

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH : BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

Appeal No.	Appellant	Respondent	Assessment Year
ITA No. 1429/Bang/2024	The Deputy Commissioner of Income Tax, Central Circle – 2(1), Bangalore.	M/s. Toyota Kirloskar Motor Pvt. Ltd., Plot No. 1, Bidadi S.O., Bidadi Industrial Area, Ramanagara, Karnataka – 562 109. <b>PAN: AAAC5415B</b>	2008-09
ITA No. 1430/Bang/2024			2009-10
C.O. No. 35/Bang/2024 (in ITA No. 1429/Bang/2024)	M/s. Toyota Kirloskar Motor Pvt. Ltd., Plot No. 1, Bidadi S.O., Bidadi Industrial Area, Ramanagara, Karnataka – 562 109. <b>PAN: AAAC5415B</b>	The Deputy Commissioner of Income Tax, Central Circle – 2(1), Bangalore.	2008-09
C.O. No. 36/Bang/2024 (in ITA No. 1430/Bang/2024)			2009-10

Assessee by	:	Shri Padam Chand Kinchu, CA
Revenue by	:	Shri Sridhar .E, CIT-DR

Date of Hearing	:	21-10-2024
Date of Pronouncement	:	23-10-2024

**ORDER**

**PER BENCH**

These two appeals filed by the revenue and the two Cross Objections filed by the assessee for the above said two appeals arising out of the order

passed by the Ld.CIT(A), Bangalore-12 dated 30/05/2024 and 14/06/2024 in respect of the A.Ys. 2008-09 and 2009-10 respectively.

**2.** Since the issues involved in the above two appeals are identical in nature, these two appeals as well as the cross objections are disposed of by way of a common order for the sake of convenience.

**3.** We will take up the appeal relating to the A.Y. 2008-09 in ITA No. 1429/Bang/2024 as the lead case. The brief facts related to A.Y. 2008-09 are that the assessee is a subsidiary of Toyota Motor Corporation, a company incorporated under the laws of Japan. The assessee filed their return of income on 29/09/2008 declaring a total income of Rs. 365,08,48,458/-. Thereafter, the return was processed u/s. 143(1) of the Act. Later on a reference u/s. 92CA of the act was made to the TPO and the TPO after evaluating the segmental results, had concluded that both the trading and manufacturing segment are at arms length. The TPO, thereafter, proceeded to evaluate the arms length character of technical assistance fee and the royalty separately. However, the TPO satisfied that the international transaction relating to payment of technical assistance fee by the assessee to its AE is at arms length. The TPO, insofar as the royalty payment is concerned, had concluded that the assessee had not demonstrated any economic benefit and therefore he computed the arms length price at Nil. Finally, he has treated the royalty payment of Rs. 97,82,11,238/- as transfer pricing adjustment. As against the said order, the assessee filed an appeal before the Ld.CIT(A) and contended that the TP adjustment made by the AO without appreciating the fact that the ITAT, Bangalore had set aside the similar TP adjustment made for the A.Y. 2008-09 and therefore the present order is liable to be set aside.

**4.** The assessee in respect of the TPO's earlier order, in which the TP adjustment of royalty payment of Rs. 97,82,11,238/-, was originally challenged before the Tribunal and the Tribunal had remitted the issue to

the TPO and while giving effect to the order of the Tribunal, the TPO had reduced the adjustment of royalty payment to Rs. 14,18,47,658/- which was challenged by the assessee before the Ld.CIT(A). The assessee made a submission before the Ld.CIT(A) that when the margin was accepted by the TPO to be at arms length price, the royalty could not be separately benchmarked. In support of their contention, the assessee relied on their own case of the ITAT, Bangalore in respect of the A.Ys. 2015-16 and 2016-17. The Ld.CIT(A) considered the decisions of the assessee for the A.Ys. 2012-13 to 2016-17 in which the Tribunal had decided the issue in favour of the assessee by holding that royalty cannot be separately benchmarked, and allowed the appeal filed by the assessee for A.Y. 2008-09 also.

**5.** As against the said order of the Ld.CIT(A), the revenue is in appeal before this Tribunal for A.Y. 2008-09 and raised the following grounds of appeal.

*“1. Whether the Id. CIT(A), Bangalore was right to hold that royalty cannot be benchmarked separately on the issue of determination of ALP on the international transaction, when the Bangalore Bench of ITAT in similar case, in the case of M/s Gemplus India Pvt Ltd. in 2010-T11-55-BANG-TP, has given the decision in the favour of Revenue as the assessee could not prove before the TPO that the payment that were made are commensurate to the volume and quality of the services.*

*2. Whether the Id. CIT(A) erred in holding that the TPO is required to determine the ALP of the international transaction but cannot examine and benchmark the international transaction between the assessee and the AE for payment of royalty.*

*3. Whether the Id. CIT(A) erred in not appreciating that it is not possible to decide the value as NIL of an international transaction in the nature of Royalty without looking into the benefit derived there from as Benefits Test is integral aspect to the Transfer Pricing Analysis.”*

At the time of hearing, the Ld.DR relied on the grounds of appeal raised by the revenue and prayed to allow the appeal filed by them.

6. On the other hand, the Ld.AR filed a compilation of case laws in which he has enclosed the orders passed by this Tribunal in assessee's own case in respect of the A.Ys. 2013-14, 2012-13, 2014-15, 2015-16, 2016-17, 2018-19 and 2007-08 and prayed that the issue was covered in favour of the assessee and prayed to follow the same and dismiss the appeal filed by the revenue.

7. We have heard the arguments of both sides and perused the materials available on record.

8. The only dispute arises in the appeal is whether the royalty can be separately benchmarked when the margin was accepted by the TPO to be at arms length price. On similar facts and circumstances, in the assessee's own case, in respect of the A.Y. 2018-19 in IT(TP)A No. 863/Bang/2023 dated 22/01/2024, the Tribunal had followed the earlier order of the Tribunal in IT(TP)A Nos. 421 & 422/Bang/2023 for the A.Ys. 2015-16 & 2016-17 dated 21/12/2023 wherein the Tribunal had extracted the following findings.

*"12. After hearing both the sides, perusing the entire material on record and the orders of the lower authorities, we note that this issue is covered by the decision of the coordinate Bench of this Tribunal in assessee's own case for the for AY 2012-13 & 2014-15 [2023] 147 taxmann.com 558 (Bang.Trib.) where it is held as under:-*

*"13. We note that assessee's margins have been computed including royalty payment which is higher than the margin of the comparables. It is also not disputed by the revenue that the comparables in case of the comparables, the royalty, margins are computed after including royalty and research and development expenses. The view taken by the Coordinate Bench of this Tribunal in assessee's own case for A.Y. 200708 has been reproduced hereinabove wherein all these aspects have been considered. This Tribunal for A.Y. 2007-08 has deleted the adjustment made by the Ld.TPO in respect of royalty by separately bench marking the transactions. This has been fortified by the clarification given in a Miscellaneous Petition filed by the department which is also reproduced hereinabove. This view is also supported by various decisions of Coordinate Benches of this Tribunal as well as various High courts, Cojoint reading of these orders, we direct the Ld.AO/TPO to delete the*

*adjustment proposed for royalty as a separate international transaction. Respectfully following the above view, we direct the Ld.AO/TPO to delete the adjustment proposed towards royalty as a separate international transaction. Accordingly, ground nos. 10 to 12 raised by assessee stands allowed.*

*13.1 The ld.DR relied on the order of the lower authorities and he submitted that since the assessee has adopted TNMM and the TPO has also accepted the methods for calculation ALP, the TPO has not made separate adjustment in regard to payment of royalty, therefore, this issue should not be raised by the assessee.*

*13.2 After hearing both the sides, we observe from the order of the TPO, he has calculated the ALP in regard to royalty payment determined under TNMM of Rs. 154.54 crores however, no separate*

*adjustment of royalty has been proposed by the TPO since the TNMM was adopted at NTT level which includes royalty also. The ld.DRP also expressed his opinion that the TPO has not proposed any adjustment towards royalty payment. Considering the above observations and arguments, we uphold the order of the DRP and no separate adjustment is required for the payment of royalty if the TNMM approach has been adopted at entity level as decided by the coordinate bench of the Tribunal in the assessee's own case noted supra, therefore ground Nos.8 to 15 become academic in nature, accordingly, we allow ground nos.8 to 15."*

*13. Following the above decision of the coordinate Bench of the*

*Tribunal, we hold that no separate benchmarking of royalty payment is required and this issue is decided in favour of the assessee and ground No.3 is allowed. Thus, grounds no.4 to 9 relating to ALP computation of royalty has become academic and is left open."*

*5.1 Further, same view has been taken by this Tribunal in assessee's own case for this assessment year also.*

<i>Assessment Year</i>	<i>ITAT Appeal No and Order date</i>
<i>AY 2012-13 and 2014-15</i>	<i>IT(TP)A No. 150/Bang/2017 (AY 2012-13) and IT(TP)A No.320/Bang/2019 (AY 2014-15), dated 02.12.2022]</i>
<i>AY 2007-08</i>	<i>MP 7/Bang/2015 dated 20.2.2015</i>

**9.** We find that the issue involved in this appeal is similar to the facts and circumstances found in the earlier orders of the Tribunal in the assessee's own case and therefore we are of the view that the Ld.CIT(A) had rightly allowed the appeal filed by the assessee challenging the order of the

TPO in which the royalty was separately benchmarked even after the margin is accepted to be at arms length price by the TPO.

**10.** In view of the above said findings and the several orders passed by this Tribunal in the assessee's own case, we are not inclined to accept the grounds raised by the revenue and in effect, we are dismissing the appeal filed by the revenue.

**11.** The facts involved in ITA No. 1430/Bang/2024 in respect of the A.Y. 2009-10 are similar to the facts found in the A.Y. 2008-09 in which we have given our finding and applying the same *mutatis mutandis*, we also dismiss the appeal filed by the revenue for A.Y. 2009-10.

**12.** Insofar as the C.O. Nos. 35 & 36/Bang/2024, we are of the view that the said cross objection petitions are only a counter to the main appeals filed by the revenue and also in view of the fact that we are not accepting the grounds raised by the revenue and dismissed the appeals filed by the revenue, the present grounds raised in the cross objection petitions becomes infructuous and we dismiss both the cross objection petitions as infructuous.

**13.** In the result, both the appeals filed by the revenue are dismissed and both the cross objections filed by the assessee are also dismissed as infructuous.

Order pronounced in the open court on 23<sup>rd</sup> October, 2024.

Sd/-  
(LAXMI PRASAD SAHU)  
Accountant Member

Sd/-  
(SOUNDARARAJAN K.)  
Judicial Member

Bangalore,  
Dated, the 23<sup>rd</sup> October, 2024.  
/MS /

ITA Nos. 1429 & 1430/Bang/2024,  
C.O. Nos. 35 & 36/Bang/2024

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|---------------|------------------------|
| 1. Appellant  | 2. Respondent          |
| 3. CIT        | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A)              |

By order

Assistant Registrar,  
ITAT, Bangalore