

Delhi ITAT rejects bright line test to determine ALP of AMP exp; directs TPO to follow ratio of Sony Ericsson's case

Summary – The Delhi ITAT in a recent case of Reebok India Co., (the Assessee) held that where details of advertising, marketing and promotion functions performed by assessee were not available on record and functions of comparables had also not been analyzed by TPO and he applied bright line test for determining value of International transaction, matter be reconsidered afresh

Facts

- The assessee-company was engaged in the business of distribution of footwear, apparel, accessories, sports equipments. It imported finished products from its AE.
- It incurred advertising, marketing and promotion expenses.
- The TPO noticed that significant portion of the AMP expenses were attributable towards promotion of 'Reebok' brand and other marketing intangibles. He applied 'bright line test', using comparable companies in similar product, determined the average rate of marketing and distribution expenses and worked out the excess AMP expenses incurred by the assessee-company. He considered this excess AMP expenses as expenditure attributable to the promotion of 'Reebok' brand held it as an international transaction and computed arm's length price marketing and prime expenses and made addition.
- The DRP confirmed the order of the TPO.
- On appeal: the assessee submitted that the assessee referring to the facts and the order of the ITAT in the case of assessee itself in *Reebok India Co. v. Dy. CIT [2015] 58 taxmann.com 326/154 ITD 314 (Delhi)* submitted that the issue may be remitted to the file of the AO.

Held

- The Court, while dealing with appeal filed by assessee, has held that if suitable comparables engaged in both distribution and advertising, marketing and promotion (AMP) functions are found, then, arm's length price of the transaction should be determined on aggregate basis. If, however, there is some difference in the function of distribution or advertising, marketing and promotion performed by the assessee as compared to the comparables, then attempt should be made to bridge the difference by making a suitable adjustment to the profit margin of the comparables. The Court has gone on to hold that if such adjustment is not possible, then, the chosen comparable should be eliminated and if in the process of comparing, no comparables are left who are engaged in performing such distribution and advertising, marketing and promotion functions, then the International transaction of AMP should be segregated and its arm's length price should be

determined applying a suitable method, however, in determining so, a proper set off, if any available from the distribution activity should be allowed.

- In the present case details of the advertising, marketing and promotion function performed by the assessee were not available on record and advertising, marketing and promotion functions of the comparables had also not been analyzed by the TPO as he applied the bright line test for determining the value of international transaction of advertising, marketing and promotion expenses which approach had not been approved of by the High Court. Thus, since the fairly stated that facts need to be addressed afresh as at this stage without a detailed discussion on facts, agreements, conduct etc. of the assessee, it is not possible to address the advertising, marketing and promotion function of the assessee as well as comparables, thus request for remitting the matter back to the Assessing Officer on facts and circumstances of the case is found to be justified.