

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'J' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
MS PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.1123/Mum/2015
(Assessment Year :2010-11)**

Dy. Commissioner of Income Tax-1(3)(2) Room No.564 Aayakar Bhawan M.K.Road Mumbai-400 020	V s.	M/s. Unilever Industries Pvt. Ltd. Unilever House B.D. Sawant Marg Chakala, Andheri (E) Mumbai- 400 099
PAN/GIR No.AAACU0791P		
(Appellant)	..	(Respondent)

**ITA No.1280/Mum/2015
(Assessment Year :2010-11)
&
ITA No.7438/Mum/2018
(Assessment Year :2014-15)**

M/s. Unilever Industries Pvt. Ltd. Unilever House B.D. Sawant Marg Chakala, Andheri (E) Mumbai- 400 099	V s.	Dy. Commissioner of Income Tax-1(3)(2) Room No.564 Aayakar Bhawan M.K.Road Mumbai-400 020
PAN/GIR No.AAACU0791P		
(Appellant)	..	(Respondent)

Assessee by	Shri Nishant Thakkar, Ms. Jasmin Amalsadwala
Revenue by	Shri Pankaj Kumar, CIT DR
Date of Hearing	11/02/2025
Date of Pronouncement	24/02/2025

आदेश / O R D E R**PER AMIT SHUKLA (J.M):****ITA No.1123/Mum/2015 & 1280/Mum/2015**

The aforesaid cross appeals have been filed by the Revenue as well as by the assessee against final assessment order dated 29/12/2014 passed u/s.143(3) r.w.s. 14C(13) in pursuance of the directions given by the DRP dated 12/11/2014 for the A.Y.2010-11.

2. Here in this case it has been stated that in so far as the main issue raised in the Revenue's appeal as well as assessee's appeal relating to transfer pricing adjustment the same is now covered by Bi-lateral Advance Pricing Arrangement (BAPA) on 28/03/2022 whereby the Revenue authorities of both the countries have agreed upon the arm's length margin for the services provided under the R & D services agreement and accordingly, the grounds raised in both the appeals should be dismissed as withdrawn.

3. In so far as ground No. 1 & 2 of Revenue's appeal are concerned, it relates to a Transfer Pricing adjustment of Rs. 7.41 crores w.r.t. Research and Development (R&D) services (referred to as provision of Scientific and Technical services) to its AE (Unilever Plc.).

4. The brief facts are that the assessee operates two segments; (a) Scientific and Technical Services segment providing contract Research and Development Services; and (b) Information Technology Enabled Services (ITES) segment providing business process outsourcing services. There is no dispute with respect to the ITES/BPO segment. Insofar as the Scientific and Technical Services / Research and Development (R&D) segment is concerned, the Assessee and Unilever Plc (AE) have entered into a Research Agreement dated 16 November 2000 providing that the Assessee would be remunerated at cost + 5% for the services rendered by it. During the year under consideration the Assessee billed Unilever Plc Rs 51.65 crores and reported an operating profit of Rs.9.34 Cr which translates to operating profit (OP) to operating cost (OC) margin of 22.08%. Assessee carried out benchmarking applying the Transactional Net Margin Method (TNMM) and basis the comparable companies selected, the Assessee arrived at the arm's length OP/OC margin of 12.62%. Accordingly, the Assessee reported its transactions with the AE to be at arm's length.

5. The Transfer Pricing Officer (TPO) did not agree with the benchmarking carried out by assessee. The TPO rejected the 22.08% margin of the assessee by holding that since under the agreement with Unilever Plc. the Assessee was entitled to cost + 5%, the excess cannot be considered for the purposes of the benchmarking profitability. The TPO altered the comparables-set selected by the Assessee and reworked the arm's length OP/OC

margin to 20.08% and held that the difference between 5% and 20.08% worked out to a differential profit Rs.7.41 cr and accordingly recommended an adjustment of Rs.7.41 cr. In addition, the TPO held that the Assessee ought to have received a 50% share in the royalty income earned by Unilever Plc. from the intellectual property developed with the assistance of the services provided by the Assessee. The TPO was informed that Unilever Plc. (the AE) has earned Rs. 3010 Cr as royalty. The TPO on the basis of the employees engaged by the Assessee to the overall employees attributed Rs.90.3 cr. to the assesseees ($3010 \times 180 / 6000$) and held that 50% of the thereof, i.e. Rs.45 cr. share of royalty that should have been shared by the AE (Unilever Plc.) with the assessee with respect to the R&D services rendered by the assessee. The Dispute Resolution Panel (DRP) did not entirely agree with the adjustment made by the TPO to R&D Services segment. The Id.DRP held that the TPO had erred in not considering the actual profit earned by the Assessee to arrive at its OP/OC margin, however, the DRP upheld the stand of the TPO that Rs.90.3 Cr royalty earned by Unilever Plc. was relatable to the services rendered by the Assessee and that 50% thereof should have been received by the Assessee. In computing the final adjustment, the DRP directed the TPO to delete the adjustment of Rs.7.41 cr and compute the 50% royalty after giving credit for the amount already billed by the Assessee (ie., Rs.51.65 crores). Accordingly, the Id.DRP confirmed an addition of Rs. 19.32 cr.

6. Accordingly, the assessee filed this appeal before the Tribunal being aggrieved by the ld. DRP's Directions upholding the attribution of royalty earned by Unilever Plc., to the assessee; and the Revenue filed the present appeal being aggrieved by the deletion of Rs 7.41 crores by ld.DRP in arriving at the computation of margin for the purposes of TNMM benchmarking. Similar adjustments were made in the assessee's hands for AY 2011-12 to 2014-15 and the cross appeals were pending before this Tribunal.

7. It has been informed that during the pendency of the cross appeals, the assessee invoked the Mutual Agreement Procedure ("MAP") on 3 February 2015 with respect to the adjustments made under the R&D services segment for AY 2010-11 to AY 2014-15. Pending MAP resolution, the Assessee also entered into a Bi-lateral Advance Pricing Agreement (BAPA) on 28 March 2022 where under the revenue authorities of both countries agreed that the OP/OC arm's length margin for the services provided under the R&D Services segment by the assessee to Unilever Plc. would be 16.7%. The copy of Bi-lateral agreement dated 28/03/2022 has also been filed before us. It is seen that given the BAPA, Indian Revenue Authority conveyed to Her Majesty's Revenue and Customs (HMRC) that they were willing to settle the MAP proceedings for all the years i.e., AY 2010-11 to 2014-15 as per the BAPA. This communication was agreed to and accepted by the assessee, its AE (Unilever Plc.) and the HMRC. Based on the arm's length margin of 16.7% the adjustment for the R&D services segment (scientific and

technical services segment) for AY 2010-11 to 2014-15 was communicated to the Assessee by the Indian Revenue Authorities vide letter dated 11/10/2023. The copy of the same has been filed before us. It is seen from the letter filed for A.Ys. 2010-11 to 2012-13, there was no adjustment, that is because the Assessee's OP/OC margin was higher than 16.7% as agreed under BAPA, whereas for AY 2013-14 and 2014-15 the Assessee's OP/OC there was an adjustment agreed to, as the margin being lower than 16.7%, hence addition was agreed to. Accordingly, the assessee was permitted to withdraw the transfer pricing grounds raised in its appeal vide order sheet entry dated 21/12/2023. Since OP/OC margin for R & D segment for A.Y.2010-11 was well over 16.7% as agreed in BAPA and thereafter, under the MAP proceedings passed by Id. AO vide order dated 25/04/2014, the copy of this has been placed before us. The copy of order giving effect to the MAP resolution has also been filed. Since the transfer pricing issues which were raised have been settled under BAPA and MAP proceedings, accordingly, the grounds raised by the Revenue are dismissed.

8. In so far as the ground No.1 to 6 raised by the assessee, a letter dated 06/11/2023 has been filed seeking leave of this Tribunal to withdraw the grounds in compliance with Rule 44G and give a finality to the MAP resolution, accordingly, 1-6 of the assessee is allowed to be withdrawn.

9. In assessee's appeal in so far as ground Nos. 7-11 in relation to disallowance u/s.14A, the brief facts are that assessee had

shown exempt income of Rs.11,250/- and no disallowance was made u/s.14A on the ground that it was a claim of the assessee that it had not incurred any expenditure to earn exempt income. The ld. AO however, invoked Rule 8D and disallowed an amount of Rs.13,41,490/-. The ld. DRP has upheld the disallowance made by the ld. AO.

10. Before us ld. Counsel submitted that even though the claim of the assessee is that it has incurred any expenditure to earn the exempt income, however, he submitted that disallowance should be restricted to the extent of exempt income earned i.e. Rs.11,250/-. Accordingly, the disallowance u/s.14A is restricted to the extent of exempt income of Rs.11,250/- and this issue now stands covered by the judgment of the **Hon'ble Bombay High Court in the case of Nirved Traders Pvt. Ltd. vs. DCIT in ITA No. 149 of 2017 dated 23/04/2019** and also this issue stands covered by the decision of the Tribunal in assessee's own case for A.Y.2012-13 wherein disallowance has been limited to the extent of exempt income. Accordingly, ground Nos. 7-11 are partly allowed.

11. In so far as ground Nos. 12 to 17 relating to disallowance of consultation charges amounting to Rs.49,27,292/-, the brief facts are that the assessee made payment to consultants / institutions for consultancy services rendered by them. These expenses were incurred by the assessee under the Research Agreement dated 16 November 2000 and the expenses formed a

part of the cost base which was recovered (recharged) from Unilever Plc. with a markup of 5%. The ld. AO relying on the stand of the Revenue of treating these expenses as capital in nature in the earlier years inter alia AY's 2004-05 and 2007-08 treated these expenses incurred in this year to be capital in nature and disallowed the same. The DRP rejected the objections and upheld the order of the ld. AO. It has been stated that in A.Y.2009-10, the ld. CIT (A) has reversed the treatment of these expenses as being capital in nature and has allowed them as revenue expenses and consequently allowed the ground of the assessee. The revenue has not agitated and accepted this decision of the ld.CIT (A) as is evident from grounds raised by the department in the appeal filed against the order of the ld.CIT (A) reproduced in the order of the Tribunal in ITA No. 4983/Mum/2015 dated 13/12/2017. Further, it has been pointed out that from A.Y.2011-12 onwards payment to consultancy / institutions for consultancy services are hereby allowed by the ld. AO himself.

12. We find that this issue stands covered by the decision of the Tribunal in assessee's own case for the A.Y.2007-08 in ITA No.2795/Mum/2015 wherein earlier Tribunal order for A.Y.2004-05 has been followed. Before us it has been brought on record that in the earlier hearings before the Tribunal assessee had filed a certificate dated 24/06/2024 confirming that no disallowance with respect to consultancy charges paid has been made for the A.Y.2011-12 to 2019-20. Thus, in view of the fact that this issue has been decided in favour of the assessee by the

Tribunal in assessee's own case for A.Y.2007-08 and 2004-05 and also in the subsequent year, no disallowance has been made by the AO, therefore, the addition on account of disallowance of consultancy charges is deleted. In the result, grounds Nos. 12 to 17 are allowed.

In the result, appeal of the Revenue is dismissed and assessee's appeal is allowed in the manner indicated above.

ITA No.7438/Mum/2018

13. The aforesaid appeal has been filed by the assessee against final assessment order dated 25/10/2018 passed u/s.143(3) r.w.s. 144C(13) in pursuance of the directions given by the Id. DRP.

14. In so far as ground relating to transfer pricing adjustment on account of allocation of royalty in respect of provision of scientific and technical services, these grounds have already been withdrawn by the assessee as noted vide order sheet entry dated 21/12/2023 pursuant to the MAP resolution in BAPA signed between the assessee, its Unilver Plc. the Indian Revenue Authorities and UK Revenue Authorities. Accordingly, these grounds are dismissed as withdrawn.

15. In Ground Nos.2.4 to 2.9, assessee has challenged the transfer pricing adjustment with respect to purchases of equipment of Rs.47,50,308/- which was on account of purchases

of following laboratory equipment by the assessee from its AE- Unilever UK Central Resources Limited.

	Particulars	Invoice Date	Qty.	Amount in GBP
a.	Fabric Flow Cell	10.12.2013	1	38,229
b.	Softness Meter	13.06.2013	2	7,940 (3,970 Each)

16. Before the ld. TPO in response to the query, assessee submitted the copies of invoices vide letter dated 14/08/2017. The ld. TPO without giving any further clarification held that since bills produced by the assessee were not for the equipment purchased by the assessee, ALP of the transaction was treated as 'nil' and adjustment of Rs.47,50,308 was 'nil'.

17. The ld. DRP held that insofar as the bill for Fabric Flow Cell was concerned, the TPO had erroneously observed that the invoice issued was not in the name of the assessee. Insofar as the invoice for Softness Meters was concerned, the assessee had filed a clarification that the invoice was erroneously in the name of Hindustan Unilever Limited, instead of the assessee. The DRP required the TPO to consider the confirmations and related documents. In any case, the DRP held that an adjustment of the entire amount could not be made, and at the highest adjustment should be restricted to the depreciation claimed by the assessee.

18. In compliance to the directions given by the ld. DRP assessee filed the relevant papers, however, the ld. TPO dismissed the submissions and held that there was no clarity and reiterated the adjustment of Rs.47,50,308/-.

19. Now, before us also the assessee had filed following documents which were filed before the ld. TPO as well as before ld. DRP.

a. Fabric Flow Cell

1. Copy of the Purchase Order ("PO") bearing Order No.DO6009651.

ii Copy of the Invoice dated 10.12.2013 bearing no. D961002306 for Order No. DO6009651.

iii. Requisition raised by the Appellant on 19.02.2014 with Standard Chartered bank for payment of GBP 38,229.

iv. Tax Audit Report in Form 3CA for subsequent year, i.e. FY 2014-15 capitalising Fabric Flow Cell since the equipment was put to use in the subsequent year.

b. Softness Meter

i. Copy of the purchase order bearing Order No.DO5017393 for 2 Softness Meters.

ii. Copy of the 2 Invoices dated 13.06.2013 of GBP 3970 each bearing no.180463 and 180465 for Order No.DO5017393-2

iii. Requisitions raised by the Appellant on 2.12.2013 with Standard Chartered bank for payment of GBP 3970 each

iv. Tax Audit Report in Form 3CA for year under consideration, i.e. FY 2013-14 capitalising Softness Meter.

19. All these documents have been filed in separate Exhibit alongwith copies of invoices, purchase order and tax audit report for each of the equipment for the fabric flow and softness meter.

20. From the perusal of these documents which were also filed before the Id. TPO, it would be incorrect on part of the Id. TPO to hold that the purchase by the assessee of the said laboratory equipment remain uncleared and therefore, disallowance in respect of laboratory equipment is unsustainable. Once the Id. DRP has given the direction, the Id. TPO / AO has to carryout and follow the directions. When the Id. DRP itself has directed that adjustment if any ought to be restricted the depreciation claim, then he cannot hold contrary. Thus, in the worst case scenario depreciation claim and softness meter alone could have been disallowed.

21. Here in this case the adjustment has been made on the ground that the bills produced by the assessee were not for the equipment purchases whereas the assessee has produced all those bills before the Id. DRP and also before the Id. TPO as noted above. Once these bills have been produced there cannot be any doubt for the purchases and accordingly, no adjustment should have been made on this issue. Accordingly, the addition adjustment made by the Id. TPO is deleted.

22. As ground Nos.2-2.3 has been withdrawn, TP adjustment raised in 2.4 to 2.9 is allowed.

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

24. In the result appeal of the Revenue in ITA No.1123/Mum/2015 is dismissed and appeal of the assessee in ITA No. 1280/Mum/2015 is partly allowed and appeal of the assessee in ITA No.7438/Mum/2018 is partly allowed.

Order pronounced on 24th February, 2025.

Sd/-

(PADMAVATHY S)

ACCOUNTANT MEMBER

Mumbai; Dated 24/02/2025
KARUNA, *sr.ps*

Sd/-

(AMIT SHUKLA)

JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai