
[2025] 178 taxmann.com 596 (Mumbai - Trib.)[18-09-2025]

TRANSFER PRICING: Where advertisement, marketing and promotion (AMP) expenses were incurred wholly and exclusively for purpose of business of assessee in India and no benefit was passed on to AEs of assessee and there was no agreement or understanding between assessee and its AEs for sharing such expenses, impugned AMP expenses could not be considered as an international transaction under section 92B

INCOME TAX : Where assessee filed application under section 154 before Assessing Officer for seeking correction of double taxation of certain amount and relief of foreign tax credit, Assessing Officer was directed to consider application and pass order in accordance with law



[2025] 178 taxmann.com 596 (Mumbai - Trib.)

IN THE ITAT MUMBAI BENCH 'K'

L'Oreal India (P.) Ltd.

v.

Deputy Commissioner of Income-tax*

PAWAN SINGH, JUDICIAL MEMBER
AND SMT. RENU JAUHRI, ACCOUNTANT MEMBER
IT APPEAL NO. 6623 (MUM) OF 2024
[ASSESSMENT YEAR 2021-22]
SEPTEMBER 18, 2025

I. Section 92B of the Income-tax Act, 1961 - Transfer Pricing - International transaction, meaning of (Advertisement, marketing and promotion expenses) - Assessment year 2021-22 - Assessee incurred advertisement, marketing and promotion (AMP) expenses - Assessing Officer treated AMP expenses as international transaction in nature of provision for promotion of brand of assessee's parent company - It was noted that AMP expenses were incurred wholly and exclusively for purpose of business of assessee in India and no benefit was passed on to AEs of assessee and, hence, there should not be any reimbursement of such expenses to AEs - Further, there was no agreement or understanding between assessee and its AEs for sharing such expenses - Whether, on facts, impugned AMP expenses could not be considered as an international transaction under section 92B - Held, yes [Paras 6 and 7] [In favour of assessee]

II. Section 154, read with section 90, of the Income-tax Act, 1961 - Rectification of mistake - Apparent from records (Foreign tax credit) - Assessment year 2021-22 - Assessee filed an application under section 154 claiming that Assessing Officer had considered income of Rs. 55.25 lakhs twice, without appreciating fact that amount was already part of total income which had been offered to tax - It was noted that assessee had already filed application under section 154 seeking correction of double taxation of amount chargeable under section 41 of Rs. 55.25 lakhs and on relief of foreign tax credit - Whether, therefore, Assessing Officer was to be directed to consider application of assessee under section 154 and pass order in accordance with law on both issue raised in application under section 154 before Assessing Officer - Held, yes [Para 12] [Matter remanded]

FACT I

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- The assessee-company incurred advertisement, marketing and promotion (AMP) expenses.
 - The Assessing Officer treated AMP expenses as international transaction in the nature of provision for promotion of brand of assessee's parent company and made transfer pricing adjustment.
 - On appeal, the Commissioner (Appeals) upheld the adjustment.
 - On appeal to the Tribunal:

HELD I

- On similar grounds of appeal and on similar set of fact, the co-ordinate bench of Mumbai Tribunal from assessment year 2008-09 to 2020-21, the similar issue has been consistently held in favour of assessee. While deciding the similar issue in appeal for assessment year 2020-21 in *L'Oreal India (P.) Ltd. v. Asstt. CIT* [2025] 171 taxmann.com 621 (Mumbai - Trib.) the co-ordinate bench of this Tribunal passed the order holding that in absence of any 'understanding' or 'arrangement' or 'action in concert' between assessee and its AE for incurring AMP expenses for brand building of AE, provisions of Chapter X could not be invoked and AMP expenditure could not be regarded as an international transaction; consequently, TP adjustment made by TPO on account of AMP was liable to be deleted [Para 6].
- Considering the consistent decision of Tribunal in assessee's own case in earlier years and following the same as there is no material variation in fact, therefore, the appeal is allowed. [Para 7]

FACT II

- The assessee claimed that the Assessing Officer had considered income of Rs. 55.25 lakhs twice, without appreciating the fact that the amount was already part of total income which had been offered to tax.
- The assessee had filed an application under section 154 before the Assessing Officer seeking correction of double taxation of amount chargeable under section 41 of Rs. 55.25 lakhs and also claiming relief of foreign tax credit of Rs. 14.46 lakhs in respect of taxes paid in Bangladesh.
- The Assessing Officer, however, did not consider the said application.
- On appeal to the Tribunal,

HELD II

- It is found that the assessee has already filed application under section 154 before the Deputy Commissioner for seeking correction of double taxation of amount chargeable under section 41 of Rs. 55.25 lakhs and on relief of foreign tax credit of Rs. 14.46 lakhs. Considering the submission of both the parties and the fact that the assessee has already filed application under section 154 for making necessary correction. Hence, the Assessing Officer is directed to consider the application of the assessee under section 154 and pass the order in accordance with law on both the issue raised in application under section 154 before Assessing Officer. [Para 12]

CASE REVIEW

L'Oreal India (P.) Ltd. v. Asstt. CIT [2025] 171 taxmann.com 621 (Mumbai - Trib.) (para 6) followed.

CASES REFERRED TO

L'Oreal India (P.) Ltd. v. Asstt. CIT [2025] 171 taxmann.com 621 (Mumbai - Trib.) (para 6).

Niraj Sheth, Adv. for the Appellant. **Ms. Neena Jeph**, CIT-DR for the Respondent.

ORDER

Pawan Singh, Judicial Member.- This appeal by assessee is directed against the addition made in A.Y. assessment order passed under section 143(3) r.w.s. 144C(13) and section 144B dated 29.10.2024, passed in pursuance of direction of DRP dated 01.08.2024 for A.Y. 2021-22. The assessee has raised following grounds of appeal:

A Transfer Pricing Grounds

Adjustment on account of Advertisement Marketing and Promotion ('AMP') expenses

Adjustment proposed by incorrectly applying Section 92CA(3) of the Act and disregarding the relevant submissions made during the assessment proceedings

1 Erred in making an addition of Rs 184,75,26,393 to the total income of the Appellant under Section 92CA(3) of the Act on account of adjustments in the arm's length price ('ALP') of the alleged international transactions undertaken by the Appellant;

Presumption of fictitious transaction in the nature of 'provision of brand promotion services' since AMP is not an international transaction

2. Erred in alleging that the AMP expense incurred by the Appellant is an international transaction under Section 928 of the Act;

3. Erred in ignoring that the Appellant has not rendered any service to the Associated Enterprises ('AEs') and hence erroneously treating and categorizing AMP expenses incurred by the Appellant on its own behalf, as an international transaction of the nature of provision of brand promotion services between the Appellant and AEs under Section 928 of the Act;

4. Failed to appreciate the fact that AMP expenses were incurred 'wholly and exclusively for purpose of business of the Appellant in India and no benefit was passed on to the AE and hence, there should not be any reimbursement of such expenses to the Appellant;

5. Erred in ignoring that in absence of a valid international transaction, the adjustment is outside the purview of the jurisdiction of learned AO/ TPO, as the alleged AMP transaction is not covered under Section 928 of the Act;

6. Erred in not appreciating that there is no arrangement whatsoever between the Appellant and its AEs for promotion of AEs brand by incurring AMP expenses on behalf of the AEs;

7. Erred in linking the AMP expenses incurred by the Appellant for its own business in India, as expenses incurred for the purpose of/towards brand building activities for its AEs;

8. Erred in not following the orders of the Hon'ble the ITAT in the Appellant's own case for AY 2008-09, AY 2009-10, AY 2010-11, AY 2011-12, AY 2012-13, AY 2013-14, AY 2014-15, AY 2015-16, AY 2016-17, AY 2017-18 and AY 2018-19 which were brought to notice, where on identical facts, the Hon'ble ITAT has held that there is no 'arrangement between the Appellant and AEs and directed to delete the entire AMP adjustment along with mark-up on AMP, holding that the same is not an international transaction;

9. Erred in concluding that the Appellant is engaged in performing development, enhancement, maintenance, protection or exploitation ('DEMPE') services which includes market development, value addition, creation of marketing intangibles etc and there is mutual agreement/ arrangement between the Appellant and its AE for discharging market development functions;

10. Erred in overriding the charging provisions of Section 4 of the Act by the machinery provisions of Section 92 of the Act to bring to tax fictional/ assumed/ hypothetical income/ benefit;

Re-characterisation of Appellant's Entrepreneur Activities

11. Erred in disregarding the Appellant's contention that the issue of AMP is not applicable to the Appellant, as the Appellant is an entrepreneur licensee in the Indian market and is entitled to entrepreneurial returns in the form of residual profit/ loss associated with India business. remaining after the overseas AEs are compensated with an arm's-length return for royalty. goods and services. Further, the said Entrepreneur characterisation is in line with the economic organisation of L'Oréal Group globally. Therefore, the AMP expenses incurred by the Appellant has to be considered as being incurred for its

own entrepreneurial activities and therefore ought not to cannot be construed as an international transaction which warrants a separate adjustment;

12. Erred in applying bright line test ('BLT') using 'Other Method to determine the arm's length price of the AMP expenses incurred by the Appellant;

Business and commercial expediency

13. Erred in holding that the Appellant incurred AMP expenses for promoting the brands owned by overseas AE, instead of appreciating that the Appellant was only carrying out its business by using the well-established brands and any benefit derived by the AE is purely incidental;

14. Erred in ignoring that the advertisements by the Appellant are product advertisements to enable higher sales of the products in the Indian market and not brand advertisements for or on behalf of the AE;

Most appropriate method

15. Without prejudice to the above, erred in applying BLT and treating the same as routine ALP determination method under "Other Method to determine the arm's length price of the AMP expenses incurred by the Appellant;

16. Without prejudice to the above, erred in not appreciating that BLT does not take into account the functional and the accounting differences between the Appellant and the comparable companies;

17. Without prejudice to the above, erred in selecting comparable which are not truly aligned with the functional, risk and asset profile of the Applicant for application of BLT. Moreover, the nature and channels of AMP spend of comparable companies selected by the TPO do not fully align with that of the Applicant. Also the Ld TPO has erred in failing to provide the details of 43 companies rejected in the search process conducted by the Ld. TPO stating that the same are functionally not comparable;

18. Without prejudice to the above, erred in calculating the AMP expenses to Sales ratio of the Appellant at 22.61% instead of 20.44%;

19. Without prejudice to the above, erred in not providing an opportunity of being heard to the Appellant at the time of re-working the ratio of 'AMP expenses to Sales' as directed by the Hon'ble DRP;

Mark-up on AMP expenses

20. Without prejudice to the above, erred in holding that the Appellant should have earned a mark-up of 7.19% on the alleged excessive AMP expenses in relation to manufacturing and distribution segment, which are to be reimbursed to the Appellant by considering inappropriate comparable company(les);

21. Without prejudice to the above, erred in not adopting a scientific search process to identify companies engaged in marketing activity for computing the mark-up to be applied to the alleged excessive AMP expenses;

22. Without prejudice to the above, erred in disregarding that even if the Applicant had to be compensated for the alleged excessive AMP, in absence of any services element, the Applicant should be entitled to reimbursement of "actual" excessive AMP expenses incurred, rather than a mark-up on the same;

23. Without prejudice to the above erred in computing mark-up over alleged excessive AMP expenses incurred without appreciating that an addition if any, shall be commensurate with agency function, if any, undertaken by the Assessee;

B Assessment Order is time barred

24. On the facts and the circumstances of the case and in law, the final order dated 29 October 2024 passed by the AO under Section 143(3) read with Section 144C(3) of the Act is barred by limitation in view the provisions of Section 153(1) of the Act;

C Adjustment under section 143(1)(a)

25. The learned AO erred in holding that even after the assessment proceedings have culminated and are completed, the intimation under Section 143(1) of the Act is distinct from the assessment order passed under section 143(3) of the Act;

26. The Learned AO erred in not computing total income and tax liability of the Appellant in accordance with the provision of the Act and as required by Section 143(3) of the Act;

27. The learned AO erred in computing total income of the Appellant by mere relying on the intimation issued under Section 143(1) of the Act determining an erroneous total income and tax liability, and disregarding total income declared in Return of income filed by the Appellant;

28. The learned AO erred in computing total income of the Appellant without considering all the facts of the case and contents of response filed by the appellant against the proposed variation in the intimation under Section 143(1) of the Act;

29. The learned AO erred in not allowing credit for foreign taxes paid in Bangladesh of INR 14,46,220/- without appreciating the fact that the appellant has filed Form 67, as required under Rule 128 of the Income Tax Rules, 1962 ('the Rules');

30. The learned AO and Hon'ble DRP erred in stating that the Appellant should approach the CIT(A) in respect of variations made to total income under section 143(1) of the Act, since this would lead to multiple appealable orders co-existing simultaneously for the same year;

31. The Hon'ble DRP erred in not adjudicating on merits with respect to the additions made under Section 143(1) of the Act

32. Without prejudice to the above, erred in disregarding the rectification application filed by the Appellant with respect to the adjustments proposed in the intimation passed under section 143(1) of the Act;

33. Without prejudice to the above, the Hon'ble DRP erred in not directing the Assessing Officer to make an assessment of the total income of the Appellant, which implies to also assess the adjustments made in the intimation passed under section 143(1) of the Act;

34. Without prejudice to the above, the Hon'ble DRP erred in not directing the Assessing Officer to act in a duty bound manner in order to assess the total income of the Appellant;

D. Initiation of penalty proceedings

35. Erred in initiating penalty proceedings under section 270A of the Act."

2. The assessee *vide* application dated 07.04.2025 filed following revised / updated grounds of appeal. In the application, the assessee stated that to inadvertent error certain parts of grounds of appeal, which are annexed to Form 36 were left.

The assessee has raised following revised / updated grounds of appeal.

"27. The learned AO erred in computing total income of the appellant by mere relying on the intimation issued under section 143(1) of the Act and determining an erroneous total income and tax liability disregarding total income declared in Return of income filed by the appellant.

27(a). The learned AO erred in considering the income of Rs. 55,25,788/- twice without appreciating the facts that the amount already forms part of the total income which has been offered to tax by the appellant and also without considering the facts of the case and contents of response filed by the appellant against the proposed variation under section 143(1) of the Act."

3. Rival submissions of both the parties have been heard and record perused. The learned Authorised Representative (Id. AR) of the assessee submits that grounds of appeal raised by assessee are covered by the decision of Tribunal in assessee's own case for A.Y. 2008-09 to 2020-21 by various decisions of Mumbai Tribunal. Copies of all such decisions are placed on record. The Id. AR of the assessee submits that ground no. 1 to 23 relates to transfer pricing adjustment of advertisement, marketing and promotion (AMP) expenses of Rs. 184.75 crores. The Id. AR of the assessee submits that lower authority erroneously treated AMP expenses as international transaction in the nature of provision for promotion of brand of assessee's parent company. The assessee incurred AMP expenses wholly and exclusively for the purpose of business in India. The assessee has not claimed reimbursement of such expenses from its AEs. There is no existence of agreement or any understanding between the assessee and its AEs for sharing such expenses. The lower authorities are making similar adjustment and on further appeal, the assessee is consistently allowed relief by Tribunal right from the assessment beginning from A.Y. 2008-09 onwards. The lower authorities are making

similar adjustment by taking view to keep the issue alive. The Id. AR of the assessee submits that in case the decision of earlier year is followed, the assessee would not press ground no. 24 which relates to passing the assessment order beyond the limitation prescribed in section 153(1) of Income Tax Act.

4. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue. The Id CIT-DR for the revenue further submits that Tribunal's order have been challenged before Hon'ble Jurisdictional High Court and the issues under consideration has not attained finality, hence, the same cannot be relied. The Id. CIT-DR further submits that TPO in his order clearly held that assessee has been repeatedly claimed that there is no international transaction, so far as AMP expenses are concerned. However, from the arrangements and understanding and action in concert between the assessee and its AE for incurring AMP expenses to enhance the brand value owned by AE, which is an international transaction. The assessee has royalty agreement with its parent company. The assessee is making payment of royalty at a specified percentage (6.75%) as well as to incur expenditure on marketing and advertisement. The license agreement is only for one year, in other word it is for a short period, it can be terminated at any time. The assessee has no long term rights as there is no continuity of agreement. No independent party for short term agreement and without any right in tangible or right for compensation in case of loss of such tangible being created by the assessee by AMP activity will incur such huge expenses, which give rise to long term benefit of brands building and marketing development. Thus, the plea of assessee that AMP is not international transaction is misplaced. Chapter VI of OECD guideline is also applicable on the facts of present case.

5. In the rejoinder submission, the Id. AR of the assessee submits all similar submissions were considered by co-ordinate bench of Tribunal while deciding similar issue in favour of assessee. Thus, no new plea is raised by Id. CIT-DR for the revenue. In fact, the issue of AMP expenses is covered in favour of assessee.

6. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities. We find that on similar grounds of appeal and on similar set of fact, the co-ordinate bench of Mumbai Tribunal from A.Y. 2008-09 to 2020-21, the similar issue has been consistently held in favour of assessee. The Tribunal in earlier years has considered all objections and submissions of revenue while deciding similar issue in favour of assessee. We further find that while deciding the similar issue in appeal for A.Y. 2020-21 in *L'Oreal India (P.) Ltd. v. Assistant Commissioner of Income-tax* [2025] 171 taxmann.com 621 (Mumbai - Trib.)/ITA No. 4577/Mum/2024 dated 16.12.2024, the co-ordinate bench of this Tribunal passed the following order:

"11. We have heard the rival submissions and perused the materials available on record. The Id. DRP in its finding has stated that grounds pertaining to the international transaction in the nature of provision of brand promotion service. AMP expenditure incurred by the assessee was a recurring issue which was there in the earlier years where the DRP in those cases have rejected the objections raised by the assessee. The Id. DRP relied on the findings of the Id. DRP in A.Y. 2018-19 which has concurred with the finding of the TPO that the expenses incurred in malls and retail outlets for sales were in the nature of advertisement and brand promotion and further stated that the said expenses were to maintain the brand value of L'oreal and rejected the assessee's contention that these were in the nature of selling expenses, expenses towards customer relation, maintenance which includes photo shoot, BSP, salary, etc. and was also for animations, promotional material, gift, cards, etc. was not in the nature of advertising expenses.

11.1 The comparables namely Dabur India Ltd., Marico Limited, Godrej Consumer Products Limited, Emami Ltd. and Jyothi Laboratories Limited. selected by the TPO were also not accepted by the assessee for the reason that they were not functionally comparable to the business of the assessee.

Further, the Id. DRP held that the international transaction is not merely AMP expenditure but was benefiting the AEs in the form of promotion and brand value of the AE brands. The Id. DRP also stated that in the A.Y. 2011-12, this issue was decided in favour of the assessee by the DRP by placing reliance on the decision of the Hon'ble Delhi High Court in the case of Maruti Suzuki (I) Ltd., Whirlpool of India Ltd., Bausch and Lomb Eyecare (India) Pvt. Ltd. and Honda Sael Power Products, wherein it was held that when there was no explicit arrangement between the assessee and its AEs for incurring expenses, the same cannot be considered as an international transaction with AEs. The Revenue has contended that it had filed appeal against the decision of the Maruti Suzuki (I) Ltd. before the Hon'ble Apex Court, the decisions have not attained finality and, hence, the Dispute Resolution Panel has rejected the objections raised by the assessee on these issues. The assessee, on the other hand, has contended that the A.O./TPO has failed to prove by cogent evidence that the existence of an arrangement between the assessee and the AE to discharge market development function and had relied on the decision of the Hon'ble High Court

in the case of *Whirlpool of India v. CIT* (in ITA No. 228 of 2015 & CM No. 5751/2015) and in ITA No. 2269/M um/ 2 0 2 2 (A Y 2 0 1 8- 1 9) in the case of *Bausch & Lomb* which has held that the Revenue cannot presume that the assessee was acting for the benefit of the AE, in this case, the marketing activity for promoting the AEs brand in the absence of any arrangement between them. Though the Id. DR had pointed out that the TPO in his order stated that the terms of the license agreement dated 23.11.2005 between the assessee and the AE implies that the assessee has to incur AMP expenses for the products bearing the licensed trade mark owned by the AE which according to TPO is an agreement between the assessee and its AE pertaining to AMP expenses, the same cannot be said to be a conclusive proof of arrangement between the assessee and the AE which has not been corroborated by any other evidence to conclude the impugned transaction to be for the benefit of AEs. The assessee's contention that the impugned expense related to marketing was only for the benefit of the assessee and not for the AEs holds merit. It is observed that the Tribunal in its earlier years have decided this issue in favour of the assessee by holding that the same does not amount to international transaction and that there was no arrangement between the assessee and its AE pertaining to the AMP expenses. The relevant extract of the decisions in ITA No. 1198/Mum/2021 and 802/Mum/2022 for the A.Y. 2016-17 and 2017-18 *vide* order dated 29.06.2022 are cited hereunder for ease of reference:

"6. We have heard learned Departmental Representative and perused the record. We noticed that the issue of primary adjustment relating to AMP expenses and secondary adjustment on account of training, saloon, promotional goods have been deleted by the Coordinate Bench in assessee's own case with following observations :-

"9. Ground No. 2 to 18 relates to adjustment on account of advertisement and marketing expenses (AMP). The Id. AR of the assessee submits that these grounds of appeal are covered in favour of assessee by the decision of Tribunal in A.Y. 2008-09 to 2014-15. The Id. AR of the assessee furnished the copy of consolidated decision of Tribunal for A.Y. 2008-09 to 2020-11, order of Tribunal for AYs 2011- 12, 2012-13, 2013-14 & 2014-15 respectively. 10. On the other hand, the Id. DR for the revenue relied upon the order of lower authorities. The Id. DR for the revenue further submits that revenue has already filed appeal against the order of Tribunal for various assessment years before the jurisdictional High Court and the issue is sub-judice before the Hon'ble High Court.

11. We have considered the rival submission of the parties and have gone through the orders of authorities below. We have also gone through the orders of Tribunal for various earlier years. We have noted that the TPO while passing the order under section 92CA basically followed the order for

AY 2014-15. We have further noted that in appeal for AY 2014-15 in ITA No. 6448/Mum/2018, the Tribunal while considering the orders for earlier year passed the following order:

"9. We have heard both the counsel and perused the records. Learned Counsel of the assessee submitted that identical issues have been considered by the ITAT in assessee's own case for earlier year except for the alternative adjustment on manufacturing segment. Submission of learned counsel in this regard is summarised as under :- (A) Adjustment on account of advertisement, marketing and brand promotion (AMP) expenses :- (i) Covered by appellant's own ITAT order for A.Y. 2013-14 (page No. 31 para 18) (copy of aforesaid orders were submitted during the course of hearing). (ii) Also appellant's own ITAT order for A.Y. 2008-09 to A.Y. 2010-11 (page 16- 17 and para 2.4), A.Y. 2011-12 (page 13 and para 16) and A.Y. 2012-13 (page 23-24 and para 12) (copy of aforesaid orders were submitted during the course of hearing). (B) Alternate adjustment on manufacturing segment on account of payment of royalty for use of technical know-how (Rs. 38.82 crores) and trademark (Rs. 25.16 crores) :- (i) Appellant's own ITAT order for A.Y. 2013-14 : Trademark royalty - page No. 35 para 23 Technical know-how royalty- page No. 37 para 25. (ii) Also appellant's own ITAT order for A.Y. 2012-13 - page No. 29 para 18 (iii) Further the TPO in his order has not examined whether or not the method adopted by the appellant to determine the Arm's length price (ALP) is the most appropriate method and has instead concluded that the payments for trademark and technical know-how royalty are excessive in nature (page 176 of appeal memo) (iv) Accordingly, the TPO has exceeded his jurisdiction by making an addition to the international transaction of payment of royalty for technical know-how and trademark. In this regard, the appellant relies on the Judgment of Bombay High Court in the case of *CIT v. Lever India Exports Ltd.* (78 taxmann.com 88) (copy enclosed as Annexure 1) (v) Without prejudice to the above, it is submitted that the TPO has proposed the royalty adjustment, *inter alia* on the basis of AMP spend of the Appellant (page 141 and 142 of the appeal memo). Therefore, in the event it is held that AMP does not constitute an

international transaction, then this adjustment would not survive. (vi) In this connection, a reference may be made to Para 20 on Page 33 of ITAT order for AY 2013-14, wherein an alternate adjustment for the distribution segment (based on AMP) was deleted by the ITAT on the ground that once AMP was held not to be an international transaction, this adjustment which was based thereon, could not survive. (vii) It is further submitted that L'Oreal SA, France (recipient of income) has offered the royalty income received from the Appellant and the said royalty income has been accepted to be at arm's length by the TPO in hands of L'Oreal SA. In view of the above, the appellant prays that the adjustment on account of royalty should be deleted. (C) Alternate adjustment on the distribution segment international transaction of import of finished goods from AEs for resale. Appellant's own ITAT order for A.Y. 2013-14. (D) Alternate adjustment on the manufacturing segment- international transaction of payment for availing of marketing support services to AEs. (a brief description of marketing support services availed is described in Annexure 2 to this note).

1. The TPO in his order has instead of examining whether or not the method adopted to determine the ALP is the most appropriate method or whether the comparable companies selected are appropriate or not, has gone into the question of determining the need for such services, proof of rendition of such services, commercial expediency, basis of cost allocation etc. It is submitted that it is not part of the TPO's jurisdiction to consider the above aspects. 2. In this regard, the Appellant relies on the Judgment of Bombay High Court in the case of *CIT v. Lever India Exports Ltd.* (*supra*) 3. In any extent, Appellant has submitted extensive evidences to TPO including advertising creative/concepts developed by AEs, sample story boards for Television Commercial conceptualized by AEs and adopted by the Appellant, agreements, sample invoices, Organisation structure of Marketing support services team, sample email correspondences, product and marketing dossiers, public relationship guidelines, screenshot of global database and websites of AEs accessible to appellant, etc. along detailed write up on the nature of service/evidences and benefits of the services.

Further, the Appellant submitted additional evidences to DRP comprising of cost allocation certificate and tables along copies of invoices. These have been examined by TPO in remand proceedings and no fault is found with the same Accordingly, the Appellant submits that considering that no adverse comments are provided by the TPO as well as the DRP, the said transaction should not be remanded back to the file of the AO/DRP as it would tantamount to giving a second inning to the Department and taking advantage of its own wrong. 5. *In this regard, reliance is placed on the following judicial precedents: - Kansai Nerolac Paints Ltd. v. Deputy Commissioner of Income-tax, [2014] 49 taxmann.com 208 (Bombay High Court) (Copy enclosed as Annexure 3); - K. Rajiv v. Additional Commissioner of Income-tax, [2018] 98 taxmann.com 418 (Madras High Court) (Copy enclosed as Annexure 4).* 6. Further, it may be noted that in AY 2011 -12, the ITAT has remanded the issue of marketing support services availed to the DRP since additional evidences were submitted before the ITAT. However, in the year under consideration, all evidences which are filed before the ITAT were filed before the lower authorities and the TPO has himself examined them in remand proceedings and not adversely commented thereon, thereby accepting the same. 7. Further, it is submitted that L'Oreal SA, France (recipient of income) has offered to tax the income received from the Appellant and the said service income has been accepted to be at an arm's length by the TPO in hands of L'Oreal SA. Thus, the provision of services being availed by the Appellant, its rendition and benefits of services etc. stands accepted in the case of the income recipient, L'Oreal SA. 8. In light of the above, it is humbly submitted that the matter should not be remanded back since there were extensive evidences submitted before the lower authorities and the same was accepted by the TPO in remand proceedings. E) Alternate adjustment on the manufacturing segment international transaction of payment for availing of consulting services. 1. The TPO in his order has instead of examining whether or not the method adopted to determine the ALP is the most appropriate method or whether the comparables selected are appropriate or not, has gone into the question of determining the need for such services, proof of rendition of such services, commercial expediency, basis of cost allocation etc. It is submitted that it is not part of the TPO's jurisdiction to consider the above aspects. 2. In this regard, the Appellant relies on the Judgment of Bombay High Court in the case of *CIT v. Lever India Exports Ltd.* (*supra*)

3. In any event, the Appellant has submitted extensive evidences *inter alia* including agreements, sample invoices, evidences for technical/ consulting advise provided by AE through sample emails etc. in support of receipt of consultancy services and the benefits derived. Further, the Appellant submitted additional evidences before DRP comprising of agreement, certificate for costs allocated,

evidences for technical/consulting advise provided by AE through sample emails in relation to Packaging Services, Environmental, Health and Safety Services, Finance Services, Supply Chain Services, HR Services along with a list summarizing the evidences submitted and benefits derived thereof

4. After verifying the evidences, the TPO in his remand report has accepted that the services were rendered, that they have benefited the Appellant and werenecessary. He has only made a vague allegation that cost justification in a thirdparty situation needs to be established.

5. Accordingly, the Appellant submits that the said transaction should not be remanded back to the file of the AO / DRP as it would tantamount to giving a second inning to the Department and taking advantage of its own wrong. 6. *In this regard, reliance is placed on the following judicial precedents: - Kansai Nerolac Paints Ltd. v. Deputy Commissioner of Income-tax (supra); -K. Rajiv v. Additional Commissioner of Income-tax (supra)* 7. Further, it is humbly submitted that Transfer Pricing officer allowed identical expenses in earlier years and subsequent years of AY 2015-16 and AY 2016-17 after detailed scrutiny. 10 Per contra, learned Departmental Representative relied upon the orders of the authorities below. 11. Upon careful consideration we hold as under :- As regards the adjustment on account of AMP expenses in manufacturing segment the ITAT has decided the issue in favour ofthe assessee.

In this regard, we may refer to ITAT order in assessee's own case for A.Y. 2013-14 *vide* order dated 23.8.2019 for following concluding adjudication on this issue:-

"8. We find that in the backdrop of our aforesaid observations that de hors any 'understanding' or an 'arrangement' or 'action in concert', as per which the assessee had agreed for incurring of AMP expenses for brand building of its AE, vizL'Oreal S.A., France, the provisions of Chapter-X could not have been invoked for undertaking TP adjustment exercise. Apart there from, we find that a similar view had been taken by the Tribunal while disposing off the appeals of the assessee for the preceding years viz. A.Ys 2008-09 to 2011-12. In fact, the Tribunal while disposing off the appeal of the assessee for A.Y 2012-13 in [ITA No. 1417/Mum/2017; dated 30.01.2019], had followed the view earlier taken in the preceding years and had vacated the adjustment of 304.69 crores that was made by the TPO by alleging that the AMP expenses incurred by the assessee was an international transaction under Sec. 92B of the Act. The Tribunal while so concluding had observed as under: "12. We have also perused the agreement of assessee with its AE dated 4th January 2011 executed between assessee and its AE. Clause 7 of the agreement describes about right of distribution of licensed product in the territory. As per Clause 8 of the said agreement the assessee is responsible for the advertising the licensed product in the territory. The territory is defined under clause 1.5 of the agreement, which means the territory of Nepal, Bhutan, Bangladesh, Maldives, Mauritius, India and Sri Lanka. However, it excludes any free trade zone, which may exist or may be created. Further it excludes duty free shops located in the duty free or travel retail area which is specialized in sales against foreign currency to foreigner or diplomatic corps, ship chlanders, airlines companies or shipping companies. Though the AE has reserves its right for the zones of excluded areas. The contentions of the ld. A.R for the assessee is that clause 8 of the agreement does not obligates the assessee to incur expenses on AMP so as to promote the brand owned by its AE,,s. And that the expenses are incurred by assessee in the normal course of its business. The perusal of the Clause 7 and 8 reveals that there is no agreement between the assessee and the AEs for sharing the expenses and the payments made by the assessee for theexpenses of AMP. The TPO has also not brought any fact on record that there exist any agreement between the assessee and its AE to share or reimburse the AMP expenses. Moreover, we have seen that there is no material change in the facts for the year under consideration. Therefore, considering the above factual discussions and the decision of the coordinate bench of Tribunal for A.Y. 2008-09 to 2010-11, on the identical issue the ground No. 2 to 21 of the appeal is allowed." We thus in terms of our aforesaid observations, finding ourselves to be in agreement with the view taken by the Tribunal in the assessee's own case for A.Y 2012-therefore, respectfully follow the same. Accordingly, being of the considered view that as the revenue had failed to discharge the onus that was cast upon it as regards proving that there was any 'understanding' or an 'arrangement' or 'action in concert' as per which the assessee had agreed for incurring of AMP expenses for brand building of its AE, viz. L'Oreal S.A., France, the TP adjustment of Rs. 354.73 crores in respect of AMP expenses cannot be sustained and is liable to be

vacated." 12. Since the facts are identical we set aside the order of authorities below and direct that the TP adjustment of Rs. 198.18 crores is to be deleted."

12. Considering the consistent decision of Tribunal on identical set of fact on identical issue for earlier years, wherein no factual difference for the year under consideration is brought to our notice, nor any contrary law is shown to us, to take any other view, therefore, respectfully following the orders for earlier years the Ground No.2 to 18 are allowed.

12. From the above observations, it is evident that this recurring issue raised in this appeal has been decided in favour of the assessee wherein it was held that there was no arrangement between the assessee and the AE pertaining to AMP expenses. The Tribunal in the earlier years has held that the onus of proof lies on the Revenue to prove that there was an international transaction in existence. The Tribunal further held that the proposition laid down in the case of Maruti Suzuki India Ltd. (*supra*) is that the absence of a machinery provision qua AMP expenses, the A.O. is not at liberty to levy tax on an imagined transaction. In such case, the provisions of Chapter X cannot be invoked for making a TP adjustment. The Tribunal has also relied on the decision of the Hon'ble Delhi High Court in the case of Bausch and Lomb (India) Pvt. Ltd. and held that the impugned transaction is not an international transaction for which the TPO was not entitled to invoke the provision of Chapter X of the Act.

13. Respectfully following the above said decision, we are of the considered opinion that this issue is no longer res integra and has been decided by the Tribunal in its earlier decision in favour of the assessee by holding that the impugned transaction is not an international transaction as per the provisions of the law. As there has been no change in the factual matrix of this case in order to have a consistent view on this issue, we hereby allow these grounds of appeal raised by the assessee. Ground nos. 1 to 22 raised by the assessee are allowed.

7. Considering the consistent decision of Tribunal in assessee's own case in earlier years and respectfully following the same as there is no material variation in fact, therefore, ground no. 1 to 23 of appeal is allowed.

8. Ground no. 24 of the appeal relates to time period of passing assessment order. At the time of submission, the ld. AR of the assessee submits that in case ground no. 1 to 23 are held in favour of assessee, this issue may be kept open till the decision of Hon'ble Apex Court on similar question of law.

9. Considering the fact that we have already allowed full relief to the assessee. Therefore, this ground of appeal has become infructuous and keeping the issue alive will not serve any purpose. In the result, this ground of appeal is treated as dismissed being infructuous.

10. Ground No. 25 to 35 relates to foreign tax credit. The ld. AR of the assessee submits that assessee is not allowed credit of foreign tax, the assessee has filed an application under section 154 dated 23.04.2023. In addition to the assessee has also filed revised / updated ground of appeal *vide* application dated 07.04.2025 before Tribunal wherein the assessee has filed substituted ground no. 27 and 27A. The assessing officer considered the income of Rs. 55,25,788/- twice, without appreciating the fact that amount is already form part of total income which has been offered to tax. The ld. AR submits that necessary direction may be given to the assessing officer to allow credit of foreign tax paid in Bangladesh and to verify the fact that income of Rs. 55,25,788/- has been considered twice.

11. The ld. CIT-DR for the revenue submits that necessary direction may be given to assessing officer to verify the fact and pass the order on such ground of appeal by making necessary correction if any.

12. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We find that assessee has already filed application under section 154 dated 20.04.2023 before DCIT Circle 7(1)(1) for seeking correction of double taxation of amount chargeable under section 41 of Rs. 55,25,788/- and on relief of foreign tax credit of Rs. 14,46,220/-, copy of such application is available on page no. 2514 of paper book. Considering the submission of both the parties and the fact that assessee has already filed application under section 154 for making necessary correction. Hence, the assessing officer is directed to consider the application of assessee under section 154 and pass the order in accordance with law on both the issue raised in application under section 154 before assessing officer. In the result, ground no. 25 to 35 including 27(a) are allowed for statistical purpose.

13. In the result, the appeal of the assessee is allowed.

*Partly in favour of assessee.