DEWAN P.N. CHOPRA & CO.

Transfer Pricing Update

Delhi HC on use of Bright Line test for benchmarking marketing intangible

Delhi High Court held that Bright Line Test (BLT) could not be applied for benchmarking AMP expenses

In the recent ruling of Hon'ble Delhi High Court (HC) in the case of Pr. CIT v. Pepsico India Holding Pvt. Ltd. involving the issue of marketing intangibles, it was held that the AMP computation under transfer pricing which was based on the adoption of the Bright Line Test (BLT), would clearly not sustain in light of the judgement rendered by the Court in Sony Ericson Mobile Communication v. CIT[1]. Thus, the case did not find any merits and same was dismissed.

The Background

The issue of marketing intangibles or the AMP expenses as is its commonly called, is vexed and

[1] [2015] 55 taxmann.com 240/231 Taxman 113/374 ITR 118 (Delhi)

has been in litigation from a long time. Its original shape and form was designed around the BLT and inspite of being struck down very explicitly by HC, it remains in its vintage form, in the Transfer Pricing (TP) orders.

In the case of Sony Ericsson, the Hon'ble HC held that, while a taxpayer distributor who may perform additional functions on account of the AMP as compared to similar companies would generally require additional remuneration for such functions. Such additional rewards may be granted through pricing of products or distribution margins. Where comparables adopted by assessee, with or without making adjustments as a bundled transaction had been accepted by TPO, it would be illogical and improper to treat AMP expenses as a separate transaction using bright line test; bright line test has no statutory mandate and in all cases costs or

compensation paid for AMP expenses cannot be 'NIL'. The revenue officer cannot demand a separate remuneration through reimbursement of excess AMP expenses along with a mark-up, as such action would clearly result in double addition or taxation, which does not have any sanctity. In the case of Sony Ericsson, the AMP computation which was based on the adoption of the BLT, was struck down.

Similar view was upheld by Hon'ble Delhi in the case of Maruti Suzuki[2] as well wherein it was held that AMP spend on a stand-alone basis could not be treated as an 'international transaction' under the provisions of the Indian TP regulations.

[2] [2010] 328 ITR 210/192 Taxman 317 (Delhi)

For details, please refer judgement of Delhi HC in case of PCIT vs. PepsiCo India Holding (P.) Ltd. [2024] 162 taxmann.com 724 (Delhi)

DISCLAIMER: - The summary information herein is based on Delhi HC ruling in case of PepsiCo India Holding (P.) Ltd in the m/o May 2024. *While the information is believed to be accurate, we make no representations or warranties, express or implied, as to the accuracy or completeness of it. Readers should conduct and rely upon their own examination and analysis and are advised to seek their own professional advice. This note is not an offer, advice or solicitation. We accept no responsibility for any errors it may contain, whether caused by negligence or otherwise or for any loss, howsoever caused or sustained, by the person who relies upon it.*