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

BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI VIMAL KUMAR, JUDICIAL MEMBER

ITA No.2341/DEL/2022
(Assessment Year: 2012-13)

Chanel (India) Private Limited, Unit No.505, 5th Floor, Worldmark 3, Aerocity, IGI Airport, New Delhi – 110 037.	vs.	DCIT, Circle 4 (2), New Delhi.
(PAN :AACCC4140N)		
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Shri Vishal Kalra, Advocate
Shri Ankit Sahni, Advocate
Ms. Taranjeet Kaur, AR
REVENUE BY :Ms. Shaveta Nakra Datta, CIT DR

Date of Hearing : 12.05.2026
Date of Pronouncement : 27.07.2026

O R D E R

PER S.RIFAURRAHMAN,AM:

1. This appeal filed by the assessee is directed against the assessment order dated 28.07.2022 passed by the Income Tax Department, Circle 4 (2), Delhi under section 143(3) read with section 147/143 (3) of the Income-tax Act, 1961 (for short 'the Act") for Assessment Year 2012-13 pursuant to the directions of the Dispute Resolution Panel u/s 144C of the Act raising the following grounds of appeal :-

"1. That on the facts and circumstances of the case and in law, the AO has erred in assessing the total loss of the Appellant at INR 1,40,90,978, in pursuance to the directions issued by the DRP, as against a returned income of INR Nil.

Corporate Tax Grounds

2. That on the facts and circumstances of the case and in law, the assessment order passed under section 143(3) read with sections 147 and 144C of the Act is beyond jurisdiction, bad in law and void ab initio.

3. That on the facts and circumstances of "the case and in law, the AO erred in initiating re-assessment proceedings after the expiry of four years from the end of the relevant assessment year without appreciating that there was no failure on the part of the Appellant to disclose fully and truly all material facts necessary for assessment. Consequently, the assessment framed is nullity, bad in law and liable to be quashed.

4. That on the facts and circumstances of the case and in law, the AO has erred in initiating re-assessment proceedings without application of mind and without bringing any new material on record to infer escapement of income, which is sine qua non for initiating proceedings under section 147 of the Act.

5. That on the facts and circumstances of the case and in law, the reopening of assessment proceedings is based upon mere change of opinion as the Appellant had submitted all the requisite details and documents during the course of original assessment proceedings.

Transfer Pricing Grounds - Transfer Pricing adjustment amounting to INR 3,08,28,457 on account of treating subsidy income received by the Appellant as non-operating in nature

6. That on the facts and circumstances of the case and in law, the AOI DRPI TPO have erred in making a transfer pricing adjustment amounting to INR 3,08,28,457 by treating subsidy income received by the Appellant from its associated enterprise CAE") as non-operating in nature.

7. That on the facts and circumstances of the case and in law, the AOI DRPI TPO have erred in not appreciating the business model of the Appellant and erroneously concluding the subsidy income received by the Appellant during the year as non-operating in nature.

8. That on the facts and circumstances of the case and in law, the AOI DRPI TPO have erred in not appreciating the submissions and documentary evidences filed during the course of assessment proceedings to substantiate the nature of subsidy income received by the Appellant.

9. That on the facts and circumstances of the case and in law, the AOI DRPI TPO have erred in rejecting aggregation approach adopted by the Appellant and erroneously adopting segregation approach for benchmarking

the international transaction of receipt of subsidy by the Appellant without providing any cogent reasons.

10. That on the facts and circumstances of the case and in law, the AOI DRPI TPO have erred in not appreciating that the subsidy income was already offered to tax by the Appellant while filing return for the subject assessment year and hence, the action of the AOI DRPI TPO leads to double taxation of the same income which is impermissible.

11. Notwithstanding and without prejudice to the above, the subsidy income received by the Appellant should be allowed as a set-off from the transfer pricing adjustment.

12. That on the facts and circumstances of the case and in law, the AO/TPO have erred in initiating penalty proceedings under section 270A of the Act.

Each of the above grounds are independent and without prejudice to the other grounds of appeal preferred by the Appellant.

2. Ground No.1 is general in nature, hence not adjudicated.

3. Grounds No.2 to 5 are with regard toreassessment proceeding initiated under section 147 of the Income-tax Act, 1961 (“the Act”).

4. At the time of hearing, ld. AR of the assessee brought to our notice relevant facts relating to these grounds and submitted his submissions. He submitted that Chanel India Private Limited, (assessee) is engaged in the business of distribution of high-end fashion and beauty products. He submitted that for the assessment year, it hasfiled its return of income for AY 2012-13 on November 30, 2012 i.e. within the time prescribed under section 139(1) of the Income-tax Act, 1961 (for short ‘the Act’). Further, for the subject assessment year, the detailed assessment proceedings were undertaken under section 143(3) of the Act by the AO and during the

proceedings, the TPO did not propose any adjustment in respect of the international transactions while passing the order dated December 21, 2015in this regardreferred to page no. 79 to 80 of paper book.

5. He submitted that subsequently, AO while passing the assessment order dated March 29, 2016, accepted the returned income of the assessee, referredpage no. 74 to 78 of paper book.Further, the notice under section 148 of the Act for the subject assessment years was issued after expiry of four years from the end of relevant assessment year without there being any existence of new tangible material being brought on record by the AO, referred page 70 to 73 of paper book.

6. At the outset, it is submitted that the reasons recorded for initiation of reassessment proceedings in this case for AY 2012-13 are not tenable in law and fail to satisfy the conditions prescribed under section 147 of the Act. He submitted that the first proviso to section 147 of the Act provides that where assessment has been completed under section 143(3) of the Act, reassessment after expiry of four years from the end of the relevant assessment year can be initiated only if income has escaped assessment due to:

- Failure on part of the assessee to furnish return/ relevant information under section 139 or 142(1) or 148 of the Act, or
- Failure on part of the assessee to disclose fully and truly all material facts necessary for making assessment.

7. He further submittedthat the tax return has been duly assessed under section 143(3) of the Act, no re-assessment proceedings can be initiated after the expiry of 4 years from the end of the relevant AY, unless it can be demonstrated that the taxpayer has failed to disclose fully and truly all material facts necessary for the purpose of his assessment for year under consideration.

8. It is submitted that the notice under section 148 of the Act for subject assessment years was issued without there being any existence of new tangible material being brought on record by the AO, referred to page 70 to 73 of paper book. He submitted that it is pertinent to note that the assessee had received subsidy income during the relevant assessment year and the same was clearly evident from the submissions made before the TPO/AO during the course of original assessment proceedings under section 143(3) of the Act. Further, he submitted that since the returned income of the assessee was accepted during the course of original assessment proceedings, it can be concluded that AO has initiated the proceedings under section 147 of the Act merely due to change in opinion, as the basis on which reassessment under section 147 has been initiated was substantiated by the assessee during the course of original assessment before the AO/TPO. Without prejudice to the above, it is submitted that the assessee had truly disclosed all primary facts relating to subsidy income as an international transaction through the following:

a) The details regarding international transaction entered by the assessee during the subject assessment year filed before the TPO vide submission dated April 22, 2015 during the assessment proceedings (**refer pages 86 to 88 of paper book)**.

b) Form 3CEB filed by the assessee for the subject assessment year clearly included details regarding the international transaction of receipt of subsidy income from Chanel Hongkong (**refer pages 164 to 174 of paper book)**

c) The transfer pricing study report of the assessee was submitted before TPO which contains details regarding the international transactions of the assessee with the Associated Enterprises ("AEs") along with the benchmarking for the subject assessment year (**refer pages 89 to 163 of paper book)**.

d) The distribution agreement dated January 01, 2005 entered by the assessee with Chanel Hongkong are submitted before TPO refer (**pages 201 to 211 of paper book.)**

9. He submitted that the apex Court in the case of ***CIT vs Kelvinator of India Ltd. (supra)*** held that even in case of assessment which is sought to be re-opened within a period of four years from the end of relevant assessment year, the concept of change of opinion is not given a go-bye. Further he placed relianceon the following case laws wherein it was held by the Courts that issuance of notice under section 148 of the Act would be without jurisdiction in the absence of any new or tangible material in a case where assessment was completed earlier under section 143(3) of the Act:

- Godrej Projects Development (P.) Ltd. v ITO: [2024] 159 taxmann.com 32(Bombay)
- Jagat Jayantilal Parikh vs. DCIT: [2013] 355 ITR 400 (Guj)

10. In this regard, it is submitted that the AO, in the reasons recorded for reopening, has not pointed out as to what additional fact or new material has surfaced in the assessment of subsequent year which was not earlier made available or disclosed by the assessee so as to enable the AO to issue notice under section 148 of the Act. Further, the AO in the reasons recorded, has also nowhere mentioned that there was failure on the part of the assessee to not fully disclose all material facts.

11. He submitted that the AO has erred in initiating reassessment proceedings based on a mere change of opinion, which is impermissible under section 147 of the Act. As stated above, it is submitted that during the course of original assessment proceedings under section 143(3) of the Act, the assessee had fully disclosed all primary and material facts, including the transaction relating to subsidy income, in the return of income, Transfer Pricing Study Report, and Form 3CEB. Thus, the issue forming the basis of reassessment was already examined and consciously accepted during the original assessment proceedings and AO did not record any new material and facts while issuing notice under section 148 of the Act. He submitted that it is a settled principle of law that the power of reassessment cannot be exercised to review or revisit an issue which has already been examined, merely because the AO now holds a different view on the same set of facts and such an exercise amounts to a change of

opinion, which is beyond the scope of section 147. He submitted that in the present case, the reasons recorded for reopening do not refer to any new tangible material coming into the possession of the AO subsequent to the completion of assessment and the reopening is based solely on the same material already available on record, which has been re-appreciated by the AO. Accordingly, He submitted that the impugned reassessment proceedings are nothing but a review in the guise of reassessment, which is not permissible in law.

12. He relied on the decision of Hon'ble Delhi High Court in the case of ***CIT vs. Usha International Ltd. (2012) 348 ITR 485***, wherein it has held as under:

> *"The expression "change of opinion" postulates formation of opinion and then a change thereof... In the context of assessment proceedings, it means formation of belief by an Assessing Officer resulting from what he thinks on a particular question. It is a result of understanding, experience and reflection. A distinction must be drawn between erroneous application / interpretation / understanding of law and cases where fresh or new factual information comes to the knowledge of the Assessing Officer subsequent to the passing of the assessment order.....The said principle would apply even when there is no discussion in the assessment order but where the Assessing Officer had applied his mind. A wrong decision, wrong understanding of law or failure to draw proper inferences from the material facts already on record and examined, cannot be rectified or corrected by recourse to reassessment proceedings. Assessee is required to disclose full and true material facts and need not explain and interpret law. Legal inference has to be drawn by the Assessing Officer from the facts disclosed. It is for the Assessing Officer to understand and apply the law."*

13. He further submitted that Hon'ble Delhi High Court in the case of CIT v/s. Eicher Ltd. (2007) 294 ITR310, has held as under:-

> *"16. If the entire material had been placed by the Assessee before the Assessing Officer at the time when the original assessment was made and the Assessing Officer applied his mind to that material and accepted the view canvassed by the Assessee, then merely because he did express this in the assessment order, that by itself would not give him a ground to conclude that income had escaped assessment and, therefore, the assessment needed to be reopened. On the other hand, if the Assessing Officer did not apply his mind and committed a lapse, there would be no reason why the Assessee should be made to suffer the consequences of the lapse."*

14. In view of the above, he submitted that the initiation of reassessment proceedings under section 147 of the Act is bad in law, without jurisdiction, and liable to be quashed. He further submitted that in view of the above, since, in the instant case, the notice under section 148 of the Act and that too without there being any new or fresh tangible material coming in the possession of the AO, assessment deserves to be quashed.

15. Grounds No.6 to 11 are with regard toaddition on account of treating subsidy income received by the Assessee as non-operating in nature (INR 3,08,28,457). At the time of hearing, ld. AR of the assessee brought relevant facts relating to these grounds and submitted his submissions. He submitted that for the subject assessment year, the assessee acts as a distributor in India for the range of products manufactured by various Chanel entities. During the year, the assesseeentered into following cross border related entity transactions:

International Transaction	**Description**	**Amount of Transaction**	**Method used**
Purchase of Traded Goods	High end Fashion Products	13,36,70,645	Transactional Net Margin Method("TNMM")
Receipt of Subsidy	Subsidy	3,11,24,885	

16. He further submitted that the aforesaid international transactions are closely interlinked with the overall business operations of the assessee and, therefore, were aggregated and analysed together from an arm's length perspective and the assessee has applied the Transactional Net Margin Method ("TNMM") as the Most Appropriate Method for benchmarking such transactions. Further, he submitted that while computing the Profit Level Indicator ("PLI"), the assessee has treated the subsidy income as operating in nature, considering its direct nexus with the distribution activity and its role as a compensation mechanism to ensure arm's length profitability. Subsequently, he submitted that the TPO during the course of original Transfer Pricing assessment proceedings completed the Transfer Pricing assessment u/s 92CA(3) of the Act and accepted the arm's length nature of international transactions entered into by assessee including the nature of subsidy income being operating and adopted aggregated approach and referred pages 79 to 80 of paper book. He submitted that thereafter, notice u/s 148 of the Act was issued on March 30,2019 by the AO where while computing PLI of the assessee the subsidy amount of INR 3,11,24,885 excluded being non-operational income and adopting segregation approach for benchmarking

the international transaction of receipt of subsidy and referred pages 70 to 73 of paper book.

17. Ld. AR submitted that the assessee is a subsidiary of Chanel International BV. It acts as a distributor which sells goods in the India market pursuant to the overall strategic guidance and supervision of its AE, which is responsible to frame the broad strategy in relation to marketing and pricing of the products for sale in India market and the assessee acts as a routine distributor which is remunerated by its AE at an arm's length level of net profitability percentage. He submitted that the assessee operates as a Distributor of Chanel's products in India and it gets support from its AE in case it is not able to meet its unabsorbed cost as per the inter- company agreement of the assessee and its AE. Such unabsorbed costs would be due to the start-up nature of the distributor's business and referred pages 201 to 211 of paper book. He further provided rrelevantextract of the agreement which isreproduced below:-

> " *....(c) Chanel recognizes that Distributor may be required to incur significant unabsorbed costs during the initial years. Such unabsorbed costs would be due to the start-up nature of the Distributor's business in the Territory as well as market conditions prevailing in India. Chanel agrees to reimburse such costs during the initial term of this Agreement. The costs to be reimbursed will be determined based on mutually acceptable methodology. The amount to be paid by Chanel Distributor will be estimated on a quarterly basis with adjustment to be made after the finalization of the year0- end financial accounts."*

18. He submitted that it is evident that the subsidy is paid to Chanel India pursuant to the distribution agreement entered between the assessee and its AE. The subsidy is paid by the AE to ensure that the assessee earns an arm's length level of mark-up for its distribution activity. He further submitted that the said subsidy is not a one-time exceptional payment and is routinely paid by the AE to the assessee to compensate it in case it earns less than the net level profitability as per the transfer pricing policy between the assessee and its AE.

19. Further, he brought to our notice that the auditor of the assessee has also treated subsidy income operating in nature and accordingly mentioned under the head 'other operating revenue' in the note 15 of the financial statement for FY 2011-12. The relevant extract from the financial statement of the assessee from the relevant financial year is also provided below for your reference:

Note	Particulars	For the year ended 31 March, 2012	For the year ended 31 March, 2011
		Rupees	Rupees
(i)	**Sale of traded goods comprises:**		
	Fragrance and Beauty products	10,45,67,620	8,35,25,114
	Fashion products	10,57,74,555	7,33,07,030
	Total - Sale of traded goods	21,03,42,175	15,68,32,144
(ii)	**Other operating revenues comprise:**		
	Subsidy from Chanel Ltd Hongkong	3,11,24,885	6,73,84,505
	Total - Other operating revenues	3,11,24,885	6,73,84,505

20. He submitted that Hon'ble Delhi High Court also in the case **of Sony Ericsson Mobile Communications India Pvt. Ltd. (ITA No. 16 of 2014)** stated that when AO/ TPO bifurcates or segregates the packaged transaction as declared by the assessee, he must conduct the exercise, rationally and objectively. The relevant extract of the case is placed below for reference:

> *"146. Whether higher net profit rate would indicate lower or reduced purchase price, we observe is a question of fact and not law. Subsidy paid could account for the bundled transaction, including the entire set of transactions included. The final finding should be reasoned and analytical. It should be sound as per mathematical and accountancy principles. In case of a package or bunched transaction, this would require forthright and rigorous examination. If bifurcation is legitimate and mandated, apportionment should proceed on accurate and punctilious manner which is fair and reasonable. When the Assessing Officer / the TPO bifurcates or segregates the packaged transaction as declared by the assessed, he must conduct the exercise, rationally and objectively."Basis on the above demonstrates that the international transactions of purchase of goods and receipt of subsidy income are integral part of the business operations of the assessee emanating from the same agreement and therefore the profitability of the distribution activity cannot be examined by treating the subsidy income as non-operating while computing the profitability of the assessee.*

<u>Judicial Precedent upholding the nature of subsidy income as operating</u>

21. He further placed reliance on the judgments pronounced by various ITATBenchess and High Courts upholding that the subsidy income is an integral part of overall activities undertaken by assesseeand should be aggregated for determining the arm's length price of distribution activities performed by it. Accordingly, the approach adopted by the

assessee cannot be rejected.

22. He further submitted that without prejudice to any contention of the assessee, even if TPO treats the subsidy income as an exceptional payment by the AE to protect the losses of the assessee, it is submitted that even then it cannot be denied that the said payment was paid to the assessee to recoup its losses and therefore the same ought to be treated as operational in nature. Reliance in this regard is placed on the ruling of the Hon'ble Pune ITAT in the case of ***Nalco Water India Ltd vs ACIT (2019 111 taxmann.com 194) and MSD Pharmaceutical P Ltd v DCIT (2020 114.taxmann.com 719)***wherein it has been held that subsidy/support payments from AE to compensate losses are operating in nature and must be considered while benchmarking**.**

AO/DRP/TPO have erred in rejecting aggregation approach

23. It is submitted, as CIPL's international transaction of purchase of traded goods and receipt ofsubsidy are closely linked to the distribution activity of CIPL, it would not be appropriate orfeasible to apply the arm's length method on a transaction-by-transaction basis. Therefore, fordetermining the arm's length price, the following international transactions have beenaggregated for benchmarkingand referred pages 119 to 120 of paper book.

24. It is submitted that the international transaction is integral and intrinsically linked to the operation of the distribution activity of the

assessee. Accordingly, the services transaction is closely linked and complementary to the primary activity of the assessee. He submitted that hence, the impugned transaction cannot be evaluated separately from a transfer pricing perspective and was considered to be part of the distribution division of the assessee by adopting a combined transaction approach.

25. He further submitted that the assessee would like to submit that principle of aggregation is a well-established rule in transfer pricing analysis and this principle seeks to combine all closely linked transactions wherein arm's length price can be determined for a number of transactions taken together. The OECD Guidelines also recommend an aggregated benchmarking approach in situations where the underlying transactions are closely linked to the core business operations. Accordingly, the expenses paid the assessee of such training to its AE is integral and closely related to the manufacturing process and products sold by the assessee. Hence, the transaction needs to be benchmarked with other transactions under aggregation approach.

26. Further, he submitted that the above principle has also been upheld by the jurisdictional Hon'ble Delhi High Courtin the case of Sony Ericsson Mobile Communication India Pvt. Ltd (374 ITR 118) wherein it has been stated that:

> *"93…These anomalies arise on account of fact that there was no apportionment and division of the transactional compensation, but the packaged transaction has been bifurcated and divided into two. This position is not acceptable as it is irrational and unsound.*
>
> *137… Aggregation of transactions is desirable and not merely permissible, if the nature of transaction(s) taken as a whole is so inter-related that it will be more reliable means of determining the arm's length consideration for the controlled transactions. There are often situations where separate transactions are intertwined and linked or are continuous that they cannot be evaluated adequately on separate basis. Secondly, the controlled transaction should ordinarily be based on the transaction actually undertaken by the AEs as has been struck by them…."*

27. He submitted that the Assessee, by taking cognizance of the operational nature of the subsidy income, has suo-moto considered the subsidy income received from its AE as taxable in nature and has duly paid income-taxes on the same. He submitted that cconsidering the same, the action of the ld. AO/ TPO leads to undue benefit and double taxation in the hands of the Assessee which is not permitted under the law.

28. Without prejudice to the above, it is further submitted in case your goodself treats the said income as non-operating item by treating the subsidy income as an extraordinary/exceptional item, the Assessee reserves its right to pray for treating the said income as non-taxable in accordance with the principle laid down by the ruling of the Apex Court in the case of ***Siemens Public Communication Network (P) Ltd vs CIT (2017 taxmann.com 22 (SC).***

29. Without prejudice to the other contentions of the assessee, he submitted that even if the Bench Panel considers the subsidy income as non-

operating in nature and works out a transfer pricing adjustment, the subsidy received should be set-off/ deducted from the proposed transfer pricing adjustment.In this regard, he placed reliance on the decision of Hon'ble Delhi High Court decision of ***Sony Ericsson Mobile Communications India Pvt. Ltd. (ITA No. 16. 2014)*** wherein the Hon'ble court has upheld the principle of set-off of transactions.

30. Further he submitted that from the above contentions and arguments, it is amply demonstrated that the Ld. AO/TPO have erred in treating the subsidy as non-operating in nature and while doing so, have also erred in not appreciating that the said position of the assessee was already accepted in the original TP assessment proceedings. Accordingly, he pleased that the adjustment made by the Ld. AO/TPO should be deleted in its entirety.

31. On the other hand, ld. DR of the Revenue brought to our notice page 5 of the ld. DRP's order, the relevant para 4.24. He relied on the detailed findings of ld. DRP/Assessing Officer on the above two issues.

32. Considered the rival submissions and material placed on record. We observed that the assessment was reopened after expiry of 4 years and as per the settled position of law, in such cases, the AO can reopen the assessment only on the basis of establishing that the assessee had not disclosed fully and truly all the material facts necessary for making assessment. In the given case, the original assessment was already completed u/s 143(3) of the Act

and while recording the reasons, AO has not established the fact that the assessee had not disclosed fully and truly all material facts and also not brought on record any fresh material to reopen the assessment. That being the case, as held in the case of Godrej Projects Development (P.) Ltd.(supra), itwas held that issuance of notice u/s 148 of the Act in absence of any new or tangible materials is without jurisdiction where the assessment was already completed earlier u/s 143(3) of the Act. Further after considering the various material placed on record at the time of original assessment proceedings, the issue of subsidy was already disclosed in the financial statement, which was already considered, not only in the impugned assessment year, but the same subsidy was also disclosed by the assessee in the earlier assessment year, which was duly accepted by the revenue. In our view, initiation of the reassessment proceeding is nothing but change opinion, in the similar facts on record, the Hon'ble Delhi High Court in the case of Usha International Ltd (supra) held thata wrong decision, wrong understanding of law or failure to draw proper inferences from the material facts already on record and examined, cannot be rectified or corrected by recourse to reassessment proceedings. Assessee is required to disclose full and true material facts and need not explain and interpret law. Further in the case of Eicher Ltd (supra), it was held that If the entire material had been placed by the Assessee before the Assessing Officer at the time when the original assessment was made and the Assessing Officer applied his mind to that material and accepted the view canvassed by the Assessee, then merely because he did express this in the assessment order, that by itself would not give him a ground to conclude that income had escaped assessment. After considering the entire facts on record, in our view, the AO had not established that there is failure on the part of the assessee to disclose fully and truly all material facts necessary for making assessment particularly the case was reopened after expiry of the 4 years. Hence, the assessment reopened is beyond jurisdiction and we only infer that it is out of change of opinion.

33. Further on merits of the case, we observed that the assessee is a distributor in India for the range of high end Fashion products manufactured and supplied by Various Chanel Group entities. In this regard the assessee had filed transfer pricing documents by bench marking on the basis of TNMM as MAM, by computing PLI by treating the subsidy received from its AE as operating income for the reason that it has direct nexus with the distribution activities. The same was in nature of compensation to ensure profitability on the basis of line of products it is into i.e., it is high end fashion products. It is in the nature of compensationfor the reason that the sales are being monitored by AE and when the assessee failed to reach the expected target in the initial year of operation, the assessee was compensated for the unabsorbed costs. It forms part of the distributor agreement, which is placed at pages 201 to 211 of the paper book. However, the AO/TPO had treated

the same as non-operating revenue and made the adjustment to the ALP. Further we noticed that the subsidy is not one time award to the assessee but it is awarded routinely on the basis of performance each year and compensated based on yearly of performance. We noticed that even in the previous AY, the assessee was compensated and the AO had accepted the same (refer para 19 above). In our view, when it is compensated on the basis of performance of sales, it can only be operating income, it cannot be treated as non-operating income. Further, we observed that in the case of ***Nalco Water India Ltd (supra) and MSD Pharmaceutical P Ltd (supra)***wherein it has been held that subsidy/support payments from AE to compensate losses are operating in nature and must be considered while benchmarking**.**Therefore, in the given case, the subsidy received by the assessee is only to compensate for the unabsorbed expenditure, it has direct nexus with the distribution activities, therefore, in our view, the treatment of the above subsidy from the AE is part of the operation and treatment given by the assessee in their books of account is proper. Therefore, the addition made by the AO is accordingly deleted.

34. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on this 27th day of July, 2026.

Sd/-	**sd/**
(VIMAL KUMAR) **JUDICIAL MEMBER**	**(S. RIFAUR RAHMAN)** **ACCOUNTANT MEMBER**

Dated: 27.07.2026
TS

Copy forwarded to:

1. assessee
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT, NEW DELHI