

**IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. (TP) No.2296/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2012-13)

GIA India Laboratory Pvt. Ltd. 10 <sup>th</sup> Floor, Trade Centre Bandra Kurla Complex Bandra (E), Mumbai-400051.	<b>बनाम/</b> Vs.	The Income Tax Officer Ward-14(1)(3) Aayakar Bhavan, M.K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCG9457G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Ketan Ved	
Revenue by:	Shri Anand Mohan (DR)	

सुनवाई की तारीख / Date of Hearing: 04/06/2019

घोषणा की तारीख /Date of Pronouncement: 07/06/2019

**आदेश / O R D E R**

**PER AMARJIT SINGH, JM:**

The assessee has filed the present appeal against the assessment order dated 25.01.2017 passed u/s 143(3) r.w.s. 144C(13) of the I.T. Act, 1961(for short 'the Act') for the A.Y.2012-13 in pursuance to the direction of the Dispute Resolution Panel-1 (DRP) Mumbai.

2. The assessee has raised the following grounds: -

*"1 0 Re.: Adjustment of Rs.68,45,62,120/- in relation to international transaction of payment of royalty:-*

*1 : 1 The Assessing Officer / the Transfer Pricing Officer / the Dispute Resolution Panel have erred in holding that the "royalty" paid by the*

*Appellant during the year to its Associated Enterprise is not at an arm's length and in thereby making an adjustment of Rs.68,45,62,120/- in respect thereof while computing the total income of the Appellant.*

*1.2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject the international transaction relating to payment of royalty by the Appellant to its Associated Enterprise was at an arm's length and the stand taken by the Assessing Officer / the Transfer Pricing Officer/ the Dispute Resolution Panel in this regard is misconceived, erroneous, incorrect and illegal.*

*1 : 3 The Appellant submits that the Assessing Officer / the Transfer Pricing Officer / the Dispute Resolution Panel have erred in arriving at various unwarranted and erroneous conclusions unsupported by any relevant material and have also failed to consider various materials and evidence adduced and the submissions made by the Appellant to substantiate the arm's length nature of the transaction relating to payment of "royalty" and further erred in alleging that material was not produced by the Appellant.*

*1 : 4 The Appellant submits that the Assessing Officer / the Transfer Pricing Officer / the Dispute Resolution Panel have proceeded on a completely erroneous basis that the agreement entered into between the Appellant and the Associate Enterprise has not been followed.*

*1.5 The Appellant submits that there is no reasoning whatsoever given by the Transfer Pricing Officer and the adjustment is made merely based on estimates and on a pure ipse-dixit basis and by following the Transfer Pricing Order passed for AY 201112 and the Dispute Resolution Panel too has upheld the same without any reasoning whatsoever.*

*1.6 The Appellant submits that the Assessing Officer be directed to delete the adjustment of Rs. 68,45,62,120/- made by him to the Appellant's total income and to recompute its taxable income and tax liability accordingly.*

*1 : 7 The Appellant submits that the Transfer Pricing Officer has erred in making a without prejudice transfer pricing adjustment of Rs.2,96,49,707/-.*

*1 : 8 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject the international transaction relating to payment of royalty by the Appellant to its Associated Enterprise was at an arm's length and the stand taken by the*

*Assessing Officer in connection with his without prejudice adjustment of Rs.2,96,49,707/- is misconceived, erroneous, incorrect and illegal.*

*2 : 0 Re.: Adjustment of Rs.2,79,50,093/- in relation to international transaction of availing of management services:-*

*2 : 1 The Assessing Officer / the Transfer Pricing Officer / the Dispute Resolution Panel have erred in holding that the management fees paid by the Appellant during the year to its Associated Enterprise is not at an arm's length and in thereby making an adjustment of Rs.2,79,50,093/- in respect thereof while computing the total income of the Appellant.*

*2 : 2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject the international transaction relating to availing of management services was at an arm's length and the stand taken by the Assessing Officer / the Transfer Pricing Officer / the Dispute Resolution Panel in this regard is misconceived, erroneous, incorrect and illegal.*

*2 : 3 The Appellant submits that the Assessing Officer / the Transfer Pricing Officer / the Dispute Resolution Panel have erred in arriving at various unwarranted and erroneous conclusions unsupported by any relevant material and have also failed to consider various materials and evidence adduced and the submissions made by the Appellant to substantiate the arm's length nature of the transaction relating to availing of management services and further erred in alleging that material was not produced by the Appellant.*

*2 : 5 The Appellant submits that the Assessing Officer be directed to delete the adjustment of Rs. 2,79,50,093/- made by him to the Appellant's total income and to recompute its taxable income and tax liability accordingly.*

*3 : 0 Re.: Short grant of tax deducted at source of Rs:61,04,085/-:-*

*3 :1 The Assessing Officer has erred in granting the Appellant credit for tax deducted at source short by Rs. 61,04,085/- while computing its tax liability for the year under consideration.*

*3 : 2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject it is entitled to full credit of tax deducted at source from its income.*

*3 : 3 The Appellant submits that the Assessing Officer be directed to grant full credit for tax deducted at source and to re-compute its tax liability accordingly.*

*4 Re: General;*

*4.1 The appellate craves leave to add, alter, amend and/or substitute all or any of the foregoing grounds of appeal at or before the hearing of the appeal."*

**3.** The brief facts of the case are that the assessee filed its return of income on 29.11.2012 declaring total income to the tune of Rs.30,43,00,080/-. The return was processed u/s 143(1) of the I.T. Act, 1961. The case was selected for scrutiny under CASS. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee company is engaged in the business of Grading of Diamonds, Coloured Stones, Gems, Pearls and other precious stones etc. To assess the Arm's Length Price (ALP) in relation to International transaction, the reference was made by Asstt. Commissioner of Income Tax-14(1)2), Mumbai vide letter dated 23.02.2015 after obtaining approval from the Pr. Commissioner of Income Tax-14, Mumbai for determining the Arm's Length Price (ALP) with reference to various International transactions in Form No.3CEB filed by the assessee. Thereafter, the TPO Joint CIT(TP)-2(2), Mumbai vide order passed u/s 92CA(3) dated 21.01.2016 computed the Arm's Length Price (ALP) in relation to the International transactions. The TPO made has adjustment to Arm's Length Price (ALP) on account of Export and payment for Intra Group Services as under.:-

Nature of Adjustment	Amount (in Rs.)
Excess Royalty paid in India Graded Diamond Segment	68,45,62,123

Adjustment in Infra Group Services	2,79,50,093
Total	71,25,12,213

4. Thereafter, the draft assessment order dated 28.03.2016 was passed u/s 143(3) r.w.s. 144C(1) of the I.T. Act, 1961 and forwarded to the assessee proposing the addition in sum of Rs.71,25,12,213/-. The assessee company filed the objection before DRP-1, Mumbai which were dismissed and addition of Rs.71,25,12,213/- and Book Profit u/s 115JB of the Act in sum of Rs.4,91,88,517/- was confirmed. The assessee was not satisfied with the directions of the DRP, therefore, the assessee has filed the present appeal before us.

**ISSUE Nos. 1 & 2**

5. Under these issues the assessee has challenged the adjustment of Rs.68,45,62,120/- in relation to International transaction of payment of royalty and the adjustment of Rs.2,79,50,093/- in relation to International transaction of availing of management services. At the very outset, the Ld. Representative of the assessee has argued that these issues have squarely been covered by the decision of the Hon'ble ITAT in the assessee's own case for the **A.Y.2011-12 in ITA. No.1011/M/2016 and A.Y. 2011-12 and in ITA. No.1915/M/2016 dated 30.01.2019**, therefore, in the said circumstances, the claim of the assessee is liable to be allowed in the interest of justice. However, on the other hand, the Ld. Representative of the Department has refuted the contention. Before going further, we deem it necessary to advert the finding of the Hon'ble ITAT in the

assessee's own case (supra) on record. The relevant finding has been given in para no.5 which is hereby reproduced as under.:-

*“5. We have considered rival submissions and perused material on record. As could be seen, in ground no.1, the assessee has challenged transfer pricing adjustment made of ` 58,91,32,017, on account of payment of royalty to the AE. Notably, this issue has been resolved by the assessee and the Department by the Advance Pricing Agreement dated 7th May 2018. Similarly, the only issue raised by the Department in its appeal relates to transfer pricing adjustment made on account of payment made by the assessee towards availing of management services. This dispute between the parties has also been resolved by the Advance Pricing Agreement referred to above. That being the case, there is no need to delve further into these issues. Accordingly, ground no.1, of assessee's appeal and only ground in Department's appeal having become infructuous are dismissed.”*

6. On appraisal of the above said finding, we noticed that these issues have been resolved between the assessee and department by the Advance Pricing Agreement dated 07.05.2018, therefore, the same has now been infructuous, hence, dismissed.

### **ISSUE No.3**

7. Under this issue the assessee has challenged the Short grant of tax deducted at source of Rs.61,04,085/-. Having considered rival submissions, we direct the AO to verify assessee's claim and grant credit for the actual TDS, therefore, this issue is hereby allowed for statistical purposes.

**8. In the result, the appeal filed by the assessee is hereby partly allowed in terms stated above.**

Order pronounced in the open court on 07/06/2019.

Sd/-  
(SHAMIM YAHYA)  
लेखा सदस्य / ACCOUNTANT MEMBER  
मुंबई Mumbai; दिनांक Dated : 07/06/2019  
Vijay

Sd/-  
(AMARJIT SINGH)  
न्यायिक सदस्य/JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Sr. Private Secretary)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai