

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'I-1' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 2833/DEL/2018 (A.Y 2013-14)

(THROUGH VIDEO CONFERENCING)

JCIT Special Range-1 New Delhi (APPELLANT)	Vs	Amway India Enterprises Pvt. Ltd. 1 st Floor, Elegance Tower, Plot No. 8 Non Hierarchical Commercial Centre, Jasola Vihar, New Delhi AAACA5603Q (RESPONDENT)
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Appellant by	Sh. Surender Pal, CIT DR
Respondent by	Sh. Sudesh Garg, Adv

Date of Hearing	25.08.2021
Date of Pronouncement	08.10.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order 31/1/2017 order passed by 144C(1)(3) read with Section 143 (3) of the Income Tax Act, 1961 for Assessment Year 2013-14.

2. The grounds of appeal are as under:-

1.1 *"The Ld. CIT(A) has erred in law and on facts in directing the Transfer Pricing Officer (TPO) to delete the adjustment for transaction related to royalty on account of TP adjustment in arm's length price as the Ld. CIT(A) has failed to appreciate the fact that the royalty payment is excessive and not at arm's length on consideration of AMP expenses.*

1.2 *The Ld. CIT(A) has also failed to appreciate the fact that in the new agreement, although the rate has been kept at 5% of "Net Sales", the methodology of computing the Net Sales was changed considerably, resulting in significant higher amount of royalty outgo.*

1.3 *The OECD guidelines also advocate that Arm's length pricing for intangible property must take into account for the purposes of comparability the perspective of both the transferor of the property and the transferee."*

3. The assessee is a company incorporated under the provisions of the Companies Act, 1956. The Appellant is assessed to tax by the Assessing Officer. The assessee is engaged in the business of direct selling of consumer products. For the previous year ended on March 31, 2013, the assessee filed its return of income on November 29, 2013, declaring an income of Rs. 304,03,40,790/-. The return was selected for scrutiny and the assessment proceedings were initiated under Section 143(2) of the Act. Necessary compliances were ensured and all the information requisitioned was furnished from time to time with the office of the Assessing Officer. Further, the assessee's case was referred to the Joint Commissioner of Income Tax, Transfer Pricing Officer-1(1), New Delhi ("TPO") by the Assessing Officer. Consequently, the TPO, passed an order dated October 31, 2016 under Section 92CA (3) of the Act, wherein adjustment of Rs. 23,21,04,662/- was recommended. The Assessing Officer passed an assessment order dated January 31, 2017 under Section 143(3) of the Act (received by the assessee on February 2, 2017). Accordingly, the Assessing Officer made total additions of Rs. 23,21,04,662/- and computed the income of the assessee at Rs. 327,24,45,452 after taking into account the current year's returned income. The TPO did not concur with the analysis undertaken by the assessee for the purported reasons mentioned in his order and made an addition of Rs, 23,21,04,662. The TPO vide his order dated October 31, 2016 determined the arm's length price in respect of the following transactions:

Nature of Transactions	Adjustment (in Rs.)
Royalty Payment	15,66,27,250/-
Managerial Remuneration to Director	7,54,77,412/-
Total	23,21,04,662/-

The Assessing Officer in accordance with the order of the TPO, made an addition of Rs. 23,21,04,662/- on account of transfer pricing in order dated January 31, 2017.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT (A) partly allowed the appeal of the assessee.

5. The Ld. DR submitted that the TPO has observed that the formula for calculating net sales has also change from the earlier years. The TPO considered royalty payment as a separate international transaction and proceeded to test the royalty transaction separately by applying comparable uncontrolled transaction. The Ld. DR relied upon the order of the TPO and assessment order.

6. The Ld. AR relied upon the order of the CIT(A) as well as the decision of the Hon'ble Jurisdictional High Court in case of ChrysCapital Investment Advisors India Pvt. Ltd. vs. DCIT ITA No. 417/2014 order dated 27.04.2015.

7. We have heard both the parties and perused all the relevant materials available on record. The CIT(A) held in para 7.9 as under:

“7.9 The contention of the TPO is not backed by any cogent reason but is based on conjectures and surmises which will not stand the test of judicial scrutiny. A comparable cannot be excluded merely on the ground that it shows a very high rate of royalty. The TPO has not discussed if there are any material facts like nature of the entity, business model, terms of agreement, geographical area etc. pertaining to Columbia Laboratories, Inc. and Premier

Consumer Products, Inc., which render them incomparable to the appellant. As stated above, he has merely rejected them on the ground that the rate of payment for royalty is very high. In view of the same the contention of the appellant is not acceptable. This principle has been upheld by the Hon'ble Delhi High Court in the case of ChrysCapital Investment Advisors India Private Limited ITA No. 417/2014 which lays down the fundamental ratio that a comparable should not be rejected simply on the ground that its margin is extremely high (or low) in relative comparison to the data pertaining to its peers.

7.10 In view of the above discussion and in view of the facts and the circumstances of the case, the grounds of appeal 1-6 are decided in favour of the appellant. The AO/TPO is directed to delete the addition made on account of transfer pricing adjustment for transaction related to royalty.”

It is specifically observed by the CIT(A) that the rejection of the two comparables by the TPO, are based on conjectures and surmises. It is pertinent to note that the filters used by the TPO does not indicate that the high rates in respect of determination of ALP of royalty is one of the criteria of the rejection while confronting the assessee. The ratio laid down by the Hon'ble High Court in case of ChrysCapital Investment (supra) is applicable in the present case. Hence there is no need to interfere with the findings of the CIT(A). The appeal of the Revenue is dismissed.

8. In result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on this 08th Day of October, 2021.

**Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 08/10/2021
R. Naheed *

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI