

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

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

**ITA.No.31/Del/2017
Assessment Year: 2011-12**

**ACIT, Circle-4(2),
New Delhi.**

vs

**Benetton India P. Ltd.,
B-25, Infocity, Sector -34,
New Delhi.
PAN: AAACD1013F**

(Appellant)

(Respondent)

Appellant by: Shri Sandeep Kumar Mishra, Sr. Dr.

Respondent by: Shri Atul Jain, CA

Date of hearing: 31/7/2019

Date of order : 30/8/2019

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 19.08.2016 in Appeal No.44/2015-16 passed by the Learned Commissioner of Income-tax (Appeals)-44, New Delhi {"CIT(A)"} for Assessment Years 2011-12, revenue preferred this appeal.

2. Brief facts of the case are that the assessee, Benetton India Private Limited, is a wholly-owned subsidiary of Benetton International NV, Netherlands which in turn is a subsidiary of Benetton Group SPA, Italy. Assessee is engaged in the business of

production and sale of readymade garments in the name and style of 'Benetton' in India.

3. For the Assessment Year 2011-12, assessee filed their return of income on 30.11.2011 declaring 'nil' income after setting off the brought forward losses to the tune of Rs.67,04,642/-under normal provisions of the Income Tax Act, 1961 (for short "the Act").

4. During the Financial Year 2010-11, the assessee had entered into the international transaction and paid a sum of Rs.13,74,48,935/-towards royalty and for benchmarking the said transaction the assessee employed the CUP method. Determination of the arm's-length price was referred to the learned Transfer Pricing Officer (TPO) who suggested an adjustment to the tune of Rs.13,74,48,935/-attributable to the difference in arm's length price of the international transaction entered by the assessee with the associated enterprise. Pursuant to the report of the Ld. TPO, learned Assessing Officer made an addition of such amount while passing the final assessment order.

5. Aggrieved by the said addition, assessee preferred an appeal and by way of the impugned order, Ld. CIT(A) directed the Ld. TPO/learned Assessing Officer to treat the royalty payment at arm's length and not to make any upward adjustment on account of royalty payment.

6. Challenging the said deletion of the addition, Revenue is in appeal before us. It is the argument of the Ld. DR that the Ld. CIT(A) committed error in deleting the adjustment on account of expatriate cost holding that there was no meaningful analysis/evidence produced by TPO to hold that the entire royalty payment should be reduced to zero and consequently deleting the addition of Rs.13,74,48,935/-made on this point.

7. Ld. AR submitted that while deleting the impugned addition, Ld. CIT(A) made factual verification of the observations made by the learned Assessing Officer and reached a factual finding that the assessee could not have conducted their business with the trademark of 'Benetton' without making the impugned payments and as a matter of fact the assessee had been using the technical know-how developed by the associated enterprise in its manufacturing activities on account of use of trademark and technical know-how. Further Ld. CIT(A) followed the decision of the Tribunal in assessee's own case for the Assessment Year 2006-07 which was followed by the Ld. CIT(A) for the Assessment Years 2007-08 to 2009-10. Ld.AR also produced copy of the order dated 27/10/2017 in assessee's own case for the Assessment Year 2009-10 in ITA No. 4229/Del/2014 wherein the identical issue was dealt with and answered in favour of the assessee.

8. We have gone through the record in the light of the submissions made on either side. Having considered the facts in their entirety, Ld. CIT(A) found that the entire sale of the

assessee has been due to the use of the brand name "Benetton" and the assessee has been using the technical know-how developed by the AE in its manufacturing activities on account of use of trademark and technical know-how. Ld. CIT(A) further found that in case of breach of royalty payment, the assessee will not be able to do the business with the trademark of 'Benetton' and therefore there was no point or justification in the Ld. TPO holding that the third party will not make any payment for brandon technical know-how as provided by the AE to the assessee. Ld. CIT(A) further found that the assessee is getting designs and sketches, measurement specification, advertising and sales promotion materials, store MBS specification, package information as part of the royalty agreement and therefore, it is not a case where the assessee was not deriving any benefit by use of royalty payment on a net sale.

9. Apart from this, Ld. CIT(A) referred to the decision of the Tribunal on the same issue under identical set of circumstances for the Assessment Year 2006-07 where the benchmarking of the royalty was held at arm's length by not approving the TNMM analysis by bunching all the international transactions. He further noted that in assessee's case for the Assessment Years 2007-08 to 2009-10 also, similar approach was followed.

10. We have perused the copy of the order dated 27.10.2017 in ITA No.4229/Del/2014 in assessee's own case where the Revenue preferred the appeal challenging a similar deletion and found that following the consistent view taken in assessee's own case

by the Revenue as well as by the Tribunal, the Tribunal held that employment of the CUP method by the taxpayer in respect of the international transaction relating to the payment of royalty was proper and rule of consistency is required to be followed by the Revenue.

11. Since the facts are similar and issue is identical, we find no reason to take a different view for this assessment year. While respectfully following the consistent view taken by the Tribunal in assessee's own case for the Assessment Years 2006-07 to 2009-10, we hold that the impugned addition cannot be sustained and there was no illegality or irregularity in the findings of the Ld. CIT(A). We, therefore, while upholding the findings of the Ld. CIT(A) find the appeal of Revenue as devoid of merits and accordingly dismissed the same.

12. In the result, appeal of the Revenue is dismissed.

Pronounced in open court on this the 30th August, 2019

Sd/-
(PRAMOD KUMAR)
VICE PRESIDENT

sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 30th August, 2019
'VJ'

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

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