

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA**  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

श्री राजेश कुमार लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष

**I.T.A. No. 226/Kol/2021**  
**Assessment Year : 2016-17**

M/s Philips India Ltd. (PAN: AABCP 9487 A)	Vs.	DCIT, Circle-11(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	23.06.2022
Date of Pronouncement / आदेश उद्घोषणा की तिथि	06.09.2022
For the Appellant / निर्धारिती की ओर से	Shri Ketan K. Ved. CA
For the Respondent / राजस्व की ओर से	Shri Tushal Dhawal Singh, CITDR

**ORDER / आदेश**

**Per Shri Rajesh Kumar, AM:**

This appeal filed by the assessee against the assessment order of the ACIT Circle-12(2), Kolkata, dt. 31.12.2019 for the A.Y. 2016-17 passed u/s 143(3) r.w.s. 144C(5) of the Income Tax Act, 1961 (hereinafter the ‘Act’) in pursuance to the order of the DRP-2, New Delhi, dt. 26.02.2021.

2. Issue raised in ground no. 1 is general in nature and does not require any adjudication.
3. Issue raised in ground no. 2 is against the direction of DRP on determination of arms’ length price in respect thereof for intra group services received by the appellant- assessee.

4. The Ld. Counsel for the assessee at the outset submitted that the issue is recurring one right from A.Y.2009-10 to 2015-16 and is covered in favour of the assessee by the decisions of the Co-ordinate Benches of the Tribunal deciding the issue in favour of the assessee in all the assessment years. The Ld. A.R took the Bench through the decisions attached in the Paper book and prayed that the ground may be allowed following the said decisions of the Co-ordinate Bench in the assessee's own case.

5. The Ld. D.R. on the other hand fairly agreed that the issue is squarely covered by the decisions of Co-ordinate Benches in assessee's own case however relied on the order of DRP.

6. Having heard rival submissions and perusing the material on record including the decisions of the coordinate benches in assessee's own case in the earlier assessment years, we find that the issue is squarely covered in favour of the assessee. Therefore taking a consistent view, we allow ground no. 2 by setting aside the direction of the DRP and directing the TPO/AO to delete the adjustment/addition.

7. Issue raised in ground no. 3 is in respect of determination of arm's length price and an adjustment made on account thereof towards advertisement, marketing and promotion expenses.

8. Having heard rival submission and perusing the material on record we find that issue is squarely covered by the decisions of the Co-ordinate Benches in earlier assessment years in assessee's own case from AY 2010-11 to 2015-16. Accordingly we set aside the DRP direction on this issue and direct the AO/TPO to delete the adjustment made and consequently ground no. 3 is allowed.

9. Issue raised in ground no. 4 is qua the determination of arm's length price and adjustment thereof for contract research and development services rendered by the appellant-assessee.

10. The Ld. Counsel for the assessee submitted that the issue has been rectified by the AO vide order dated 21.09.2021 passed u/s 154 of the Act copy of which is placed at page 6624 to 6631 of the PB allowing the relief to the assessee. The ground raised by the assessee becomes redundant and is dismissed. Ground no. 4 is dismissed.

11. Issue raised in ground no. 5 is general in nature and need no adjudication.

12. Issue raised in ground no. 6, the assessee has assailed the DRP direction upholding the disallowance made by the AO in respect of rental paid in respect of motor cars by treating the same as capital expenditure.

13. The Ld. Counsel of the assessee submitted that DRP in Para 9 of page 16 & 17 of its direction has followed the direction given by DRP in AY 2012-13 and AY 2013-14. The Ld. Counsel of the assessee submitted that DRP has also directed the AO to find out whether an appeal has been filed before the Hon'ble High Court by the revenue in AY 2011-12 against the decision of the Co-ordinate bench deciding the issue in favour of the assessee. The Ld. Counsel of the assessee submitted before the Bench that issue is recurring one and has been decided by the Co-ordinate Benches from AY 2009-10 to 2015-16 the copies thereof are attached in the paper book and the issue in current year may also be decided on the same line following the said Co-ordinate Bench's decision in AY 2009-10 to 2015-16.

14. We have perused the facts of the case in the light of the decisions of Co-ordinate Benches from AY 2009-10 to 2015-16 in assessee's own case and find that the issue is recurring one which has been decided in favour of the assessee. Accordingly ground no. 6 is allowed by setting aside the direction of DRP.

15. Issue raised in ground no. 7 is against the order of DRP sustaining the disallowance of depreciation on moulds of Rs. 5,01,20,737/-.

16. Having heard the rival parties and perusing the material on record we find that the issue is also recurring one which has been restored to the file of the AO for fresh

verification from A.Y. 2011-12 to 2015-16. Therefore following the orders of Coordinate Benches from A.Y. 2011-12 to 2015-16, we restore this issue to the file of the AO for fresh verification and decide the same in accordance with the provisions of the Act.

17. Issue is raised in ground no. 8 is against the disallowance u/s 14A of the Act.

18. Facts in brief are that the assessee has not received any dividend income and accordingly no disallowance was made in terms of Hon'ble Supreme Court in the case of *CIT vs. Chettinad Logistics Pvt. Ltd. reported in [2018] 95 taxmann.com 250 (SC)*. The AO however applied Rule 8D and disallowance was made which was affirmed by the DRP.

19. In our considered opinion the issue is settled one that no disallowance can be made where there is no exempt income as laid down by the Hon'ble Supreme Court in the above decision. We, therefore, respectfully following the decision of the Hon'ble Apex Court set aside the order of DRP on this issue and direct the AO to delete the disallowance. The ground No. 8 is accordingly allowed.

19. Issue raised in ground no. 9 is in respect of not allowing the deduction in respect of claim of assessee in respect of education cess of Rs. 6,88,42,886/-.

20. After hearing the rival parties and perusing the material on record, we are of the view that the issue is covered against the assessee and is accordingly dismissed.

21. Issue raised in ground no. 10 is against the short grant of tax deducted at source/tax collected at source to the tune of Rs. 18,98,192/-.

22. After hearing the rival parties and perusing the material on record, we are of the view that the issue needs to be examined at the level of AO. Accordingly the same is restored to the file of the AO with the direction to examine and allow the same after doing the necessary verification. The assessee is also directed to co-operate and

furnish necessary evidences proving its contentions of short grant of TDS/TCS. Ground is allowed for statistical purposes.

23. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 6<sup>th</sup> September, 2022

Sd/-

(Sonjoy Sarma/ संजय शर्मा)  
Judicial Member / न्यायिक सदस्य

Sd/-

(Rajesh Kumar/ राजेश कुमार)  
Accountant Member / लेखा सदस्य

Dated: 6<sup>th</sup> September, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Philips India Ltd., 3<sup>rd</sup> Floor, Tower A, DLF Park, 08 Block AF, Major Arterial Road, New Town (Rajarhat), Kolkata-700156.
2. Respondent –DCIT, Circle-11(1), Kolkata
3. The DRP-2, New Delhi
4. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata