

ANNEXURE

Para No.	Observation
5-7	AR's contentions about Distribution Agreement dated 12/12/05 reproduced, wherein, AR explains how sale and marketing of Advertisement space works and that, Google India is a mere reseller of space
8-9	How "Adword" operates and that, Google India has no control on functioning of "Adword"
14	<ul style="list-style-type: none"> - Google India submits that, ITES is independent of "Adword" activity - Example of South Africa given, wherein, google South Africa ITES relates to conformity of "Adword" with laws of the country, and for this activity, ITES revenue gets generated, etc. - No professional interaction between "ITES" team and "Adword" team - AO linked ITES work with "Adword" team work
15	Google India explained how "Adword" runs
16	DR says, amt. paid by Google India to Google Ireland is for license to use IPR
18	Distribution Agreement grants Google India access to confidential information of GIL. Google India can use the IPR, hence, amt paid for such use of IPR is Royalty as per S. 9(1)(vi) & DTAA
19 - 21	DR submits that, search engine & all related products, being IPR of Google Ireland, are patented and Google India has right to use the same and that is how and why, Google India can provide services to Advertisers.
22 + 23	DR submits that sale of space by Google India pre-supposes use of IPR
23 - 27	Process + Equipment + Trademark use is made by Google India when right to use search engine and related IPRs, is granted, as per the DR
31 + 32 + 33	<p>Rejoinder by Google India stating that,</p> <ul style="list-style-type: none"> - Neither Google India nor the Advertisers are the actual users of the "Adword" search engine. Users of the "Adword" phenomenon may or may not exist in India. - ITES agreement separate from Distribution Agreement

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34	AR relies on TAG view that Advertisement revenue is not Royalty
35-37	AR also submitted that, customers after sales services is a routine function for Google India and that, considering the presence of NDA & confidentiality clause in ITES & Distribution Agreement, there is no any use of IPRs of GIL for their commercial exploitation .
38 + 39	<p>Further analysis of Honourable ITAT, considering data / information in public domain.</p> <p>“Adword” functioning explained (especially, click-based mechanism and how consideration gets decided for the Advertisers, etc.)</p> <p>Example of a Bangalore hotel booking given to suggest ad to how, dynamic marketing keeps happening automatically</p>
39 – 51	Dynamic marketing process; considering the time zones, preferences, habits, wearing choices of users, etc. explained with examples. Also explained, how dynamic marketing gets optimised and focused with positive and negative stipulations, etc.
52 + 53	ITAT held that, the agreement between Google India & Google Ireland is not one of sale of Ad-space but one of facilitation of display and advertisements to users
54 – 59	ITAT further held that, since, Google Ireland shares data & search engine IPRs with Google India, obligations of distribution of space could be met by Google India and hence, linking of the two agreements, as so done by AO is appropriate
60 – 65	ITAT concludes the key issue by observing that, Google India is, in fact, not selling space, but providing services for getting targeted advertising. ITAT also concludes that, both the agreements emanate from a common NAVAL-CORD and without use of confidential data and IPRs, the obligations under Distribution Agreement can’t be met

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66 - 75	ITAT further observed that, in the entire process, GOOGLE <u>trademark</u> also used, <u>process</u> is also deployed, etc.
78- 81	Cases such as eBay + Right Florist + Yahoo + Pinstorm distinguished saying, therein, no access to IPRs to the users, whereas, herein, access to IPRs, etc. exists
82.3	Accordingly, grounds of Google India were dismissed