

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

**Before Sh. Amit Shukla, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**(Through Video Conferencing)**

**ITA No. 9247/Del/2019 : Asstt. Year : 2015-16**

**&**

**SA No. 100/Del/2020: Asstt. Year : 2015-16**

Michelin India Technology Center Pvt. Ltd. (converted from Michelin India Technology Center LLP) 3 <sup>rd</sup> Floor, Orchid Business Park, Sohna Road, Gurgaon-122002	Vs	Asstt. Commissioner of Income Tax, Circle-1, Faridabad-121001
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAXFM5559P</b>		

**Assessee by : Sh. Nageshwar Rao, Adv.**

**Revenue by : Ms. Meera Srivastava, CIT DR &  
Sh. M. Barnwal, Sr. DR**

**Date of Hearing: 26.07.2021**

**Date of Pronouncement: 07.10.2021**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order dated 15.10.2019 passed by the AO u/s 143(3) r.w.s. 144C(3) of the Income Tax Act, 1961.

2. Following grounds have been raised by the assessee:

**"Ground No. 1 – General**

*That the Learned Assistant Commissioner of Income Tax, Circle 1, Faridabad ("Ld AO") and Learned Dispute Resolution Panel ("Ld DRP") have erred both in law and on facts of the case while assessing the income of the*

*Appellant for the relevant assessment year at INR 18,19,60,840 as against the returned income of INR 4,05,81,450, thereby making an addition of INR 14,13,79,393.*

**Ground No. 2 - Incorrect Disallowance of Legal and Professional Expense**

*That, the Ld AO and Ld DRP erred both in law and on the facts of the case in making a disallowance of various Legal and Professional expenses aggregating to INR 13,53,59,645 under Section 37 of the Income-tax Act, 1961 ('Act'), treating the same as capital in nature.*

*2.1 That the Ld AO and Ld DRP erred on facts of the case in holding that the above expenditure incurred for the purpose of the projects of the appellant, thus, are to be considered as capital expenditure and depreciation is allowable as per law.*

*2.2 That the Ld AO and Ld DRP failed to appreciate that the above expenditure includes INR 3,67,04,772 towards the cost of abandoned project and the same should be allowed under Section 37 of the Act.*

*2.3 That the Ld AO and Ld DRP erred in presuming that legal and professional fees amounting to INR 14,31,97,068 paid to Accenture Services Private Ltd. as being towards project and disallowing the same failing to appreciate that such routine expenditure had in fact resulted in income offered to tax.*

*2.4 Without prejudice to above, Ld. AO and Ld. DRP erred in adopting inconsistent and contradictory positions as corresponding income earned at cost plus agreed was brought to tax while disallowed the cost.*

*2.5 Without prejudice to ground 2 and 2.1 wherein the expenditure is treated as capital in nature, the Ld AO and Ld DRP erred both in law and on the facts of the case in treating the corresponding receipts (including markup) recovered from the AE as income under section 28 of the Act instead of reducing the*

same from cost of capital expenditure as per explanation 10 of the section 43(1) of the Act. Thus, the corresponding receipts (including mark-up) should not be treated as income of the appellant instead should be reduced from actual cost of assets.

**Ground No. 3 - Incorrect Transfer Pricing Adjustment**

That on the facts and in law, the Learned Transfer Pricing Officer ('Ld. TPO') has erred in making transfer pricing adjustment amounting to INR 60,19,748.

3.1 The Ld. TPO while passing the order incorporating the directions issued by the Hon'ble DRP, has erred in law and failed to appreciate that the margin earned by the Appellant is within the arm's length range computed in the order and hence, no adjustment in respect of transfer pricing matters is warranted.

3.2. The Hon'ble DRP / Ld. TPO erred in law in re-determining the price of the impugned international transactions undertaken by the Appellant and making the impugned transfer pricing adjustment, as the circumstances necessitating the re-determination of price by the Ld. TPO as mentioned in sub-section (3) of section 92C did not exist in case of the Appellant.

3.3. The Hon'ble DRP / Ld. TPO has grossly erred in applying quantitative filter of turnover less than Rs. 1 Crore and rejecting "Hi-Tech Laboratories" as a comparable, without giving due cognizance to the functions, asset and risk profile of Hi-Tech Laboratories which is comparable to the Appellant.

3.4. The Hon'ble DRP failed to appreciate that Ld. TPO had not chosen a scientific process of selection of new comparable companies and merely "cherry-picked" companies arbitrarily without providing any cogent reasons for selecting the following companies:

- Vimta Labs Ltd.
- Majestic Research Services & Solutions Ltd.
- Killick Agencies & Mktg. Ltd.

3.5. Hon'ble DRP has erred in accepting certain companies proposed by the Ld. TPO and rejecting the comparables including additionally proposed by the Appellant, without giving cognizance to the functions, asset and risk analysis and merely relying upon the financial results, and even disregarding the fundamentals of the comparability principles which are prescribed under Rule 10B(2), such as comparability of the products supplied by independent companies or services provided by the independent companies.

3.6. The Hon'ble DRP / Ld. TPO failed to include Unimed Diagnostics Private Limited after performing reasonable accurate adjustments as prescribed under Rule 10B(4).

3.7 The Hon'ble DRP / Ld. TPO has grossly erred in subjectively rejecting "Nutek India Limited" as a comparable by citing exceptional economic circumstances, without giving due cognizance to the complete facts and nature of activities being performed by Nutek India Limited during the subject year.

**Ground No. 4 - Incorrect levy of interest under Section 234A/ 234B of the Act**

That on facts and circumstances of the case, the Learned AO has erred both in law and on the facts of the case in levying interest under Section 234A/ 234B of the Act.

**Ground No. 5 - Penalty Proceedings**

That on the fact and circumstances of the case and in law, the Learned AO has erred in initiating penalty proceedings under 271(1)(c) of the Act."

The transfer pricing grounds have not been pressed.

### **Legal and Professional Expenses:**

3. The Assessing Officer following the directions of the Id. DRP has disallowed the expenditure of Rs.13,53,59,648/- being the amount paid to ABRD Architects of Rs.69,37,450/-, Accenture Services Pvt. Ltd. Of Rs.14,31,97,068/-, HOK International Ltd. Of Rs.68,18,099/-, Open Building Research SRL of Rs.71,37,026/-, PTK Architects of Rs.20,23,200/-, Romi Khosla Design Studios of Rs.43,07,847/-, Woods Bagot Architects PC of Rs.94,81,10/- and Director General of Haryana under the head 'Legal and Professional expenses of Rs.5,77,690/- being related to the projects of the Assessee, considering the same as capital expenditure. The AO has allowed 25% depreciation on the intangible assets.

### **The core issue:**

4. The Assessee was set-up in October 2013 and had planned to establish a regional R&D centre in India. For this purpose, it purchased 14 acre land and sought conversion of same for commercial purposes. Its customer asked them to set-up a world class R&D facility for which it incurred various cost for the project named as "Project Corbet". However, due to commercial reasons, the head quarter decided to abandon the project. As the customer did not want to proceed further, **the entire cost with mark-up was charged to them by the Assessee**. The Head Quarters entered into contract with Accenture globally for various services like study of customer behavior, product cost structure, cost management, project management and tracking,

supply chain modeling etc. For India purpose, it asked Assessee to enter similar agreement for Accenture India to undertake study in India market and share the outcome thereof with them. Accordingly, the Assessee entered into sub-contract with Accenture Services Pvt. Ltd. for provision of management consultancy services and paid an amount of Rs.14.31 crores.

5. **It is to be observed that the entire cost has been reimbursed by the parent company along with mark-up.** Thus, the receipts have been duly and correctly shown as revenue receipt by the Assessee in the P&L account whereas the department treated the amount paid to Accenture Services Pvt. Ltd. as capital expenditure. While the income for the same services are treated as revenue receipt, the expenditure on the same is treated as capital receipt by the Id. DRP. It is also not in dispute, the Assessee has also received mark-up charges of 10% which has been duly offered to tax. Thus, we find that the revenue department has misdirected itself to treat this expenditure as capital expenditure. When the entire costs have been reimbursed to the Assessee by the head quarters and when the TP study did not find any reason to adjust the receipts, the contrary treatment given to the expenditure incurred as capital expenditure cannot be held to be legally valid.

6. Having indisputably found that all the costs have been reimbursed with mark-up by the head quarter and duly considered as revenue receipt of the Assessee in the P&L account, we hold that treating the other expenditure incurred/paid to HOK International, OBR, PTK Architects, RKD

Studios, WB Architects and fees paid to conversion of land use (CLU) as capital expenditure cannot be held to be legally tenable.

7. While the receipts are treated as revenue in nature, the above said expenditure is treated as capital in nature by the Assessing Officer which is an anti-thesis to the prudent taxation principles.

8. Owing to the disposal of the appeal of the assessee, the Stay Application No. 100/Del/2020 is dismissed as infructuous.

9. In the result, the appeal of the assessee is allowed and the Stay Application of the assessee is dismissed.

Order Pronounced in the Open Court on 07/10/2021.

Sd/-

**(Amit Shukla)**  
**Judicial Member**

**Dated: 07/10/2021**

\*Subodh\*

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**