

**In the Income-Tax Appellate Tribunal,
Delhi Bench '1-2', New Delhi**

**Before : Shri Amit Shukla, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 293/Del/2016
Assessment Year: 2011-12**

Munjal Showa Ltd., 9-11, Maruti Indl. Area, Gurgaon. PAN- AAACM0070D (Appellant)	vs.	DCIT, Circle 17(1), New Delhi. (Respondent)
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Appellant by	S/Sh. Vishal Klara, Ankit Sahni & S.S. Tomar, Advocates
Respondent by	Sh. H.K. Choudhary, CIT/DR

Date of Hearing	11.04.2019
Date of Pronouncement	29.04.2019

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the assessee against the order passed by the Assessing Officer u/s. 143(3) read with sec. 144C(1) of the IT Act dated 31.12.2015 on the following grounds :

1. *That on the facts and in the circumstances of the case, the orders passed by the Learned Assessing Officer ("AO"), Learned Transfer Pricing Officer ("TPO") and Hon'ble Dispute Resolution Panels ("DRP") are bad in law and void ab-initio wherein the returned income of INR 446,451,010 of appellant was assessed at INR 832,024,020.*

Transfer Pricing Grounds

2. *That on the facts and circumstances of the case and in law, the reference made by the AO suffers from jurisdictional error as the AO has*

not recorded any reasons in the assessment order based on which he reached the conclusion that it was "expedient and necessary" to refer the matter to the TPO for computation of the arm's length price, as is required under section 92CA(1) of the Income Tax Act, 1961 ("Act").

3. *That on the facts and in the circumstances of the case, the AO/TPO/ DRP erred on facts and in law in determining the arm's length price of the international transactions of royalty, technical fee and design and drawing fee of the Appellant as nil by not taking cognizance of the business operations of the Appellant and without considering the benefits derived from the technical assistance received and underlying evidence thereof and hence, challenging the commercial wisdom of the Appellant's business operations.*

4. *That on the facts and in the circumstances of the case, the AO/TPO/ DRP erred on facts and in law in determining the arm's length price of the international transaction of payment of royalty amounting to INR 338,946,167 as Nil. The aggregation of transaction as closely linked and intrinsic to the business operations (FAR) of the Appellant and application of TNMM as has been wrongly rejected.*

5. *That on the facts and in the circumstances of the case, the AO/TPO/ DRP erred on facts and in law in determining the arm's length price of the international transaction of payment of Technical service fee amounting to INR 2,140,724 as Nil. The aggregation of transaction as closely linked and intrinsic to the business operations (FAR) of the Appellant and application of TNMM as has been wrongly rejected.*

6. *That on the facts and in the circumstances of the case, the AO/TPO/ DRP erred on facts and in law in determining the arm's length price of the international transaction of payment of design and drawing amounting to INR 44,486,115 as Nil. The aggregation of transaction as closely linked and intrinsic to the business operations (FAR) of the Appellant and application of TNMM as has been wrongly rejected.*

7. *That on the facts and in the circumstances of the case, the AO/TPO/ DRP erred on facts and in law in determining the arm's length price of the international transactions of royalty, technical fee, design and drawing fee of the Appellant as nil by erroneous application of Comparable*

Uncontrolled Price method without furnishing data/details of price charged in any comparable uncontrolled transaction which is in contravention of the provisions of Rule 10B of the Rules.

8. *That on the facts and in the circumstances of the case, the AO/ TPO/ DRP erred on facts and in law in determining the arm's length price of the international transactions of royalty, technical fee, design and drawing fee of the Appellant as nil by not taking cognizance of our detailed submissions/ cost benefit analysis/ workings made to the TPO from time to time during the TP Assessment proceedings.*

Corporate Tax grounds

9. *That on the facts and in the circumstances of the case, the DRP erred on facts and in law in considering the expenditure on account of royalty and technical fee of INR 34,10,86,891 as capital expenditure.*

10. *That on the facts and in the circumstances of the case, the AO has erroneously made an addition amounting to INR 385,573,006 instead of INR 341,086,891, ignoring the fact that the difference amounting to INR 44,486,115, relating to design and drawing fee, has been capitalized by the appellant.*

11. *That in the facts and circumstances of the case, the above fact pattern has already been acknowledged by the AO in his draft assessment order wherein, the AO made an addition amounting to INR 341,086,891, as opposed to INR 385,573,006.*

12. *The AO erred in facts and in law in charging and computing interest under section 234D of the Act.*

13. *That on facts and circumstances of the case and in law, the AO/ DRP has erred in initiating penalty proceedings u/s 271(l)(c) of the Act mechanically and without recording any adequate satisfaction for such initiation.*

The above grounds of appeal are mutually exclusive and without prejudice to each other.

2. The brief facts of the case are that the appellant, Munjal showa Limited was established in 1985 in technical and financial collaboration with Showa Corporation, Japan, the pioneer and leader in the world of Shock Absorbers. The joint venture was brought to India, a world of expertise in design and manufacturing of shock absorbers for all leading two wheelers and four wheelers. Showa is one of the largest suppliers of shock absorbers to major Auto Giants in Japan, USA, Germany UK and other developed markets. Company's products conform to the highest standards of Quality, Safety, Comfort and Dependability. Company's product enjoy wide patronage while serving as original equipment to vehicles like Maruti 800cc, Omni Van, Alto, Esteem, Honda City Car, Complete range of Hero Honda Motor Cycles, Kinetic Honda Scooter, Hero Puch, Hero winner, Hero Majestic and Unicorn.

2.1. For the Assessment Year 2011-12, assessee filed their return of income on 24.11.2011 declaring a total income of Rs.44,64,51,010/-. The case was selected for scrutiny and statutory notices were issued. During scrutiny proceedings, the learned AO found that the assessee has paid a sum of Rs.33,89,46,187/- towards royalty, Rs.21,40,724/- towards technical fee and Rs.4,44,86,115/- towards design and drawing fee put together Rs.38,55,73,006/- as royalty, technical fees and drawing and design fee to its Associate Enterprise (AE). For determination of the arm's length price thereof, learned AO referred the issue to the learned Transfer Pricing Officer.

2.2. Ld. TPO held that no tangible benefit was passed to the assessee and the arm's length price of the above transactions was reduced to nil. Consequently, assessment order was passed by making addition of Rs.38,55,73,006/- on account of transfer pricing issue.

2.3. Assessee filed objections before the learned Dispute Resolution Panel (DRP). Learned DRP, however, affirmed the order passed by the Assessing Officer through direction dated 24.11.2015, thereby rejecting the objections made by the assessee.

3. The assessee, therefore, preferred this appeal on as many as 13 grounds. Ground Nos. 1 is general in nature. Grounds Nos. 2 to 8 relate to the transfer pricing issue and grounds Nos.9 to 11 relate to the treatment of expenditure on account of royalty and Technical fee whether Revenue or Capital in nature. Ground Nos.12 & 13 relate to interest and penalty which are consequential and premature in nature.

4. First, taking the transfer pricing issue, as has been stated above, it relates to the determination of arm's length price of international transactions of royalty, fee for technical services and fee paid for design and drawing fee to the tune of Rs.38,55,73,006/-. At the outset, it is submitted by the learned AR that a similar issue had arisen in the AYs 2007-08 to 2009-10 before the Tribunal and for all these years the issue was answered in favour of the assessee and effects was given to the orders of the Tribunal. The ld. AR further submitted that the same issue has also been decided by the Tribunal in favour of assessee in A.Y. 2010-11 vide order dated 27.06.2018. Learned DR does not dispute this fact.

5. We have gone through the record which includes the orders of the Tribunal for the AYs 2006-07 to 2009-10 and A.Y. 2010-11. Having gone through these orders, we find that the issues involved in this appeal, as noted above, are squarely covered in favour of the assessee by the decision of Co-

ordinate Benches for A.Yrs. 2006-07 to 2010-11. The relevant findings of the Tribunal reached in A.Y. 2010-11 are reproduced below for ready reference :

“8. We have gone through the record which includes the orders of the Tribunal for the AYs. 2006-07 to 2009-10 in ITA No. 1030/Del/2014. For AY 2009-10, a coordinate Bench of this Tribunal dealt with this issue vide ground nos. 2 to 2.6 and while referring to the orders in assessee’s own case in ITA No.4675/Del/2010 and 4242/Del/2011 for AYs 2006-07 and 2007-08 respectively at paras 27 to 39 of the said earlier year orders, it was observed that this issue was decided in favour of the assessee for AYs 2002-03 to 2004-05 also by the Tribunal, appeal against such order preferred by the Revenue before the Hon’ble Delhi High Court was dismissed and in accordance with such orders, the matter had to be remitted to the TPO to decide afresh after providing an opportunity of being heard to the assessee.

9. In the order for the AYs 2006-07 and 2007-08, a coordinate bench of this Tribunal observed as follows:

“28. The assessee’s case is that it had limited right to use the technology of Showa Japan. The ownership / property rights in technical know how continue to be vested in Showa and the appellant has no authorised approval of company to transfer the know how or any technical information to any third party. There is no explicit or implicit authority to transfer or create ownership in the technology, know how/technical information in the appellant. The expenditure of royalty or technical fee did not result with capital asset or a benefit of enduring nature much less in the capital field. The Appellate Tribunal in the case of the assessee for the asstt. Year 1993-94 to 1995-96 and for Asstt. Year 2002-03 and 2004-05 have deleted the similar disallowance. Revenue appeal for asstt. Year 2002-03 and 2004-05 stands dismissed by the Delhi High Court vide its order dated 6.9.2010 in ITA No. 94, 95 & 96/Del/2014.

29. Heard parties. In the peculiar fact-situation and the judgment of the Hon’ble Delhi High Court in the earlier years in assessee’s own case of which, the AO did not have benefit at the time when he passed the order, we consider it appropriate to remit the matter back to him and take decision afresh, in accordance with law by having regard to the aforesaid judgment. Needless to say the assessee may be granted effective opportunity of being heard.”

10. Respectfully following the same, we remand the case to the TPO to decide afresh in tune with the earlier year orders. Ground Nos. 2 to 8 are answered accordingly.”

6. Coming to ground Nos. 9 to 11 pertaining to treatment of expenditure incurred on account of Royalty and technical fee of Rs.34,10,86,891/- whether capital or Revenue in nature, we find that this issue does not emerge from the

final assessment order, as the Assessing Officer has nowhere in the final order decided this issue nor made any addition on this score. Therefore, there remains nothing to challenge before us on this score by the assessee.

7. However, before parting, we find substance in the contention of the assessee that the AO in the final assessment order did not make any disallowance of expenditure on account of royalty and technical fee. The same was, however, made in draft assessment order which was upheld by DRP. The contention of the assessee has also been that even otherwise this issue is also covered by the aforesaid decision of Coordinate Bench for A.Y. 2010-11 whereby in the identical facts it has been held that royalty and technical fee paid is to be treated as Revenue expenditure. In view of attending facts as noted above, in our considered opinion, these contentions cannot be considered at this stage once no such issue or disallowance in relation thereto was made in the impugned order.

8. In view of what has been discussed above, the appeal of the assessee deserves to be partly allowed.

9. In the result, the appeal is partly allowed.

Order pronounced in the open court on 29.04.2019.

Sd/-

(Amit Shukla)
Judicial member

Sd/-

(L.P. Sahu)
Accountant Member

Dated: 29.04.2019

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