

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं सुश्री पदमावती यस, लेखक सदस्य के समक्ष  
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND  
MS. PADMAVATHY.S, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1009/Chny/2017  
निर्धारण वर्ष /Assessment Year: 2012-13

M/s. PAR Formulations Pvt. Ltd.,  
1/58, Kelambakkam-Vandalur Main Road, Padupakkam, Kelambakkam,  
Chennai – 603 103.  
PAN: AAACC 2463N

The Dy. Commissioner of Income Tax,  
Corporate Circle-5(1),  
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: Mr. Vikram Vijayaraghavan, Advocate  
: Mr. ARV Sreenivasan, CIT

सुनवाई की तारीख/Date of Hearing  
घोषणा की तारीख /Date of Pronouncement

: 08.01.2026  
: 23.01.2026

**आदेश / ORDER**

**PER PADMAVATHY.S, A.M:**

This appeal by the assessee is against the final order of the assessment passed by Dy. Commissioner of Income Tax, Company Circle-1 (in short "AO") passed u/s. 143(3) r.w.s 144C of the Income Tax Act, 1961 (in short "the Act") dated 15.02.2017 for Assessment Year (AY) 2012-13. The grounds of appeal raised by the assessee are as under:

*"1. That the order of learned Deputy Commissioner of Income Tax, Corporate Circle 5(1), Chennai ("Ld. AO"), the Ld. Joint Commissioner of Income tax, Transfer Pricing Officer - 2(i/c), Chennai ("Ld. TPO") and the Ld. Dispute Resolution Panel ("Ld. DRP"), (hereinafter collectively referred as the "lower authorities"); inflicting a transfer pricing adjustment of INR 49.29 crores towards purported arm's length sale*

*consideration for transfer of intangibles made by appellant to its affiliate, Par Pharmaceuticals Inc. ("Par US"), is contrary to the law, facts, and circumstances of the case and is liable to be quashed.*

*2. That the lower authorities erred in rejecting the independent valuation report submitted/ relied upon by the appellant to substantiate the arm's length consideration for the transfer of intangible assets.*

*2.1. Without prejudice to 2 above, the lower authorities also erred in law by failing to obtain an alternative expert opinion and accordingly, the entire order of the Ld. TPO, issued based on erroneous presumptions relating to the facts and future income stream is liable to be quashed.*

*3. That the lower authorities erred in rejecting/ disallowing the methodologies originally considered by the independent valuer to determine the arm's length consideration of sale of intangibles by the appellant; without appreciating the appropriateness of such items and thereby attributing an arbitrary value to the intangibles based on several erroneous conjectures and surmises, inter-alia but not limited to, in the nature of:*

*3.1. Incorrectly disallowing an amount of INR 28.4 crores envisaged for routine manufacturing income which was reduced by the appellant from the Enterprise Value for determining the value of intangibles.*

*3.2. Incorrectly disallowing INR 3.9 crores, pertaining to the reduction of non-compete fee from the enterprise value for determining the value of intangibles transferred, by making certain assumptions which are contrary to the facts of the case.*

*3-3-Without prejudice to 3.2 above, inadvertently proposing an adjustment of INR 3.9 crores towards non-compete fee as against the value of INR 3.69 crores actually determined by the independent valuation report.*

*4. The lower authorities erred in imputing an income of INR 16.99 crores based on a purported cost plus arrangement between the appellant and Par US by wrongly interpreting the provisions of Section 92A of the Act, and thereby:*

*4.1. Erroneously imputing an upward adjustment to the extent of INR 12.46 crores that were third party transactions undertaken by Ediet prior to the date of acquisition, by incorrectly holding Ediet and Par US as related parties based on certain assumptions which are completely contrary to the facts of the case.*

*4.2. Erroneously imputing an upward adjustment to the extent of INR 2.49 crores, being a mark-up of 20% on the value of such third party transactions explained in 4.1 above undertaken by Edict prior to the date of acquisition.*

*4-3-Incorrectly proposing an upward adjustment on the third party un-allocable expenses amounting to INR 1.7 crores incurred by Edict prior to the date of the acquisition, and imputing an unwarranted mark-up of 20% on such un-allocable expenses amounting to INR 34 lakhs.*

*The above Grounds of Appeal are without prejudice to one another. The appellant craves leave to add, to alter, to amend, to substitute, to modify and/or withdraw all or any of the Grounds of Appeal herein and to submit such statements, documents and papers as may be considered necessary either at or before the appellate hearing.”*

2. The assessee is a private limited company earlier known as Edict Pharmaceuticals Pvt. Ltd. was an independent developer of solid oral dosage form of generic pharmaceuticals. The assessee also held a manufacturing facility for solid oral dosages in Chennai with a manufacturing capacity of one million units per day. The assessee had also undertaken research and development contract work. The assessee has entered into a product supply and development agreement with PAR, USA on 22.12.2010 to develop products, get approval of ANDA in the name of Edict and retain the right to manufacture the products. PAR, USA was given the right to market the products. PAR, USA would provide funds to the assessee to develop pharmaceutical products getting the approval of the ANDA from US FDA. The assessee had also entered into marketing and distribution agreement with PAR, USA whereby PAR, USA was given exclusive license to market the collaborative products and the profit arising from the sale of these products were shared between the assessee and PAR, USA.

3. Subsequently PAR, USA acquired the assessee (earlier known as Edict pharmaceuticals Pvt. Ltd.(Edict)) by entering into a share purchase agreement (SPA) on 17.05.2011 through which PAR, USA agreed to acquire the equity shares of Edict for a total consideration of USD 32.5 Million (Rs.174.9 Cr.). The said consideration was based on the enterprise valuation computed on the basis of discounted cash flow of income. Post the date of acquisition, the assessee who became the subsidiary of PAR, USA, was renamed as PAR Formulation Pvt. Ltd. (present assessee) and commenced its operations as a capital entity rendering contract R&D and contract manufacturing services exclusively to PAR, USA. The assessee in order to align itself as a limited risk entity entered into a memorandum of understanding with PAR, USA, where it was agreed that all the intangibles *inter-alia* in rights, resources and capabilities held as on the date of acquisition was transferred by the assessee to PAR, USA. It was also agreed as per the MoU that the assessee would operate on a capital basis. The consideration agreed for transfer of intangibles was USD 14.43 Million (Rs.97.3 Cr.). The assessee determined the consideration for transfer of intangibles through an independent valuation report where the total consideration paid towards acquisition of shares is considered as a base and after applying certain adjustments such as present value of future returns from contract manufacturing, contract R&D services etc., and arrived at the value of intangibles. In the transfer pricing study report (TPSR), the assessee applied internal CUP i.e., the consideration agreed under the share purchase agreement as the uncontrolled transaction stating that at the time of entering into SPA, the assessee (earlier known as Edict pharmaceuticals Pvt. Ltd.) and PAR, USA were independent parties without having any relationship. Accordingly, the assessee in the TPSR has stated that the consideration of Rs. 97.2 Cr. is within the Arms Length.

4. During the course of assessment, the A.O made a reference to the TPO for the purpose of determining the Arms Length Price of the various international transactions entered into by the assessee with its AE (PAR, USA). The TPO held that the consideration received by the assessee towards sale of intangibles is not adequate and rejected the method in which the said price was considered by the assessee as at arms length. The determination of the ALP towards sale of intangible assets by the assessee is tabulated below:

<b>Steps</b>	<b>Particulars</b>	<b>Value in INR Crores</b>
<i>Step 1</i>	<i>Enterprise value as on Febrary 17, 2012 (As per SPA Agreement in page 384 of paper book &amp; as per the table in page no 617 of paper book)</i>	<i>174.9</i>
<i>Step 2</i>	<i>Less: Present value of routine contract R&amp;D activities</i>	<i>45.4</i>
<i>Step 3</i>	<i>Less: Value of non-compete fee included and IP not transferred to Par US</i>	<i>28.4</i>
<b>Step 4</b>	<b>Total value of IP rights, resources &amp; capabilities transferred to Par US as of February 17, 2012</b>	<b>97.2</b>

5. The TPO made an upward adjustment of Rs.49.29 towards the consideration by holding that the adjustments made by the assessee were not acceptable. The details of the upward adjustment as arrived at by the TPO are given below:

<b>S. No.</b>	<b>Description</b>	<b>Amount (in Rs. Crores)</b>
<i>1.</i>	<i>Enterprise value for contract manufacturing</i>	<i>28.40</i>
<i>2.</i>	<i>Non compete fee</i>	<i>3.90</i>
<i>3.</i>	<i>Increment book value in IPRs from 01.04.2011 to 31.03.2012</i>	<i>12.46</i>
<i>4.</i>	<i>Add: 20% thereof being the admitted rate of return from contract R&amp;D to PAR USA, post acquisition and claimed to be at arm's length with reference to external comparables</i>	<i>2.49</i>
<i>5.</i>	<i>Unallocated expenses incurred by way of contract R&amp;D to be recouped with a markup of 20%</i>	<i>2.04</i>
<b>6.</b>	<b>Upward adjustment</b>	<b>49.29</b>
<i>7.</i>	<i>Add; Transaction value reported in Form 3CEB</i>	<i>97.20</i>
<b>8.</b>	<b>Arm's length price</b>	<b>146.49</b>

6. The assessee filed its objections before the DRP against the draft assessment order passed by the A.O incorporating the TP adjustments. The DRP rejected the objections of the assessee and confirmed the TP adjustment. The assessee is in appeal before the Tribunal against the final order of the assessment passed by the A.O.

7. The Ld. Authorized Representative (AR) of the assessee submitted that the assessee has rightly adopted the internal CUP as the most appropriate method and the valuation of intangibles is based on valuation report. The Ld. AR further submitted that the observations of the TPO (para 7.1 of TPO's order) that the assessee has not shared independent valuation is factually incorrect since the assessee has submitted all the relevant documents. The Ld. AR took the bench through the TPSR to submit that the assessee has done a proper benchmarking to determine the ALP of the consideration towards of intangibles. The Ld. AR also took the bench through list of intangibles which have been transferred to PAR, USA against which the assessee has received the consideration (Page 9 & 10 of DRP order). The Ld. AR argued that the TPO has made the adjustments without any benchmarking and has simply added the amounts which the assessee has considered as adjustments from the consideration received as per SPA. Accordingly, the ld. AR submitted that the determination of the TP adjustment is without any basis.

8. The Ld. Departmental Representative (DR), on other hand, relied on the order of the TPO and submitted that the assessee has not properly substantiated the basis on which the consideration towards sale of intangibles have been arrived at.

9. We have heard the parties, and perused the material available on record. The assessee before acquisition of shares by PAR, USA has been carrying out product supply and development services to PAR, USA. As per agreement entered into on 17.05.2011, the assessee's shares were acquired by PAR, USA for a consideration of Rs. 174.9 Cr. The assessee has subsequently transferred the intangibles to PAR, USA for a consideration of Rs.97.2 post which the assessee started rendering contract manufacturing services as a captive entity exclusively to PAR, USA. We notice that in the TPSR, the assessee has bench marked the transfer of intangible separately using CUP as the most appropriate method. We further notice that for the purpose of bench marking the SPA and the consideration received there-under has been taken as uncontrolled transaction stating that at the time of entering into SPA the assessee (earlier known as Edict pharmaceuticals Pvt. Ltd.) and PAR, USA, were independent parties without any relationship. We also notice that the assessee for the purpose of ALP has made certain adjustments to the consideration received under SPA to conclude that the consideration received for transfer of intangibles is with arms length (refer the working which is extracted in the earlier part of this order). The TPO has rejected the TP study and held that the adjustments made are not acceptable and the TPO added certain amounts to make upward adjustment of Rs. 49.29 Cr. From the perusal of the order of the TPO, we notice that the TP adjustment is made by the TPO by recording certain adverse findings with regard to each of the adjustments made by the assessee in the TPR against the uncontrolled transaction of consideration received under SPA. We further notice that the TPO while making the TP adjustment has not carried out any independent benchmarking but has arrived at the upward TP adjustment by considering the same amount as taken by the assessee for bench marking and has made the adjustment by

merely not allowing the adjustment. It is relevant to mention here that the TPO has observed that the assessee has not carried out independent valuation of intangibles which according to the assessee is factually incorrect. Further the major portion of the TP adjustment is made towards future valuation of manufacturing capabilities on the ground of non-cognizance of evidence by the assessee to substantiate the existence of such capability. The said finding of the TPO is also contended by the assessee as factually incorrect since according to the assessee even prior to acquisition the assessee was a contract manufacturer for PAR USA. Considering the overall facts and circumstances of the case we are of the considered view that TPO has proceeded to make the upward TP adjustment based on certain incorrect understanding of facts and without proper independent bench marking of the transaction. Therefore we deem it fit to remit the impugned issue back to the TPO for a *denovo* consideration and bench marking. The TPO is directed to examine the TPSR afresh where the assessee has applied CUP as the most appropriate method and call for details/documents as may be required. The assessee is directed to produce the relevant evidences to substantiate the benchmarking done in the TPSR and cooperate with the proceedings. It is ordered accordingly.

10. In result, the appeal of the assessee is allowed for statistical purposes.

*Order pronounced on 23<sup>rd</sup> day of January, 2026 at Chennai.*

Sd/-  
(एबी टी. वर्की)  
(ABY. T. Varkey)

न्यायिक सदस्य / Judicial Member

Sd/-  
(पदमाव्रती यस)  
(Padmavathy.S)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 23<sup>rd</sup> January, 2026.

EDN, Sr. P.S

**आदेश की प्रतिलिपि अग्रेषित/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF