In other words, the AOs cannot climb the second storey of a building without reaching to the first storey if the existence of an IT and calculation of ALP can be compared with a double storeyed building.

3.4.1. We find that the assessee is the market leader of the chocolate market in India, that it was commanding 70% of the market share in the year under appeal, that it had debited AMP expenses, amounting to Rs.85.15 crores to its P& L a/c, that the net turnover of the assessee was of Rs.766.21 crores, that it was 11.11% of the sales recorded by the assessee during the year, that it had also paid royalty amounting to Rs.13.56 crores for the same period, that the TPO computed Rs.1.52 crores (1.78%) as the cost apportioned/allocable out of the A&M cost incurred by the assessee for the benefit accruing to the AE, that he restricted the cost to Rs.71 lakhs (being 0.87% of Rs.85.15 crores) in view of the disallowance/adjustment in income made on account of royalty for trade mark, that the average AMP expenditure by the leading FMCG companies for the period 2001-05 was 10.28%, that the AMP expenditure incurred by the assessee during the same period was 10.45%, that the assessee had contended that its profitability (PBT to sales ratio)

@10.85% was much higher compared to the average profitability of the comparables at the rate of 3.57%, that the FAA had held that higher rate profitability could not be a justification of this proportionate expenditure, that in the appellate proceedings the FAA had proposed further addition, that finally he upheld the order of the TPO and confirmed the

addition of Rs.71 lakhs, that there was no contractual obligation to recover money from the AE, that it was separately paying royalty for use of brand and trademark. There is no reason for not holding that the increased AMP expenditure led to enhanced sales and profitability, that for the purpose of analysing the AMP expenditure incurred by and the comparables it is necessary to consider various factors. If factors like growth rate, nature of business, number of products launched, territories serviced and turnover/profits achieved have necessarily to be considered for determining the AMP expenses. The entire expenditure was focused on the Indian consumer and it is evident from the local flavour/ language/concepts. It is also an undeniable fact that new players were entering India after liberalization era started. If the expenditure incurred by the assessee is considered in the back ground of the growth achieved by it one has to agree with the argument of the assessee that it made rapid progress in the Indian market post liberalization period and AMP played an important role in it. Here, we would also like to mention that there exists a fundamental and basic distinction between the provisions of section 37 and section 92 of the Act - as the first is expense oriented and the second is pricing oriented. The FAA tried to incorporate the ingredients of Section 37 while dealing with the TP adjustments, when he talked of the higher expenditure "and, justification" of such expenditure. In our opinion, the approach of the FAA was not in accordance with the basic philosophy of TP provisions. In our opinion, it is the assessee who has to decide how much to spend for earning his income. The tax authorities are prevented from entering into the proverbial shoes of the assessee to decide the justification of the expenditure. The Act stipulates that in certain conditions only the so called higher expenditure can be questioned. The FAA had not proved that the expenditure incurred by the assessee for advertisement etc. was covered by those sections. If it was the case then the transaction would not fall under section 92 of the Act. Therefore, in our opinion he had adopted a totally incorrect approach, while dealing the allowability of AMP expenditure.

3.4.2. We further hold that the claim of the assessee is factually correct that it had incurred the AMP expenditure for creating product awareness and to recall the value of existing products and that it had a local marketing strategy of making advertisement/slogans in the local language. In our opinion, KUCH MEETHA HOJAY campaign proves the claim made by the assessee. The TPO had ignored the fact that films/TV advertisements of the assessee had the local messaging concept. Such local advertisement campaigns can never be held to be driven towards serving the interests of the AE. It is also a fact that new multinational players in the industry had entered the Indian market. The commercial wisdom of any assessee, in such a situation, would compel it to be innovative and to spend reasonable expenditure for maintaining its position in the market. The TPO/FAA had not controverted the fact that the AE was the owner of intellectual property of the "Cadbury" brand and that it was responsible for promoting the brand all over the globe and that the brand related exercise at the cost of the AE for the overall brand positioning and management benefited the assessee also in an indirect manner. Nothing has been brought on record to prove that the assessee was directly or indirectly promoting the global brand rather than promoting its own products. In our opinion, there exists a fine but very important distinction between products promoted and nurtured by an assessee and the brand owned and supported by its AE. In the modern world both exist and play different and specified roles. Therefore, until and unless something positive is brought on record about sharing/incurred AMP expenditure under the head by an assessee on behalf of its AE, it cannot be held that it should have recovered some amount from the AE as the expenditure by it indirectly helped in augmenting the brand value owned by its overseas AE. In the case under consideration, the assessee was incurring expenditure for its products whereas the AE was looking after the ground at global level. If the AMP expenditure incurred by them benefited indirectly in the local/international market it would not mean that it was an IT. The basic purpose of introducing the various provisions of chapter X, as stated earlier, was to prevent tax evasion in the transactions undertaken between an Indian entity and its overseas AE. In our opinion, a perceived/notional indirect benefit to the AE, due to incurring of certain expenditure by an assessee in India, is not covered by the TP provisions. It is a fact that the payment under the head AMP expenditure was made to third parties and that those parties were located in India.

3.4.3. We find that in the cases of Maruti Suzuki (supra), Whirlpool India (supra), Bausch & Lomb Eyecare (India) Pvt. Ltd. (ITA 643 of 2014 of Hon'ble Delhi HC), the issue of AMP expenses had been deliberated upon extensively and each and every argument raised by the TPO/DRP have been analysed thread bare. We would like to reproduce relevant portion of the judgment of Bausch & Lomb Eyecare (India) Pvt. Ltd. (supra) and same reads as under:

53. A reading of the heading of Chapter X [Computation of income from international transactions having regard to arm's length price] and Section 92 (1) which states that any income arising from an international transaction shall be computed having regard to the ALP and Section 92C (1) which sets out the different methods of determining the ALP, makes it clear that the transfer pricing adjustment is made by substituting the ALP for the price of the transaction. To begin with there has to be an international transaction with a certain disclosed price. The transfer pricing adjustment envisages the substitution of the price of such international transaction with the ALP. 54. Under Sections 92B to 92F, the pre-requisite for commencing the TP exercise is to show the existence of an international transaction. The next step is to determine the price of such transaction. The third step would be to determine the ALP by applying one of the five price discovery methods specified in Section 92C. The fourth step would be to compare the price of the transaction that is shown to exist with that of the ALP and make the TP adjustment by substituting the ALP for the contract price. 55. Section 928 defines 'international transaction' as under:

"Meaning of international transaction. 928.(1) For the purposes of this section and sections 92, 92C, 92D and 92E, 'international transaction' means a transaction between two or more associated enterprises, either or both of whom are non-residents; in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on the profits, income, losses or assets of such enterprises, and shall include a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to anyone or more of such enterprises. (2) A transaction entered into by an enterprise with a person other than an associated enterprise shall, for the purposes of sub-section (1), be deemed to be a transaction entered into between two

associated enterprises, if there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise, or the terms of the relevant transaction are determined in substance between such other person and the associated enterprise."

56. Thus, under Section 92B(1) an 'international transaction' means- (a) a transaction between two or more AEs, either or both of whom are non-resident (b) the transaction is in the nature of purchase, sale or lease of tangible or intangible property or provision of service or lending or borrowing money or any other transaction having a bearing on the profits, incomes or losses of such enterprises, and (c) shall include a mutual agreement or arrangement between two or more AEs for allocation or apportionment or contribution to the any cost or expenses incurred or to be incurred in connection with the benefit, service or facility provided or to be provided to one or more of such enterprises.

57. Clauses (b) and (c) above cannot be read disjunctively. Even if resort is had to the residuary part of clause (b) to contend that the AMP spend of BLI is "any other transaction having a bearing" on its "profits, incomes or losses", for a 'transaction' there has to be two parties. Therefore for the purposes of the 'means' part of clause (b) and the 'includes' part of clause (c), the Revenue has to show that there exists an 'agreement' or 'arrangement' or 'understanding' between BLI and B&L, USA whereby BLI is obliged to spend excessively on AMP in order to promote the brand of B&L, USA. As far as the legislative intent is concerned, it is seen that certain transactions listed in the Explanation under clauses (i) (a) to (e) to Section 92B are described as an 'International transaction'. This might be only an illustrative list, but significantly it does not list AMP spending as one such transaction. 58. In Maruti Suzuki India Ltd. (supra), one of the submissions of the Revenue was: "The mere fact that the service or benefit has been provided by one party to the other would by itself constitute a transaction irrespective of whether the consideration for the same has been paid or remains payable or there is a mutual agreement to not charge any compensation for the service or benefit.—This was negated by the Court by pointing out; "Even if the word 'transaction' is given its widest connotation, and need not involve any transfer of money or a written agreement as suggested by the Revenue, and even if resort is had to Section 92F (v), which defines 'transaction' to include 'arrangement', 'understanding' or 'action in concert', 'whether formal or in writing', it is still incumbent on the Revenue to show the

existence of an 'understanding' or an 'arrangement' or 'action in concert' between MSIL and SMC as regards AMP spend for brand promotion. In other words, for both the 'means', part and the 'includes' part of Section 928 (1) what has to be definitely shown is the existence of transaction whereby MSIL has been obliged to incur AMP of a certain level for SMC for the purposes of promoting the brand of SMC."

59. In Whirlpool of India Ltd. (supra), the Court interpreted the expression "acted in concert" and in that context referred to the decision of the Supreme Court in Daiichi Sankyo Company Ltd. vs Jayaram Chigurupati 2010(6)MANU/SC/0454/2010, which arose in the context of acquisition of shares of Zenotech Laboratory Ltd. by the Ranbaxy Group. The question that was examined was whether at the relevant time the Appellant, i.e., 'Daiichi Sankyo Company and Ranbaxy were "acting in concert" within the meaning of Regulation 20(4) (b) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. In para 44, it was observed as under: "The other limb of the concept requires two or more persons joining together with the shared common objective and purpose of substantial acquisition of shares etc. of a certain target company, There can be no "persons acting in concert" unless there is a shared common objective or purpose between two or more persons of substantial acquisition of shares etc. of the target company, For, de hors the element of the shared common Objective' or purpose the idea of "person acting in concert" is as meaningless as criminal conspiracy without any agreement to commit a criminal offence. The idea of "persons acting in concert" is not about a fortuitous relationship coming into existence by accident or chance. The relationship' can come into being only by design, by meeting of minds between two or more persons leading to the shared common objective or purpose of acquisition of substantial acquisition of shares etc. of the target company. It is another matter that the common objective or purpose may be in pursuance of an agreement' or an understanding, formal or informal; the acquisition of shares etc. may be direct or indirect or the persons acting in concert may cooperate in actual acquisition of shares etc. or they may agree to, cooperate in such acquisition. Nonetheless, the element of the shared common objective or purpose is the sine qua non for the relationship of "persons acting in concert" to come into being 60. The transfer pricing adjustment is not expected to be made by deducing from the difference between the 'excessive' AMP expenditure incurred by the Assessee and the

AMP expenditure of a comparable entity that an international transaction exists and then proceeding to make the adjustment of the difference in order to determine the value of such AMP expenditure incurred, for the AE. In any event, after the decision in Sony Ericsson (supra), -- the question of applying the BLT to determine the existence of an international transaction involving AMP expenditure does not arise. 61. There is merit in the contention of the Assessee that a distinction is required to be drawn between a 'function' and a 'transaction' and that every expenditure forming part of the function, cannot be construed as a 'transaction'. Further, the Revenue's attempt at re-characterising the AMP expenditure incurred as a transaction by itself when it has neither been identified as such by the Assessee or legislatively recognised in the Explanation to Section 92 B runs counter to legal position explained in CIT vs. EKL Appliances Ltd. (supra) which required a TPO "to examine the 'international transaction' as he actually finds the same." 62. In the present case, the mere fact that B&L, USA through B&L, South Asia, Inc holds 99.9% of the share of the Assessee will not ipso facto lead to the conclusion that the mere increasing of AMP expenditure by the Assessee involves an international transaction in that regard with B&L, USA. A similar contention by the Revenue, namely the fact that even if there is no explicit arrangement, the fact that the benefit of such AMP expenses would also be incurred to the AE is itself self sufficient to infer the existence of an international transaction has been negated by the Court in Maruti Suzuki India Ltd. (supra) as under:

68. The above submissions proceed purely on surmises and conjectures and if accepted as such will lead to sending the tax authorities themselves on a wild goose chase of what can at best be described as a 'mirage'. First of all, there has to be a clear statutory mandate for such an exercise. The Court is unable to find one. To the question whether there is any 'machinery' provision for determining the existence of an international transaction involving AMP expenses, Mr. Srivastava only referred to Section 92F (ii) which defines ALP to mean a price "which is applied or proposed to be applied in a transaction between persons other than AEs in uncontrolled conditions". Since the reference is to 'price' and to 'uncontrolled conditions' it implicitly brings into play the BLT. In other words, it emphasises that where the price is something other than what would be paid or charged by one entity from another in uncontrolled situations then that would be the ALP. The Court does not see this as a machinery provision particularly -- in light of the fact that -- the BLT has

been expressly negated by the Court in Sony Ericsson. Therefore, the existence of an international transaction will have to be established de hors the BLT.

70. What is clear is that it is the 'price' of an international transaction which is required to be adjusted: The very existence of an international transaction cannot be presumed by assigning some price to it and then deducing that since it is not an ALP, an adjustment had to be made. The burden is on the Revenue to first show the existence of an international transaction. Next, to ascertain the disclosed 'price' of such transaction and thereafter ask whether it is an ALP. If the answer to that is in the negative the TP adjustment should follow. The objective of Chapter X is to make adjustments to the price of an international transaction which the AEs involved may seek to shift from one jurisdiction to another. An 'assumed' price cannot form the reason for making an ALP adjustment. "

71. Since a quantitative adjustment is not permissible for the purposes of a TP adjustment under Chapter X, equally it cannot be permitted in respect of AMP expenses either. As already noticed herein before, what the Revenue has sought to do in the present case is to resort to a quantitative adjustment by first determining whether the AMP spend of the Assessee on application of the BLT, is excessive, thereby evidencing the existence of an international transaction involving the AE. The quantitative determination forms the very basis for the entire TP exercise in the present case.

74. The problem with the Revenue's approach is that it wants every instance of an AMP spend by an Indian entity which happens to use the brand of a foreign AE to be presumed to involve an international transaction. And this, notwithstanding that this is not one of the deemed international transactions listed under the Explanation to Section 928 of the Act. The problem does not stop here. Even if a transaction involving an AMP spend for a foreign AE is able to be located in some agreement, written (for e.g., the sample agreements produced before the Court by the Revenue) or otherwise, how should a TPO proceed to benchmark the portion of such AMP spend that the Indian entity should be compensated for?

63. Further, in Maruti Suzuki India Ltd. (supra) the Court further explained the absence of a 'machinery provision' qua AMP expenses by the following analogy:—

75. As an analogy;

and for no other purpose; in the context of a domestic transaction involving two or more related parties, reference may be made to Section 40 A (2) (a) under which certain types of expenditure incurred by way of payment to related parties is not deductible where the AO is of the opinion that such expenditure is excessive or unreasonable having regard to the fair market value of the goods." In such event, so much of the expenditure as is so considered by him to be excessive or unreasonable shall not be allowed as a deduction." The AO in such an instance deploys the 'best judgment' assessment as a device to disallow what he considers to be an excessive expenditure. There is no corresponding 'machinery' provision in Chapter X which enables an AO to determine what should be the fair 'compensation' an Indian entity would be entitled to if it is found that there is an International transaction in that regard. In practical terms, absent a clear statutory guidance, this may encounter further difficulties. The strength of a brand, which could be product specific, may be "impacted by numerous other imponderables not limited to the nature of the industry, the geographical peculiarities, economic trends both international and domestic, the consumption patterns, market behavior and so on. A simplistic approach using one of the modes similar to the ones contemplated by Section 92C may not only be legally impermissible but will end itself to arbitrariness. What is then needed is a clear statutory scheme encapsulating the legislative policy and mandate which provides the necessary checks against arbitrariness while at the same time addressing the apprehension of tax avoidance.

64. In the absence of any machinery provision, bringing an imagined transaction to tax is not possible. The decisions in CIT v. B.C. Srinivasa Setty (1981) 128 ITR 294 (SC) and PNB Finance Ltd. v. CIT (2008) 307 ITR 75 (SC) make this position explicit. Therefore, where the existence of an international transaction involving AMP expense with an ascertainable price is unable to be shown to exist, even if such price is nil, Chapter X provisions cannot be invoked to undertake a TP adjustment exercise.

65. As already mentioned, merely because there is an incidental benefit to the foreign AE, it cannot be said that the AMP expenses incurred by the Indian entity was for promoting the brand of the foreign AE. As mentioned in Sassoon -J David (supra) - "the fact that somebody other than the Assessee is also benefitted by the expenditure should not

come in the way of an expenditure being 'allowed by way of a deduction under Section 10 (2) (xv) of the Act (Indian Income Tax Act, 1922) if it satisfies otherwise the tests laid down by the law". Considering the facts-like absence of an agreement between the assessee and the AEs. for sharing AMP expenses, payment made by the assessee under the head AMP to the domestic parties, failure of the TPO prove that expenses were not for the business carried out by the assessee in India and following the judgments of the Hon'ble Delhi High Court delivered in the case of Bausch and Lomb (India) Pvt. Ltd. (supra), we are of the opinion that the transaction-in-question was not an international transaction and that the TPO had wrongly invoked the provisions of Chapter X of the Act for the said transaction.

3.4.4. With regard to the submissions of the AR that the issue of AMP should be restored back to the file of the AO, we want to mention that law as a concept is supposed to evolve with passage of time-it cannot be static always. Non availability of a particular decision of the higher forum cannot justify the restoration of issue/cases to the file of AO in each and every case. Unnecessary litigation has to be avoided and issues have to be settled for once and all. We are of the opinion that after the judgments of Maruti Suzuki and Bausch & Lomb (supra) there is no scope of any other interpretation about the AMP expenditure. In the case under consideration, the AO/TPO has not brought anything on record 5470 & ors. cadbury

21 that there existed an agreement, formal or informal, between the assessee and the AE to share/reimburse the AMP expenses incurred by the assessee in India. In absence of such an agreement the first and primary precondition of treating the transaction-in-question as an IT remains unfulfilled. Conducting FAR analysis or adopting an appropriate method is the second stage of TP adjustments. The first thing is to find out whether the disputed transaction is IT or not. Without crossing the first threshold second cannot be approached, as stated earlier. In the case under consideration, we are of the opinion that AMP expenditure is not an IT and therefore we are not inclined to restore back the issue to the file of the AO. Considering the facts and circumstances of the case under consideration, we are of the opinion that the FAA was not justified in upholding the order of the TPO. Therefore, reversing his order, we decide second ground in favour of the assessee."

15. Facts being identical, respectfully following the aforesaid decision of the Co-ordinate Bench in assessee's own case, we delete the addition made by the Assessing Officer towards transfer pricing adjustment on account of AMP expenditure. Ground raised is allowed. 24. Therefore, respectfully following the above decision of Coordinate Bench in assessee's own case in turn relying on the decision of Assessment Year 2006-07. These issues are settled in favour of the assessee. Therefore, we are inclined to accept the submission of Ld. AR. Accordingly, these grounds raised by the assessee are allowed.

24. Therefore, respectfully following the above decision of Coordinate Bench in assessee's own case in turn relying on the decision of Assessment Year 2006-07. These issues are settled in favour of the assessee. Therefore, we are inclined to accept the submission of Ld. AR. Accordingly, these grounds raised by the assessee are allowed.

10. Respectfully following the above decision of the co-ordinate bench, we hold that the decisions made by the TPO / AO towards transfer pricing adjustment on account of AMP expenditure be deleted. Accordingly, these grounds raised by the assessee are allowed.

11. The facts being identical, respectfully following the above order of the co-ordinate bench of the Tribunal, we hold that the TP adjustment made towards AMP expenses is hereby deleted. The grounds raised by the assessee in this regard are allowed.”

11. Respectfully following the aforesaid decision, we are of the view that the TP adjustment made towards AMP expenses is liable to be deleted. We order accordingly. Thus, the **Grounds of appeal No. 2 to 21** raised by the assessee company are allowed.

12. In so far as **Grounds of appeal No.22 to 27** concerning disallowance of payment of royalty on technology paid to Cadbury Enterprises Pte Limited, we find that the Co-ordinate Bench of the ITAT, Mumbai in assessee's own

case for A.Y.2013-14& 2014-15, ITA Nos. 7104/MUM/2017 & ITA No. 7404/Mum/2018), dated 20.09.2023, while considering the same issue has observed as follows:

“12. With regard to the issue contended in grounds 23 to 27 pertaining to disallowance of payment of royalty on technology paid to Cadbury Enterprises Pte Limited, we find that this issue has also been decided by the Tribunal for A.Ys 2011-12 & 2012-13 and held as under:-

13. We heard the parties and perused the material on record. The co-ordinate bench in assessee's own case for A.Y. 2009-10 (supra) has considered the issue of payment of royalty on technology to Cadbury Adams USA LLC, to Cadbury Enterprises Pte Ltd and Cadbury Schweppes Asia Pacific Pte Limited (now merged with Cadbury Enterprises Pte Ltd) and held that-

“10. Considered the rival submission and material placed on record. We notice from the records that the identical ground has already been decided by the Coordinate Bench of ITAT in ITA No. 7539/Mum/2012 for AY 2008-09 in assessee's own case on merits. For the sake of clarity, the same is reproduced below:-

“With regard to disallowance of payment of royalty on trademarks paid to Cadbury Schweppes Overseas Ltd 3.3.2 It is admitted position that the issue stood squarely covered in assessee's favor by the decision of this very bench in assessee's own case for AY 2006-07 wherein the matter has been concluded in the following manner: -

7. We have considered rival submissions and perused materials on record. As could be seen from the order of the Transfer Pricing Officer, he has determined the arm's length price of royalty payment on trademark to SCOL at zero. In other words, he has disallowed royalty payment on trademark at 1% while allowing royalty payment on technical knowhow at 1.25% of net sales. The reasoning on which the Assessing Officer has denied royalty payment on trademark are basically that as per the terms of earlier agreement approved by the Government, the assessee can pay royalty for technical knowhow at the maximum rate of 2%, whereas, the assessee has paid royalty both for technical knowhow and trademark aggregating to 2.25%. He has also referred to the

Press Note issued by the Government clarifying that royalty payment cannot exceed 2% and further the royalty payment for technical knowhow subsumes royalty payment for trademark. In this context, the Transfer Pricing Officer has also referred to similar dispute arising in the preceding assessment years. It is evident that the learned Commissioner (Appeals) has upheld the disallowance of royalty payment of trademark simply relying upon the order passed by him in assessee's own case for assessment year 2005-06. As could be seen from the material available on record, the assessee has entered into agreement.

13. We heard the parties and perused the material on record. The co-ordinate bench in assessee's own case for A.Y. 2009-10 (supra) has considered the issue of payment of royalty on technology to Cadbury Adams USA LLC, to Cadbury Enterprises Pte Ltd and Cadbury Schweppes Asia Pacific Pte Limited (now merged with Cadbury Enterprises Pte Ltd) and held that – 10. Considered the rival submission and material placed on record. We noticed from the records that the identical ground has already been decided by the Coordinate Bench of ITA in ITA No. 7539/Mum/2012 for AY 2008-09 in assessee's own case on merits. For the sake of clarity, the same is reproduced below:- With regard to disallowance of payment of royalty on trademarks paid to Cadbury Schweppes Overseas Ltd 3.3.2 It is admitted position that the issue stood squarely covered in assessee's favor by the decision of this very bench in assessee's own case for AY 2006-07 wherein the matter has been concluded in the following manner: - 7. We have considered rival submissions and perused materials on record. As could be seen from the order of the Transfer Pricing Officer, he has determined the arm's length price of royalty payment on trademark to SCOL at zero. In other words, he has disallowed royalty payment on trademark at 1% while allowing royalty payment on technical knowhow at 1.25% of net sales. The reasoning on which the Assessing Officer has denied royalty payment on trademark are basically that as per the terms of earlier agreement approved by the Government, the assessee can pay royalty for technical knowhow at the maximum rate of 2%, whereas, the assessee has paid royalty both for technical knowhow and trademark aggregating to 2.25%. He has also referred to the Press Note issued by the Government clarifying that royalty payment cannot exceed 2% and further the royalty payment for technical knowhow subsumes royalty payment for trademark. In this context, the Transfer Pricing Officer has also referred to similar dispute arising in the preceding assessment years. It is evident that the learned Commissioner

(Appeals) has upheld the disallowance of royalty payment of trademark simply relying upon the order passed by him in assessee's own case for assessment year 2005-06. As could be seen from the material available on record, the assessee has entered into agreement with its current company in the year 1993, for availing technical knowhow for which it was required to pay royalty @ 2%. Subsequently, the assessee has entered into fresh agreements with the parent company for transfer of technical knowhow as well as use of trademark for which assessee is required to pay royalty @ 1.25% and 1% of the net

sales respectively. As could be seen from the materials placed on record, the payment of royalty for technical knowhow @ 1.25% has been approved by the Ministry of Commerce and Industry, Government of India, vide letter dated 14th September 2000 (copy is placed at Page-85 of the paper book). Similarly, payment of royalty for trademark @ 1% has been approved by the Reserve Bank of India, vide letter dated 25th June 2001, copy at Page-119 of the paper book. Thus, as could be seen, payment of royalty for trademark at 1% over and above the royalty paid at 1.25% for technical knowhow has been approved by the Reserve Bank of India. Though, the Transfer Pricing Officer has relied upon Press Note dated 3rd January 2002, to observe that in case of technology transfer payment of royalty subsumes the payment for royalty for use of trademark, however, in a subsequent Press Note issued by the Ministry of Commerce and Industry, Government of India, vide no.5(5)/2003-FC, dated 24th June 2003, has permitted royalty payment up to 8% on export sales and 5% on domestic sales. It is also relevant to note, the fact that the royalty paid by the assessee @ 2.25% both for technical knowhow and trademark is lesser than the royalty paid by other comparables and even group companies has not been disputed either by the Transfer Pricing Officer or by the learned Commissioner (Appeals). It is also relevant to note, identical dispute relating to payment of royalty for trademark at 1% over and above royalty paid for technical knowhow at 1.25% and its allowability came up for consideration before the Tribunal in assessee's own case for assessment year 2002-03 to 2005-06. While deciding the issue in the aforesaid assessment years, the Tribunal held that the payment of royalty on trademark to CSOL at 1% of sales is allowable and at arm's length. In fact, decision of the Tribunal has also been accepted by the Revenue. In this context, we may refer to the relevant observations of the Tribunal while deciding identical issue in assessee's own case for assessment year 2005-06, in ITA no.5470/Mum/2012, dated 18th May 2016,

which is as under: – –2.3. We have heard the rival submissions and perused the material before us. We find that while deciding the appeal for AY 2002-03 (supra) the Tribunal has decided the issue as under:

37. We have heard the detailed arguments from both the sides. The basic issue is the correctness of ALP on the royalty payments made by the assessee company to its parent AE on account of technical knowhow and trademark usage.

38. From the arguments of the DR, made on behalf of the TPO, the agreement for paying royalty on technical know-how at 1.25% and trademark usage at 1.25%, were overlapping and thus, TNMM method used by the assessee was incorrect. According to the TPO, the best method to ascertain ALP in the interest case was CUP, as the transactions were controlled. This was reasonable, as no data was available from independent source to benchmark the transactions.

39. On going through the records and the orders of the revenue authorities, we find that in so far as the payment of royalty on technical knowhow concerned, the assessee has been paying to its parent AE right from 1993, as, other group companies are paying across the globe. It has been accepted by the TPO that the payment does not effect the profitability of the assessee, if we are to examine the issue from that angle as well. In any case the payment of royalty on technical knowhow is at par with the similar payments from the group companies in other countries & region. Besides this, the payment is made as per the approval given by the RBI and SIA, Government of India. Hence there cannot be any scope of doubt that the royalty payment on technical knowhow is not at arm's length. 40. Coming to the issue of royalty payment on trademark usage, we find that the assessee, in fact is paying a lesser amount, if the payments are compared with the payments towards trademark usage, by the other group companies using the Brand Cadbury in other parts of the world. On the other hand, if we examine the argument taken by the TPO with regard to OECD guidelines. On this point the assessee's payment is coming to a lesser figure, as discussed in detail by the CIT(A). 41. We are not going into the arguments advanced by the DR/TPO on geographical differences, and payments made to Hershey, as these arguments get merged in the interpretation and details available in the table supplied by the assessee and taken note of by the TPO and the CIT(A).

42. We are also not referring to the case of Maruti Suzuki Ltd. as we find that insofar as the instant case is concerned, there is really no relevance. 43. On the basis of the above observations, we are of the opinion that the royalty payment on trademark usage is within the arms' length and does not call for any adjustment. Respectfully, following the above order, and the order for subsequent AYs we decide the Ground of Appeal No.1 in favour of the assessee. 8. There being no difference in factual position in the impugned assessment year, respectfully following the consistent view of the Tribunal on identical issue in assessee's own case as referred to above, we hold that the royalty payment on trademark to SCOL @ 1% of net sales is at arm's length, hence, no further adjustment is required. Accordingly, we delete the disallowance made by the Assessing Officer. Ground raised is allowed. Respectfully following the aforesaid view of Tribunal in assessee's own case, we delete the impugned adjustment of Rs.1300.22 Lacs as made by Ld. AO in the final assessment order. Nothing has been shown to us that the aforesaid ruling is not applicable to the year under consideration. Ground No.3 stand allowed. With regard to disallowance of payment of royalty on technology paid to Cadbury Adams USA LLC.

3.4.2 We find that this issue is covered by the decision of this Tribunal for AY 2006-07 wherein it has been held as under: -

22. We have considered rival submissions and perused materials on record. Undisputedly, the assessee has paid royalty to CAUSA @ 2.7% of net sales as per the agreement executed on 1st June 2006. It is the claim of the assessee that the payment of royalty is for use of trademark as well as technical knowhow. However, the Transfer Pricing Officer after examining the agreement between the assessee and CAUSA has opined that the agreement only provided for use of trademark and it does not provide for use of technical knowhow. It is the say of the Transfer Pricing Officer that since as per the Government guidelines, payment of royalty on trademark under the automatic route is fixed at the maximum rate of 1%. Royalty paid for trademark at 2.7% is not at arm's length. Accordingly, he has allowed payment of royalty for trademark at 1%. While doing so, the Transfer Pricing Officer has also observed that the agreement executed in December 2007, amending the terms of the original agreement having come into existence after expiry of relevant financial year would not be applicable for a transaction undertaken in the relevant financial year. The learned Commissioner (Appeals) has also endorsed the aforesaid view of the Transfer Pricing Officer. No doubt, on

aperusal of the agreement dated 1st June 2006 between the assessee and CAUSA it appears that the said agreement has been termed as trademark license agreement. However, reading the agreement as a whole and more particularly, Clause-7(b) of the said agreement, it becomes clear the licensee (the assessee) shall manufacture licensed product using any technology of the licensor provided to the licensee in accordance with all specifications and instructions provided by the licensor from time to time. It is not the case of the Revenue that in the relevant previous year assessee has neither manufactured nor sold „Halls“ brand products in India. Thus, it is necessary to ponder whether in absence of necessary technical knowhow/knowledge it would have been possible for the assessee to manufacture the aforesaid products? In our view, the answer would be- No. Further, the assessee and CAUSA have entered into one more agreement on 24th December 2007, amending the terms of the original agreement. As per the aforesaid agreement, certain terms of the original agreement was amended to include licensing / sub-licensing of technology. It is the contention of the learned Sr. Counsel for the assessee that the amendment agreement executed on 24th December 2007, shall operate retrospectively from 1st January 2006, to emphasize this fact, the learned Sr. Counsel for the assessee has sought to produce letter dated 26th April 2016, issued by Mondelez International as additional evidence. From a perusal of the aforesaid letter, it appears that it has been issued to clarify that as per the original agreement executed on 1st June 2006, effective from 1st January 2006, the parties to the agreement intended to transfer and avail technical knowhow/ knowledge relating to the licensed product along with trademark. Considering the submissions of the learned Sr. Counsel for the assessee that in subsequent assessment years royalty paid by the assessee @ 2.7% of sales was accepted by the Transfer Pricing Officer, the letter dated 26th April 2016, sought to be produced by the assessee as additional evidence, in our view, is of much significance since it will have a crucial bearing in determining whether CAUSA has authorised the assessee to use technical knowhow along with trademark, hence, is admitted as additional evidence. Even, without taking cognizance of the aforesaid additional evidence, the original as well as amended agreement make it abundantly clear that assessee has also availed technical knowhow from CAUSA. Further, the Departmental Authorities do not dispute the genuineness or authenticity of the amended agreement. What they are disputing is the date from which the amended agreement is effective. If the departmental

authorities in the subsequent assessment years have allowed payment of royalty both for trademark and technical knowhow, there is no reason why it should not be allowed in the impugned assessment year, since, it cannot be said that the assessee was manufacturing „Halls“ brand products without obtaining the required technical knowhow. Accordingly, we hold that payment of royalty to CAUSA is at arm's length. The ground is allowed. Respectfully following the same, we delete the impugned addition of Rs.87.61 Lacs. Ground No.4 stand allowed. With regard to disallowance of payment of royalty on technology paid to Cadbury Enterprises Pvt. Ltd. 3.5.1 It was noted that the assessee entered into Technical collaboration Agreement dated 28/06/2007 with CEPT to avail the benefits of Technical Know-how, trade secrets etc. for mixed fruit flavored and strawberry flavored sugar noncoated center filled bubble gums / chewing gums. Another agreement was entered into with the same entity for Trademarks and copyright licenses in respect of products Bubbalo, Bubba the Cat & Adams. As per agreement, the assessee paid Technical royalty @4% and Trademark Royalty @1%. Applying the same reasoning, it was held that CEPT was authorized to sub-license the rights of the Trademark only and there was no reference to presume that the same included the right to sublicense the Technology and know-how related to the products, an adjustment of Rs.142.51 Lacs was proposed by Ld. TPO. The Ld.DRP, finding the adjustment quite similar to as made for royalty payment to CAUSA, endorsed Ld. TPO's action. 3.5.2 Since facts as well as reasoning of lower authorities are quite similar as in the case of royalty payment made by assessee to CAUSA, applying the same analogy, we delete the impugned addition. One more reason to delete the adjustment is that the assessee has entered into two separate agreements for payment of Trademark Royalty & Technical royalty and therefore, the matter would stand on a better footing. Hence, Ground No. 5 stand allowed.

11. Therefore, respectfully following the above decision of Coordinate Bench in assessee's own case in turn relying on the decision of Assessment Year 2008-09. These issues are settled in favour of the assessee. Therefore, we are inclined to accept the submission of Ld. AR. Accordingly, these grounds raised by the assessee are allowed.

14. It is noticed that the payment of royalty towards trademark for the year under consideration is based on the same agreement, which is considered by the co-ordinate bench for the assessment year 2009-10. Therefore we are of

the view that the issue is covered by the above decision for the year under consideration also. Accordingly, we delete the TP adjustment made by the TPO towards payment of royalty on technology paid to Cadbury Adams USA LLC, and Cadbury Enterprises Pte Ltd. These grounds are allowed in favour of the assessee.”

13. Respectfully following the aforesaid decision, we delete the TP adjustment made by the TPO towards payment of royalty on technology paid to Cadbury Adams USA LLC, and Cadbury Enterprises Pte Ltd. Thus, the **Grounds of appeal No. 22 to 27** raised by the assessee company are allowed.

14. In so far as **Ground of appeal No.28** concerning disallowance of service fees paid to Cadbury Enterprises Pte Ltd., Singapore, we find that the Co-ordinate Bench of the ITAT, Mumbai in assessee's own case for A.Y.2013-14 & 2014-15, ITA Nos. 7104/MUM/2017 & ITA No. 7404/Mum/2018, dated 20.09.2023 while considering the same issue has observed as follows:

“14. Ground Nos. 28 to 30 pertain to disallowance of service fees paid to Cadbury Enterprises Pte Ltd. We notice that the facts and circumstances pertaining to this issue are identical for A.Y. 2011-12 & 2012-13, which, the co-ordinate bench has already decided in favour of the assessee by holding as under:-

16. The Ld.AR submitted that the issue is covered by the decision of the co-ordinate bench in assessee's own case for A.Y. 2009-10 where it has been held that –

14. Considered the rival submission and material placed on record. We notice from the records that the identical ground has already been decided by the Coordinate Bench of ITAT in ITA No. 7539/Mum/2012 for AY 2008-09 in assessee's own case on merits

in which ITAT has restored the matter back to the file of AO with direction to enable the revenue to take a consistent stand in the matter and also to follow the ITAT order for Assessment Year 2006-07. We draw strength from the following decisions in which matter cannot be remanded back when the TPO has failed to follow the prescribed method u/s. 92C:-

- i) Kodak India Pvt. Ltd. (2013) 37 taxmann.com 233 (Mum)
- ii) Barclays Bank PLC vrs. ADIT (90 taxmann.com 378) (Mum)
- iii) Vedanta Ltd. Vrs. PCIT (ITA 303/2018, C.M.Appl. 10257/2018).

15. For the sake of clarity, the decision of ITAT in the case of Kodak India Pvt. Ltd. is reproduced below:-

I. Section 92B, read with section 92C, of the Income-tax Act, 1961 – Transfer pricing -Meaning of international transaction - Assessment year 2008-09 Assessee, an Indian company sold its medical imaging business to 'C' Ltd. another Indian company for USD 13.543 million - Being domestic transaction, assessee returned its income, disclosing sale transaction as a normal domestic transaction - Assessing Officer found that sale transaction of imaging business by assessee to 'C' Ltd. was pursuant to a larger sale transaction, on global basis, wherein holding company of assessee sold its imaging business to 'C' Inc. i.e., holding company of 'C' Ltd. on global basis - Thus, on suo moto assumption of jurisdiction over impugned transaction, TPO, proceeded to determine ALP -TPO determined ALP, based on worldwide revenue break upamongst countries and concluded that India accounted for 1.4 per centthereof, which came to USD 32.9 million as against USD 13.54 million shownby assessee - Accordingly, an adjustment of Rs. 79.96 crore was made -Whether since transactions entered into by holding foreign companies andsubsidiary Indian companies were independent of each other and there was nointernational element involved in sale of imaging segment by assessee of itsbusiness to 'C' Ltd., authorities below were not justified in invoking transferpricing provisions in respect of assessee's transaction - Held, yes - Whether,therefore, impugned adjustment made by revenue authorities was to be setaside - Held, yes [paras 49 and 63] [In favour of assessee]Section 92C of the Income-tax Act, 1961 - Transfer pricing – Computationof arm's length price [Others] - Assessment year 2008-09 - Whether whiledetermining ALP of international transactions entered into by assessee, TPOcannot adopt any other method except methods prescribed in section 92C(1)- Held, yes [Para 66]

II. Section 92C of the Income-tax Act, 1961 - Transfer pricing – Computationof arm's length price [Safe harbour rules] - Assessment

year 2008-09 -Assessee had incurred certain expenses on behalf of its AE - As said expenses were to be reimbursed to assessee receipts on account of reimbursement was recovered on cost plus 10 per cent mark up TPO proposed mark up at the rate.

12.5 per cent and made an adjustment accordingly- Whether since adjustments sought by TPO and sustained by DRP was falling within margin of +/- 5 per cent as provided by proviso to section 92C(2), same was not sustainable -Held, yes [Para .84] [In favour of assessee]

16. Therefore, respectfully following the above decision of Coordinate Bench which are similar to the facts of present case, we are inclined to accept the submission of Ld. AR. Accordingly, these grounds raised by the assessee are allowed.

17. One of the grounds on which the TP adjustment is contested by the assessee is that the TPO has computed the ALP based on an adhoc estimation of salary and the number of man hours. The Ld AR submitted that the TPO has not followed the CUP method but has arrived at the ALP on some estimation. It was further submitted that the determination of ALP cannot be done except under one of the methods as prescribed in section 92C(1) and therefore the TPO's computation of ALP based on adhoc assumptions is not correct. We notice that the TPO while arriving at the ALP has used the estimated salary and also used earlier years man hours to determine the current year man hours spent. In the above decision, the coordinate bench has considered the issue of determination of ALP by the TPO and has held that the TP adjustment is not tenable by relying on the decision in the case of Kodak India Pvt.Ltd (supra) where it is held that –

64. On the other legal issue that whether the TPO was correct to employ an alien method for arriving at the ALP. Once again, relevant section is very clear, which reads, "The arm's length price in relation to an international transaction shall be determined by any of the following methods, being the most appropriate method, having regard to the nature of transaction or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors as the Board may prescribe."

65. It is important to take note of the word "shall" used in the section. No doubt that under the General Clauses Act, shall can be used as may or vice versa, but the Hon'ble Supreme Court of India in the case of CIT v. Anjum M.H. Ghaswala, [2001] 252 ITR 1/119 Taxman 352, sitting in Constitution Bench explained the exact premise of the word "shall". The case was pertaining to the levy of interest under section 234B on Chapter XIXA of the Income-tax Act,

i.e. Settlement Commission. In the decision, the Hon'ble Supreme Court held, 'Nextly, the Commission has elaborately discussed the object of introduction of Chapter XIX-A in the Act, the history behind the introduction and schematic rationalisation of the provisions of Chapter XIX-A brought about through Finance Act, 1987 to hold that in exercising its power under Chapter XIX-A it has almost an unbridled power to arrive at a settlement. This exercise of purposive interpretation by looking into the object and scheme of the Act and legislative intent would arise, in our opinion, if the language of the Statute is either ambiguous or conflicting or gives a meaning leading to absurdity. We do not find any such problem in the provisions of the Act to which we have already referred to Sections 234A, 234B and 234C in clear terms impose a mandate to collect interest at the rates stipulated therein. The expression "shall" used in the said Section cannot by any stretch of imagination be construed as "may". There are sufficient indications in the scheme of the Act to show that the expression "shall" used in Sections 234A, 234B and 234C is used by the Legislature deliberately and it has not left any scope for interpreting the said expression as "may".'

66. By the use of the word "shall", for computing the ALP in one of the following methods, the Legislature has cast an embargo that no seventh method could be adopted by the TPO for computing the ALP. Even the Special Bench of the ITAT in the case of LG Electronics India (P.) Ltd., (supra), in paras 22.10 and 22.11, pages 128 and 129, observes, "As regards the contention that methods are tools for determining the ALP, we find that there is dispute that there is no dispute the main purpose of Chapter X is to determine the ALP of an international transaction, but such determination can be done only by way of the methods specified by the statute. When the Legislature has specifically enshrined a provision under section 92C requiring the computation of ALP by any of the prescribed methods, it does not fall in the realm of the TPO or for that matter any other authority to breach such mandate and apply or direct to apply any other method. Going by the dictate of the provision as subsists under sub-section (1) of section 92C, there can be absolutely no doubt on adoption of any single method of those set out in section. Rule 10B has specified a set procedure to be followed for determining the ALP distinctly under the five methods. It is equally not permissible to invent a new procedure and try to fit such procedure within any of the existing procedures prescribed as per these methods. No one is authorized to add one or more new steps in the prescribed procedure or to substitute any other mechanism with the prescribed under the rule. It is neither possible to invent a method nor to substitute a new methodology in place of the one prescribed in the rule."

67. We cannot accept the arguments of the DR that the word any has been used in section 92C(1), which could give leeway to the TPO to ascribe to a non-specific method. Word any, is founded on the suffix, "of the following methods being the most appropriate method". Therefore, the ambit of the word any in section 92C(1) has been restricted within the precinct of the five specific methods. This gathers strength from the fact that even in the Rules, relevant Rule 10B provides with the similar wordings.

68. Taking into account the clear and unambiguous wordings of the provisions of the Income-tax Act and Rules and respectfully following the decision of the Special Bench in the case of LG Electronics India (P.) Ltd. (supra), we hold that even on this legal issue, the assessee succeeds. Therefore, respectfully following the above decisions of the co-ordinate bench, we delete the TP adjustment.”

15. Respectfully following the aforesaid decision, we delete the TP adjustment made by the TPO towards services fees paid to Cadbury Enterprises Pte Ltd. Thus, the **Ground of appeal No. 28** raised by the assessee company is allowed.

16. In so far as **Ground of appeal No.29** concerning disallowance of service fees paid to Mondelez International Holdings LLC, we find that the Co-ordinate Bench of the ITAT, Mumbai in assessee's own case for A.Y.2013-14 & 2014-15 (ITA Nos. 7104/MUM/2017 & ITA No. 7404/Mum/2018), dated 20.09.2023 while considering the same issue has observed as follows:

“16. Ground Nos. 31 to 33 raised by the assessee pertains to disallowance of service fees paid to Mondelez International Holdings LLC. This issue also stands covered in favour of the assessee by the decision of the co-ordinate bench in assessee's own case for A.Ys 21011-12 & 2012-13 (supra), wherein the Tribunal held as under:-

18. The assessee has entered into service agreement dated 30/12/2008 (with effect from 01/01/2008) for availing services from its AE Cadbury Holding Ltd (CHL) where the services rendered are in the nature of business and commercial strategy and support, executive development, programme development and delivery, internal management, etc. The assessee submitted before the TPO the documents with respect to the said services which are maintained for CHL at global level. The assessee also submitted that the said amounts are being offered to tax by CHL in India and therefore, there has been no tax based erosion. The assessee further submitted that as per the benchmarking done, the comparable companies earn an average margin of 9.22% on operating cost whereas CHL has charged cost plus 5% for the services provided and accordingly, it was submitted that the transaction is within arm's length price. The TPO rejected the submissions of the assessee and applied CUP method where he has applied the amount / rate of Rs.6,250 to be the arm's length compensation for the services rendered. The TPO made the TP adjustment based on the man-hours of services rendered by the AE at 3913 hours to arrive at the ALP of Rs.2,44,56,250/- and made the TP adjustment for the difference of Rs.14,56,22,330/-. 19. The Ld.AR submitted that this issue is also covered by the decision of the co-ordinate bench in assessee's own case for A.Y. 2009-10. The Ld.AR further brought to our attention that the assessee raised a Miscellaneous Application with regard to the finding given by the Hon'ble Tribunal in the order 17.02.2021 and that the Hon'ble Tribunal passed the order in M.A. vide order dated 31/08/2021 substituting

“3. The contents of misc. application insofar as assessee's Prayer-(a) is concerned, the same is reproduced below:-

Ground 11 to 13 - Transfer pricing adjustment on-account payment of service fees to Cadbury Holding Limited.

7. During the year under consideration, MIFPL has availed services from CadburySchweppes Asia Pacific Pte Limited ('CSAPL') (covered by ground no. 8 to 10) and Cadbury Holding Limited ('CHL') (covered by ground 11 to 13). The Hon'ble ITAT while passing the order for AY 2009-10, allowed payment of service fees by MIFPL to CSAPL (covered by ground no. 8 to 10) stating that:

a. The method followed by TPO for making adjustment was not a method prescribed under the Act.

b. Further relying on the decision of the coordinate bench in case of Kodak India Pvt., Barclays Bank PLC and Vedanta Ltd., it was held that matter cannot be remanded back when the TPO has failed to follow the prescribed method under section 92C. (Refer Para 14 on page 13 of the ITAT order for AY 2009- 10)

Since, facts and issues in relation to services availed from CSAPL (i.e. ground no. 8 to 10) and facts and issues in relation to services availed from CHL (i.e. ground 11 to 13) are identical and as both the transactions have been benchmarked by MIFPL using TNMM, findings of ITAT for ground no. 8 to 10 are to be applied for ground no. 11 to 13 as well. The Tribunal has erroneously relied on the order for A.Y.2008-09, this being a mistake apparent from record may be rectified and the findings given in Para 14 to 16 may be adopted for Ground No. 11 to 13 also.

4. In view of the submissions of the learned Counsel for the assessee and since the mistake being apparent on the face of record, we proceed to rectify the mistakes. 5. The concluding part, vide Para-19 and 20 of grounds No.11 to 13, of the impugned order dated 17th February 2021, passed in assessee's appeal being ITA No.2214/Mum./2014, for the assessment year 2009-10, are hereby substituted and be read as under:-

"19. Having considered the rival submissions and having perused the material on record, we find that the related facts and circumstances of the issue raised by the assessee in the grounds no.11 to 13 of the present appeal is materially identical to the issue decided by us vide grounds no.8 to 11, in Para-14, 15 and 16, wherein we have allowed the issue while following the decision of the Co-ordinate Bench of the Tribunal rendered in Kodak India Pvt. Ltd. v/s ACIT, [2013] 37 taxmann.com 233 (Mum.). Since the issue raised in these grounds no.11 to 13, are identical to the issue decided by us in grounds no.8 to 11 vide Para-14, 15 and 16, as aforesaid, consistent with the view taken therein, we set aside the impugned order passed by the learned CIT(A) and allow these grounds. Thus, grounds no.11 to 13, are allowed.

We have already held in the earlier part of this order that the determination of ALP without applying any methods as prescribed under section 92C(1) by the TPO is not tenable. We notice that the TPO has computed the TP adjustment towards global services rendered by Cadbury Holdings Limited also in

the same way by applying adhoc estimation of salary cost and man hours. Therefore our decision with respect regional service fee paid to Cadbury Enterprises Pte Ltd., is equally applicable to the current issue under consideration also. Therefore considering the decisions of the coordinate bench in assessee's own case for AY 2009-10 and in the case of Kodak India Private Ltd., (supra) we hold that the TP adjustment towards global services rendered by Cadbury Holdings Limited be deleted.

17. We notice that the TPO has computed the TP adjustment towards global services rendered by Mondelez International Holdings LLC also in the same way by applying adhoc estimation of salary cost and man hours. Therefore our decision with respect regional service fee paid to Cadbury Enterprises Pte Ltd. Respectfully following the above order of the co-ordinate bench, we allow in favour of the assessee.”

17. Respectfully following the aforesaid decision of coordinate bench in assessee's case, we allow the **Grounds of appeal No. 29** raised by the assessee company.

18. In so far as **Grounds of appeal No.30-31** concerning disallowance under section 14A of the act read with rule 8D, we find that the Co-ordinate Bench of the ITAT, Mumbai in assessee's own case for A.Y.2013-14 & 2014-15, ITA Nos. 7104/MUM/2017 & ITA No. 7404/Mum/2018), dated 20.09.2023 while considering the same issue has observed as follows:

“18. Ground No.34 pertains to disallowance under section 14A of the act read with rule 8D. We notice that this issue is identical to the issue decided by the Tribunal for A.Ys. 2011-12 and 2012-13 (supra) and that the facts and circumstances are also identical. We find that the co-ordinate bench, for A.Y 2011-12 & 2012-13 has decided the issue by following its earlier decision for A.Y 2009-10 and remitted the issue back to the Assessing Officer with the following observations: -

“22. We heard the parties and perused the material on record. It is now settled position that when the own funds are available, no disallowance is warranted under section 14A read with rule 8D. For the year under consideration, the reserves and surplus of the company as on 31/03/2011 is at Rs.89,988.09 lakhs and the investments made stands at Rs.12,881.07 lakhs, therefore, we see merit in the contention of the Ld.AR that no disallowance is warranted under section 14A. Further, the co-ordinate bench in assessee's own case for A.Y. 2009-10 had also held that

“31. Considered the rival submission and material placed on record. We notice from the records that the identical ground has already been decided by the Coordinate Bench of ITAT in ITA No. 7539/Mum/2012 for AY 2008-09 in assessee's own case on merits. For the sake of clarity, which is reproduced below:-

5.1 During assessment proceedings, it transpired that the assessee earned exempt income of Rs.16.18 Crores which mainly comprised off of dividend on mutual funds. The assessee, inter-alia, submitted that Rule 8D was not applicable to year under consideration. It was also submitted that assessee's surplus funds were invested in Liquid Mutual Fund and the same were withdrawn as per business requirements. The attention was also drawn to the fact there were two persons in the Treasury department to manage mutual funds investment on regular basis and the total salary paid to them was Rs.9.20 Lacs therefore, a part of the same could be disallowed. The arguments were also raised to submit that investments were made out of reserves and surplus. However, not satisfied, Ld. AO, applying Rule 8D, worked out aggregate disallowance of Rs.233.04 Lacs which comprised off of direct disallowance u/r 8D(2)(i) for Rs.9.20 Lacs, interest disallowance u/r 8D(2)(ii) for Rs.80.56 Lacs and indirect expense disallowance u/r 8D(2)(iii) for Rs.143.28 Lacs. The direct expense disallowance u/r 8D(2)(i) for Rs.9.20 Lacs is the same disallowance which has been offered by the assessee against Treasury department expenses. The disallowance, upon confirmation by learned DRP, is under appeal before us. 5.2 The arguments of Ld. Sr. Counsel are two-fold viz. (i) Ld. AO has not recorded requisite satisfaction before proceeding to compute disallowance as per Rule 8D; (ii) The assessee had surplus funds to make the investments and therefore, the presumption that the investments were out of surplus funds stood in assessee's favor by the judgments of Hon'ble Bombay High Court rendered in HDFC Bank Ltd. V/s CIT (2016 95 CCH 61) &

CITV/s HDFC Bank Ltd. (2014 366 ITR 505). 5.3 We have considered the same. Upon perusal of financial statements, we find that own funds in the shape of share capital & free reserves at year end stood at Rs.46266.97 Lacs as against investment of Rs.31228.98 Lacs. Nothing has been brought on record by Ld. AO to establish the nexus of investments with borrowed funds. In fact, opening investments stood at Rs.26663.91 Lacs and the assessee earned profit after tax for Rs.15094.68 Lacs during the year under consideration which is more than incremental investments. Therefore, applying the ratio of cited decisions, we hold that no interest disallowance would be justified on the facts and circumstances. We order so. So far as the disallowance of direct / indirect expenses is concerned, we are of the view that since Rule 8D was applicable to this AY, the findings given in earlier orders of Tribunal would not apply to this year and the disallowance has to be worked out in terms of the Rule 8D. The Ld. AO, in draft assessment order, at para 6.4, has noted that the submissions made by assessee in defense of suo-moto disallowance could not be accepted as against the submissions of the Ld. Sr. Counsel that the requisite satisfaction was not recorded by Ld. AO before proceeding to apply Rule 8D. We are of the considered opinion that there was no particular method of recording satisfaction in the quantum assessment order and therefore, unable to accept this specific plea of Ld. Sr. Counsel. However, keeping in view the factual matrix as well as submissions made before us, we deem it fit to restore the matter of direct / indirect expense disallowance to the file of Ld. AO for re-adjudication in the light of suo-moto disallowance offered by the assessee. As held earlier, no interest disallowance would be justified, keeping in view the assessee's financial parameters. Ground No. 14 stand partly allowed.

32. Therefore, respectfully following the above decision of Coordinate Bench in assessee's own case in turn relying on the decision of Assessment Year 2008-09. These issues are settled in favour of the assessee. Therefore, we are inclined to accept the submission of Ld. AR. Accordingly, these grounds raised by the assessee are allowed.

23. Respectfully following the above decision, we hold that no disallowance towards interest is warranted under section 14A r.w.r. 8D of the Act. With regard to the contention that the suo motu disallowance we notice that the Assessing Officer in the OGE passed for AY 2009-10 has deleted the disallowance made under section 14A and therefore we see merit in the submission of the Ld AR that the suo moto disallowance

based on the salary of employees in treasury department is being accepted by the revenue. We therefore remit the issue of verification of direct / indirect expense disallowance to the file of Ld. AO for re-adjudication in the light of suo-moto disallowance offered by the assessee i.e. of Rs.3,44,215/- keeping in mind the fact that for AY2009-10 the suo motu disallowance based on salary of employees in treasury department has been accepted by the Assessing Officer. Needless to say that the assessee be given an opportunity of being heard. It is ordered accordingly.

19. For the year under consideration also we notice that the assessee is having sufficient own funds which is more than the investments made. Further the assessee has made a suo moto disallowance of Rs.81,000 towards salary paid to personnel working in Treasury Department. Therefore the facts and circumstances are identical to the above decision of the Tribunal and respectfully following the above order of the Tribunal, we remit the issue to assessing officer with similar directions. This ground is allowed for statistical purpose.

19. Respectfully following the aforesaid decision, we remit the issue to assessing officer with similar directions. Thus, the **Grounds of appeal No. 30 & 31** raised by the assessee company are allowed for statistical purposes.

20. In so far as **Grounds of appeal No.32-33** concerning allocation of expenditure at Baddi Unit-I and Unit-II in turn affecting the assessee's claim u/s 80IC, we find that the Co-ordinate Bench of the ITAT, Mumbai in assessee's own case for A.Y.2013-14 & 2014-15, ITA Nos. 7104/MUM/2017 & ITA No. 7404/Mum/2018, dated 20.09.2023 while considering the same issue has observed as follows:

“20. Grounds 35 to 36 pertain to allocation of expenditure at Baddi Unit-I and Unit-II. We find that this issue has been exhaustively

considered by the co- ordinate bench in its order for A.Ys 2011-12 & 2012-13 (supra) and then arrived at the following conclusions:-

“31. We heard the rival submissions and perused the materials on record. From the perusal of statement showing the basis of allocation of expenses to Baddi Unit I and II (page 430 and 431 of paper book) we notice that the Assessing Officer has accepted the allocation of Material cost, employee cost and depreciation. The disallowance is arising out of the allocation of finance cost and the Operating & Establishment expenses (O&E) which the assessee allocated based on the revenue ratio as compared to the total revenue of the assessee. We notice that the coordinate bench in assessee's own case for AY 2009-10 accepted the claim towards finance cost and remitted the issue back to the Assessing Officer only with respect to the verification of allocation of O&E expenses. We further notice that in the OGE the Assessing Officer has allowed the O&E expenses as claimed in the return of income for the purpose of deduction under section 80IC thereby accepting the method of allocation followed by the assessee for allocating O&E expenses. It is also noticed that there is no change in the method of allocation followed by the assessee for AY 2011-12 also. Considering the decision of the coordinate bench and the OGE passed by the Assessing Officer, we delete the disallowance made by the Assessing Officer and hold that the assessee be allowed the deduction under section 80IC as claimed in the return of income.

21. For the year under consideration, the ld AR during the course hearing presented a worksheet with details of how the disallowance is computed by the assessing officer. From the perusal of the same we notice that the assessing officer has used the same basis as in AY 2011-12 in order to make the disallowances. Therefore, in our considered view our decision in assessee's own case for AY 2011-12, as extracted above will be applicable for the year under consideration also. Therefore, respectfully following the earlier decision of the co-ordinate bench, we delete the disallowance made by the Assessing Officer. These grounds of the assessee are allowed.”

21. Respectfully following the aforesaid decision, under identical facts and circumstances, as observed from the working of allocation of subjected expenses furnished by the Ld. AR before us, that the Ld.AO had adopted a basis for allocation which is not in conformity with the basis approved by the ITAT in its earlier orders, we thus in terms of aforesaid observations

delete the disallowance made by the A.O. Thus, the **Grounds of appeal No. 32 & 33** raised by the assessee company are allowed.

22. In so far as the **Grounds of appeal No.34** regarding the levy of interest u/s. 234C of the Act, the Ld. Counsel submitted that the A.O has levied interest u/s. 234C of the Act on the assessed income whereas the provisions of Section 234C talks about levy of interest on income returned. We, therefore, remit the issue back to the A.O with a direction to examine the records and re-compute the interest u/s. 234C of the Act as per provisions of the said section. Thus, the **Ground of appeal No.34** is allowed for statistical purposes.

23. In so far as the **Grounds of appeal No.35** concerning non grant of MAT credit, we find that the Co-ordinate Bench of the ITAT, Mumbai in assessee's own case for A.Y.2013-14& 2014-15, ITA Nos. 7104/MUM/2017 & ITA No. 7404/Mum/2018, dated 20.09.2023 while considering the same issue has observed as follows:

“23. Ground No. 38 pertains to non grant of MAT credit. We find that the Tribunal while considering the appeal for A.Y. 2011-12 has observed as under with regard to similar issue:-

“36. The Ld.AR submitted that the MAT credit is carried forward from A.Y.2010-11 and the credit was modified due to additions made in the assessment order for A.Y. 2010-11. The Ld.AR further submitted that the Tribunal vide order dated 14th November, 2022 has quashed the assessment for A.Y. 2010-11 as being barred by limitation. It is therefore, prayed that the assessee allowed the MAT credit as per the original return of income filed as has been carried forward from A.Y. 2010-11. After hearing the parties, we are of the

view that this issue needs to be factually examined for the purpose of allowing the credit towards carried for MATcredit from AY 2010-11. Therefore, we remit the issue back to the Assessing Officer to examine the status of the assessment order passed for A.Y. 2010-11 and accordingly give credit for the carried forward MAT for the year under consideration.

24. Facts and circumstances, being identical, consistent with the earlier decision of the Tribunal, we remit the issue back to the Assessing Officer to examine the status of the assessment order for A.Y.2010-11 and accordingly give credit for the carried forward MAT for the year under consideration. This ground is allowed for statistical purpose.”

24. Respectfully following the aforesaid decision, we remit the issue back to the Assessing Officer to examine the status as per assessment records and accordingly give credit for the carried forward MAT for the year under consideration. Thus, the **Ground of appeal No. 35** raised by the assessee company is allowed for statistical purposes.

25. In the result, appeal of the assessee company is allowed/partly allowed for statistical purposes, as per our aforesaid observations.

Order pronounced in the open court on 22nd August, 2025.

Sd/-
AMIT SHUKLA
(JUDICIAL MEMBER)

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

मुंबई/Mumbai; दिनांक / Dated : 22nd August, 2025.
SB, Sr.PS (on Tour)

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

1. अपीलार्थी /The Appellant.
2. प्रत्यर्थी /The Respondent.

3. आयकरआयुक्त/The CIT, Mumbai
4. प्रधानआयकर आयुक्त/ Pr.CIT, Mumbai
- 5.विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,मुंबईबेंच,
मुंबई/DR, ITAT, Mumbai Benches, Mumbai.
- 6.गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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