

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "I" BENCH: NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER &  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No.7315/Del/2019**

**[Assessment Year : 2014-15]**

Benetton India Pvt.Ltd., B-25, Infocity, Sector-34, Gurgaon-122002 (Haryana) <b>PAN-AAACD1013F</b>	vs	ACIT, Circle-4(2), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Ms. Suchita Kanodia, AR, Ms. Nishitta Rai, AR and Shri Ajit Jain, AR	
<b>Respondent by</b>	Shri Dharamvir Singh, CIT DR	
<b>Date of Hearing</b>	04.11.2024	
<b>Date of Pronouncement</b>	07.11.2024	

**ORDER**

**PER SATBEER SINGH GODARA, JM :**

This assessee's appeal for Assessment Year 2014-15 is directed against the CIT(A)-44, New Delhi's order dated 28.06.2019 passed in case No.145/2016-17/CIT(A)-44, in proceedings u/s 143(3) r.w.s. 144C of the Income Tax Act, 1961 ("the Act").

2. The assessee pleads the following substantive grounds in the instant appeal:-

1. *"On the facts and in law, Hon'ble Commissioner of Income Tax (Appeals)-44 [Hon'ble CIT(A)] has erred in upholding an adjustment of INR 41,14,344 made by the Ld. Transfer Pricing officer/Assessing officer ('Ld. TPO/AO') on account of consultancy charges.*
2. *On the facts and circumstances of the case and in law, the Ld. TPO as well as the Hon'ble CIT(A) erred in not appreciating the commercial expediency and business needs of the expense incurred*

*and completely ignoring all submissions and documentary evidences placed on record to show the arm's length nature of the transaction.*

3. *On the facts, circumstances of the case and in law, the Ld. AO has erred in initiating the penalty proceedings under section 271(1) of the Act.*

*The Appellant craves leave to alter, amend or withdraw all or any of the Grounds of Appeal herein or add any further grounds as may be considered necessary and to submit such statements, documents and papers as may be considered necessary either before or during the appeal hearing.*

*The Appellant prays for appropriate relief based on the said grounds of appeal and the facts and circumstances of the case.”*

3. Coming to the assessee's sole substantive issue challenging correctness of arm's length price ("ALP") adjustment of Rs.41,14,344/- claimed in the nature of reimbursement of consultancy expenses, both the learned representatives invite our attention to the CIT(A)'s detailed lower appellate discussion upholding the assessment findings as under:-

9.12. *“The TPO/AO made an addition on account of reimbursement of consultancy expenses amounting to Rs. 41,14,344. It was stated that the appellant had entered into an intercompany consultancy agreement with its Associate Enterprise based in Hong Kong in relation to quality control of the taxpayer's product by using its facilities and personnel based out of Hong Kong.*

9.13 *The appellant stated that the services were received from its AE which had designated one Mr. David Leung for providing services pertaining to quality check and control of accessories (shoes and bags) imported from China and other regions outside India. While the TPO/AO had made no transfer pricing adjustment pertaining to the expatriates working in India, he had not accepted the contention*

of the appellant regarding Mr. David Leung, who was based in Hong Kong.

9.14. The appellant submitted additional evidence which were as follows:-

"With reference to the above, we wish to highlight that, the intercompany consultancy service agreement dated July 01, 2013 (attached as Annexure 1), with BAP for availing quality control services for certain accessories, ie, shoes and bags, imported from third parties was submitted vide submission dated 4 December 2016 during the course of Transfer Pricing (TP) assessment proceedings.

4. As per the said arrangement, BAP provides consultancy services in relation to quality control of Benetton India's products by using its facilities and personnel based out of Hong Kong. The personnel performs quality check and control of the accessories (shoes and bags), imported from China and other regions outside India by Benetton India to ensure best quality through educating vendor and performing initial and mid inspections from third party vendors.

5. The above was owing to following reasons

**a. Availability of experienced and qualified staff required for quality control-** Mr. Daniel, employed by BAP had a vast experience in the field of quality control. This, he was appointed for provision of quality control service specifically for the Appellant's business for the year. (Letter issued to Daniel Heung by BAP mentioning the salary being paid to him for operations conducted for Benetton India Private Limited's/ BIPL's Business for FY 2013-14 attached as Annexure 2).

**b. Proximity of vendors to BAP** - Mr. Daniel Heung visited the vendors who operated out of china and Hong Kong on their locations and performed quality check of goods required to be imported by the Appellant. Once the same were quality

checked and approved by him, the finished goods were imported by Benetton India from third party vendors

- c. Non availability of similar staff in quality control division of Appellant's organisation for shoes and bags.
- d. Requirement of the business: The services received are critical to the operation of the Appellant as its quality of the products are critical to the growth of the business.
- e. No third party would have provided such services free of cost.

Reference sample email evidences depicting the role of Mr. Daniel Leung being engaged in quality control activities for India are attached as Annexure 3.

<b>Ref</b>	<b>Email Summary</b>
<b>3A</b>	Mail correspondence between Daniel Leung, Prerna Gandhi (Production deptt. Of BIPL) and Alina (3 <sup>rd</sup> party Vendor) dated November 2013 with respect to finalization of inspection dates for quality check of products at vendor facility in Fuzhou, China <b>(Pages 1-3 of binder)</b>
<b>3B</b>	Mail correspondence between Daniel Leung, Prerna Gandhi and Mayhuang (3 <sup>rd</sup> party Vendor) dated October 2013 with respect to quality check for a specific style of bag by Daniel <b>(Pages 4-5 of binder)</b>
<b>3C</b>	Mail correspondence between Daniel Leung and Rupesh Tyagi (Vice President-accessories) sharing Daniel's weekly QC schedule for August-September 2013 indicating his visit to various vendors of BIPL in Hong Kong and China where inspection was done and QC was performed. <b>(Pages 6-7 of binder)</b>
<b>3D</b>	Mail correspondence between Daniel Leung and Rupesh Tyagi with respect to the weekly QC schedule of Mr. Daniel for February-March 2014 indicating his visit to various third party vendors of BIPL in Hong Kong and China for performing quality control. <b>(Pages 8-13 of binder)</b>
<b>3E</b>	Mail correspondence between Daniel Leung and Rupesh Tyagi dated 11 <sup>th</sup> September 2013 with respect to travel expenses of Mr. Daniel, which were sent for approval to Mr. Rupesh Tyagi for the traveling expenses incurred by Daniel during inspection for India products <b>(Pages 14-89 of binder)</b>

6. Documentary evidence of cost recharge: BIPL entered into an inter-company agreement to receive the said services at a fixed fee of USD 3,781 per month (USD 34,037 for the year) plus actual expenses incurred by Mr. Leung. The fees paid primarily represents salary cost, bonus and out of pocket expenses of the employee which were incurred specifically for providing quality check services to BIPL. It is pertinent to note that these were dedicated services being provided

*by BAP to BIPL. (Back to back invoices of out of pocket expenses spent by Daniel Leung for performance of services to BIPL attached as Annexure 4)."*

9.15. *The TPO in his Remand Report has stated that the above documents largely deal with claim of travel expenses which do not prove that the taxpayer incurred such expenses or that Mr. David Leung was appointed by the AE to provide consultancy services to the assessee.*

9.16. *I agree with the contention of the TPO/AO that no document has been provided which shows that Mr. David Leung had been appointed by the AE to provide services to the appellant. The email exchanges include the working schedule but it is not clear how these relate to the work of the taxpayer. Hence, the contention of the appellant is not accepted. The transfer pricing adjustment amounting to Rs. 41,14,344 pertaining to reimbursement of consultancy expenses is upheld."*

This leaves the assessee aggrieved.

4. The assessee's first and foremost contention before us is that the above adjustment of consultancy expenses regarding its payments made to Mr. Daniel Leung, is a recurring issue between the parties. And that this tribunal's latest order dated 24.07.2014 in Assessment Year 2017-18 has already rejected the Revenue's contentions supporting the same. Ms. Kanodia takes us to paras 30 to 32 thereof at page 19 that the learned co-ordinate bench has accepted the assessee's arguments by placing reliance on the earlier orders right from Assessment Years 2007-08 onwards.

5. The Revenue on the other hand clarifies that relevant consultancy agreement had been executed between the parties i.e. the assessee and its overseas associate enterprise "AE" only on 01.07.2013 and therefore, the

impugned adjustment has to be adjudicated as not a covered and recurring but a fresh issue only.

6. We find merit in the Revenue's instant technical objection once it has come on record that the relevant consultancy agreement was itself executed in F.Y. 2013-14 relevant to Assessment Year 2014-15 only. Meaning thereby that the same could not be treated as a recurring issue as the parties themselves have chosen to arrive at fresh terms thereof.

7. Faced with this situation, the assessee sought to buttress the point that it had engaged its overseas "AEs" employee Mr. Daniel Leung to oversee all quality and other related issues regarding its various goods imported is "apparel" and related segments and therefore, learned lower authorities have erred in law and on facts in making the impugned adjustment after adopting only "NIL" value of the services availed in light of ***CIT vs EKL Appliances [2012] 24 taxmann.com 199 (Del)***.

8. It is at this stage that we sought to know from the assessee side as to what method it had adopted in benchmarking the impugned international transaction representing consultancy charges. The assessee replies that it had adopted comparable uncontrolled price "CUP" method only. It fails to throw any light based on the case records as to how and in what manner, it had benchmarked the impugned payments by adopting "CUP" method going by the relevant comparables in the above segment.

9. Mr. Singh further submits that based on above stated consultancy agreement dated 01.07.2013, the monthly fee stipulated was US \$ 3781.93 whereas Mr. Daniel Leung's salary w.e.f 01.01.2014 had been increased to US

\$ 24960 per month. His case accordingly is that this is not an instance wherein Mr. Daniel Leung had only worked for the assessee since there is no record of any apportionment of his salary vis-a-vis the consultancy charges and other expenses in issue. No satisfactory explanation has come from the assessee's side to this clinching effect. It is in these peculiar facts and circumstances that we deem it appropriate to uphold the lower authorities action impugned "ALP" adjustment of Rs. 41,14,344/- in assessee's hands. Ordered accordingly.

10. This assessee's appeal is dismissed.

Order pronounced in the open Court on 07<sup>th</sup> November, 2024.

**Sd/-**

**Sd/-**

**(AVDHESH KUMAR MISHRA)  
ACCOUNTANT MEMBER**

**(SATBEER SINGH GODARA)  
JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI