IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH :: COCHIN

BEFORE SHRI INTURI RAMA RAO, AM&
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

IT (TP) A No. 119/Coch/2016
(Assessment Year: 2011-12)

And

IT (TP) A Nos. 38 & 643/Coch/2017
(Assessment Years :2012-13 & 2013-14)

M/s. Joyalukkas (India)Pvt. Ltd. ..... Appellant
Palace Road, Trichur-680020
[PAN: AABCJ 1087 G]

vs.

Asst. Commissioner of Income Tax ..... Respondent
Corporate Circle-1(2), Ernakulam.

Appellant by: Smt. Parvathy Ammal, CA
Respondent by: Shri Sanjit Kumar Das, CIT-DR

Date of Hearing: 18.08.2025
Date of Pronouncement: 08.09.2025

O R D E R

Per Inturi Rama Rao, AM:

These are the appeals filed by the assessee-company directed against the different final assessment orders dated 29/01/2016, 27/12/2016 & 30/10/2017 passed u/s. 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (for short, 'the Act') for Assessment Years (AY) 2011-12, 2012-13 & 2013-14 respectively.

2. Since identical issues and facts are involved in all these appeals and the appeals are heard together and disposed of vide this common order.

3. For the sake of convenience and clarity, the facts relevant to the Appeal bearing IT (TP) No. 119/Coch/2016 for the A.Y. 2011-12 are stated herein.

4. Brief facts of the case are that the appellant is a company duly incorporated under the provisions of Companies Act, 1956. It is engaged in the business of manufacturing and trading gold ornaments, textiles, life style products etc. The return of income for the A.Y. 2011-12 was filed on 30/11/2011 declaring total income of Rs. 150,75,82,230/-

5. The appellant-company also reported the following international transactions with the Associated Enterprises (AEs):-

Sr.No.	Name of the AE	Nature of international transaction	Total amount	Method adopted
1.	Joy AlukkasJewellery LLC, Dubai	Export of Jewellery	Rs. 18,84,01,929	TNMM
2.	Joy AlukkasJewellery LLC, UAE	Export of Textiles	Rs. 5,12,56,914	TNMM
3.	Alukkas Ltd., London	Supply of gift items	Rs. 2,86,032	---

6. The appellant-company also submitted the TP study report adopting the internal TNMM as most appropriate method and sought to justify the above international transactions are at arm's length price (ALP). On noticing the above, the AO referred the matter to

the TPO for the purpose of benchmarking the above international transactions. The TPO rejecting the TP study submitted by the appellant and proceeded with the benchmarking the international transaction by rejecting the internal TNMM as adopted by the appellant. The TPO also treated another entity called 'Joy Alukkas Jewellery LLC, Dubai' as AE of the appellant-company and proceeded with benchmarking the transaction by adopting the operating profit margin on cost as PLI and computed the PLI domestic segment at 6.89% and the export segment at 0.08% and proceeded to compare with the export segment with domestic segment. Further, the TPO had proceeded with identification of the comparables and adopted the adjustment margin of the appellant non-AE jewellery segment at 7.81%. Accordingly, suggested to compute the TP adjustment of Rs.6,32,43,154/-. The TPO also suggested the TP adjustment of Rs. 1,54,18,632/- on account of expenses towards fee for brand utilization expenditure by adopting the Bright Line test method vide order dated 30/01/2015 passed u/s. 92CA (3) of the Act.

7. The AO on receipt of the TPO's order passed draft assessment order on 27/12/2016 u/s. 143(3) r.w.s. 144C(13) after proposing the following additions:-

a) Addition by way of adjustments of Rs. 7,86,61,786/-

b) Addition made on account of leasehold premises of Rs. 12,12,97,648/-.

c) Addition on account of insurance claim received on leasehold improvements of Rs. 17,16,427/-

d) Disallowance on account of excess depreciation claimed on residential building of Rs. 5,55,305/-

e) Disallowance of interest u/s. 36(1)(viii) of Rs. 1,39,04,056/-

f) Disallowance of advertisement expenses of Rs. 1,05,59,467/-.

8. On receipt of draft assessment order, the appellant-company had filed several objections before the Dispute Resolution Panel-2, Bangalore (DRP). The DRP issued directions confirming the addition of TP adjustments and further directed to allow the expenditure incurred on improvements to leasehold premises as Revenue expenditure following the direction of Hon'ble Jurisdictional High Court in Assessee's own case. The DRP also confirmed the addition of interest on borrowed funds of Rs. 1,39,04,056/- u/s. 36(1)(iii) of the Act. The DRP confirmed the addition of 2% of advertisement expenses of Rs. 1,40,79,290/-.

9. Being aggrieved, the appellant is in appeal before us in the present appeal raising the following grounds of appeal:-

1. The order of the Assistant Commissioner of Income Tax dated 29.1.2016 is against facts and law.

2. *The Transfer Pricing Officer, assessing officer and Dispute Resolution are not justified is treating the transactions with AIRas as entered into Deemed Associated Enterprise and consequently holding that the transfer pricing provisions are attracted. The DRP failed to note that the assessing authorities had not established that AIRas was an associated enterprise within the meaning of explanation to section 92A(2), without first establishing that the transactions are entered with an associated enterprises, went on to confirm that the transactions were falling within section 92B(2).*

3. *The Dispute Resolution Panel is not justified in not passing any adjudication on the grounds raised by the appellant that AIRas was not an associated enterprises falling with section 92A(2), but went on confirm the upward revision towards TP adjustment proposed by the TPO.*

4. *The Dispute Resolution Panel is erred in not appreciating the fact that the data relied on by the transfer pricing officer was not available in public domain while carrying out its TP documentation and hence such data should not have been considered for determining the ALP*

5. *The Dispute Resolution Panel erred in its direction confirming that proportionate amount of Rs.1,54,18,632 out of advertisement expenses incurred by appellant in India for the purpose of its business as falling under transfer pricing provisions under section 92B. The DRP failed to appreciate that the Transfer Pricing Officer had on its own benchmarked the advertisement expenses incurred in India although was not referred to the TPO. The DRP failed to appreciate that advertisement expenses incurred in India by themselves did not constitute an international transaction in the absence of any specific reference being made in that behalf by the AO.*

6. *The TPO undertook the benchmarking analysis by applying the 'bright line test' ('BLT) and compared the proportion of such expenses incurred by the appellant with that incurred by comparable companies. The DRP failed to note that BLT is*

not an approved method for benchmarking and hence should have deleted the same

7. *The DRP failed to note that in the absence of any machinery provision, bringing an imagined international transaction to tax is fraught with the danger of invalidation. In the absence of there being an international transaction involving advertisement expenses with an ascertainable price, neither the substantive nor the machinery provision of Chapter X are applicable to the transfer pricing adjustment exercise.*

8. *Without prejudice to the above arguments, the assessing officer and TPO are not justified in not excluding normal selling expenses while working out the brand utilisation fee as directed by the DRP. Your appellant had furnished the detailed ledger showing the nature of expenditure incurred and hence the same should have been excluded.*

9. *The Assistant Commissioner of Income Tax is not justified in treating interest of Rs. 1,39, 04,056 on working capital loans availed from banks as incurred for acquisition of assets and disallowing the same under proviso to section 36(1)(iii) on notional basis. The improvements to leasehold properties was considered as a revenue expenditure and hence the proviso to section 36(1) (iii) was not applicable at all. The Assessing officer failed to consider that the ITAT in appellant's own case in IT(TP) 6/coch/2013 dated 9.5.2014 for the assessment year 2007-08 has deleted the disallowance and the department has accepted the same and the addition should not have been made.*

10. *The Assistant Commissioner of Income tax is not justified in treating a sum of Rs.1,05,59,467 out of the advertisement expenditure as incurred towards brand building and hence capital in nature. The Assistant Commissioner of Income tax failed to appreciate that the expenditure is incurred on advertisement in print and visual media in respect of products dealt in by the company, show room launch, web site maintenance, various discounts offered customers, etc. These expenditure are incurred in the normal course of business of*

retail sales of jewellery and textiles. Expenditure is not 'capital' or 'revenue', but gets so classified on the basis of the purpose for which it is incurred. Expenditure on 'goods' and 'labour, for example, would be construed as of 'revenue' or 'capital' nature where incurred for a trading asset or, as the case may be, a capital asset. As such, no capital asset stands acquired by the appellant through its advertisement campaign. The very fact that the appellant had to incur the expenditure year after year, shows that the benefit arising therefrom to be transitory, so that where the advertisement was not followed up subsequently, even the advantage secured from the earlier advertisement would get dissipated. The appellant has not acquired any capital asset or any enduring advantage on account of the advertisement. They were incurred merely for the purposes of the business and is incurred year after year and hence the disallowance is not correct.

11. Without prejudice to our arguments in paragraph 10 above, the assessing authority is not justified in treating part of advertisement expenses as capital where are adjustment is already made in ALP of the transactions with associate enterprises, which has resulted in the disallowances being made twice- once as a transfer pricing additions and secondly as a capital expenditure."

10. The ground of appeal No.1 is general in nature, does not require any adjudication.

11. The ground of appeal Nos.2 to 8 challenge the action of the TP addition as confirmed by the DRP and also challenging treating the 'Joy Alukkas Jewellery LLC, Dubai' as AE of the appellant. It is contended that there is no material to hold that price is fixed based on the prior agreement and the export of gold of M/s. Joy Alukkas India Pvt. Ltd. to AI Ras Jewellery Est, Dubai is not influenced by the relationship between M/s. Joy Alukkas India Pvt. Ltd. and M/s.

Joy Alukkas Jewellery LLC, Dubai. It is further submitted that the DRP ought not to have confirmed the TP addition proposed by the TPO on account of advertisements as it does not constitute an international transaction and adopting bright line adopted by the DRP is not approved method for benchmarking the transaction of advertisement expenditure. It is further submitted that for the purpose of computing the PLI of export segment, the TPO had arrived at the cost of gold sold which includes the cost of opening stock purchases made + closing stock of cost of goods whereas the export segment, the appellant had been purchased the gold from Nova Scotia at current rate and therefore, cannot be compared with the domestic segment. All these submissions are made by the appellant for the first time before this Tribunal which goes to the root of the computation of benchmarking of the international transactions. Further, we find that in the A.Y. 2010-11, this Tribunal had remanded the matter back to the file of AO/TPO to undertake fresh exercise of benchmarking of the international transactions. In view of the above facts, we are of the considered opinion that in the interest of justice, the matter requires remand to the file of AO/TPO to undertake the fresh exercise of benchmarking of international transaction taking into consideration the submissions made by the appellant before us. Thus, the grounds of appeal Nos. 2 to 8 raised by the appellant stand partly allowed for statistical purposes.

12. The ground of appeal No.9 challenges the disallowance of interest under the proviso to section 36(1) of the Act of Rs. 1,39,04,056/-. It is submitted before us that the issue stands covered in favourof the Assessee by this Tribunal in Assessee's own case for the A.Y. 2010-11 in ITA No. 190/Coch/2015 dt. 10/04/2018, wherein following the Assessee's own case in IT (TP) No. 06/Coch/2013 dt.09/05/2014, held as follows:-

> *"3. "This tribunal in the first round of litigation in IT(TP)A No. 02/Coch/2012 found that the expenditure incurred by the assessee for renovating the premises taken on lease to set up a new show room is capital expenditure. In respect of the interest on borrowed funds the assessee contended before the Tribunal that the borrowed funds were not used for renovation of leasehold premises. In the absence of any material this Tribunal remanded back the matter to the file of the Assessing Officer to find out the availability of interest free funs and the extent of loan taken and thereafter decide the issue afresh. In the meantime the assessee filed appeal before the High Court against the order of this Tribunal in IT(TP)A No. 02/Coch/2012. The High Court found that the expenditure incurred for renovation of the premises taken on lease to set up a new show room is a revenue expenditure incurred by the assessee the question whether the borrowed funds are used for renovation or no borrowed funds were used is irrelevant. Therefore there is no question of any disallowance of notional interest on the borrowed funds. In other words in view of the judgment of the Kerala High Court holding that the expenditure incurred on renovation of the leasehold premises for setting up a new show room is revenue expenditure the interest on such borrowing has to be allowed as revenue expenditure. Hence there is no question of any disallowance. Accordingly, the order of the lower authority is set aside and the entire addition on account of disallowance of notional interest is deleted."*

13. The above submissions of the learned Authorised Representative remain uncontroverted by the learned Departmental

Representative. In these circumstances, following the parity of reasoning of the Tribunal in Assessee's own case for the A.Y. 2010-11, we direct the AO/TPO allow the interest expenditure of Rs. 1,39,04,056/- as Revenue expenditure. Thus, this ground of appeal raised by the Assessee stands allowed.

14. The ground of appeal No.10 challenges the disallowance of advertisement expenditure of Rs. 1,05,59,467/- holding to be capital expenditure. It is submitted that as a result of this expenditure, the appellant had not acquired any capital asset or advantage of enduring the nature. The expenditure was incurred wholly and exclusively for the purpose of business and, therefore, should be allowed as Revenue expenditure. We find merit in the submissions made on behalf of the appellant company. Accordingly, this ground of appeal stands allowed.

15. The ground of appeal No. 11 is consequential in nature. Accordingly, dismissed.

16. In the result, the appeal filed by the Assessee stands partly allowed for statistical purposes.

IT(TP)A Nos.38 & 643/Coch/2017 (A.Ys. 2012-13 & 2013-14)

17. The facts involved in IT(TP)A Nos.38 & 643/Coch/2017 are similar to the facts involved in IT(TP) A No.119/Coch/2016. Therefore, our findings in IT(TP) A No.119/Coch/2016 shall apply

mutatis mutandis to the appeals in IT(TP)A Nos.38 & 643/Coch/2017 also.

18. In the result, appeals filed by the appellant in IT(TP)A Nos.119/Coch/2016 and IT(TP)A Nos.38 & 643/Coch/2017 stand partly allowed for statistical purposes.

Order pronounced in open Court on 8th September, 2025.

Sd/-	Sd/-
(RAHUL CHAUDHARY)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Cochin, Dated: 8th September, 2025

vr/-

Copy to:

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

By Order

Assistant Registrar
ITAT, Cochin