IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'I-1' NEW DELHI

BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

(THROUGH VIDEO CONFERENCING)

I.T.A. No. 838/DEL/2021 (A.Y 2012-13)

M/s Olympus Medical Systems India Pvt. Ltd. Ground Floor, Tower-C, SAS Tower, Gurugram-122001 **PAN No. AABCO2131L** **(APPELLANT)**	Vs	DCIT Circle-3 Gurgaon **(RESPONDENT)**

S.A. No. 145/DEL/2021 (A.Y 2012-13) in (ITA No. 838/Del/2021)

M/s Olympus Medical Systems India Pvt. Ltd. Ground Floor, Tower-C, SAS Tower, Gurugram-122001 **PAN No. AABCO2131L** **(APPELLANT)**	Vs	DCIT Circle-3 Gurgaon **(RESPONDENT)**

Appellant by	**Sh. Nageshwar Rao, Adv & Ms. Deepika Aggarwal, Adv**
Respondent by	**Sh. Mahesh Shah, CIT DR**

Date of Hearing	**01.02.2022**
Date of Pronouncement	**20.04.2022**

ORDER

PER YOGESH KUMAR U.S., JM

The present appeal is preferred by the assessee for the Assessment Year 2012-13 against the final assessment order dated 30/04/2021 passed by the DCIT, Circle-3, Gurgaon u/s 143(3) r/w Section 144C of Income tax Act, 1961,('the Act' for short).

2. **Brief facts of the case:** The assessee company Olympus India incorporated on 20 October 2009, is a wholly owned subsidiary of Olympus Corp. The company is engaged in import and resale of medical equipment like gastrointestinal endoscopes, surgical endoscopes, endotherapy devices, endoscopic ultrasound systems and medical information systems. In addition, assessee is also engaged in installation, repair and maintenance of these equipments in India.

3. The assessee e-filed its return of income on 29.11.2012 for A.Y. 2012-13 showing the total loss of Rs. (-1,79,27,970/-). The case was selected for scrutiny through CASS. It was noted that, the assessee company had made international transaction with its associated enterprises. Therefore, a reference u/s 92CA(1) of the Act was made to the Transfer Pricing Officer, New Delhi (TPO)for determining Arm's Length Price. Subsequently, a draft assessment order u/s 143(3) r.w.s 144C of the Act was passed on 15.03.2016 proposing Transfer Pricing adjustment of Rs. 19,21,78,080/- on the basis of TPO's order dated 28.01.2016.

4. In response to draft assessment order, the assessee filed objections before the Dispute Resolution Panel, Delhi ('DRP'). The DRP, vide its order 22.12.2016, disposed the objections by confirming the additions proposed in the draft order. In light of the same, assessment order was passed u/s 143(3) r.w.s 144C of the Act on 31.01.2017, assessing the total income of the assessee at Rs.17,42,50,110/-. Aggrieved by the said Assessment Order, the assessee

preferred an appeal before this Tribunal. The Tribunal vide its order dated 12/07/2017 in ITA No. 890/Del/2017, remanded the matter to the file of AO/TPO with a direction to determine the question as to whether an existence of international transaction of ALP expenses or not, if the international transaction found to be in exist, directed to determine the ALP of such international transactions.

5. After the remand, a fresh reference under section 92CA (1) of the Act was made to the TPO for determining the Arm's Length Price under Section 92CA (3) of the Act in respect of the International Transactions entered into by the assessee company with its associated enterprises (AEs) during the financial year 2011-12 relevant to the Assessment Year 2012-13. Further it is observed that, since the assessee had failed to provide audited financials of all its AEs to determine the overall profits incurring to the group, adopted Resale Sale Method (RSM) using Bright Line Test (BLT) approach. Accordingly, an order u/s 92CA(3) of the Act was passed by the TPO on 28.10.2019 by enhancing the income of the Assessee to Rs. 3,59,07,900/-.

6. On considering the objections filed by the Assessee, the DRP has passed an Order u/s. 144C (5) of the Act on 27-08-2020, consequently; a fresh final assessment order has been passed on 30/04/2021, wherein the Ld. A.O held that, there was existence of international transaction of Advertising Marketing and Promotion ('AMP') expense and made additions.

7. Aggrieved by the final assessment order dated 30/04/2021, the assessee is before this Tribunal as a second round of litigation on following grounds:-

"Based on the facts and circumstances of the case and in law, Olympus Medical Systems India Private Limited (hereinafter referred to as 'OMSI' or 'Appellant') craves leave to prefer an appeal against the order passed by the National e-Assessment Centre, Delhi [hereinafter referred to as "NeAC" or "AO"] pursuant to directions issued by the Hon'ble Dispute Resolution Panel [hereinafter referred to as 'DRP'] under 144C(13) read with Section 254 and 144B of the Income-tax Act, 1961 (hereinafter referred to as the 'Act') on the following grounds:

GENERAL GROUNDS

1. *On the facts and circumstances of the case and in law, the assessment order/ directions passed by the Learned Assessing Officer ("AO") / Transfer Pricing Officer ("TPO") / Dispute Resolution Panel ("DRP") are bad in law.*

2. *On the facts and circumstances of the case, TPO order is bad in law being not in accordance with procedure laid down in law, consequently all further proceedings are also vitiated and invalid in law.*

3. *On the facts and circumstances of the case, TPO order is bad in law being not in accordance with scope of remand by the Tribunal, consequently all further proceedings are also vitiated and invalid in law.*

   a. *The TPO has erred in facts & circumstances of the case by imputing adjustment on Advertisement, Marketing and Promotion ("AMP") using Bright Line Test which was specifically excluded from the scope of remand by the Tribunal and such a view has also been accepted by the DRP.*

4. *On the facts and circumstances of the case, the assessment order is bad in law in not following the directions of DRP, consequently all further proceedings are also vitiated and invalid in law.*

5. *Impugned final assessment order dated **30.04.2021** is invalid and void ab initio since the same is not in accordance with the procedure laid down under the provisions of section 144B of the Act.*

GROUNDS AGAINST ADJUSTMENTMADE IN RELATION TO ADVERTISEMENT.MARKETINGAND PROMOTION ("AMP") EXPENSES

6. *That on the facts and circumstances of the case and in law, Ld. AO / TPO/ DRP erred in treating routine selling expenses incurred by the Appellant as non-routine Advertisement, Marketing and Promotion ("AMP") expenses which have further been assumed to have been incurred solely towards brand promotion of foreign associated enterprise ("AE"), While doing so, Ld. AO/TPO/DRP have completely disregarded the nature of industry and business realities of the Appellant*

a. Determination of selling expenses as non-routine brand promotion expense is also in violation of order of the Hon'ble High Court ('HC') in the case of Sony Ericson Mobile Communications India Pvt. Ltd.

7. That on the facts and in circumstances of the case and in law, Ld. AO / TPO/ DRP erred in holding that sales promotion expenditure incurred by the Appellant in India is an 'international transaction' as per the provisions of the Act without demonstrating the existence of any understanding or an agreement between the Appellant and its AEs which requires the Appellant to spend excessively towards brand promotion.

a. *The assumption of existence of an 'international transaction' without having any valid agreement as basis has been overruled by the Hon'ble HC in the cases of Maruti Suzuki India Limited and Whirlpool of India Limited.*

b. *Ld. AO/TPO/DRP has erred in making a factually incorrect assumption that the top- level plan reviews of AMP expenses are determined and controlled by the AE.*

c. *Ld. AO/TPO/DRP erred in merely relying upon extracts from the Appellant's website and incorrectly interpreting that AMP expenses are influenced by the overall strategy of the Group instead of examining the facts and documentary evidences submitted by the Appellant.*

8. That on the facts and in circumstances of the case and in law, Ld. AO / TPO/ DRP erred in not appreciating that the sales promotion expenses incurred by the Appellant are wholly and exclusively focused on generating domestic sales for its distribution operations and benefit arising from incurrence of such expenses has been received by the Appellant.

9. That on the facts and in circumstances of the case and in law, Ld. AO / TPO/ DRP erred in not appreciating that if any benefit resulted to its AEs from incurrence of sales promotion expenses, the same is merely incidental.

10. On facts and circumstances of the case and in law, Ld. AO / TPO / DRP erred in assuming that AMP expenses incurred by Appellant have led to creation of marketing intangibles by relying on and with reference to irrelevant material and without citing any valid legal basis.

11. Without prejudice to any other contentions, AMP transaction can be benchmarked using adjusted Resale Price Method ('RPM') which is preferred by Hon'ble HC over segregation approach.

12. Without prejudice to all the other contentions, if Ld. AO / TPO / DRP propose adjustment to the value of AMP expenses, as directed by Hon'ble ITAT direct selling expenses should be excluded from the value of such AMP expenses.

13. Without prejudice to the above, Ld. AO / TPO / DRP have inadvertently included "entertainment expenses" and "special discount" within the ambit of alleged AMP which were held to be not in nature of brand building during the course of initial round of assessment proceedings.

14. Without prejudice to any other contentions, Ld. AO / TPO / DRP has erred on facts and circumstances of the case and in law in considering PSM as the most appropriate method.

15. Without prejudice to the above ground, while applying PSM, Ld. AO / TPO / DRP again resorted to Bright Line Test in order to compute non-routine AMP expenditure, which has been overruled by Hon'ble High Court.

16. Without prejudice to any other contentions, in the absence of any supernormal profits vis- a-vis comparable companies, PSM cannot be applied to benchmark the alleged transaction of AMP.

17. Without prejudice to any other grounds, that on the facts and in circumstances of the case and in law, Ld. AO / TPO / DRP has grossly erred in incorrectly assessing functional and risk profile of the Appellant vis-a-vis its AEs while applying PSM.

18. Without prejudice to any other grounds, Ld. AO / TPO / DRP

has grossly erred in allotting weights to FAR of AE/Appellant in an arbitrary manner for computing profit split ratio to allocate residual profits.

GROUNDS PERTAINING TO PROTECTIVE ADJUSTMENTMADE IN RELATION TO ADVERTISEMENT, MARKETING AND PROMOTION ("AMP") EXPENSES -BRIGHT LINE TEST ("BLT")

19. That the Ld. AO / TPO / DRP erred in law in making adjustment on a protective basis using BLT as the most appropriate method.

20. That the Ld. AO / TPO / DRP erred in law in undertaking alternate assessment or multiple assessments of the same income or transaction using different methodologies without appreciating the fact that there is no such TP provision under the Act.

21. That the Ld. AO / TPO / DRP failed to appreciate that as per the provisions of the Act, a transaction can only be benchmarked applying the "Most Appropriate Method" ("MAM") prescribed therein, only once.

22. That protective adjustment based on Bright Line Test as proposed by Ld. AO / TPO / DRP is against the principles laid down by Hon'ble Delhi HC in the case of Sony Ericsson (supra).

23. That the Ld. A.O/ TPO / DRP failed to appreciate that in absence of any stay by the Hon'ble Supreme Court, the decision of Hon'ble High Court in the case of Sony Ericsson (supra) holds the field and is fully operational especially in context to Bright Line Test ("BLT").

24. Without prejudice to all other contentions, if Ld. AO / TPO / DRP proposes adjustment to the value of AMP expenses by BLT; direct selling expenses should be excluded from the value of such

AMP expenses as directed by Hon'ble ITAT.

25. Without prejudice to other grounds, that Ld. AO / TPO / DRP erred in adding gross margin of the Appellant itself for the mark-up on alleged brand building/AMP expenditure while computing adjustment on protective basis.

26. Without prejudice to the above, there are certain arithmetical inaccuracies in the computation of gross margin of the Appellant considered as mark-up on alleged AMP expenses.

Further, since the above-mentioned approach has been followed at present only on protective basis, the Appellant reserves all rights in law to raise suitable objections in future, if office of Ld. AO / TPO / DRP propose any adjustment to the Appellant's income using Bright Line or any other variant of the same approach.

GROUNDS PERTAINING TO PENALTY PROCEEDINGS

27. That on facts and in laws, the Ld. AO / TPO / DRP erred in holding that the Appellant has furnished inaccurate particulars of income in respect of each item of disallowance/ additions and in initiating penalty proceedings under section 271 (1)(c) of the Act."

8. The first un-numbered ground and Grounds No. 1 and 2 are too general in nature, which require no adjudication. Grounds No. 3 to 10 are with regard to whether AMP expenses incurred by the Assessee amounts to international transaction or not. The Grounds No. 11 to 26 are with regard to application of method for determination of Arm's Length Price ('ALP') of AMP expenses and the Assessee's Grounds of appeal 27 is in respect of initiating the penalty proceedings.

9. As per the Grounds of Appeal Nos. 3 to 26, the issues to be decided by us are in two folds:

I). Whether the TPO/DRP/AO are correct in holding that there is an existence of international transaction of AMP Expenses of the assessee? (Grounds No.3 to 10).

II. Whether the Method applied by the TPO ie Profit Split Method (PSM) in determination of Arm Length Price (ALP) of the Advertisement Marketing and Promotion (AMP) expenses is the proper or not (Grounds No. 11 to 26).

10. The Ld. Counsel for the assessee, while arguing on the Issue No. I, contended that, based on the profile of the Assessee mentioned in Website, the Ld. TPO/DRP/AO have recorded the finding that, the expenses being incurred as a part of global brand outreach of the group. He further contended that, there is no information and document to show that there is an existence of international transaction, the findings of the Lower Authorities are without basis and the same is imaginary. Further argued that, when there is no method for levying the tax, the same cannot be levied. Further contended that, the assessee is not the manufacturer and only undertaking AMP and the advertisement made by the assessee is only to reach the Doctors to show the product and not for forming brand to its AE's. Further, submitted that determination of selling expenses as non routine brand promotion expense is contrary to the judgment of Jurisdictional High Court in the case of Sony Ericson Mobile Communication Pvt. Ltd. in ITA No. 123/2019 & CM Nos.5324-25/2019. Further contended that the Ld. AO/TPO/DRP have erred in holding that sales promotion expenditure incurred by the assessee in India is an international transaction without the existence of any understanding or an agreement in writing between the assessee its AE which is contrary to the law

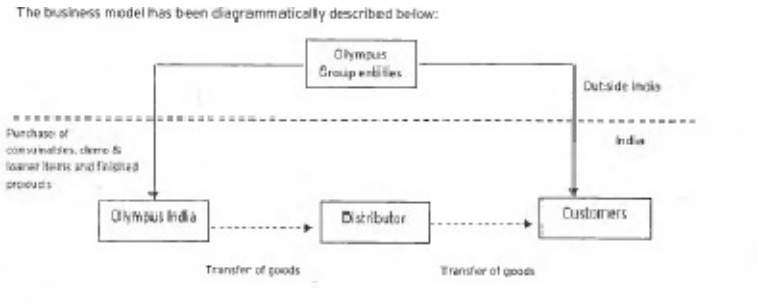
laid down by the Jurisdictional High Court in the case of Maruti Suzuki India in ITA No. 110/2014.

11. Per contra, Ld. DR has contended that, there is an existence of international transaction of AMP Expenses of the assessee. The Ld. DR by relying on the findings of the Lower Authorities argued that, the product of the Olympus Group are not only sold by the assessee, but also the third party can buy the same directly from AE. Thus, the Ld. DR contended that, the assessee being Indian Company is working on the guidance of the AE in Japan. The demonstrations have been done by the assessee for promoting the global brand and the results of such branding of the goods in certainly benefits the AE. The Ld. DR further emphasized on the fact that, the present case assessee is not even an exclusive distributor of the goods being sold in India as the Indian third parties can directly buy from the AE's directly from outside India unlike in other cases relied by the Ld. AR. Further, argued that, one cannot claim depreciation if the assessee is only carrying out the work of demonstration and not other activities. To substantiate the above contentions, the Ld. DR has taken us through records in detail and justified the order and findings of the TPO/DRP/A.O. Further, the Ld. AR has also relied on the assessee's own case in ITA No. 7414/Del/2018 for the AY 2014-15 and submitted that, the similar issues have already been considered by the Coordinate Bench of this Tribunal and decided against the Assessee.

12. We have heard both the Parties, gone through the record and gave our thoughtful consideration.

13. The Assessee had undertaken Advertisement, Marketing and Promotion of the products of the AE by importing the same. The assessee company is wholly owned subsidiary of Olympus Corporation, engaged in trading and service of medical equipment and accessories in India. In addition to the same, Olympus India also provides installation and maintenance

services to the end customers. The said business model diagrammatically described below:-



Further, as per the Transfer Pricing Study Report (TPSR), under the head of receipt service income the above facts have been reiterated in following manners:-

> *"Olympus India does not sell its products directly to hospitals/ clinics but instead sells its products to distributors and dealers who in turn sell these products to customers. These dealers/distributors also bid for projects whenever the opportunity comes up. There are instances where the customers may want to buy from Olympus Japan. In such a scenario, Olympus Japan would sell directly to customers in India and Olympus India assists it in this process."*

Thus, the above module of business clearly establishes that, the assessee company is not only the exclusive distributor of the Olympus product, but also the customers can also buy directly from the Olympus group entities outside India.

14. As per the P & L account of the assessee, the total Revenue from the operations of the assessee during the year is Rs. 74.39 crores on which the loss suffered by the assessee during the said year is Rs. 6.65 crore. The major

expenses incurred by the assessee during the year is on account of advertisement and sales promotion of Rs. 7.53 crore and the depreciation amortization expenses to the extent of Rs. 6.27 crore. The assessee had also shown plant and machinery of Rs. 11.66 crore after depreciation as the asset employed in the FAR analysis. Looking at the said figures, assessee although being engaged in the trading activities, have been utilizing lot of assets in the form of plant and machinery and consequent higher depreciation which is primary due to fact that assessee is importing demo/loaner and jigs and tools forming part of the fixed asset from its various AE's which are being used by the assessee company including AMP expenses.

15. The Para 4.3 of TPSR (Page No. 81 of paper book) in which the international transaction has been described by the assessee himself in detail which is reproduced hereunder:-

> *"During the year Olympus India, has imported certain equipments to be used to demonstrate the characteristic and actual working of the equipments that Olympus India sells in India. Sometimes such equipment is also loaned to potential customer for short durations for their use. Such equipments were capitalized by Olympus India in its books of accounts. During F.Y. 2011-12, Olympus India has imported total equipments worth Rs. 4.54 crores from various AE's."*

Thus the above said facts establishes the fact that that, the assessee had imported the equipments from the AE's directly for demonstration purpose.

16. Our attentions were also drawn on the details of expenses debited to P & L account. As per the details of the expenses debited to P & L account of the assessee for AMP expenses, the assessee had claimed Rs.2,09,06,083/- on

account of demo and loaner expenses out of total expense of Rs. 6,84,25,033/- which claim to have been incurred for procurement of accessories and consumable which are mandatory requirement for conducting the demonstration of the equipment. As per Para 4.1 of TPSR at page No. 72 and 73 of PB, those consumable and accessories for Demo and Loaner and other miscellaneous items were imported from various AE's whose details are given at Page No. 72 & 73 of PB. As per the TPSR the assessee had imported certain equipments accessories and promotional items to be used to demonstrate the characteristic and actual working of the equipment that the assessee sells in India. Sometimes, such equipment/accessories were also loaned to potential customer for their use for short term durations. We have also verified various invoices copies submitted by the assessee regarding import of various items which has been raised by Olympus Japan on the assessee Company.

17. As per the website of the assessee, which has focused on brand value of the Olympus Brand being part of core object of the group. The said information has been provided by the assessee himself in its website.

18. As per the paper book of the assessee at page no. 258, which are the photographs of seminar conducted by the assessee, wherein the representatives of the AE have participated in the event of the assessee for promotion of the products of the and the same has been confirmed by the over view report given by the Olympus. Thus, it is clear that even in the promotion activities, the representatives of the AE have actively participated and monitored by the AE's. Therefore, there is clear understanding, arrangement and 'acting in concert' between the assessee and the AE for carrying out the AMP expenses which is also being demonstrated by the active participation by the employees/representatives of the AE.

19. In so far as the judgment of the Jurisdictional High Court in the case of Sony Ericson Mobile (supra) relied by the Ld. AR, the Hon'ble High Court has clearly held that, in the case of distributors, contention that AMP expenses are

not international transaction is to be rejected. The relevant portion of the findings is as under:-

> *"52. The contention that AMP expenses are not international transactions has to be rejected. There seems to be an incongruity in the submission of the assessee on the said aspect for the simple reason that in most cases the assessed have submitted that the international transactions between them and the AE, resident abroad included the cost/value of the AMP expenses, which the assessee had incurred in India. In other words, when the assessed raise the aforesaid argument, they accept that the declared price of the international transaction included the said element or function of AMP expenses, for which they stand duly compensated in their margins or the arm's length price as computed.*
>
> *53. We also fail to understand the contention or argument that there is no international transaction, for the AMP expenses were incurred by the assessed in India. The question is not whether the assessed had incurred the AMP expenses in India. This is an undisputed position. The arm's length determination pertains to adequate compensation to the Indian AE for incurring and performing the functions by the domestic AE. The dispute pertains to adequacy of compensation for incurring and performing marketing and _non-routine' AMP expenses in India by the AE. The expenses incurred or the quantum of expenditure paid by the Indian assessee to third parties in India, for incurring the AMP expenses is not in dispute or under challenge. This is not a subject matter of arm's length pricing or determination."*

In the present case also, admittedly assessee has been engaged in the distribution of goods produced by the AE, further the assessee is also not the exclusive distributor of the goods being sold in India and apart from the

assessee, independent third party customer based in India can directly place the order for buying the goods from AE. The assessee is neither manufacturer of the goods nor the exclusive distributor and the assessee has also reported huge expenses on account of AMP and reporting loss in India being distributor.

20. Further, in our opinion, the ratio laid down in the judgment of Sony Ericson Mobile (supra) supports the contention of the Revenue that, in the case of distributor, AMP expenses cannot be negated at the threshold, but further also held that the onus will be on the Revenue to establish the existence of the international transaction on the basis of the facts of each case.

21. The judgment rendered in Maruti Suzuki Ltd. (supra) the Hon'ble High Court retreated that, the onus on the revenue to establish the existence of international transaction. In the said case, the TPO has held that trade mark 'Maruti' had acquired the status of 'super brand' whereas the trade mark 'Suzuki' was relatively weak brand, therefore, co branding of 'Maruti-Suzuki' had resulted in a promotion of trade mark of AE. The findings of the Hon'ble High Court in the case of Maruti Suzuki are: The Maruti Suzuki Ltd. is a licensed manufacturer and Maruti brand had already been used in India when it was acquired by Suzuki Motor Company in 2002. The assessee had vast market share of automobile brand in India having 45% market share, sales growth of 21% year on year. Suzuki Motor Company was spending 7.5% of its total revenue of AMP worldwide and whereas assessee was spending only 1.87% of the total revenue of AMP. Therefore, held that the said facts bellies the possibilities of any arrangement of understanding between the assessee and Suzuki Motor Company. Further held that, assessee therein had economic ownership of the brand as it is licensed manufacturer of the

automobiles in India and therefore, the assessee is direct beneficiary of AMP spent in India.

22. On the other hand, in the present case, the facts are entirely different, here the assessee is a pure distributor and not even the exclusive distributor having exclusive right of sales in India, the third independent parties in India can directly buy from the AE's of the assessee without their being any role of the assessee. The assessee has imported demo equipment directly from the AE's for demonstration and advertisement of such equipment in India. Therefore, there is a direct transaction in import of such equipment as well as consumables which is clearly an international transaction. The facts in the Maruti Suzuki (supra) is entirely different than the present case of the assessee . Therefore, the said judgment is not applicable.

23. In so for as the decision of the coordinate Bench Order dated 22-09-2021 in the case of Perfetti Van Melle India Pvt. Ltd. Vs. Assistant Commissioner of Income Tax in I.T.A. No. 463/Del/2021, the factual matrix are entirely different than the case in hand. The Perfetti Van Melle India Pvt. Ltd. was engaged in the business of manufacturing and selling of confectionary products and the entire AMP expenditure has been incurred by the assessee company to promote the sale of its products in India as a full-fledged risk bearing manufacturing and solely responsible for its functions or activities and related returns. However, in the present case the assessee is a distributor who even does not have the exclusive right of distribution in the territory of India as it has already been highlighted in the earlier paras and third independent parties can also directly buy from AE's from outside India. Therefore the decision in the case of Perfetti Van Melle India Pvt. Ltd. (Supra) is also not applicable.

24. By looking into above facts and circumstances of the case including the business modules of the Assessee and its AE's, a reliance can be placed on

the order of the Tribunal in the case of Vodafone India Services Ltd. Vs. DCIT in ITA No. 565/Ahd/17 dated 23/01/2018, wherein the expression 'acting in concert' has been elaborately discussed and held as follows:-

> *"111. The expression 'acting in concert', in common business parlance, suggests two or more persons acting in coordination or in tandem for a common goal, even if for different purposes. Its dictionary meaning includes (a) "agreement of two or more persons in a design or a plan; combined action; accord or harmony"; and (b) "to arrange or contrive (a plan) by agreement"; and (c) "acting in a coordinated fashion with a common purpose". As the parties to the agreement include the foreign AEs and, leaving aside the question whether such foreign AEs had legally enforceable rights or not, there can hardly be any dispute that all the parties to the agreement are essentially 'acting in concert'. In the absence of a statutory requirement to that effect, legal rights of the parties cannot be inferred to be sine qua non for treating the parties 'acting in concert' as such. Whether persons are acting in concert or not is essentially a question of facts which must be decided in the light of facts of each case. In the case of CIT Vs Jubilee Mills Ltd [(1963) 48 ITR 9 (SC)] connotations of the expression 'action in concert', which finds place in the inclusive definition of 'transaction' under section 92F(v), came up for consideration before Hon'ble Supreme Court. It was in the context of determining whether the assessee company is a company in which public is substantially interested. Hon'ble Supreme Court took note of its earlier judgment in the case of Raghuvanshi Mills Ltd Vs CIT [(1961) 41 ITR 613(SC)], and observed that "one has to find out is whether there is an individual who, or a group acting in concert which, controls or control the affairs of the company". It*

was in this backdrop that Their Lordships had thrown light on connotations of the expression 'acting in concert' by observing that "The test is not whether they have actually acted in concert but whether the circumstances are such that human experience tells us that it can safely be taken that they must be acting together". We respectfully adopt this test for the purpose of deciding what amounts to 'acting in concert' for the purpose of definition of transaction under section 52F(v)as well, particularly as there is no statutory definition of this expression, there is nothing contrary to this meaning in the context and there is no judicial precedent suggesting to the contrary. Quite clearly, therefore, as to whether the assessee has acted in concert with its overseas AEs is a question of fact to be decided on the basis of reasonable inferences from facts of facts and circumstances of the case, and it has nothing to do with legal rights of the parties. Viewed in this light, let us also look at the facts of the case to find out whether the parties can be said to have acted in concert or not. Let us not forget that it is a case in which HTIL-M nominates SMMS Investments as nominee under the share purchase agreement, for transfer of shares in ITNL/Omega held by Hinduja group companies-namely Hinduja TMT and IndusInd Network, and, at the same time, the assessee enters into the framework agreement with IDFC for option rights to buy entire equity of SMMS Investments at a nominal price which is just a small fraction of prevailing price of these shares now held by SMMS Investments. Can it be said that it is not an action in concert with HTIL-M; our answer is an emphatic 'No'. It is a later avtar of this Framework Agreement, entered into by the assessee with IDFC and others-including overseas AEs, which was terminated on 24th November 2011 and payment of termination fees by the assessee is triggered. Even as the agreement was terminated, the payment

was not only for termination of options agreement but virtually ensuring that the shareholdings in SMMS Investments are transferred to another group entity, i.e. TII Investments- which has the same ultimate parent company as the assessee and the said ultimate parent company is also a part of this entire arrangement. Given these facts, can it be said that the ultimate parent company, a non-resident AE, has not acted in concert in this arrangement? Once again, de horse the question whether there is any evidence to the effect that the assessee and the ultimate parent company has actually acted in concert or not, "the circumstances are such that human experience tells us that it can safely be taken that they must be acting together" and that is what satisfies the test of "acting in concert" as laid down by Hon'ble Supreme Court.

112. Nothing, therefore, turns on the lack of legal rights to the foreign AEs, under the agreements on termination of which the termination fee of Rs 21.25 crores was paid by the assessee. As long as the action in concert, understanding or arrangements included any non- resident AEs, and de horse the question of their legal rights under the action in concert, understanding or arrangement, such a non-resident AE being a party to the arrangement, understanding or action in concert satisfied the first limb of definition of international transaction under section 92B read with section 92F(v).

113. Once we come to the conclusion that the lack of legal rights to the non-resident AE does not take away the transaction from the ambit of 'international transaction' under section 92B r.w.s. 92F(v), as we do in our foregoing analysis, learned counsel's reliance on Hon'ble Supreme Court's judgment in the case of

Vodafone International Holdings BV (supra) ceases to be relevant. We are not really impressed with the line of reasoning adopted by the assessee. Having said so, we may also add that all that Article 141 states is that "(t)he law declared by the Supreme Court shall be binding on all courts within the territory of India". The question whether the non-resident AE of the assessee has acted in concert with the assessee, in an arrangement with the assessee or as a part of understanding with the assessee are all questions of fact and these aspects have not even been considered by Their Lordships in the aforesaid case. The reliance placed on Hon'ble Supreme Court's judgment in Vodafone International Holdings' case (supra), to the extent it pertains to the question as to whether there was an international transaction, involving non-resident AEs or not, is devoid of legally sustainable merits."

Thus, the Tribunal by relying on the Supreme Court judgment in the case of CIT Vs. Jubilee Mills Ltd. and Raghuvanshi Mills Ltd. Vs. CIT, declared that the test is not whether the AE and the assessee have actually acted in concert, but whether circumstances are that human experience tells us that it can be safely be taken that they must be acting together.

25. By applying the ratio laid down in the above judicial pronouncements, on verifying the material on record, we have no hesitation to hold that, the assessee and AE have acted 'in concert' between the assessee and the AE's for carrying out the AMP expenses.

26. Further the issue of 'whether AMP expenses is an international transaction' has been restored for fresh determination by the Hon'ble Jurisdictional High Court in Yum Restaurant (India) Pvt. Ltd. Vs. ITO (2016) 380 ITR 637/Del and in the case of Sony Ericson Mobile Communication India

Pvt. Ltd. and laid down the law that the AMP expenses could qualify an international transaction, but onus to prove the same is on the revenue. Thus, there is no blanket rule that, the AMP expenses are not an international transaction, it would be depending on the facts and circumstances of the each case as held by the letter judgment of Hon'ble Delhi High Court viz. Raybon Sun Optics India Ltd. Vs. CIT (dated 14.09.2016) Pr. CIT Vs. Toshiba India Pvt. Ltd. (dt. 16.08.2016) and Pr. CIT Vs. Bose Corporation (India) Pvt. Ltd. (dt. 23.08.2016). In the said judgments similar issue has been restored for fresh determination in the light of earlier judgment in the case of Sony Ericson Mobile Communication (India) Pvt. Ltd. (supra).

27. The next contention of the Ld. Counsel for the assessee is that, the Lower Authorities have erred in holding that, the sales promotion expenditure incurred by the appellant in India is an international transaction without demonstrating the existence of any understanding or an agreement between the assessee and its AE, which is contrary to judgment rendered in Maruti Suzuki Ltd (supra) and Whirlpool of India Ltd. We find that the factual aspects in the case of Maruti Suzuki Ltd. and Whirlpool of India Ltd. are entirely different than the present appeal. In both the cases of Maruti Suzuki Ltd. and Whirlpool of India Ltd., the assessee was not a mere distributor and the assessee was having economic ownership of the product and has to pay the royalty. Therefore, the existence of an agreement between the AE and the assessee are mandatory in respect of the international transaction. But in the present case, since the assessee is a mere distributor, not having an exclusive right of distribution in India, therefore, having a written agreement with the AE is optional since the royalty will not be paid by the assessee. Further the Revenue has substantially proved that assessee and AE have acted 'in concert' between the assessee and the AE for carrying out the AMP expenses. In our view, there is no mandatory requirement to have written agreement between the Assessee and its AE in the statute as well. As per Section 92F(v) the

transaction includes arrangement, understanding or action in concert whether or not such arrangement, understanding or action is formal or in writing.

Section 92F(v) reads as follows:

(*v*) "transaction" includes an arrangement, understanding or action in concert,—

(*A*) whether or not such arrangement, understanding or action is formal or in writing; or

(*B*) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceeding.

Therefore, the judgments rendered in Maruti Suzuki Ltd (supra) and Whirlpool of India Ltd (supra) are not applicable.

28. Further, in assessee's own case in ITA No. 7414/Del/2018 for the AY 2014-15 vide order dated 27/03/2019, the similar issue has been decided against the assessee, wherein it is held that the international transaction of AMP functions exist in the case of assessee. The relevant portions are hereunder:-

> *"5.5 We have heard the rival submissions and perused the relevant material on record including the paper book filed by the assessee and the order of the Tribunal in the case of PepsiCo India Holding Private Limited (supra) relied upon by the learned counsel of the assessee. The first and foremost issue, which has been challenged before us by the Ld. counsel is that incurring of AMP expenses is not an international transaction. The learned counsel in support of his contention, has relied on the decision of the PepsiCo India Holding Private Limited (supra). In the said case, the assessee is mainly involved in manufacturing of soft drink/juice-based concentrate and other Agro products and supply of concentrated aerated and non-aerated soft drinks in India as well as to its AEs in Bangladesh, Nepal Bhutan and Sri Lanka. The said assessee was granted a non-transferable, royalty free license for the use of trademarks of the AE*

in India. The said assessee characterized itself as a full-fledged manufacturer exposed to all kinds of risk associated with carrying out such business. The Tribunal (supra) referred to provisions of section 92B, relevant explanation to section 92B and clause (v) of section 92F of the Act with regard to the issue of what is an international transaction. After appreciating various provisions of the Tribunal observed in para 53 as under:

"53..... This definition of transaction has to be read in conjunction with the definition given in section 92 B, which means that the transaction has to be first in the nature given in Section 92B (1); and then when such transaction includes any kind of arrangement, understanding or action in concert amongst the parties, whether in writing or formal, then too it is treated as international transaction, Here the conjoint reading of both the sections lead to an inference that in order to characterized as international transaction, it has to be demonstrated that transaction arose in pursuant to an arrangement, understanding or action in concert. Such an arrangement lias to be between the two parties and not any unilateral action by one of the parties without any binding obligation on the other or without any mutual understanding or contract. If one of the party by its own volition is entering any expenditure for its own business purpose, then without there being any corresponding binding obligation on the other or any such kind of an arrangement actually existing in writing or oral or otherwise, it cannot be characterized as international transaction within the scope and defining of Section 92B(1)."

5.6 The Tribunal (supra) observed that the assessee had been independently performing the function of procurement of material,

manufacturing of concentrates, development of advertising and marketing strategy, determination of the marketing budget, design concept and content of advertisement, choice of media, pricing of concentrate on the sales of concentrate to retailers and distributors and thus all the rewards for such function and the returns associated with, commercial exploitation of the brand was completely enjoyed by the assessee. In the aforesaid circumstances, the Tribunal held that the assessee was free to decide its own AMP expenses which had been borne by it and therefore, two hold or presume that parent AE should have reimbursed some or part of the expenditure, would not be correct. The Tribunal also observed that there was no existence of any direct benefit passed on to the parent AE, because no royalty has been paid to the parent AE for the use of brand and technology and the assessee had paid a very miniscule amount for the import of keys and essences. The Tribunal(supra) in para 63 of the order has laid down as under what circumstances it can be said to exist in International transaction of AMP expenses. The relevant para of the order of the Tribunal (supra) is reproduced as under:

"63. Before examining as to whether any transfer pricing adjustment on AMP is required or not for the reason stated above, the first and foremost condition is that, existence of an international transaction in relation to any service of benefit has to be established before the transfer pricing provision can be triggered so as to place value on service of benefit for the purpose of determining the compensation. Mere fact of excessive AMP expenditure cannot establish the existence of such a transaction. It is only when such a transaction is established then perhaps it may be possible to bench mark it separately. Under the Indian Transfer Pricing provisions, it has been well established over the period of time that detailed FAR analysis

has to be carried out to identify all the functions of resident tax payer company and the non-resident AEs pertaining to all the international transactions like purchase of raw material, payment of royalty, purchase of finished goods, export of finished goods, support services or whether there is any direct sales by AE in India.

Further it needs to be seen, whether marketing activities relating to DEMPE functions reflected in any such expenditure incurred by the resident tax payer company and the non-resident AE in India are in conformity with the functions and risk profiles and the benefit derived by the tax payer company and the AE. It is also very relevant to examine, whether the AE is assuming any kind of risk in the Indian market or is benefitting from India in one way or the other. Thus, FAR analysis is the key which needs to be seen what kind of functions is being carried out by the AE in India, the nature of assets which have been deployed and the risk which have been assumed. If there is no risk of such attributes which is being carried out by the non-resident AE in India then there is no question of AE compensating to its subsidiary in India for any marketing expenses. Here, we have already stated at several places that parent AE of the assessee-company has not carried out any function in India and had not assumed any risk in India and even for the license for use of trademark, no royalty has been paid. Hence, no benefit whatsoever has accrued to the parent AE. Accordingly, we are of the opinion that under these facts and circumstances of the case it is very difficult to attribute any kind of Arm's Length compensation which is supposed to be made by the AE to the assessee company."

5.7 When we examine the facts of the instant case in view of the above principles laid down, we find that facts of the instant case are entirely different from the facts in the case of PepsiCo India holding

private limited (supra). In the said case, the entity is the manufacturing entity bearing all kind of risk and there was no requirement of payment of royalty on the products manufactured in India. In the instant case, the assessee has merely purchased products from its AEs and sold further to distributor/dealers in India. Thus, function of the assessee are akin to distributor though there was no distribution agreement between the assessee and its AE. The learned DRP has brought on record that prior to 2009, the parent company was trading its product through third-party (J Mitra & Co. P Ltd.). The Ld. DRP for comparison of the terms of agreement with regard to remuneration/functions and marketing and brand proportions entered into with said third-party and the AE, asked to file agreements with said third-party, however, no such details were filed before the learned DRP. Details of the expenses incurred by the said third-party on AMP, could have provided a direct comparison with the expenses incurred by the assessee but in absence of any such information provided by the assessee, that comparison could not have been done. In the facts of the instant case, we have to examine whether the AE has undertaken any risk in the entire transaction of sale of product by the assessee. On Page 199 of the paper book Volume-I, the assessee has reported various risk associated with the transaction of purchase of products by the assessee as under:

Type	*OMSI (the assessees)*	*AEs*
Business risk	*Yes*	*Yes*
Inventory risk	*Yes*	*Yes*
Product liability risk	*No*	*Yes*
Warranty risk	*Yes*	*No*
Credit and collection risk	*Yes*	*No*
Foreign exchange risk	*Limited*	*Yes*

5.8 Thus, we find that along with the business risk and inventory risk shared with the assessee, the AE was subjected to hundred percent product liability risk. The relevant clause of the productivity risk on page 198 of the paper book-I reads as under:

"4.1.3.3 Product liability risk Product liability risk refers to the risk associated with failure of a product or the possibility of facing legal action from customers due to defects in the products provided.

In case of inherent default in the manufactured product, the AEs are responsible for repair cost. Further, the risk of legal suits is covered by way of insurance policy taken by the AEs of OMSI."

5.9 As we find that the AE, who is assuming the risk of the legal dispute with respect to the products sold in India. According to us, it is the reason as the why AE is interested in increasing technical awareness of its products among the doctors and the hospital, for which the assessee has incurred expenses on seminars and conferences. And this reason, the assessee must have been suitably compensated by the AE for the expenses incurred on seminars and conferences.

5.10 Further, it is undisputed that seminars and conferences have been organized for the doctors in the hospital, who were instrumental in prescribing the product of the AE to the final customers i.e. patients , has played a dominant role in increasing sale of the products, which ultimately benefited the AE. The product manufactured by the AE were exclusively displayed in various seminar/conferences along with display of the brand name of the "Olympus", which is owned by the AE and not by the assessee.

5.11 In view of the aforesaid discussion, we hold that by way of incurring AMP expenses, the AE has been benefited and it was required to compensate the assessee suitably. As the benefit from the AMP expenditure is having bearing on the profit, income, losses or assets of the AE, the transaction undisputedly falls under the category of International transaction."

29. In view of the above binding decision of the coordinate bench of the Tribunal and by looking into the facts and circumstances of the case, we hold that the revenue has also substantially proved the onus of existence of international transaction between assessee and its AE's as defined u/s 92B of the Act. Ergo, we are of the opinion that, the TPO/DRP/AO are right in holding the existence of international transaction in the AMP undertaken by the Assessee. **Accordingly we dismiss the assessee's Grounds of Appeal No. 4 to 10.**

30. **II. Whether the Method of Profit Split Method (PSM) adopted by the AO in determination Arm Length Price (ALP) of the Advertisement Marketing and Promotion (AMP) expenses is the proper or not.**

31. The Ld. AR's contentions on the above issue are in two folds. Firstly, the TPO/AO is erroneous in adopting Profit Split Method (PSM) in determination ALP of the AMP expenses and Profit Split Method (PSM) is the most appropriate method for determination of ALP of the AMP expenses. In support of the same, the Ld. AR relied on the Order dated 22-09-2021 of the co ordinate bench in I.T.A. No. 463/Del/2021 (Perfetti Van Melle India Pvt Ltd Vs.. Assistant Commissioner of Income Tax). Secondly, since the AO has failed to determine overall profits incurring to the group and in the absence of the audited financials of the AEs, the TPO/AO cannot make adjustment.

32. Per contra, the Ld DR. submitted that, the Assessee has not provided the audited financials of AE to determine the overall profits incurring to the group, further as per Section 92D of the Act, Assessee is duty bound to keep all the information and Documents of the AE. The TPO/AO has adopted the Most Appropriate Method (MAM) as per Rule 10C of Income tax Rules and by relying on the Rule 10C(c), in the absence of the financials of the AE, adopted RPSM method. Further contended that, since the Assessee is duty bound to submit the Audited Financials of the AE for the proper application of the PSM method, failure to submit the same adverse inference can be drawn by the TPO/AO and thereby justified the Assessment Order in applying Residual Profit Split Method (RPSM) in determination of ALP of the AMP expenses of the Assessee. Further contended that, the factual matrix of the case of perfetti Van Melle India Pvt. Ltd. (Supra) is entirely different than the assessee herein and justified the action of the Lower Authorities.

33. The TPO has benchmarked using the Residual Profit Split Method. For applying the Residual Profits Split Method, it is incumbent upon the TPO first to combine profit from the international transaction of incurring AMP expenses and then split the combined profit in proportion to the relative contribution made by both the entities. In order to work out the combined profit in the transaction the financials/profitability of the AE's is very much essential. In the instant case, the assessee has refused to submit the profitability of the AE's, therefore the TPO has adopted the RPSM.

34. The Section 92D of Income Tax Act mandates with maintenance, keeping furnishing information and document by the person who enters in to international transaction, which reads as follows.

92D. (1) Every person

(i) who has entered into an international transaction or

specified domestic transaction shall keep and maintain such information and document in respect thereof, as may be prescribed :

Provided that the person,

(ii) being a constituent entity of an international group,

shall also keep and maintain such information and document in respect of an international group as may be prescribed.

Explanation.—For the purposes of this Clause,—

(A) "constituent entity" shall have the meaning assigned to it in clause (d) of sub-section (9) of section 286;

(B) "international group" shall have the meaning assigned to it in clause (g) of sub-section (9) of section 286.

(2) Without prejudice to the provisions contained in sub-section (1), the Board may prescribe the period for which the information and document shall be kept and maintained under that sub-section.

(3) The Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under this Act, require any person who has entered into an international transaction or specified domestic transaction to furnish any information or document in respect thereof, as may be prescribed under sub-section (1), within a period of thirty days from the date of receipt of a notice issued in this regard :

Provided that the Assessing Officer or the Commissioner (Appeals) may, on an application made by such person, extend the period of thirty days by a further period not exceeding thirty days.

(4) The persons referred to in Clause (ii) of sub-section (1) shall furnish the information and document referred therein to the authority prescribed under sub-Section (1) of Section 286, in such manner, on or before such date, as may be prescribed..

35. Further, Rule 10D of Income Tax Rules, 1962 deals with information and documents to be kept and maintained under 92D. The Rule 92D makes it mandatory to the person who entered into international transaction or specified domestic transaction to keep and maintain the certain information

and documents. Rule 10D Sub Clause 3 deals with the information specified in Sub Rule 1 and 2A of 10D shall be supported by authentic documents. Rule 10D(3) reads as follows:-

> *" The information specified in [sub-rules (1) and (2A)] shall be supported by authentic documents, which may include the following:*
>
> *(a) Official publications, reports, studies and data bases from the Government of the country of residence of the associated enterprise, or* ***<u>of any other country</u>****:*
>
> *b.....*
>
> *c....."*

The documents or information specified in Sub Rule 1 & 2A of Rule 10D not only includes official publication reports, studies and data base from Government of the country of the residence of the associated enterprises but also includes of any other country. In our opinion, the Assessee who is entering into the International transaction is duty bound to maintain and produce the same before the Department when it is asked to produce as per Section 92D of Income Tax Act R/w. Rule 10D and 92D of Income Tax Rules, 1962. If the assessee doesn't provide the financials of its AE's, the TPO/AO/DRP can very well invoke the provisions of Income tax Provisions of Income-Tax Act and the Rules framed there under to call for such records not only from the country of residence but also from any other country in cases of AE's and decide the issue.

36. In our opinion the TPO/Assessing Officer cannot apply wrong method in the absence of material ie: audited financials of AE. On the other hand, TPO/AO cannot even give the benefit as well to the Assessee for non co-operation for providing the audited financials of AE.

37. The Hon'ble Supreme Court in the case of Kapurchand Shrimal Vs CIT, Andhra Pradesh 1981 AIR 1965 dated 28/08/1981 held that, the duty of the Tribunal does not end with making a declaration that the assessments are illegal and it has no duty to issue any further directions too. It is well known that an appellate authority has the jurisdiction as well as the duty to correct all errors in the proceedings under appeal and to issue, if necessary, appropriate directions to the authority against whose decision the appeal is preferred to dispose of the whole or any part of the matter afresh unless forbidden from doing so by the statute. The statute does not say that such a direction cannot be issued by the appellate authority in a case of this nature. We are conscious of the facts that no tax can be levied without the authority of law as mandated by Article 265 of the Constitution of India. Similarly, the exchequer should not be deprived from its legitimate tax due.

39. Further, in assessee's own case in ITA No. 7414/Del/2018 for the AY 2014-15 (supra), the co ordinate bench of this Tribunal held that the international transaction of AMP functions exists in the case of the assessee and restored the issue to the TPO with directions. The relevant para is extracted hereunder.

> *"6.7 In view of the aforesaid discussion, we hold that International transaction of AMP functions exists in the case of the assessee, however, as far as benchmarking of the said transaction is concerned, we find that the Ld. Transfer Pricing Officer has claimed to have followed the directions of Hon'ble Delhi High Court in the case of Sony Ericsion (supra). The assessee is aggrieved with not considering the AMP expenses in aggregated manner with imports of goods under TNMM. The assessee is also aggrieved with cost plus method in segregated manner without properly comparing the functions of the ITA No.7414/Del/2018 comparable companies. In such circumstances, we feel it appropriate to restore the issue to the*

file of the Ld. TPO for following the direction of the Hon'ble Delhi High Court for benchmarking under TNMM in aggregated manner along with the purchase of goods from the AE or in the segregated manner, after taking into account appropriate comparables or applying of resale price method or cost-plus method keeping in view the finding of the Hon'ble Delhi High Court after appreciation of the facts and circumstances of the case vis-à-vis various situations pointed out by the Hon'ble High Court. We are restoring this issue to Ld. Transfer Pricing Officer because factual information on the issues raised by the Hon'ble Court are not before fully. The Ld. TPO may also decide the issue of direct selling expenses and applying markup following the decision of the Hon'ble Delhi High Court in the case of Sony Ericsson (supra). It is needless to mention that assesses shall be afforded adequate opportunity of being heard. 6.8 In the result, the ground of the assessee from serial No. 4 to 16 are allowed for statistical purposes."

40. By following the above said binding decision in Assessee's own case and also for the reasons mentioned above, we hold that the international transaction of AMP functions exists in the case of the assessee and restore the issue to the TPO for following the direction of the Hon'ble Delhi High Court in the case of Sony Ericsson (supra) for benchmarking under TNMM in aggregated manner along with the purchase of goods from the AE's or in the segregated manner, after taking into account appropriate comparables or applying of Resale price method or Cost Plus Method or Profit Split Method keeping in view the findings of the Hon'ble Delhi High Court. Needles to say that, the Assessee shall be given opportunity of being heard. Further Assessee is directed to provide all the relevant documents including the financials of its AE's if required, failing to which the Authorities can act in accordance with law by invoking the relevant provisions. Accordingly, we allow the **Ground No.11 to 26 for statistical purposes.**

41. Ground of Appeal No. 27 is pertaining to initiating penalty proceedings u/s 271(1)(c) of the Act and the same is consequential and premature in nature accordingly, **we dismiss the Grounds of Appeal No. 27.**

42. As regards the Stay Application filed by the assessee, since the appeal of the assessee has already been adjudicated. The Stay Application has become in-fructuous, the same is accordingly dismissed.

43. **In the result, the appeal filed by the Assessee is partly allowed for statistical purpose.**

Order pronounced in the Open Court on this 20th Day of April, 2022

Sd/-	**Sd/-**
(Dr. B. R. R. KUMAR)	**(YOGESH KUMAR U.S.)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 20/04/2022
*R. Naheed **

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

ASSISTANT REGISTRAR
ITAT NEW DELHI