

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'I': NEW DELHI  
BEFORE,  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.512/Del/2022, A.Y. 2017-18**

JCB India Ltd. B-1/I-1, 2 <sup>nd</sup> Floor, Mohan Co- operative Industrial Estate Mathura Road, New Delhi, 110044  <b>PAN :AAACE0653L</b>	Vs.	DCIT, Circle-13(1) C. R. Building, I.P. Estate, New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

**AND**

**STAY No. 101/DEL/2022**

**[ in I.T.A. No. 512/DEL/2022 (A.Y. 2017-18 )**

JCB India Ltd. B-1/I-1, 2 <sup>nd</sup> Floor, Mohan Co-operative Industrial Estate Mathura Road, New Delhi, 110044  <b>PAN :AAACE0653L</b> <b>(APPELLANTS)</b>	Vs.	DCIT, Circle-13(1) C. R. Building, I.P. Estate, New Delhi  <b>(RESPONDENTS)</b>
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Appellant by	Sh. Vishal Kalra & Sh. Ankit Sahani, Advs and Mr. Yishu Goel, AR
Respondent by	Sh. Rajesh Kumar CIT(DR)

Date of Hearing	06/08/2024
Date of Pronouncement	15/10/2024

**ORDER**

**PER YOGESH KUMAR U.S., JM:**

The present appeal and the Stay Application have been preferred by the Assessee for assessment year 2017-18 aggrieved by the final assessment order passed u/s 143(3) read

with Section 144C (3) read with Section 144B of the Income Tax Act (“Act” for short) dated 26/02/2022 by (Income Tax Department) National Faceless Appeal Centre (NFAC), Delhi [“Ld. CIT (A)”, for short].

2. Grounds taken in this appeal are as under:

1. *That on the facts and circumstances of the case and in law, the AO/DRP/TPO have erred in assessing the total income of the Appellant at INR 11,98,34,09,834 against the returned income of INR 10,32,25,22,480 making a TP adjustment of INR 1,66,08,87,354.*

2. *That on the facts and circumstances of the case and in law, the AO ought to have considered the arm's length price of royalty payments for the 3DX model at 4 percent for the AY 2017-18, as agreed between the Competent Authorities of India and the UK under the provisions of Article 27 read with Article 10 of the India-UK DTAA.*

3. *That on the facts and circumstances of the case and in law, the AO/DRP/TPO have erred in not appreciating the approach followed by the Hon'ble Competent Authorities of two countries (India and the UK) in the Appellant's own case for prior AYs 2009-10 to 2016-17, wherein the arm's length price of royalty payments for the 3DX model was settled under the provisions of Article 27 (Mutual Agreement Procedure or MAP) read with Article 10 of the India-UK DTAA!.*

4. *That on the facts and circumstances of the case and in law, the AO/DRP/TPO erred in making a transfer pricing adjustment with respect to models other than 3DX ie. 2DX, 4DX, Loadall, Tracked, Excavator, Wheel loader, Mini Excavator (relating to entities based in UK) and Compactor and Skid steer (relating to entities based outside of UK) when the*

*same have been accepted to be arm's length at same rate of royalty consistently.*

*5. That on the facts and circumstances of the case and in law, the AO/ DRP/TPO have erred on facts and in law in making a transfer pricing adjustment with respect to payment of royalty by the Appellant to its AEs, without appreciating or erring:*

*5.1. the economic analysis, benchmarking methodology followed, and arbitrarily rejecting/ ignoring the uncontrolled comparable license agreements identified for applying CUP method in its transfer pricing documentation maintained as per the provisions of the Art*

*5.2 the corroborative benchmarking of royalty payment under Transaction Net Margin Method (TNMM) disregarding the principle of aggregation of benchmarking closely Inked transactions, ignoring the settled ratio decidendi.*

*5.3 in upholding transfer pricing adjustment stating application of Other Method to broaden the selection criteria for comparable agreements and selecting a non exclusive trademark agreement as comparable to the Appellant's exclusive technology transfer agreement, and not accepting the comparable agreements identified by the Appellant from the TPOs search process.*

*5.4 in not considering additional agreements proposed by the Appellant based on the search criteria applied by the TPO,*

*5.5 in computing the ad hoc transfer price of the royalty rate at 2 percent post certain economic adjustments based on surmises and conjectures de hors the fact that in the comparable agreement selected by TPO, the royalty rate was 3%*

6. That on the facts and circumstances of the case and in law, the AO/ TPO has erred in making protective adjustment being against the mandate of law and without any legal basis, by

6.1. misinterpreting the benefits received by the Appellant under the Technology Transfer Agreements and further disregarding the business model and key value drivers of the Appellant in concluding that the increase in advertisement spend and expansion in dealers network is the real reason for increase in sales of the Appellant

6.2. misinterpreting the disclosures made in the Annual Report of the Appellant and erroneously alleging that the Appellant is engaged in R&D activities, import substitution and that the AE does not have patent registered in relation to the licensed products

7. That on the facts and circumstances of the case and in law, the AD has erred in not granting credit of tax deducted at source amounting to INR 590.572

8. That on the facts and circumstances of the case and in law, the Ld. AO has grossly erred in computing higher tax demand income on account certain mistakes apparent from record. The mistakes apparent from record comprise the following

-Not granting credit of Dividend Distribution Tax ("DDT") paid by the Appellant amounting to INR 1,73,26.85,141,

-Computing interest u/s 115P of the Act amounting to INR 1,10.89, 18,400 despite the fact that Appellant had timely deposited the DDT with the tax authorities

9. That on the facts and circumstances of the case and in law, the A.O. has erred in levying interest u/s 234A, 234B and 234C of the Act.

*Each of the above grounds is independent and without prejudice to the other grounds of appeal preferred by the appellants.*

3. Brief facts of the case are that, the Assessee JCB India Ltd. is a wholly owned subsidiary of J. C. Bamford Excavators Ltd. U.K. ('JCB' UK) and is engaged of manufacturing of earthmoving and construction equipment from its manufacturing plants. The case of the Assessee was selected for complete scrutiny under e-assessment Scheme 2019 on following issues:-

*S.No. Issues*

- i. Claim of "Any other amount allowable as deduction" in Schedule BP*
- ii. Depreciation Claim*
- iii. Deduction and deposit of TDS*
- iv. Deduction under Chapter VIA*
- v. Custom duty paid*
- vi. Capital gains/loss on sale of property*
- vii. Foreign remittance*
- viii. Reduction in profit due to ICDS*
- ix. International Transaction(s)*

4. An assessment order u/s 143 (3A) and 143 (3B) of the Income Tax Act, 1961 ('Act' for short) has been passed on 23/03/2021 assessing the income of the Assessee at Rs. 11,98,34,09,830/- after making addition as suggested by the

TPO vide order u/s 92CA (3) dated 30/01/2021 of Rs. 1,66,08,87,354/- to the returned income of the Assessee of Rs. 10,32,25,22,480/-. The Assessee filed objections before the Dispute Resolution Panel (DRP) u/s.144C (5) of the Act, vide Objection No.43/2021-22 dt.29.04.2021. The DRP, after hearing the Assessee an passed order dt.06.01.2022 rejecting the objections and confirming the additions made by the TPO vide Order u/s 92CA(3) of the Act dt. 19.12.2019, with the directions to the Assessing Officer to incorporate the findings of the DRP in respect of various objections suitably in the final order and also place a copy of the DRP Directions as Annexure to the final order. Further, the DRP has directed the AO to levy interest under sections 234B, 234C and 234D of the Act. In pursuance of the directions of the DRP, the TPO, vide order dt. 17.01.2022, has confirmed the original TP adjustment amount of Rs. 1,66,08,87,354/-, The TPO has requested the AO to take appropriate action with regard to the directions given by the DRP to the AO after taking an overall view and understanding of the facts and circumstances of the case. The assessment order came to be passed on 26/02/2022 by the A.O. u/s 143(3) r.w.s. 144C(3) r.w.s 144B of the Act. Aggrieved by the

assessment order dated 26/02/2022, the Assessee preferred the present appeal on the grounds mentioned above.

5. Ground No. 1 is general in nature which requires no adjudication. Ground No. 2 & 3 as the issue involved thereon pertaining to payment of royalty and the Assessee has entered into Mutual Agreement Procedure (MAP) with respect to the transactions with UK entities. Accordingly, Ground No. 2 & 3 of the Assessee are dismissed as withdrawn. In Ground No. 4 the Assessee has also not pressed to the extent of adjustment made with respect to royalty made to AE in the UK. The issue remaining to be decided in Ground No. 4 in so far as adjustment with respect to non UK based entity in respect of Compactor and Skid steer. The Ld. Counsel for the Assessee submitted that the Assessee entered into Advance Pricing Agreement ('APA' for short) for the Assessment Year 2018-19 to 2022-23 which covers royalty transaction with JCB UK Entities the arm's length of the royalty in the agreement is determined at 5% if the assessee's pre royalty operating margin in the license manufacturing segment falls within the range of 13.05% to 18.5% since the transaction of royalty with non UK entities being linked to the license manufacturing segment are

similar in nature and therefore, drawing support from APA, the royalty rate of 5% to be considered to be ALP. The Ld. Counsel for the assessee also submitted that the APA has been concluded the multiple aspects and has persuasive value for non-covered transaction as well if they are similar in nature. The Ld. Counsel submitted that the DRP/TPO has not followed principals of consistency in so far as approach computing ALP of royalty. The Ld. Counsel has also relied on various judicial precedents in support of his argument and contended that no royalty adjustment should be made within non UK Entities and alternatively has prayed for application of the APA signed for Assessment Year 2018-19 to 2022-23 for the Assessment Year under consideration i.e. 2017-18 which is not covered within the APA period and alternatively also proposed for application of royalty rate stood in APA at 4% of UK entities to non UK entities also.

6. Per contra, the Ld. Departmental Representative vehemently submitted that the instant year is not covered in the MAP proceedings, the MAP rate cannot be applied to royalty transaction done between the assessee company and its AE's in US & Germany and in support of the same, the Ld.

Departmental Representative placed reliance on the Coordinate Bench of the Tribunals order for Assessment Year 2014-15. The Ld. Departmental Representative submitted that rights granted under the agreements with UK entities vis-à-vis agreement with non UK entities are different, therefore, the MAP rate settled for royalty for UK entities cannot be applied in the case of non UK entities.

7. We have heard both the parties and perused the materials available on record. The issue to be decided in the present Appeal is regarding royalty paid to non UK entities as the Assessee has not entered into APA/MPA proceedings for Assessment Year 2017-18 with UK entities. It is the case of the Assessee that no royalty adjustment should be made with non-UK entities and alternatively has also prayed for application for APA/MPA signed for assessment year 2018-19 to 2022-23 for the year under consideration as well. Admittedly, for assessment year 2017-18 is not covered within APA period.

8. The similar issue came for consideration by the Coordinate Bench of the Tribunal for the assessment year 2013-14 in ITA No. 7200/Del/2017 vide order dated

31/05/2019, wherein the Tribunal has remitted the matter to the file of the TPO to determine arm's length price of international transaction entered into by the Assessee with associated enterprise in Germany in following manners:

*"3. We have perused submissions advanced by both sides in light of records placed before us. We have perused resolution of dispute under MAP with United Kingdom in case of assessee for years under consideration.*

*3.1 In the light of aforesaid understanding between revenue and Competent Authority of UK, assessee is allowed to withdraw its appeals for A.Y. 2009-10, 2010-11, 2011-12 and 2013-14 wherein the issues raised are in respect of transaction that stands fully covered by MAP resolution. 3.2. In respect of assessment year 2013-14, it has been submitted that, assessee had transaction with non-UK based AE, for which there is no MAP resolution MAP is drawn after considering relevant aspects giving rise to transfer pricing adjustment to with a particular UK to determine the arm's length price, same parameters cannot be applied to determine the arm's length price of transaction with non-UK based AE. We draw our support from the 3 ITA 7199/Del/17 and group S.A.Nos. 717 and group JCB India Ltd.*

*View expressed by Hon'ble Bombay High Court in case of Pr. CIT vs JP Morgan Services India Pvi Lid, reported in 2019- T11-33-HC- MUM-TP*

*3.3. Accordingly we direct Ld TPO to determine arm's length price of international transaction entered into by assessee with Associated Enterprise in Germany for A.Y. 2013-14, as per law Needless to say that proper opportunity shall be granted to assessee to represent its case.*

*4. In the result appeal for assessment year 2009-10, 2013-14 in respect of transaction with non-AE is set aside to Id. TPO as per the directions hereinabove, and in respect of assessment year 2010-11 and 2011-12 the assessee is allowed to withdraw the appeal.*

*In respect of appeal filed by Revenue for A.Y. 2011-12 the same stands dismissed pursuant to MAP Resolution*

*In respect of issues raised by assessee on the issues covered under MAP for A.Y. 2013-14 appeal stands withdrawn.*

*5. As we have already disposed of appeals for assessment year under consideration, respective Stay Applications filed in respect of years under consideration, therefore, stands infructuous and are dismissed as infructuous."*

9. Taking a consistent view of the matter, we remit the issue in dispute to the file of the AO/TPO for fresh consideration on similar lines. Since we decided the above ground No.4, other grounds become in-fructuous and dismissed accordingly.

10. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

11. Since we have decided the appeal itself, the stay petition has become in-fructuous and dismissed accordingly.

Order pronounced in open Court on 15th October, 2024

Sd/-

**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 15/10/2024

*B.R./R.N, Sr. Ps.*

Copy forwarded to:

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

Sd/-

**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR

ITAT, NEW DELHI

