

आयकर अपीलीय अधिकरण, "बी" न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.3095/Chny/2019
(निर्धारणवर्ष / Assessment Year: 2014-15)

Assistant Commissioner of Income Tax, Circle-1(1), International Taxation, Chennai-6.	Vs	M/s. Ford Global Technologies LLC., GST Road, SP Koil Post, Chengalpattu, Kanchipuram-603 204.
		PAN: AAACF 7286N
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. G.Johnson, Addl.CIT
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. Ajith Kumar Jain, C.A.

सुनवाईकीतारीख/Date of hearing	:	11.01.2022
घोषणाकीतारीख /Date of Pronouncement	:	09.02.2022

आदेश / ORDER

PER G. MANJUNATHA, AM:

This appeal filed by the Revenue is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-9, Chennai, dated 27.08.2019 and pertains to assessment year 2014-15.

2. The revenue has raised following grounds of appeal:-

"1. The Ld. CIT(A) erred in facts and law in deleting the addition made amounting to Rs.7,95,13,858/- on account of unaccounted royalty.

2. The Ld CIT (A) erred in applying royalty @ 2.5% on profit making models alone, whereas the Assessing Officer has correctly computing Royalty at 2.5% on the revenue base as per clause V(A)(1) of the agreement.

3. The CIT(A) erred in computing royalty @2.5% on the profit making models ignoring Clause V(A)(2) of the agreement which states that Royalty should be paid @ 5% on the revenue base from the sale of vehicle assembled by or for FILP.

4. The CIT(A) erred in allowing the expenses with respect to two loss makings models (New Fiesta And Endeavour), whereas the AO has considered the above while arriving at Net revenue base.

5. The CIT(A) erred in holding that the AC has made an upward adjustment to the total income of the Appellant only for AY 2014-15, disregarding the consistent approach adopted for previous/subsequent assessment years. The principle of res-judicata is not applicable to proceedings under Income tax Act and specially when the AC clearly brought on record the reasons for the same.

6. The CIT(A) also erred in stating that when the Royalty income has been subject to TP assessments and the same has been accepted to be at Arms'-Length, the TPO's order is binding on the AO u/s 92(CA)(4). The Hon'ble Delhi High Court in the case of Cushman and Wakefield India Pvt. Ltd in 367 ITR 730 (Delhi)/(2014) 269 CTR 16 (Delhi) held that the authority of TPO is to conduct the TP analysis to determine the ALP and not to determine whether the Tax payer may get the benefit from the service. The Hon'ble Delhi High court has held that determination of the benefit to the tax payer is in the domain of Assessing Officer."

3. Brief facts of the case are that M/s. Ford Global Technology LLC, a limited liability company under the laws of Delaware, United States of America, owns and develops

intellectual property by evaluating new inventions, developing intellectual plans for critical technologies. The company manages key aspects of intellectual property for M/s. Ford Motor Company, USA and its brands and charges royalty for aforementioned services. The assessee had entered into a license agreement with M/s. Ford India Private Limited, the Indian subsidiary of Ford Motor Company, USA, effective from 1st April 2012. As per agreement between the parties, clause V(A) & (B) of agreement specifies minimum royalty of 2.5% on sale of vehicles assembled in India, if its financial shows loss or minimum royalty of 5% on sale of vehicles assembled India, if its financial shows profit. During the financial year relevant to assessment year 2014-15, the assessee company had shown royalty income of Rs.92,69,83,597/- from M/s. Ford India Private Limited. During the course of assessment proceedings, the Assessing Officer on the basis of Notes to financial statements observed that the assessee has achieved sale of goods at Rs.8,562.47 crores and on this sale, as per agreement minimum royalty @ 2.5%, should work out to Rs.183.95 crores, whereas the assessee admitted royalty income at Rs.92.70 crores. Therefore, called upon the

assessee to explain and reconcile difference between royalty to be received and royalty actually received from M/s. Ford Motor India Pvt Ltd. In response, the assessee has filed computation explaining amount of royalty received from sale of vehicles assembled in India and argued that it has received royalty income from different models, wherever the company has earned profit and further, in case there is loss, it has not computed royalty. The Assessing Officer, after considering relevant submissions of the assessee and also taken note of sales declared in financial statement, has computed net sale on which royalty is payable by M/s. Ford Motors India Pvt. Ltd. at Rs.4,025.98 crores and has computed royalty of Rs.100,64,97,455/- @ 2.5% on sale of cars assembled in India.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before learned CIT(A). Before the learned CIT(A), the assessee has filed reconciliation between royalty income computed by the assessee and royalty income computed by the Assessing Officer and explained that the assessee has received royalty only on those passenger vehicle models which has positive revenue base, whereas the

Assessing Officer has taken all passenger vehicle models, including passenger vehicle models which has negative revenue base, which resulted in lesser royalty computation, when compared to royalty income computed by the assessee. The assessee further contended that in case, the Assessing Officer wants to take revenue base of all passenger vehicle models, then cost associated with those models which has negative base also needs to be considered.

5. The learned CIT(A), after considering relevant submissions of the assessee and also taken note of reconciliation filed by the assessee explaining difference between royalty income computed by the assessee as well as royalty income computed by the Assessing Officer, has deleted additions made by the Assessing Officer by holding that the Assessing Officer had erroneously not taken into account expenses with respect to New Fiesta and Endeavour models and if expenses relatable to above two models are considered, then royalty income @ 2.5% of net revenue works out to Rs.91.68 crores which is lesser than royalty income received

by the assessee at Rs.92.74 crores. Aggrieved by the learned CIT(A) order, the Revenue is in appeal before us.

6. The learned DR submitted that the learned CIT(A) has erred in deleting additions made by the Assessing Officer towards difference in royalty income received by the assessee from M/s. Ford India Private Limited without appreciating fact that the assessee has not considered passenger vehicle models which is having negative revenue base, without understanding fact that as per agreement between the parties, royalty should be computed on gross revenue base of passenger vehicle models assembled and sold in India. The learned DR further submitted that there is no dispute with regard to agreement between the parties for payment of royalty. However, there is dispute with regard to computation of royalty and hence, to ascertain correct facts and quantify correct amount of royalty, issue may be set aside to the file of the Assessing Officer.

7. The learned A.R for the assessee, on the other hand, submitted that the Assessing Officer has adopted incorrect

method for computing amount of royalty receivable from M/s. Ford India Private Limited, which is evident from fact that the assessee has received royalty only on those passenger vehicle models which has positive revenue base, whereas the Assessing Officer has considered passenger vehicle models, which has negative revenue base, however, failed to consider cost associated with those models which has negative revenue base. The learned AR further referring to paper book filed by the assessee submitted that the assessee has filed reconciliation, which is available at page 40 of paper book filed by the assessee, as per which correct amount of royalty receivable by the assessee as per approach of the Assessing Officer is at Rs.91.68 crores, which is lesser than the amount of royalty income considered by the assessee at Rs.92.74 crores. The learned CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer and hence, there is no reason to give one more opportunity to the Assessing Officer to verify computation of royalty income.

8. We have heard both the parties, perused material available on record and gone through orders of the authorities

below. There is no dispute with regard to license agreement entered into by the assessee with M/s. Ford India Private Limited, the Indian subsidiary of Ford Motor Company, USA. As per agreement between the parties, clause V (A) & (B) specifies amount of minimum royalty payable by M/s. Ford India Private Limited. According to clause V (A) & (B) of the agreement, M/s.Ford India Private Limited, has to pay minimum royalty of 2.5% on the sale of vehicles assembled in India, if its financial shows loss or minimum royalty of 5% on sale of vehicles assembled in India, if its financial shows profit. Admittedly, financial of the assessee company shows loss for the year under consideration. Therefore, clause V(A) of royalty agreement applies and as per which the assessee shall receive minimum royalty of 2.5% on sale of vehicles assembled in India. The Assessing Officer has taken sales declared by the assessee in the financial statement and has reduced landed cost of imported components, standard bought out components used in the manufacture of the products, variable marketing expenses and proportionate excise duty and has arrived at net sales value of Rs.4025.98 crores and on which he has computed 2.5% royalty which works out to Rs.100.65 crores. It

was the explanation of the assessee that the appellant has received royalty only on those passenger vehicle models which has positive revenue base. The assessee further contended that in case, passenger vehicle models which has negative revenue base is also considered for computing royalty, then cost associated with those models also needs to be considered to arrive at net sales value. According to the assessee, if methodology adopted by the Assessing Officer is considered, then royalty income receivable by the assessee from M/s. Ford India Private Limited, shall work out at Rs.91.68 crores, which is lesser than amount of royalty income of Rs.92.74 crores considered by the assessee in books of account.

9. We have considered arguments of both the sides in light of various facts brought out by the Assessing Officer and we find that as per clause V(A) & (B) of the agreement, the assessee shall receive royalty on revenue base from sale of vehicles assembled by M/s. Ford India Private Limited. However, there is no segregation as to payment of royalty only on those passenger vehicles models which has positive revenue base. Therefore, to this extent arguments of the

assessee that it has considered only those passenger vehicle models which has positive revenue base, is inconsistent with royalty agreement between the parties and thus, argument of the learned A.R for the assessee is rejected. As regards other arguments of the assessee that in case passenger vehicle models which has negative revenue base also needs to be considered for royalty computation, then cost associated with those passenger vehicle models also needs be considered to arrive at sales value, we find force in the arguments of the assessee for simple reason that once gross revenue from all models is considered, including those passenger vehicle models which has negative base, then related cost associated with those models also needs to be considered, because royalty agreement specifies payment of royalty on revenue base of sales of passenger vehicles assembled in India. The assessee has filed reconciliation statement explaining difference between royalty income computed by the assessee and determined by the Assessing Officer, which is available at page 40 of the paper book filed by the assessee. According to the reconciliation statement filed by the assessee, if methodology considered by the Assessing Officer is adopted

for computing royalty, then royalty income receivable by the assessee from M/s. Ford India Private Limited, shall work out to Rs.91.68 crores, which is lesser than the amount of royalty income received by the assessee at Rs.92.74 crores. The facts with regard to consideration of cost associated with those passenger vehicle models which has negative revenue base by the Assessing Officer is not forthcoming from records. Further, reconciliation statement filed by the assessee explaining difference between royalty income computed by the assessee and royalty income determined by the Assessing Officer was also not available with the Assessing Officer. Therefore, to consider the above aspect and also reconciliation statement filed by the assessee, the issue needs to go back to the file of the Assessing Officer for fresh consideration. Hence, we set aside the issue to file of the Assessing Officer and direct the Assessing Officer to reconsider the issue in light of royalty agreement between the parties, revenue base of passenger vehicles assembled in India and reconciliation statement filed by the assessee explaining difference between royalty income computed by the assessee and royalty income determined by the Assessing Officer.

10. In the result, appeal filed by the Revenue is treated as allowed for statistical purposes.

Order pronounced in the open court on 9th February, 2022

Sd/-
(वी. दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 9th February, 2022.

DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.