

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'I-2' : NEW DELHI)**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.4329/Del./2014  
(ASSESSMENT YEAR : 2009-10)**

M/s. Benetton India Private Ltd., vs. DCIT,  
B – 25, Infocity, Sector 34, Circle 2 (1),  
Gurgaon – 122 002 (Haryana). New Delhi.

**(PAN : AAACD1013F)**

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DCIT, vs. M/s. Benetton India Private Ltd.,  
Circle 2 (1), B – 25, Infocity, Sector 34,  
New Delhi. Gurgaon – 122 002 (Haryana).

**(PAN : AAACD1013F)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Shri Atul Jain, CA  
REVENUE BY : Shri H.K. Choudhary, CIT DR

Date of Hearing : 09.10.2017  
Date of Order : 27.10.2017

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Present cross appeals filed by the assessee as well as by the revenue are being disposed off by way of consolidated order to avoid repetition of discussion.

2. The Appellant, M/s. Benetton India Private Limited (hereinafter referred to as 'the taxpayer') by filing the present appeal sought to set aside the impugned order dated 20.03.2013, passed by the AO in consonance with the orders passed by the Id. CIT (A)/TPO under section 143 (3) read with section 144C of the Income-tax Act, 1961 (for short 'the Act') qua the assessment year 2009-10 on the grounds inter alia that :-

*“The Appellant respectfully submits as under :*

***Transfer Pricing ("TP") Adjustment - Reimbursement of Software Costs (INR 69,59,814)***

***1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding TP adjustment on account of reimbursement of software costs by the Appellant to its Associated Enterprise ("AE"), namely Bentec S.p.A.***

***2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in summarily rejecting Appellant's objections and disregarding the materials placed on record.***

***3. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not adhering to the principles of natural justice by not affording sufficient opportunity to the Appellant of being heard and place on record the required details and clarifications.***

***4. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in disregarding the findings arrived at by his office for the immediately preceding Assessment Years (' A Y s') although the***

***underlying facts were the same in the relevant A Y, thereby disregarding the principle of consistency.”***

3. The Appellant, Deputy Commissioner of Income-tax, Circle 2 (1), New Delhi (hereinafter referred to as ‘the Revenue’) by filing the present appeal sought to set aside the impugned order dated 20.03.2013, passed by the AO in consonance with the orders passed by the Id. CIT (A)/TPO under section 143 (3) read with section 144C of the Income-tax Act, 1961 (for short ‘the Act’) qua the assessment year 2009-10 on the grounds inter alia that :-

***“1. On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in deleting the adjustment on account of expatriate cost.***

***2. Holding that there was no meaning full analyses/evidence produced by the TPO to hold that the entire royalty payment should be reduced to Zero and consequently deleting the addition of Rs.13,57,77,031/- made on this point.”***

4. Briefly stated the facts necessary for adjudication of the controversy at hand are : Benetton India Private Limited (BIPL) is a wholly owned subsidiary of Benetton International NV, Netherlands which is also a subsidiary of Benetton Group SPA, Italy. The taxpayer is into the business of production and sale of readymade garments in the name and style of ‘Benetton’ in India and for this purpose, it imports certain garments and accessories for sale at its outlets. The taxpayer also export finished goods

manufactured by it to Benetton Group entities on regular basis and it assisted Benetton SPA in acquiring garments and other finished products from third party vendors in India. The taxpayer has entered into a technical know-how agreement by paying royalty at 4.8% on domestic sale of goods which are manufactured and sold through franchises. In case of goods manufactured and sold through its own outlets, the taxpayer paid royalty at 2.4% of the same but the taxpayer has not paid any royalty qua the goods which are not manufactured but are traded by the taxpayer.

5. During the year under assessment, the taxpayer entered into international transactions as under :-

<i>International transactions</i>	<i>Method</i>	<i>Value (in INR)</i>
<i>Import of finished goods</i>	<i>CUP</i>	<i>217045853</i>
<i>Export of finished goods</i>	<i>TNMM</i>	<i>28499298</i>
<i>Receipt of commission for sourcing activities</i>	<i>TNMM</i>	<i>107500323</i>
<i>Payment of royalty</i>	<i>CUP</i>	<i>83015291</i>
<i>Import of raw material</i>	<i>CUP</i>	<i>11767929</i>
<i>Reimbursement of expenses by AEs</i>	<i>CUP</i>	<i>12727600</i>
<i>Reimbursement of expenses to AEs</i>	<i>CUP</i>	<i>76431330</i>

6. TPO / CIT (A) have made Transfer Pricing adjustment to the tune of Rs.69,59,814/- on account of reimbursement of software cost by the taxpayer to its Associated Enterprises (AE), namely,

Benetton SPA on the ground that price of the intra-group services relating to expatriate salary and software cost royalty transaction in uncontrolled condition is treated as NIL under CUP.

7. TPO further made adjustment of Rs.8,30,15,291/- on account of royalty transaction on the ground that the value of royalty transaction in uncontrolled condition is treated as NIL under CUP and in the absence of any substantive material, benefit has accrued to the taxpayer. TPO held all other transactions at Arm's Length Price (ALP).

8. The taxpayer carried the matter before the Id. CIT (A) who has deleted the addition of Rs.8,30,15,291/- on account of transfer pricing adjustment qua royalty paid to AE by following decision of his predecessors for AYs 2007-08 and 2008-09. Ld. CIT (A) however deleted the TP adjustment of Rs.69,59,814/- on account of reimbursement of software cost by the taxpayer to its AE, namely, Benetton SPA. Feeling aggrieved, both the taxpayer as well as the Revenue have come up before the Tribunal by way of filing the present cross appeals.

9. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

**ITA NO.4329/DEL/2014 (ASSEESSEE'S APPEAL)****GROUND NO.1, 2, 3 & 4**

10. Assessee claimed to have received information technology from its AE in the form of assistance in Computer Aided Design Techniques, Orchidie, Iris, Citrix & Rtbenet etc. which were used by BIPL in its manufacturing process. AE charged BIPL for use of above software on cost-to-cost basis. The software provided BIPL the benefit of economies of scale as the subscription of such software was a costly affair. This fact has not been denied by TPO who has made adjustment on this ground on the grounds inter alia that the taxpayer has failed to prove the benefits derived from the software activities; that it has failed to furnish no cost benefit analyses nor any documentation proof has been furnished to support claim for receipt of services nor the assessee has furnished proof of any tangible benefits for the use of software services. The Id. CIT (A) also upheld TP adjustment made by the TPO. The taxpayer has provided complete detail to the TPO as to the function performed and software provided by the AE, available at page 185 of the paper book.

11. Ld. AR for the taxpayer contended that the transaction as to reimbursement of third party cost paid to the AE is not on account

of payment for any intra-group services; that it is not necessary that the expenditure incurred by the taxpayer results in direct and tangible benefits for the spender; that it is prerogative of the taxpayer / businessman to enter into any transaction for its business and relied upon the decision rendered by Hon'ble Delhi High Court in case of *CIT vs. EKL Appliances Ltd. – TS-206-HC-2012 (DEL)-TP*. The Id. AR for the taxpayer further contended that the issue in controversy has already been decided by the *coordinate Bench of the Tribunal in taxpayer's own case for AY 2007-08*.

12. However, on the other hand, the Id. DR for the Revenue relied upon the order passed by TPO/ CIT (A).

13. The coordinate Bench of the Tribunal upheld the findings of Id. CIT (A) returned in favour of the taxpayer qua the identical issue on the premise that it is settled principle of law that certain transactions entered into by the taxpayer for business expediency need not necessarily attract financial benefits. In such cases, Revenue cannot dictate its term that certain transactions should not be entered into. Even otherwise, there is no data available with the Revenue that the CUP value of the transaction would be NIL nor any comparable has been taken where such adjustment on account of reimbursement of software cost or reimbursement of expatriate cost as the case may be has been taken as NIL.

14. Moreover keeping in view the concept of “*there is no free lunch*” a third party shall not charge anything for providing services. TPO as well as CIT (A) have not disputed the incurring of the software cost. Even otherwise, rule of consistency is required to be followed by the Revenue particularly when there is no change in facts and circumstances of the case. When the Revenue has extended relief to the taxpayer in AY 2007-08 and 2008-09 the Id. CIT (A) had no reason to decline the same qua the year under assessment. The Revenue has also accepted same transaction at arm’s length in AY 2011-12 and 2012-13.

15. In view of what has been discussed above, CIT (A) has erred in upholding the TP adjustment on account of reimbursement of software cost by the assessee to its AE. Consequently, grounds no.1, 2, 3 & 4 are determined in favour of the assessee.

### **ITA NO.4229/DEL/2014 (REVENUE’S APPEAL)**

#### **GROUND NO.1 & 2**

16. The taxpayer claimed to have paid royalty to Bencom S.R.L. (Bencom) for manufacture of garments and accessories and stated to have furnished the details of intangibles provided by Bencom to the taxpayer before TPO as is mentioned in para 11.4 of the TP order. TPO treated an amount of Rs.8,30,15,291/- as adjustment

u/s 92CA on account of value of the royalty transfer in uncontrolled condition at Rs.NIL under CUP. However, ld. CIT (A) deleted the addition by following the decision of his predecessors rendered in assessee's own case for AYs 2007-08 & 2008-09 which have already been affirmed by the coordinate Bench of the Tribunal.

17. The ld. CIT (A) has thrashed the issue threadbare and has come to the conclusion that in the transfer pricing study qua payment of royalty to Bencom, the taxpayer benchmarked the same by using CUP method. The taxpayer has used both internal as well as external comparables to benchmark royalty payment and in fact, for internal payment relied upon technical know-how payment between Bencom and third party based in Syria where licence fee has been paid @ 6% of the net sales.

18. Ld. CIT (A) also discussed the benefit of technical know-how to the taxpayer. Moreover, when the Revenue has been continuously deciding the royalty payment issue in favour of assessee since AY 2007-08 on the basis of same Agreement between assessee and Bencom and there is no change in the business model and facts and circumstances of the case, the rule of consistency is required to be followed by the Revenue. So, we are of the considered view that ld. CIT (A) has rightly deleted the

addition of Rs.13,57,77,031/- made by the AO on account of royalty payment to its AE. So, we find no ground to interfere in the impugned order passed by the Id. CIT (A) qua deletion of royalty payment. Consequently, grounds no.1 & 2 are determined against the Revenue.

19. Resultantly, the appeal filed by the assessee is allowed and the appeal filed by the Revenue is dismissed.

**Order pronounced in open court on this 27<sup>th</sup> day of October, 2017.**

**Sd/-  
(N.K. SAINI)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 27<sup>th</sup> day of October, 2017  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**