

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'T': NEW DELHI**

BEFORE SHRICHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

AND

SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

**ITA No.2329/Del/2022
[Assessment Year:2009-10]**

Brown Forman Worldwide LLC India, Branch Office, 148, Centrum Plaza, 1st Floor, Golf Course Road, (Opposite Sun City Complex), Gurgaon, Haryana-122002	Vs	Assistant Commissioner of Income Tax, International Tax, HSIIDC Building, Vanijya Nkunj, Udyog Vihar, Phase-V, Gurgaon, Haryana-122001
PAN AACCB2612A		
Appellant		Respondent

Assessee by	Shri Vishal Kalra, Adv. Shri Ankit Sahni, Adv. & Ms. Taranjeet Kaur, AR
Revenue by	Shri Dharm Veer Singh, CIT(DR)

Date of Hearing	18.12.2025
Date of Pronouncement	21.01.2026

ORDER

PER AMITABH SHUKLA, AM,

The captioned appeal has been preferred by the assessee against order dated 27.07.2022 of the Assessing officer arising out of direction of learned Dispute Resolution Panel, (in short 'ld. DRP') 21.06.2022 passed u/s 144(c) of the Income Tax Act, 1961 pertaining to Assessment Year 2009-10. The word 'Act' herein this order would mean Income Tax Act, 1961.

2. Aggrieved with the order of the Ld. Assessing Officer, passed in compliance to directions of the ld. DRP, the assessee has raised following grounds of appeal:-

1. That on the facts and circumstances of the case and in law, the AO has erred in assessing the total income of the Appellant at IN 1,29,42,885 in pursuance to the directions issued by the DRP, as against the returned income of IN 84,39,560.

2. Transfer Pricing adjustment amounting to INR 45,03,325 in respect of the international transaction pertaining to provision of marketing support services:

2.1. That on the facts and circumstances of the case and in law, the Transfer Pricing Officer ("TPO") has erred in making and the AO/ DRP have erred in upholding the Transfer Pricing ("TP") adjustment of INR 45,03,325 in respect of the international transaction pertaining to the provision of marketing support services.

2.2 That on the facts and circumstances of the case and in law, the AO/DRP/TPO have erred in not correctly interpreting the directions issued by the Hon'ble Delhi Bench of the Income Tax Appellate Tribunal ("Tribunal") and retaining companies in the final comparable set which were excluded by the Tribunal vide consolidated order passed in Appellant's own case for the immediately preceding assessment years i.e., AY 2007-08 and AY 2008-09.

2.2.1 That on the facts and circumstances of the case and in law, the AO/DRP/TPO have erred in including ICRA Management Consulting Services India Private Limited, IDC India Limited and Technicom-Chemie India Limited in the final comparable set for bench marking the international transaction pertaining to provision of marketing support services.

2.3. That on the facts and circumstances of the case and in law, the AO/DRP/TPO have erred in arbitrarily rejecting 18 out of 19 functionally comparable companies, selected by the Appellant in its transfer pricing report, without providing any detailed rejection reasons.

2.4. That on the facts and circumstances of the case and in law, the AO/ DRP/ TPO have erred in incorrectly computing the working capital adjusted margins of the comparable companies.

2.4.1. That on the facts and circumstances of the case and in law, the AO/DRP/TPO have erred in considering miscellaneous expenses, deferred revenue expenditure written off, festival celebration expenses, bad debts written-off, professional fee receivable written off and office expenses as non-operating in nature while computing the margin of comparable companies.

2.4.2. That on the facts and circumstances of the case and in law, the AO/DRP/TPO have erred in not adopting a consistent approach in treating the expenses as operating or non-operating while computing the margin of the Appellant vis-à-vis the companies chosen as comparables for benchmarking the international transaction.

2.4.3. That on the facts and circumstances of the case and in law, the AO/DRP/TO have erred in not adopting a consistent approach in treating the expenses as operating or non-operating while computing the margin of the Appellant in first round of litigation vis-à-vis the second round of litigation.

2.5. That on the facts and circumstances of the case and in law, the AO has erred in levying interest under section 234B of the Act.

2.6. That on the facts and circumstances of the case and in law, the AO has erred in initiating penalty proceedings under section 271(1)(c) of the Act.

3. Ground of appeal no.1 is general in nature and hence dismissed as infructuous.

4. Ground of appeal nos.2 including sub-grounds 2.1 to 2.4.3 are regarding the transfer pricing adjustment made in the case of the assessee amounting to Rs.45,03,325/- on account of provision of marketing support

services. As all the grounds revolve around the solitary dispute of transfer pricing adjustment, the same are dealt together.

5. Brief facts of the case are that the assessee is engaged in the "Wine" and "Spirit" business and also diversified producer and marketer of fine quality consumer product. The beverage segment includes various "Kentucky whiskey", "Kentucky Bourbon", "California sparkling wine" etc. During the year under consideration, the assessee was primarily engaged in providing support services and other auxiliary sales support services and to its group companies. The Ld. AO noted international transaction of market support services of Rs.7,92,80,797/- and therefore, referred to the Ld. TPO for determination of Arm's Length Price (in short 'ALP'). The Ld. TPO proposed adjustment of Rs. 1,91,30,582/-to the income of the assessee. The then Ld. AO in draft assessment order dated 06/03/2019 included the above transfer pricing adjustment. Aggrieved with the Draft assessment order of the Ld. AO, the assessee filed objection before the Ld. DRP. The Ld. DRP issued directions to the Ld. TPO for excluding one of the comparable and also allow the working capital adjustment. Pursuant to the direction of the Ld. DRP, the Ld. TPO recomputed the adjustment to Rs. 1,20,80,085/-. Accordingly, the assessment proceedings was completed and the assessment order in this case was passed on 17.02.2014, wherein the adjustment amounting to Rs. 1,20,80,085/- as proposed by the Ld. TPO were made to the returned

income of the assessee. Accordingly, the income was assessed at of Rs.2,05,19,645/-

6. Before us, the Id. Counsel for the assessee submitted that this is the second round of litigation. It was informed that in assessee's case, an hon'ble Co-ordinate Bench has vide order in ITA No.2571/Del/2014 dated 12.04.2019 had ordered as under:-

".....8. We have heard submission of the both the parties on the issue of making a fresh search of the comparable. We are of the opinion that all the 19 companies selected by the assessee, including the company M/s Excellent Insurance Broking Service Ltd. should be considered afresh by the learned TPO along with 5 comparables which have been retained by the Tribunal in the case of the assessee for assessment year 2008-09, in the light of the filters applied by the TPO. We further direct that, in case, no companies found to be comparable out of the 19 companies and 5 companies are mentioned respectively above, the learned TPO may carry out a fresh search on the database applying the filters already upheld by the learned DRP.

9. The grounds of the appeal of the assessee are accordingly allowed for statistical purposes....."

7. The Id. Counsel simultaneously invited our attention to the order of learned Transfer Pricing Officer dated 26.07.2021 passed in compliance to the impugned directions of the Co-ordinate Bench extracted hereunder:-

"3....In the first round of proceedings u/s 92CA TPO proposed adjustment an upward adjustment amounting to Rs. 1,91,30,582/- in account of market support services with was further enhanced to Rs. 1,20,82,085/- after DRP order's effect.

Aggrieved with this, the assessee preferred an appeal before ITAT. The Tribunal has set aside the case to the file of the TPO with the directions to re-consider the comparables selected by the assessee in its economic analysis. Vide the order in question, the Tribunal has some of the comparables selected by the TPO on the ground of functional dissimilarity and only one comparable has been retained for re-consideration. The current TP proceeding arises from the said ITAT Order, and the discussion is as under:

Further, the ITAT has directed to consider 5 more comparables which have been said to be retained by the Tribunal in assessee's own case for AY 2008-09.

The Hon'ble Tribunal has directed the TPO to consider the 19 comparables selected by the assessee along with M/s Excellent Insurance Broking Services Ltd. It has also been directed that if the comparables available for re-consideration do not pass the filters applied by the TPO then a fresh search may be carried out to find some new comparables.

4.1 In order to benchmark the transactions, the undersigned propose to compare AMP expenditure of the tested party with AMP expenditure of other comparables engaged in similar business using Advertisement. and Marketing and Promotional expenditure to the sales ratio for comparability analysis. For the purpose of comparability, the undersigned propose to use the current year's data (A.Y. 2009-10).

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4.2. As only one comparable i.e. Excellent Insurance Broking Services Ltd. is accepted from the above 19 comparables and as per the Hon'ble ITAT has directed to consider 5 more comparables which have been said to be retained by the Tribunal in assessee's own case for AY 2008-09 (After checking in database for passing of the filters), the final comparables are as below mentioned.:-

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Sr. No.	Name of the Company	OP/OC(%)
1.	ICRA Management Consulting Services India Pvt. Ltd.	1.59%
2.	Indus Technical and Financial Consultants Limited	6.90%
3.	IDC (India) Ltd.	10.79%
4.	Best Mulyankan Consultants Ltd.	14.83%
5.	Excellence Insurance Broking Services Ltd.	27.66%

6.	Technicom – Chemie (India) Ltd.	42.66%
	Average	17.41

5. Since the margin in respect of the MSS of the assessee is 9.97% and the recomputed mean margin of the comparables is 17.41%, the computation of the Arm's Length Price of the assessee is a follow:

Operational Cost	7,20,90,967
ALP at a Margin of 17.41%	8,46,42,004
Price Received	7,92,80,797
Adjustment u/s 92CA	53,61,207

Therefore, in perusal of the direction of the Hon'ble ITAT, New Delhi, the earlier adjustment of Rs. 1,20,80,085/- is being revised to Rs. 53,61,207/-.

8. The Id. Counsel invited our further attention to the following discussion/directions of this Tribunal again in assessee's own case for AY 2007-08 and 2008-09, pronounced vide ITA No.433 and 6139/Del/2012, dated 11.05.2018.

“.....5. In order to appreciate the comparability or otherwise of the companies challenged before us, it is sine qua non to first consider the functional profile of the assessee under the international transaction of 'Provision of marketing

support services.’ The TPO has simply mentioned on page 2 of his order that the assessee is engaged in providing marketing support services and other similar auxiliary sale support/assistance services. There is not much amplification of such services. We have gone through the Transfer pricing study report of the assessee, whose copy is available on page 120 of the paper book. Elaboration of the services rendered by the assessee is contained on page 136 of the paper book. Such services encompass Liaison activities, Market information activities and Sales support to the existing customers in India. Under the Liaison activities, it has been stated that the market in India for alcoholic beverages, being the product which is sold by the Head office in India, is a regulated market and falls in the State List of the Constitution, implying that each State of the country has its own individual policies and regulations. The assessee as a branch office is in rationalization of policies in respect of selling and distribution of alcoholic beverages. Under the head Market information activities, it has been mentioned that the assessee is engaged in providing information of Indian markets and assists its head office in creating market for them. Under the last category, the assessee is extending support to the existing customers in India. We have also gone through the Agreement dated 04.09.2012 between the assessee and its Head office pursuant to which such services were rendered. A copy of such Agreement is available on page 454 of the paper book. This Agreement characterizes the nature of services as ‘Marketing support services’ and provides that the assessee : ‘will provide Marketing Support Services and other similar auxiliary sale support services in respect of BFC products’. It has also been mentioned that the assessee : ‘shall use its best efforts to support BFC, identify and predict market trends, analyze customer needs, improve customer relations and facilitate the information flow between BFC and its customers’. Clause 2 of the Agreement sets out ‘Price for the services.’ It provides that : ‘The price, which BFC (the head office) shall pay to BFWBO (the assessee) for the Marketing Support Services shall be an amount equal to BFWBO’s Cost plus 5% (the ‘Profit Margin’). The above narration of facts transpires that the assessee is basically engaged in rendering marketing support services to its Head office, for which it is remunerated at cost plus 5% mark-up. With the above understanding of the nature of services rendered by the assessee and the business

model, we shall proceed to examine the comparability or otherwise of the companies assailed before us.

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12. We have gone through the Annual report of this company, whose copy is available on page 27 onwards of the paper book. Its Director's Report shows that it has completed 650 projects for about 350 clients, and its area of operation extends to a mix of national and international organizations, Governments, regulators, banks and corporate entities. This company is also into Government and infrastructure practices, in addition to rendering banking and financial services. Apart from the corporate advisory practices, this company has also established two specialized divisions, viz., Information technology (IT) and Research activities. These divisions lend support to the Consulting divisions and also provide value added products for its clients. Such detail of the functional profile of ICRA Management Consulting Services proves beyond a shadow of doubt that it is nowhere close to the assessee company insofar as the functionality is concerned. We, therefore, order to exclude this company from the list of comparables.

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A.Y. 2008-09

31. In this appeal the assessee is aggrieved against an addition of Rs.55,68,219/- towards transfer pricing adjustment in the international transaction of 'Marketing support services'.

32. The assessee reported an international transaction of provision of 'Market support services' with the transacted value of Rs.6,40,37,573/-. The Assessing Officer made reference to the TPO for determining the ALP of this international transaction. The TPO did not dispute the application of TNMM as the most appropriate method with the PLI of OP/TC. The assessee had selected 11 companies as

comparable. The TPO rejected all of them and made a list of 10 new comparable companies with their average OP/TC at 17.76%. This led to the transfer pricing adjustment of Rs.77,82,089/-. The assessee challenged the draft order, incorporating the addition on account of transfer pricing adjustment, before the DRP, which excluded three companies from the list of comparables drawn by the TPO. The assessee is aggrieved in the instant appeal against the inclusion of two companies, namely, Choksi Lab Ltd. and WAPCOS Ltd. (Seg.).

33. It is an admitted position that the functional profile of the assessee is similar to that of the preceding year. In fact, the same Agreement is stated to be governing the year under consideration as well. As such, there is no need to separately analyze the nature of the functions performed by the assessee under the international transaction of 'Marketing support services'. Thus, the functional profile discussed above while dealing with the appeal for the assessment year 2007-08 is adopted for the purposes of examining the comparability or otherwise of the companies in challenge before us.

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41. We, therefore, set aside the impugned order on the issue of addition towards transfer pricing adjustment and remit the matter to the file of AO/TPO for a fresh determination of the ALP of the international transaction of 'Provision of Marketing support services' in consonance with our above directions. Needless to say, the assessee will be allowed a reasonable opportunity of being heard in such fresh proceedings....."

9. Thus, the Id. Counsel vehemently argued that the learned Transfer Pricing Officer has not complied with the directions and conclusions drawn by the Hon'ble Co-ordinate Bench of this Tribunal in assessee's own case for AY 2007-08, 2008-09 and 2009-10 (supra). The Id. Counsel accordingly requested that this appeal agitated by it through its grounds of

appeals nos. 2 to 2.4.3 may be remitted back to the file of the learned Transfer Pricing Officer for re-adjudication de novo on the issue of determination of ALP in the case of the assessee in consideration of directions and conclusions drawn by the Hon'ble Co-ordinate Bench of this Tribunal in assessee's own case for AY 2007-08, 2008-09 and 2009-10 (supra).

10. Per contra, the ld. DR relied upon the order of lower authorities. On the issue of exclusion of comparable in AY 2008-09 (supra), it was submitted that the issue did not come up for consideration of the Tribunal as the assessee had not challenged the matter.

11. We have heard rival submissions in the light of material placed on record. We have noted that the learned Transfer Pricing Officer in his order dated 26.07.2021, passed in response to the directions of the Tribunal has not considered the impugned directions in totality. We have also noted that the decision of this Tribunal in assessee's own case for AY 2007-08, 2008-09 (supra) also has a clear bearing upon determination of ALP in this year. Be that as it may be, we are of the considered view that ends of justice would be met if the matter is remitted back to the file of the learned Transfer Pricing Officer for re-adjudication of ALP in hands of the assessee. Accordingly, we set-aside the order of the lower authorities and direct the ld AO to pass the assessment order de novo after obtaining the fresh report from the learned Transfer Pricing Officer. The assessee

shall be entitled to due opportunity of being heard and to submit details/evidences as deemed appropriate in its defense. It shall be bounden upon the assessee to comply with the statutory notices by the learned Transfer Pricing Officer/AO. Accordingly, grounds of appeal no.2.1 to 2.4.3 are allowed for statistical purposes.

12. Ground of appeal no.2.5 and 2.6 are regarding the levy of interest under section 234B and initiation of penalty proceedings under section 271(1)(c) respectively. The ground of appeal no. 2.5 has been found to be consequential in nature and ground of appeal no. 2.6 has been found to be premature at this stage. Accordingly, Ground of appeal no.2.5 and 2.6 are dismissed.

13. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 21st January, 2026.

Sd/-
[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER

Sd/-
[AMITABH SHUKLA]
ACCOUNTANT MEMBER

Dated: 21.01.2026

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi