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CASE LAW UPDATE

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TIMEX GROUP INDIA LTD Vs. ACIT - CIRCLE 16(1), NEW DELHI
(ITA No. 1502/Del/2018*) Assessment Year: 2008-09*

❖ Summary

The Timex Group India Limited ("assessee company") is engaged in the business of manufacture, trading, sale and servicing of quartz, analogue and digital watches and watch components. It is also engaged in the manufacture and sale of plastic components, tools and moulds while rendering also information technology and financial support services to its overseas group companies.

❖ Facts of the Case

For the assessment year 2008-09 the assessee company has filed a return of income declaring nil income after setting off of loss amounting to Rs.7,22,02,563/-.

❖ Tax Department's Arguments

The learned Assessing Officer ("AO") believed that the assessee company had undertaken an international transaction pertaining to Advertising Marketing and Promotion ("AMP") with its associated enterprises ("AE"), pursuant to which the learned AO referred the determination of the arm's length price ("ALP") to the learned Transfer Pricing Officer ("TPO"). The TPO carried out the ALP exercise and proposed an adjustment of Rs.19,82,44,016/-. The learned AO upheld the TPO workings and adjustment.

❖ Tax Payer's Arguments

Being aggrieved, the assessee company preferred an appeal with the Commissioner of Income Tax (Appeals) ("CIT(A)"). During the course of appeal, the assessee company was unable to provide a viable and rational alternative course to test the AMP function to ascertain compliance to the provisions of Chapter X of the Income-tax Act, 1961.

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Accordingly, the Hon'ble CIT(A) directed the learned TPO to bring the adjustment in tune with the Base Erosion Profit Shifting ("BEPS") example without using the concept of bright line as this approach would take care of the mark-up in a reasonable manner in line with the BEPS proposals.

Being aggrieved, the assessee company pursued an appeal with the Hon'ble Income Tax Appellate Tribunal ("ITAT"). During the course of appeal, it was a settled contention, that the primary engagement of the assessee is in manufacturing operations and the AMP expenditure incurred by it is to the benefit of its operations in India.

❖ **Authority's Finding**

In the instant case of the assessee company, the Hon'ble ITAT considered the submissions made by the learned DR that the matter relating to the international transaction involving AMP expenses is pending before the Apex Court in case of other assesses*. Thus, an addition by the Apex Court in such cases would also be binding upon all the authorities. Therefore, the Hon'ble Bench confirmed that the assessee can be characterized as a full-fledged manufacturer and the entire AMP expenses were incurred by it to enhance its sale in India and not for promoting the brand of its AE and for creation of intangibles for its AE.

❖ **Author's Comments**

Accordingly, the alleged excessive AMP expenditure does not fall in the category of international transaction and consequently the adjustment made by the Revenue on account of incurrence of AMP expenses is not sustainable in law.

**Sony Ericsson Indio Pvt. Ltd. v. LIT (2015) 374 ITR 118 (Del.) = 2015-TII-06-HC-DEL-TP; and Maruti Suzuki India Ltd. v. CIT (2016) 381 ITR 117 = 2015-TII-58-HC-DEL-TP*