

TransPrice Times

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Unibic Foods India Pvt Ltd – Bangalore ITAT

Outcome: In **favour** of taxpayer

Category: AMP Expenditure by brand owner

The taxpayer is engaged as a manufacturer of biscuits and related bakery products and confectionaries. The taxpayer was granted an exclusive license to use in India, the name, image and/or likeness of Sir Donald Bradman and right to use the name i.e. trademark of 'Bradman' or logo of the foundation pertaining to 'Chocolate Chip Biscuits', by its Associated Enterprise ('AE'). In addition, the trademarks certificate and India-specific advertisements submitted by the taxpayer evidenced that the taxpayer owned the trademark 'Unibic' and had incurred AMP expenses in relation to promoting 'Unibic' in India.

The transfer pricing authorities considered that incurring of such AMP expenses were for promoting the brand value of 'Unibic' and hence, promoting the brand of its AE, disregarding the vital fact that taxpayer owned the trademark 'Unibic' and AMP expenses pertain to 'Unibic', whereas taxpayer was given the right to use the AE's trademark named 'Bradman'.

The Tribunal held in favour of the taxpayer stating that if the brand is owned by the Indian taxpayer, the AMP expenditure incurred for its promotion cannot be disallowed by transfer pricing authorities pursuant to determination of arm's length price, as these expenses are in the nature of business expenditure of the taxpayer.

TMW ASPF i Cyprus Holding Company Ltd – Delhi ITAT

Outcome: In **favour** of taxpayer

Category: Transfer Pricing adjustment on hypothetical amount receivable from AE

The taxpayer is a company incorporated in Cyprus and is engaged in the business of making investments. The taxpayer had made some investments in companies in India through Fully Compulsorily Convertible Debentures ('FCCDs'). The taxpayer was eligible for coupon rate @ 4% from such AEs, which was received during the year. These instruments also had an option to sell the FCCDs upon conversion, at an option price of investment plus 18%.

Considering the option of selling the FCCDs upon conversion into equity, at an option price of investment plus 18%, the transfer pricing authorities contended that the taxpayer was to earn an assured return of 18% and thus, inferred that the ALP should be 18%, and not 4%.

The Tribunal observed that that the international transaction of conversion and sale of FCCDs was futuristic and contingent, whereas the transfer pricing adjustment proposed by the transfer pricing authorities was on a hypothetical amount of interest receivable. Also, the Tribunal referred to the relevant provisions of the Indo-Cyprus Double Taxation Avoidance Agreement, where it is stated that only the interest actually received can be a subject matter of taxation. Thus, the Tribunal held that no adjustment can be made on such hypothetical receivable amount which was contingent upon certain event which had actually not occurred during the year.

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