

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'D' BENCH: CHENNAI**

श्री मंजुनाथ जी, लेखकसदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष  
**BEFORE SHRI MANJUNATHA. G, ACCOUNTANT MEMBER AND**  
**SHRI MANOMOHAN DAS, JUDICIAL MEMBER**

आयकर अपील सं./IT(TP)A Nos.9, 10 & 11/Chny/2018  
निर्धारण वर्ष /Assessment Years: 2011-12, 2012-13 & 2013-14

**M/s. Indian Additives Ltd.,**  
Express Highway, Manali,  
Chennai – 600 068.  
[PAN: AAACI-1445-G]

(अपीलार्थी/Appellant)

**The Dy. Commissioner of**  
**Vs. Income Tax,**  
Corporate Circle-2(2),  
Chennai.

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.1034, 1035, 1036 & 1037/Chny/2018  
निर्धारण वर्ष /Assessment Years: 2011-12, 2012-13, 2013-14 & 2014-15

**The Dy. Commissioner of Income**  
**Tax,**  
Corporate Circle-2(2),  
Chennai.

(अपीलार्थी/Appellant)

**M/s. Indian Additives Ltd.,**  
Express Highway, Manali,  
Chennai – 600 068.  
[PAN: AAACI-1445-G]

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by  
प्रत्यर्थी की ओर से /Revenue by

: Shri R. Sudharsan, C.A  
: Dr. S. Palanikumar, CIT

सुनवाई की तारीख/Date of Hearing

: 10.04.2023

घोषणा की तारीख /Date of Pronouncement

: 19.05.2023

**आदेश / ORDER**

**PER BENCH:**

These cross appeals filed by the assessee, as well as the Revenue are directed against the separate, but identical orders passed by the learned Commissioner of Income Tax (Appeals)-6,

Chennai, dated 28.12.2017 and pertains to Assessment Years (A.Ys) 2011-12, 2012-13, 2013-14 & 2014-15. Since, facts are identical and issues are common, for the sake of convenience, these cross appeals filed by the assessee as well the Revenue are being heard together and are being disposed off, by this consolidated order.

2. The assessee, as well as the Revenue filed grounds of cross appeals in their respective appeals filed for all A.Ys. Therefore, for the sake of brevity, grounds of appeal filed by the assessee in IT(TP)A No.9/Chny/2018 for A.Y 2011-12 and grounds of appeal filed by the Revenue in ITA No.1034/Chny/2018 for A.Y 2011-12 are reproduced as under:

**IT(TP)A No.9/Chny/2018 for A.Y 2011-12:**

*"The order of the Hon'ble Commissioner of Income Tax (Appeal) is against facts and circumstances of the case.*

*Both the CIT (A) and the Assessing Officer has failed to appreciate the various submissions made in the current perspective.*

***1. Download Adjustment of Rs.5,59,73,812/-:***

*The Appellant has adopted different methods for each type of transactions and the same has been already produced before the TPO and Assessing Officer. However, TPO has ignored the method adopted by the Appellant and applied TNMM for the transaction as a whole.*

*Even assuming but not admitting in the event of Lubrizol as comparison the following adjustments has to be granted.*

- Adjustments on account of Lube Oil / Base Oil/ Mineral Oil price*
- Tolling fee for Zinc*
- Freight cost on sales*

*If the same is considered the Operating Profit/ Operating Income of IAL will be 23.57% as against Lubrizol ratio of 23.72% and the transaction will be at Arms Length Price.*

***2. Disallowance u/s.40a(ii) - Rs.1,08,43,349/-:***

*The amount of royalty paid is revenue in nature as held by the Hon'ble Income Tax Appellate Tribunal ITA No.2138/ Mds/2008 & ITA No.700 to 702/ Mds/2009 dated 13.11.2009 in appellant's own case for A.Yrs 1999-2000 to 2002-03. Therefore any tax paid towards royalty is also revenue in nature.*

***3. R& D Cess Rs.21,26,429/-:***

*The Appellant has paid CESS towards Royalty at 5% and it is remitted to Reserve bank of India. The Appellant has claimed the same on payment basis under section 43B of the Income Tax Act, 1961.*

***4. Disallowance of depreciation for non-submission of supporting documents Rs.20,63,369/-:***

*The Assessing Officer has not called for any specific invoices towards addition to Fixed Assets. However the Assessing Officer has disallowed the adhoc amount of 25% and the claim regarding additional depreciation.*

*The CIT Appeals has not discussed the same in the order for which the Appellant has filed the Rectification Petition.*

*However while passing the order the Assessment of depreciation has not been considered.*

*For these and other grounds that may be urged at the time of hearing of the appeal, the appellant prays that the appeal be allowed.*

*The appellant be permitted to submit additional grounds at the time of hearing."*

**ITA No.1304/Chny/2018 for A.Y 2011-12:**

*"1. The Order of the learned Commissioner of Income Tax (Appeals) is contrary to the Law and facts of the case.*

*2.1 The CIT(A) erred in treating the royalty payments made to M/s. Chevron Oronite Company LLC USA as nothing but revenue expenditure not resulting in any acquisition of intangible assets when the assessee is enjoying enduring benefit on the acquisition of the same.*

*2.2 The CIT(A) ought to have appreciated the fact that when the royalty falls under the definition of intangible assets as per the provisions of section 32(1)(0) of the Act and the said expenditure is to be treated only as capital expenditure.*

*3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the Order of the learned Commissioner of*

*Income Tax (Appeals) be set aside and that of the Assessing Officer be restored."*

3. The brief facts of the case extracted from IT(TP)A No.9/Chny/2018 for A.Y 2011-12 are that the assessee M/s. Indian Additives Ltd. (IAL) is engaged in the business of manufacturing and sale of lubricant oil additives for the Indian market. IAL was formed as 60:40 joint venture between Chevron Oronite Company LLC, UK (COCL) and Chevron Oronite Japan Ltd. Japan (COJL). The assessee had filed its return of income for A.Y 2011-12 to 2014-15 u/s.139(1) of the Income Tax Act, 1961 (hereinafter referred as "the Act"). The case was selected for scrutiny and during the course of assessment proceedings, a reference was made to the Transfer Pricing Officer (TPO) to determine Arms Length Price (ALP) of international transactions of the assessee with its associated enterprises (AE) as reported in Form-3CD, filed for the relevant assessment year. During the course of transfer pricing proceedings, the TPO noticed that the assessee had entered into various international transactions including purchase of raw materials from their AE Chevron Oronite Pvt. Ltd., Singapore etc. The assessee

has followed CUP as a most appropriate method to benchmark international transactions for purchase of raw-materials. The assessee has taken external CUP and benchmarked its transactions with AE in respect of purchase of raw-materials and claimed that the transactions with its AE are at ALP. The TPO has called information from M/s. Lubrizol India Pvt. Ltd. which is also in the field of automobile additives manufacturing. The assessee has also accepted said company as comparable. From the information received, M/s. Lubrizol India Pvt. Ltd. is having operating margin 23.73% as against assessee's operating margin of 16.01%. Therefore, called upon assessee to explain as to why M/s. Lubrizol India Pvt. Ltd. cannot be considered as comparable for the purpose of CUP method. The assessee raised their objection for comparing M/s. Lubrizol India Pvt. Ltd. as comparable on the ground that M/s. Lubrizol India Pvt. Ltd. has a better backward integration system, whereas the assessee company does not possess the manufacturing facility for making zinc. Further, the assessee has entered into subcontracting agreement with United Prosperous Ltd. for making Zinc. Therefore, the cost of zinc in the case of IAL and Lubrizol

cannot be compared one to one and necessary adjustment had to be made to reflect the correct cost, which IAL has incurred on subcontracting the same on UPL. The assessee had also sought for adjustment in respect of Lube oil/base oil/mineral oil price on the ground that the cost of procurement of lube oil or mineral oil which is one of the major raw-material used in the additive package is higher in the case of assessee when compared to the selected company. The assessee had also sought adjustment towards freight cost on sales on the ground that M/s. Lubrizol India Pvt. Ltd. is having reduced cost of transportation, because of plant situated across the countries, whereas the assessee is not having advantage of plant across the countries. Therefore, suitable adjustment needs to be given for cost of freight on sales. The TPO after considering the relevant submissions of the assessee and also taken note of his predecessor TP order for earlier assessment years, observed that similar claim made by the assessee in last year was not entertained and the matter is pending before the Ld. CIT(A) for adjudication. The scenario for the current year was also not different. Therefore, rejected the arguments of the

assessee for economic adjustments and computed downward adjustment by considering Lubrizol India Pvt. Ltd. operating margin to the margin of the assessee and made TP adjustment of Rs. 27,35,30,000/-.

4. Pursuant to transfer pricing order of the TPO, the A.O passed draft assessment order u/s. 143(3) r.w.s 144C(1) of the Act on 16.03.2015 and proposed TP adjustment as suggested by the TPO. The assessee vide letter dated 15.04.2015 informed the A.O that the assessee wish to prefer an appeal before the Ld. CIT(A) against the draft assessment order. Therefore, requested the A.O to pass final assessment order. Thereafter, the A.O passed final assessment order u/s. 143(3) r.w.s. 144C(13) of the Act, and made additions towards TP adjustment as suggested by the TPO. The A.O had also made additions towards disallowance u/s. 40(a)(ii) of the Act towards TDS on royalty, on the ground that the TDS is not deductible u/s. 40(a)(ii) of the Act. The A.O had also made additions towards disallowance of R&D Cess u/s. 43B of the Act. Similarly, the A.O had made additions towards disallowance of depreciation for non submission of

supporting documents and has also made additions towards interest on unsecured loan.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee challenged additions made by the A.O towards downward adjustment on international transactions of the assessee with its AE, royalty payment made to M/s. Chevron Oronite Company LLC, USA, Disallowance of TDS u/s. 40(a)(ii) of the Act, disallowance of R & D cess, disallowance of depreciation for non submission of supporting documents and addition towards interest on unsecured loans. The Ld. CIT(A), for the reasons stated in their appellate order dated 28.12.2017, partly allowed the appeal filed by the assessee, wherein he has deleted additions made by the A.O towards disallowance of royalty on the ground that royalty paid by the assessee to its AE is revenue in nature. However, confirmed additions made by the A.O towards TP adjustment on international transactions, disallowance of TDS u/s. 40(a)(ii) of the Act, disallowance of R&D cess and disallowance of depreciation. Aggrieved by the Ld. CIT(A)

order, the assessee as well as the Revenue are in appeal before us.

6. The first issue that came up for our consideration from assessee's appeal for A.Ys 2011-12 to 2013-14 is downward adjustment towards purchase of raw-materials from its AE. The Ld. counsel for the assessee, submitted that this issue is covered in favour of the assessee by the decision of ITAT, 'D' Bench, Chennai in assessee's own case for A.Y 2009-10 in ITA No.2579/Mds/2016, where an identical issue had been considered by the Tribunal, in light of relevant facts and in respect of cost of Lubrizol and mineral oil adjustment and set aside the matter to the A.O for fresh adjudication to provide adjustment towards cost of Lubrizol oil and tolling fee for Zinc. In respect of adjustment towards transportation cost, the Tribunal has confirmed the findings of the A.O and Ld. CIT(A). Therefore, a similar directions may be given for these A.Ys to give suitable adjustment towards tolling fee for zinc and Lubrizol oil.

7. The Ld. D.R present for the Revenue, supporting the order of Ld. CIT(A) submitted that the assessee could not

provide any evidences as to why necessary adjustment is required to be given in respect of price of Lubrizol oil and tolling fee for zinc. The assessee is also unable to provide necessary details why adjustment is required to be provided for cost of freight on sales. However, he fairly agreed that in the earlier years, Tribunal has set aside the issue to the file of A.O and TPO for fresh consideration and thus, the matter may be decided in accordance with law.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that an identical issue has been considered by the Tribunal in assessee's own case for A.Y 2009-10 in ITA No.2579/Mds/2016, where the Tribunal after considering relevant facts has set aside the issue to the file of the A.O for reconsideration and give proper adjustment on account of raw-material cost of Lubrizol and mineral oil and also regarding tolling fee for zinc. The relevant findings of the Tribunal order are as under:

*"6. We have heard both the parties and perused the material on record. According to Id.A.R, Lubrizol is procuring raw materials at lower cost as Lubrizol is a JV promoted by M/s. Indian Oil Corporation ( IOCL)., and M/s.Chevron Oronite Company LLC USA. IOCL has given better discount in Lube Oil price/MT to*

*Lubrizol, which is not available to the assessee. In our opinion, if it is reflected in the financial statement of Lubrizol, it is appropriate to give credit to the same and computation of T.P adjustments thereafter while determining the ALP. Accordingly we remit the issue to the file of AO for reconsideration and give proper adjustments on account of raw materials cost of Lubrizol and mineral oil. This issue is remitted to the file of AO for fresh consideration.*

*6.1 Regarding Tolling fee for ZINC, it was submitted that Lubrizol toll had their own Zinc and on other hand, the assessee entered into sub contract agreement with UPL Ltd. in Gujarat for making Zinc. Therefore the cost of Zinc in the case of assessee is higher compared to the cost incurred by the Lubrizol towards the Zinc. In our opinion, if the details of cost of procurement of Zinc by tolling, the same by Lubrizol is available and if the AO finds that the cost price of the Zinc incurred by the Lubrizol is lesser as compared to the assessee's case, then the suitable adjustments to be made while determining the ALP. Accordingly, this issue is also remitted to the file of AO for fresh consideration. It is needless to say that opportunity of hearing to be given to assessee by AO/TPO before deciding the above issues.*

*6.2 Regarding transportation cost, it is submitted that the assessee incurred additional cost for transportation from Gujarat to Chennai whereas the cost of transportation in case of Lubrizol is less. However, we find that the assessee has not able to establish that the cost of transportation in case of Lubrizol is lesser than the assessee and Lubrizol is selling its goods only in local and thus arguments of assessee cannot be upheld. This ground is rejected."*

9. In view of this matter and by following the decision of Co-ordinate Bench of ITAT in assessee's own case for earlier year, we remit the issue of downward adjustment towards purchase of raw-materials to the file of the TPO/A.O to give suitable adjustment in respect raw-material cost of Lubrizol and mineral oil and also tolling fee for zinc. Thus, we set aside the issue to the file of the A.O to re-consider the issue in light of directions given by the Tribunal for A.Y 2009-10

and decide the issue for these assessment years 2011-12, 2012-13 & 2013-14 also.

10. The next issue that came up for our consideration from assessee appeal for A.Ys 2011-12 & 2012-13 is disallowance of TDS on running royalty u/s. 40(a)(ii) of the Act. The A.O has disallowed a sum of Rs. 1,08,43,349/- for A.Y 2011-12 towards income tax paid on royalty payment made to AE on the ground that, as per the provisions of Section 40(a)(ii) of the Act any sum on account of any rate or tax levied on the profits and gains of any business or profession or assessed at a proportion of, or otherwise should not be allowed as expenditure. It was the argument of the assessee before the A.O that, out of sum of Rs. 1,08,43,349/- a sum of Rs. 75,05,019/- is on account of TDS on royalty paid to AE and said TDS has been incurred by the assessee as per terms of agreement with its AE. Therefore, when royalty has been treated as an expenditure, consequent TDS liability incurred by the assessee for grossing up purpose also needs to be allowed as an expenditure.

11. The Ld. counsel for the assessee submitted that, as per the agreement with its AE, the royalty payment to M/s. Chevron Oronite Company LLC, USA is net on all taxes. Therefore, while making payment of royalty, the assessee has grossed up TDS deductible on said royalty and paid royalty net of taxes to the AE and remitted TDS portion to the Govt. account. Since, royalty paid to AE has been held to be revenue in nature and allowable as expenditure, consequent TDS paid on said royalty is also in the nature of expenditure, which needs to be allowed as deduction. The A.O without understanding relevant facts simply disallowed TDS deducted on royalty paid and debited to rates and taxes account u/s. 40(a)(ii) of the Act. In this regard, the Ld. counsel for the assessee has filed copy of agreement between appellant and Chevron Oronite Company LLC, USA to prove their claim that TDS liability on royalty is borne by the assessee.

12. The Ld. D.R, on the other hand, supporting the order of Ld. CIT(A) submitted that the assessee could not explain how TDS on royalty is an allowable expenditure. Further, as per the provisions of Section 40(a)(ii) of the Act, any tax on profit

is not allowable as deduction. Further, the assessee could not file copy of agreement with its AE to prove that TDS on royalty is borne by the assessee. Therefore, the A.O has rightly disallowed TDS u/s. 40(a)(ii) of the Act and therefore, their order should be upheld.

13. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The assessee has debited TDS deducted on royalty payment made to its AE M/s. Chevron Oronite Company LLC, USA. The A.O has disallowed royalty payment as capital in nature and consequently disallowed TDS deducted on said royalty and debited to profit and loss account under the head rates and taxes as not allowable deduction u/s 40(a)(ii) of the Act. The assessee claims that royalty paid to AE has been held to be revenue in nature by the decision of ITAT in earlier years and the Ld. CIT(A) by following the decision of ITAT has deleted additions made by the A.O towards disallowance of royalty expenses and Revenue is in appeal before the Tribunal. We find that the Tribunal in earlier years considered the nature of royalty paid by the assessee in light

of agreement between the parties and after considering the relevant facts held that royalty paid to M/s. Chevron Oronite Company LLC, USA is revenue in nature and allowable as deduction. Since, royalty expenditure has been considered to be revenue in nature, consequent grossing up of expenditure towards TDS deductible on said royalty is also revenue in nature and said expenditure is deductible u/s. 37(1) of the Act. We further noted that as per clause (4)(i)(c) of agreement between assessee and its AE dated 31.03.2009, the royalty payment to AE is net of applicable Indian income tax (which shall be borne by Indian Additives Ltd.). From the above, it is very clear that the assessee needs to make payment of royalty, net applicable taxes and thereby liability towards TDS is borne by the assessee. Since, the royalty expenditure is considered as revenue in nature, consequent TDS on said royalty is also revenue in nature which needs to be allowed as deduction. Therefore, we are of the considered opinion that the A.O is erred in disallowing TDS on royalty u/s. 40(a)(ii) of the Act because, it is neither a tax nor duty levied on profits of the assessee, but it is an expenditure incurred by the assessee for payment of royalty to its AE.

Therefore, we direct the A.O to delete the additions made towards disallowance of royalty u/s. 40(a)(ii) of the Act for A.Ys 2011-12 & 2012-13.

14. The next issue that came up for our consideration from assessee appeal for A.Ys 2011-12 & 2012-13 is disallowance on R&D cess paid to RBI. The assessee has paid 5% cess on total royalty paid to its AE and remitted the same to RBI. The A.O has disallowed R&D cess on the ground that royalty expenditure is capital in nature and not revenue and consequently cess paid on said royalty expenditure and remitted to RBI cannot be allowed as a deduction.

15. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that the Tribunal in assessee's own case for earlier years, held that royalty payment made to its AE M/s. Chevron Oronite Company LLC, USA is revenue in nature which is allowable as expenditure. Since, royalty expenditure is considered to be revenue in nature, cess paid on royalty expenditure and remitted to RBI is also revenue in nature, which needs to be allowed as expenditure. Therefore,

we direct the A.O to delete disallowance of R&D cess for the A.Ys. 2011-12 & 2012-13.

16. The next issue that came up for our consideration from assessee appeal for A.Ys 2011-12 is disallowance of depreciation for non submission of supporting documents. During the course of assessment proceedings, the assessee was asked to submit the invoices/bills for the additions to fixed assets. Since, the assessee could not file necessary bills/invoices in support of additions to fixed assets, the A.O has disallowed 25% of the claim of the assessee regarding the additional depreciation on fixed assets and disallowed a sum of Rs. 20,63,369/- and added back to total income.

17. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The assessee neither furnished necessary bills and invoices in respect of additions to fixed assets nor justified the rate of additional depreciation. Even before us, the assessee could not file any details, including bills and invoices for addition to fixed assets. In the absence of necessary bills and invoices, the claim of additional

depreciation cannot be allowed. Therefore, we are inclined to uphold the findings of A.O and Ld. CIT(A) and reject the claim of the assessee.

18. The next issue that came up for our consideration from assessee appeal for A.Y 2012-13 is interest on unsecured loan. During the course of assessment proceedings, the A.O noticed that the assessee had claimed an amount of Rs. 33.83 Lakhs, towards interest on shortfall of advance tax under the head 'Finance Cost' in the profit and loss account. However, in the computation, the assessee has added back a sum of Rs. 30.82 Lakhs, but not entire amount. On being questioned, the assessee stated that shortfall for advance tax is only Rs. 30.82 Lacs and the remaining balance of Rs. 3.1 Lakh pertains to interest on unsecured loan paid to HDFC Bank. However, the assessee has not filed any details. Therefore, the A.O has disallowed interest on unsecured loan amounting to Rs. 3.1 Lakh and added back to total income.

19. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that the assessee has claimed

interest paid on unsecured loan borrowed from HDFC Bank, but could not file any necessary evidences including relevant bank statements and loan sanctioned letter to prove interest on unsecured loan debited into the profit and loss account. Therefore, we are of the considered view that there is no error in the reasons given by the Ld. CIT(A) to sustain additions made towards disallowance of interest on unsecured loan and thus, we are inclined to uphold the findings of Ld. CIT(A) and reject the ground taken by the assessee.

20. The next issue that came up for our consideration from assessee appeal for A.Ys 2011-12 to 2014-15 is additions made towards disallowance of royalty payment to M/s. Chevron Oronite Company LLC, USA. The A.O has disallowed royalty paid to M/s. Chevron Oronite Company LLC, USA, AE of the assessee on the ground that royalty payment is capital in nature which gives enduring benefit to the assessee and thus, cannot be allowed as deduction.

21. The Ld. counsel for the assessee submitted that, this issue is covered in favour of the assessee by the decision of

ITAT, 'A' Bench, Chennai in assessee's own case for A.Y 2010-11 in ITA No.835/Mds/2016, where the Tribunal after considering the relevant agreement between the assessee and its AE held that royalty payment to its AE is revenue expenditure which does not give any enduring benefit to the assessee, therefore, allowable as deduction u/s. 37(1) of the Act.

22. The Ld. DR, on the other hand, fairly agreed that this issue is covered in favour of the assessee in assessee's own case for A.Y 2010-11 in ITA No.835/Mds/2016.

23. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that the Co-ordinate Bench of ITAT, Chennai in assessee's own case has considered an identical issue in light of agreement between the assessee and M/s. Chevron Oronite Company LLC, USA and after considering the relevant facts held that royalty payment by the assessee to its AE has no nexus or direct connection with the manufacture of the product and thus in this circumstances, it should only be a revenue expenditure paid

for the use of the license, trade mark and technical information for a particular period and accordingly, allowable as a revenue expenditure. The relevant findings of the Tribunal order are as under:

*"7. We heard the rival submissions, perused the material on record and judicial decisions relied. The sole crux of the issue being payment of royalty to M/s.Chevron Oronite Company, LLC, USA is a Revenue expenditure or capital expenditure eligible for depreciation @ 25%. We perused the assessment order and found that Ld.Assessing Officer has elaborately discussed on the agreement and treated the said payment in the nature of intangible assets and allowed depreciation. The Id. Commissioner of Income Tax (Appeals) relied on the order of the Co-ordinate Bench of this Tribunal in assessee's own case and allowed the appeal. The only contention of the Department before the Tribunal that the Revenue has not accepted the order of the Tribunal and an appeal has already been filed in Hon'ble High court of Madras and the same is pending. This Tribunal is of the considered opinion that mere pendency of appeal before Hon'ble High Court cannot be a reason to take a different view. So, considering the decision of Co-ordinate Bench of the Tribunal in assessee own case in ITA No.1437, 1438 & 1439/Mds/2012, assessment years 2003-04, 2005-06 & 2006-07 observed at para 4 at page 2 of his order as under:*

*4. We have perused the orders and heard the rival submissions. We find that a similar issue had come up before this Tribunal in Revenue's appeal for assessment years 1999-2000 to 2002-03 as also in assessment year 2004-05. In its order dated 17<sup>th</sup> June, 2011 for assessment year 2004-05 in ITA No.951/Mds/2009, it was held by co-ordinate bench of this Tribunal as under:*

*"7. We have perused the orders and heard the rival contentions. We find that the same issue regarding royalty payment made to M/s.COCL was considered by this Tribunal in the orders referred supra. It was held by this Tribunal at para 2.17 of its order dated 13<sup>th</sup> November, 2009, as under:*

*"2.17 In the facts and circumstances of the case, when the royalty payments shall be computed at a particular percentage of sales priced, and if there was no sales, no royalty would be payable. Merely because goods were produced in India by the assessee acquiring the technical process from the foreign collaborator, it cannot be said that the royalty payment is referable to the production house/manufacturing of the products. The technical know-how for the manufacturing*

*process was acquired by the assessee against a lump Sum payment or royalty and subsequent to that, if there is no sale of the product manufactured by the assessee, then there would be no royalty payable. Thus, the running royalty payable has no nexus or direct connection with the manufacture of the product. The liability to pay the royalty arises only when there is a sale. Therefore, we are of the view that the running royalty cannot be said to be a capital expenditure. We do not find any rationale in bifurcation of the running royalty and treating one part as capital and the other part as revenue by the learned Commissioner of Income Tax (Appeals) without any basis. The decision relied upon by the learned Commissioner of Income Tax (Appeals) is on the facts that the assessee could continue to use the technology even after the expiry of the period of payment of royalty. Therefore, when the lump sum royalty was separately agreed and paid, then the running royalty, in the facts and circumstances, would only be a revenue expenditure paid for the use of the license, trade mark and technical information for a particular period. Accordingly, this issue is decided in favour of the assessee and against the Revenue".*

*8. Respectfully following the order of this Tribunal for the earlier assessment years, claim of the assessee has to be allowed for the impugned assessment year as well. Hence, appeal of the assessee for assessment year 2004-05 stands allowed, whereas, the related ground of the Revenue stands dismissed".*

*5. Thus, this Tribunal had followed its own order for earlier assessment years on the same issue. We are, therefore, of the opinion that CIT(Appeals) was well justified in treating the royalty payments made to M/s. Chevron Oronite Company LLC USA as nothing but revenue expenditure, not resulting in, any acquisition of intangible assets"*

*We, respectfully following the Co-ordinate Bench decision, upheld the order of Commissioner of Income Tax (Appeals) and dismiss the ground of the Revenue."*

*Respectfully following Jurisdictional ITAT's decision in appellant's own case, on this recurring issue, I direct the AO to delete the addition made on account of royalty payment pertaining to all the four assessment years under appeal. The grounds of appeal taken by the appellant on this issue are allowed."*

24. In view of this matter and by following decision of decision of Co-ordinate Bench of ITAT in assessee's own case for A.Y 2010-11, we are of the considered view that there is

no error in the order of Ld. CIT(A) to delete the additions made towards royalty and thus, we are inclined to uphold the findings of Ld. CIT(A) and dismiss the appeal filed by the Revenue for A.Y 2011-12 to 2014-15.

25. In the result, appeals filed by the assessee for A.Ys 2011-12, 2012-13 and 2013-14 are partly allowed and appeals filed by the Revenue for A.Ys. 2011-12 to 2013-14 are dismissed.

*Order pronounced on 19<sup>th</sup> May, 2023.*

**Sd/-**  
**(मंजुनाथ. जी)**  
**(Manjunatha. G)**

**लेखा सदस्य /Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 19<sup>th</sup> May, 2023.

*EDN/-*

**Sd/-**  
**(मनोमोहन दास)**  
**(Manomohan Das)**  
**न्यायिक सदस्य/Judicial Member**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF