# Mumbai ITAT directs AO to follow Sony Ericsson's case for benchmarking of AMP expenditure

**Summary – The Mumbai ITAT in a recent case of India Medtronic (P.) Ltd., (the Assessee) held that where TPO applied bright line test to benchmark AMP transactions which was not valid in view of Sony Ericsson Mobile Communications India (P.) Ltd. v. CIT [2015] 374 ITR 118/231 Taxman 113/55 taxmann.com 240 (Delhi), matter was remanded to apply ratio of said case**

**Facts**

- The assessee, being 100 per cent subsidiary of a foreign company, was engaged in the business of trading in life saving devices. It purchased finished goods for resale from its AE. It booked huge AMP expenses.
- The TPO, while accepting the fact that the international transactions entered into with the AE were at arm's length, proceeded to benchmark the AMP expenditure of the assessee by using Bright Line Test and observed that the excess AMP expenditure were required to be reimbursed by the AE to the assessee. In the TP studies, the TPO considered 80 per cent : 20 per cent of the total travelling and personal cost after excluding non-business employees related expenses. After rejecting the assessee's comparables, the TPO selected five new comparable companies.
- The DRP upheld the use of Bright Line Test. However, it also gave certain directions to the Assessing Officer to re-compute the AMP expenses as per the approach adopted in earlier assessment year, according to which only 50 per cent of the total personal and travelling cost was considered instead of 80 per cent by the TPO for computing the AMP expenses.
- On appeal before Tribunal:

**Held**

- It is a legally decided issue now by virtue of the judgment of the Delhi High Court in the case of *Sony Ericsson Mobile Communications India (P.) Ltd*. v. *CIT* [2015] 374 ITR 118/231 Taxman 113/55 taxmann.com 240, the Special Bench decision in the case of *L.G. Electronics India (P.) Ltd*. v. *Asstt. CIT* [2013] 29 taxmann.com 300/140 ITD 41 (Delhi) stands reversed on many issues such as adopting the 'bright line method' in matters of benchmarking the AMP transactions. Factually, the said judgment of the Delhi High Court being dated 16-3-2015, was not available during the proceedings before the Assessing Officer, dated 29-1-2014. Therefore, it is fair to give an opportunity to the TPO/Assessing Officer to apply the ratio of the said judgment and others, if any, and remand this issue to the file of the Assessing Officer.
- It is also legally settled issue that the TPO/Assessing Officer is required to adopt 'bundled approach' in benchmarking the AMP expenses as well. No contrary decisions are brought to Court's notice by the revenue. Revenue should not unfairly segregate AMP expenses while benchmarking. When the TPO accepts the comparables adopted by the assessee as a 'bundled transaction', treating the AMP

expenses as a separate international transaction, is not proper. Because the said comparables are accepted after comparing the various functions performed by the tested party and the AMP expenses are duly accounted for in such comparing analysis, making adjustments to AMP expenses segregated from the 'bundled transactions' will only lead to the situation of making additions thereby increasing PLI unfairly.

- Regarding the fetters to the Assessing Officer, it is found that the assessee has considered the benchmarking of the AMP transactions in its TP studies. The TPO's order is self-explanatory regarding the rejection of the said comparables and thrusting of his five comparables. On these facts, in the remand proceedings, the Assessing Officer/TPO shall consider the same comparables when resorting to any search in this regard. The question of benchmarking other international transactions, which were accepted by the TPO and the Assessing Officer should not arise in the remanding proceedings as they should not be given second chance merely because of the Delhi High Court judgment in the case of *Sony Ericsson Mobile Communications India (P.) Ltd.* (*supra*). However, TPO is free to re-use his data, which is already on record so far as benchmarking of the AMP transactions is concerned considering the rejection of the BLT, by the Delhi High Court. Further, TPO is directed to apply all the principles laid down by the Delhi High Court in the case of *Maruti Suzuki India Ltd*. v. *CIT* [2015] 64 taxmann.com 150 in the remand proceedings in the matters of the requirement of benchmarking the AMP transactions.