IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

I.T.A. Nos. 133 to 137/Ahd/2023
(Assessment Years: 2010-11 to 2014-15)

Schaeffler India Limited, (Earlier known as FAG Bearings India Ltd.), Opp. ABB, PO Maneja, Vadodara-390013	Vs.	Assistant Commissioner of Income Tax, Circle-1(2), Now Circle-1(1)(1), Vadodara
[PAN No.AAACF3357Q]		
(Appellant)	..	**(Respondent)**

I.T.A. Nos. 147 to 150/Ahd/2023
(Assessment Years: 2010-11 to 2013-14)

Assistant Commissioner of Income Tax, Circle-1(1)(1), Vadodara	Vs.	M/s. Schaeffler India Ltd., P.O. Maneja, Maneja, Vadodara-390013
[PAN No.AAACI5120L]		
(Appellant)	..	**(Respondent)**

Appellant by :	Shri Bhavin Marfatia, A.R.
Respondent by:	Dr. Darsi Suman Ratnam, CIT D.R. & Shri Ashok Kumar Suthar, Sr. D.R.

Date of Hearing	18.12.2023
Date of Pronouncement	12.01.2024

O R D E R

PER BENCH:

These bunch of appeals have been filed by the Assessee and the Revenue against the orders passed by the Ld. Commissioner of Income Tax (Appeals)-13 (in short "Ld. CIT(A)"), Ahmedabad vide orders dated 09.01.2023 passed for the Assessment Years 2010-11 to 2014-15 & 2010-11 to 2013-14.

2. At the outset, we observe that the appeal filed by the Department is time barred by 01 day. Before us, the Ld. D.R. submitted before us that the file could not be filed due to the fact that Memorandum of Authorization was received on 06.03.2023 and there was a holiday on 08.03.2023. Accordingly, the appeal could not file within the prescribed time. Accordingly, looking into the facts of the instant case and reasons cited by Ld. D.R., the delay of 01 day in filing of the present appeal is hereby condoned.

3. We shall first take up the Assessee's and Department's appeal for A.Y. 2010-11, and our observations made for these years shall apply to the balance years as well, wherever applicable.

We shall first take up the assessee's appeal for A.Y. 2010-11 (ITA No. 133/Ahd/2023)

4. The assessee has taken the following grounds of appeal:-

*"**Disallowance of Reimbursement expense u/s 37 -Rs. 31,63,877:***

1) The learned Commissioner of Income Tax (Appeals) - 13, Ahmedabad ["CIT(A)"] erred in fact and in law in confirming the action of the learned AO and the TPO in disallowing Rs. 31,63,877 u/s 37 of the Income Tax Act, 1961 ("the Act").

2) The learned CIT(A) erred in fact and in law in invoking section 37 of the Act without satisfying the conditions stipulated under the Act.

3) The learned CIT(A) erred in fact and in law in disallowing reimbursement of expense without appreciating the facts on record in proper perspective.

4) The learned CIT(A) erred in fact and in law in disallowing Rs. 31,63,877 without disputing the fact that the expense was incurred for the purpose of the business of the Appellant.

5) The learned CIT(A) erred in fact and in law in disallowing the expense merely on the basis of assumption and presumptions.

Refund of excess Dividend Distribution Tax - Rs. 26,84,774:

6) The learned CIT(A) erred in fact and in law in not directing the learned AO to grant refund of excess amount of Dividend Distribution Tax ("DDT") of Rs. 26,84,774 paid on dividend distributed to the German Shareholder.

7) The learned CIT(A) erred in fact and in law in not appreciating the fact that as per Double Avoidance Taxation Agreement ("DTAA") between India and Germany, the liability of tax on dividend received by the German resident does not exceeds 10% of the dividends.

8) The learned CIT(A) erred in fact and in law in taxing the dividend income paid to the nonresident shareholder in excess of rate specified under DTAA without appreciating the provisions of section 90(2) of the Act in proper perspective.

9) The learned CIT(A) erred in fact and in law in disallowing the claim made by the Appellant on account of refund of excess DDT paid during the year without appreciating the law in proper perspective.

Other Grounds:

10) The learned CIT(A) erred in fact and in law in confirming the action of the AO in charging interest u/s 234A of the Act.

11) The learned CIT(A) erred in fact and in law in confirming the action of the AO in charging interest u/s 234 D of the Act.

12) The learned CIT(A) erred in fact and in law in confirming the action of learned AO in initiating penalty proceedings u/s 271(1)(c) of the Act.

13) Your Appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal.”

5. At the outset, the Counsel for the assessee submitted that in respect of Grounds 6 to 9 of the assessee’s appeal (Refund of excess amount of Dividend Distribution Tax (“DDT”) of Rs. 2,84,774/-), the assessee company had declared and paid dividend to Schaeffler GMBH, a tax resident of Germany and paid Dividend Distribution Tax @ 16.995%. As per Article 10(2) of the Act DTAA between India and Germany, the

Dividend paid to German Shareholder was liable to tax @ 10%. However, the Counsel for the assessee submitted that the case is now covered against the assessee by virtue of decision of ITAT Mumbai, Special Bench in the case of Total Oil India Pvt. Ltd. 149 taxmann.com 332 (Mumbai) (SB), and accordingly, the Counsel for the assessee submitted that Grounds 6 to 9 of the assessee's appeal may accordingly be decided against the assessee in light of the aforesaid decision cited above.

6. We observe that ITAT Mumbai Special Bench in the case of DCIT vs. Total Oil India Pvt. Ltd. 149 taxmann.com 332 (Mumbai-Tribunal) (SB) held that DTAA does not get triggered at all when a domestic company pays DDT under Section 115-O of the Act. Further, the Mumbai Special Bench held that when contracting States to a tax treaty intend to extend treaty protection to domestic company paying dividend distribution tax, only then, domestic company can claim benefit of DTAA and not otherwise. While passing the order, the Mumbai Special Bench made the following observations:-

> *"**81.** If domestic company has to enter the domain of DTAA, the countries should have agreed specifically in the DTAA to that effect. In the Treaty between India and Hungary, the Contracting States have extended the Treaty protection to the dividend distribution tax. It has been specifically provided in the protocol to the Indo Hungarian Tax Treaty that, when the company paying the dividends is a resident of India the tax on distributed profits shall be deemed to be taxed in the hands of the shareholders and it shall not exceed 10 per cent of the gross amount of dividend. While making Reference in the case of Total Oil (supra), the ld. Division Bench has made the following observations on this aspect:*
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> > *"(f) Wherever the Contracting States to a tax treaty intended to extend the treaty protection to the dividend distribution tax, it has been so specifically*

provided in the tax treaty itself. For example, in India Hungry Double Taxation Avoidance Agreement [(2005) 274 ITR (Stat) 74; Indo Hungarian tax treaty, in short], it is specifically provided, In the protocol to the Indo Hungarian tax treaty it is specifically stated that "When the company paying the dividends is a resident of India the tax on distributed profits shall be deemed to be taxed in the hands of the shareholders and it shall not exceed 10 per cent of the gross amount of dividend". That is a provision in the protocol, which is essentially an integral part of the treaty, and the protocol to a treaty is as binding as the provisions in the main treaty itself. In the absence of such a provision in other tax treaties, it cannot be inferred as such because a protocol does not explain, but rather lays down, a treaty provision. No matter how desirable be such provisions in the other tax treaties, these provisions cannot be inferred on the basis of a rather aggressively creative process of interpretation of tax treaties. The tax treaties are agreements between the treaty partner jurisdictions, and agreements are to be interpreted as they exist and not on the basis of what ideally these agreements should have been.

(g) A tax treaty protects taxation of income in the hands of residents of the treaty partner jurisdictions in the other treaty partner jurisdiction. Therefore, in order to seek treaty protection of an income in India under the Indo French tax treaty, the person seeking such treaty protection has to be a resident of France. The expression 'resident' is defined, under article 4(1) of the Indo French tax treaty, as "any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature". Obviously, the company incorporated in India, i.e. the assessee before us, cannot seek treaty protection in India- except for the purpose of, in deserving cases, where the cases are covered by the nationality non-discrimination under article 26(1), deductibility non-discrimination under article 26(4), and ownership non-discrimination under article 24(5) as, for example, article 26(5) specifically extends the scope of tax treaty protection to the "enterprises of one of the Contracting States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State". The same is the position with respect of the other non-discrimination provisions. No such extension of the scope of treaty protection is envisaged, or demonstrated, in the present case. When the taxes are paid by the resident of India, in respect of its own liability in India, such taxation in India, in our considered view, cannot be protected or influenced by a tax treaty provision, unless a specific provision exists in the related tax treaty enabling extension of the treaty protection.

(h) Taxation is a sovereign power of the State- collection and imposition of taxes are sovereign functions. Double Taxation Avoidance Agreement is in the nature of self-imposed limitations of a State's inherent right to tax, and these DTAAs divide tax sources, taxable objects amongst themselves. Inherent in the self-imposed restrictions imposed by the DTAA is the fact that

outside of the limitations imposed by the DTAA, the State is free to levy taxes as per its own policy choices. The dividend distribution tax, not being a tax paid by or on behalf of a resident of treaty partner jurisdiction, cannot thus be curtailed by a tax treaty provision."

82. *We are of the view that the above exposition of law is correct and we agree with the same. Therefore, the DTAA does not get triggered at all when a domestic company pays DDT u/s.115O of the Act.*

Conclusion:

83. *For the reasons give above, we hold that where dividend is declared, distributed or paid by a domestic company to a non-resident shareholder(s), which attracts Additional Income-tax (Tax on Distributed Profits) referred to in sec.115-O of the Act, such additional income tax payable by the domestic company shall be at the rate mentioned in section 115-O of the Act and not at the rate of tax applicable to the non-resident shareholder(s) as specified in the relevant DTAA with reference to such dividend income. Nevertheless, we are conscious of the sovereign's prerogative to extend the treaty protection to domestic companies paying dividend distribution tax through the mechanism of DTAAs. Thus, wherever the Contracting States to a tax treaty intend to extend the treaty protection to the domestic company paying dividend distribution tax, only then, the domestic company can claim benefit of the DTAA, if any. Thus, the question before the Special Bench is answered, accordingly.*

84. *We wish to place on record our appreciation for the assistance provided by the ld. counsels for the parties and the interveners and the ld. DR for the assistance provided to the Bench in deciding the issue referred to the Special Bench.*

84.1 *These appeals/COs are restored to the respective Division Benches for deciding the issues raised in the respective appeals, accordingly."*

7. In view of the above observations made by Mumbai Special Bench, we hereby dismiss Ground Nos. 6 to 9 of the assessee's appeal.

Ground No. 1 to 5 of assessee's appeal (Disallowance of reimbursement of expenses under Section 37 of the Act – Rs. 31,63,877)

8. The brief facts in relation to these Grounds of Appeal are that the assessee had reimbursed a sum of Rs. 31,63,877/- to Schaeffler

Technology GMBH and CO KG, Germany on account of professional services rendered by E.Y. Germany in lieu of Agreement entered with Schaeffler Germany. Accordingly, the proportionate share attributable to the assessee was recovered by Schaeffler Germany at cost from the assessee. A copy of Agreement between the assessee and Schaeffler Germany was submitted to the Assessing Officer and CIT(A) during the course of hearing (refer Pages 40-41 and 68-69 of CIT(A) order). However, the Counsel for the assessee submitted before us that the CIT(A) without granting opportunity of hearing, dismissed the appeal and upheld the disallowance of the expenses under Section 37 of the Act, despite the fact that there was no specific finding either by AO or TPO or CIT(A) that the aforesaid expenses were not incurred wholly and exclusively for the purpose of business of the assessee. The Counsel for the assessee submitted that the aforesaid grounds of appeal have been dismissed by the Ld. CIT(A), without giving a fair opportunity of hearing to the assessee to present it's case on merits and produce all relevant documents in support of it's contention to claim deduction under Section 37 of the Act. Accordingly, the Counsel for the assessee submitted that in the interest of justice, this issue may be referred back to the file of Assesing Officer, so as to allow the assessee to produce all relevant documents in support of it's contention.

9. In response Ld. D.R. placed reliance on the observations made by Ld. CIT(A) in the appellate order.

10. We have heard the rival contentions and perused the material on record.

11. We are of the considered view that in the interests of justice the matter may be restored to the file of the Ld. A.O. so as to allow the assessee to produce relevant documents / evidences in support of claim of deduction of the aforesaid expenses under Section 37 of the Act.

12. In the result, Ground Nos. 1 to 5 of the assessee's appeal are allowed for statistical purposes.

<u>Now we shall take up the Department's appeal for A.Y. 2010-11 (ITA No. 147/Ahd/20223)</u>

13. The Department has raised the following grounds of appeal:-

""1. Whether, the Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs.2,13,09,160/ (upward adjustment) proposed by the TPO on account of benchmarking of Royalty using CUP Method instead of TNMM Method?

2. Whether, the Ld.CIT(A) has erred in law and on facts in not appreciating the findings of the TPO that CUP is a direct method and one that can give the most accurate results. This is one method that compares prices exchanged, while other methods compare profits. This method, therefore, calls for a high level of accuracy in the comparability analysis?

3. Whether, the Ld. CIT(A) has erred in law and facts in not appreciating the findings of the TPO that the assessee has clubbed the payment of royalty, fee for market support and fee for management services with its other transactions to carry out a benchmarking study adopting TNMM at the manufacturing activity level. The Hon'ble ITAT's in the case of UCB India Private Limited Vs. ACIT ITA No. 428 & 429/Mum/2007 has also stated that TNMM should be applied on transaction basis and not on clubbing dissimilar transactions.

4. Whether, the Ld.CIT(A) has erred in law and facts in deleting the addition of Rs.6,72,66,305/-(upward adjustment) proposed by the TPO on account of

benchmarking of payment of marketing support service/Management Fees to Schaeffler Holding (China) Co. Limited.

5. Whether, the Ld. CIT(A) has erred in law and facts in not appreciating the findings of the TPO that the services performed by AE (directly or through other AEs) fall into the category of stewardship activity as defined by Hon'ble Supreme Court of India (to say nothing about the charge for such services being not in consonance with the type of services provided).

6. Whether, the Ld. CIT(A) has erred in law and facts in not appreciating the findings of the TPO that the assessee had not produced any details in respect of determination of payment made by it to the AE in at the time of entering into the agreement alongwith its basis, cost benefit analysis carried out by it, the comparability analysis in respect of the payment is required to made by it to the AE vis-a-vis an independent party under similar circumstances."

7. The appellant craves leaves to add, modify, amend or alter any grounds of appeal at the time of, or before, the hearing of appeal."

Grounds No. 1 to 3 of Department's appeal (T.P. Adjustment – Royalty Rs. 2,13,09,160/-)

14. The brief facts in relation to this ground of appeal are that the assessee paid Royalty to Schaeffler KG, Germany and Schaeffler Korea Corporation, Associated Enterprises of the assessee company @ 2.80% of net sales in respect of know-how, technical support and technological assistance provided by the AEs. The assessee company determined Arm's Length Price using Transactions Net Margin Method (in short "TNMM"), however, TPO rejected TNMM as most appropriate method and determined Arm's Length Price using CUP.

15. In appeal Ld. CIT(A) deleted the adjustments by relying on the decision of Coordinate Bench in the assessee's own case for A.Y. 2002-03 in ITA No. 793 of 2006, wherein the ITAT held that Arm's Length

Price of Royalty is to be determined using TNMM, as the most appropriate method.

16. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(A). Before us, the Ld. D.R. submitted that CIT(A) has erred in facts and in law in relying on the decision of order passed by ITAT for A.Y. 2002-03. The Ld. D.R. drew our attention to Page 8 Para 29 of order passed by Ld. CIT(A) and submitted that ITAT for A.Y. 2002-03 has nowhere stated that TNMM is the most appropriate method for computing Arm's Length Price, and ITAT has only held that CUP is not the most appropriate method. Further, the assessee has computed TNMM using aggregation of profits and Hon'ble Supreme Court in the case Sap Labs India Pvt. Ltd. vs. ITO 149 taxmann.com 327 (SC) has held that aggregation is not permissible while computing Arm's Length Price. However, the TPO has failed to differentiate this ruling rendered by Hon'ble Supreme Court. Accordingly, the D.R. submitted that Ld. CIT(A) erred in facts and in law in deciding this issue in favour of the assessee. In response, Counsel for the assessee relied on the observations made by Ld. CIT(A) in the appellate order.

17. We have heard the rival contentions and perused the material on record. The issue for consideration in respect of this ground of appeal are that the assessee had computed Royalty of Rs. 13,04,47,480/- to Scheffler KG, Germany and Rs. 10,81,370/- to Schaeffler Korea Corporation, which were the owners of Royalty for manufacturing of

products. The Royalty was paid as fees for technical services for know-how related to manufacturing of bearings. The rate of Royalty has been fixed on the basis of classification of products as Scheduled and non-Scheduled products and on the basis of domestic or export sales. The export sales attracted 8% Royalty rates. For Scheduled products, the Royalty was 3% and for non-Scheduled products, the Royalty was 5%. The TPO observed that up to the year 2000 the assessee was paying Royalty @ 1.5% on all products. The assessee had benchmarked the ALP of the Royalty paid to it's AEs as per TNMM method. The TPO rejected TNMM method as the most appropriate method for determination of ALP and chose CUP as the most appropriate method to determining the Arm's Length Price in this case and accordingly made an adjustment of Rs. 2,13,09,160/-. In appeal, the Ld. CIT(A) observed that the issue of most appropriate method for benchmarking Royalty in the case of the assessee has been a matter of contention from A.Y. 2002-03 to 2013-14 onwards. The Ld. CIT(A) observed that the issue with respect to MAM for determination to Royalty was decided in favour of the assessee and appeal effect has reached finality. Further, the Ld. CIT(A) observed that the issue for A.Y. 2003-04 has been set-aside to Ld. CIT(A) / DRP with a specific direction to benchmark Royalty as per TNMM method by following the decision of ITAT in assessee's own case for A.Y. 2002-03. The CIT(A) observed that ITAT Ahmedabad for A.Ys. 2004-05 to 2009-10 vide order dated 30.04.2019 by relying on the decision of ITAT Ahmedabad in assessee's own case for A.Y. 2002-03 in ITA No. 793 and 817/Ahd/2006 dated 14.11.2000, has held that TNMM

method has to be applied for determination in ALP in respect of payment of Royalty. Accordingly, Ld. CIT(A) decided this issue in favour of the assessee with the following observations:-

> *"3.6 The appellant had brought to notice that the ITAT Ahmedabad vide order dated 30-04-2019 for preceding years 2004-05 to 2009-10 [ITA No.4565/Ahd/2007 and 4 Other appeals (By Revenue) & 80/Ahd/2008 and 7 Other appeals (By Assessee) Asstt. Years 2004-05, 05-06,06-07, 07-08, 08-09, 09-10 j by relying on the decision of A.Y. 2002-03 in ITA No. 793 & 817/Ahd/2006 dated 14.11.2014 in case of Appellant itself has held that TNMM method has to be applied for determination of ALP in respect of payment of royalty. The relevant findings of the Hon'ble ITAT are reproduced below;*
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> > *"15. We have heard the rival contentions and permed the materials available on record. At the outset, we find that in the identical facts and circumstances in the own case, of the assesses (supra), the ITAT has allowed the appeal for statistical purposes. The relevant extract of the order for the issue of the Revenue and the assessee is reproduced as under:*
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> .....
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> ***Finding of the ITA T in Assessee's appeal .ITA No. 793/AHD/2006 in respect of adjustment in Royalty segment***
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> *29. Coming to the ground no. 7, we have heard the parties and gone through the written submission. We find that the ld. CIT(A) in its order has held thai royalty at 1. 5% only represent reasonable royalty. This finding is on the basis of the appellate order pertaining to AY 2001-02. ft is also held that the benchmarking of royalty is to he done for EOU as well as DTA. The grievance of the assessee is that the ld. CIT(A) erred in relying upon the rates of royalty for controlled transaction of SKF. The contention of the assessee is that the fundamental principle of CUP is that the comparable transaction has to be "uncontrolled Transaction", meaning thereby that it has to be a transaction between two parties who are not related to each other. SKF transaction is not eligible to be treated as CUP as it is with related party. The another contention of the assessee is that the TPO and ld. CIT(A) has relied upon the rates of royalty paid by the assessee during the earlier years. The contention is that this transaction is also with related parties as it is given to a related party of the assesses for the earlier period. It is also the contention of the assessee that no material is available on record that any enquiry of any nature has been carried out by any person including TPO to conclude that the transaction of SKF and for the earlier years for the assessee were the correct ALP or were done in circumstances so as to be at the ALP. The contention is that the only available option is to adopt TNMM as the method for determining the ALP.*

29.1. We have given our thoughtful consideration to the rival contentions. We find force into the contention of the ld. Counsel for the assessee, therefore, ***we are of the considered view that the ld. CIT(A) and TPO were not justified in adopting the CUP method and therefore, we direct the ld. CIT(A) to adopt the method of TNMM for determination of the ALP and recompute the ALP In respect of the royalty.*** *Thus, this ground of assessee 's appeal is also restored back to the file of Id. C1T(A) for recomputation of ALP after giving an opportunity of being heard to both the parties. Ground no. 7 of assesses 's appeal is allowed for statistical purposes."*

16.1 As the facts in the case on hand are identical to the facts of the case as discussed above, therefore the same is binding on us as per the judgment of Hon'ble Madras High Court in the case of CIT v. L. G. Ramamurthi 1977 CTR (Mad.) 416 : [1977] 110 ITR 453 (Mad.) which has been elaborated in the preceding paragraph.

16.2 In view of the above and the precedent in the own case of the assessee as discussed above, we restore both the issue, i.e.. adjustment in the DTA segment and the royalty payment to the file of Ld.CIT (A) for fresh adjudication and in the light of above discussion as per the provisions of law.

16.3 Hence the grounds of appeal of the assessee are allowed for statist/eel purposes, and the grounds of appeal of the Revenue are dismissed."

3.6.1 Considering the fact that for this AY also the facts are identical, the matter was remanded to the TPO for his comments especially on this issue whether the Benchmarking as per TNMM for determination of ALP with regard to Royalty payment to the AEs was appropriate or not. The TPO/AO was directed to give opportunity to the appellant before such recomputation of ALP for AY 2010-11. The AO has objected to the notion that TNMM is the MAM for such benchmarking .and has given arguments in favour of the CUP method as selected in the assessment being the most appropriate method of benchmarking and cited several case laws in it's favour as well. However., on the second aspect of the direction it has stated that if TNMM is taken to be the MAM, the transaction is at ALP.

3.7 It is seen that the AO has vehemently objected to the ITAT Ahmedabad treating TNMM as the MAM for determination of ALP in this case in previous AYs 2002-03 to 2009-10. However, judicial discipline demands that the ratio of the Higher Court/Tribunal has to be followed if the facts are identical. Further the case of AY 2002-03 has been settled upto the level of ITAT for AY 2002-03. In view of the same, following the order of the ITAT Ahmedabad in it's own case, I also hold that TNMM is the MAM for determination of Royalty in this case. Since the TPO/AO has held that as per the TMMM the Royalty paio is benchmarked at Arm's length, accordingly the entire upward adjustment of Rs. 2,13,09,160/- is directed to be deleted. Ground of appeal 1 to 5 is allowed."

18. In our considered view this issue is squarely covered in favour of the assessee vide ITAT orders passed in favour of the assessee for earlier assessment years, while dealing with this very same issue and accordingly, there is no infirmity in the order of Ld. CIT(A) so as to call for any interference. We observe that ITAT Ahmedabad in assessee's own case for A.Y. 2002-03 has held that TNMM may be used for determination or Arm's Length Price for Royalty payments. The relevant extracts of the order passed by ITAT Ahmedabad in assessee's own case for A.Y. 2002-03 has been reproduced by Ld. CIT(A) (at Page 20-21 of his order), while deciding the issue in favour of the assessee. Further, we observe that even the AO / TPO in the remand proceedings have given a specific findings that if TNMM is taken to be the most appropriate method, the transactions is at Arm's Length Price (refer Para 3.6.1., Page 21 of CIT(A) for A.Y. 2010-11). Accordingly, in view of the decision of ITAT Ahmedabad in assessee's own case on this issue, we are of the considered view that Ld. CIT(A) has not erred in facts and in law in deciding this issue in favour of the assessee.

19. In the result, Ground Nos. 1 to 3 of the Department's appeal are dismissed.

Now we shall take up Ground Nos. 4 to 6 of the Department's Appeal (TP Adjustment – Management Fees Rs. 6,72,66,305/-)

20. The brief facts in relation to these grounds of appeal are that assessee paid a sum of Rs. 6,72,02,428/- to Schaeffler Holding (China)

Company Ltd. and a sum of Rs. 31,63,877/- to Schaeffler GmbH as management fees. The Assessing Officer held that the nature of support provided by Schaeffler China is in the nature of "Stewardship Activity" and hence does not entail any management fees to be paid. Without prejudice, the TPO held that assessee has not produced any details in respect of determination of payment made by the assessee to it's AEs at the time of entering into the Agreement alongwith the basis thereof, cost benefit analysis carried out by the assessee, the comparability analysis in respect of the payment etc., at the time of making the aforesaid payments. Accordingly, the TPO concluded that the Arm's Length Price of the services provided to the assessee by both the Associated Enterprises towards management fee, is to be taken at "NIL" and accordingly, recommended adjustment of the entire amount of Rs. 7,03,66,305/-.

21. In appeal before Ld. CIT(A), the assessee submitted that the issue is covered in favour of the assessee by the case of another group company in favour of the assessee, INA Bearings India Pvt. Ltd. vide order dated 24.06.2019 of ITAT Pune in ITA No. 150/PN/2017 for A.Y. 2011-12. The assessee submitted that the ITAT Pune had analyzed the same issue of payment of management fees to Schaeffler China and the decision in the aforesaid case rendered by Pune ITAT in respect of a group entity, has a direct correlation and bearing on the issue under consideration before Ld. CIT(A).

22. Accordingly, Ld. CIT(A) carried out a point-wise comparison between the facts of the assessee's case and the decision of INA Bearings for A.Y. 2011-12 and decided the issue in favour of the assessee.

23. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(A) deciding the issue in favour of the assessee. Before us, D.R. submitted that Ld. CIT(A) has ignored the fact that no specific documents were provided by the assessee for justifying the payment of Management Fees. This vital fact has been ignored by the Ld. CIT(A) while deciding the issue in favour of the assessee. Further, the D.R. submitted that this issue has been decided in favour of the assessee by placing reliance by Ld. CIT(A) on decision rendered by Pune ITAT in the case of another group company and it is not clear whether the ratio of the aforesaid decision could be applied to the assessee's set of facts, especially in the light of the fact that the relevant documents in support of payment of Management Fees have not been submitted by the assessee.

24. In response, the Counsel for the assessee submitted that the issue is directly covered in favour of ITAT Pune decision in a group company case of INA Bearings to which reference was made by Ld. CIT(A) while deciding the issue in favour of the assessee. Further, the Counsel for the assessee drew our attention to Page 88 of the CIT(A) order and submitted that Ld. CIT(A) has given a specific finding that the services received from Schaeffler China are not stewardship activity. Further, Ld. CIT(A)

at Para 4.5 Page 88 has also observed that for A.Ys. 2013-14 & 2014-15 similar Management Fees was paid by the assessee amounting to Rs. 14,80,65,367/- and Rs. 9,94,05,195/- to Schaeffler China, however, the TPO had accepted the payment and has not made any adjustment and accepted the same to be at Arm's Length. Accordingly, Ld. CIT(A), on basis of the above facts and the decision of ITAT Pune in group company case of INA Bearings has decided this issue in favour of the assessee and hence there is no infirmity in order passed by Ld. CIT(A).

25. We have heard the rival contentions and perused the material on record.

26. We observe that Ld. CIT(A) has made a specific finding that the assessee has provided relevant details regarding the nature of Service Level Agreement, description of services, detailed invoices and copy of email communication for evidencing that services were rendered by the AEs. Further, Ld. CIT(A) at Para 4.5 Page 88 of his order has also given a specific finding that for A.Ys. 2013-14 and 2014-15, similar management fees was paid by the assessee to Schaeffler China, however, the TPO has not made any adjustments and accepted the same to be at Arm's Length. It would be useful to reproduce the relevant extracts of the order passed by Ld. CIT(A) for ready reference:-

> *"4.4 A reading of the above order shows that the ITAT Pune has deleted the adjustment suggested by the TPO in the case of INA Bearings on multiple reasons which are outlined and discussed vis-a-vis the facts in this case as below:*

a) The first question which arises for our consideration is as to whether the TPO was right in determining the ALP of the international transaction of payment of Fees for Management services in a segregated manner?

This issue was specific to the case of INA Bearing wherein Management fees was aggregated under the head manufacturing and trading payments and the TPO segregated the same and culled out Fees for Management services and then went on to determine the ALP for this international transaction. The ITAT held the action of TPO as correct. However, in the present case of my appellant it is seen that Fees for Management Services is already shown separately and this part of the ITAT order has no relevance in my case.

b) The ITA T then went on to find whether there was any agreement for rendition of Management support services?

In the case before the Tribunal such Service Level Agreement existed between INA Bearing and Schaeffler China. Similarly in the case of present appellant also, similar SLA was part of paperbook furnished by the appellant. The wordings of the agreement are identical in c-both with respect to the scope of services that shall be provided and with respect to the service fee to be charged. The rates reflect the actual fully-loaded costs incurred in providing such services, plus a profit mark-up 5% (Cost plus method).

However, it is seen that the Reimbursement agreement between the appellant and Schaeffler GmBH, copy of which was furnished is for reimbursement of expenses incurred in relation to EY report and were not related to the payment of any management fees and it pertained to CY 2007 & 2008.

From the above discussion, it follows that there is valid Agreement between the assessee and Schaeffler China only for provision of Management support services to the assessee for the relevant period.

c) The next question answered by the IT A T is whether any services were actually rendered?

In the case of INA Bearings, the ITAT Pune observed that the sum and substance of the TPO's observations, which he also emphatically stated in other parts of his order, is that services rendered by Schaeffler China to the assessee were in the nature of stewardship activities or shareholders services, for which no payment was required to be made. In present case before me also the major thrust of the argument of the TPO/AO is that the services performed by AE (directly or through other AEs) fall into the category of stewardship activity. Although the TPO refers to that 'no mails or contemporaneous documents were submitted in support of the receipt of such services' and 'to say nothing about the charge for such services being not in consonance with the type of services provided', there is no clear finding that the services claimed by the appellant to have been provided by Schaeffler China were

actually not provided. It is seen that, as in the case of INA Bearings, in this case also, the appellant had monthly invoices raised by Schaeffler China in the name of the appellant showing variety of services provided. The invoice raised is in respect of each and every minute spent for assessee's work provided by by Schaeffler China. So, the appellant has adduced necessary evidence, as the INA Bearings had done before it's TPO, before the TPO to justify the Services rendered and expenditure claimed.

d) if yes, whether the services were in the nature of stewardship activities?; if not, whether these were at ALP?

In the case of INA Bearings, the ITAT Pune found that Schaeffler China provided services under head "Business Development", "Finance & Controlling Services", "Human Resources services, "Purchasing/Procurement services", "Supply chain Management services", "Process and Information services" and "Distribution sales services" etc. It held that patently such services are in the nature of normal business services performed with a view to enable the assessee to carry out its business operations producing effect on the assessee company and hence do not qualify as 'stewardship activities', thereby overturned the TPO action pro-tanto. In the case of my appellant also the same ratio applies in toto, mutatis mutandi as the services provided were identical in nature.

e) whether (he international transaction of payment of Fees for Management support services to the tune ofRs.5,65,53,971/- was of ALP?

The ITAT Pune measured the issue, on the basis of two aspects of TPO's order, viz..

1. The TPO held that the services received from Schaeffler China as stewardship activities leading to Nil ALP

The ITAT decided this issue by discussing the duties of AO and TPO to whom issue is referred only for purpose of determining the ALP of the international transaction and the duty or jurisdiction of the TPO is confined statutorily to do so only. The TPO determines the ALP of the transactions by carrying out FAR (functions performed, assets employed and risks undertaken) analysis and deploying one of the prescribed methods. It held that in this case the TPO has not questioned whether the services were rendered or not. It has accepted the proposition largely that the services were rendered but then went onto hold that these services were not required. The ITAT states that this is not the domain of the TPO but that of the AO and the TPO cannot usurp the power of AO and determine the services rendered to by valued at NIL. It has to work within the parameters of his power and determine the ALP for international transaction, he cannot say no services were required to be rendered so the fees charges should be NIL and such determination by the AO in the case of IN A Bearing vitiated the process. In the present case also, identical situation exists. SO the conclusion drawn by the ITAT Pune in the case cited applies in this case also.

2. The TPO did not apply any specific method for determining the ALP of the international transaction of payment of Fees for Management services.

On this issue the ITAT Pune said that the TPO did not apply any of the method for determination of ALP as per section 92CA. Examining the provision it said that ALP has to be determined as per the prescribed method which is MAM in the specific facts and circumstances of the case. IN case of INA bearing the TPO did not apply any of the prescribed and hence TP adjustments need to be deleted on this count as well. This ratio is squarely applicable in the present appeal as well.

f) The ITAT also gave credence to the fact that Schaeffler China charged service fee at the rate of actual cost incurred plus a markup of 5% which is of the nature Cost plus Method prescribed under the Rules. It also argued that even if, it is assumed that the mark up of 5% is not at ALP and the same should be as low as 1% or even less than that, still the difference arising on account of such mark-up going even up to 0% in a comparable uncontrolled situation, would be within +/-5% range, not requiring any transfer pricing adjustment. The ratio applies in this case also, as here also the SLA was similar and service fee was charged at a mark up of 5% to actual cost as in the case of IMA Bearings.

4.5 A very crucial aspect is that for AY 2013-14 & 2014-15 similar Management fees was paid by the appellant of Rs 14,80,65,367/- & Rs 9,94,05,195/- to Schaeffler China. However, the TPO has accepted the payment and not made any adjustments and accepted the same to be at Arm's length.

4.6 Despite the fact that during the year under consideration INA Bearing was a group concern and related party. But by a scheme of merger the same got merged with Schaeffler India and now part of the appellant concern. The issue involved in that case as dealt by ITAT Pune is identical with the adjustment made in the case of this appellant and SLA, terms of payments, TPO not finding any clear finding that services were not rendered, similarly holding the services provided as shareholder activity which it was not empowered to and without application of prescribed methods of ALP determination holding the same at NIL is very similar. Hence following the case of ITAT Pune in the case of INA Bearings, in this case also the adjustment of Rs 6,72,66,305/- paid as Management fees to Schaeffler India is directed to be deleted.”

27. On going through the facts of the instant case, we are of the considered view that Ld. CIT(A) has not erred in facts and in law in holding the determination of Management Fees to be at Arm’s Length Price. In our considered view, Ld. CIT(A) has correctly observed that the aforesaid activities / services do not qualify as stewardship / shareholder activity. Notably, in assessee’s own case for A.Ys. 2013-14 and 2014-15, the TPO has not made any Transfer Pricing Adjustment in

respect of aforesaid services and accepted the payment of Management Fees to be at Arm's Length Price. Further, we also observe that Ld. CIT(A) has made a detailed comparison between the decision rendered by ITAT, Pune Bench in the case of a group company (INA Bearings) in respect of management services and after a detailed comparison and looking into the facts of the assessee's case, has held that the assessee has correctly determined the Arm's Length Price in respect of the aforesaid Management Fees by using TNMM method. Accordingly, looking into the instant facts, we are of the considered view that Ld. CIT(A) has not erred in facts and in law in deciding this issue in favour of the assessee.

28. In the result, Ground Nos. 4 to 6 of the Department's appeal are dismissed.

Now we shall take up the assessee's appeal for A.Y. 2011-12 (ITA No. 134/Ahd/2023)

29. The assessee has raised the following grounds of appeal:-

*"**Disallowance of Reimbursement expense u/s 37 -Rs. 2,37,15,585:***

1) The learned Commissioner of Income Tax (Appeals) - 13, Ahmedabad ["CIT(A)"] erred in fact and in law in confirming the action of the learned AO and the TPO in disallowing Rs. 2,37,15,585 u/s 37 of the Income Tax Act, 1961 ("the Act").

2) The learned CIT(A) erred in fact and in law in invoking section 37 of the Act without satisfying the conditions stipulated under the Act.
3) The learned CIT(A) erred in fact and in law in disallowing reimbursement of expense without appreciating the facts on record in proper perspective.

4) The learned CIT(A) erred in fact and in law in disallowing Rs. 31,63,877 without disputing the fact that the expense was incurred for the purpose of the business of the Appellant.

5) The learned CIT(A) erred in fact and in law in disallowing the expense merely on the basis of assumption and presumptions.

Refund of excess Dividend Distribution Tax - Rs. 28,25,264:

6) The learned CIT(A) erred in fact and in law in not directing the learned AO to grant refund of excess amount of Dividend Distribution Tax ("DDT") of Rs. 28,25,264 paid on dividend distributed to the German Shareholder.
7) The learned CIT(A) erred in fact and in law in not appreciating the fact that as per Double Avoidance Taxation Agreement ("DTAA") between India and Germany, the liability of tax on dividend received by the German resident does not exceeds 10% of the dividends.

8) The learned CIT(A) erred in fact and in law in taxing the dividend income paid to the nonresident shareholder in excess of rate specified under DTAA without appreciating the provisions of section 90(2) of the Act in proper perspective.

9) The learned CIT(A) erred in fact and in law in disallowing the claim made by the Appellant on account of refund of excess DDT paid during the year without appreciating the law in proper perspective.

Other Grounds:

10) The learned CIT(A) erred in fact and in law in confirming the action of the AO in charging interest u/s 234A of the Act.

11) The learned CIT(A) erred in fact and in law in confirming the action of the AO in charging interest u/s 234C of the Act.

12) The learned CIT(A) erred in fact and in law in confirming the action of the AO in charging interest u/s 234 D of the Act.

12) The learned CIT(A) erred in fact and in law in confirming the action of learned AO in initiating penalty proceedings u/s 271(1)(c) of the Act.

13) Your Appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal."

Grounds 1 to 5 (Disallowance of expenses under Section 37 of the Act – Rs. 2,37,15,585/-)

30. We observe that this issue is similar to Grounds 1 to 5 of the assessee's appeal for A.Y. 2010-11. Accordingly, the matter is being restored to the file of Ld. TPO so as to allow the assessee to produce relevant documents / evidences in support of claim of deduction of the aforesaid expenses under Section 37 of the Act.

31. In the result, Grounds No. 1 to 5 of the assessee's appeal are allowed for statistical purposes.

Grounds 6-9 (Refund of Excess Dividend Distribution Tax –Rs. 28,25,264/-)

32. We observe that this issue is similar to Grounds 6 to 9 of the assessee's appeal for A.Y. 2010-11. Accordingly, in view of the decision of ITAT Mumbai Bench in the case of DCIT vs. Total Oil India Pvt. Ltd. (supra), Ground Nos. 6 to 9 of the assessee's appeal are dismissed.

33. The other grounds raised by the assessee are general in nature and do not require any specific adjudication.

Now we shall take up the Department's appeal for A.Y. 2011-12 (I.T.A. No. 148/Ahd/2023)

34. The Department has raised the following grounds of appeal:-

> *""1. Whether, the Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs.2,51,24,000/- (upward adjustment) proposed by the TPO on account of benchmarking of Royalty using CUP Method instead of TNMM Method?*

2. Whether, the Ld.CIT(A) has erred in law and on facts in not appreciating the findings of the TPO that CUP is a direct method and one that can give the most accurate results. This is one method that compares prices exchanged, while other methods compare profits. This method, therefore, calls for a high level of accuracy in the comparability analysis?

3. Whether, the Ld. CIT(A) has erred in law and facts in not appreciating the findings of the TPO that the assessee has clubbed the payment of royalty, fee for market support and fee for management services with its other transactions to carry out a benchmarking study adopting TNMM at the manufacturing activity level. The Hon'ble ITAT's in the case of UCB India Private Limited Vs. ACIT ITA No. 428 & 429/Mum/2007 has also stated that TNMM should be applied on transaction basis and not on clubbing dissimilar transactions.

4. Whether, the Ld.CIT(A) has erred in law and facts in deleting the addition of Rs.7,68,83,552/- (upward adjustment) proposed by the TPO on account of benchmarking of payment of marketing support service/Management Fees to Schaeffler Holding (China) Co. Limited.

5. Whether, the Ld. CIT(A) has erred in law and facts in not appreciating the findings of the TPO that the services performed by AE (directly or through other AEs) fall into the category of stewardship activity as defined by Hon'ble Supreme Court of India (to say nothing about the charge for such services being not in consonance with the type of services provided).

6. Whether, the Ld. CIT(A) has erred in law and facts in not appreciating the findings of the TPO that the assessee had not produced any details in respect of determination of payment made by it to the AE in at the time of entering into the agreement alongwith its basis, cost benefit analysis carried out by it, the comparability analysis in respect of the payment is required to made by it to the AE vis-a-vis an independent party under similar circumstances."

7. The appellant craves leaves to add, modify, amend or alter any grounds of appeal at the time of, or before, the hearing of appeal."

<u>Ground Nos. 1 to 3 (TP Adjustment – Royalty):-</u>

35. We observe that Grounds 1 to 3 of the Department's appeal are similar to Grounds 1 to 3 of the Department's appeal for A.Y. 2010-11.

36. In view of our observations made for A.Y. 2010-11 in Department's appeal, Grounds No. 1 to 3 of the Department's appeal are dismissed for A.Y. 2011-12 as well.

Ground Nos. 4 to 6 of Department's appeal (TP Adjustment – Management Fees Rs. 7,68,83,552/-)

37. We observe that Ground Nos. 4 to 6 of the Department's appeal for A.Y. 2011-12 are similar to Grounds 4 to 6 of Department's appeal for A.Y. 2010-11.

38. In view of our observations with respect to the aforesaid grounds of appeal for A.Y. 2010-11, Ground Nos. 4 to 6 of Department's appeal for A.Y. 2011-12 are dismissed.

Now we shall take up the assessee's appeal for A.Y. 2012-13 (ITA No. 135/Ahd/2023)

39. The assessee has raised the following grounds of appeal:-

"Refund of excess Dividend Distribution Tax - Rs. 26,59,672:

1) The learned CIT(A) erred in fact and in law in not directing the learned AO to grant refund of excess amount of Dividend Distribution Tax ("DDT") of Rs. 26,59,672/- paid on dividend distributed to the German Shareholder.

2) The learned CIT(A) erred in fact and in law in not appreciating the fact that as per Double Avoidance Taxation Agreement ("DTAA") between India and Germany, the liability of tax on dividend received by the German resident does not exceeds 10% of the dividends.

3) The learned CIT(A) erred in fact and in law in taxing the dividend income paid to the nonresident shareholder in excess of rate specified under DTAA without appreciating the provisions of section 90(2) of the Act in proper perspective.
4) The learned CIT(A) erred in fact and in law in disallowing the claim made by the Appellant on account of refund of excess DDT paid during the year without appreciating the law in proper perspective.

5) Your Appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal."

Ground Nos. 1 to 5 (Refund of Excess Dividend Distribution Tax – Rs. 26,59,672/-)

40. We observe that Ground Nos. 1 to 5 of the assessee's appeal are similar to Ground Nos. 6 to 9 of the assessee's appeal for A.Y. 2010-11.

41. Accordingly, in view of our observations for similar grounds of appeal for A.Y. 2010-11, Ground Nos. 1 to 5 of assessee's appeal are dismissed for A.Y. 2012-13.

Now we shall take up Department's appeal for A.Y. 2012-13 (ITA No. 149/Ahd/2023)

42. The Department has raised the following grounds of appeal:-

""1. Whether, the Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs.2,75,44,000/- (upward adjustment) proposed by the TPO on account of benchmarking of Royalty using CUP Method instead of TNMM Method?

2. Whether, the Ld.CIT(A) has erred in law and on facts in not appreciating the findings of the TPO that CUP is a direct method and one that can give the most accurate results. This is one method that compares prices exchanged, while other methods compare profits. This method, therefore, calls for a high level of accuracy in the comparability analysis?

3. Whether, the Ld. CIT(A) has erred in law and facts in not appreciating the findings of the TPO that the assessee has clubbed the payment of royalty, fee for

market support and fee for management services with its other transactions to carry out a benchmarking study adopting TNMM at the manufacturing activity level. The Hon'ble ITAT's in the case of UCB India Private Limited Vs. ACIT ITA No. 428 & 429/Mum/2007 has also stated that TNMM should be applied on transaction basis and not on clubbing dissimilar transactions.

4. Whether, the Ld.CIT(A) has erred in law and facts in deleting the addition of Rs.12,25,18,070/- (upward adjustment) proposed by the TPO on account of benchmarking of payment of marketing support service/Management Fees to Schaeffler Holding (China) Co. Limited?

5. Whether, the Ld. CIT(A) has erred in law and facts in not appreciating the findings of the TPO that the services performed by AE (directly or through other AEs) fall into the category of stewardship activity as defined by Hon'ble Supreme Court of India (to say nothing about the charge for such services being not in consonance with the type of services provided).

6. Whether, the Ld. CIT(A) has erred in law and facts in not appreciating the findings of the TPO that the assessee had not produced any details in respect of determination of payment made by it to the AE in at the time of entering into the agreement alongwith its basis, cost benefit analysis carried out by it, the comparability analysis in respect of the payment is required to made by it to the AE vis-a-vis an independent party under similar circumstances."

7. The appellant craves leaves to add, modify, amend or alter any grounds of appeal at the time of, or before, the hearing of appeal."

Ground Nos. 1 to 3 (TP Adjustment – Royalty Rs.2,75,44,000/-)

43. We observe that Ground Nos. 1 to 3 of Department's appeal for A.Y. 2012-13 are similar to Grounds 1 to 3 of Department's appeal for A.Y. 2010-11.

44. In view of our observations for similar grounds of appeal for A.Y. 2010-11, Ground Nos. 1 to 3 of the Department's appeal are hereby dismissed for A.Y. 2012-13.

Ground Nos. 4 to 6 of the Department's appeal (TP Adjustment – Management Fees Rs. 12,25,18,070/-)

45. We observe that Ground Nos. 4 to 6 of the Department's appeal are similar to grounds 4 to 6 of the Department's appeal for A.Y. 2010-11.

46. In view of our observations made for similar grounds of appeal for A.Y. 2010-11, we are hereby dismissing Ground Nos. 4 to 6 of the Department's appeal for A.Y. 2012-13.

Now we shall take up the assessee's appeal for A.Y. 2013-14 (ITA No. 136/Ahd/2023)

47. The assessee has raised the following grounds of appeal:-

"Refund of excess Dividend Distribution Tax - Rs. 53,02,725:

1) The learned CIT(A) erred in fact and in law in not directing the learned AO to grant refund of excess amount of Dividend Distribution Tax ("DDT") of Rs. 53,02,725/- paid on dividend distributed to the German Shareholder.

2) The learned CIT(A) erred in fact and in law in not appreciating the fact that as per Double Avoidance Taxation Agreement ("DTAA") between India and Germany, the liability of tax on dividend received by the German resident does not exceeds 10% of the dividends.

3) The learned CIT(A) erred in fact and in law in taxing the dividend income paid to the nonresident shareholder in excess of rate specified under DTAA without appreciating the provisions of section 90(2) of the Act in proper perspective.

4) The learned CIT(A) erred in fact and in law in disallowing the claim made by the Appellant on account of refund of excess DDT paid during the year without appreciating the law in proper perspective.

5) Your Appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal."

Ground Nos. 1 to 4 (Refund of excess DDT Rs. 53,02,725/-)

48. We observe that Ground Nos. 1 to 4 of the assessee's appeal for A.Y. 2013-14 are similar to grounds 6 to 9 of assessee's appeal for A.Y. 2010-11.

49. In view of our observations made for similar grounds of appeal for A.Y. 2010-11, we are hereby dismissing Ground Nos. 1 to 4 of the assessee's appeal for A.Y. 2013-14.

Now we shall take up Department's appeal for A.Y. 2013-14 (ITA No. 150/Ahd/2023)

50. The Department has raised the following grounds of appeal:-

""1. Whether, the Ld.CIT(A) has erred in law and facts in deleting the addition of Rs. 3,94,25,000/-(upward adjustment) proposed by the TPO on account of benchmarking of Royalty using CUP Method instead of TNMM Method.

2. Whether, the Ld.CIT(A) has erred in law and facts in not appreciating the findings of the TPO that CUP is a direct method and one that can give the most accurate results. This is one method that compares prices exchanged, while other methods compare profits. This method, therefore, calls for a high level of accuracy in the comparability analysis.

3. Whether, the Ld.CIT(A) has erred in law and facts in not appreciating the findings of the TPO that the assessee has clubbed the payment of royalty, fee for market support and fee for management services with its other transactions to carry out a benchmarking study adopting TNMM at the manufacturing activity level. The Hon'ble ITAT's in the case of UCB India Private Limited Vs. ACIT ITA No. 428 & 429/Mum/2007 has also stated that TNMM should be applied on transaction basis and not on clubbing dissimilar transactions."

4. The appellant craves leaves to add, modify, amend or alter any grounds of appeal at the time of, or before, the hearing of appeal."

Ground Nos. 1 to 3 (TP Adjustment – Royalty Rs.3,94,25,000/-)

51. We observe that Ground Nos. 1 to 3 of the Department's appeal for A.Y. 2013-14 are similar to Ground Nos. 1 to 3 of Department's appeal for A.Y. 2010-11.

52. In view of our observations with respect to similar grounds of appeal raised by Department for A.Y. 2010-11, we are hereby dismissing Department's Ground of Appeal Nos. 1 to 3 for A.Y. 2013-14 as well.

Now we shall take up the assessee's appeal for A.Y. 2014-15 (ITA No. 135/Ahd/2023)

53. The assessee has raised the following grounds of appeal:-

"Refund of excess Dividend Distribution Tax - Rs. 29,83,082:

1) The learned CIT(A) erred in fact and in law in not directing the learned AO to grant refund of excess amount of Dividend Distribution Tax ("DDT") of Rs. 29,83,082/- paid on dividend distributed to the German Shareholder.

2) The learned CIT(A) erred in fact and in law in not appreciating the fact that as per Double Avoidance Taxation Agreement ("DTAA") between India and Germany, the liability of tax on dividend received by the German resident does not exceeds 10% of the dividends.

3) The learned CIT(A) erred in fact and in law in taxing the dividend income paid to the nonresident shareholder in excess of rate specified under DTAA without appreciating the provisions of section 90(2) of the Act in proper perspective.

4) The learned CIT(A) erred in fact and in law in disallowing the claim made by the Appellant on account of refund of excess DDT paid during the year without appreciating the law in proper perspective.

5) Your Appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal."

Ground Nos. 1 to 4 (Refund of Excess DDT Rs. 29,83,082/-)

54. We observe that Ground Nos. 1 to 4 of the assessee's appeal for A.Y. 2014-15 are similar to Ground Nos. 6 to 9 of the assessee's appeal for A.Y. 2010-11.

55. In view of our observations with respect to similar grounds of appeal raised by the assessee for A.Y. 2010-11, we are hereby dismissing assessee's Grounds of Appeal No. 1 to 4 for A.Y. 2014-15.

56. In the combined result, the assessee's appeals are partly allowed for statistical purposes and Department's appeals are dismissed.

This Order pronounced in Open Court on 12/01/2024

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad; Dated 12/01/2024
TANMAY, Sr. PS ***TRUE COPY***

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad