

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचन्द्र, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, AM AND SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 1035/JP/2016
निर्धारण वर्ष/Assessment Year : 2011-12

The ACIT, Circle-2, Alwar.	बनाम Vs.	M/s Sakata Inx (India) Ltd. B-1245-1246, RIICO Industrial Area, Bhiwadi, Alwar (Raj.)
स्थायी लेखा सं./जीआईआर सं./PAN No. AACCS 4797 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by: Smt. Pratima Kaushik (CIT)
निर्धारित की ओर से / Assessee by : Shri Parth (Advocate)

सुनवाई की तारीख / Date of Hearing : 21.04.2017.
घोषणा की तारीख / Date of Pronouncement : 24 /4/2017 .

आदेश / ORDER

Per Shri Kul Bharat, JM.

This appeal by the Revenue is directed against the order of Id. CIT (A)-2,
Jaipur, dated 23.09.2016 pertaining to assessment year 2011-12.

The Revenue has raised following grounds of appeal.

"Appeal is filed on the following grounds against the order of Ld. CIT(A)-2, Jaipur in appeal No. 158/2015-16 dated 23.09.2016 in the case of M/s Sakata Inx (India) Ltd., B-1245-1246, RIICO Industrial Area, Bhiwadi, Alwar (Raj.) (AACCS4797D) for the AY 2011-12:-

1. That the Id. CIT(A) has erred on the facts and circumstances of the case in deleting the addition of Rs. 2,30,42,000/- made by the AO on account of Transfer Pricing Adjustment.

That the appellant craves leave to add, amend or alter the grounds of appeal on or before the date the appeal is finally heard for disposal."

2. At the time of hearing Ld. CIT (DR) sought adjournment on the ground that the order impugned has been passed by her. The request was rejected, as pointed by the Ld. Counsel for the assessee that the issue has been consistently decided in favour of the assessee by the order of the Tribunal in earlier years. Therefore, the issue is covered. Considering these facts, the request for adjournment was rejected and the appeal was taken up for hearing.

3. Only effective ground is against deleting the addition on account of Transfer Pricing Adjustment. The Ld. Counsel for the assessee reiterated the submissions as made in the written synopsis. The written submissions are reproduced as under:-

"Respondent's Submission"

The Respondent respectfully submits before this Hon'ble Tribunal:

- *The dispute issue is squarely covered in favour of the Respondent by orders of this Hon'ble Tribunal in Respondent's own case for AYs 2007-08 (ITA No. 376/JP/2012) 2008-09 (ITA No. 799/JP/2012), 2009-10 (ITA No. 646/JP/2016) and 2010-11 (ITA No. 647/JP/2016).*
- *The Hon'ble Tribunal for AY 2007-08, after considering all the materials available on record, held that (para 2.9, pages 8-9 of Tribunal order):*
 - *The order of CIT(A) suffered from no infirmity.*
 - *Application of CUP method was unjustified to determine the Arm's Length Price of Respondent's transaction of royalty payment.*
 - *Products manufactured by Respondent were developed from continuous technology support provided by AE.*
 - *The cost benefit test worked out by TPO was not based on proper appreciation of facts and choice of CUP method by TPO was unjustified.*

- *The judicial precedents relied upon CIT(A) in its order and by Respondent before Hon'ble Tribunal conclusively support the stand taken by CIT(A).*
- *Similarly for AY 2008-09, the Hon'ble Tribunal held in favour of the Respondent by following its earlier order for AY 2007-08. (para 4.1, pages 3-4 of Tribunal order)*
- *A similar finding has been given by Hon'ble Tribunal in its orders for AYs 2009-10 and 2010-11. (pages 6-7 of Tribunal order)*
- *Further reliance is placed on the following judgments/orders:*
 - *CIT vs. EKL Appliances Ltd. – ITA 1068 and 1070 of 2011- Hon'ble Delhi High Court (paras 18-22)*
 - *CIT vs. Cushman & Wakefield (India) Pvt. Ltd. –ITA 475 of 2012- Hon'ble Delhi High Court (para 36)*
 - *Toyota Kirloskar Motor (Pvt.) Ltd. vs. ACIT- ITA 1315/Bang/2011- ITAT (para 48)*
 - *DCIT vs. Air Liquide Engineering India Pvt. Ltd. – ITA 1040/Hyd/2011- ITAT (para 21)*
- *There is no change in relevant facts of law compared to earlier years.*

On behalf of Respondent assessee, it is respectfully prayed that the decision of coordinate bench in the assessee's own case deserves to be followed and the adjustment deleted for which we respectfully pray."

4. We have heard the Ld. Counsel for the assessee, it is contended that the issue is squarely covered in favour of the assessee by the decision of the various Co-ordinate Benches of this Tribunal in assessee's own case pertaining to the earlier assessment years. The Ld. CIT(A) followed the decision of the Co-ordinate Bench and held as under:-

"2.3.1 I have considered the facts of the case, assessment order and the written submissions of the appellant. In this case the issue is regarding adjustment of INR 2,30,42,000 (taken by the assessee at 20,749,000 in ground No. 2) to the total income of the appellant under section 92CA(3) of the IT Act, 1961 on account of adjustment in arms length price of the international transaction of payment of royalty by Sakata India to its AE. The appellant company is a 100% subsidiary of Sakata Inx Corporation Japan ("Sakata Japan") which is one of the largest producer of Printing Ink globally. During the year the appellant company was engaged in the business of manufacturing and selling printing ink and resins. The Assessing Officer had made a reference to the TPO to determine the Arm's Length Price under section 92CA(3) of IT Act. Further, on perusal of order passed under section 92CA(3) of IT Act by TPO-1, Jaipur it is seen that in the Transfer Pricing documentation the appellant company has considered transactional net margin method known as TNMM as the most appropriate method with operating profit margin as the profit level indicator. In the Transfer Pricing documentation of Sakata India, it was found that Sakata India's operating margin was higher than the arithmetic mean of the net operating margin of the comparable companies and hence the international transactions were considered to be at arms length by the assessee. However, the TPO/Assessing Officer made an adjustment to the arms length value by rejecting TNMM as the most appropriate method and using the CUP method. The same has been discussed in detail in the order of the TPO para 13.5 to 17 and finally it has been held that the arms length price of the payment of royalty for offset ink as also for gravure ink is nil. It was inferred that the assessee has not been able to justify the payment of royalty during the year on the sale of offset ink as well as gravure ink and as adjustment of Rs. 2,30,42,000/- was made u/s 92CA of the IT Act, 1961. The TPO thus proposed an adjustment to the international transaction of payment of royalty of an amount of Rs. 2,30,42,000/- to the total income of the appellant.

It is seen that similar adjustments to payment of royalty by the Assessing Officer has been made for Assessment Years 2007-08 & 2008-09 which had been

adjudicated by CIT(A)-2, Jaipur vide his order dated 12.01.2012 and 05.07.2012 respectively, deciding the issue in favour of the appellant.

In the present proceedings, the appellant submitted that the issue had now been decided by the jurisdictional bench of ITAT in its favour. The Hon'ble ITAT, Jaipur Bench in assessee's own case for the Assessment year 2007-08 vide its order ITA No. 376/JP/2012 dated 14.11.2014 on the issue of royalty payment held as follows:

"We have heard the rival contentions and perused the material available on record. In our considered view there is no infirmity in the order of Ld. CIT(A) in as much as:

- (I) Ld. DR could not justify the application of CUP method to Arms Length Working.*
- (II) The products manufactured by the appellant were developed from technology support provided by the AE. It would not have been possible so without the continuous AE support. The rights of access to the ongoing technical support and development of new products received by the appellant were clearly provided in the agreements entered into with the AE.*
- (III) The cost benefit test as worked out by the TPO was not based on proper appreciation of the facts and thus CUP method applied by the AO/TPO was not justified.*
- (IV) The judicial citations relied on by the Ld. CIT(A) as well as further judgments relied on by the assessee including Hon'ble High Court in the case of Delhi EKL Appliances Ltd. (supra) support the view taken by the Ld. CIT(A).*

In view of the foregoing, we uphold the order of Ld. CIT(A) and dismiss revenue's appeal."

Respectfully following the above decision of the ITAT, the adjustment made to the arm's length price on the issue of royalty is deleted. The ground of appeal is allowed."

4.1 The facts are identical in this year also, the Revenue has not pointed out any changed into the facts and circumstances. Therefore, we do not see any reason to interfere into the order of the Ld. CIT(A), same is hereby affirmed.

Therefore, taking a consistent view, appeal of the Revenue is dismissed.

5. In the result, appeal of the Revenue in ITA No. 1035/JP/2016 is dismissed.

Order pronounced in the open court on Monday the 24th day of April 2017.

Sd/-

(भागचन्द)
(BHAGCHAND)

लेखा सदस्य / Accountant Member

Jaipur

Dated:- 24 /04/2017.

Pooja/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- ACIT, Circle-2, Alwar.
2. The Respondent- M/s Sakata Inx (India) Ltd., Alwar.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 1035/JP/2016)

Sd/-

(कुल भारत)
(KUL BHARAT)

न्यायिक सदस्य / Judicial Member

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar