

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

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

**ITA No. 679/Coch/2024
Assessment Year: 2020-21**

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 20.06.2024 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) 2020-21.

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 2020-21 was filed on

150% Capital Expenditure Rs. 53,87,57,064

Out of the above expenditure the DSIR in Form 3CL quantified the eligible amount as under: -

(Rs. In lakhs)	
Land and Building	Rs. 280.30
Capital Expenditure (Capital Equipment other than Building)	Rs. 1280.86/- 3498.12
Revenue Expenditure	Rs. 8122.42/-
Building	Rs. 133,26/-
Total	Rs. 11620.54/-

The AO was of the opinion that in the absence of quantification of expenditure by DSIR the balance amount cannot be allowed. Accordingly made addition u/s. 35(2AB) of Rs. 36,69,03,588/-

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 partly allowed objections.

6. On receipt of the directions from the DRP, the AO had passed the final assessment order dated 20.06.2024 passed u/s. 143(3) r.w.s. 144C(13) r.w.s. 144B of the Act at a total loss of Rs. 279,84,04,204/- after making the following additions: -

Additions on account of TP adjustment	3,61,58,496
Disallowance u/s. 35(2AB)	36,69,03,588
Disallowance of CESS	3,94,81,413

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 20th June, 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/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. 279,84,04,204/- as against returned business loss of Rs. 324,09,47,701/-.*
3. *Regarding transfer pricing adjustment of Rs.56,48,130/- (Corporate IT services)*
 - a. *That the Ld. TPO/AO/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. 56,48,130/- 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 < 1 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 108(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. 3.07.02.519% 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 Ld. AO/TPO/DRP grossly erred in not appreciating that the recovery of salary expenses of Rs. 14,38,73,097/- (which was rectified by Ld. TPO vide its Order dt. 12-06-2023) by the Appellant Company from its associated enterprises ('AEs') is purely on cost to cost basis, hence no mark-up was warranted.*

- b. Without prejudice to the above and on the facts and in the circumstances of the case and in law, the Ld. AO/TPO/DRP has failed to appreciate that in past three years. on exactly similar facts & issue adjustment was made at an average rate of 9.96%. However, in the current year, adjustment of 21.34%. (approx. -1.5 times of the average mark-up being applied in the preceding years) has been made which is grossly arbitrary, injudicious and bad at law.*
5. *Regarding disallowance of Rs. 35,28,65,197/- being R&D Revenue Expense and Rs. 1,40,38,500/- being R&D Capital Expense claimed under section 35(2AB) of the Act*
- a. The Ld. AO/DRP erred in law and on facts, in disallowing the weighted deduction of Rs. 35,28,65,197/- of R&D Revenue Expense and Rs. 1,40,38,500/- of R&D Capital Expense as claimed by the Appellant under section 35(2AB) of the Act in respect of expenditure incurred by it for its in-house R&D facility.*
- b. The Ld. AO/DRP failed to appreciate that all the requisite pre-conditions for 35(2AB) have been fulfilled by the Appellant, and section 35(2AB) being a beneficial provision with a view to encourage in-house research and development, is applicable on the facts of the present case.*
- c. The Ld. AO/DRP failed to appreciate that Form 3CL is a mere procedural intimation and cannot form the basis to compute the deduction u/s 35(2AB).*
6. *Regarding incorrect addition of Rs. 29.88 crs made in Book Profit:*
- The Ld. AO erred in law and on facts, in considering Deemed Total Income (Book Profit) u/s 115JB of the Act at Rs. 617,40,70.233/- as against the correct returned*

amount of Rs. 587,52,13,537/-, This has resulted in increase of book profit u/s 115JB by Rs 29,88,56,696/-.

7. *Regarding incorrect computation of interest u/s 244A:*

The Ld. AO has erred in not correctly computing interest as per provision of Section 244A of the Income Tax Act on the refund amount as determined in assessment order.

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. 56,48,130/- 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. 3,7,02,590/- (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 disallowance of claim u/s. 35(2AB) of the Act. Similar issue is decided by this Bench in assessee's own case in ITA No. 609/Coch/2027 for AY 2013-14. For the detailed reasons given paras10&11 of the said

order, these grounds of appeal stand remitted to the file of AO on the lines indicated therein. Thus, this grounds stands partly allowed for statistical purposes.

12. Grounds Nos. 6 & 7 are dismissed as not pressed during the course of hearing.

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