

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री अनिल चतुर्वेदी, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
BEFORE SHRI ANIL CHATURVEDI, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No. 376/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Spicer India Private Limited,  
(Formerly known as Spicer India  
Limited),  
29 Milestone, Pune-Nashik Highway,  
Village : Kuruli, Tal: Khed,  
Pune-410 501  
PAN : AAECs1869C

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Assistant Commissioner of Income Tax,  
Circle-10,  
Pune.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 826/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

The Assistant Commissioner of Income Tax,  
Circle-10,  
Pune.

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Spicer India Private Limited,  
(Formerly known as Spicer India  
Limited),  
29 Milestone, Pune-Nashik Highway,  
Village : Kuruli, Tal : Khed,  
Pune-410 501  
PAN : AAECs1869C

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.D. Onkar  
Revenue by : Shri Rajeev Kumar, CIT

सुनवाई की तारीख / Date of Hearing : 07.02.2018  
घोषणा की तारीख / Date of Pronouncement : 09.02.2018

### **आदेश / ORDER**

#### **PER VIKAS AWASTHY, JM**

These cross appeals by the assessee and the Department are directed against assessment order dated 26.02.2016 passed u/s.143(3) r.w.s 144C(13) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The brief facts of the case as emanating from records are: The assessee company is engaged in the business of manufacture, assemblies and sale of auto components. During the period relevant to assessment year under appeal, assessee entered into international transactions with its Associate Enterprises (AE). Reference u/s.92CA(1) of the Act was made to the Transfer Pricing Officer (TPO) for computation of the Arm's Length Price (ALP) in relation to the international transactions entered into by assessee with its AE. The TPO vide order dated 29.01.2015 made adjustment of Rs.14,54,45,173/- in respect of Royalty payment to its AE, Dana Corp., USA. The TPO held that the assessee has failed to show any advantage from the services rendered by Dana Corp., USA, therefore, payment of royalty is not justified and took the ALP of royalty payment as 'Nil'. The Assessing Officer in line with the order of TPO passed draft assessment order on 30.03.2015. Further, the Assessing Officer made addition of Rs.2,25,00,000/- on account of warranty provision and disallowed management services fees of Rs.14,54,45,173/- paid to Asia Investment Pvt.

Ltd., a group concern of the assessee. The Assessing Officer held that services rendered by the Asia Investment Pvt. Ltd. are general in nature. The assessee has not been able to substantiate the reason for making such huge payment. The assessee has also not been able to show through cogent evidence, services rendered by Asia Investment Pvt. Ltd.

3. Aggrieved by the additions made by Assessing Officer and TPO, the assessee filed objections before the Dispute Resolution Panel (DRP). The DRP vide directions dated 30.12.2015 deleted the transfer pricing adjustment in respect of royalty payment, as well as, addition made by the Assessing Officer in respect of warranty provision. However, in respect of management services fees Rs.14,54,45,173/- paid to Asia Investment Pvt. Ltd, Indian Associate of the assessee, the DRP confirmed the disallowance. In line with the directions of DRP, the Assessing Officer passed impugned assessment order confirming addition of Rs.14,54,45,173/- on account of management services fees. Against the assessment order dated 26.02.2016 and findings of the DRP, both, the assessee and the Revenue are in appeal before the Tribunal.

3.1 The assessee in its appeal has raised two grounds. Both the grounds are directed towards single addition i.e. on account of disallowance of management services fees Rs.14,54,45,173/-.

The Department in its appeal has raised six grounds. The ground Nos. 1 to 4 are directed towards deleting addition on account of payment of Royalty to Dana Corp., USA. In grounds nos. 5 and 6, the Revenue has assailed deleting of addition on account of warranty provision.

4. Shri R.D. Onkar appearing on behalf of assessee submitted at the outset that grounds raised by assessee in its appeal and ground No. 1 to 4 raised by the Department against allowing of payment of royalty to Dana Corp., USA are squarely covered by the decision of Tribunal in cross appeals in assessee's own case i.e. ITA No.251/PUN/2014 and ITA No.1327/PUN/2014 for assessment year 2009-10 decided on 10.02.2017.

4.1 The ld. AR submitted that identical issues had come up in cross appeal before the Tribunal in assessment year 2010-11 i.e. ITA No. 1321/PUN/2015 and ITA No. 1350/PUN/2015 decided on 27.10.2017. The Co-ordinate Bench of Tribunal by following the decision in earlier assessment year granted relief to the assessee. The ld. AR placed on record copy of order of Tribunal for assessment year 2009-10 and 2010-11. The ld. AR stated at the Bar that there has been no change in the facts and circumstances of the assessment year under appeal. The nature of transactions are identical and are emanating from same set of agreements between assessee and AEs.

4.2 In respect of ground No. 5 and 6 raised in appeal by Department, the ld. AR submitted that the assessee is engaged in the business of manufacture of fully assembled light axles and drive shafts and components thereof used in Sport Utility Vehicles (SUVs) and Light Commercial Vehicles (LCVs) manufactured by Original Equipment Manufacturers (OEMs). The sale order of the customers invariably has a clause regarding warranty and sales invoice price includes warranty as part of cost of goods sold. The assessee employs mercantile method of accounting and provides for warranty liability at 0.3% of sales based on scientific analysis of past data and represents a reliable estimate of liability arising out of sales made during the relevant previous year. The ld. AR asserted that assessee qualifies the test laid down by Hon'ble Supreme

Court of India in the case of Rotork Controls India P. Ltd Vs. CIT reported as 314 ITR 62. The DRP has granted relief to the assessee by following the law laid down in the case of Rotork Controls India P. Ltd (supra).

5. On the other hand, Shri Rajeev Kumar representing the Department vehemently supported the findings of TPO in making adjustment in respect of Royalty payment to Dana Corp., USA. However, the ld. DR fairly admitted that issue relating to payment of Royalty and payment of management services fees has been considered by Tribunal in assessee's own case in assessment year 2009-10 and 2010-11.

6. We have heard the submissions made by representatives of rival sides and have perused the orders of Authorities below. We have also considered the decisions on which the ld. AR has placed his reliance.

First, we will take the appeal of assessee. The assessee in its appeal has assailed disallowance of management services fees Rs.14,54,45,173/- paid to Asia Investment Pvt. Ltd. We find that identical ground was raised by assessee in its appeal in ITA No. 251/PUN/2014 (supra). It is an undisputed fact that facts and circumstances in the present appeal are identical to the facts in assessment year 2009-10. Management services fees has been paid under Corporate Services Agreement dated 14<sup>th</sup> December, 2004 and renewed thereafter, to be effective till 31<sup>st</sup> December, 2015. The said agreement is at page 229 to 237 of the paper book. The assessee under the said agreement availed support services in respect of human resources, environment, health & safety, business development, marketing, finance, legal and taxation and secretarial etc. Management services fees is paid to Asia Investment Pvt. Ltd at the rate 2.85% of sales. It has been contented that tax at source has been deducted in

respect of said payment. The Co-ordinate Bench of Tribunal while deciding this issue in favour of assessee for assessment year 2009-10 held as under:

*“23. We have heard the rival contentions and perused the record. The corporate issue raised by the assessee is against the disallowance of management fees paid by the assessee. The assessee had entered into an agreement with AIPL dated 14.12.2004. The said concern was engaged in providing professional and management services to the assessee. The assessee has enlisted benefits received by it by making the said payment of management fees to AIPL which are as under:-*

- *Human Resource: AIPL consistently provided Human resource services like education / trainings services with the intention of developing a talent pool, by educating, training, and developing a chain of employees who are slated to take over the baton of future leadership. Further, AIPL advised SIPL based on survey output like Compensation Survey, supported in forming HR policies like performance management system etc., supported on Setting-up and deploying the Operating Engineering Model concept across SIPL.*
- *Business Development, Marketing and Distribution: Services like conducting presentations on latest technologies at client location, meeting with key customers to generate opportunities for SIPL, supporting in participation at various business events etc. This support from AIPL resulted in increased turnover year on year as well as boost in aftermarket sales as provided vide submission dated 26 March 2013 before the learned AO.*
- *Finance: AIPL's strong corporate relationship with leading lending institutions, commercial banks, insurance companies supported SIPL in arranging and availing long term funds and short term working capital needs at competitive rates, covering foreign exchange exposure risk, negotiating quotes for Insurance as well as reviewing and advising for risk coverage etc.*
- *Legal and taxation: In accordance with frequent changes in various Acts and Rules in Direct and Indirect Tax Laws and various other laws, AIPL supported in advising from time to time with regard to changes which helped SIPL to comply with all the laws and regulations.*
- *Operational overview: AIPL conducted periodic operation review meetings to drive the performance of SIPL and supported for excelling the operations. In addition to that, advisors drawn from diverse fields were available for advising SIPL in the matters of strategic issues, key business decisions, organizational market development and global trend.*
- *Operational Excellence Drive: As the main focus was on competence with global benchmark, AIPL initiated various programs with an objective which directly benefited SIPL to manufacture based on the requirement of market/ customers, focus flow, stable production across all tiers, less fluctuated delivery requests etc.*
- *Facilities: SIPL used facility set up of AIPL which is well equipped for their board meetings and meetings with overseas visitors and also other facilities like transit facilities for the stay of employees of client companies etc.*
- *Support in New Manufacturing Facility Set-up and expansions: AIPL supported in setting up new facilities for SIPL in terms of preparation of feasibility study, effective planning and execution for new project / manufacturing facility, monitoring controlling on capital spent and in executing cost effective contracts, etc.*

- Government liason: Assisted SIPL to have effective interaction with various Government agencies, Ministry and Trade Chambers of Commerce etc.
- Corporate relations and communications: Continuous corporate communication department with contracts with media and brought out a quarterly corporate publication which helped SIPL in branding and publicity.
- Strategic sourcing: Supported in vendor development and defining strategy for sourcing commodities or materials through various activities.
- Environment, Health and Safety: AIPL supported in forming group environment policies which laid down the actions expected from employees and various green initiatives.
- Standards of services with business code of conduct: AIPL deployed Business code of conduct in confirmation with standards of services and made available ethics helpline to report non-compliances.”

24. In the facts of the present case, the assessee was paying Royalty to Dana Corporation @ 2.85% and was also paying management fees to AIPL for rendering several types of services at remuneration which was equivalent to the amount of Royalty i.e. 2.85% of sales. The perusal of agreement reflects the nature of services to be provided and the fees to be charged for providing the said services. The majority of support services are being rendered by the said concern to the assessee and the perusal of expenses debited by the assessee reflects that no major expenses have been incurred by the assessee and the benefits flow from AIPL to the assessee. The said benefits were for smooth carrying on of the business by the assessee and were incurred for the purpose of business. The assessee is the best judge to decide the expenditure it needs to incur for smooth carrying on of its business. The Assessing Officer cannot sit in judgment of businessman position in incurring any expenditure. The Hon'ble Supreme Court in Hero Cycles (P) Ltd. Vs. CIT (supra) have applied the ratio laid down by the Apex court in S.A. Builders Ltd. Vs. CIT(A) and another (2007) 288 ITR 1 (SC) and upheld the scope of commercial expediency, wherein it was held that The expression "commercial expediency" is an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation, but yet it is allowable as business expenditure if it was incurred on grounds of commercial expediency. Where there is nexus between the expenditure incurred and the purpose of business, then the revenue cannot put itself in the arm chair of the businessman to decide how much of the expenditure is reasonable. Applying the above said proposition laid down by the Hon'ble Supreme Court, we hold that the expenditure incurred by the assessee on management fees in order to facilitate smooth running of its business is an allowable expenditure in the hands of assessee. Similar expenditure has been allowed in the hands of assessee in preceding year. Another aspect of the issue is that the said management fees is to be taxed in the hands of recipient and even the service tax has been paid by the recipient, evidence of which is placed in the Paper Book. Once the commercial expediency of expenditure is established, then the same is to be allowed as business expenditure in the hands of assessee. We hold so. The ground of appeal No.5 raised by the assessee is thus, allowed.”

Following the decision of Co-ordinate Bench on identical set of facts, we hold the management service fee paid by assessee to Asia Investment Pvt. Ltd is allowable. Thus, the **ground No. 1 and 2 raised by assessee in appeal is allowed.**

7. Now, adverting to the appeal by the Revenue, the ground Nos. 1 to 4 are against deleting of addition on account of payment of Royalty Rs. 14,54,45,173/- to Dana Corp., USA. The Co-ordinate Bench of Tribunal in the ground raised by assessee assailing the addition of entire Royalty paid to AE i.e. Dana Corp., USA in assessment year 2009-10 held as under :

*“48. We have heard the rival contentions and perused the record. The assessee had entered into a Drive Shaft Technology Licencing Agreement and Technology Licence Agreement for axles along with Supplementary Agreement with Dana Corporation, under which for the services and assistance provided by associate enterprises, the assessee was to pay Royalty initially @ 3% and thereafter, @ 2.85%. The copies of agreements are placed at pages 116 to 158 of the Paper Book. The assessee also provided documentation, under which the assessee had received the benefits and assistance from its associate enterprises in relation to the Royalty transaction on account of technical assistance, design, process review and technical know-how, which are placed at pages 201 to 210 of the Paper Book. It was pointed out that associate enterprises supports the assessee in technology upgradation by bringing the latest technology in drive train systems to India. The Assessing Officer referred the issue of computation of arm's length price of the said international transaction to the TPO, who in his order treated the arm's length price at Nil.*

*49. In the facts and circumstances of the present case, the Royalty paid by the assessee to its associate enterprises had been approved by the Secretariat of Industrial Approval, Ministry of Industry, Government of India, vide letter dated 28/31.01.2003 and initially by the RBI @ 3%. However, subsequently, the RBI vide communication dated 21.07.2003 accorded automatic approval route to make the Royalty payment at 8% on exports and 5% on domestic sales without any restriction on the duration of Royalty payments. Thereafter, this rate was reduced to 2.85% by the RBI. The case of the assessee before the TPO was that since the Royalty payments were in terms of approval granted by SIA and RBI, the same were at arm's length price and the assessee placed reliance on CUP method for benchmarking the said transaction of payment of Royalty in this regard. The plea of assessee that the rate approved by the SIA and RBI was to be used as reliable CUP data, was not accepted by the TPO. The TPO on the other hand, rejecting the explanation of assessee of technology supports provided by associate enterprises to the assessee, further held that SIA / RBI were not related to transfer pricing. The TPO stressed that no proper documentation had been brought on record to justify the benefits received by the assessee against payment of Royalty and hence, the Royalty*

*transaction was held to be not at arm's length. The first issue which has been raised before us is against justification of Royalty payment vis-à-vis benefits received by the assessee and whether it was beyond the scope of TPO while determining the arm's length price of said transactions. The second issue raised before us was that the transactions undertaken by the assessee on account of Royalty payment were at arm's length or not.*

*50. The first aspect of the issue is that the assessee has been paying the said Royalty payment from year to year, which has been allowed in the hands of assessee by the TPO without making any adjustment in assessment years 2005-06 to 2008-09. The Assessing Officer had also allowed the claim of assessee. Further, in assessment year 2010-11, it has been allowed by the CIT(A) and in assessment year 2011-12, allowed by the DRP. The second aspect is that whether the rate of Royalty approved by SIA / RBI would constitute CUP data and the transaction is at arm's length price. The Hon'ble Bombay High Court in CIT Vs. SGS India Pvt. Ltd. (supra) has held so. The said proposition has also been laid down by the Mumbai Bench of Tribunal in ACIT Vs. M/s. Dow Agrosciences India Pvt. Ltd. (supra) and it has been held that where the Royalties were paid in terms of approval granted by SIA / RBI, then the same are to be considered at arm's length rate. Following the said proposition laid down by the Hon'ble Bombay High Court in CIT Vs. SGS India Pvt. Ltd. (supra) and Mumbai Bench of Tribunal in ACIT Vs. M/s. Dow Agrosciences India Pvt. Ltd. (supra), we hold that where the payment of Royalty by the assessee to its associate enterprise Dana Corporation is @ 2.85% is liable to be considered at arm's length rate and no addition is warranted on this count. Accordingly, the claim of assessee is thus, allowed. In any case, the jurisdiction and power of TPO is to determine arm's length price of Royalty and the order of TPO holding that the assessee had not derived any benefit under the said Agreement is beyond the scope of TPO while benchmarking the international transaction for the purpose of determining arm's length price. Accordingly, we hold so. The grounds of objections raised by the assessee are thus, allowed. ”*

The DRP granted relief to the assessee by following the order of Commissioner of Income Tax (Appeal) in assessee's own case for assessment year 2010-11. Since, identical issue has already been decided in favour of assessee by the Tribunal in assessment years 2009-10 and 2010-11 and now there is no dispute with regard to similarity in facts and circumstances, there is no reason to take a different view. Accordingly, **ground nos. 1 to 4 raised by the Revenue in appeal are dismissed.**

8. So far as ground Nos. 5 and 6 relating to warranty provision is concerned, the DRP has given categorical finding that provision of warranty made by assessee are based on scientific analysis of the past data and represents a

reliable estimate of obligation arising out of sales made during the relevant previous year. The ld. DR has not been able to controvert the findings of DRP. The Hon'ble Apex Court in the case of Rotork Controls India P. Ltd.(supra) has held that where provision for warranty is made on scientific basis, the same is to be allowed. Thus, in view of well settled law, we find no infirmity in the findings of DRP/Assessing Officer. Accordingly, **ground no. 5 and 6 raised by the Revenue in appeal are dismissed being devoid of any merit.**

9. In the result, appeal of the assessee is allowed and appeal of the Revenue is dismissed.

Order pronounced on Friday, the 09<sup>th</sup> day of February, 2018.

Sd/-  
(अनिल चतुर्वेदी /ANIL CHATURVEDI)  
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-  
(विकास अवस्थी /Vikas Awasthy)  
न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 09<sup>th</sup> February, 2018.

SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-13, Pune.
4. The CIT-IT/TP, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// सत्यापित प्रति // True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.