

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

**BEFORE SHRI R.C.SHARMA, AM & SHRI VIKAS AWASTHY, JM**

**ITA No. 4225/Mum/2014  
(Assessment Year: 2007-08)**

Mondelez India Foods Pvt. Ltd., (Formerly known as M/s Mondelez India Foods Ltd.), Mondelez House, Unit No. 2001, 20 <sup>th</sup> Floor, Tower-3, Wing-C, India Bulls Finance Centre, Parel, Mumbai-400013.	Vs.	Addl.CIT, Range-5(1), Aayakar Bhavan, 5 <sup>th</sup> Floor, M.K. Road, Mumbai-400020.
<b>PAN/GIR No.AAACC 0460 H</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri J.D. Mistry (AR)
Revenue by	Shri A. Mohan (DR)
<b>Date of Hearing</b>	<b>11/02/2020</b>
<b>Date of Pronouncement</b>	<b>11/02/2020</b>

**आदेश / O R D E R**

**PER: R.C. SHARMA, A.M.**

This is the appeal filed by the assessee against the order of the Id. CIT(A)-15, Mumbai dated 19/03/2014 for the A.Y. 2007-08 in the matter of order passed U/s 143(3) of the Income Tax Act, 1961 (in short, the Act).

2. The only issue for determination is pertaining to payment of trademark royalty of Cadbury Schweppes Overseas Limited (in short, CSOL) and the transfer pricing adjustment made by the TPO on

account of payment of trademark royalty to CSOL amounting to INR 10,74,54,000/-.

3. From the record, we found that this appeal was originally heard by the Bench on 16/4/2019 and decided vide order dated 04/07/2019 wherein this ground was restored back to the file of the TPO. Thereafter the assessee filed a Misc. application U/s 254(2) of the Act pointing out that this issue has already been decided in favour of the assessee and the Tribunal have inadvertently even though quoted the order of the Tribunal in earlier assessment year 2006-07, however in spite of allowing the same had restored the matter back to the file of the TPO. Since it was a mistake apparent from the record, this ground was recalled by the Tribunal vide order dated 11/12/2019 for a limited purpose only to decide this issue.

4. We have considered the rival contentions and carefully gone through the orders of the authorities below and found that this Tribunal in assessee's own case for A.Y. 2006-07 in ITA No. 1512/Mum/2013 vide order dated 28/11/2018 considered this issue as under:

*"..... 39. On going through the records and the orders of the revenue authorities, we find that in so far as the payment of royalty on technical knowhow concerned, the assessee has been paying to its parent AE right from 1993, as, other group companies are paying across the globe. It has been accepted by the TPO that the payment does not effect the profitability of the assessee, if we are to examine the issue*

*from that angle as well. In any case the payment of royalty on technical knowhow is at par with the similar payments from the group companies in other countries & region. Besides this, the payment is made as per the approval given by the RBI and SI A, Government of India. Hence there cannot be any scope of doubt that the royalty payment on technical knowhow is not at arm's length.*

40. *Coming to the issue of royalty payment on trademark usage, we find that the assessee, in fact is paying a lesser amount, if the payments are compared with the payments towards trademark usage, by the other group companies using the Brand Cadbury in other parts of the world. On the other hand, if we examine the argument taken by the TPO with regard to OECD guidelines. On this point the assessee "s payment is coming to a lesser figure, as discussed in detail by the CIT(A).*

.....

43. *On the basis of the above observations, we are of the opinion that the royalty payment on trademark usage is within the arms" length and does not call for any adjustment. "Respectfully, following the above order and the order for subsequent AY. We decide the ground of appeal No. 1 in favour of the assessee."*

5. It is clear from the above decision of the Tribunal that the royalty payment of trademark used held within arm's length and does not call for any adjustment. There being no difference in the factual position in the impugned assessment year, therefore, respectfully following the order of the Tribunal on identical facts in assessee's own case we hold that royalty payment on trademark to CSOL, 1% of net sale is at arm's length, hence, no further adjustment is required. The

Id DR has fairly conceded that the issue is covered by the decision of the Tribunal in assessee's own case.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 11<sup>th</sup> February, 2020.

**Sd/-**  
**(VIKAS AWASTHY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(R.C.SHARMA)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 11/02/2020

\*Ranjan

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**