

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "C", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 1748/PUN/2018  
निर्धारण वर्ष / Assessment Year : 2014-15

Spicer India Private Limited,  
29 Milestone,  
Pune-Nashik Highway,  
Village Kuruli, Taluka Khed,  
District Pune  
PAN : AAECs1869C

Vs. ACIT, Circle-10,  
Pune

(Appellant)

(Respondent)

Appellant by  
Respondent by

Shri R.D. Onkar  
Shri T. Vijaya Bhaskar Reddy,  
CIT

Date of hearing 16-10-2019  
Date of pronouncement 17-10-2019

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee arises out of the order dated 27-09-2018 passed by the Assessing Officer u/s.143(3) r.w.s. 144C(13) of the Income-tax Act, 1961 (hereinafter called 'the Act') in relation to the assessment year 2014-15.

2. The first issue raised in this appeal is against the making of the transfer pricing adjustment in respect of Royalty payment.

3. Briefly stated, the facts of the case are that the assessee filed its return declaring total income of odd Rs.75.67 crore. Such return was accompanied by the Audit Report in Form No. 3CEB indicating international transactions, *inter alia*, of payment of Royalty amounting to Rs.15,36,43,405/-. The Assessing Officer (AO) made a reference to the Transfer Pricing Officer (TPO) for determining the Arm's Length Price (ALP) of the international transactions/specified domestic transactions. The TPO observed that the assessee applied the Transactional Net Margin Method (TNMM) for benchmarking the international transaction of payment of Royalty. After entertaining objections from the assessee, the TPO determined NIL ALP of the international transaction by holding that the assessee did not receive any benefit from the payment of Royalty. The Dispute Resolution Panel (DRP), on page 10 of its order, observed that the issue raised was similar to that decided by it in its order for the A.Y. 2012-13. Relevant parts of its order for such preceding year have been reproduced on pages 11 and 12 of the impugned order by the DRP. Considering the facts and circumstances as identical to those for the A.Y. 2012-13, the DRP upheld the action of the TPO on this score. The AO passed the

final order making transfer pricing addition, *inter alia*, on this score, against which the assessee has approached the Tribunal.

4. We have heard the rival submissions and gone through the relevant material on record. It is pertinent to note that the DRP confirmed the action of the TPO by relying on its order for the A.Y. 2012-13. It is interesting to note that the order passed by the AO, implementing the direction of the DRP, for the A.Y. 2012-13 came up for consideration before the Tribunal. Vide its order dated 11-12-2018 in ITA No.2948/PUN/2016, the Tribunal has deleted similar transfer pricing adjustment by following its orders for the A.Ys. 2009-10 to 2011-12. Relevant discussion has been made in para 6 of the order of the Tribunal. The ld. DR tried to distinguish the facts of the instant case *vis-à-vis* the preceding year by contending that the technology, in respect of which the royalty was paid, was actually acquired from the Associated Enterprises about 15 years ago and there was no rationale in continuing to make the payment. In our considered opinion, this point does not carry any weight because what was relevant for the immediately preceding year continues to remain so even for the year under consideration in as much as the situation has not undergone any change in one year,

when we consider that the technology was acquired 15 years ago. Respectfully following the precedent, we delete the transfer pricing addition made on this score.

5. The only other issue which survives in the instant appeal is against the transfer pricing addition of Rs.15,36,43,405/-, being, Management Fee to Asia Investment Pvt. Ltd., which is a specified domestic transaction. The TPO discussed the payment of Management Fee along with payment of Royalty jointly from para 15 onwards of his order. The assessee was show caused as to why NIL ALP of the Management Fee should not be determined. In response, the assessee submitted details being invoices; details of experts and facilities which were available for training to the employees; e-mail communications; and Manuals etc. The TPO did not find anything convincing and determined NIL ALP of the specified domestic transaction of payment of Management Fee. The DRP approved the action of the AO in the draft order, incorporating the transfer pricing adjustment.

6. Having heard both the sides and gone through the relevant material on record, it is observed that identical issue came up for consideration before the Tribunal in the immediately preceding

assessment year 2013-14. Vide order dated 04-07-2019, the Tribunal in ITA No.609/PUN/2018 has upheld the order passed by the Id. CIT(A) deciding this issue in favour of the assessee. Relevant discussion has been made in para 7 onwards of the Tribunal order. In deciding this issue so, the Tribunal also considered its own order for A.Y. the 2012-13. Since the facts and circumstances of this issue are *mutatis mutandis* similar to those of the immediately preceding year, respectfully following the precedent, we overturn the impugned order and order to delete the addition.

7. In the result, the appeal is allowed.

Order pronounced in the Open Court on 17<sup>th</sup> October, 2019.

Sd/-  
**(S.S. VISWANETHRA RAVI)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.S.SYAL)**  
**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 17<sup>th</sup> October, 2019  
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-13, Pune
4. The Pr. CIT-V, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे  
“C” / DR ‘C’, ITAT, Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	16-10-2019	Sr.PS
2.	Draft placed before author	16-10-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

\*