

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH**

**BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI RAHUL CHAUDHARY, JM**

**ITA No. 1000/Coch/2024
Assessment Year: 2021-22**

Apollo Tyres Ltd. Appellant
3rd Floor, Areekal Mansion, Panampilly
Nagar, Kochi 682036
[PAN: AAACA6990Q]

vs.

ACIT, Corporate Circle-1(1), Kochi Respondent

Assessee by: Shri Abraham Joseph Markos, Adv.
Revenue by: Shri Sanjit Kumar Das, CIT-DR

Date of Hearing: 20.08.2025
Date of Pronouncement: 10.09.2025

ORDER

Per: Inturi Rama Rao, AM

This appeal filed by the assessee is directed against the final assessment order dated 24.10.2024 passed u/s. 143(3) r.w.s. 144C(13) r.w.s. 144B of Income Tax Act, 1961 (hereinafter "the Act") for Assessment Year (AY) 2021-22.

2. Brief facts of the case are that the appellant is a company incorporated under the provisions of Companies Act, 1956. It is engaged in the business of manufacture and sale of tyres, tubes and dealing in flaps. The return of income for AY 2021-22 was filed on

03.03.2022 declaring Nil income and also reported book profit under MAT of Rs. 1088,40,84,655/-. The assessee company also reported the certain international transactions from AE in from 3CEB.

3. On noticing the above international transactions, the AO referred the matter to the Transfer Pricing Officer (TPO) u/s. 92CA(1) of the Act for the purpose of benchmarking the above international transactions. The TPO vide order dated 15.10.2023 passed u/s. 92CA(3) of the Act suggested upward TP adjustment aggregating to Rs. 11,40,90,416/- in respect of the following segments: -

- a) Software development segments of Rs. 59,91,468/-
- b) Recovery of expenses of Rs. 70,38,193/-
- c) Corporate Guarantee of Rs. 10,10,60,765/-

4. On receipt of the TPO's order, the AO passed draft assessment order u/s. 143(3) r.w.s. 144C(1) of the Act on 27.12.2023 proposing to make the following additions: -

- i. TP adjustment – Rs. 11,40,90,416/-
- ii. Addition u/s. 14A Rs. 12,22,000/-

5. On receipt of the draft assessment order, the appellant company filed objections before the Dispute Resolution Panel (DRP) contesting all the above additions. The DRP dismissed the objections vide order dated 04.09.2024.

6. On receipt of the directions from the DRP, the AO had passed the final assessment order dated 24.10.2024 passed u/s. 143(3) r.w.s. 144C(13) r.w.s. 144B of the Act at a total loss of Rs. 11,53,70,330/- after making the following additions: -

Additions on account of TP adjustment	11,40,90,416
Addition u/s. 14A	12,22,000

7. Being aggrieved by the final assessment order the appellant is in appeal before this Tribunal in the present appeal raising the following grounds:

- “1. *The assessment order passed u/s 143(3) r.w.s., 144C(13) & 144B of the Income-tax Act, 1961 ('the Act') dated 24th October, 2024, by the Assessment Unit, Income Tax Department (AO) pursuant to the directions of the Dispute Resolution Panel (DRP'), and the additions/disallowances made by the Id. AO/Transfer Pricing Officer (TPO), are grossly injudicious, unwarranted, against the facts of the case and bad in law.*
2. *The additions/disallowances made are unsustainable, unjust, highly excessive and are not based on any material on record. Total Business loss of the Appellant has been incorrectly and un-lawfully assessed under normal provisions of the Act at Rs. 11,53,70,330/- as against returned income of Rs. NIL..*
3. *Regarding transfer pricing adjustment of Rs.59,91,468/- (Corporate IT services)*
 - a. *That the Ld. TPO/AO/ Dispute Resolution Panel ('DRP') erred in not appreciating that the Transfer Pricing documentation is maintained as per the provisions of the Indian Transfer Pricing Law, and in the absence of any defect, the economic analysis undertaken by the*

Appellant should stand accepted. Moreover, the AO/DRP/TPO grossly erred by making a transfer pricing addition of Rs. 59,91,468/- to the income of the Appellant and erred in holding that the international transactions pertaining to provision of software development services do not satisfy the arm's length principle envisaged under the Act

- b. That the Ld. TPO/AO/DRP erred in adopting and applying filters of current year data, companies having different financial year ending, service income < I cr. SWD is less than 75% of the total operating revenues, export service income < than 75% of the sales and employee cost <25% of the turnover. Adoption of such filters is arbitrary and contrary to the provisions of the Act.*
- c. The TPO/AO/DRP failed to appreciate that the comparables chosen by the TPO are not functionally comparable since they do not meet the Functions performed, assets used, risks assumed ('FAR') test as envisaged under Rule 10B(2) of the Income Tax Rules, 1962 ('the Rules') and hence cannot be used for benchmarking the transaction. Hence, such comparables ought to be excluded from the final list of comparable companies.*
- d. The TPO/ AO/DRP erred in not appreciating that all the comparables chosen by the Appellant in its Transfer Pricing Documentation meet the FAR test, and as such are comparable to the Appellant. Hence, such comparables ought to be included in the final list of comparable companies.*
- e. That the TPO/ AO/DRP erred in not allowing the benefit of working capital adjustment and risk adjustment, to the Appellant, without appreciating that such an adjustment is warranted in terms of Rule 10B(3) of the Rules.*

4. *Regarding transfer pricing adjustment of Rs. 70,38,193/- on Cost-to-Cost Recovery of Salary expenses from AES*
 - a. *On the facts and in the circumstances of the case and in law, the Id. AO/TPO/DRP grossly erred in not appreciating that the recovery of salary expenses of Rs. 6,62,10,655/- by the Appellant Company from its associated enterprises ('AEs') is purely on cost to cost basis, hence no mark-up was warranted.*
5. *Regarding transfer pricing adjustment of Rs. 10,10,60,755/- on Corporate Guarantee fee*
 - a. *The TPO has erred in law and on the facts of the case in making an adjustment on account of corporate guarantee and the DRP has erred in upholding the adjustment up to Rs. 10,10,60,755/- & disregarding the benchmarking study obtained by appellant company from 3rd party consultant.*
 - b. *The Id. TPO further erred in comparing Bank Guarantee rate with Corporate Guarantee rate without making the appropriate adjustment before arriving to the conclusion.*
 - c. *The Id. TPO further erred in taking naked bank quotes as comparable without undertaking appropriate adjustments as laid down in Rule 10B.*
 - d. *The approach adopted by the TPO/AO/DRP in determining the arm's length price in providing corporate guarantee to its AE, is incorrect and untenable in law. The TPO/AO/DRP has wrongly and illegally upheld the rate of 2.53%. Such rate of 2.53% is arbitrary, without any basis and is unwarranted.*
6. *Disallowance u/s 14A of Income Tax Act:*
 - a. *On the facts and circumstances of the case and in law, the Id. AO/DRP has grossly erred in making an addition of Rs. 12,22,000/- on account of disallowance made u/s 14A of the Act read with Rule 8 of the Income Tax Rules, 1962 ('the Rule'), without appreciating the fact that the dividend income is now taxable as inserted by Finance Act 2020.*

b. On the facts and circumstances of the case and in law the Id. AO has wrongly concluded that though the Appellant has not received any exempt income, as the Appellant has invested in unlisted equity shares, the disallowance of Rs. 12,22,000/-u/s 14A of the Act would be made per circular No. 5/2014 dated 11th February 2014.

The above grounds are without prejudice to each other. The Appellant Company reserves the right to add, alter, amend or modify any of the grounds appealed against during the course of hearing.”

8. The ground of appeal Nos. 1 & 2 are general in nature, requiring no adjudication.

9. The ground of appeal No. 3 challenges the addition on account of transfer pricing adjustment of Rs. 59,91,468/- in respect of provision of Corporate IT services. This issue stands remitted back to the file of the AO/TPO in terms of the passed by Tribunal on 10.01.2017 for AY 2011-12.

10. The ground appeal No. 4 challenges the transfer pricing adjustments of Rs. 70,38,193/- (recovery of salary expenses). This issue stands remitted back to the file of the AO/TPO in terms of the passed by Tribunal on 10.01.2017 for AY 2011-12.

11. The ground of appeal No. 5 challenges the addition on transfer pricing adjustment of corporate guarantee of Rs. 10,10,60,755/-. This issue had come up before us in assessee's own case in ITA No. 609/Coch/2017 for assessment year 2013-14, wherein vide para 20 of the order we directed the AO/TPO to benchmark the transaction

of corporate guarantee by adopting 0.5%. Thus, this ground of appeal stands partly allowed.

12. Grounds Nos. 6 challenges the disallowance u/s. 14A of the Act. It is stated before us that the appellant is not in receipt of any exempt income. Therefore, the question of disallowance u/s. 14A does not arise. The ld. DR had not disputed this position. In the circumstances, we direct the AO to delete the addition u/s. 14A. In the result, this ground of appeal stands allowed.

13. In the result, the appeal filed by the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 10th September, 2025.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 10th September, 2025

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

Assistant Registrar
ITAT, Cochin