

**HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
&
HON'BLE SRI JUSTICE T.AMARNATH GOUD**

I.T.T.A.No.374 of 2019

JUDGMENT: *(Per MSR,J)*

This appeal is filed under Section 260-A of the Income Tax Act, 1961 challenging the order dt.15-02-2019 in I.T.A.No.2022/Hyd/2017 of the Income Tax Appellate Tribunal, Hyderabad Bench-A, Hyderabad in relation to the respondent-assessee for the year 2013-14.

2. The respondent-company is engaged in the business of manufacturing high performance flexible disc coupling for application in critical turbo machinery.

3. It filed its return of income for the assessment year 2013-14 on 21-09-2013 declaring an income of Rs.54,15,52,720/- and showed book profit of Rs.54,28,24,910/-.

4. During the assessment proceedings under Section 143 (3) of the Income Tax Act, 1961, the Assessment Officer (A.O.) observed that the assessee has entered into international transactions with its A.E. and that the determination of arm's length price of the international transaction was referred to Transfer Pricing Officer (TPO); and the TPO vide proceedings dt.31-10-2016, proposed adjustment of Rs.2,72,47,432/- on account of royalty payment. He held that the assessee has failed to prove the benefit obtained by him by use of latest technology.

5. In accordance with the proposed adjustment, the A.O. passed the draft assessment order and the assessee preferred its objections before the D.R.T.

6. The D.R.T. confirmed the T.P.O's order and in accordance therewith, the final assessment order was passed.

7. The assessee then filed the appeal before the Tribunal.

8. It was contended before the Tribunal by the assessee that the issue of determination of the royalty payment at Rs.nil by using the benefit test was considered by the Coordinate Bench of the Tribunal in the case of **M/s.Toyota Kirloskar Auto Parts Pvt Ltd. v. ACIT**¹ and the Tribunal, in that case, had followed other decisions of the Delhi High Court and observed that the benefit test cannot be adopted and the royalty payment cannot be determined at Rs.nil. Other decisions were also relied upon. It was contended that the adjustment made in the final assessment order must be deleted. The department representative however supported the orders of the Court below.

9. By order dt.15-02-2019, the Tribunal gave a finding that the respondent-assessee has used the technologies supplied by its A.E. in its manufacturing process and for such use of technology, it has paid the royalty. It then referred to decisions of the Coordinate Bench of the Tribunal at Bangalore. In a similar case, the Tribunal had remitted the issue to the file of the A.O. to determinate the arm's length price of royalty by adopting TNMM after giving fair opportunity for hearing. Thus, the Tribunal has only remitted the matter back to the file of AO/TPO and did not adjudicate anything in the appeal and it allowed the appeal only for statistical purpose.

¹ 2015 (1) TMI 921

10. In these circumstances, we are not inclined to admit this appeal since after the remand order passed by the Tribunal, the matter will again be gone into as per its directions and fresh assessment would be made after complying the principles of natural justice.

11. Accordingly, the appeal fails and is dismissed. No costs.

12. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE T.AMARNATH GOUD

Date: 29-01-2020
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