

IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH, GUWAHATI
(VIRTUAL HEARING AT KOLKATA)

SHRI MANOMOHAN DAS, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 288/GTY/2024
Assessment Year: 2021-22

Assam Bio Ethanol Private Limited
(Formerly known as Assam Bio Refinery Private Limited),

122A, G.S. Road, Christianbasti,
Guwahati, Kamrup 781005, Assam
[PAN: AAQCA9789H]

.....**Appellant**

vs.

ITO, W-1(1), Guwahati,

Assessment Unit, Income Tax Department,
Aayakar Bhawan, Christian Basti, G.S. Road,
Guwahati - 781005

..... **Respondent**

Appearances by:

Assessee represented by : Ajit Kumar Jain, FCA
Department represented by : Kausik Ray, JCIT

Date of concluding the hearing : 09.10.2025
Date of pronouncing the order : 16.10.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. The present appeal arises from the Ld. AO's order dated 29.10.2024, passed under Section 143(3) r.w.s. 144C(13), r.w.s. 144B of the Income Tax Act, 1961 (hereafter "the Act").

1.1 In this case, the assessee is seen to have entered into 04 international transactions, as detailed on page 2 of the DRP's order. The point of dispute is a payment of Rs. 1,47,11,046/- to an Associated Enterprise (AE), regarding which the issue before the DRP was that the

impugned payment was ostensibly for composite services involving the usage of technology and all connected know-how. Thus, a separate payment (impugned amount) was allegedly not justified. The Ld. Transfer Pricing Officer (TPO) held that the impugned payment was unjustified and proposed a 'nil' figure as against the impugned amount showed and claimed by the assessee. The following are the critical findings in the Ld. AO's order:

"3.2.5 On receiving TPO order, order u/s 144C(3) of the Act was passed on 15.12.2023 against which the assessee filed an appeal before Hon'ble DRP. The Hon'ble DRP considering the submission of the assessee, the arguments of the TPO in TP Order, the Remand Report of the TPO as well as the rejoinder filed by the assessee, has confirmed the addition made by TPO by observing that even though, the commercial rationale for requisitioning and receiving services from other group entities lies within the province of the assessee, it is incumbent upon the assessee to prove the actual receipt of services and to substantiate that the payments of the same are at ALP. Mere intra company service agreement or email correspondences are not enough to substantiate these two aspects. All these aspects namely the need for technical services, the requisition for technical services, the actual receipt of the technical services and the benefits from these services need to be clearly established with contemporary documentary evidences. If there is any gap in any of these aspects, the payments for the technical services cannot be considered to be at arm's length. In this case, there is no commercial rationale for making a separate payment on account of technical services as claimed by the assessee and the assessee has also failed to substantiate as to how the payments made by it on account of receipt of technical services are at arm's length. Accordingly, DRP has not interfered with the conclusion of the TPO."

1.2 Aggrieved with this action, the assessee is in appeal before the ITAT, with the following grounds:

"Ground 1

That the AO erred in passing the impugned assessment order dated 29 October 2024 under section 143(3) r.w.s. 144C(13) read with section 1448 of the Act, pursuant to the directions of the Hon'ble DRP in assessing the income of the Appellant as INR 36,32,060/- for Assessment Year (AV) 2021-22 as against the returned loss of INR 11,078,992 declared by the Appellant.

Ground 2:

The Ld. AO/ Learned Assistant Commissioner of Income Tax, Transfer Pricing 1, Kolkata (Ld. TPO) and subsequently Hon'ble DRP erred on facts and in law in proposing an adjustment of INR 14,711.046 to the income of the Assessee on account of alleged difference in the arm's length price ("ALP") of the international

transaction pertaining to receipt of technical services from its Associated Enterprise (AE) during the relevant previous year.

Ground 3:

That on the facts and circumstances of the case, the Assessee having established the need for technical services, the requisition for technical services, evidence of services, ensuing benefits and pricing of services received from its AE, the Ld. TPO, Ld. AO and subsequently, the Hon'ble DRP have erred in determining the arm's length price of service fees to be Rs. Nil, erroneously concluding that the actual receipt of services and consequent benefits from the services are not found.

Ground 4:

On facts and in law, the Ld. AO/Ld. TPO and accordingly Hon'ble DRP erred in completely disregarding the written submissions and factual evidence submitted by the Assessee to demonstrate the arm's length nature of the service charges by merely alleging that such submissions evidences are insufficient and that no separate payment is warranted for such services.

Ground 5:

On facts and circumstances of the case, the Id. AO-Ld. TPO and accordingly Hon'ble DRP erred in disregarding the benchmarking analysis produced in the Transfer Pricing Study report by alleging that no independent pricing analysis was conducted to justify that the receipt of technical services is at arm's length.

Ground 6:

That on the facts and in the circumstances of the case and without prejudice to the grounds taken hereinabove, the Ld. AO grossly erred in not granting set-off of brought forward losses amounting to INR 26,28.053/, against assessed income in the computation sheet annexed to the assessment order.

Ground 7:

On the facts and in the circumstances of the case and without prejudice to the grounds taken here-in-above, the Ld. AO grossly erred in levying interest and fee amounting to INR 151,970/-.

Ground 8:

On the facts and circumstances of the case and in law, the AO erred in issuing the impugned order beyond the time-limit as prescribed under section 153 of the Act. The final assessment order is, thus, time-barred. and liable to be quashed.

Ground 9:

On facts and in law, the Ld. AO/ Ld. TPO erred on fact and in law in initiating penalty under section 270A of the Act.”

2. Before us, right at the outset, the Ld. AR made a statement at the

Bar that the assessee was not pressing grounds of appeal numbers, 1, 6, 7, 8 and 9. Thereafter, the Ld. AR vehemently argued that the TPO completely disregarded the transfer pricing report prepared by the assessee and submitted before the Ld. TPO by the assessee (the same was pointed out in the paper book, for our perusal). The Ld. AR read out the critical portions of the Ld. TPO's report at page 13 (paras 7.5, 7.6 and 7.7 thereon) to demonstrate that either the Ld. TPO has erroneously not considered the transfer pricing report submitted by the assessee or has chosen to disregard it entirely. Since these portions from the Ld. TPO's report would have critical bearing on the outcome of this case, they deserve to be extracted for reference:

“7.5 In view of the above, the undersigned has amply explained and clarified that post analysis of international transaction entered into by assessee, it could be concluded that the said transaction has not been undertaken at arm's length. No pricing analysis has been produced to evident that payment made for receipt of technical services is at arm's length.

7.6 Accordingly, after verification of the information and documents furnished by the assessee during the TP proceeding, the undersigned finds that no separate payment for such service is warranted at this instance. Hence, the arm's length price for such technical service fees paid by the assessee to its AEs during the year under consideration is determined as NIL.

7.7 In view of the above discussion, it is justified and reasonable to arrive at the conclusion that the assessee has failed to explain and substantiate the justification for incurring the aforesaid head of expenses. As elaborated above, the ALP on account of technical service availed from its AEs in the nature of the payment for such fee should be considered to be Rs. NIL and a downward adjustment of Rs. 1,47,11,046/- is computed.

It was the submission by the Ld. AR that the assessee had filed a reasoned and very detailed transfer pricing report, which had taken into consideration all possible and permissible methods of computing Arm's Length Price (ALP) and had, with good reasons, rejected all of them and adopted “other method” as prescribed under Rule 10AB. The Ld. AR pointed out on page 133 of the paper book that the “other method” was adopted after a detailed analysis of its applicability to the facts of the present case. It was the submission that the Ld. TPO/AO/DRP never

considered the assessee's submissions and merely summarily rejected or completely overlooked the said report. It was a further submission that the Ld. TPO's action were neither scientific nor had the sanction of law. On the other hand, the assessee had taken 8 comparable entities (as per details on page 136 of paper book) for the sake of comparison and concluded that the impugned amount was totally justifiable. The Ld. AR concluded his arguments by also stating that even otherwise such expenses are being capitalized since the project is still in construction phase.

2.1 Per contra, the Ld. DR relied on written submissions prepared by the Ld. AO. Incidentally, on the TP issue, which alone survives for adjudication at this stage, the Ld. AO has asked for a few months' time (i.e. vide report dated 04.08.2025). However, till the time of hearing no further comments are submitted by him. The Ld. DR relied on the order of Ld. AO and stated that considering the composite nature of services embedded in the quantum of payment, it was unjustified on the part of the assessee to claim the impugned expenses separately.

3. We have carefully considered the rival submissions and have perused the documents (including the paper books) before us. We find considerable strength in the Ld. AR's arguments that a technical transfer pricing report prepared by them could not have been summarily rejected or even ignored. We are also mindful of the findings of the Ld. DRP on this issue. The same deserves to be extracted for reference: -

"5.8 Perusal of the above will show that the Tribunal has affirmed that the benefit test is well recognized and the expected benefits from intra-group services must be sufficiently direct and substantial, so that an independent entity in similar circumstances, would be prepared to pay for it. If no benefits have been provided then the services cannot be charged for, and mere explanations in generic terms about the benefits are inadequate for allowability. Even though, the commercial rationale for requisitioning and receiving services from other group entities lies within the province of the assessee, it is incumbent upon the assessee to prove the actual receipt of services and to substantiate that the payments for the same are at ALP. Mere intra company service agreement or email correspondences are

not enough to substantiate these two aspects. All three aspects namely the need for technical services, the requisition for technical services, the actual receipt of the technical services and the benefits from these services need to be clearly established with contemporary documentary evidence. If there is a gap in any of these aspects, the payments for the technical services cannot be considered to be at arm's length. As observed by the TPO, the receipt of technical service is an integral part of the technology transfer itself and there is no commercial rationale for making a separate payment on account of technical services as claimed by the assessee. Further, the assessee has clearly failed to substantiate as to how the payments made by it on account of receipt of technical services are at arm's length. No independent pricing analysis has been done in the case to justify that the payments for receipt of technical services are indeed at arm's length. In view of the above, the Panel finds no ground to interfere with the conclusion of the TPO. Accordingly, ground numbers 3 to 5 are rejected.”

3.1 Considering the totality of facts and circumstances of this issue it appears that while for this year there may not be any significant impact since the expenses are being capitalized, but it would set a disturbing precedence whereby the authorities below would continue to ignore or disregard the “other method’ adopted by the assessee to arrive at “nil adjustment” on account of ALP, for further years. Thus, the Ld. AO’s order on this point is set aside and remanded back to the Ld. AO/TPO to consider the transfer pricing report of the assessee and either agree with it or rebut it through any legally recognized methodology, after reference to viable comparable cases, as has been done by the assessee for his report. We direct accordingly.

4. Accordingly, the grounds not pressed are dismissed and the grounds pertaining to TP adjustments are remanded back to the Ld. AO/TPO for fresh consideration.

5. In result, this appeal is partly allowed.

Order pronounced on 16.10.2025

Sd/-
[Manomohan Das]
Judicial Member

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 16.10.2025

AK, Sr. PS

Copy of the order forwarded to:

1. The Appellant
2. The Respondent
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches