ITAT deleted AMP exp. adjustments as no benefit had accrued to AE on sale of India specified product in India only

Summary – The Delhi ITAT in a recent case of Pernod Ricard India (P.) Ltd., (the Assessee) held that where product manufactured and sold by assessee was India specific, it could not be said that any benefit could have accrued to AE on account of AMP spent in India in respect of such products

Where assessee provided Marketing Support Services to its AEs to promote duty free sales to be undertaken by such AEs in SAARC region and, AEs paid a fixed fee per month as compensation and also reimbursed actual marketing cost incurred by assessee, reimbursements had to be included in cost base and operating margins had to be computed accordingly

Facts

- The assessee-company was engaged in processing, bottling and selling of Indian Made Foreign Liquor ('IMFL').
- The assessee in order to promote the sale of the brands, which were owned by AE in foreign jurisdiction, incurred AMP expenses in India. The TPO held that by incurring such AMP expenses, the assessee created marketing intangible for the AEs and, thus, such expenses needed to be shared between assessee and the AEs. Thereafter, the TPO added the cost of CAB imported by the assessee and the revenue from bottling arrangements to use as the base line figure in calculating the benefit that AEs were deriving because of such brand expenses incurred by the assessee and computed the cost contribution of AEs.
- The Commissioner (Appeals) noted that the assessee had a royalty-free license with the AEs for the utilization of the aforementioned brands in India and that such brands were specific only to the Indian market and were not significantly sold outside of India. Therefore, the Commissioner (Appeals) held that benefit arising to the AE was purely incidental and, thus, deleted adjustment.
- On appeal:

Held

- There is force in the contentions of the assessee that no adjustment was warranted on the facts of the instant case since the brands for which the AMP expenditure was incurred were India specific. This categorical finding has been recorded by the Commissioner (Appeals) for assessment year 2004-05 and no evidence has been brought on record by the revenue to repel this factual finding. Given the above, there is no force in the contentions of the Revenue that the issue be remanded back to the TPO for a fresh consideration. As rightly pointed out by the assessee, the Court has time and again directed the Tribunal to apply the law as laid down by the High Court and adjudicate the matter. Given the fact that the AMP spend was India specific as the said brands were also India

specific, no benefit could have arisen to the non-resident AE. If the product manufactured and sold by the assessee was India specific then it could not be said that any benefit could have accrued to the AE on account the AMP spend in India in respect of such brands.

- Further, the assessee has also submitted that the assessee is a full risk bearing manufacturer in India and as such no adjustment is warranted on account of AMP expenditure since the benefit of such expenditure accrues to the assessee only. However, one is not opining on this issue at this stage since on the facts the Tribunal has already held that where the products are India specific there cannot be any adjustment in respect of the AMP expenditure since no benefit arises to the AE on account of such expenditure and, accordingly, order of Commissioner (Appeals) is to be confirmed.