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

BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER
AND
SHRI SUDHIR KUMAR, JUDICIAL MEMBER

ITA No.3446/Del/2024
(ASSESSMENT YEAR:2020-21)

Fujifilm India Private Limited, Unit No.521, Level-5, Caddie Commercial Tower, Hospitality District Aerocity, IGI Airport, New Delhi-110037. ***PAN-AABCF1594J***	v.	The Assessing Officer, Assessment Unit, Income Tax Department, Delhi
(Appellant)		**(Respondent)**

Assessee by	Shri Kamal Sawhney, Adv. (virtual) & Shri Puru Medhira, Adv.
Department by	Shri Dharm Veer Singh, CIT-DR
Date of Hearing	23.04.2026
Date of Pronouncement	20.07.2026

ORDER

PER RAMIT KOCHAR, AM:

This appeal in ITA No. 3446/Del/2024 has arisen from assessment order dated 29.06.2024 passed by ld. Assessing Officer u/s. 144 r.w.s. 144C (13) read with section 144B of the Income-tax Act, 1961, which was passed in pursuance to directions issued by learned Dispute Resolution Panel-1,New Delhi , dated 31.05.2024 u/s 144C(5) of the 1961 Act for the assessment year:2020-21.

2. The assessee has raised following grounds of appeal in Memo of Appeal filed with the Income Tax Appellate Tribunal, New Delhi, which reads as under :-

> *"1. On the facts and circumstances of the case and in law, the impugned order passed by Ld. AO/Transfer Pricing Officer (Ld. TPO) is erroneous and bad in law to the extent it makes adjustment to returned income towards advertising, marketing, and promotion ('AMP'), by applying Bright Line Test.*
>
> *2. Impugned order erred in making transfer pricing adjustment without establishing the existence of international transaction of AMP.*
>
> *3. Without prejudice to above, there is no justification for any protective adjustment more so by application of Bright Line Test which is invalidated by the jurisdictional High Court. Final Assessment Order computing total income by including such adjustment made on BLT and consequential demand are unlawful and deserves to be corrected, and a direction to accept the returned income as final, deserves to be issued*
>
> *4. Without prejudice, the Ld. TPO/ Ld. AO erred in determining the 'non-routine' quantum of the AMP expenditure incurred by the Appellant based on BLT test.*
>
> *5. On facts and circumstances of the case and in law, the Ld. TPO/Ld. AO erred by holding that the Appellant was incurring non-routine expenditure primarily for promotion Fuji brand and creating marketing Intangibles for parent company, ignoring that the same directly benefitted the Appellant's sale*
>
> *6. Without prejudice to the other grounds, the Ld. TPO/Ld. AO has erred in facts and circumstances of the case and in law by ignoring the fact that even if a transaction-by-transaction approach is applied, the AMP function has been benchmarked under transactional net margin method (TNMM) analysis carried out by the TPO and found to be at arm's length.*
>
> *7. Ld. AO has erred in initiating penalty proceedings under Section 271AA."*

3. The Brief facts of the case are that the assessee is part of '*Fujifilm*' Group , and was incorporated on 4th December, 2007. The assessee equity is held by '*Fujifilm Asia Pacific Pte. Ltd., Singapore*' and '*Fujifilm Corporation, Japan*'. The assessee

deals in broad spectrum of imaging technologies, providing solutions in Medical Imaging Systems, Image Capturing Technologies such as digital still cameras and instant camera systems, Graphic Printing Solutions , Data Storage Solutions and Industrial Products. The assessee is engaged in the business of trading of various products which mainly includes Medical products(X-ray imaging devices, endoscopy, ultrasound systems, MRI and CT Veterinary machines), photo imaging, digital camera graphics arts etc. . The assessee purchases these goods from its associate enterprises(AE's) for resale in India.

3.2 The assessee filed its return of income for the impugned assessment year on 12.02.2021 , declaring income of Rs. 51,29,52,500/-. The assessee filed report in Form No. 3CEB in respect of international transaction carried out during the year.

3.3 The case of the assessee was selected by Revenue for framing complete scrutiny through CASS.Statutory Notices u/s 143(2) ad 142(1) were issued by the AO to the assessee, and duly served by the learned Assessing Officer("AO") to the assessee, as are recorded by the AO in the assessment order. The assessee participated in the assessment proceedings.

3.4 Since, the assessee has entered into international transactions with its AE's , the reference was made by the AO to the Transfer Pricing Officer("TPO") u/s 92CA(1) of the 1961 Act, to determine Arms Length Price (In short "*ALP*") of the international transactions entered into by the assessee with its AE's. The TPO observed that the assessee has entered into various International Transactions with its AE's. The details of such international transactions entered into by the assessee with its AE's were reported by the assessee in its Form No. 3CEB, and details of such transactions are recorded by the ld. TPO in its TP order at page no. 2 and 3. The TPO also observed that the assessee has incurred Advertising , Marketing and Promotion Expenses(in Short "*AMP"*), which are for promotion of Brand '*Fuji*' owned by its parent AE, which as per TPO is an international transaction entered into by the assessee with its AE and is for brand building for its AE, while the brand is not owned by the assessee but by its parent AE . Thus, as per TPO , *AMP* expenditure by the assessee benefitted assessee's parent AE by way of building of Brand 'Fuji' as brand '*Fuj*i' is owned by assessee's parent AE, and the assessee should have been adequately compensated by its parent AE, which in the instant case was not been done by assessee's parent AE. The TPO also observed that the assessee has not reported said international transaction of incurring *AMP* expenses in its Form No. 3CEB, and the same required determination of *ALP* of such international transaction of incurring of *AMP* expenditure. The TPO undertook detailed proceedings while determining the *ALP* of the international transaction undertaken by the assessee wrt *AMP* expenditure incurred by the assessee. The TPO applied TNMM as the most appropriate method while determining ALP of the international transaction of AMP expenditure incurred by the assessee. The TPO applied *Bright Line Test* by comparing *AMP* expenses incurred by the assessee with the *AMP* expenditure incurred by the comparables, and the excess of the expenditure incurred by the assessee vis-à-vis *AMP* expenditure incurred by the comparables were held to be incurred for the benefit of building of Brand '*Fuji*' owned by assessee's parent AE, and Transfer Pricing adjustment to that effect to the tune of Rs.12,00,70,000/- to Arm Length Price of the international transaction entered into by the assessee with its AE was computed by TPO wrt *AMP* expenditure, which was proposed by the TPO on protective basis. The TPO observed that *Hon'ble Delhi High Court* in the case of *Sony Ericsson Mobile*

Communications India Private Limited , reported in (2015) 374 ITR 118(Delhi) has rejected *Bright Line Method*. The TPO observed that the Revenue has filed *SLP* with *Hon'ble Supreme Court*, and adjudication by *Hon'ble Supreme Court* is awaited. The TPO also applied intensity method to propose TP additions on substantive basis to compute *ALP* of the international transaction of *AMP* expenditure incurred by the assessee, wherein TP adjustment to the tune of Rs. 22,90,9000/- was proposed by the TPO on substantive basis, vide orders dated 26.07.2023 passed by TPO u/s 92CA(3) of the 1961 Act (DIN & Order No. ITBA/TPO/F/92CA3/2023-24/1054645316(1)).

3.5 The ld. AO based on the TP adjustment proposed by the ld. TPO both on protective as well substantive basis vide its TP order dated 26.07.2023 , passed draft assessment order dated 30.08.2023 u/s 144C of the 1961 Act(DIN & Letter No. ITBA/AST/F/17/2023-24/1055582735(1)).

3.6. Aggrieved, the assessee filed objections before ld. DRP, who was pleased to pass directions vide orders dated 31.05.2024 (DIN: ITBA/DRP/M/144C(5)/2024-2025/1065316327(1)), wherein ld. DRP directed that *AMP* expenditure incurred by the assessee are international transactions within the provisions of the 1961 Act, which requires computation of *ALP* of the said international transaction of incurring *AMP* expenditure , as the parent AE who owned brand '*Fuji*' has benefitted by way of brand building owing to *AMP* expenditure incurred by the assessee, and the parent AE ought to have suitable compensated assessee wrt AMP expenditure incurred by the assessee. The ld. DRP upheld *Bright Line Test* applied by TPO for determining *ALP* of the international transaction entered into by the assessee with respect to incurring of *AMP* expenses. The ld. DRP also directed

TPO to verify margins of comparable companies from annual reports submitted by the assessee. The ld. DRP also directed that CSR is non-operating in nature and not to be included in computing operating expenses. There were other directions also issued by ld. DRP wrt selections of comparables as to their inclusion and/or exclusions etc., as are recorded in the ld. DRP directions. The ld. TPO passed order giving effect dated 25.06.2024 in pursuance to directions of ld. DRP , wherein TP additions as earlier proposed were reduced to the tune of Rs. 5,19,00,000/- , and consequently aforesaid TP additions were made by applying *Bright Line Test* by computing *ALP* of international transaction of *AMP* expenditure incurred in an uncontrolled situation . So far as TP addition by applying intensity method for computing *ALP* of the international transaction of *AMP* expenditure incurred by the assessee , was reduced to Nil by ld. TPO in its order giving effect pursuant to aforesaid ld. DRP directions. Thereafter, the AO passed assessment order dated 29.06.2024 u/s 144 r.w.s. 144C(13) read with Section 144B of the 1961 Act in pursuance to directions issued by ld. DRP and order giving effect passed by ld. TPO, wherein additions to the tune of Rs. 5,19,00,000/- was made by the AO on substantive basis by applying *Bright Line Test* by computing *ALP* of the international transaction of incurring *AMP* expenditure by the assessee .

4. The assessee being aggrieved by the assessment order dated 29.06.2024 passed by ld. AO has now filed an appeal with ITAT. At the outset ld. Counsel for the assessee submitted before the Bench that TP addition as was finally upheld pursuant to directions of ld. DRP to the tune of Rs. 5,19,00,000/- by applying *Bright Line Test* wherein *ALP* is computed of the international transaction of the *AMP* expenditure incurred by the assessee , is not sustainable in the eyes of law and is liable to be quashed, as *Hon'ble Delhi High Court* in the case of *Sony*

Ericsson(supra) has rejected Bright Line Test method for computing *ALP* of the international transaction of *AMP* expenditure incurred by the assessee. It was submitted that *SLP* against the aforesaid judgment of *Hon'ble Delhi High Court* in the case of *Sony Ericsson(supra)* filed by Revenue is pending with *Hon'ble Supreme Court*, but there is no stay order and/or directions given by *Hon'ble Supreme Court* staying the aforesaid judgment of *Hon'ble Delhi High Court*. Thus, it was submitted at outset that the additions as sustained by ld. DRP by applying BLT is not sustainable in the eye of law and is liable to be quashed. It was further submitted by ld. Counsel for the assesssee that TPO also applied intensity method to compute TP Additions wrt *AMP* expenditure incurred by the assessee on substantive basis , to the tune of Rs. 22.90,90,000/- , which has been reduced to Rs. NIL in pursuant to aforesaid ld. DRP directions. The ld. Counsel for the assessee relied upon judgment and order of *Hon'ble Delhi High Court* in the case of *DCIT v. Casio India Company in ITA No. 828/2019 dated 13.09.2019*, wherein *Hon'ble Delhi High Court* deleted the additions made by Revenue by applying *Bright Line Test* , relying on judgment and order of *Hon'ble Delhi High Court* in the case of *Sony Ericsson(supra)*. Our attention was also drawn to base order passed by the Delhi Tribunal in the case of *Casio India Company Private Limited v. DCIT, reported in (2019) 102 taxmann.com 492(Deli-Trib.).*

4.2. The ld. CIT-DR submitted that *AMP* constitute an international transaction. Our attention was drawn to Rule 10B(2) and 10B(3) of the Income-tax Rules, 1962. The ld. CIT-DR submitted that Revenue has filed *SLP* with *Hon'ble Supreme Court* against judgment and order of Hon'ble Delhi High court in the case of *Sony Ericsson(supra)*, and decision of *Hon'ble Supreme Court* is awaited. The ld. CIT-DR did not brought to our notice any other judgment of the Superior

Courts taking a contrary stand to the aforesaid judgment and order of *Hon'ble Delhi High Court* in the case of *Sony Ericsson(supra),* nor ld. CIT-DR could point to any directions or stay order issued by *Hon'ble Supreme Court* staying the operation of judgment and order of *Hon'ble Delhi High Court* in the case of *Sony Ericsson(supra)*.

4.3. The ld. Counsel for the assessee in rejoinder submitted that the assessee has conceded with respect to Ground No. 2, and is not pressing Ground No. 2 raised by the assessee in Memo of appeal filed with the Tribunal,and the same may be dismissed.

5. We have heard rival parties and perused the material on record. The brief facts, background and contentions of rival parties are recorded in preceding para's of this order , and are not repeated. It is observed that the addition which is finally sustained by Revenue in pursuance to ld. DRP directions is on account of TP additions to the tune of Rs. 5,19,00,000/- by applying *Bright Line Test* by computing *ALP* of the international transactions entered into by the assessee wrt *AMP* expenditure incurred by the assessee, which is held to be towards brand building exercise wrt brand '*Fuji*' owned by the parent AE of the assessee. The brand '*Fuji*' is owned by assessee's parent AE. The assessee does not own brand '*Fuji*' nor owned any other brand. The assessee is importing various products from its AE's , and undertaking resale of these products in Indian Market. The assessee has incurred *AMP* expenditure during the year under consideration which is held to be an international transaction, and *ALP* of the said international transaction is computed by applying *Bright Line Test* by comparing *AMP* expenditure incurred by the assessee vis-à-vis *AMP* expenditure incurred by comparables in an

uncontrolled transactions, and the excess has been held to be expenditure incurred for brand building of Brand '*Fuji*' owned by assessee's parent AE and hence aforesaid TP adjustments were made in pursuance to directions of ld. DRP.We have observed that *Hon'ble Delhi High Court* in the case of *Sony Ericsson(supra)* has rejected *Bright Line Test* for computing TP additions while computing *ALP* of the international transactions of *AMP* expenditure incurred towards building of brands of AE's. It is also observed that Revenue has filed *SLP* with *Hon'ble Supreme Court* against the aforesaid judgment and order of *Hon'ble Delhi High Court* in the case of *Sony Ericsson(supra)*, which is pending adjudication by *Hon'ble Supreme Court*. No contrary decision(s) of Superior Courts is brought to our notice by both the parties. None of the parties brought to our notice any directions or stay order issued by *Hon'ble Supreme Court* staying the operation of judgment and order of *Hon'ble Delhi High Court* in the case of *Sony Ericsson(supra)*. Thus, Respectfully following aforesaid judgment and order of *Hon'ble Delhi High Court* in the case of *Sony Ericsson(supra)*, we delete the aforesaid TP addition to the tune of Rs. 5,19,00,000/- made by the authorities below by applying *Bright Line Test*. Since *SLP* filed by Revenue with Hon'ble Supreme Court *against the judgment and order of Hon'ble Delhi High Court in the case of Sony Ericsson(supra)* is pending for adjudication by *Hon'ble Supreme Court*, we direct that both the parties shall be bound by the outcome of aforesaid *SLP*. The AO is to take on record aforesaid directions issued by us as above, and is directed to implement the same. Since, we have deleted the additions by following the aforesaid judgment and order of *Hon'ble Delhi High Court* in the case of *Sony Ericsson(supra)*, the other grounds with respect thereto are kept open. This disposes of ground number 1,3,4,5 & 6. So far as Ground No. 2 is concerned, the same is conceded to by the assessee, and accordingly not pressed by the assessee, and hence the same stood dismissed. Ground No. 7 is premature at this stage, and hence dismissed. We order accordingly.

6.In the result, appeal filed by the assessee is partly allowed in the manner as indicated above.

Order is pronounced in the Open Court on 20.07.2026.

Sd/- Sd/-

(SUDHIR KUMAR)
JUDICIAL MEMBER

(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Dated: 20.07.2026
PK, Sr. Ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DRP
5. TPO
6. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI