



ITA No.7760/Mum/2012

Sara Lee TTK Ltd.

(Amalgamated into Godrej Consumer Products Ltd.)

Assessment Year :2008-09

**आयकर अपीलीय अधिकरण “जे” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“J” BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI MAHAVIR SINGH, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.7760/Mum/2012

(निर्धारण वर्ष / Assessment Year:2008-09)

<b>Sara Lee TTK Ltd.</b> (Now Amalgamated into Godrej Consumer Products Ltd.) Kalyaniwalla & Mistry 3 <sup>rd</sup> Floor, Army & Navy Building 148, M.G. Road, Fort Mumbai-400 001.	<b>बनाम/ Vs.</b>	<b>Addl. CIT-Range 10(2)</b> Aaykar Bhavan M.K.Road Mumbai-400 020.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. <b>AAACK-2416-M</b>		
(आपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Appellant by</b>	:	Shri Farrukh Irani- Ld. AR
<b>Respondent by</b>	:	Shri Pawan Kumar Beerla - Ld.DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	12/09/2019
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	25/11/2019

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1.1 Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2008-09 contest certain additions / adjustment made by revenue authorities in final assessment order dated 30/10/2012 passed by Ld. Assistant Commissioner of Income Tax-10(2), Mumbai [AO] u/s. 143(3) r.w.s. 144C(13), pursuant to the directions of Dispute



Resolution Panel-II, Mumbai, [in short referred to as DRP], u/s 144C(5) dated 25/09/2012.

1.2 The income of the assessee in the final assessment order has been determined at Rs.724.42 Lacs after certain Transfer Pricing (TP) Adjustment of Rs.340.60 Lacs as against revised returned income of Rs.386.33 Lacs filed by the assessee on 20/01/2010. The grounds raised by the assessee read as under: -

- 1) The learned Dispute Resolution Panel/ Assessing Officer erred in holding that 50% of the expenditure incurred on advertisement and publicity was incurred for promotion of products in export markets and consequent thereto, restricting the adjustment to the domestic selling price to 50% of the advertisement and publicity expenses incurred, for the purpose of computing the comparable uncontrolled arms length price in respect of sales made by the Appellant to Associated Enterprises.
- 2) Without prejudice to Ground 1, the learned Dispute Resolution Panel erred in ignoring the alternate submissions and the benchmarking analysis carried out by the Appellant Company by applying the Internal and External Transactional Net Margin Method.
- 3) The learned Dispute Resolution Panel/ Assessing Officer erred in disregarding the specific permission granted by the Government of India, Ministry of Commerce and Industry, New Delhi, for the use of Trademark and restricting the royalty paid by the Appellant Company to its Associated Enterprise @ 1% of the qualifying Net Sales as against the royalty payable @ 5% of such sales.
- 4) The learned Dispute Resolution Panel/ Assessing Officer erred in disregarding the Agreements and various reports/correspondence furnished during the course of the proceedings substantiating the payment of technical know-how fees by the Appellant and in holding that there was no need for payment of such technical know-how fees and disallowing such payment computed @1.4% of qualifying net sales for the year.
- 5) The learned Dispute Resolution Panel / Assessing Officer erred in confirming the disallowance of brand development expenses paid by the Appellant to its Associated Enterprise.”

2.1 Briefly stated, the assessee being resident corporate assessee is stated to be engaged in the manufacturing and sale of shoe-care, household-care and personal-care products. Certain international transactions carried out by the assessee during the year under consideration with its Associated Enterprises (AE) and as reported in



Form 3CEB were referred u/s. 92CA(1) to Ld. Transfer Pricing Officer-II(10) [TPO] for determination of Arms' Length Price [ALP]. The Ld. TPO noted the assessee was incorporated under The Indian Companies Act in the year 1977 and became a member of Sara Lee Group in 1999. The assessee, at present, was a wholly owned subsidiary of Godrej Sara Lee Ltd. The main activity of the assessee comprised-off of manufacturing and sale of show-care, body-care and household products under the brand name '*kiwi*', '*kiwi-kleen*' and '*Brylcream*'.

2.2 The dispute under appeal is with respect to determination of ALP of following international transactions: -

No.	Class of Transaction	Amount	Arms Length Price	Method Adopted
1.	Sale of Finished Goods	311,821,364	311,821,364	CUP
2.	Expenses reimbursed by the company towards common cost allocation	9,117,270	9,117,270	At Cost
3.	Royalty Payment	20,219,217	20,219,217	CUP

The brief description of TP adjustment made by revenue authorities is as follows.

#### Sale of finished Goods

Out of sale of Rs.82.81 Crores achieved by the assessee during the year, export sales were Rs.31.81 Crores out of which export sales of Rs.31.18 crores were to its AE. The assessee compared the sale price of goods sold to AE's with that of non-AE's and in domestic market and contended that after making adjustments such as advertisement, publicity, export incentives, excise duty, cost of credit, royalty expenses, trade promotions, distribution costs etc., the price at which the goods were sold to its AEs are higher than the price at which goods were sold



to non-AE's. However, Ld. TPO opined that the adjustment of advertisement & publicity expenses would not be allowed since the advertisement would have mass product appeal inherent in it and therefore, the said adjustment could not be allowed. Out of export incentive, it was held that exchange gain would be purely hedging income and therefore, the deduction of exchange gain would not be allowed. Regarding cost of credit, the assessee claimed that in domestic market, it extended the credit in distribution chain whereas in export market, any credit in distribution chain is taken care of by its AE. However, in the absence of evidence, the said adjustment was not allowed, Similarly, the adjustment of trade promotions expenditure was not allowed. Finally, as against distribution cost of 2.45% as claimed by the assessee during proceedings, the same was allowed only to the extent of 1.96% of sale price, being rate worked out by the assessee in the beginning of the year. Accordingly, modifying the adjustment on product basis, Ld. TPO proposed TP adjustment of Rs.603.42 Lacs.

#### Payment for Royalty & Technical know-how

It transpired that the assessee paid trademark royalty of Rs.163.55 Lacs to its AE @5% of net sales of *Brylcream* and *Kiwi* products in India and R & D (technical) royalty of 1.4%. In other words, the total royalty paid by the assessee was 6.4%. In the absence of cogent evidences, ALP of technical royalty was determined as *Nil*. Relying upon Press Note 9 (2000 series), the trademark royalty was reduced to 1%. Both the adjustment resulted into proposed TP adjustment of Rs.169.48 Lacs.



### Brand Development Expenses

It transpired that the assessee paid an amount of Rs.91.17 Lacs to its AE as apportionment of cost allocation of brand development expenses. The assessee produced agreement to support the same. However, finding that the assessee could not produce any evidence in support of nature of expenses, the ALP of the same was determined as *Nil*

2.3 The TP adjustments, thus proposed by Ld. TPO, aggregating to Rs.864.07 Lacs were incorporated in the draft assessment order dated 26/12/2011 which were subjected to objections before Ld. DRP.

3.1 Before Ld. DRP, the assessee reiterated the stand that advertisement expenditure was incurred in India for a particular product and such expenditure pertained only to the Indian market having target audience in India. None of the expenditure was stated to be related to sales in the exports markets. The attention was drawn to the fact that such expenditure was incurred by concerned AEs in their respective countries for marketing the product and therefore, an adjustment was to be made to exclude such costs from the domestic selling prices for proper comparability. It was submitted that under comparable uncontrolled price (CUP) method, while comparing the price of a particular product in the domestic market and in the export market, an adjustment was required to be made for costs incurred in the domestic market for sale of the product which was not incurred for sale in the export market.

3.2 The Ld. DRP, after due consideration of factual matrix, held that the expenditure under the head advertisement and publicity had 3



components viz. media advertisement, market research and provision for doubtful debts. The expenditure on market research could not be said to have any relation with export of the products and therefore, the adjustment of the same was allowable to the assessee. However, at least 50% of expenditure on advertisement and publicity were directed to be treated as exclusively for the promotion of products in domestic market and therefore, the adjustment thereof was to be provided to the assessee. The assessee's plea regarding adjustment of sale promotion expenditure was accepted but the adjustment of foreign gains was not allowed. It is evident from final assessment order that the directions of Ld. DRP has reduced the proposed TP adjustment, under this head, to Rs.79.95 Lacs.

3.3 The Ld. DRP also noted that, as per the direction of Ld. TPO, the assessee had carried out comparability analysis using Transactional Net Margin Method (TNMM), using internal as well as external data and taking operating profit as Profit Level indicator (PLI). The assessee's margin, using internal as well as external TNMM, were shown to be higher in export sales and therefore, it was pleaded that no adjustment would be warranted. However, keeping in view the directions given by Ld. DRP, under CUP method, the said plea was dismissed as being redundant.

3.4 The adjustment on account of royalty payment was confirmed following the order of first appellate authority in AY 2007-08. The ground relating to brand development expenses was also dismissed since the assessee could not demonstrate the nature of expenses incurred by it.



3.5 The aforesaid directions of Ld. DRP were incorporated in the final assessment order wherein the assessee was saddled with impugned TP adjustment of Rs.340.60 Lacs. Aggrieved, the assessee is under further appeal before us.

4. We have carefully heard the rival submissions, perused relevant material on record and deliberated on the orders of lower authorities. Our adjudication on various grounds of appeal would be as given in succeeding paragraphs.

5. So far as the adjustment on account of export sales made to AE is concerned, we find that although Ld. DRP agreed with assessee's submissions that significant amount of advertisement expenditure was directly for the benefit of Indian Market, still the adjustment only to the extent of 50% only was provided to the assessee. The assessee's submissions that the expenditure was incurred in India for advertisement of a particular product and the same pertained only to Indian market and had a target audience in India, remained uncontroverted. The documents placed in the paper book, in the shape of media service agreements, invoices etc. support the said submissions. Another relevant fact is that assessee's AE were incurring similar expenditure in the respective markets and the assessee was not incurring any expenditure in respect of products being exported. Lastly, the assessee had benchmarked these transactions using TNMM method, external as well as internal and had demonstrated that the stated transactions were at Arm's Length. The same has also remain uncontroverted and no fallacy has been found in the same. The Ld. DRP dismissed this ground treating the same



as redundant, which could not be held to be correct approach. Therefore, keeping in mind all these factors, the impugned adjustment made in final assessment order, in this regard, could not be sustained. By deleting the same, we allow Ground Nos. 1 & 2.

6.1 So far as the payment of trademark royalty @5% & R & D Royalty @1.4% is concerned, we find that the said rates / payments are pursuant to *manufacturing & distribution license agreement* as amended on 02/07/2007 entered into by the assessee with *Buttress B.V.* for *Brylcreem* brand. Similar agreement for payment of royalty has been entered by the assessee with *Kiwi European Holdings B.V.* for *Kiwi Products Brand*. The documents on record establish that the said rates have duly been approved by Department of Industrial Policy & Promotion, Secretariat for industrial Assistance (SIA), Government of India vide approval letters dated 07/07/2010 & 08/07/2010, the copies of which have been placed on record. The Ld. Sr. Counsel has relied upon the decision of Pune Tribunal rendered in **Spicer India Private Limited V/s ACIT (ITA Nos. 376,826/Pun/2016 order dated 09/02/2018** for the submissions that approval of royalty rates by SIA / RBI would constitute CUP data and the transactions were to be considered at Arm's Length Price. On the other hand, the revenue has drawn attention to the fact that similar issue of trademark royalty arose in AY 2007-08 which was restored by the Tribunal vide ITA No.376/Mum/2012 order dated 24/08/2016. The attention has further been drawn to the fact that in the set aside proceedings, vide order dated 31/10/2018, the ALP of the



royalty was determined as 3.88% being mean rate reflected by 17 entities.

6.2 Upon due consideration, in line with view taken by Tribunal in assessee's own case for AY 2007-08, we deem it fit to restore the matter of trademark royalty as well as R & D royalty back to the file of Ld. AO / TPO with similar directions as given in para-12 of the order for AY 2007-08. Ground Nos. 3 & 4 stands allowed for statistical purposes.

7.1 The last issue of the appeal is allowability of *brand development expenses*. It has been submitted that *Sara Lee* was the world leader in household and body care-business and market products under various global brands. The group incurred costs on global basis to develop and market the said brands by way of appointing advertising agencies, incurring various marketing costs, developing marketing strategies, running advertisement programs etc. which would benefit the group worldwide. Similarly, there were various other group costs that were incurred to generate and obtain new rights, information and experience for the benefit of the group as a whole. The group also provided marketing concepts, marketing assistance and support and other experiences and informative data concerning the marketing of the products under Sara Lee Brand. All such rights and information benefits were generated at considerable costs which were expensed to Sara Lee division. To reimburse such costs, the assessee entered into an agreement with its AE whereby the parties have agreed for reimbursement of costs based on assessee's proportionate share in Net Sale Value of the Global Business, in relation to the costs of such



services applied under each of the brand. The apportionment is stated to have been done on cost basis without any mark up. It has also been submitted that expenses incurred by assessee in India towards the development of the global brands were similarly recovered from its AE on cost basis. Per Contra, Ld. DR relied upon the stand of lower authorities.

7.2 Upon perusal of documents, we find that the said cost allocations are pursuant to *global brands costs allocation agreement* dated 15/06/2004 entered into by the assessee with its AE namely Sara Lee / DE N.V., a company incorporated in Netherlands. As per the terms of the agreement, the AE was, *inter-alia*, to make available and give assessee access to achievement in its product conception / development and marketing activities relating to Global brands. The assessee was also granted a non-exclusive, non-transferable and indivisible license under all existing and future intangible property rights for the products marketed and sold by the assessee under the Global Brands. In turn, the assessee was to pay to its AE a compensation in proportion to assessee's share in costs of such services computed on the basis of Net Sales Value in certain segment. The perusal of these documents would demonstrate that the impugned payments were made by the assessee pursuant to well defined contractual terms under an agreement. The nature of services being availed by the assessee were clearly spelt out in the agreement and the fact that the allocations were on cost basis, remain uncontroverted. It is also noteworthy that Ld. TPO, without determining the ALP of these transactions by adopting any of the



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prescribed method, disallowed the entire payment. The same, in our opinion, could not be said to be correct approach. Another fact is that similar payments have been made by the assessee in preceding years which emanates from the same agreement but no such adjustment has been made in earlier years. Therefore, the given factual matrix does not inspire us to confirm the impugned additions. Hence, by deleting the same, we allow Ground No.5.

8. Finally, the appeal stands partly allowed in terms of our above order.

*Order pronounced in the open court on 25<sup>th</sup> November, 2019.*

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 25/11/2019  
Sr.PS, Jaisy Varghese

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

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2. प्रत्यर्थी/ The Respondent
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4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
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