आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM "DIVN" BENCH, VISAKHAPATNAM
श्री विजयपाल राव, उपाध्यक्ष एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI VIJAY PAL RAO, HON'BLE VICE PRESIDENT
&
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपीलसं./**I.T.A.No.340/Viz/2024**
(निर्धारण वर्ष/ **Assessment Year: 2020-21)**

&

S.A. No. 15/Viz/2025
(निर्धारण वर्ष/ **Assessment Year: 2020-21)**

Teejay India Private Limited, Plot No. 15, Brandix, APSEZ, Pudimadaka Road, Atchutapuram Mandal, Visakhapatnam-530011. PAN: AAACO9452H (अपीलार्थी/ Appellant)	Vs.	Deputy Commissioner of Income Tax, Circle-5(1), Visakhapatnam. (प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Sri Darpan Kirpalani, Advocate
प्रत्यार्थी की ओरसे/ Respondent by	:	Dr. Satyasai Rath, CIT(DR)
सुनवाई की तारीख/ Date of Hearing	:	16/07/2025
घोषणा की तारीख/Date of Pronouncement	:	25/07/2025

O R D E R

PER S. BALAKRISHNAN, Accountant Member:

This appeal filed by the assessee is directed against the final order of the Ld. Assessing Officer [AO] passed in DIN No. ITBA/AST/S/143(3)/2024-25/1066102794(1), dated 26/06/2024 U/s. 143(3) r.w.s 144C(13) r.w.s 144B of the

Income Tax Act, 1961 (in short "the Act")j for the Asst. Year 2020-21.

2. Brief facts of the case are that the assessee-company, M/s. Teejay India Private Limited is a fully owned subsidiary of M/s. Ocean India Pvt Ltd which in turn is held by Teejay Lanka PLC, is engaged in the business of manufacturing and sale of knitted fabrics/apparels at Brandix APSEZ, Atchutapuram, Visakhapatnam. The assessee filed its return of income for the AY 2020-21 on 12/02/2021 declaring a total income of Rs.19,19,53,860/-. Subsequently, the case was selected for scrutiny under CASS and notice U/s 143(2) of the Act was issued on 29/06/2021. Subsequently notice U/s. 142(1) of the Act was issued along with an annexure calling for relevant details. In the course of assessment proceedings, the Ld. AO noticed that Form 3CEB report of the assessee company had international transactions with its Associated Enterprises (AEs). Hence, a reference was made to the Transfer Pricing Officer u/s. 92CA(1) of the Act for the international transactions undertaken by the assessee company in the F.Y.2019-20. Accordingly, the TP matters were examined by the DC/ACIT (TPO)-3, Hyderabad and an order u/s. 92CA(3) of

the Act was passed on 18/02/2022 determining the proposed adjustment as follows:

Sl No	**Description**	**Adjustment U/s. 92CA (in Rs.)**
1.	Payment of royalty for technical support services	24,84,58,065
2.	Interest on ECB	40,49,995
3.	Interest on Trade Receivables	5,57,443
	Total adjustment U/s. 92CA	25,30,65,503

Thus, the Ld. TPO proposed to make an upward transfer pricing adjustment of Rs. 25,30,65,503/- while computing the income of the assessee for the AY 2020-21.

3. The Ld. AO made further addition of Rs. 23,33,312/- claimed by the assessee as Amortization of lease hold rights for the relevant AY. The Ld. AO accordingly passed the draft assessment order on 28/09/2023. Aggrieved by the draft assessment order, the assessee preferred an appeal before the Ld. Dispute Resolution Panel-1, Bengaluru [DRP]. The Ld. AR made various submissions before the Ld. DRP with respect to comparable selected by the Ld. Transfer Pricing Officer [TPO] as proposed in the order u/s 92CA(3) of the Act. The Ld. AR further submitted various documents with respect to the Arm's Length Price of the interest rate on external commercial

borrowings. The Ld. AR contended the treatment of notional interest receivable as international transaction. The Ld. AR further made submissions before the Ld. DRP in respect of disallowance of payment of royalty to the AE in relation to the assistance received during the year. Further, the Ld. AR also made submissions with regard to amortization of leasehold land charges. Considering the above submissions made by the Ld. AR, while rejecting the objections, the Ld. DRP directed the Ld. TPO to re-compute the ALP of the international transactions in accordance with the directions of the Ld. DRP U/s. 144C(5) of the Act, dated 30/05/2024. Thereafter, the LdAO, giving effect to the directions of the Ld. DRP, passed the final order U/s. 143(3) r.w.s 144C(13) r.w.s 144B of the Act on 26/06/2024. Aggrieved by the final order passed by Ld. AO, the assessee filed the present appeal before us.

4. The assessee has raised the following grounds of appeal:

> *"1. That the order of the Additional/Joint/Deputy/Assistant Commissioner of Income Tax / Income Tax Officer, National E-assessment Centre, New Delhi (Ld. AO) to the extent prejudicial to the appellant, is bad in law, contrary to the facts and circumstances of the case and is liable to be quashed.*
>
> *2. That the Ld. DRP-1, Bengaluru erred in not appreciating that the order of the Ld. DC/ACIT TP-3, Hyderabad (Ld TPO) passed U/s. 92CA of the Act is contrary to law and thus liable to be quashed.*

3. That on facts and in the circumstances of the case, the Ld. AO/TPO and the Ld. DRP erred in making an upward adjustment to the transfer price of the appellant's international transactions of Rs. 24,84,58,065/- in respect of payment of royalty, Rs. 40,49,995/- in respect of payment of interest on ECB and Rs. 5,57,443/- on account of imputation of notional interest on outstanding receivables. Further, the Ld. AO and the Ld. DRP erred in disallowing an amount of Rs. 23,47,826/- towards amortization of leasehold rights.

Grounds for imputation of notional interest on outstanding receivables.

1. On the facts and in the circumstances of the case, the Ld. DRP/AO/TPO erred in :

1.1. Considering overdue receivables from AEs as an international transaction under the provisions of section 92B of the Act. In doing so, the Ld. DRP/AO/TPO erred in imputing an interest on such outstanding receivables.

1.2. On the facts and circumstances of the case and in law, the Ld. DRP/AO/TPO erred in making an adjustment of Rs. 5,57,443/- to the income of the appellant in respect of notional interest on outstanding receivables.

1.3. The Ld. DRP/AO/TPO erred in not appreciating the fact that since no interest has been charged in case of overdue receivables from Non-AEs, following the same principle interest should not be imputed on the overdue receivables.

1.4. The Ld. DRP/AO/TPO erred in ignoring the fact that the appellant does not pay any interest to the AEs in relation to outstanding payable to AEs.

Grounds for disallowance of royalty paid

2. On the facts and in the circumstances of the case, the Ld. DRP/AO/TPO erred in:

2.1. Making an adjustment of INR 24,84,58,065/- to the income of the appellant by disallowing the payment to the AE in relation to the technical assistance received during the year;

2.2. In doing so, the Ld. DRP/AO/TPO erred in rejecting the benchmarking analysis furnished by the appellant and determined the ALP of the said international transactions to be NIL.

2.3. The Ld. AO/Ld. TPO erred in challenging the commercial expediency of any expenditure incurred by the appellant, even when such expenses have been incurred wholly and exclusively for the purpose of business operations.

2.4. Ignoring the fact that the appellant has filed an application for entering into unilateral advanced pricing agreement with the Central Board of Direct Taxes (CBDT) covering the

transaction of payment of royalty and the relevant assessment year is covered under the purview of the application.

2.5. *On the facts and circumstances of the case and in law, the Ld. TPO/Ld. AO/Hon'ble DRP has erred in proposing / upholding an adjustment to the Arm's Length Price determined by the appellant in respect of the international transaction in connection with payment of royalty by the appellant to the AEs by not appropriately applying any of the prescribed methods as per section 92C(1) of the Act and not bringing on record any comparables uncontrolled transactions.*

Grounds for disallowance of use of Reserve Bank of India (RBI) master circular as a valid CUP with regards to payment of interest on ECB:

3. *On the facts and in the circumstances of the case, the Ld. DRP/AO/TPO erred in:*

3.1. *Making an adjustment of Rs. 40,49,995/- to the income of the appellant in respect of interest paid on external commercial borrowings availed from the AE.*

3.2. *Considering London Interbank Offered Rate (LIBOR) plus 200 basis points as the arm's length rate for benchmarking the payment of interest on ECB instead of LIBOR plus 450 basis points used by the appellant.*

3.3. *Disregarding the use of the RBI master circular as a valid CUP without providing any cogent reasons for the same.*

3.4. *On the facts and circumstances of the case and in law, the Ld. TPO/Ld. AO/Hon'ble DRP has erred in proposing / upholding an adjustment to the Arm's Length Price determined by the appellant in respect of the international transaction in connection with payment of ECB by the appellant to its AEs by not appropriately applying any of the prescribed methods as per section 92C(1) of the Act and not bringing on record any comparables uncontrolled transactions.*

Grounds for disallowance of leasehold amortization charges

4. *On the facts and in the circumstances of the case, the Ld. DRP/AO erred in*

4.1. *Disallowing land leasehold amortization charges of Rs. 23,47,826/- by concluding that same as an apportionment of prior period expenditure and further that the same is disallowable expenditure since there is no concept of deferred revenue expenditure in IT Act and all that the expenses must be allowed in the year in which it is incurred.*

4.2. *Failing to appreciate that the company follows mercantile system of accounting, wherein the period costs relating to*

relevant year are accounted for in that year even if the liability for the same was settled in earlier years.

4.3. The Ld. AO completely erred in considering lease amortization charge as a prior period expenditure just because of settlement of liability without considering fact that such are to be considered as period cost and should be debited to P & L Account under mercantile system of accounting.

That the appellant craves leave to add to and/or alter, amend, rescind, modify grounds herein below or produce further documents before or at the time of hearing of this appeal."

5. Ground No.1 and its sub-grounds relate to imputation of notional interest on outstanding receivables. This issue is identical to that of the issue raised by the assessee in its own case for the A.Y.2017-18 & 2018-19 in ITA Nos. 154 & 155/Viz/2022. The Tribunal vide its order dated 23/01/2023 decided this issue of notional interest on outstanding receivables which is raised by the assessee vide Ground No.8 of its appeal in ITA No. 154/Viz/2022 (A.Y.2017-18). For the sake of convenience and immediate reference the findings of the Tribunal in ITA No. 154/Viz/2022 (supra) are extracted herein under:

"22. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. In Ground No.8.1 the assessee contested that the receivables is not an international transaction under the provisions of section 92B of the Act. While deciding on the identical issue the ITAT in the case of M/s. Devi Sea Foods Limited vs. DCIT in ITAT No.75/Viz/2022, dated 9/9/2022, held as follows:

"7…….There is no dispute with regard to the fact that receivables is included under the definition of international transaction consequent to the amendments made by the Finance Act, 2012 w.e.f 1/4/2002. Therefore we are of the considered view that there is no merit in the argument of Ld AR that receivables is not an international transaction……"

Consistently following the above decision this ground No 8.1 raised by the assessee is dismissed."

6. Considering the identical facts and circumstances of the present case with that of the assessee's own case decided by the Tribunal in ITA No. 154/Viz/2022 (supra) as well as following the principle of consistency, we hereby dismiss the Ground No.1 and its sub-grounds raised by the assessee.

7. Ground No.2 and its sub-grounds relate to disallowance of royalty paid to Teejay Lanka PLC. On this issue, the Ld. AR submitted that the assessee has adopted the CUP method for benchmarking the transactions with respect to the payment of royalties. However, he submitted that the Ld. TPO / DRP has concluded that there are no comparables and the ALP was taken at NIL. The assessee further submitted that the impugned year was covered under a unilateral APA application filed with CBDT, wherein the transaction in question is a subject matter of negotiation, which is pending for finality. He also referred to the decision of the jurisdictional Bench in the assessee's own case for the AYs 2017-18 and 2018-19 whereas this Bench has remitted the mater back to the Ld. TPO to decide the case on merits subject to outcome of the Advance Pricing Agreement (APA) with CBDT by the assessee. He further submitted that the Ld. TPO has followed the "other method"

while determining the ALP as NIL under "other method" and accordingly made adjustment of Rs. 24.84 Crs. On this issue, he relied on the decision of the Coordinate Bench of Mumbai in the case of M/s.Sulzer Tech India Pvt Ltd vs. Addl./Jt.Dy./Asst. Commissioner of Income Tax in ITA No. 633/Mum/2021 (AY 2016-17) wherein vide para 22 of the order it was held that the ALP of the international transaction was treated to be NIL is not valid by following the decision of the Hon'ble Delhi High Court in the case of Cushman and Wakefield (India) Pvt Ltd [2014] 367 ITR 730 (Del.). The Ld. AR also referred to Rule 10AB of the Income Tax Rules, 1962 wherein the determination of ALP in relation to an international transaction shall be any method which takes into account the price which has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances, considering all the relevant facts. The Ld. AR once again reiterated that the Revenue erred in not following the Rule 10AB of the IT Rules. He also further submitted that royalties are paid on the net sale value as per the agreement between the parties. He also submitted that the sale of finished goods has been benchmarked under TNMM method. He therefore pleaded that the ALP shall be determined after finalization of APA with CBDT.

8. Per contra, the Ld. DR submitted that the assessee is engaged in contract manufacturing and the brand utilization advantages are totally enjoyed by the AEs. Further, the Ld. DR also submitted that there is no commercial or economic value addition to the assessee visible from the Profit & Loss Account when compared with the previous year. Hence, the Ld. DR submitted that there is no justification for chargeability of royalty because the assessee could not establish the justification of payment of royalty with documentary evidence. He also submitted that the assessee has not furnished documentation substantiating the receipt of services. He therefore pleaded that the order of the Ld. TPO/DRP be upheld. Countering the arguments of the Ld. DR, the Ld. AR submitted that the assessee is not into contract of manufacturing but a regular manufacturer of garments. The Ld. TPO although claiming to have applied the "other method" has not brought on record any comparable transaction to substantiate the determination of ALP to resort the ad-hoc benchmarking approach which is contrary to the mandate of section 92C of the Act. The Ld. AR also submitted that there are no services rendered as pointed out by the Ld. DR but the payment of royalty is based on the turnover achieved by the assessee.

9. We have heard rival contentions and perused the material available on record including the submissions of the Ld. AR. The grievance of the assessee that the Ld. TPO benchmarked the ALP at Nil without considering any comparables as detailed in the T.P. Study report. Further, it was also submitted by the Ld.AR that TPO has not rejected the comparables and neither followed Rule 10AB of the I.T. Rules, 1962. This issue is identical to ground No. 6 in ITA No. 154/VIZ/2022. The plea of the Ld.AR is to remit back the issue to the file of the TPO to decide the issue subject to the final outcome of the Advance Pricing Agreement with CBDT. We find merit in the argument of the Ld. AR and we are of the considered opinion that this issue shall be remitted back to the file of the Ld. TPO to decide the case on merits subject to the outcome of the APA with CBDT by the assessee. We therefore allow the Ground No.2 and its sub-grounds raised by the assessee for statistical purposes.

10. Ground No.3 and its sub-grounds relate to payment of interest on ECB.This issue is identical to that of the issue raised by the assessee in its own case for the AY 2017-18 & 2018-19 in ITA Nos. 154 & 155/Viz/2022. The Tribunal vide its order dated 23/01/2023 decided this issue of payment of interest on ECBwhich is raised by the assessee vide Ground No.7 of its appeal in ITA No. 154/Viz/2022 (AY 2017-18). For the sake of convenience and immediate reference the

findings of the Tribunal in ITA No. 154/Viz/2022 (supra) are extracted herein under:

> *"20. We have heard both the sides and perused the material available on record. The Ld. AO relied on the decision of the ITAT in Dr. Reddy's Laboratories Limited vs. Addl. CIT in ITA No. 2229/H/2011 and 85/H/2013 dated 2/1/2017 and the decision of the ITAT, Hyderabad in the case of Infotech Enterprises Limited vs. Addl. CIT in ITA No. 115/Hyd/2011, dated 16/1/2014. We find from the Master Circular relied on by Ld AR, that RBI prescribed the maximum cap interest on ECBs with different tenures. Therefore, the Ld. DRP has rightly determined the ALP as LIBOR + 200 basis points considering it rational based on several judicial decisions while directing the Ld TPO to adopt the interest rate @ LIBOR + 200 basis points. We are therefore not inclined to interfere with the order of the Ld. DRP and hence this ground raised by the assessee is dismissed."*

11. Considering the identical facts and circumstances of the present case with that of the assessee's own case decided by the Tribunal in ITA No. 154/Viz/2022 (supra) as well as following the principle of consistency, we hereby dismiss the Ground No.3 and its sub-grounds raised by the assessee.

12. Ground No. 4 and its sub-grounds relate to disallowance of leasehold amortization charges. This issue is identical to that of the issue raised by the assessee in its own case for the AY 2017-18 & 2018-19 in ITA Nos. 154 & 155/Viz/2022. The Tribunal vide its order dated 23/01/2023 decided this issue ofdisallowance of leasehold amortization chargeswhich is raised by the assessee vide Ground No.11 of its appeal in ITA No. 154/Viz/2022 (AY 2017-18). For the

sake of convenience and immediate reference the findings of the Tribunal in ITA No. 154/Viz/2022 (supra) are extracted herein under:

> *"27. We have heard both the sides and perused the material available on record. Admittedly the assessee has paid a sum of Rs. 5.40 Crs for a period of 23 years for taking the land on lease. It is the case of the Ld. AO that it is one time lumpsum payment and a prior period expenditure which cannot be apportioned during the impugned assessment year as revenue expenditure. The assessee has claimed proportionate share of amortization of leasehold charges amounting to Rs. 23,47,826/- for the relevant assessment year. There are various judicial pronouncements as submitted by Ld AR, with respect to amortization of the leasehold charges over the lease period, and therefore we are of the considered view that the leasehold charges paid by the assessee shall be proportionately claimed as revenue expenditure, over the lease period and hence the amortization of leasehold charges claimed by the assessee for Rs. 23,47,826/- for the relevant assessment year shall be allowed as revenue expenditure during the impugned assessment year. We therefore allow this ground raised by the assessee."*

13. Considering the identical facts and circumstances of the present case with that of the assessee's own case decided by the Tribunal in ITA No. 154/Viz/2022 (supra) as well as following the principle of consistency, we hereby allow the Ground No.4 and its sub-grounds raised by the assessee.

14. In the result, appeal of the assessee is partly allowed for statistical purposes.

15. With respect to S.A. No. 15/Viz/2025 (AY 2020-21) filed by the assessee, since the appeal of the assessee is being disposed

of on merits as in the aforesaid paras, the adjudication of Stay Application filed by the assessee becomes infructuous.

16. Ex-consequenti, the appeal filed by the assessee is partly allowed for statistical purposes and the Stay Application filed by the assessee is dismissed.

Order pronounced in the open court on 25th July, 2025.

Sd/-	Sd/-
(VIJAY PAL RAO)	(S. BALAKRISHNAN)
उपाध्यक्ष/VICE PRESIDENT	**लेखासदस्य**/ACCOUNTANT MEMBER

Visakhapatnam, dated 25.07.2025.
OKK/sps

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–Teejay India Private Limited, Plot No. 15, Brandix, APSEZ, Pudimadaka Road, Atchutapuram Mandal, Visakhapatnam-530011.
2. राजस्व/The Revenue – Deputy Commissioner of Income Tax, Circle-5(1), Visakhapatnam, Andhra Pradesh.
3. The Principal Commissioner of Income Tax,
   (ii) The Dispute Resolution Panel-1, Kendriya Sadan, 4th Floor, C-Wing, Bengaluru-560034.
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
   (ii) Deputy Commissioner of Income Tax, Transfer Pricing Officer-1, Hyderabad.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam