$~61 to 68

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 872/2019

PR. COMMISSIONER OF INCOME TAX, (CENTRAL)-3, NEW DELHI .....Appellant

Through: Mr. Anurag Ojha, SSC along with Ms. Hemlata Rawat & Mr. V.K. Saksena, JSCs.

versus

M/S PERNOD RICARD (INDIA) PVT. LT .....Respondent

Through: Mr. Deepak Chopra, Mr. Anmol Anand, Ms. Priya Tandon and Ms. Sheetal Kandpal, Advs.

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\+ ITA 49/2020

PR.COMMISSIONER OF INCOME TAX CENTRAL -3 ND .....Appellant

Through: Mr. Anurag Ojha, SSC along with Ms. Hemlata Rawat & Mr. V.K. Saksena, JSCs.

versus

M/S PERNOD RICARD INDIA PVT. LTD. .....Respondent

Through: Mr. Deepak Chopra, Mr. Anmol Anand, Ms. Priya Tandon and Ms. Sheetal Kandpal, Advs.

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\+ ITA 50/2020

PR. COMMISSIONER OF INCOME TAX (CENTRAL) -3, NEW DELHI .....Appellant

Through: Mr. Anurag Ojha, SSC along with Ms. Hemlata Rawat & Mr. V.K. Saksena, JSCs.

versus

M/S. PERNOD RICARD (INDIA) PVT. LTD

.....Respondent

Through: Mr. Deepak Chopra, Mr. Anmol Anand, Ms. Priya Tandon and Ms. Sheetal Kandpal, Advs.

64

\+ ITA 51/2020

PR. COMMISSIONER OF INCOME TAX (CENTRAL), NEW DELHI

.....Appellant

Through: Mr. Anurag Ojha, SSC along with Ms. Hemlata Rawat & Mr. V.K. Saksena, JSCs.

versus

M/S. PERNOD RICARD (INDIA) PVT . LTD

.....Respondent

Through: Mr. Deepak Chopra, Mr. Anmol Anand, Ms. Priya Tandon and Ms. Sheetal Kandpal, Advs.

65

\+ ITA 54/2020

PR. COMMISSIONER OF INCOME TAX, (CENTRAL)-3, NEW DLEHI

.....Appellant

Through: Mr. Anurag Ojha, SSC along with Ms. Hemlata Rawat & Mr. V.K. Saksena, JSCs.

versus

M/S. PERNOD RICARD (INDIA) PVT. LTD

.....Respondent

Through: Mr. Deepak Chopra, Mr. Anmol Anand, Ms. Priya Tandon and Ms. Sheetal

Kandpal, Advs.

66

\+ ITA 165/2021

PRINCIPAL COM0MISSIONER OF INCOME TAX (CENTRAL) - 3

.....Appellant

Through: Mr. Anurag Ojha, SSC along with Ms. Hemlata Rawat & Mr. V.K. Saksena, JSCs.

versus

PERNOD RICARD INDIA PVT. LTD.

.....Respondent

Through: Mr. Deepak Chopra, Mr. Anmol Anand, Ms. Priya Tandon and Ms. Sheetal Kandpal, Advs.

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\+ ITA 166/2021

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) – 3 .....Appellant

Through: Mr. Anurag Ojha, SSC along with Ms. Hemlata Rawat & Mr. V.K. Saksena, JSCs.

versus

PERNOD RICARD INDIA PVT. LTD. .....Respondent

Through: Mr. Deepak Chopra, Mr. Anmol Anand, Ms. Priya Tandon and Ms. Sheetal Kandpal, Advs.

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\+ ITA 83/2022

PRINCIPAL COM0MISSIONER OF INCOME TAX (CENTRAL) - 3

.....Appellant

Through: Mr. Anurag Ojha, SSC along with Ms. Hemlata Rawat & Mr. V.K. Saksena, JSCs.

versus

PERNOD RICARD INDIA PVT. LTD.

.....Respondent

Through: Mr. Deepak Chopra, Mr. Anmol Anand, Ms. Priya Tandon and Ms. Sheetal Kandpal, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **29.08.2024**

1. Having heard Mr. Ojha, learned counsel for the appellant and Mr. Chopra, learned counsel for the respondent, we take note of the following principal issues which stand raised in these appeals and pertain to:-

i) Transfer Pricing Adjustment on account of **Advertising, Marketing and Promotional**[1] expenditure

ii) Disallowance under Section 14A of the **Income Tax Act, 1961**[2]

iii) Disallowance of brand building expenditure under Section 37 of the Act

iv) Disallowance of INR 10,80,000/- based on seized material pertaining to the preceding years.

2. It is these four principal issues which form the heart of the questions as would be evident from the common chart which has been placed for our consideration and is extracted hereinbelow: -

[1] AMP
[2] Act

COMMON CHART OF ISSUES INVOLVED

ITA No.	872/2019	54/2020	51/2020	50/2020	49/2020	165/2021	166/2021	83/2022
Date of Impugned Order	15.03.2019	10.07.2019				15.05.2020		
ITA Number before Tribunal	910/D/2015	911/D/2015	912/D/2015	913/D/2015	914/D/2015	1607/D/2018	1608/D/2018	2601/D/2019
AY	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
Issues	References to questions of law raised by the Appellant Revenue Department							
Transfer Pricing Adjustment on account of Advertising, Marketing and Promotional ("AMP") expenditure	A, B, C, G	(a), (b), (f)	(a), (b), (f)	(a), (b), (e)	(a), (b), (e)	A, B, C	A, B, C	A, B, C
Disallowance under section 14A of the Income-tax Act, 1961 ("Act").	D	(d)	(d)	-	-	-	-	-
Disallowance of brand building expenditure under section 37 of the Act.	E	(c)	(c)	(c)	(c)	-	D	D
Disallowance of INR 10,80,000/- based on seized material pertaining to preceding years.	F	(e)	(e)	(d)	(d)	-	-	-

3. We note that insofar as the issue of AMP is concerned or the same transcending to brand building for the benefit of the AE, the same would have to necessarily be answered against the appellant bearing in mind the view expressed by the Court in **Maruti Suzuki India Ltd. vs. Commissioner of Income-Tax**[3] and **Sony Ericsson Mobile Communications India Pvt. Ltd. vs. Commissioner of Income-Tax**[4].

4. In the present matter, the **Transfer Pricing Officer**[5] in its order dated 28 January 2014 held that the AMP expenses amounted to brand building for the benefit of the **Associated Enterprise**[6]. However, in the absence of any material or evidence which may have tended to

[3] 2015 SCC OnLine Del 13940
[4] 2015 SCC OnLine Del 8083
[5] TPO
[6] AE

establish the existence of an arrangement between the Indian entity and its AE, or which may have been viewed as evidence of them acting in concert, the view expressed by the TPO is untenable and the order of the Tribunal is liable to be upheld.

5. This more so in light of the order passed by this Court in **Principal Commissioner of Income Tax (Central) – 3 vs. Seagram Manufacturing Private Ltd.** (now Pemod Richard India Pvt. Ltd.) [ITA 885/2016 decided on 09 December 2016] and which we propose to presently review.

6. Viewed in light of the position of law which stood enunciated in the *Maruti Suzuki* and *Sony Ericsson* decisions, we are of the considered opinion that the appeals fail to raise any substantial questions of law in this respect.

7. As noticed above, the issue of disallowance of brand building expenses had formed subject matter of contestation inter partes in *Seagram Manufacturing* and in which appeal this issue came to be answered in favour of the respondent as would be evident from the order dated 09 December 2016 passed in the aforenoted appeal. The relevant extracts of that order are reproduced hereinbelow: -

> "**6.** Regarding Question No.2, during the course of proceedings in the relevant Assessment Year 2003-04, the AO disallowed 10% from the expenditure on brand enhancement on the ground that it was allocable to the overseas owner/collaborator. The AO reasoned that any enhancement in the brand presence of the assessee invariably had a fall-out vis-a-vis brand value of the overseas IPR proprietor. The AO also recorded the relevant facts that not all brands which belong to the overseas owner were available in the Indian market and in the eventuality of the brand proprietor deciding to wind-up operations, its reputation would still remain intact. The CIT(A), however disagreed with this reasoning. The ITAT confirmed the order but with little or seconded or no reasoning.
>
> **7.** <u>The expenses in this case were incurred by the assessee. The arrangement inter alia between the assessee and the brand proprietor</u>

was such that specified required brands were made available in the assessee deals. No doubt, the profits reported were put through the recourse of transfer pricing exercise for the purpose of Arm's Length Price determination. Yet, the fact remains that the overseas owner did not set up any other licensee, at least in the area where the assessee operated, to operate as a rival. Under the Trade Mark Act, especially Section 48, as long as the arrangement existed, the assessee, who was a licensee of the products, was entitled to claim them as business expenditure though in the ultimate analysis they might have enhanced the brand of the overseas owner. No doubt, if the arrangements were terminated, the brand presence of the overseas owner of the articles/IPR would have subsisted. But that would nevertheless subsist in any event on the theory of trans-national reputation of the IPR owner. In the circumstances, disallowing a certain proportion on an entirely artificial and notional basis from the expense otherwise deductible, in our opinion, was not justified. The question of law is answered against the revenue. For the above reasons, the appeal fails. It is accordingly dismissed."

We consequently find no justification to re-examine the aforesaid issue.

8. We also find no justification to interfere with the view expressed by the **Income Tax Appellate Tribunal**[7] with respect to Section 14A of the Act, bearing in mind the admitted position of there being no exempt income which was earned in the concerned **Assessment Years**[8]. We also bear in mind the judgment rendered recently by this Court in **Principal Commissioner of Income Tax (Central) – 3 vs. Alchemist Ltd.**[9]

9. That only leaves us to examine the question of disallowance on the basis of seized material. It is conceded before us that the seized material pertained to AY 2002-03 whereas the present appeals pertain to the period AY 2007-08 to 2011-12. It is in the aforesaid context that the Tribunal had followed the view expressed by the Supreme Court in **Commissioner of Income-Tax III vs. Sinhgad Technical**

[7] Tribunal
[8] AYs
[9] 2024:DHC:6439-DB

Education Society[10] to hold that in the absence of any incriminating material pertaining to the concerned AYs', no disallowances would be merited.

10. In view of the aforesaid, these appeals fail and shall stand dismissed.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

AUGUST 29, 2024/RW

[10] (2018) 11 SCC 490.