IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
& SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER
ITA No. 2038/MUM/2025 (AY : 2022-23)
(*Physical hearing*)

The UK Trade Desk Ltd. 10th Floor, 1 Bartholomew Close, London, United Kingdom. [PAN No. AAHCT6320Q]	Vs	ACIT (International Taxation-4(3)(1), Mumbai, 6th Floor, Kautilya Bhavan, BKC, Bandra East, Mumbai – 400051.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Sriram Seshadri & Ms. Amulya K.
Revenue by	Shri Krishna Kumar, Sr. DR
Date of institution of appeal	26.03.2025
Date of hearing	16.10.2025
Date of pronouncement	07.01.2026

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by assessee is directed against the addition in assessment order passed under section 143(3) r.w.s. 144C(13) dated 28.01.2025, passed in pursuance of direction of DRP dated 24.12.2024 for A.Y. 2022-23. The assessee has raised following grounds of appeal:

*"1. **General Ground***

1.1 The final assessment order ("Impugned Order") passed by the Assistant Commissioner of Income-tax (International Taxation)-4(3)(1) ("Ld. AO") under Section 143(3) read with Section 144C(13) of the Income-tax Act, 1961 (the "Act"), pursuant to the directions issued by the Learned Dispute Resolution Panel 2, Mumbai (the "Ld. DRP") under section 144C(5) of the Act, suffers from legal defects such as, but not limited to, being passed in violation of principles of natural justice, is devoid of merits, based on conjectures, surmises and a pre-judged mind without appreciating the Appellant's submissions, contrary to the facts on record and the provisions of the Act, and hence, is bad in law and is liable to be quashed as such

*2. **Validity of the Impugned Order***

2.1 The Impugned order dated January 28, 2025, is void-ab-initio, invalid, without jurisdiction and bad in law on account of being barred by the period of limitation prescribed under Section 153 of the Act the limitation prescribed under the Act and is liable to quashed as such.

*3. **Attribution of profits to the Indian Operations***

3.1 The Ld. AO and the Ld. DRP ("Lower Authorities") erroneously applied Section 9(1)(i) of the Act without appreciating that the Appellant did not undertake any part of its operations in India.

3.2 The Lower Authorities erred in not following the binding position of law laid down by the Hon'ble Supreme Court in the case of Morgan Stanley Co. Inc. [292 ITR 416), that no further profits could be attributed to the Permanent Establishment ("PE") when the Indian Associated Enterprise ("AE") is remunerated at arm's length.

3.3 The Lower Authorities erred in attributing further profits to the Appellant's Dependent Agent Permanent Establishment ("DAPE") in India by applying Rule 10 of the Income Tax Rules, 1962 ("IT Rules") and, further erred in not following the provisions of Article 7 of the Agreement for Avoidance of Double Taxation ("DTAA") between India and the UK, providing for the application of transfer pricing principles for determining such profit attribution, by considering a PE as a distinct and a separate enterprise.

3.4 Without prejudice, the said attribution of profits by the Ld. AO, without referring the Appellant's international transactions to the Ld. Transfer Pricing Officer ("TPO") for an arms length determination, is beyond the jurisdiction provided under the Act, and hence, is illegal and invalid.

3.5 The Lower Authorities erred in arbitrarily assigning ad hoc ratios of 25 percent and 20 percent respectively, towards the gross revenue attributable to the operations of the DAPE in India, and its taxable business profits in India, despite the undisputed fact that the Appellant has incurred losses in the calendar year 2021 and 2022, as evidenced from its audited financial statements.

3.6 Without prejudice, attribution of further profits to the Appellant's DAPE in India, if any, shall be restricted to a deemed profitability rate of 2 percent of the total revenue, as recommended in the draft report on Profit Attribution, dated April 18, 2019, issued by the Central Board of Direct Taxes ("CBDT"), in the cases where the foreign enterprise incurred a global loss or earned marginal profits.

3.7 The Lower Authorities erred in doubly taxing the same profits, by not allowing a deduction towards the profits already taxed in the hands of the Appellant's Indian AF, Le., Trade Desk India Private Limited (TTD INDIA"), whose activities are said considered as creating a DAPE in India, in determining its taxable profits under the Act.

3.8 The Lower Authorities erred in not appreciating the rationale provided in, and the persuasive value of, the draft report on Profit Attribution, dated April 18, 2019, issued by the CBDT.

4 ***Erroneous computation of interest and demand***

4.1 The Ld. AO erred in levying an aggregate amount of INR 281,934 towards interest and fee payable under Sections 234A 2348, 234C, 234D and 234F of the Act, in determining the sum payable by the Appellant pursuant to the Impugned Order, in the computation sheet annexed thereto.

4.2 The Ld. AO erred in short-grant of TDS credit amounting to INR 105,162 in determining the taxes payable by the Appellant pursuant to the Impugned Order, in the computation sheet annexed thereto.

4.3 The Ld. AO erred in considering that a refund of INR 77.743 has already been issued to the Appellant, in determining the taxes payable by the Appellant pursuant to the Impugned Order, in the computation sheet annexed thereto.

The Appellant craves leave to add, alter, modify, amend, substitute, withdraw and/or re-instate all or any of the Grounds of Appeal herein and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing, to enable the Hon'ble Tribunal to decide the above grounds according to the law.

2. Brief facts of the case are that assessee is engaged in the business of providing technology and service related of internet advertising, filed its return of income for assessment year (A.Y.) 2022-23 declaring Nil income. The case was selected for scrutiny. During assessment, the assessing officer noted that assessee has associated enterprises (AE) in India namely TTD India through which its business is carried out in India. The assessee has also declared its permanent

establishment under Article 5(4) of Double Taxation Avoidance Agreement (DTAA) between India and UK. The assessee entered into Master Service Agreement and Marketing Service Agreement. The assessing officer extracted certain clause of Master Service Agreement (MSA) in para 4 of assessment order. On the basis of certain clauses of MSA, the assessing officer was of the view that TTD India (AE) of assessee focussed on generating new lead and liaising with its existing clients to promote new products. Indian AE liaising with new potential clients and local branches of global agency to promote assessee's product in India. Initiating its price and is responsible for all enquiries on sales and post sales services. Thus, Indian entity / AE is acting as dependent agent of assessee company. The assessing officer on the basis of such view by referring the provision of section 9(1)(i) of the Act held that all income accruing or arising whether directly or indirectly through or from business connection in India shall be deemed to accrue and arise in India. The assessing officer recorded that Indian entity / devoted wholly on behalf of the assessee company and its source of income is from assessee and it economically dependent on its income in India. The Indian entity had received 100% revenue from assessee. On the basis of aforesaid view, the assessing officer (AO) issued show cause notice dated 19.03.2024 proposing 25% of revenue from Indian Operation should not be attributed to Indian entity and why 20% profit should not be estimated from India Operation by invoking Rule 10. In sum and substance, the AO issued show cause as to why 5.00% profit should not be attributed to Indian entity from India

Operation. In response to show cause notice, the assessee filed detailed reply. The contents of reply is recorded in para 6 of assessment order. The assessee submitted that no profit attributable to PE in case Indian Associate Enterprises whether activity resulting constitution of a PE is compensated at arm's length price. There should not be any further attribution to the profit to its PE of assessee as the transaction between assessee and its AE is at arm's length price. To support such view, the assessee relied upon the decision of Hon'ble Apex Court in DIT vs Morgan Stanley & Co. 292 ITR 416 (SC), wherein it was held that no further profit can be attributed to the PE in India since the agent has already been remunerated with an arm's length consideration. The assessee also stated that transaction of assessee and the PE of assessee is an international transaction under the provision of Indian Income Tax Act and arm's length price needs to be determined as per Indian Transfer Pricing Regulation as prescribed in section 92 to 92F. The assessee also submitted that under the provisions of DTAA between India and UK, the profit attributable to PE is determined in accordance with Article 7 of the treaty. The assessee submitted that appropriate procedure for attribution of profits, is when the same is computed by TPO by adopting transfer pricing regulation under the Act. In case, the AO wishes to attribute profit to PE of assessee, in such situation a reference to TPO under section 92CA ought to be made for determining profit attributable to PE. The assessee fourthly submitted that it has incurred losses and loss position of assessee cannot be made into profit position by attributing profit to the Indian operation for the year

under consideration. The reply of assessee was not accepted by assessing officer. The assessing officer held that principle laid down in case of Morgan Stanley & Co (supra) and other judicial pronouncements are not applicable on the facts of the present case. On the second objection that attribution under the provisions to be made as per transfer pricing regulation in India, the ld. AO recorded that CBDT in its Instruction No. 3 of 2016 is specified are not condition for reference to TPO and the case of assessee is not covered in such prescribed parameters on the issue of loss claimed by assessee, the AO held that assessee has not provided India is specific profit and loss account. The AO ultimately held that in such situation he had no option but to resort to estimation of taxable profit as per Rule 10 of Income Tax Rules. The assessing officer thereby made the addition of Rs. 58,93,470/- in the draft assessment order on the basis of following calculation:

Particulars	*Amount (Rs.)*
Total Business Revenue from Indian operations	*11,78,69,417/-*
25% of (A) Attributable to India operations – Business Revenue from India (A)	*2,94,67,354/-*
Business profits from India assumed at 20% of (A)	*58,93,471/-*
Total income	*58,93,470/-*

3. Copy of draft assessment order was served upon the assessee. The assessee exercised its option to file objection before DRP. The DRP in its direction dated 24.12.2024 upheld the addition made by assessing officer. The DRP while confirming the action of assessing officer held that Indian AE have no real business independence. It is a clear case where assessee has dependent agent who acts in India for obtaining, expending and facilitating the business of

assessee in India. TTD India is performing substantial and core business activities for the assessee. The activities performed by TTD India includes marketing and promotion, sales and post sale services, technological support services. Such activities can in no way be called merely preparatory or auxiliary in nature. On the objection of estimation of profit / addition, the ld. DRP held that during assessment assessee has not provided India is specific profit and loss account. Further, the global profit and gain have not been computed in accordance with provision of Indian Income Tax Act; hence the AO has no other option except for allocation profit attributable to the Indian operation by resorting the provision of Rule 10 of Income Tax Rules. The ld. DRP passed the direction on 24.12.2024. On receipt of direction of DRP, the ld. AO passed final assessment order on 28.01.2025. Aggrieved by the additions in the assessment order, the assessee has filed present appeal before Tribunal.

4. We have heard the submissions of learned Authorised Representative (ld. AR) of the assessee and the learned Senior Departmental Representative (ld. Sr. DR) for the Revenue. The ld. AR of the assessee that assessee is engaged in the business of providing technology and services related to internet advertising. The assessee purchases media space from overseas suppliers and provides to Indian customer. The assessee appointed its subsidiary in India to provide marketing and related services to assessee. The assessee is a non-resident and maintained its financial statement in its source country that is UK. The financial statements were provided to lower authorities. The assessee entered into a master service

agreement with its AE in India. The copy of master service agreement to lower authorities. In pursuance of agreement, the India AE rendered certain services to assessee. Such transactions were considered as international transaction as per Indian Income Tax Regulation. The transaction between assessee and its AE were at arm's length. To substantiate such transactions, the assessee furnished its transfer pricing study report. The lower authorities has not doubted the arm's length transaction with its AE. Once the AE was remunerated at arm's length price no further profit could be attributed to the permanent establishment as has been held by Hon'ble Apex Court in Morgan Stanley & Co. INC (supra). The assessing officer attributed further profit to assessee is dependent agent / permanent establishment in India by applying rule 10 and not followed the provisions of Article 7 of DTAA between India and UK. Article 7 of DTAA between India and UK provides for application of transfer pricing principle for determining such profit attribution. The assessing officer arbitrarily assigned adhoc ratio 25% of 20% that is 5% towards the gross revenue attributable to the operation of dependent agent in India without resorting the TP regulation as per Income Tax Act. To support its submission, the ld. AR though filed voluminous legal paper book, however, at the time of his submission he merely relied upon the decision of Hon'ble Apex Court in DIT vs Morgan Stanley & Co. (supra), Honda Motors Co. Vs ADIT (2018) 92 taxmann.com 353 (SC), DIT vs Travelport Inc in CA No. 6511 -6518/2010 dated 19.04.2023 and decision of Mumbai Tribunal in ADIT vs ACR Today Ltd. (2021) 124 taxmann.com 1 (Mumbai).

5. On the other hand the learned senior DR for the revenue supported the order of lower authorities. The learned senior DR for the revenue submits that assessing officer while passing the draft assessment order in para 5.4 has clearly recorded the finding that activities of Indian AE of assessee are devoted wholly on behalf of assessee company. India entity has only source of income is from assessee company which is due to the agreement with assessee. The India entity is economically dependent on assessee. The AO correctly worked out / estimated revenue from Indian operation attributable to India.

6. We have considered the rival submission of both the parties and have gone through the orders of lower authorities carefully. We have also deliberated on various documentary evidences filed by the assessee on record. We have also deliberated on various case laws relied by ld. AR of the assessee. We find that there is no much dispute on fact. There is no dispute that during the assessment, the assessee has furnished its transfer pricing its study report to show the transaction with its AE ar arm's length. Admittedly, arm's length price has not been examined or doubted by the assessing officer. We find that in a series of decision, the various bench of Tribunal held that where the assessee has a dependent agency, permanent establishment and its Indian agent had been paid / remunerated at arm's length price, nothing further could be taxed in the hands of assessee. We also find that Hon'ble Apex Court in Honda Motors Co. Ltd. vs ADIT (supra) while quashing the notice under section 147 held that where notice to the assessee for reassessment was based only on the allegation that it had

permanent establishment in India, said notice could not be sustained once arm's length price procedure has been followed. We also find that the Hon'ble Apex Court in leading decision in DIT vs Morgan Stanley & Co. (supra) has held that as long as Morgan Stanley Advantage Services Ltd., being PE in India is remunerated for its arm's length basis taking into account risk taking functions of foreign enterprises, no profit would be attributable to PE. Thus, on the basis of aforesaid settled legal position, we are of the considered view that once Indian entity has been remunerated at arm's length prices, no further profit would be attributable to PE in India. Thus, we do not find any justification in making such adhoc addition. In the result, various sub grounds of ground no. 3 are allowed.

7. Considering the fact that we have allowed substantial ground against the addition made by assessing officer. Therefore, adjudication on ground no. 2 have become academic.

8. In the result, the ground No. 4 of appeal is allowed. Considering the facts that we have allowed relief to the assessee/ appellant, thus, adjudication on merits has become academic.

9. In the result, the appeal of the assessee is allowed

Order pronounced in open court on 07/01/2026

Sd-	Sd-
GIRISH AGRAWAL **ACCOUNTANT MEMBER**	**PAWAN SINGH** **JUDICIAL MEMBER**

Mumbai: Dated: 07/01/2026
Biswajit

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
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Assistant Registrar
ITAT, Mumbai