

IN THE INCOME TAX APPELLATE TRIBUNAL PANAJI
BENCH PANAJI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL
MEMBER & SHRI G D PADMAHSHALI ACCOUNTANT
MEMBER

I T A.No.62/PAN/2017
(A.Y.2012-13)

Guala Closures(India) Private Limited, D-1, Seasa Ghor, 20,EDC Complex, Patto, Panaji-403001, Goa	Vs.	I T O Ward1(1), Aaykar Bhavan, EDC, Patto, Panjim-403001. Goa.
PAN/GIR No.:AAACG4447J		
Appellant	..	Respondent

Appellant by :	Shri.Nirajsheth. AR
Respondent by :	Shri.Satish M .CIT DR

Date of Hearing	23.07.2025
Date of Pronouncement	29.07.2025

आदेश / O R D E R

PER PAVAN KUMAR GADALE, JM:

The assessee has filed the appeal against the order of the Assessing Officer passed u/s 143(3) r.w.s 144C(13) of the Income Tax Act, 1961 passed in pursuance to the directions of the Dispute Resolution Panel (DRP) u/s 144C(5) of the Act. The assessee has

raised grounds of appeal challenging the action of lower authorities in determining the ALP pertaining to management fees as Nil and also the lower authorities erred in passing the orders without considering the submissions and evidences.

2. The assessee has raised two additional grounds of appeal as under.

(i) To allow deduction of education cess on income tax and secondary and higher education cess payable for the year under consideration while computing the total income.

(ii) To restrict the Dividend Distribution Tax (DDT) prescribed under the India-Netherlands tax treaty read with protocol to tax treaty and the excess DDT paid should be refunded along with the interest.

3. At the time of hearing, the Ld.AR has not pressed the additional ground of appeal no (i) and accordingly this ground of appeal is treated as withdrawn and is dismissed.

4. The second additional ground of appeal (ii) raised by the assessee for applicability of Dividend

Distribution Tax (DDT) tax rate @10% under the India-Netherlands tax treaty read with protocol treaty and the excess DDT paid should be refunded along with the interest. We find this disputed issue was decided by the Special Bench (Mumbai) in ITA. No 6997/Mum/2019 in the revenue appeal of DCIT Vs Total oil India Pvt Ltd & others vide order dated 20-4-2023. We considered it appropriate to refer to the observations of the Honble Tribunal at Para 82 to 84 of the order read as under:

“82. We are of the view that the above exposition of law is correct and we agree with the same. Therefore, the DTAA does not get triggered at all when a domestic company pays DDT u/s 115-O of the Act.

83. For the reasons give above, we hold that where dividend is declared, distributed or paid by a domestic company a non-resident shareholder(s), which attracts Additional Income Tax (Tax on Distributed Profits) referred to in Sec.115-0 of the Act, such additional income tax payable by the company shall be at the rate mentioned in Section 115 0 of the Act and not at the rate of tax applicable to the non-resident shareholder(s) as specified in the relevant DTAA with reference to such dividend Nevertheless, we are conscious of the sovereign's

prerogative to extend the treaty protection to domestic companies paying dividend distribution tax through the mechanism of DTAAS. Thus, wherever the Contracting States to a tax treaty intend to extend the treaty protection to the domestic company paying dividend distribution tax, only then, the domestic company can claim benefit of the DTAA, if any. Thus, the question before the Special Bench is answered,. accordingly.

84. We wish to place on record our appreciation for the assistance provided by the ld, counsels for the parties and the interveners and the ld. DR for the assistance provided to the Bench in deciding the issue referred to the Special Bench

84 These appeals/COs are restored to the respective Division Benches for deciding the issues raised in the respective appeals, accordingly.

*Therefore, we considered the ratio **special bench** and as the fact follow jurisdictional precedence and set aside the order of the CIT(A) on this disputed issue relied on the ratio of judicial nations and observed that the dividend dispute paid by the assessee company to its non residential shareholder dividend distribution tax, distribution tax mentioning in 1150 not on the rate of tax applicable to non-residential shareholder as per the relevant DTA and*

accordingly, we set aside the order of the CIT(A) and allow the ground of appeal as in favor of the revenue”

5. We considering the facts, circumstances and ratio of judicial decisions and Special bench decision fallow the judicial precedence and observe that the Dividend Distribution Tax (DDT) on dividend declared and paid by the assessee to a non resident Netherlands share holder shall be at the rate mentioned in section 115(O) of the Act is applicable and not at the rate of tax applicable to nonresident share holders as specified in the relevant DTAA on such dividend income and accordingly this additional ground of appeal of the assessee is dismissed.

6. The Brief facts of the case are that, the assessee company is engaged in the business of manufacturing and sale of no refillable plastics closures and nip caps, trading of finished closures and job work for pet performs. The assessee has filed the return of income electronically for A.Y.2012-13 on 30.11.2012 disclosing a total income of Rs.96,23,30,850/-. Subsequently, the case was selected for scrutiny under CASS and the notice u/sec 143(2) and u/sec 142(1) of the Act are issued. In compliance the Ld.AR

of the assessee has appeared from time to time and submitted the details and explanations in support of the return of income filed. The Assessing officer (A.O) on perusal of the financial statements found that the assessee has international transactions with its Associate Enterprises (AE) and therefore the matter was referred to the Transfer Pricing Officer (TPO) for determination of Arm's Length Price (ALP). The TPO on receipt of the directions of the A.O. has called for the information in support of ALP computed as per Form.no.-3CEB. Whereas, the assessee has submitted the details and documents relating to the international transactions with its Associate Enterprises(AE) and the basis of computation of ALP. On the disputed issue in respect of payment of management fees, the TPO observed that there is no proof of any services having actually been rendered by the Associate Enterprises "AE" and such services are mere duplication of functions being carried out by the assessee on its own and no economic value of services and dealt on the objections/submissions of the assessee at Para 8 of the T.P.O order. Accordingly the TPO has made ALP adjustment of international

transactions of payment of management fees of Rs.3,04,33,012/- and passed the order u/s 92CA(3) of the Act dated 13.01.20216.

7. The A.O. after the receipt of the TPO order, has passed a draft assessment order on 23.02.2016 u/s 144C(1) of the Act with (i) the Transfer pricing adjustment of Rs.3,04,33,012/- and (ii) disallowance of excess depreciation on Nip Cap unit of Rs.20,64,601/ and assessed the total income of Rs.99,48,28,460/-. The assessee aggrieved with the draft assessment order has filed the objections in Formno-35A with the Dispute Resolution Panel (DRP). In the DRP proceedings the assessee in support of payment of management fees in addition to the objections raised in Form no-35A and submissions, the assessee has filed the evidences in the DRP proceedings which were filed earlier before the Transfer Pricing Officer (TPO) and were not considered. The DRP has sent the evidences to the office of the TPO vide letter dated 21-09-2016 to submit a report and in compliance TPO has filed a report dated 13-10-2016 dealt at Para3.4 of the DRP order. In addition to these submissions, the assessee

has also filed additional evidences in the form of paper book on 11 August 2016 and the DRP has dealt on the filling of additional evidences and has not accepted the assessee evidences and were rejected. Finally the DRP has upheld decision of the TPO in ALP adjustment of Payment of management fee and has passed the directions u/s 144 C(5) of the Act vide order dated 09.11.2016. Subsequently, the A.O. after the receipt of the order of the DRP, has passed the final assessment order with the ALP adjustment of payment of management fee of Rs.3,04,33,012/- and disallowance of excess depreciation claimed on Nip Cap unit of Rs.20,64,601/ and assessed the total income of Rs.99,48,28,460/-and passed the order u/s143(3) r.w.s 144C(13) of the Act on 30-11-2016. Aggrieved by the order of the AO, the assessee has filed an appeal before Honble Tribunal.

8. At the time of hearing, the Ld.AR submitted that the DRP has erred in confirming the action of the TPO in making ALP adjustment of international transactions with the AE in respect of payment of management fees of Rs.3,04,33,012/- which is in the ordinary course of business as per the service agreement entered.

Further the assessee has also filed application with the additional evidences on 11 August 2016 in the DRP proceedings and the DRP has dealt on the filling of additional evidences and were rejected. The lower authorities have not considered the submissions and evidences and denied the claim of the assessee. Further the Ld.AR submitted that the assessee has a good case on merits and has filed an application for admission of the additional evidence under Rule 29 of ITAT rules. The Ld. DR submitted that the evidences were not examined by the lower authorities. The Ld.AR substantiated the submissions with judicial decisions and factual paper book. Per Contra, the Ld DR relied on the orders of the TPO and DRP.

9. We have heard the rival submissions and perused the material on record. The Ld.AR emphasized that the lower authorities and the DRP has erred in overlooking the factual aspects that the management fees was paid based on the service agreement with the AE-Guala Italy and the said management fees was paid as the AE, provides various services to the group companies to strengthen their competitive position in a centrally organized system and the cost allocation methodology

is followed consistently in the group companies. Whereas the sole crux of the disputed issue that the DRP has erred in rejecting the additional evidences filed by the assessee. The Ld.AR emphasized that the assessee has submitted the details as called for by the authorities. The assessee has filled the application for admission of additional evidences under Rule 29 of ITAT rules on 2-11-2018 along with the details/information substantiating the claim placed at S.no.235 to 367 of the paper book and also present application dated 22-07-2025, which could not be submitted before the lower authorities and further the evidences play a important role in decision making in the adjudicating proceedings. Therefore considering the facts, circumstances and additional evidences, the assessee should not suffer for non filing of material information, as the evidences play a vital role in decision making and we admit the additional evidence. Accordingly, to meet the ends of justice, we restore the disputed issue on the aggregation of bench marking approach for the payment of management fees along with the additional evidences to the file of the DRP to adjudicate afresh and the assessee should be

provided adequate opportunity of hearing and shall cooperate in submitting the information . And, we allow these grounds of appeal of the assessee for statistical purposes.

10. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 29.07.2025

Sd/-

(GD PADMAHSHALI)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Panaji Dated 29.07.2025

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar

ITAT, Panaji

		Date	<u>Initial</u>	
1.	Draft dictated on			PS
2.	Draft placed before author			PS
3.	Draft proposed & placed before the second member			PS
4.	Draft discussed/approved by Second Member.			PS
5.	Approved Draft comes to the Sr.PS/PS			PS
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed			