

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH '1-2' NEW DELHI**

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No.6962/Del/2018
Assessment Year: 2014-15**

**Nissin Brake India P. Ltd.
B-37/38, HIP Japanese Business
Centre, IDC, Mehrauli Road,
Sector 14, Gurugram.
PAN: AACCN3633K**

**Vs ACIT, Circle 3(1),
Gurugram.**

(Appellant)

(Respondent)

Assessee by: Shri Himanshu Sinha , Advocate
Shri Bhuvan Dhooper, Advocate
Department by: Shri H.K. Choudhary, Sr. DR

Date of hearing: 22/7/2019
Date of order : 30/7/2019

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order of the Dy. Commissioner of Income-tax, Circle -3 Gurugram for Assessment Year 2014-15, assessee preferred this appeal.

2. M/s Nissin Brake India Private Ltd., was incorporated on 13.9.2006 with the objective of manufacturing, altering, conversion, procurement, sale and trading of various types of automotive brakes and aluminium components,

spare parts and other related accessories. The company started its commercial production in Financial year 2008-09. M/s Nissin Kogyo Co. Ltd. Japan (ultimate holding company) is engaged in developing and manufacturing a wide range of brake products for motor cycles and four-wheeled vehicles. The assessee had entered into various international transactions like purchase of raw goods, material and consumables, payment of royalty, payment for technical services which were benchmarked using TNMM method using OP/OR as Profit Level Indicator (PLI).

3. For the Asstt. Year 2014-15, the assessee filed their return of income on 30.11.2014 declaring total income as nil and in view of the international transactions undertaken by the assessee, determination of arm's length price was referred to the TPO u/s 92CA(1) of the Income-tax Act, 1961 ("the Act"). Learned TPO passed the order dated 29.9.2017 and subsequently, draft assessment order was passed. Assessee filed objections before the DRP and vide order dated 29.9.2017 excluded one comparable from final list of the comparables by which the margin of the assessee arrived at arm's length price. The grievance of the assessee is that Id. DRP did not grant any relief in respect of the Royalty and Product Development fee resulting in the assessment order dated 7.9.2018 with transfer pricing adjustment of Rs.11,47,92,236/- to the income of the assessee.

4. It is, therefore, aggrieved by the non grant of Royalty and Product Development fee, assessee preferred this appeal on several grounds.

5. Learned AR submitted that the assessee had been following the TNMM method consistently and it has been accepted by the authorities, He further submitted that the assessee produced the agreement invoice issued by Nissin Kogyo, evidence for product development fee other AEs to Nissin Kogyo,

product wise breakup explaining the impact of product development services by showing the comparative rates of royalty paid by other group entities to Nissin Kogyo.

6. He further submitted that the issue relating to the Royalty and Product Development fee is no longer res integra inasmuch as in assessee's own case for the Asstt. Year 2013-14, under identical facts and circumstances, a coordinate bench of this Tribunal vide order dated 16.11.2018 considered the same and held the issue in favour of the assessee. It is submitted on behalf of the assessee that similar evidences as were produced before the TPO for the Asstt. Year 2013-14 are produced for this year also so taking such evidence into consideration. He, therefore, submitted that inasmuch as the facts and grounds are similar, the same view may be taken for this year also.

7. Learned DR heavily relied upon the orders of the authorities below.

8. We have gone through the record in the light of the submissions made on either side. Copy of the order dated 16.11.2018 is produced and on perusal of the same, we find that the facts relating to the Asstt. Years 2013-14 and 2014-15 are identical on all fours including the grounds of appeal. The Tribunal held that the assessee had been consistently following the TNMM method as accepted by the authorities and, therefore, it is not open for the TPO to apply the CUP method abruptly without assigning any reason and such an act of the TPO amounts to deciding the issue by sitting in the armchair of the businessman/assessee. The Tribunal further held that the application of benefit test is impermissible and as a matter of fact the payment of royalty and product development fee are intrinsically interlined with the production and sales and can only be decided under TNMM. On this premise, the Tribunal set

aside the impugned order and remanded the issue back to the Id. TPO to decide it afresh after providing an opportunity to the assessee. With this view of the matter, we set aside the impugned order and remand the issue relating to the royalty and product development fee to the file of the Id. TPO for deciding it afresh in view of our above directions.

8. In the result, appeal is allowed for statistical purposes.

Order pronounced in open court on 30th July, 2019.

Sd/-
(PRAMOD KUMAR)
VICE PRESIDENT

sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 30th July, 2019
'VJ'

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Draft dictated	23.07.2019
Draft placed before author	26.07.2019
Approved Draft comes to the Sr.PS/PS	
Order signed and pronounced on	
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	
Date of uploading on the website	