



।आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "C" :: PUNE

BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपीलसं. / ITA No.1641/PUN/2024

निर्धारण वर्ष / Assessment Year: 2020-21

Cummins Generator Technologies India Pvt. Ltd., Tower A, 6 th Floor, Cummins India Office Campus, Balewadi, Pune – 411045. PAN: AABCC1533E	V s	The Assessment Unit, Income Tax Department, NFAC and The ACIT, Circle-1(1), Pune.
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Ketan Ved – AR
Revenue by	Shir Prakash L Pathade – CIT(DR)
Date of hearing	05/12/2024
Date of pronouncement	19/12/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of Assessing Officer passed under section 143(3) r.w.s. 144C(13) read with section 144B of the Income Tax Act, 1961 dated 07.06.2024; to give effect to the order of Dispute Resolution Panel dated 18.05.2024. The grounds of appeal raised by the assessee are as under :



“1. Ground for not following the directions of the Hon'ble Dispute Resolution Panel (hereinafter referred to as "DRP")

1.1 On the facts and in circumstances of the case and in law, the Id. AO erred in not following the directions of the Hon'ble DRP, while passing the final assessment order

1.2 The Hon'ble DRP in its direction dated 18 May 2024, has explicitly mentioned that the payment of royalty for use of technology is at arm's length and hence, the determination of arm's length price of such royalty payments by the Ld. AO to be "Nil is not sustainable in the specific facts and circumstances of the case.

1.3 However, the Id. AO in its order dated 07 June 2024, erred in ignoring the main finding of the Hon'ble DRP and making an upward adjustment of INR 3,29,56,988/ to the total income of the Appellant by holding that international transaction of payment of royalty by the Appellant is not at arm's length.

2. General Ground: Transfer pricing adjustment of INR 3,29,56,988/-

2.1 On the facts and in circumstances of the case and in law, the Ld. AO/TPO pursuant to the directions of Hon'ble DRP, has erred in making an upward adjustment INR 3,29,56,988/- to the total income of the Appellant by wt holding that international transaction of payment of royalty by the Appellant is not at arm's length.

2.2 The Ld. AO/TPO pursuant to the directions of the Hon'ble DRP erred in law and on the facts and in circumstances of the case and rejected the benchmarking of the international transaction of payment of royalty by the Appellant by applying Other Method.”

Brief facts of the case :

2. Assessee company e-filed Return of Income for A.Y.2020-21 on 12.02.2021. The Assessee Company has entered into International Transactions for which reference was made to the



Transfer Pricing Officer to determine the Arms Length Price(ALP) of International Transactions. The Transfer Pricing Officer(TPO), Deputy Commissioner of Income Tax(TP)-1(1), Pune passed an order under section 92CA(3) of the Act on 29.07.2023. The assessee aggrieved by the order of Transfer Pricing Officer preferred an appeal before Dispute Resolution Panel. Dispute Resolution Panel decided the objections raised by assessee vide order dated 18.05.2024. Then the Assessing Officer passed an order under section 143(3) r.w.s. 144C(13) r.w.s. 144B of the Act, dated 07.06.2024. In the said assessment order, the Assessing Officer made an addition of Rs.3,29,56,988/- on account of royalty paid/payable as proposed by Transfer Pricing Officer in addition to other additions. Aggrieved by the assessment order, assessee filed appeal before this Tribunal.

Submission of Id.AR :

3. The Id.Authorised Representative of the assessee submitted that though there are many grounds, the effective dispute is regarding upward adjustment of Rs.3,29,56,988/- made on account of royalty based on the order of the Transfer Pricing Officer. Ld.AR submitted that assessee had filed objections before Dispute



Resolution Panel. The Dispute Resolution Panel heard the assessee and decided the Objection No.6 & 7 pertaining to Royalty in favour of assessee. Ld.AR invited our attention to the order of the Dispute Resolution Panel. Ld.AR read out the relevant paragraph 7.5 of the order of the Dispute Resolution Panel. Ld.AR submitted that once Dispute Resolution Panel held that the adjustment proposed by the Transfer Pricing Officer with reference to Royalty Payment is not sustainable, the Assessing Officer has no jurisdiction to add the amounts. Ld.AR therefore, pleaded that said addition may be deleted. Ld.AR also submitted that once the Ground No.1.2 of the assessee is decided, then all other grounds become academic in nature, except Ground No.9 and 10.

Submission of ld.DR :

4. The ld.DR for the Revenue relied on the order of the Assessing Officer. A specific query was raised by Bench to the ld.DR that how Assessing Officer has jurisdiction to make an addition on the issue of Royalty, once Dispute Resolution Panel has specifically mentioned in the order that impugned addition cannot be sustained ! Ld.DR admitted that AO does not have any such jurisdiction.

**Findings & Analysis :**

5. We have heard both the parties and perused the records. In this case, the Transfer Pricing Officer proposed an adjustment of Rs.3,29,56,988/- on account of Royalty paid/payable. The TPO held that the said transaction was not at Arms Length Price. Assessee filed objections before the Dispute Resolution Panel. The Dispute Resolution Panel vide its order dated 18.05.2024 gave directions as under :

“Further, the Panel is sensitive to the fact that in case of Cummins India Ltd., albeit for technology royalty, the Ld. TPO has determined Royalty @ 4.10% Hence, in this case, the payment of 2% Royalty for licensing, in opinion of the Panel, is at arm's length.

In view of the above, the panel holds that the Applicant has derived direct benefit from the payment of Royalty in terms of usage of licence. On the specific set of facts during this A.Y, the documents demonstrate conferment of trade name, trade mark on applicant.

Hence, the determination of Arm's Length Price of Arm's Length Price of License Royalty payments at "Nil" is not sustainable in the specific facts and circumstances of this case. It was incumbent on the Ld. TPO to conduct a royalty rate analysis and/or establish that there was no need-remittance-receipt-benefit of the royalty related payments and services COME TAX DEPARTMENT

7.6. Directions of the DRP for Objection No. 6 and Objection No. 7:

The objection of the Applicant succeeds. The action of the Ld. Transfer Pricing Officer, in the specific and peculiar factual and procedural scenario, is not sustained.”



5.1 Thus, Dispute Resolution Panel held that objection of the appellant succeeds. DRP specifically held that the Transfer Pricing Adjustment proposed by TPO of Rs.3,29,56,988/- on account of Royalty is not sustainable. Once DRP has given a specific finding that the proposed adjustment is not sustainable, the Assessing Officer have no jurisdiction to make the adjustment.

5.2 Section 144C(10) is reproduced here as under :

“(10) Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.”

5.3 Thus, Section 144C(10) categorically states that direction issued by Dispute Resolution Panel shall be binding on the Assessing Officer. Therefore, the Assessing Officer has erred in making addition of Rs.3,29,56,988/- on account of Royalty as Dispute Resolution Panel had held that the impugned addition is not maintainable. Therefore, we direct the Assessing Officer to delete addition of Rs.3,29,56,988/-. Accordingly, Ground No.1.2 and 2 raised by Assessee are allowed.

6. The Ground No.9 and 10 are related to interest under section 234A and 234C of the Act. These are consequential grounds. Ld.AR had admitted that these grounds become academic in



nature, once the addition is deleted. Therefore, we direct the Assessing Officer to verify the applicability of Section 234C and 234A of the Act. Accordingly, Ground No.9 and 10 are allowed for statistical purpose.

7. Ld.AR had admitted that all other grounds become academic in nature. Ld.AR had not pleaded the remaining grounds. Accordingly, all other grounds are dismissed as unadjudicated.

8. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open Court on 19th December, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 19th Dec, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "सी" बेंच, पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्डफाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.