

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I', NEW DELHI**

Before Sh. R. S. Syal, AM And Sh. Rajpal Yadav, JM

ITA No. 655/Del/2014 : Asstt. Year : 2009-10

SA No. 89/Del/2014 : Asstt. Year : 2009-10

M/s Perfetti Van Melle India Pvt. Ltd., 47 th Milestone, Delhi-Jaipur Highway, Manesar, Gurgaon-1122002 (Haryana)	Vs	DCIT, Circle-2 Gurgaon
(APPELLANT)		(RESPONDENT)
PAN No. AAACP2626A		

**Assessee by : Shri Deepak Chopra, Piyoush K. Singh,
Nitin Narang & Harpreet Singh
Revenue by : Shri Peeyush Jain & Y. K. Verma**

Date of Hearing : 15.4.2014	Date of Pronouncement : 15.4.2014
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ORDER

Per R. S. Syal, AM:

This appeal by the assessee is directed against the order passed by the Assessing Officer u/s 143(3) r.w.s 144C(13) on 07.01.2014 in relation to the assessment year 2009-10.

2. The only issue pressed in this appeal is against the Transfer Pricing Adjustment on account of AMP expenses.

3. We have heard the rival submissions and perused the relevant material on record. It is noticed that the Special Bench of the Tribunal in

LG Electronics India Pvt. Ltd. Vs. ACIT 2013 152 TTJ (Del) (SB) 273, by majority decision, has decided this very issue by *inter alia* holding that incurring of AMP expenses towards promotion of brand, legally owned by the foreign AE, firstly constitutes a '*transaction*' and then an '*international transaction*'. The contention that no disallowance can be made out of AMP expenses by benchmarking them separately when the overall net profit rate declared by the assessee is higher than other comparable cases came to be specifically jettisoned by the special bench. Resultantly, the transfer pricing adjustment in relation to such AMP expenses has been held to be sustainable in principle. In the eventual order, the Special Bench restored the matter to the file of the AO/TPO for fresh determination of Transfer Pricing Adjustment in relation to AMP expenses. In order to enable the determination of correct ALP of AMP expenses, the Tribunal listed out 14 parameters at Para 17.4 of its order which should be examined by the AO/TPO before reaching the final conclusion about the warrant for a TP Adjustment on this score. It is relevant to note that there were 22 interveners in this case, some of which were distributors, while others were licensed manufacturers. While setting out 14 parameters, the Special Bench has held vide first parameter that the AO/TPO should ascertain as to whether the Indian AE is simply a distributor or is holding a manufacturing license from its Foreign AE. The second parameter talks of examining as to whether or not the Indian AE is a full fledged manufacturer and whether it is selling

the goods purchased from the Foreign AE as such or is making some value addition to the goods purchased from its foreign AE before selling it to customers. Thus there is not even a slightest doubt that the special bench order not only applies to a 'Manufacturer', but also extends to a distributor, whether he is bearing full risk or least risk. Thus, such tests are applicable with full vigor to the extent applicable, to the distributors. There is nothing in the special bench order which restricts its operation only to the 'Manufacturers'. Though there is a specific ground for the relief in the light of the order by the Delhi tribunal in the case of BMW India Private Limited, but the Id. AR was fair enough not to press this ground by admitting the matter be decided as per the mandate of the special bench order in the case of LG Electronics (supra).

4. The Id. AR argued that the authorities below erred in including selling commission and discount etc. within the ambit of AMP expenses. It was submitted that such expenses should be excluded at the very outset from consideration under the broader scope of AMP expenses. It was fairly accepted that the details of such discount and commission etc. paid to the distributors etc. was not readily available on record inasmuch as there is only one consolidated figure which has been reported, considered and acted upon by the authorities. It was however, submitted that the amount of sales specific expenses included in these AMP expenses should first be excluded and thereafter the remaining amount of expenses should be processed for the purpose of TP adjustment, if

any. In the opposition, the ld. DR relied on the impugned order on this score.

5. We agree in principle with the contention that the expenses directly connected with sales should be excluded. The Special Bench in LG Electronics (supra) has specifically dealt with this issue in para 318 of its order and held that the dealers commission and sales commission etc. are in the nature of the expenses directly connected with sales and hence should not be included within the overall AMP expenses for processing them u/s 92 of the Act. Since, such detail is not available on record, we direct the A.O/TPO to examine the detail of total AMP expenses and exclude such sales specific expenses in line with the decision of LG Electronics for working out the remaining amount to be considered for proceeding with the AMP expenses under the TP provisions.

6. We therefore, set aside the impugned order and remit the matter to the file of the AO / TPO to decide this issue afresh in conformity with the Special Bench decision in the case of LG Electronics (Supra). Needless to say, the assessee will be allowed a reasonable opportunity of being heard by the AO/TPO in such fresh proceedings.

7. In the result, the appeal is allowed for statistical purposes.

STAY NO. 89/Del/2014

8. The present Stay Application has become infructuous in view of our decision on the appeal filed by the assessee.

9. In the result, the Stay application is dismissed as having become infructuous.

Order pronounced in the open Court on 15/4/2014.

Sd/-

(Rajpal Yadav)

JUDICIAL MEMBER

Dated: 15/4/2014

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(R. S. Syal)

ACCOUNTANT MEMBER

ASSISTANT REGISTRAR

		Date	Initial	
1.	Draft dictated on	15.4.2014		PS
2.	Draft placed before author	15.4.2014		PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			

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