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

BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER

AND

SHRI M. BALAGANESH, ACCONTANT MEMBER

ITA No.2040/Del/2022
Assessment Year 2018-19

Louis Vuitton India Retail Private Limited **901-A, Ninth Floor,** **Time Tower, MG Road,** **Gurgaon** **PAN No.AAACL8230E**	**Vs.**	**ACIT** **Circle -1 (1)** **Gurgaon**
Appellant		Respondent

Appellant	Sh. Ajit Jain, AR
Respondent	Ms. Shaveta Nakra Datta, CIT DR

Date of Hearing	**25.02.2026**
Date of Pronouncement	**17.04.2026**

ORDER

PER C.N. PRASAD, JM,

This appeal is filed by the assessee against final assessment order dated 27.06.2022 passed u/s.143(3) r.w.s. 144C(13) of the Act pursuant to the directions of the DRP dated 27.4.2022 passed u/s.144C(5) of the Act for the A.Y. 2018-19.

2. The assessee in its appeal has raised the following grounds of appeal :-

1. That on the facts and circumstances of the case and in law, the AO erred in assessing the total income of the Appellant under section 143(3) read with sections 144C(13) of the Act, for the subject AY at 20,44,08,010 as against the returned income of INR 18,45,35,400.

2. That on the facts and circumstances of the case and in law, the orders passed by the AO / TPO were bad in law as the pre-requisite for applying Chapter-X, Le, existence of an international transaction between two Associated Enterprises ('AE") under section 928 of the Act, was not satisfied or existed as there was no agreement, understanding or arrangement between the Appellant and the AE for incurrence of such expenditure by the Appellant and the DRP erred in upholding the same.

2.1. That on the facts and circumstances of the case and in law, the AO/DRP/TPO have erred in re-characterizing the Appellant as service provider rendering brand building services to its AE, without appreciating that it is a full risk bearing retailer incurring AMP expenditure in the course of its own business to promote its sales in India.

3. That on the facts and circumstances of the case and in law, the orders passed by the AO/DRP/TPO were bad in law as the unilateral AMP expenditure incurred by the Appellant was categorized as 'international transaction' under chapter X of the Act, by the AO/DRP/TPO, contrary to law in as much the AO neither granted any opportunity of being heard to the Appellant, nor passed a speaking order recording his satisfaction in relation to characterisation/categorization of the AMP expenditure as an 'international transaction'.

4. That on the facts and circumstances of the case and in law, the TPO erred in re-characterizing the unilateral AMP expenditure being payments made by Appellant to independent third parties as an 'international transaction' under chapter X of the Act, particularly when section 92CA

of the Act enables the TPO only to compute the arm's length price ("ALP") of 'international transaction'. Further, the DRP erred in not adjudicating the objections challenging the jurisdiction of the TPO in this regard.

4.1. That on the facts and circumstances of the case and in law, the TPO erred in suo benchmarking the alleged international transaction related to AMP expenditure without there being any order or reference from the AD in relation thereto

Notwithstanding and without prejudice to the above grounds that the AMP expenditure incurred by the Appellant does not constitute an international transaction under Chapter X of the Act, the Appellant craves to raise following grounds on merits:

5. That on facts and circumstances of the case and in law, DRP has erred in not directing AQ/TPO to exclude the sales and distribution expenditure from the quantum of alleged excessive AMP expenditure while benchmarking the alleged international transaction using substantive and/or protective methods, disregarding the decision of the Hon'ble Tribunal in Appellant's own case and various decisions of the High Court(s)

6. That on the facts and circumstances of the case and in law, the AO/TPO grossly erred in applying Bright Line Test (BLT') for making transfer pricing adjustment amounting to INR 53,78,020, on protective basis, without appreciating that BLT has been expressly rejected by the Hon'ble Tribunal in Appellant's own case for earlier AYs. The DRP further erred in upholding the action of the AO/TPO

6.1. Notwithstanding and without prejudice to the ground that BLT is not a statuary method. AO/DRP/TPO has erred in arbitrarily selecting improper companies for purposes of BLT without appreciating that the same were functionally not comparable.

7. That on facts and circumstances of the case and in law, the AO/DRP/TPO have erred in making an adjustment in respect of alleged AMP expenditure as an international transaction, without appreciating that adjusted gross profit margin as well as operating margin of the Appellant was better than the comparable companies

8. That on the facts and circumstances of the case and in law, AO/DRP/TPO have erred in not appreciating that the Appellant had not provided any value added/brand building services to its AE by incurring AMP expenditure, and therefore, no mark-up could have been charged / levied on such expenditure, even if the same was to be characterized as an international transaction'.

8.1. Notwithstanding and without prejudice that no mark-up could have been levied, on the facts and circumstances of the case and in law, AO/DRP / TPO have erred in cherry picking the comparable companies for purpose of computing the mark-up for the alleged AMP as an international transaction.

8.2. Notwithstanding and without prejudice that no mark-up could have been levied, on the facts and circumstances of the case and in law, the AO/DRP/TPO have erred in selection of improper comparable companies for application of mark-up, being entities providing market support functions and without sharing a search process for identifying the comparable companies.

9. That on the facts and circumstances of the case and in law, the AO/DRP/TPO have erred in not granting set-off of excess profit from distribution of products while benchmarking the alleged international transaction of incurring excessive AMP expenditure.

10. That on the facts and circumstances of the case and in law, the AO/DRP/TPO on in not granting quantitative economic adjustments (such as non-payment of royalty expenses incurred on new product launches) while quantifying arm's length price of the alleged international transaction of AMP expenditure

Corporate tax grounds

11. That on the facts and circumstances of the case and in law, the AD while computing the total income have erred in taking the income as per intimation issued u/s 143(1) of INR 19.90,20,900 to be returned income.

12. That on the facts and circumstances of the case and in law, the AD has erred in sustaining the additions made in intimation dated November 15, 2019 under section 143(1)

12.1. That on the facts and circumstances of the case and in law, the AD has erred in sustaining the addition of INR 14,30,251, made in the Intimation u/s 143(1), of the Provident Fund of Employees Contribution paid before the due date of filing the return of income. That the addition so made in the Intimation needs to be deleted.

12.2. That on the facts and circumstances of the case and in law, the AD has erred in sustaining the addition of INR 50,19,777, made in the Intimation u/s 143(1), being disallowance of the bonus under section 438 of the Act, without appreciating that the same was paid before the due date of filing the return of income. That the addition so made in the Intimation needs to be deleted.

13. That on the facts and circumstances of the case and in law, the AO has erred in short grant of self-assessment tax paid by the Appellant.

14. That on the facts and circumstances of the case and in law, the DRP erred in not allowing the deduction of interest paid on VAT duty amounting to INR 22,35,201, claimed by Appellant under the provisions of section 37 of the Act on accrual basis.

15. That on the facts and circumstances of the case and in law, the AO has erred in charging interest under sections, 234B and 234C of the Act.

3. The Ld. Counsel for the assessee at the outset submits that ground No.1 to 5 of grounds of appeal of the assessee are not pressed. In view of the submissions of the Ld. Counsel ground Nos. 1 to 5 of grounds of appeal are dismissed as not pressed.

4. Similarly, it is submitted by the Ld. Counsel for the assessee that ground No. 7 to 10 of grounds of appeals of the assessee are not pressed. In view of the submission of the Ld. Counsel ground No.7 to 10 of grounds of appeal are dismissed as not pressed.

5. Coming to ground No.6 and 6.1 of the grounds of appeal of the assessee which are relating to applying Bright Line Test (in short "BLT") for making transfer pricing adjustment, the Ld. Counsel for the assessee submitted that the issue came up for consideration in assessee's own case before the Tribunal for the A.Y.'s 2012-13 and 2020-21 in ITA Nos. 980/Del/2017 dated 06.10.2017 and ITA No.4348/Del/2024 dated 28.05.2025 respectively, wherein the Tribunal held that no transfer pricing adjustment should be made by applying BLT in view of various judgments of the Hon'ble Jurisdictional High Courts.

6. The Ld. Counsel for the assessee further submitted that BLT approach has been discarded by the Hon'ble High Court in the following judgments :-

> *1. Sony Ericson Mobile Communication India Pvt. Ltd. and Others ITA No.16 / 2014 dated 16.03.2015 reported in (55 taxmann.com 240)*
>
> *2. Bausch & Lomb Eyecare (India) Pvt. Ltd. (ITA No.643/2014)*

Referring to the above said decisions the ld. Counsel for the assessee submitted that the BLT approach for making transfer pricing adjustment has been discarded by the Hon'ble High Courts.

7. The Ld. Counsel for the assessee further submitted that the AO/ TPO had mentioned that since the department is appealed before the Hon'ble Supreme Court against the ruling of the Hon'ble Jurisdictional High Court in Sony Ericson Mobile Communications India Pvt. Ltd. and Others case, they would continue to adopt the same approach of applying BLT.

8. The Ld. Counsel for the assessee submits that the decision of the Jurisdictional Hon'ble High Court is binding on the tax authorities, subordinate Benches and placed reliance on the decision of the Hon'ble Supreme Court in the case of Union of India Vs. Kamlakshi Financial Corporation Ltd. AIR 1992 SC 710, East India Commercial Co. Ltd. Vs. Collector of Customs AIR 1962 SC 1893 and Commissioner of Income Tax, Bhopal Vs. Ralson Industries Ltd. (2007) 2 SCC 326 (SC).

9. The Ld. Counsel for the assessee further submitted that the Ld. TPO in its show cause notice also performed an analysis under the TNMM Intensity Approach, comparing the assessee's AMP intensity with that of comparable

companies. The results of this analysis established that the assessee's operating margins were within the arm's length range as is evident from para 7.23 of the transfer pricing order wherein the TPO himself acknowledges that the assessee's OP/ OR of 12.14% is more than the mean, the ALP of the expenditure made on AMP for brand owned by the associated enterprises would be NIL as per AMP intensity adjustment. Therefore, the Ld. Counsel for the assessee submitted that the fact that the assessee's margins are at arm's length price under this approach further substantiates the absence of any need for an AMP adjustment.

10. Therefore, the ld. Counsel for the assessee submits that in view of the above BLT has been conclusively rejected in assessee's own case and its application for determining AMP adjustment is untenable. Further the TPO's analysis under TNMM intensity approach has established that the assessee's operating margins are at arm's length price and accordingly no adjustment on account of AMP expenses is warranted.

11. On the other hand the Ld. DR placed reliance on the findings of the Ld. TPO/AO.

12. Heard rival submissions and perused the orders of the authorities below. In so far as the application of BLT for making transfer pricing adjustment on account of AMP expenses is concerned the issue is squarely covered by the decision of the coordinate Bench in assessee's own case for

the A.Y.2012-13 in ITA No.980/D/2017 dated 06.10.2017 and the decision of the coordinate Bench for the A.Y.2020-21 in ITA No.4348/Del/2024 dated 28.05.2025. We observe that the coordinate Bench for the A.Y 2020-21 following the decision for the A.Y.2012-13 held as under :-

> *21. Ground No. 4 is regarding adjustment of Rs. 1,84,35,150/-on protective basis on the ground of excess advertisement, marketing and promotion expenditure.*
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> *22. The Ld. Counsel for the Assessee submitted that Bright Line Test does not have a statutory mandate and cannot be applied in order to determine the international transaction relate to incurring of AMP Expenses on behalf of AE. The Ld. Assessee's Representative placed reliance on Assessee's own case for Assessment Year 2012-13 in ITA No. 980/Del/2017, order dated 10/07/2017 and other Judgments of Hon'ble High Court of Delhi mentioned as under and sought for allowing the Ground No. 4.-*
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> *i. Sony Ericsson Mobile Communications India Private Limited & Others (ITA No. 16/2014 and connected matters)*
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> *ii. Bausch& Lomb Eye care (India) Pvt. Ltd. (ITA No. 643/2014)*
>
> *iii. Whirlpool of India Ltd. (ITA No. 610/2014)*
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> *23. Per contra, the Ld. Departmental Representative relying on the orders of the Lower Authorities, sought for dismissal of Ground No. 4.*
>
> *24. We have heard and perused the material available on record and also decisions relied by the Ld. Assessee's Representative. In Assessee's case for Assessment Year 2012-13 (supra), the Co-ordinate Bench of the Tribunal relying on the ratio laid down by Hon'ble Jurisdictional High Court, held that 'no transfer pricing adjustment should be made by applying Bright*

Line Test because the Hon'ble Jurisdictional High Court has not approved the application of Bright Line test in several decisions'. The relevant portion of the order of the Co-ordinate bench of the Tribunal in Assessee's own case for Assessment Year 2012-13 are as under:-

> *"5.2 The other point urged by the Ld. AR was to decide this issue at our end as the TPO had passed order on 29.01.2016 in which he had considered certain High Court judgments on the point. Once such judgments were taken into consideration, the Ld. AR argued, that there was no point in again directing the TPO to consider the effect of the judgments delivered by the Hon'ble High Court on the point. The argument put forth on behalf of the assessee in this regard is partly correct. It is seen that though the TPO has referred to certain rulings of the Hon'ble jurisdictional High Court on the point in coming to the conclusion that there was a separate international transaction, yet, there are certain other important judgments of the Hon'ble High Court, delivered after the passing of the order by the TPO, which could not be considered, as those were not in existence at that point of time. In this regard, it is noted that there are at least three later judgments of the Hon'ble Delhi High Court, referred to above, viz., Rayban Sun Optics India Ltd. Vs. CIT (order dated 14.9.2016), Pr. CIT VS. Toshiba India Pvt. Ltd. (order dated 16.8.2016) and Pr. CIT VS. Bose Corporation (India) Pvt. Ltd. (order dated 23.8.2016) in all of which similar issue has been restored for fresh determination in the light of the earlier judgment in Sony Ericsson Mobile Communications India Pvt. Ltd. (supra). Accordingly, the contention of the Ld. AR, claiming departure from the earlier year, on this score, is not tenable. Therefore, in light of the non-sustainability of the objections taken by the Ld. AR and following the earlier view taken by the ITAT in assessment year 2010-11 in the case of the assessee, we set aside the impugned order and remit the matter to the file of TPO/AO for a fresh determination of the question as to*

whether there exists an international transaction of AMP expenses. If the existence of such an international transaction is not proved, the matter will end there and then, calling for no transfer pricing addition. If, on the other hand, the international transaction is found to be existing, then the TPO will determine the ALP of such an international transaction in the light of the relevant judicial position, after allowing a reasonable opportunity of being heard to the assessee.

5.3 It is further clarified that if a situation for determining the ALP of AMP expenses arises, then no transfer pricing adjustment should be made by applying the Bright Line Test because the Hon'ble Jurisdictional High Court has not approved the application of the bright line test in several decisions."

25. By respectfully following the Assessee's own case for Assessment Year 2012-13 (supra) and Judgments of Hon'ble High Court of Delhi (supra), we hold that if a situation of determining the ALP arises, then no transfer pricing adjustment should be made by applying the Bright Line Test. Accordingly Ground No. 4 is allowed.

13. Further we observe that recently the Hon'ble Delhi high Court in the case of PCIT Vs. Casio India Company Pvt. Ltd. in ITA No.505/2025 dated 09.10.2025 following the decision in the case of Sony Ericson Mobile Communications India (P) Ltd., (supra) dismissed the appeal of the revenue holding that there is no substantial question of law arises, in Tribunal holding that adoption of BLT method for protective adjustment by the AO is not tenable. While rejecting the appeal filed by the revenue the Hon'ble Delhi High Court observed as under :-

"ITA 505/2025

3. This appeal lays a challenge to an order dated 19.07.2022 passed by the Income Tax Appellate Tribunal ('Tribunal') whereby the Tribunal has decided the appeal filed by the respondent/assessee by primarily relying upon the decision of a Co-ordinate Bench of the Tribunal and allowed the appeal filed by the respondent/assessee. The same relates to the Assessment Year ('AY') 2017-18.

4. We have been informed by the counsel for the appellant/revenue that two ITAs bearing number 211/2022 and 67/2022 relating to the same assessee but for the AYs 2011-12 and 2015-16 respectively, have been decided by this Court in favour of the respondent/revenue. In Pr. Commissioner of Income Tax-1 v. Casio India Company Pvt. Ltd, ITA 211/2022. which according to the counsel for the appellant/revenue involves identical issue(s) has been decided by this Court by stating in as under:

> *"1. These appeals have been preferred challenging the decision of the Income Tax Appellate Tribunal1 dated 24 February 2020 [ITA211/2022] and 18 May 2020 [ITA 67/2022] and which had placed reliance upon the respondent assessee's own case in Assessment Year2 2010-11 while arriving at the finding that Advertisement, Marketing and Promotion3 expenses did not constitute an international transaction and could thus not be separately benchmarked and as a result of which the adjustment of AMP was directed to be deleted.*
>
> *2. For the purposes of convenience, we propose to take note of the facts as they emanate from ITA 211/2022 which pertains to AY 2011-12. The Transfer Pricing Officer had proposed adjustments to the tune of INR 5,92,56,798/- on the issue of AMP expenses using the 'Bright Line Test'. The Assessing Officer5 had thereafter come to frame an assessment order in accordance with the directions framed by the Dispute Resolution Panel6 directing an upward adjustment of INR 7,65,16,936/-.*
>
> *3. The respondent-assessee, being aggrieved by the order of the AO, had approached the Tribunal which had come to pass orders in its favour and directed the deletion of adjustment of AMP.*
>
> *4. Identical issues were being considered in ITA 67/2022 pertaining to AY 2015-16. These appeals came to be admitted on 15 May 2024 on the following questions of law:-*
>
> > *"(a) Whether the Income Tax Appellate Tribunal ["ITAT"] was justified on facts and in law in deleting addition on account of expenses incurred by the*

assessee for advertisement, marketing and promotion ["AMP"] for brand-building for brand owned by the associated enterprise?

(b) Whether the ITAT was justified on facts and in law in holding that the Revenue needs to establish on the basis of tangible material or evidence that there exists an international transaction regarding brand building by way of AMP expenses despite the fact that it was held by the Delhi High Court m the ease of Sony Ericsson Mobile Communications India (P.) Ltd. v. CIT [374 ITR 118] that transaction of excess AMP is an international transaction?" 5. We have been informed by learned counsels for parties that the issues forming subject matter of consideration in these appeals have already been considered and disposed of by this Court in the case of the respondent-assessee itself in Deputy Commissioner of Income Tax-5(2) v. Casio India Company and where we had held as follows:-

"The Revenue has preferred the present appeal to assail the order dated 24.01.2019 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No. 8060/Del/2018 preferred by the respondent for the assessment year 2014-15. and where we had held as follows:-

A perusal of the impugned order shows that the same proceeds on the basis of the decision of this Court in CIT Vs. Sony Ericson Mobile Communication India Pvt. Ltd., [2015] 55 taxmann.com 240. In that decision, this Court rejected the adoption of the bright line test method for making the protective adjustment by the Assessing Officer. In the present case as well, the Assessing Officer had adopted the bright line test method and the Tribunal by following the decision of this Court in Sony Ericson Mobile Communication India Pvt. Ltd. (supra) has rejected the said method. In view of the fact that this Court has already rendered its decision on the same issue, we dismiss this appeal."

6. Bearing in mind the aforesaid, we find that no substantial questions of law survive for consideration in these appeals. The same shall stand dismissed."

5. In fact, our attention has also been drawn to a decision dated 12.09.2025 in ITAs 415/2025 and 416/2025 relating to the same assessee/respondent, whereby the Tribunal has decided three ITAs being ITAs 385/Del/2016, 341/Del/2017 and 6733/Del/2017 relating to the AYs 2011-12, 2012-13 and 2013-14 and this Court by relying upon the order passed in Pr. Commissioner of Income Tax-1 v. Casio India Company Pvt. Ltd, ITA 211/2022 has dismissed the appeals filed by the appellant/revenue.

6. For parity of reasons as given by this Court in ITA 211/2022, which we have reproduced above, the present appeal is also dismissed as no substantial question of law arises for consideration."

14. Thus, respectfully following the said decision we hold that no transfer pricing adjustment is warranted on account of AMP expenses in the case of the Assessee. Ground No.6 is allowed.

15. Coming to corporate tax grounds, ground No.11 is stated to be general ground and thus the same is not adjudicated.

16. The Ld. Counsel for the assessee submits that ground No.12 and 12.1 are not pressed. In view of the submissions these grounds are dismissed as not pressed.

17. Coming to ground No.12.2. which is in respect of addition made on account of disallowance of bonus expenses u/s.43B while processing return u/s.143(1) of the Act, the Ld. Counsel submitted that the same is paid before due date for filing return of income and therefore, a direction may be issued to the AO to look into and accordingly allow appropriate relief to the Assessee.

18. In view of the submissions this ground is restored back to the file of the AO with a direction to examine the contentions of the assessee and if bonus is paid within the due date for filing return of income no addition is warranted. This ground is allowed for statistical purpose.

19. Coming to ground No.13 and 14 which are in respect of short grant of self-assessment tax paid by the assessee and not allowing deduction in respect of interest paid on VAT duty, the Ld. Counsel for the assessee sought directions to the AO to examine the same. We restore these ground No. 13 and 14 to the file of the AO with a direction to examining the issues afresh. Ground No. 13 and 14 are allowed for statistical purpose.

20. Ground No.15 of grounds of appeal is with respect levy of interest u/s.234B and 234C of the Act and the same are consequential. Thus, these grounds are restored to the file of the AO.

21. In the result, the appeal of the assessee is partly allowed as indicated above.

Order pronounced in the open court on 17.04.2026.

Sd/-	**Sd/-**
[M. BALAGANESH]	**[C.N. PRASAD]**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 17.04.2026

*Neha, Sr.PS

Copy forwarded to:
1. Appellant
2. Respondent
3. PCIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi