

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'I' : NEW DELHI)
BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 796/Del/2022, A.Y. 2017-18

M/s. Gruner India Pvt. Ltd. 714, International Trade Tower, Nehru Place, Delhi-110019 PAN : AADCG2938H (APPELLANT)	Vs.	National Faceless Assessment Centre, New Delhi (RESPONDENT)
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Appellant by	Mr. Pancham Sethi, CA
Respondent by	Shri Manvendra Goyal, CIT(DR)

Date of hearing:	27.09.2023
Date of Pronouncement:	10.10.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appellant/ assessee has come in appeal challenging the final assessment order dated 25.02.2022 u/s. 143(3) r.w.s. 144C(13) read with section 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and DRP direction dated 18th January, 2022.

2. The brief facts of the case are that Gruner India is engaged in manufacturing of latching relays, solenoids and actuators (electromechanical products), used in electrical and electronic meter industry and automotive industry. Gruner India has the exclusive rights to manufacture the relays,

actuators and solenoids in India under the brand name “Gruner” and has also obtained the licence to use the technical know-how of the associated enterprise (AE), i.e. Gruner AG. In this case, the return of income for AY 2017-18 was e-filed on 30.11.2017 declaring a total income of Rs. 6,88,86,230/-.

2.1 As per the Transfer Pricing (TP) document furnished for the A.Y. 2017-18, the assessee company has entered into the following international transactions with its Associated Enterprises (AE):-

S. No.	Nature of Transaction	Value (in Rs.)	Method Applied
1	Import Raw Materials, spares & consumables	29,24,75,200	TNMM
2	Export-Finished Goods	6,64,97,974	TNMM
3	Purchase of Plant & Machinery	58,78,746	TNMM
4	Royalties	5,37,08,967	TNMM
5	Fees for technical Services (Paid)	6,90,94,370	TNMM
6	Reimbursement of travelling expenses	13,78,661	TNMM

2.2 DRP-1, New Delhi vide its order dated 28.01.2019 in assessee’s own case for A.Y. 2012-13 has given following directions:

- On the issue of determining of “payment of royalty fee” to be “nil”, DRP has held that ALP of royalty payment could not be taken as NIL and benefit test could not be applied and directed to adopt royalty rate of 3% for benchmarking the royalty payment.
- On the issue of determining of “payment of technical fee” to be “nil”, DRP has held that ALP of technical fee could not be taken as NIL by applying the benefit test and directed to delete the adjustment.

3. In the present assessment year, the TPO on the basis of certain judicial precedents and specially the Mumbai Bench judgment in **UCB India (P.) Ltd. v. ACIT [2009] 317 ITR 292 (Mum)** concluded that the CUP Method for analyzing the arms length nature of fee paid by the assessee to its associated enterprise will be more appropriate method and thereafter the TPO on the basis of DRP directions in assessee's own case considered royalty rate of 3% to be arms length rate for bench marking the transaction of payment of royalty while for fee for technical services followed DRP directions for A.Y. 2012-13.

4. Accordingly, draft assessment order u/s 144C was served upon which assessee for which assessee raised objection before DRP challenging the applicability of CUP Method instead of TNMM and applying 3% royalty rate, without undertaking any economic analysis and without explaining the manner of determining ALP of impugned transactions.

5. The DRP on the basis of its findings for A.Y. 2012-13 and 2013-14 directed to adhoc royalty rate of 3% for bench marking of the payment of royalty. It was also observed as far as the payment of technical services is concerned the TPO/ AO has not applied CUP correctly in terms of the directions of the Tribunal and has not searched the comparables for the purpose of bench marking and merely stated that payment of technical fee is not justified as the AE is charging itself.

6. Thereon, following its order for A.Y. 2012-13 the panel directed the TPO/AO to re-compute the ALP on the basis to comparables searched by him and if no comparable are found to be appropriate, the TPO/AO was directed to delete this adjustment on the lines of DRPs directions for 2012-13.

7. Based upon these directions dated 18.01.2022, the AO passed the impugned order dated 25.02.2022 against the assessee is in appeal raising following grounds :-

“1. On the facts and circumstances of the case and in law, Ld. DRP/AO has erred by :

- 1.1 Confirming addition of Rs. 3,89,49,560/- made to the income of the assessee u/s 92CA (3).*
- 1.2 Rejecting aggregation-approach under TNMM for benchmarking international transaction at entity level.*
- 1.3 Confirming to benchmark under CUP Method the transaction of royalty payment even when this is justified under TNMM.*
- 1.4 Failing to appreciate that when CUP cannot be applied due to absence of comparables then ALP shall be determined under other suitable method which may be TNMM.*
- 1.5 Holding that amount of royalty paid to AE should be restricted to 3%, i.e. Rs. 2,33,69,736/- against the actual claim of 8% i.e. Rs. 6,23,19,296/- thereby making disallowance of Rs. 3,89,49,560/-.*
- 1.6 Applying the ALP rate for royalty @3% as held by Hon’ble Courts in certain case laws which is not a methodology prescribed by Rule 10B(1) & Rule 10C.*

2. Ld. AO erred in charging interest u/s 234B, 234C and 234D under the facts & in law in the circumstances of the case.

3. Ld. AO erred by initiating the penalty proceedings u/s 270A.

4. The appellant craves add, amend, alter or vary the above ground of appeal at or before the time of hearing.”

8. Heard and perused the record.

9. Ld. AR relying the order of co-ordinate Bench in ITA no. 4062/Del/2019 for A.Y. 2012-13 submitted that the issue of methodology to be adopted and arbitrary selection of royalty rate of 3% without bringing any correct comparables has been considered and Coordinate bench has set aside the adjustments.

9.1 Ld. DR however submitted that in the present assessment year the case of comparable in form of Federal Mogul and Climate Systems India Ltd. have been considered to apply the rates therefore the facts are different.

10. The Bench has given thoughtful consideration to the facts and submissions, and at the very outset has no hesitation to not sustain the submission of Ld. DR about adopting comparables as per law as the order indicate that instead of making analysis on the parameters merely following judicial precedent in the case of Federal Mogul and Climate Systems India Ltd. case the 3% royalty has been adopted. Very apparently no fresh exercise seems to have been done by TPO or DRP to justify de-segregation and precedent of AY 2012-13 has been followed.

11. The co-ordinate Bench, on similar facts and circumstance, in its order dated 03.07.2023 in ITA no. 4062/Del/2019 for A.Y. 2012-13 has observed as follows ;

“9. In the light of the above, we have gone through the history of the case. The similar issue in the case of the assessee has been a subject matter of adjudication by the order of the Hon'ble High Court of Delhi vide order dated 20.12.2016. The Hon'ble High Court considered the issue of payment of assistance fee as held in the case of,

- 1. Magnetic Marelli (290 CTR 60)*
- 2. EKL Appliances Ltd.(345 ITR241)*
- 3. Sony Ericsson (374 ITR 118)*
- 4. Denso India Ltd. (240 Taxman 713)*

and remanded the matter to the revenue.

10. We find that the turnover of finished goods is Rs.92 Cr. and export sales to AE was Rs.24 Cr. The import of raw materia! was Rs.28 Cr. Royalty has been paid on the total sales.

12. In the specific facts of this case and export of goods to AE, the TNMM is the MAM. The Id. DRP has determined royalty payment @ 3% instead of 8% considered by the assessee, taking into consideration, the royalty payment of Federal Mogul TPR India Ltd., Climate Systems India Ltd. and Eicher Motors Ltd. The moot argument of the Id. AR was that the FAR of these companies is different.

13. Having gone through the entire facts and circumstances of the case, we find that the arbitrary selection of royalty rate of 3% by the Id. DRP is without brining any correct comparables on record. With regard to payment of FTS in A.Y. 2012-13, the Id. DRP agreed that the TPO failed to apply CUP correctly and is determination of ALP at Nil is incorrect. The Hon'ble High Court of Delhi in Magneti Marelli held that if segregation approach is

permissible, TNMM shall apply.

14. *Owing to these facts, the appeal of the assessee is hereby allowed.”*

12. The Bench is of considered view that there is no distinction of facts as pointed out by Ld. DR. The following co-ordinate Bench findings the ground are sustained. Consequently, **the appeal of Assessee is allowed.**

Order pronounced in the open court on 10th October, 2023.

Sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Date:-10.10.2023

Binita, SR.P.S

Copy forwarded to:

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

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**