

## ITAT deleted Pepsico's AMP adjustment due to absence of agreement with AE to spend on AMP

**Summary – The Delhi ITAT in a recent case of Pepsico India Holdings (P.) Ltd., (the Assessee) held that There being no arrangement or agreement with AE at any point of time that assessee was required to spend on AMP or it had been done at behest of AE, spending of AMP expenditure by assessee could not be held to be an international transaction between assessee and its AE and accordingly AMP adjustment made by TPO/Assessing Officer would not be sustainable**

### Facts

- The assessee-company was set up in India as subsidiary of PepsiCo Inc. a US based company. It had been *inter alia* involved in the manufacturing of soft drink/juice based concentrates for aerated and non-aerated drinks to its deemed associate enterprises (AEs) in Bangladesh, Nepal, Bhutan and Sri Lanka, in addition to its local sales in India to its franchisee bottlers. The assessee-company had obtained a license from its US parent AE, for the technology to manufacture the concentrates and to use and exploit the brands owned by its AE., in the regions allocated to the assessee-company. Under the aforesaid agreement, the assessee-company had been granted a non-transferable, royalty free license for the use of the trademarks in its territory.
- The TPO held that incurring of such a huge AMP had also benefited the AE in the nature of promotion of its brand and trademark. He held that the assessee-company had incurred the cost in connection with a benefit and services provided to the AE under a mutual agreement which was, although, not in writing, but such arrangements could be proved from the conduct of the assessee-company and accordingly, the AMP expenditure was an international transaction under section 92B(1), read with 92F(v). Thus, the TPO made AMP adjustments, by treating the AMP expenses as international transaction.
- The Assessing Officer (AO) incorporated the said transfer pricing adjustment in his draft assessment order.
- On objections raised by the assessee-company against the said draft assessment order, the DRP rejected the objections of the assessee and confirmed the transfer pricing adjustment as computed by the TPO.
- On appeal to the Tribunal the assessee submitted that the appeals of the assessee for assessment years 2006-2007 to 2010-2011 and 2011-2012 to 2013-2014 have been decided by ITAT, I-2 Bench, Delhi in *Pepsico India Holdings (P.) Ltd. v. Addl. CIT [2018] 100 taxmann.com 159 (Delhi - Trib.)* vide order, dated 19-11-2018, and similar additions have been deleted by holding that AMP adjustment made by the TPO/Assessing Officer cannot be sustained. He has, therefore, submitted that issue is covered in favour of the assessee by the above Order of the Tribunal. The revenue did not dispute the same.

### Held

- Considering the above facts in the light of Orders of the DRP, it is found that DRP has merely followed their earlier Orders for the purpose of rejecting the objections of the assessee above. Further, the Tribunal has allowed the grounds in favour of assessee. The issues are, therefore, covered in favour of the assessee by the Order of the Tribunal dated 19-11-2018 (*supra*). Following the same reasoning for decision, the Orders of the authorities below are set aside and the additions in this ground are deleted. Grounds of the appeal of assessee are allowed.