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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Date of Decision : 24.11.2025*

+ **ITA 485/2025, CM APPL. 62064/2025**

+ **ITA 486/2025, CM APPL. 62205/2025**

**PRINCIPAL COMMISSIONER OF INCOME TAX, DELHI-1**

.....Appellant

Through: Mr. Indruj Singh Rai, SSC, Mr. Sanjeev Menon, Mr Rahul Singh, JSCs and Mr Gaurav Kumar, Adv.

versus

**M/S AON CONSULTING PRIVATE LIMITED** .....Respondent

Through: Mr. Ajay Vohra, Sr. Adv, with Mr. Manoj Sabharwal & Mr. Drona Negi, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**HON'BLE MR. JUSTICE VINOD KUMAR**

**V. KAMESWAR RAO, J. (ORAL)**

1. These two appeals lay a challenge to two orders passed by the Income Tax Appellate Tribunal ("ITAT") in ITA 6365/Del/2016 relatable to assessment year ("AY") 2008-09 and ITA No. 3272/Del/2016 relatable to AY 2007-08 whereby the ITAT, by a common order, has dismissed the appeals filed by the appellant/Revenue thereby endorsing the view taken by the Commissioner of Income Tax (Appeals) on the issue that the allocation of expenses between 10A units and non-10A units made by the assessee/respondent cannot be disturbed and therefore, the disallowance of



the deduction to the extent of Rs.7,30,04,275/- and Rs.18,20,51,370/- for the AYs 2007-08 and 2008-09 respectively under Section 10A of the Income Tax Act, 1961 (“Act”) has been rightly deleted by the CIT (Appeals).

2. Some of the facts to be noted in these appeals are that the assessee is a private limited company engaged in rendering human resources consulting services and pay roll outsourcing services. It is also having a captive services unit for rendering services of consulting and human resources outsourcing business to Hewitt Associates LLC. It is also involved in development and export of computer software and Business Process Outsourcing (“BPO”) services to Hewitt Affiliates.

3. The assessment for the AY 2007-08 was originally made on 31.10.2011 under Section 143(3) read with Section 144C of the Act on total income of Rs.42,17,42,170/- as against the ‘Nil’ income declared in the return filed on 31.10.2007. Subsequently, the assessment was set aside under Section 263 of the Act. Consequent thereto, the Assessment Officer (“AO”) made fresh assessment determining total income as Rs.49,47,46,450/- under Section 143(3) read with Section 263 of the Act on 23.02.2015 disallowing therein deduction of Rs.7,30,04,275/- under Section 10A and restricting the claim of deduction at Rs.53,55,75,131/- as against Rs.60,85,79,406/-.

4. For the AY 2008-09, the original assessment was made under Section 143(3) read with Section 144C of the Act on total income of Rs.53,53,01,615/- as against the income declared in the return filed on 30.09.2008. Subsequently, the assessment was set aside under Section 263 of the Act. Consequent thereto, the AO made fresh assessment determining total income at Rs.71,73,52,990/- under Section 143(3) read with Section 263 of the Act on 29.10.2015 disallowing therein deduction of



Rs.18,20,51,370/- under Section 10A restricting the claim of deduction to Rs.69,68,22,997/- as against Rs. 87,88,74,367/- as claimed by the assessee. Being aggrieved by the order passed by the AO, the assessee filed an appeal before the CIT (Appeals) challenging the reduction in the amount of deduction claimed under Section 10A of the Act in both the AYs 2007-08 and 2008-09. The CIT(Appeals) deleted the impugned disallowance made by the AO in both the AYs by observing as under:-

*"In view of the discussion made above, it is held that Assessing Officer was not justified in allocating the royalty expenses, management fee, expenses paid by the non-10A units to the Hewitt Affiliates LLC to the 10A units in proportion to the revenue earned by the units. The Assessing Officer was also not justified in further allocating the legal and professional expenses to 10A units over and above the expenses already incurred by such units. As discussed above, the royalty is paid to the Hewitt Affiliates LLC as per the clause 3 of the license agreement for the revenue derived from third parties for rendering services. Similarly, the management fee is also paid to Hewitt Affiliates LLC by the consulting division and human resource outsourcing division for utilizing services of various group entities based on their revenue contribution, therefore, these expenses cannot be apportioned to the 10A units which are captive service provider to the Hewitt Affiliates LLC. Based on these apportionment of the expenses, the deduction to the extent of Rs.7,30,04,275/- has been disallowed by the AO which is not correct and same is deleted."*

5. The appellant/Revenue has challenged the finding of the CIT (Appeals) before the ITAT. The ITAT has in paragraph 8 onwards stated as under:-



*“8. We have carefully considered the rival submissions of the parties, perused the orders of the Ld. AO/CIT(A) and the material available in the records. We have observed that the assessee has five units in India out of which two units are non 10A units and the remaining three are set up in the area where section 10A deductions are admissible.*

*8.1 On being asked about the basis of allocation of expenses by the Ld. AO, the assessee submitted details of expenses incurred on 10A units and non 10A units in both the AYs. Perusal thereof made the Ld. AO to conclude that the assessee is reducing income in the units where no deduction under section 10A is admissible by debiting expenses under the head Royalty, Management Fee and Legal and Professional Expenses in AY 2007-08 and by debiting expenses under the head Royalty, Management Fee and Corporate Overhead Charges in AY 2008-09. Accordingly, he apportioned the expenses under the aforesaid heads in proportion of the revenue earned by 10A and non 10A units in both the AYs resulting in the impugned reduction of deduction under section 10A of the Act to the extent of Rs. 7,30,04,275/- and Rs. 18,20,51,370/- in AY 2007-08 and AY 2008-09 respectively.*

*8.2 The assessee furnished explanation / justification for allocation of expenses before the Ld. CIT(A) as also before us. The Ld. CIT(A) recorded the finding that the manner of allocation of expenses between 10A units and non 10A units are based on common principles of costing and is reasonable. We agree with the findings of the Ld. CIT(A).*

*8.3 The Ld. CIT(A) further observed that the assessee is following the basis as provided by Accounting Standards-17 approved by ICAI for apportionment of expenses between different units. The Ld. DR could not contradict and the above finding of the Ld. CIT(A) remained uncontroverted by the Revenue. If that be so,*



*without bringing on record any adverse material, the accounting standard followed by the assessee for apportionment of expenses between different units cannot be faulted. We do not find any substance in the written submission filed by the Ld. DR in support of the apportionment of expenses in proportion of the revenue earned by 10A units and non 10A units done by the Ld. AO in both the AYs*

*9. Accordingly, on the facts and in the circumstances of the case of the assessee, we endorse the findings of the Ld. CIT(A) that the allocation of expenses between 10A units and non 10A units made by the assessee cannot be disturbed and therefore, the disallowance of deduction to the extent of Rs. 7,30,04,275/- and Rs. 18,20,51,370/- in AY 2007-08 and AY 2008-09 respectively under section 10A of the Act has rightly been deleted by the Ld. CIT(A). The grounds taken by the Revenue in this regard in both the AYs are rejected.*

*10. In the result, the appeals of the Revenue for the AY 2007-08 and AY 2008-09 are dismissed.”*

6. These appeals have been filed proposing the following questions of law:-

**“ITA 485/2025**

*1. Whether on the facts and in the circumstances of the case, the Hon'ble ITAT is justified in law in deleting the addition made on account of disallowance in the section 10A amounting to Rs. 18,20,51,370/-without appreciating the fact that the benefit of such heads of expenses like Royalty, Management Fee and Legal and Professional Expenses are derived by both the units eligible u/s 10A and non-eligible units?*

*2. Whether on the facts and in the circumstances of the case, the Hon'ble ITAT is justified in law in deleting the addition made on account of disallowance in the section 10A amounting to Rs. 18,20,51,370/-without appreciating the fact that by adopting such measures,*



*the assessee has diverted such hidden expenses to its non-eligible unit thereby impacting the taxable profit?”*

**“ITA 486/2025**

*1. Whether on the facts and in the circumstances of the case, the Hon'ble ITAT is justified in law in deleting the addition made on account of disallowance in the section 10A amounting to Rs. 7,30,04,275/- without appreciating the fact that the benefit of such heads of expenses like Royalty, Management Fee and Legal and Professional Expenses are derived by both the units eligible u/s 10A and non-eligible units?*

*2. Whether on the facts and in the circumstances of the case, the Hon'ble ITAT is justified in law in deleting the addition made on account of disallowance in the section 10A amounting to Rs. 7,30,04,275/- without appreciating the fact that by adopting such measures, the assessee has diverted such hidden expenses to its non-eligible unit thereby impacting the taxable profit?”*

7. The submissions of Mr. Indruj Singh Rai, learned Senior Standing Counsel for the appellant/Revenue, are that the ITAT has perversely dismissed the appeal of the Revenue and upheld the decision of the CIT (Appeals) by deleting the disallowance of expenses. According to him, the Tribunal has failed to appreciate that AO has identified the heads of expenses, royalty, management fee and legal & professional expenses wherein no expenses were depicted on account of 10A units.

8. The heads of expenses were common to both the units and it cannot be denied that benefit of such heads of expenses would have also been derived to the unit eligible for deduction under Section 10A. Hence, such heads of expenses were rightly apportioned between both the eligible units



and non-eligible units, which the assessee has failed to prove. According to him, the ITAT has failed to appreciate the facts of the case that the benefit of such heads of expenses like royalty, management fee and legal and professional expenses were derived by both the units that is eligible under Section 10A and non-eligible units.

9. He states that the Tribunal failed to appreciate that by adopting such measures, the assessee has diverted such expenses to its non-eligible units thereby impacting the taxable profits. He states that the ITAT erred in law and in fact by not considering that the expenses such as royalty, management fee and legal & professional expenses were typically incurred at the corporate or entity level and not at a specific unit level.

10. Moreover, it is a settled principle that the expenses which are common to more than one unit must be equitably apportioned. The assessee, by claiming the full amount of such expenses against the non-eligible units, had artificially inflated profits of the 10A unit, which resulted in unjustified exemption. It is his submission that mere allocation of the entire amount of these expenses to the non-10A unit would not change the fact that 10A unit also derived benefit from such expenses. Thus, the disallowance made by the AO to ensure a proper allocation and prevent overstatement of exempt income under Section 10A was justified. It is also his submission that the assessee was showing maximum revenue from services in non-10A unit and showing profit in the units wherein the deduction u/s 10A was admissible. The assessee had adopted a method of allocating higher expenses to non-eligible units, thereby depressing taxable income while artificially boosting profits of the 10A units, which results in lower tax liability overall. He states that the burden of proof lies with the assessee to demonstrate that such



allocation of expenses was fair and based on actual usage/benefit, which has not been conclusively done. In fact, it is his submission that the assessee failed to demonstrate on record that the royalty, management fees, and legal expenses did not relate to the 10A unit. In the absence of a rational basis or allocation key, the AO's action to allocate part of these expenses to the 10A unit was justified.

11. He further states that Hewitt Associates LLC was allocating management fee/charge for the managerial services provided to the assessee company in India. Since the managerial services was being provided to the company and not to any particular unit of the assessee company, the expenses on account of management fee could not have been attributed to any particular unit.

12. That apart, it is his submission that the assessee company had entered into agreement with Hewitt Associates LLC to provide human resource outsourcing and consulting services for use in affiliate business. Since the agreement was entered into by the Indian company with the parent company for providing intellectual property use in affiliate business, the Indian company was liable to pay royalty to the parent company for use of intellectual property and for this purpose royalty was calculated at 3% of the revenue received from third party. This clearly meant that the same was the only basis to determine the royalty amount. Hence, the payment account of royalty could not have been made for claiming any expenses for a particular unit.

13. That apart, he states that the ITAT failed to appreciate if the management, legal & professional services were required for non 10A eligible units, then why similar services are not required for 10A eligible



units. The agreements did not specify that the services were only for non 10A eligible units or were not required for captive units. It only dealt with the nature of services rendered. He states it is a clear case where the CIT (Appeals) has erred in reversing the assessment order by the AO, which has been upheld by the ITAT. He seeks the prayers as made in the appeals.

14. Mr. Rai has also relied upon the judgment in the case of ***Radhasoami Satsang v. Commissioner of Income-tax, [1992] 60 Taxman 248 (SC); Honey Enterprises v. Commissioner of Income-tax, Delhi, [2016] 65 taxmann.com 35 (Delhi and Krishak Bharti Cooperative Ltd. v. Deputy CIT, [2012] 23 taxmann.com 265 (Delhi)*** in support of his submissions.

15. On the other hand, Mr. Ajay Vohra, learned Senior Counsel for the respondent, draws our attention to the order passed by the CIT (Appeals) to contend that the respondent/assessee had carried out allocation of expenses on the basis of actual nexus of expenditure and contractual terms. The ITAT has expressly endorsed the fact-finding and method undertaken by the CIT (Appeals) and before both authorities, no contrary material was produced by the Department to challenge the allocation methodology followed by the respondent/assessee.

16. According to Mr. Vohra, the ITAT in its appellate order affirmed that the assessee's AS-17 compliance allocation between 10A and non-10A units was reasonable, aligning with principles of costing and could not be disturbed in the absence of adverse material, which the Revenue failed to bring on record before the ITAT. Thus, the ITAT rejected the revenue-share apportionment proposed by the Revenue. He states that allocation methodology has been consistently followed and also accepted by the Revenue in earlier and later years.



17. He relies upon ***Hukam Chand Mills Ltd. v. CIT, [1976] 103 ITR 548 (SC)*** to contend that where there was no statutory formula for apportionment, any exercise to carry out the same would involve approximation and as such, the proportion fixed by the ITAT should not be disturbed if it was based on relevant material.

18. Similarly, he has also relied upon ***CIT v. EHPT India (P.) Ltd., [2011] 16 taxmann.com 305 (Delhi)*** to contend that the method adopted by the assessee for the apportionment of expenses is reasonable and consistent and there is no need for the same to be disturbed, especially in cases where there is no straight jacket statutory formula for apportionment.

19. He has also relied upon ***CIT v. NIT Cris Ltd., [2009] 2 taxmann.com 12 (Delhi)*** to contend that the findings of CIT (Appeals) and ITAT with respect to apportionment of expenses between two units of a company constituted a pure question of fact and shall not be interfered by this Court in exercise of jurisdiction under Section 260(A) of the Act. For similar proposition, he has also relied upon ***PCIT v. Bhadani Financiers Pvt. Ltd., [2022] 447 ITR 305 (Del)***. Further, he stated that the view taken by the ITAT is a plausible view and as long as the view is not a perverse view, the same should not be interfered with. He relies upon the case of ***C. Doddanarayana Reddy v. Jayarama Reddy, (2020) 4 SCC 659*** and seeks dismissal of the appeals.

20. Having heard the learned counsel for the parties, the issue which arises for consideration is whether the ITAT is justified in rejecting the appeals challenging the orders passed by the CIT (Appeals) in the facts of this case, which we have narrated above.

21. Suffice to state that the findings of the CIT (Appeals) can be seen



from the following:-

**ITA 485/2025**

*“Decision*

*I have considered the submission of the appellant and observation of the Assessing Officer. It is seen that the appellant company has got five units in India out of which two units are non-10A units and remaining three are set up in the area where 10A deductions are available. The details of such unit and net profit disclosed by the appellant are as under:*

| Particulars                        | HA/Consult Non 10A Unit          | HISPL 10A Unit                     | HRO Non 10A Unit                      | MPHRO 10A Unit                                 | Exult 10A Unit                     | Total         |
|------------------------------------|----------------------------------|------------------------------------|---------------------------------------|------------------------------------------------|------------------------------------|---------------|
| Nature of Activities               | Providing advice and consultancy | Development of software for Hewitt | Support to the affiliates and clients | HR related services to other Hewitt affiliates | Development of software for Hewitt |               |
| Net receipt including other income | 90,80,28,823                     | 413,81,42,138                      | 32,44,68,195                          | 2,31,76,307                                    | 52,22,68,403                       | 591,60,83,866 |
| Total Expenses claimed             | 86,09,56,820                     | 36,23,183,229                      | 27,58,45,483                          | 2,08,52,646                                    | 46,01,40,013                       | 524,60,79,193 |
| Profit before tax                  | 4,10,72,003                      | 51,49,58,919                       | 4,86,22,712                           | 23,23,659                                      | 5,21,28,389                        | 65,91,05,692  |
| Percentage of Profit Loss          | 8.14%                            | 78.96%                             | 7.27%                                 | 0.35%                                          | 9.28%                              |               |

*It was observed by the AO that appellant company is showing maximum revenue from services in non-10A units and showing profit in the units wherein deduction u/s 10A is admissible. Accordingly, the Assessing Officer asked the appellant to submit the basis for allocation of expenses. The appellant submitted the details of the expenses incurred on 10A units and non-10A units which are as under*



| Expenses                                        | HA/CNS<br>Non<br>Unit | 10A<br>Unit | HISPL/HIN<br>10A Unit | Unit<br>Non<br>Unit                | HRO<br>10A<br>Unit | MPHRO<br>10A Unit | Exult<br>Unit | 10A<br>Unit | Total        |
|-------------------------------------------------|-----------------------|-------------|-----------------------|------------------------------------|--------------------|-------------------|---------------|-------------|--------------|
| A                                               | B                     | C           | D                     | E                                  | F                  | G                 | H             | I           | J            |
| Royalty                                         | 1,84,67,851           | -           | -                     | 75,96,149                          | -                  | -                 | -             | -           | 2,60,64,000  |
| Management fee                                  | 9,62,37,068           | -           | -                     | 1,61,62,519                        | -                  | -                 | -             | -           | 11,23,99,587 |
| Legal and Professional fee                      | 4,22,90,794           | -           | 4,03,27,403           | 43,38,607                          | -                  | 61,603            | -             | 18,99,723   | 8,69,16,330  |
| Corporate Overhead Charges                      | 12,35,032             | -           | -                     | 3,32,00,128                        | -                  | -                 | -             | -           | 3,44,35,160  |
| Advertisement, publicity and business promotion | 59,12,273             | -           | 64,520                | 45,075                             | -                  | -                 | -             | -           | 60,21,868    |
| Seminars and meetings                           | 44,08,925             | -           | 97,016                | 26,280                             | -                  | -                 | -             | -           | 45,32,221    |
| Total                                           | 16,85,51,943          | -           | 4,04,88,939           | 5,13,68,958                        | -                  | 61,603            | -             | 18,99,723   | 27,23,71,265 |
|                                                 |                       |             |                       | Less exp already allocated (C+E+G) |                    |                   |               |             | 4,24,50,265  |
|                                                 |                       |             |                       |                                    |                    |                   |               |             | 22,99,20,901 |

The Assessing Officer observed that appellant company has allocated royalty, management fee and corporate overhead charges to the units which are non-10A units and not eligible for deduction u/s 10A. it was also observed by the AO that royalty and management fee have been claimed only in non-10A units whereas all the expenses including legal and professional fee, advertisement and seminars have been incurred by the appellant company as a whole for all the units. The AO came to the conclusion that appellant is reducing income in the units where no deduction u/s 10A of LT. Act is admissible by debiting expenses under the head Royalty, Management fee and Corporate Overhead Charges. Accordingly, Assessing Officer apportioned the expenses under the head Royalty, Management Fee and Corporate Overhead Charges in proportion of the revenue earned by 10A and non-10A units and as a result, deduction u/s 10A to the extent of Rs.18,20,51,370/- was reduced.

The appellant submitted that it is engaged in consulting services which entail providing advice and consultancy on various HR related issues to clients located in India and abroad. These services are being provided by the following divisions of the appellant:

\* Consulting Services ( subsequently referred to as 'HA/ CNS' or 'non-10A unit') The Consulting Services



*entail providing advice and consultancy on various HR related issues to clients located in India and abroad. These services are being provided by the following divisions of the Appellant:*

- Global Sourcing Division, which is engaged, inter alia, in providing services in relation to assessment of talent needs for both corporate and Governments;*
- Talent and Organization Consultancy Division ('TOC'), which is engaged, inter alia, in the provision of advice or consultancy in relation to development/modification of HR systems and processes, providing assistance in implementation of HR processes and systems and conducting talent landscape studies for various sectors;*
- Talent and Organization Consultancy Analytics Division ('TOAC'), which is engaged, inter alia, in the provision of advice and consultancy in the nature of designing and supporting the implementation of HR initiatives, developing reward system modules, designing career development, programs for employees etc;*
- Talent and Organization Consultancy (Global Services) Division, which has been specifically carved out to assist other divisions of the Appellant as well as similar divisions of other Hewitt Affiliates in compiling pre-existing data, providing consulting services involving data analysis, interpretation support, data processing and support for other related activities etc.*

*\* Payroll Outsourcing Services (subsequently referred to as 'HRO' or 'non-10A unit')*

*These services entail provision for payroll related support to the affiliates and clients. These services are being provided by the following divisions of the appellant:*

- Human Resource Outsourcing Division ("HRO' and 'INL), which is primarily engaged in providing payroll processing and payroll related reimbursement services for clients located in India.*



- *Retiral Fund Management Division ('RFM') of the Appellant, which is engaged in providing advisory services in relation to actuarial consulting, design and setting up of mandated and non mandated retirement plans (provident fund, gratuity and Superannuation fund).*

- *Technology Development Centre ('TDC') [subsequently referred to as 'HISPL/ HIN' or 'Exult' or '10A unit'] TDC division is engaged in the development and export of software to Hewitt Affiliates, acting in the capacity of a captive service provider of Consulting and HRO businesses owned by Hewitt Affiliates and Is an approved 10A unit.*

- \* *Business Process Outsourcing Services ('BPO') [subsequently referred to as 'HISPL/ HIN' or 'Exult' or '10A unit'] BPO division render, inter alia, support services in relation to pension administration, health management, payroll processing to Hewitt Affiliates for their clients, acting in the capacity of a captive service provider of Consulting and HRO businesses owned by Hewitt Affiliates and is an approved 10A unit.*

*Multi-Process Human Resources Outsourcing Division ('MP HRO'), which is engaged in provision of HR related services to other Hewitt Affiliates in relation to the agreements executed by such Hewitt Affiliates with their clients.*

*In view of appellant's various business division, the appellant has established following cost centre codes (referred to as "cost codes") to record every cost incurred in the accounting system:*

- *Non-10A units (Taxable) cost codes which are directly related to non-10A units;*
- *10A unit (Non-taxable) cost codes which are directly related to 10A unit; and*
- *Common cost codes which are common costs incurred with respect to both taxable (i.e.non-10A units) as well as non-taxable divisions*



(i.e. 10A units).

*Royalty on third party services:*

*The appellant submitted that as per License Agreement dated 01.10.2002 and 01.10.2007 entered into between the appellant and Hewitt Affiliates LLC, the appellant has been given non-exclusive, perpetual, world-wide, non-assignable license and right to use the intellectual property as set forth in the above mentioned license agreement. As per clause 3 of license agreement (i.e. compensation clause), in consideration of grant of license, the appellant will have to pay a royalty fee as a percentage of net revenue of the appellant derived from third party. The relevant extract of clause 3 of the agreement dated October 1, 2002 is reproduced hereunder:*

*.....the affiliate shall pay HA a composite royalty as a percentage of net revenue of affiliates derived from third parties.”*

- During the course of appellate proceedings, the appellant submitted that since only non-IOA units (i.e. HA/CNS and HRO) earns revenue from third parties as per the terms of agreement, royalty as a percentage of net revenue derived from third parties has been paid by these non-IOA units to Hewitt Affiliates LLC during the assessment year under consideration. It is also submitted by the appellant that 10A units (HISPL I HIN, MP HRO and EXULT) are captive units and render services to the Hewitt group entities only, therefore, royalty was neither paid nor payable by these captive units to the Hewitt Affiliates LLC. The appellant submitted that royalty amounting to Rs.2,60,64,000/- computed based on consulting and human resource outsourcing divisions revenue is directly related to the consulting and human resource outsourcing division and does not relate to 10A units and therefore, has been duly accounted for in consulting and human resources outsourcing division's profit & loss account. The appellant submitted that*



*these expenses are on actual basis and cannot be allocated to the 10A units as 10A units are captive units for rendering services to the Hewitt Affiliates LLC only, therefore, the Hewitt Affiliates LLC cannot pay royalty to itself. Therefore, it is submitted by the appellant that royalty amounting to Rs.2,60,64,000/- computed based on consulting and human resource outsourcing division division's (i.e. HA/ CNS and HRO) revenue is directly related to consulting and human resource outsourcing division and does not relate to 10A units and therefore, same has been accounted for in consulting and human resource outsourcing division's P&L Account.*

*Management Fee payment to the Hewitt Associate LLC for third party services:*

*On the same way appellant had charged management fee to the accounts of consulting division (HA/CNS) and human resources outsourcing division (HRO) which are non-10A units of the appellant. The appellant submitted that as per Regional Headquarter Service Agreement, Hewitt Hong Kong has been designated as Asia Pacific Headquarter and has the responsibility of participating in and making strategic decisions with respect to senior staffing, practice development, key client acquisition, and total compensation decisions for consulting division (i.e. HA/ CNS) and human resource outsourcing division (i.e. HRO) only.*

*The Asia Pacific headquarters is referred to the cost pool for regional resources who perform activities for more than one local market in their regions (including the appellant) for consulting division (i.e. HA/ CNS) and human resource outsourcing division (i.e. HRO). In other words, these regional resources do not provide services for any captive units (i.e. 10A units). In this regard, the appellant submitted that it is noteworthy that these charges were allocated based on actual consumption of related services by the*



*businesses viz. Consulting and HRO division. Software Development Services and BPO Services segment (10A units) are not availing these services. Therefore, apportioning of management fee to the 10A units like software development services and BPO services units cannot be made as these units are not availing those services.*

*The appellant submitted that as per the methodology adopted by the appellant, cost of regional resources serving consulting division (i.e. HA/ CNS) and human resource outsourcing division (i.e. HRO) are first transferred to Asia Pacific Head Quarter. Thereafter, these cost (plus mark-up) are charged to various group entities which are utilizing services of these regional resources (including the appellant) based on their revenue contribution to APAC region from consulting division (i.e. HA/ CNS) and human resource outsourcing division (i.e. HRO).*

*The appellant submitted that in relation to charge received by the appellant from Hewitt Affiliates LLC under Regional Headquarters Services Agreement, the cost incurred (including mark-up) by Hewitt Affiliates LLC has been charged to Hewitt group companies (including the appellant) based on their revenue from Consulting and human resource outsourcing divisions only (i.e. non-10A units). The same is evident from the description mentioned on the invoices for management fee raised by Hewitt Affiliates LLC on the appellant. The appellant has submitted the invoice raised to the appellant on the basis of revenue earned by the appellant company from third parties, the invoice raised is reproduced hereunder:*

*A. Invoice dated 14-03-2008 for the period 1-09-2007 to 31-01-2008:*

| <i>Fees</i> | <i>Total Invoice</i> |
|-------------|----------------------|
| <i>TOC</i>  | <i>586,418.32</i>    |
| <i>TOCA</i> | <i>563,604.16</i>    |
| <i>RFM</i>  | <i>32,661.50</i>     |



Total US\$ 1,182,683.99

*On perusal of above, it is seen that only the costs (including mark-up) relating to non-10A units have been invoiced to the appellant. Accordingly, the same has been duly accounted for in non-10A units (consulting and human resource outsourcing) division's P&L Account. The appellant submitted that the terminology used for business segments is common across Hewitt worldwide.*

*As discussed earlier, TOC and TOCA are sub division of Consultancy Division of the appellant and RFM and HRO are sub division of Payroll Outsourcing Division. The brief description of these division is explained below: -*

*- Talent and Organization Consultancy Division ('TOC'), which is engaged, inter alia, in the provision of advice or consultancy in relation to development/modification of HR systems and processes, providing assistance in implementation of HR processes and systems and conducting talent landscape studies for various sectors;*

*- Talent and Organization Consultancy Analytics Division ('TOAC'), which is engaged, inter alia, in the provision of advice and consultancy in the nature of designing and supporting the implementation of HR initiatives, developing reward system modules, designing career development programs for employees etc; and*

*- Human Resource Outsourcing Division ('HRO' and 'INL'), which is primarily engaged in providing payroll processing and payroll related reimbursement services for clients located in India.*

*- Retiral Fund Management Division ('RFM') of the Appellant, which is engaged in providing advisory services in relation to actuarial consulting, design and setting up of mandated and non mandated retirement plans (provident fund, gratuity and Superannuation fund).*



*On perusal of above descriptions, it is seen that only the costs (including mark-up) relating to consulting (TOC and TOAC) and human resource outsourcing (HRO and RFM) from Asia Pacific Headquarter divisions have been invoiced to the appellant. Accordingly, the same has been duly accounted for in consulting division's P&L Account. The appellant submitted that the terminology used for business segments is common across Hewitt worldwide.*

*It was submitted by the appellant that the charge made by Hewitt Affiliates LLC to the appellant under Regional Headquarters Services Agreement has been calculated after considering revenue from Consulting division (i.e. HA/ CNS) and Human Resource Outsourcing division (i.e. HRO) only and no revenue of captive unit(s) (i.e. 10A units) has been considered for calculating charge under Regional Headquarters Services Agreement. The expenses accounted on actual basis cannot be allocated to 10A units.*

*It was submitted by the appellant that under Regional Business Service Agreement, charge amounting to Rs.112,399,588/- has been made to the appellant for consulting and human resource outsourcing division (i.e. HA/ CNS and HRO) only and therefore, has been duly accounted for in consulting and human resource outsourcing division's P&L Account.*

*Allocation of Legal and Professional Expenses to 10A units which pertains to non-10A units:*

*The appellant submitted that expenses are accounted for on actual basis. The appellant further submitted that an amount of Rs.4,66,29,602/- has been accounted for in consulting and human resource division under the head legal and professional services. It is submitted that to carry out its consulting projects, among other things consulting division and human resources outsourcing division, the appellant has to hire independent consultants and has to avail consulting services from its group companies. In the process of*



*rendering services by the consulting division and human resource division, appellant take services of independent consultants for rendering services for consulting projects and it also take help of the group companies for rendering consultancy services for the projects.*

*The appellant submitted that to carry out its business under consulting division (i.e. HA/CNS) and human resource outsourcing division (i.e. HRO), the appellant engages independent consultants having experience in the human resource field on project to project basis. For this, the appellant has filed copies of invoices of independent consultants in its paper book at page # 405 to 416 and 433 to 440 on sample basis.*

*On perusal of these invoices from independent consultants, it is seen that independent consultants have rendered services to the appellant for following projects during the F.Y. 2007-08 relevant to AY 2008-09:*

- \* Development centre for HUL*
- \* Development centre for Lipi*
- \* Faculty fee for training conducted on May 23rd to 25th 2007 for RIL*
- \* VSNL Assessment centre's*
- \* Honda Feedback sessions, development planning session*
- \* Assessor at DC conducted for KBL*
- \* Assessor at AC conducted for HUL*
- \* Development centre for HSBC*

*The above description of invoices shows that these independent consultants were hired to deliver client project as and when required. They performed on client V projects which are not related to captive units of the appellant and accordingly these invoices have been raised by Independent Consultants for various Consultancy/ Human Resources projects (i.e. non-10A division).*

*Therefore, these expenses are directly related to*



*consulting division (i.e. HA/CNS) and human resource outsourcing division (i.e. HRO) and have been duly accounted for in consulting division and human resource outsourcing division's (i.e. non-10A units) P&L account.*

*Fees paid to group companies for rendering consulting services*

*The appellant has also taken services of group companies to carry out its business under consulting division (i.e. HA/CNS) and human resource outsourcing division (i.e. HRO and INL) on project to project basis. The copies of invoices received from group companies are enclosed in the paper book at page #417 on sample basis.*

*On perusal of these invoices raised by group companies, it is seen that group companies have rendered services to the appellant for its consulting and human resource outsourcing division during the year under consideration for following projects:*

*\* Service Fee for Whirlpool: The appellant has rendered services in relation to HR consulting to prepare report on compensation structuring and profiling for senior position being regional general manager of Whirlpool (i.e. the third part or the client). From above description of invoices mentioned above, it is evident that these invoices have been raised by group companies for various Consultancy/ Human Resources projects done by the appellant company for third parties during the year (i.e. non-10A division).*

*Accordingly, these expenses are directly related to consulting division (i.e. HA/CNS) and human resource outsourcing division (i.e. HRO and INL) and have been duly accounted for in consulting division and human resource outsourcing division's (i.e. non-10A units) P&L account.*

*In view of the above, it is seen that legal and professional fee directly related to consulting division and human resource outsourcing division has been*



*duly accounted for in consulting and human resource outsourcing division's P&L Account (i.e. non-10A units). Therefore, these expenses cannot be apportioned to the 10A units over and above the expenses under the head legal and professional expenses actually related to the 10A units. Therefore, the Assessing Officer was not justified in further allocating the legal and professional expenses to the 10A units.*

*Allocation of Corporate Overhead Charges to 10A units which pertains to non- 10A units*

*It was submitted by the appellant that as per corporate service agreement dated October 1, 2006 entered into between the appellant and Hewitt Associates LLC, the appellant will pay a service fee to Hewitt Associates LLC based on actual cost plus mark up for rendering services covered under Corporate Service Agreement. The copy of such agreement alongwith the sample copy of invoice is filed at page 376 to 382 of the PB. Based on such agreement the cost incurred by Hewitt Associates LLC has been charged to Hewitt Group of Companies based on their revenue from consulting and human resource outsourcing division.*

*It is argued by the appellant that the charge made by the Hewitt Associates LLC to the appellant under corporate service agreement has been calculated after considering revenue from non-10A units i.e. consulting division and human resources outsourcing division and captive units have not been considered for calculating charge under corporate service agreement. These charges have been allocated on actual consumption basis, therefore, the same cannot be apportioned to the 10A units.*

*To substantiate the basis of charge made by Hewitt Associates LLC, USA to the appellant, the appellant has submitted the working prepared by independent consultants and perusal of the working of the chart made by Hewitt Associates LLC, it is seen that charge*



*in relation to 10A units has been retained by Hewitt Associates LLC, USA. The relevant extract of the invoice dated 12.03.2008 is reproduced hereunder:*

*\* Budgeted charge for Year 2008: Relevant for invoice dated March 12, 2008 for USD 205,864*

Client: Hewitt Associates LLC  
Project: Transfer Pricing Corporate Service Allocation Project  
Item: 2008 US Invoice Summary

| Entity                                   | Country | Region | BUDGET TOTAL |
|------------------------------------------|---------|--------|--------------|
| IND001 - India                           | India   | APAC   | \$23,454     |
| EX001 - Exult India                      | India   | APAC   | \$           |
| IND001 - Hewitt Internal Service Pvt Ltd | India   | APAC   | \$           |

*Based on the allocations, the charge under the corporate service agreement amounting to Rs.3,44,35,160/- has been made to the appellant for consulting and human resource outsourcing division and which has been accounted for in consulting and human resource outsourcing division's profit and loss account.*

*Allocation of Advertisement, Publicity and Business Promotion Expenses to 10A units which pertains to non-10A units*

*The appellant has submitted that to carry out its consulting projects and human resource outsourcing projects, Consulting division (i.e. HA/ CNS) and Human Resource Outsourcing divisions (i.e. HRO) [Both non 10A units] of the appellant incurs advertisement, publicity and business promotion expenses. Since above mentioned advertisement, publicity and business promotion expense are directly related to Consulting division (i.e. HA/ CNS) and Human Resource Outsourcing divisions (i.e. HRO), the same have been duly accounted for in consulting division's (i.e. non-10A units) P&L account.*

*With reference to 'advertisement, publicity and*



*business promotion expenses’ amounting to Rs 59,57,348/- duly accounted for in Appellant’s Consulting division (i.e. HA/ CNS) and Human Resource Outsourcing divisions (i.e. HRO), the appellant submitted a copy of invoices on sample basis which is filed at page 419 to 420 of the paper book. The relevant extract of the invoice is reproduced hereunder:*

*\* “6th Oil and Gas HR round table (2007): It was an HR conference held to cater the developing HR needs in Oil and Gas sector where the Appellant had invited experts and scholars from this sector.*

*\* Sponsorship fee for NHRD cocktails: NHRD, a forum of HR, is the national apex body of professionals committed to promoting the HRD movement in the country and enhancing the capability of human resource professionals to compete globally. This expense was part of our marketing strategy as leading HR consultancy Firm in India.*

*\* Next Gen HR Placement: It was conference organized by the Appellant as Leading HR firm to pioneer the HR strategy discussion on evolving demography of workforce in India and themed on the next gen, these expenses are for the printing of posters displayed at the venue.”*

*From the description of the above invoices it is evident that the above mentioned advertisement, publicity and business promotion expenses are directly related to Consulting division (i.e. HA/ CNS) and Human Resource Outsourcing divisions (i.e. HRO). The appellant submitted that there is no need for Advertisement, Publicity and Business Promotion expense for 10A units which are captive units providing services to group companies. However, actual expenditure on the above head of each unit has been debited to respective unit and hence the expenditure of non 10A units cannot be allocated to 10A units.*



*Since, these expenses are directly related to consulting division (i.e. HA/CNS) and human resource outsourcing division (i.e. HRO and INL), therefore, the same have been duly accounted for in consulting division and human resource outsourcing division's (i.e. non-10A units) P&L account.*

*Allocation of seminar meeting expenses to 10A units which pertains to non-10A units*

*It is submitted by the appellant that to carry out its consulting projects and human resource outsourcing projects, Consulting division (i.e. HA/ CNS) and Human Resource Outsourcing divisions (i.e. HRO) of the Appellant incurs seminars and meetings expenses. Since above mentioned seminar and meeting expenses are directly related to Consulting division (i.e. HA/ CNS) and Human Resource Outsourcing divisions (i.e. HRO), the same have been duly accounted for in consulting division's (i.e. non-10A units) P&L account.*

*With reference to 'seminars and meetings expenses' amounting to Rs.44,35,205/- accounted for in Appellant's Consulting division (i.e. HA/ CNS) and Human Resource Outsourcing divisions (i.e. HRO), appellant filed copy of sample invoices which is filed at pages # 422 to 426. On perusal of these invoices, it is seen that description on invoice 'Representatives at Human Asset India' relates to participation in HR Conference to explore business ideas and to mark Appellant's presence as leading HR consultancy firm.*

*From above description of invoices it is evident that the above mentioned seminars and meetings expenses are directly related to non 10A units i.e. Consulting division (i.e. HA/ CNS) and Human Resource Outsourcing divisions (i.e. HRO).*

*Accordingly, these expenses, being directly related to consulting division (i.e. HA/CNS) and human resource outsourcing division (i.e. HRO and INL), have been duly accounted for in consulting division and human resource outsourcing division's (i.e. non-10A units)*



*P&L account.*

*The above discussion establishes that manner of allocation of expenses between 10A and non-10A units are based on common principles of costing and is reasonable. The appellant is following the basis as provided by Accounting Standards-17 approved by ICAI for apportionment of expenses between different units. In light of above discussion and judicial pronouncements cited by the appellant in its submission, it is held that the allocation of expenses between 10A and non-10A units cannot be disturbed.*

*In view of the discussion made above, it is held that Assessing Officer was not justified in allocating the royalty expenses, management fee expenses, legal and professional expenses, corporate overhead charges, advertisement, publicity and business promotion expenses and meeting and seminar expenses paid by the non- 10A units to the Hewitt Affiliates LLC to the 10A units in proportion to the revenue earned by the units. As discussed above, the royalty is paid to the Hewitt Affiliates LLC as per the clause 3 of the license agreement for the revenue derived from third parties for rendering services. Similarly, the management fee is also paid to Hewitt Affiliates LLC by the consulting division and human resource outsourcing division for utilizing services of various group entities based on their revenue contribution, therefore, these expenses cannot be apportioned to the 10A units which are captive service provider to the Hewitt Affiliates LLC. The corporate overhead charges, advertisement, publicity and business promotion expenses and meeting and seminar expenses have been incurred for non-10A units as consulting division and human resource outsourcing division provides service to the third party and such expenses have been incurred to get more and more business from third parties. Based on these apportionment of the expenses, the disallowance of deduction to the extent of Rs.18,20,51,370A has been*



disallowed by the AO which is not correct and same is deleted.

6. Ground no. 8 is directed against the initiation of penalty u/s 271(1)(c) of the Act. This ground is premature as penalty has not been levied. Therefore, this ground is rejected.

7. Ground no. 9 relates to charging of interest u/s 234B, 234D and 220(2) of the Income Tax Act, 1961. The AO is directed to charge interest u/s 234B, 234D and 220(2) after giving effect to my decision vide ground No. 1 to 7 of this order. Accordingly, this ground of appeal gets disposed of.

8. In the result, appeal is allowed.”

### **ITA 486/2025**

“Decision:

I have considered the submission of the appellant and observation of the Assessing Officer. It is seen that the appellant company has got six units in India out of which three units are non-10A units and remaining three are set up in the area where 10A deductions are available. The details of such unit and net profit disclosed by the appellant are as under:

| Particulars                        | NA/Consult Non 10A Unit          | HISPL 10A Unit                     | HRD Non 10A Unit                      | MPHRO 10A Unit                                 | INL Non 10A Unit                      | Exit 10A Unit                      | Total         |
|------------------------------------|----------------------------------|------------------------------------|---------------------------------------|------------------------------------------------|---------------------------------------|------------------------------------|---------------|
| Nature of Activities               | Providing advice and consultancy | Development of software for Hewitt | Support to the affiliates and clients | HR related services to other Hewitt affiliates | Support to the affiliates and clients | Development of software for Hewitt |               |
| Net receipt including other income | 58,21,71,103                     | 305,04,12,932                      | 25,09,95,920                          | 1,68,32,634                                    | 1,50,76,284                           | 60,44,14,883                       | 443,69,02,546 |
| Total Expenses claimed             | 47,38,08,503                     | 287,98,73,130                      | 25,09,92,118                          | 1,50,28,138                                    | 1,01,65,767                           | 44,55,86,863                       | 388,15,70,530 |
| Profit before tax                  | 10,82,62,600                     | 37,95,34,802                       | 20,00,037                             | 18,03,496                                      | 49,10,497                             | 5,88,17,841                        | 55,58,32,037  |
| Percentage of Profit Loss          | 19.48%                           | 88.26%                             | 0.36%                                 | 0.32%                                          | 0.89%                                 | 10.59%                             |               |

It was observed by the AO that appellant company is showing maximum revenue from services in non-10A units and showing profit in the units wherein deduction u/s 10A is admissible. Accordingly, the Assessing Officer asked the appellant to submit the basis for



*allocation of expenses. The appellant submitted the details of the expenses incurred on 10A units and non-10A units which are as under:*

| Expenses                   | Non 10A units | 10A units  | Total      |
|----------------------------|---------------|------------|------------|
| Royalty                    | 1,085,750     | -          | 1,085,750  |
| Management Fee             | 73,061,290    | -          | 73,061,290 |
| Legal and Professional Fee | 16,070,799    | 53,914,583 | 69,985,382 |

*The Assessing Officer observed that appellant company has allocated three major expenses to the units which are non-10A units and not eligible for deduction u/s 10A. It was also observed by the AO that royalty and management fee have been claimed only in non-10A units whereas all the expenses including legal and professional fee have been incurred by the appellant company as a whole for all the units. The AO came to the conclusion that appellant is reducing income in the units where no deduction u/s 10A of I.T. Act is admissible by debiting expenses under the head Royalty, Management fee and Legal and Professional Fee. Accordingly, Assessing Officer apportioned the expenses under the head Royalty, Management Fee and Legal and Professional Expenses in proportion of the revenue earned by 10A and non-10A units and as a result, deduction u/s 10A to the extent of Rs.7,30,04,275/- was reduced.*

*The appellant submitted that it is engaged in consulting services which entail providing advice and consultancy on various HR related issues to clients located in India and abroad. These services are being provided by the following divisions of the appellant:*

*• Consulting Services ( subsequently referred to as 'HA/ CNS' or 'non-10A unit.') The Consulting Services entail providing advice and consultancy on various HR related issues to clients located in India and abroad. These services are being provided by the following divisions of the Appellant:*



- *Global Sourcing Division, which is engaged, inter alia, in providing services in relation to assessment of talent needs for both corporate and Governments;*

- *Talent and Organization Consultancy Division ('TOC'), which is engaged, inter alia, in the provision of advice or consultancy in relation to development/modification of HR systems and processes, providing assistance in implementation of HR processes and systems and conducting talent landscape studies for various sectors;*

- *Talent and Organization Consultancy Analytics Division ('TOAC'), which is engaged, inter alia, in the provision of advice and consultancy in the nature of designing and supporting the implementation of HR initiatives, developing reward system modules, designing career development programs for employees etc;*

- *Talent and Organization Consultancy (Global Services) Division, which has been specifically carved out to assist other divisions of the Appellant as well as similar divisions of other Hewitt Affiliates in compiling pre-existing data providing consulting services involving data analysis, interpretation support, data processing and support for other related activities etc. and*

• *Payroll Outsourcing Services (subsequently referred to as 'HRO' or 'non-10A unit')*

*These services entail provision for payroll related support to the affiliates and clients. These services are being provided by the following divisions of the appellant:*

- *Human Resource Outsourcing Division ("HRO" and 'INL'), which is primarily engaged in providing payroll processing and payroll related reimbursement services for clients located in India.*

- *Retiral Fund Management Division ('RFM') of the Appellant, which is engaged in providing advisory services in relation to actuarial consulting, design and*



*setting up of mandated and non mandated retirement plans (provident fund, gratuity and Superannuation fund).*

- *Technology Development Centre ('TDC') [subsequently referred to as 'HISPL/HIN' or 'Exult or '10A unit']*

*TDC division is engaged in the development and export of software to Hewitt Affiliates, acting in the capacity of a captive service provider of Consulting and HRO businesses owned by Hewitt Affiliates and is an approved 10A unit.*

- *Business Process Outsourcing Services ('BPO') [subsequently referred to as 'HISPL/ HIN' or 'Exult' or '10A unit']*

*BPO division render, inter alia, support services in relation to pension administration, health management, payroll processing to Hewitt Affiliates for their clients, acting in the capacity of a captive service provider of Consulting and HRO businesses owned by Hewitt Affiliates and is an approved 10A unit.*

*Multi-Process Human Resources Outsourcing Division ('MP HRO'), which is engaged in provision of HR related services to other Hewitt Affiliates in relation to the agreements executed by such Hewitt Affiliates with their clients.*

*In view of appellant's various business division, the appellant has established following cost centre codes (referred to as "cost codes") to record every cost incurred in the accounting system:*

- *Non-10A units (Taxable) cost codes which are directly related to non-10A units;*
  - *10A unit (Non-taxable) cost codes which are directly related to 10A unit; and*
  - *Common cost codes which are common costs incurred with respect to both taxable (i.e.non-10A units) as well as non-taxable divisions (i.e. 10A units).*
- Royalty on third party services:*



*The appellant submitted that as per License Agreement dated 01.10.2002 entered into between the appellant and Hewitt Affiliates LLC, the appellant has been given non-exclusive, perpetual, world-wide, non-assignable license and right to use the intellectual property as per the above license agreement. As per clause 3 of license agreement (i.e. compensation clause), in consideration of grant, of license, the appellant will have to pay the flat royalty fee based upon the gross revenue of the appellant derived from third party. The relevant extract of clause 3 of the agreement dated October 1, 2002 is reproduced hereunder:*

*..... the affiliate shall pay HA a flat royalty fee based upon the gross revenue of affiliate derived from third parties in the relevant fiscal year in accordance with the following revenue ranges:*

| <i>Royalty</i>  | <i>Gross Revenue</i>           |
|-----------------|--------------------------------|
| <i>\$5000</i>   | <i>\$0-\$1,499,000</i>         |
| <i>\$10,000</i> | <i>\$1,500,000-\$2,499,000</i> |
| <i>\$25,000</i> | <i>\$2,500,000</i>             |

*During the course of appellate proceedings, the appellant submitted that since non-10A units (i.e. HA/CNS and HRO) earns revenue from third parties as per the terms of agreement, a royalty as a percentage of net revenue derived from third parties has been paid by these non-10A units to Hewitt Affiliates LLC during the assessment year under consideration. It is also submitted by the appellant that 10A units (HISPL I HIN and EXULT) are captive units and render services to the Hewitt group entities only, therefore, royalty was neither paid nor payable by these captive units to the Hewitt Affiliates LLC. The appellant submitted that royalty amounting to Rs.10,85,750/- computed on the basis of clause 3 of the agreement by the non-10A units is directly related to the revenue earned by non-10A units for rendering of services to the third party and does not relate to 10A units, therefore, the payment of*



*royalty has been accounted for by the appellant in consulting and human resources outsourcing division's profit & loss account. The appellant submitted that these expenses are on actual basis and cannot be allocated to the 10A units as 10A units are captive units for rendering services to the Hewitt Affiliates LLC only, therefore, the Hewitt Affiliates LLC cannot pay royalty to itself.*

*Management Fee payment to the Hewitt Associate LLC for third party services:*

*On the same way appellant had charged management fee to the accounts of consulting division (HA/CNS) and human resources outsourcing division (HRO & INL) which are non-10A units of the appellant. The appellant submitted that as per Regional Headquarter Service Agreement, Hewitt Hong Kong has been designated as Asia Pacific Headquarter and has the responsibility of participating in and making strategic decisions with respect to senior staffing, practice development, key client ; acquisition, and total compensation decisions for consulting division (i.e. HA/CNS) and human resource outsourcing division (i.e. HRO and INL) only.*

*The Asia Pacific headquarters is referred to the cost pool for regional resources who perform activities for more than one local market in their regions (including the appellant) for consulting division (i.e. HA/ CNS) and human resource outsourcing division (i.e. HRO and INL). In other words, these regional resources do not provide services for any captive units (i.e. 10A units). In this regard, the appellant submitted that it is not worthy that these charges were allocated based on actual consumption of related services by the businesses viz. Consulting and HRO division. Software Development Services and BPO Services segment (10A units) are not availing these services. Therefore, apportioning of management fee to the 10A units like software development services and BPO services units*



cannot be made as these units are not availing those services.

The appellant submitted that as per the methodology adopted by the appellant, cost of regional resources serving consulting division (i.e. HA/ CNS) and human resource outsourcing division (i.e. HRO and INL) are first transferred to Asia Pacific Head Quarter. Thereafter, these cost (plus mark-up) are charged to various group entities which are utilizing services of these regional resources (including the appellant) based on their revenue contribution to APAC region from consulting division (i.e. HA/ CNS) and human resource outsourcing division (i.e. HRO and INL).

The appellant submitted that in relation to charge received by the appellant from Hewitt Affiliates LLC under Regional Headquarters Services Agreement, the cost incurred (including mark-up) by Hewitt Affiliates LLC has been charged to Hewitt group companies (including the appellant) based on their revenue from Consulting and human resource outsourcing divisions only (i.e. non-10A units). The same is evident from the description mentioned on the invoices for management fee raised by Hewitt Affiliates LLC on the appellant. The appellant has submitted the invoice raised to the appellant on the basis of revenue earned by the appellant company from third parties, the invoice raised is reproduced hereunder:

| Particulars                                                                                                                         | Amount<br>(in INR) |
|-------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| Invoice # 3222AHQ dated September 12, 2006 for the period September 1, 2005 to August 31, 2006 of USD 762,392.52                    | 35,832,448         |
| Reversal for period Sep 1, 2005 to March 31, 2005                                                                                   | (14,351,418)       |
| Accrual for the period September 1, 2006 to March 31, 2007 on the basis of invoice # 4174AHQ September 14, 2007 of USD 2,042,608.35 | 51,580,260         |
| <b>TOTAL</b>                                                                                                                        | <b>73,061,290</b>  |

A. Invoice # 3222AHQ dated September 12, 2006 for the period 1-09-2005 to 31-08-2006:

*Fees*

|                       |                        |
|-----------------------|------------------------|
| <i>CNS</i>            | <i>US\$ 527,864.50</i> |
| <i>Add. 5% Markup</i> | <i>US\$ 26,393.23</i>  |
| <i>HRO</i>            | <i>US\$ 198,223.61</i> |
| <i>Add. 5% Markup</i> | <i>US\$ 9,911.18</i>   |
| <i>Total</i>          | <i>US\$ 762,392.52</i> |

*On perusal of above, it is seen that only the costs (including mark-up) relating to non-10A units have been invoiced to the appellant. Accordingly, the same has been duly accounted for in non-10A units (consulting and human resource outsourcing) division's P&L Account. The appellant submitted that the terminology used for business segments is common across Hewitt worldwide.*

*B. Invoice # 4174AHQ dated September 14, 2007 for the period 1-09-2006 to 31-08-2007:*

*Fees*

| <i>Invoice</i> | <i>Total Invoice</i> | <i>LOB Markup at 5%</i> | <i>Total</i>             |
|----------------|----------------------|-------------------------|--------------------------|
| <i>TOC</i>     | <i>545,669.62</i>    | <i>27,283.48</i>        | <i>572,953.10</i>        |
| <i>TOAC</i>    | <i>812,617.62</i>    | <i>40,630.88</i>        | <i>853,248.50</i>        |
| <i>RFM</i>     | <i>46,834.30</i>     | <i>2,341.71</i>         | <i>49,176.01</i>         |
| <i>HRO</i>     | <i>540,219.74</i>    | <i>27,010.99</i>        | <i>567,230.73</i>        |
| <i>Total</i>   |                      |                         | <i>US\$ 2,042,608.35</i> |

*As discussed earlier, TOC and TOCA are sub division of Consultancy Division of the appellant and RFM and HRO are sub division of Payroll Outsourcing Division. The brief description of these division is explained below:*

- Talent and Organization Consultancy Division ('TOC'), which is engaged, inter alia, in the provision of advice or consultancy in relation to development/modification of HR systems and processes, providing assistance in implementation of HR processes and systems and conducting talent landscape studies for various sectors;*
- Talent and Organization Consultancy Analytics Division ('TOAC'), which is engaged, inter alia, in the provision of advice and consultancy in the nature of*



*designing and supporting the implementation of HR initiatives, developing reward system modules, designing career development programs for employees etc; and*

*- Human Resource Outsourcing Division ('HRO' and 'INL'), which is primarily engaged in providing payroll processing and payroll related reimbursement services for clients located in India.*

*- Retiral Fund Management Division ('RFM') of the Appellant, which is engaged in providing advisory services in relation to actuarial consulting, design and setting up of mandated and non mandated retirement plans (provident fund, gratuity and Superannuation fund).*

*On perusal of above descriptions, it is seen that only the costs (including mark-up) relating to consulting (TOC and TOAC) and human resource outsourcing (HRO and RFM) from Asia Pacific Headquarter divisions have been invoiced to the appellant. Accordingly, the same has been duly accounted for in consulting division's P&L Account. The appellant submitted that the terminology used for business segments is common across Hewitt worldwide.*

*It was submitted by the appellant that the charge made by Hewitt Affiliates LLC to the appellant under Regional Headquarters Services Agreement has been calculated after considering revenue from Consulting division (i.e. HA/ CNS) and Human Resource Outsourcing division (i.e. HRO and INL) only and no revenue of captive unit(s) (i.e. 10A units) has been considered for calculating charge under Regional Headquarters Services Agreement. The expenses accounted on actual basis cannot be allocated to 10A units.*

*It. was submitted by the appellant that under Regional Business Service Agreement, charge amounting to Rs.73,061,290 has been made to the appellant for consulting and human resource outsourcing division*



*(i.e. HA/ CNS and HRO/INL) only and therefore, has been duly accounted for in consulting and human resource outsourcing division's P&L Account.*

*Allocation of Legal and Professional Expenses to Consulting Division (HA/CNS) and Human Resource Outsourcing Division (HRO and INL) i.e. non-10A units of the appellant:*

*The appellant submitted that expenses are accounted for on actual basis. The appellant further submitted that total expenditure of Rs.6,99,85,598/- under the head legal and professional services have been incurred. Out of that an amount of Rs.5,39,14,583/- has been debited to 10A units which is 77.04% of the total expenditure. This shows that expenditure has been accounted for on actual basis and no further allocation can be made to 10A units.*

*The appellant further submitted that to carry out its consulting projects, among other things, the consulting division and human resource division have hired independent consultants and avails consulting services from its group companies. In the process of rendering services by the consulting division and human resource division, appellant take services of independent consultants for rendering services for consulting projects and it also take help of the group companies for rendering consultancy services for the projects.*

*The appellant submitted that to carry out its business under consulting division (i.e. HA/CNS) and human resource outsourcing division (i.e. HRO and INL), the appellant engages independent consultants having experience in the human resource field on project to project basis. For this, the appellant has filed copies of invoices of independent consultants in its paper book at page # 81-97 on sample basis.*

*On perusal of these invoices from independent consultants, it is seen that independent consultants have rendered services to the appellant for following projects during the year under consideration:*



- \* *Development Centre for Cadbury at Lonavala –*
- \* *Development centre for KSB.*
- \* *Development centre and presentation (manpower)*
- \* *Development centre for Honda*
- \* *Survey at HCL BPO*
- \* *Reliance - Mentoring workshops*
- \* *VSNL - Role competency mapping*
- \* *Development centre for STML*
- \* *Development centre for HLL*
- \* *Microland (Role descriptions & competencies)*
- Project management*
- \* *Shyam telecom development centre*

*The above description of invoices shows that these independent consultants were hired to deliver client project as and when required. They performed on client projects which are not related to captive units of the appellant and accordingly these invoices have been raised by Independent Consultants for various Consultancy/Human Resources projects (i.e. non-10A division).*

*Therefore, these expenses are directly related to consulting division (i.e. HA/CNS) and human resource outsourcing division (i.e. HRO and INL) and have been duly accounted for in consulting division and human resource outsourcing division's (i.e. non-10A units) P&L account.*

*Fees paid to group companies for rendering consulting services*

*The appellant has also taken services of group companies to carry out its business under consulting division (i.e. HA/CNS) and human resource outsourcing division (i.e. HRO and INL) on project to project basis. The copies of invoices received from group companies are enclosed in the paper book page # 98-117 on sample basis.*

*On perusal of these invoices raised by group companies, it is seen that group companies have rendered services to the appellant for its consulting*



*and human resource outsourcing division during the year under consideration for following projects:*

*\* Kimberly Clark Market Pricing 2006: Compensation Benchmarking Study benchmarks salary structures for different level in comparison to the competitors in industry of the client of the assessee. It helps in determining the appropriate level of compensation for executives;*

*\* Job Pricing for Philips Semiconductor. Compensation Benchmarking Study benchmarks salary structures for different level in comparison to the competitors in industry of the client of the assessee. It helps in determining the appropriate level of compensation for executives;*

*\* Work on the Caltex Survey. Compensation Benchmarking Study benchmarks salary structures for different level in comparison to the competitors in industry of the client of the assessee. It helps in determining the appropriate level of compensation for executives;*

*\* Leadership coaching - Reliance Industries Ltd: Assessing the leadership skills, behavior and competencies of the leaders and analyzing the requirement for appropriate coaching, conducting executive coaching for leaders of client.*

*From above description of invoices mentioned above, it is evident that these invoices have been raised by group companies for various Consultancy/ Human Resources projects done by the appellant company for third parties during the year (i.e. non-10A division).*

*Accordingly, these expenses are directly related to consulting division (i.e. HA/CNS) and human resource outsourcing division (i.e. HRO and INL) and have been duly accounted for in consulting division and human resource outsourcing division's (i.e. non-10A units) P&L account.*

*In view of the above, it is seen that legal and professional fee directly related to consulting division*



*and human resource outsourcing division has been duly accounted for in consulting and human resource outsourcing division's P&L Account (i.e. non-10A units). Therefore, these expenses cannot be apportioned to the 10A units over and above the expenses under the head legal and professional expenses actually related to the 10A units. It is seen that out of the total legal & professional fee of Rs.69,985,382/-, expenses of Rs.53,914,799/- debited in 10A units (77.04%) and only Rs.16,070,799/- debited to in non-10A divisions (22.96%), therefore, the Assessing Officer was not justified in further allocating the legal and professional expenses to the 10A units.*

*The above discussion establishes that manner of allocation of expenses between 10A and non-10A units is based on common principles of costing and is reasonable. The appellant is following the basis as provided by Accounting Standards-17 approved by ICAI for apportionment of expenses between different units. In light of above discussion and judicial pronouncements mentioned above, it is held that the allocation of expenses between 10A and non-10A units cannot be disturbed.*

*In view of the discussion made above, it is held that Assessing Officer was not justified in allocating the royalty expenses, management fee expenses paid by the non-10A units to the Hewitt Affiliates LLC to the 10A units in proportion to the revenue earned by the units. The Assessing Officer was also not justified in further allocating the legal and professional expenses to 10A units over and above the expenses already incurred by such units. As discussed above, the royalty is paid to the Hewitt Affiliates LLC as per the clause 3 of the license agreement for the revenue derived from third parties for rendering services. Similarly, the management fee is also paid to Hewitt Affiliates LLC by the consulting division and human resource outsourcing division for utilizing services of various*



*group entities based on their revenue contribution, therefore, these expenses cannot be apportioned to the 10A units which are captive service provider to the Hewitt Affiliates LLC. Based on these apportionment of the expenses, the deduction to the extent of Rs.7,30,04,275/- has been disallowed by the AO which is not correct and same is deleted.*

*6. Ground no.8: The appellant has contended that Assessing Officer had allowed short credit of tax to the extent of Rs.12,45,26,560/-. In the original assessment order passed on 31.10.2011, the Assessing Officer had allowed credit of Rs.14,19,58,414/-. However, in the assessment order passed u/s 143(3) read with Section 263, the Assessing Officer has allowed credit of Rs.1,74,31,854/-. The appellant has contended that the Assessing Officer has not allowed full credit of the tax paid. Assessing Officer is directed to allow credit of the tax already paid by the appellant as per law after verification of the records.*

*7. Ground no. 9 is directed against the initiation of penalty u/s 271(1)(c) of the Act. This ground is premature as penalty has not been levied. Therefore, this ground is rejected.*

*8. Ground no. 10 relates to charging of interest u/s 234B and C. The AO is directed to charge interest u/s 234B and C after giving effect to my decision vide ground No. 1 to 7 of this order. Accordingly, this ground of appeal gets disposed of.*

*9. In the result, appeal is allowed."*

22. Having seen the findings drawn by the CIT (Appeals) in both the appeals for different AYs. In paragraph 9, the ITAT agrees with the findings of the CIT (Appeals). We agree with the conclusion drawn by the ITAT in the impugned orders. Mr. Vohra is justified in submitting that the findings of the CIT (Appeals) as upheld by the ITAT is not perverse. There is some basis for the CIT (Appeals) to arrive at the conclusion as it has done in its



order.

23. Having heard the learned counsel for the parties at length, we are of the view that the proposed questions of law do not arise for consideration in the facts of this case. The judgments relied upon by Mr Rai, as noted by us in paragraph 14 above, are clearly distinguishable.

24. That apart, we find that the allocation as made by the respondent/assessee in the years 2004-05, 2005-06, 2006-07 and 2009-10 have been accepted by the appellant/Revenue.

25. As such, the present appeals are dismissed. The pending applications are also disposed of as having been become infructuous.

**V. KAMESWAR RAO, J**

**VINOD KUMAR, J**

**NOVEMBER 24, 2025/sr**