

ITAT confirms TP adjustments for AMP expenditure - denies de-classification of an expenditure belonging to AMP category

Summary - If assessee has classified certain expenses under the head "advertisement" and others under the head "Business Promotion", expenses under the "advertisement" head will be treated as part of AMP expenses for transfer pricing adjustments (in accordance with the SB ruling in LG Electronics). Assessee cannot claim that certain expenses classified by him as advertisement expenses should be treated as business promotion expenses (expenses concerned directly with sales undertaken by assessee) before the Tribunal

Facts

- The assessee-company was established in 2006. M/s Panasonic Holdings (Netherlands, BV) owns 99.99% of its share capital. The ultimate holding company is M/s Matsushita Electric Co. Ltd.
- From its associate enterprise, the assessee imports electronic products (TV sets, etc.) and home appliances (air-conditioners, etc.). Thereafter it markets the said products in India through its retail chains, individual and branded shops.
- The total advertisement and business promotion expenses incurred by the assessee as per its accounts stood at Rs. 16,16,17,537/- comprising of advertisement expenses of Rs. 8,99,49,473/- and business promotion expenses of Rs. 7,16,68,064/-.
- In the TPO's opinion, the said expenses in the case of comparables were only @ 3.31% of the total sales.
- He was of the view that since the assessee had been using the logo "Panasonic" in all correspondence, letterheads, visiting cards of its personnel, product catalogue etc., it had promoted the aforesaid brand.
- TPO made TP adjustments in respect of AMP expenses which was affirmed by DRP. Hence the assessee filed an appeal to ITAT.

Held

- As per the assessee, expenses incurred on advertisement/business promotion are outside the framework of "international transaction" as specified in Section 92B of the Act.
- Since the payments have not been made to its overseas associated enterprises, the provisions contained in Chapter X of the Act are not attracted.

- It has been held by the Special Bench in LG Electronics case that the advertising, marketing and promotion expenses incurred (AMP expenditure) more than those in case of comparables, are transactions exigible to proceedings under Chapter X of the Act, being a case of brand building.
- After a minute analysis of relevant provisions in the aforesaid Chapter X sections 92, 92B, 92C, 92CA, 92F(v), the Special Bench concluded that such expenses, even if paid to Indian entities, are covered by the definition of "transaction" within the meaning of section 92F(v) of the Act. Therefore, the assessee's arguments on legality are devoid of any merit.
- However, there is force in the assessee's plea that as per Special Bench's decision, the expenses which are directly related to the sales do not come within the meaning of "brand building".
- Undisputedly, the assessee itself has categorized the expenditure into two sub-heads hereinabove, i.e. the advertisement head comprises of expenses which have been incurred for "brand building". The other head is of business promotion expenses of Rs. 71,668,064/-. Admittedly, there is no dispute about the category and nature thereof.
- Hence following the observations of the Special Bench, the advertisement expenses have been incurred for brand building; whereas, the business promotion expenses deserve to be treated as directly connected with the sales undertaken by the assessee.
- Though the assessee has pleaded that even some of the advertisement expenses are business promotion expenses, i.e. dealer meet expenses, training/seminar/classes, product demonstrators, product finance scheme, consumer gift etc, however, in view of the fact that since it itself has included the same under the head "advertisement", there is no reason to change the head of expenses from advertisement expenditure to business promotion expenditure. Hence, this latter plea of the assessee stands declined.
- Appeal was partly allowed.