IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.126 OF 2023
(ASSESSMENT YEAR 2015-2016)

Cummins India Limited)
having its registered office address at)
Tower A, 5th floor, Cummins India)
Office Campus, Balewadi,)
Pune 411 045) ..Appellant

Vs.

Assistant Commissioner of Income)
Tax, Circle-1(1), Pune)
Income Tax Office, PMT Building,)
Shankar Seth Road, Swargate,)
Pune Maharashtra 411 037) ..Respondent

WITH
INCOME TAX APPEAL (L) NO.40246 OF 2022
(ASSESSMENT YEAR 2016-2017)
WITH
INCOME TAX APPEAL NO.125 OF 2023
(ASSESSMENT YEAR 2017-2018)

Cummins India Limited)
having its registered office address at)
Tower A, 5th floor, Cummins India)
Office Campus, Balewadi,)
Pune 411 045) ..Appellant

Vs.

1.Additional / Joint / Deputy/)
Assistant Commissioner of Income)
Tax/ Income Tax Officer,)
National Faceless Assessment,)
Centre, Delhi)

2.Assistant Commissioner of Income)
Tax, Circle-1(1), Pune)
Income Tax Office, PMT Building,)
Shankar Seth Road, Swargate,)
Pune Maharashtra 411 037) ..Respondents

Mr. J. D. Mistri, Senior Advocate i/b Mr. Jitendra Singh for Appellant in all the appeals.
Mr. Suresh Kumar for Respondents in all the appeals.

CORAM : K.R. SHRIRAM &
FIRDOSH. P. POONIWALLA, JJ
DATED : 28th JULY 2023

(ORAL JUDGMENT PER K. R. SHRIRAM J.)

1 These appeals are filed by Assessee under Section 260A of the Income Tax Act 1961 (the Act) against the order dated 28th September 2022 passed by the Income Tax Appellate Tribunal (ITAT) for A.Y.2015-2016, 2016-2017 and 2017-2018. The issue is in respect of transfer pricing adjustments. The appeals were admitted on 11th April 2023 and in the three appeals, the following three questions of law were framed:-

> *"(i) Whether the Appellate Tribunal has erred in law in passing the order dated 28th September 2022 directly contrary to the view taken by the Appellate Tribunal in Appellant's own case for earlier assessment years on identical facts and law without referring the issue to a Special (Full) Bench in the event that it wished to differ from the view taken by a co-ordinate Bench of the Tribunal ?*
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> *(ii) Whether the order dated 28th September 2022 passed by the Appellate Tribunal is bad in law as the same is passed ignoring the fact that on the very same transaction the department has accepted the methodology applied by the Appellate for benchmarking the transactions for transfer pricing purposes in seven (7) earlier years in view of inter alia binding order of the Tribunal ?*
>
> *(iii) Whether in the facts and in the circumstances of the case and in law the Tribunal erred in passing the impugned order dated 28th September 2022 purporting to rely on decision of Delhi High Court in the case of Magneti Marelli Power Train India P. Ltd. Vs. Deputy Commissioner of Income-tax which ex-facie did not support and was in fact contrary to the view set out in the impugned order ?"*

2 Assessee is engaged in the business of manufacture and sale of Internal Combustion Engines, Spares, Components (including Bought-Outs)

thereof & Generating Sets, service of Engines & Gensets / Generating Sets & Allied Equipment, etc. Assessee also has a 100% Export Oriented Unit at Pirangut which is engaged in manufacture and exports of internal combustion engines and its accessories and generating sets and accessories. The returns filed by Assessee was selected for scrutiny assessment by issuing statutory notices under section 143(2) and section 142(1) of the Act. During the years under consideration, Assessee had entered into various international transactions with its Associated Enterprise(s) in the course of its business. Assessee had paid royalty amounting to Rs.54,30,69,318/- for A.Y.2015-2016, Rs.46,99,15,361/- for A.Y.2016-2017 and Rs.51,26,51,778/- for A.Y. 2017-2018 to its Associated Enterprise, i.e., Cummins Inc. for providing technical know how and technical knowledge for manufacturing of engines to be sold to the customers.

For A.Y.-2015-16 Assessee filed its return of income on 30th November 2015 declaring total income of Rs.3,83,80,77,530/-. For A.Y. 2016-2017 Assessee filed its return of income on 30th November 2016 declaring total income of Rs.4,10,59,82,510/-, and for A.Y. 2017-2018 Assessee filed its return of income on 30th November 2017 declaring total income of Rs.4,98,57,18,870/-. The returns filed by Assessee were processed and accepted under the provisions of Section 143(1) of the Act.

3 Assessee's case was taken up for scrutiny and statutory notices under Section 143(1) and Section 142(1) of the Act were issued during the course of assessment proceedings. Respondent No.1 made a reference under

section 92CA (1) of the Act to the Transfer Pricing Officer, Pune (TPO) to determine the arm's length price (ALP) of the international transactions with the Associated Enterprise(s) of Assessee. The TPO issued a notice calling upon Assessee to produce relevant evidence supporting the computation of ALP in relation to the international transactions and specified domestic transactions. Assessee furnished all the relevant details / evidence as called for by the TPO. Assessee, in response to one of the points raised relating to royalty paid to Cummins (Inc.), explained that for the use of technology received from Cummins (Inc.) it has paid royalty on the sale of the certain types of internal combustion (IC) engines covered by the technology so provided. Assessee also provided copies of agreements entered into with its Associated Enterprise and explained that the agreement that was in force for royalty, was an agreement dated 16th September 2010. Assessee also explained to the TPO that for bench marking of royalty transaction it has aggregated the royalty paid with other transactions relating to manufacturing of IC engines as these transactions are closely linked transactions.

4 TPO issued a notice under section 92C(3) of the Act wherein aggregation of royalty transactions with other transactions at the entity level was doubted and directed Assessee to show cause why the royalty rate used for domestic sales should not be used for benchmarking the royalty on export transactions as well. Assessee submitted its reply and even explained, inter alia to the TPO as under:

(a) Assessee is relying on its Associated Enterprise for various kinds of technical knowledge and knowhow received from time to time in order to manufacture and sell the engines to its customers.

(b) It had received technology updates and technical assistance in earlier years as well as in the relevant assessment year.

(c) For the purposes of benchmarking, it had aggregated the payment of royalty along with other international transactions of manufacturing activity. As the use of technology and consequential payment of royalties are closely linked to the manufacturing activity of Assessee, it was aggregated for the purposes of benchmarking. The manufacturing segment benchmarked using the Transactional Net Margin Method [the TNMM] and selecting external comparable companies. Basis the said benchmarking analysis, Assessee contended that the international transactions undertaken by it, including the transaction of payment of royalty, are at arm's length.

(d) Assessee also brought to the notice of TPO that in its own case for various assessment years, i.e., Assessment Years 2006-07 to 2011-2012, the Appellate Tribunal has upheld the principles of aggregation followed by Assessee for benchmarking the international transactions of manufacturing activity. Assessee also furnished copies of order passed by the Income Tax Appellate Tribunal in its own case before the TPO.

(e) Specific reference was made to the fact that the approach followed by the Company for payment of royalty was also accepted by the

erstwhile TPOs for the previous assessment years.

(f) Assessee on the basis of above submissions requested the TPO to accept the aggregation approach followed by it to benchmark the impugned transaction of payment of royalty as the same is closely linked with manufacturing activity of Assessee.

(g) Royalty was paid at the rate of 1%, 2%, 2.5% and 5% for domestic sales and 4% and 8% for export sales. A detailed calculation of royalty was also provided.

5 TPO passed an order under Section 92CA(3) of the Act, wherein TPO has accepted Assessee's contention for aggregation of transaction and application of the TNMM to test the ALP of most of Assessee's international transaction. Insofar as the payment of royalty made by Assessee to its Associated Enterprise is concerned, the TPO, after accepting the fact that Assessee had indeed received technology of its Associated Enterprise, rejected the contention of Assessee of aggregating the royalty paid with the other international transactions in the manufacturing segment for benchmarking the same, and made upward adjustment to the value of international transaction pertaining to payment of royalty on export sales. TPO had his own reasons for making this upward adjustment, some of which are as under:

(a) for a related party transaction or the related party closely linked transactions to be benchmarked correctly, their value should form a substantial part of the transactions being analyzed together as a group.

(b) In order to determine the most precise approximation of arm's length conditions, the arm's length principle should be applied on a transaction-by transaction basis unless the transactions are closely related. Transactions are said to be closely related when decision of price of one product service depends on the price of another product or service. In the case of Assessee, the royalty transactions do not in any manner impact or influence the pricing of the sale price or other transactions in the manufacturing segment. Therefore, aggregation of royalty in such situation would be incorrect.

(c) The TPO also rejected the contention of Assessee that the royalty transaction should be aggregated with other transactions and benchmarked with the overall TNMM margin and proposed separate benchmarking of the same. While doing so, the TPO referred to various decisions of the Courts and the Appellate Tribunal as set out in his order.

(d) The TPO refused to follow the order passed by the Appellate Tribunal in earlier years allowing the aggregation of various transactions by observing that on perusal of the said Appellate Tribunal orders, it is observed that Appellate Tribunal has opined on aggregation of Associated Enterprise and Non-Associated Enterprise segment for the manufacturing activity in those particular years. Aggregation of royalty with other transactions was not an issue being discussed in the Appellate Tribunal orders. Therefore, referring to the Appellate Tribunal Orders in the present facts would be incorrect.

(e) The TPO held that the most appropriate method for benchmarking of the royalty transaction is either the CUP method/other Method.

(f) Since the same technology was being received and applied for various products that are sold in domestic as well as export markets the rate of royalty should also be similar and in line with uncontrolled transaction. When actual bifurcation of royalty on domestic and export market is available then effective rate should be calculated at overall domestic and export segment level.

Accordingly, the TPO passed the draft assessment order under Section 143(3) read with Section 144C of the Act incorporating the upward adjustment.

6 Assessee filed the detailed objections before the Dispute Resolution Panel-3, Mumbai (DRP). DRP issued its directions under Section 144(5) rejecting Assessee's contentions and held that the transactions of royalty payment of export sales is to be segregated and benchmarked on a transaction-by-transaction basis as was done by the TPO. Following the directions of DRP, respondent passed the final assessment order under Section 143(3) read with Section 144C(13) of the Act making transfer pricing adjustment on the transfer pricing.

7 Aggrieved by the final assessment order, Assessee preferred an appeal before the Income Tax Appellate Tribunal (ITAT). ITAT upheld the action of the authorities below in making that transfer price adjustment to the international transaction of payment of royalty and held as under:

(a) the international transaction of payment of royalty is not inextricably linked with the other international transactions in the manufacturing segment;

(b) the TPO, in the case of Assessee has, after rejecting Assessee's aggregation approach, resorted to the ALP determination of royalty payment transaction separately under the TNMM only;

(c) the facts of the case of Assessee are similar to those in the case of ***Magneti Marelli Powertrain India (P.) Ltd. Vs. Deputy Commissioner of Income Tax*** [1] and held that international transaction of payment of royalty by Assessee for use of technical support cannot be clubbed with other international transactions under the manufacturing segment;

(d) rejected the reliance placed by Assessee on the order of the Appellate Tribunal in its own case for the Assessment Year 2006-2007 on the ground that the Appellate Tribunal had rendered its decision in context of an earlier agreement under which the royalty was paid;

(e) the judgment in the case of ***Knorr-Bremse India (P.) Ltd. Vs. ACIT*** [2] was delivered prior to the Appellate Tribunal order for the Assessment Year 2006-07, but it was not brought to the notice of the Bench.

Aggrieved by this finding the present appeals have been filed.

8 Mr. Mistri submitted as under:

(a) The Tribunal was not justified in rejecting the contention of Assessee with respect to aggregation approach of royalty payment with

1. (2016) 389 ITR 8 469 (delhi)
2. (2016) 380 ITR 307 (P & H)

other international transaction in the manufacturing segment for determining the ALP activity carried on by Assessee.

(b) Assessee had paid royalty to its Associated Enterprise in its earlier Assessment Year 2006-07 under an identical agreement. The Tribunal vide its order dated 3rd March 2017 for Assessment Year 2006-07 has held that the transaction of payment of royalty for use of technology is inextricably linked with manufacturing activity and should be aggregated with other international transactions in the manufacturing segment for the purposes of benchmarking the same. Thereafter, the TPO has accepted the action of Assessee in aggregating the international transaction of payment of royalty with other international transactions in the manufacturing segment and not drawn any adverse inferences in respect of such aggregation of royalty payment under identical agreement and in fact, in a majority of the years, from the Assessment Year 2007-08 up to the Assessment Year 2014-15 under the very same agreement. The TPO accepted the aforesaid after thoroughly scrutinising the international transactions entered into by Assessee, the transfer pricing report obtained and the transfer pricing documentation maintained by Assessee.

(c) Assessee had also paid royalty to its Associated Enterprise in the earlier Assessment Years 2007-08 to 2014-15, under an identical / the same agreement and had aggregated the international transaction of payment of royalty with the other international transactions under the manufacturing segment, to benchmark the payment of royalty and the said aggregation

approach adopted by Assessee was not disputed by the TPO in any of those years and hence the impugned order is in violation of judicial discipline.

(d) It is settled law that unless there is change in material facts the department is bound by the previous decision. In Assessee's case also, there is no difference in material facts from the Assessment Year 2006-07 to the year under consideration, i.e., Assessment Year 2015-16 or Assessment Year 2016-2017 or Assessment Year 2017-2018. Hence, the Tribunal is not justified in taking a different view.

(e) The Tribunal was wrong in concluding that the agreement under which Assessee has paid the royalty is different from the agreement considered by the co-ordinate bench of the Tribunal in the Assessment Year 2006-07. The TPO or DRP has not even whispered or mentioned in their order(s) about the facts being different from the earlier years. Only during the hearing before the Tribunal, the DR raised a completely different and new argument and the Tribunal has accepted the same without even verifying the agreements available on record.

(f) The royalty agreement for the year under consideration was identical to the earlier agreement.

(g) The Tribunal failed to appreciate that the TPO himself has after the date of the new agreement, i.e., after 16th September 2010 and from the Assessment Year 2011-12 up to the Assessment Year 2014-15 accepted the benchmarking of the international transaction of payment of royalty under the aggregation approach along with transactions of the manufacturing

segment. Hence, the Tribunal was not justified in taking a different view.

(h) The Tribunal has distinguished its decision in the case of Assessee for the Assessment Year 2006-07 seeking to rely on the decision of the Punjab & Haryana High Court in the case of *Knorr-Bremse India (P.) Ltd.* (supra). While doing so the Tribunal has ignored the test laid down by the Delhi High Court on the subject vis-à-vis the principles of aggregation applied by the co-ordinate Bench of the Tribunal in Assessee's own case for the earlier Assessment Years and the Tribunal has reached a conclusion that the transaction of payment of royalty is closely linked to the other international transactions under the manufacturing segment.

(i) The Tribunal has wrongly applied the decision of the Delhi High Court in the case of *Magneti Marelli* (supra) without appreciating that the facts of Assessee's case is different from the facts *Magneti Marelli* (supra). In that case, the Court had specifically held that the "lower authorities quite correctly turned down the method of explaining the justification of the technical fee-with 'proof' of its necessity by relying on profits", and it is for this reason that the Delhi High Court affirmed the remit directed by the Tribunal in that case. In the case at hand, the TPO himself has stated that he is not disputing the fact that Assessee has received technology from its Associated Enterprise for which it is making the payment of royalty. Therefore, the Tribunal could not have relied on the decision in *Magneti Marelli* (supra).

(j) Delhi High Court in *Magneti Marelli* (supra) held that the Tribunal

was right in holding that royalty and technical assistance fee did not form part of a composite transaction and have to be treated as two separate transactions for the purpose of benchmarking and computing the ALP because in that case, Assessee was unable to explain why the payment for technical assistance was made when the royalty had already been paid. Therefore, the facts in that case were different from the case at hand.

(k) At the same time, Delhi High Court in *Magneti Marelli* (supra) has held that once the TPO accepted TNMM method applied by Assessee, as the most appropriate method in respect of all the international transactions including payment of royalty, it was not open to the TPO to subject only one element, i.e payment of technical assistance fee, to an entirely different Comparable Uncontrolled Price (CUP) method. The adoption of the method as the most appropriate one assures the applicability of one standard or criteria to judge an international transaction by each method is a package in itself, as it were, containing the necessary elements that are to be used as filters to judge the soundness of the international transaction in an ALP fixing exercise.

(l) The TPO has accepted the transactions to be part of manufacturing activity and approved TNMM as the transfer price method but out of 14 only one item, payment of royalty for consideration of technology, was segregated which is not permissible.

9 Mr. Suresh Kumar submitted as under:

(a) The TPO has not disputed the fact the Assessee has received

technology. The TPO has also accepted and acknowledged that Assessee has used the TNMM method as the most appropriate method to benchmark its international transactions all under the manufacturing activity which included the royalty that it has paid on the export sales as well. But the transaction of royalty and other international transactions of Assessee are interlinked is not acceptable because the transaction of payment of royalty on exports is Rs. 46.16 crore which is only 2.7% of the total turnover of the company of Rs. 1654 crore with which it has been aggregated and then benchmarked.

(b) For a related party transaction or the related party closely linked transactions to be benchmarked correctly, their value should form a substantial part of the transactions being analyzed together as a group. In absence of the same, profitability from other unrelated transactions subsumes the profit/ loss from the related party transactions being analyzed and examination of the profit at a very broad level masks the ALP of the related party transaction and does not lead to correct determination of its ALP.

(c) Hence, in order to determine the most precise approximation of arm's length conditions, the arm's length principle should be applied on a transaction-by- transaction basis unless the transactions are closely related. Transactions are said to be closely related when decision of price of one product or service depends on the price of another product or service. For example, in the portfolio approach if Assessee demonstrates that original

equipment (e.g.printer) is priced cheaper so that more revenue can be generated from sale of consumables (e.g. ink cartridges), they can be aggregated. In the case of Assessee, the royalty transactions do not in any manner impact or influence the pricing of the sale price or other transactions in the manufacturing segment. Therefore, aggregation of royalty in such situation would be incorrect.

(d) In assessee's own case for earlier years, the Pune ITAT has allowed and considered the aggregation of various Income transactions. In this regard, on perusal of the said ITAT's order, it is observed that the ITAT has opined on aggregation of Associated Enterprise and Non Associated Enterprise segment for the manufacturing activity in those particular years. Aggregation of royalty with other transactions was not an issue being discussed in the ITAT order. Therefore, referring to the Pune ITAT Order in the present facts would be incorrect.

(e) Considering the above, the contentions of Assessee that the royalty transaction should be aggregated with other transactions and benchmarked with the overall TNMM margin is not accepted and separate benchmarking of the same is proposed to be done.

(f) Assessee is making royalty payment based on various rates ranging between 1% to 5% in the domestic market and 4% to 8% on the export sales. With respect to the domestic sales, maximum sales are with respect to product on which rate of royalty is 1% (more than 90%) , whereas in case of exports maximum amount of sales are on royalty rate of 8% (nearly 99%).

There is no difference in technology supplied by Cummins Inc. which is used for manufacturing the product meant for sale in domestic market and foreign market and, therefore, Assessee paid the royalty on goods meant for sale to its associate Enterprise at higher rate so as to reduce its income and consequential tax instances in India. Therefore, segregating the royalty on domestic sale and exports for the separate benchmarking by the TPO was correct.

(g) Merely because payment of royalty for use of technical support leads to manufacture of final product, it does not follow that they both are dependent or closely-linked transactions. In such circumstances, the ALP of the international transaction of payment of royalty for use of technology cannot be aggregated with others.

(h) In *Magneti Marelli* (supra), Delhi High Court accepted that royalty and technical assistance fee did not form part of a composite transaction and have to be treated as two separate transactions for the purpose of benchmarking and computing the ALP and answered against Assessee. The court had affirmed the view of the Tribunal that aggregation of transaction of payment of technical fees with other international transactions under the common TNMM was not correct.

(i) Even in *Magneti Marelli* (Supra) the court did not approve clubbing payment of technical fees with other transactions under the manufacturing segment.

(j) Though the Tribunal in Assessee's own case for Assessment Year

2006-2007 and some of the later years in which the contention of the asseessee for aggregation of payment of royalty with other international transactions under the manufacturing segment came to be accepted, the decision of the Tribunal was rendered in the context of an earlier agreement under which the royalty was paid. Assessee, however, has entered into a new agreement on 16th September 2010 with Cummins Inc. under which the technical support was received for which payment of royalty was made by Assessee for the year under consideration. The terms and conditions were different and the new agreement was not subject of consideration before the Tribunal for Assessment Year 2006-2007. Sections 92, 92-C, 92-D and 92-E of the Act read with Rule 10-B and 10-D of the Income Tax Rules indicate the approach of the TPO tasked with the obligation to discern, if in a given set of circumstances, Assessee has disclosed international transactions was entered into with Associate Enterprise. These TP reports should be factually correct and Assessee has to satisfy the queries of the TPO. Section 92-C of the Act underlines that the method appropriate to the transaction, amongst the four specified ones, is to be applied.

OUR CONCLUSIONS:-

10 In our view, the Tribunal has entirely misread the law as laid down in *Magneti Marelli* (Supra). It is correct that in that case also Assessee had paid royalty to its associate Enterprise for use of technical support for manufacturing its product and the court held that royalty and technical assistance fee did not form part of a composite transaction and have to be

treated as two separate transactions for the purpose of benchmarking and computing the ALP because Assessee had paid the royalty and separately technical assistance fees. During the transfer pricing proceedings, Assessee was unable to substantiate the need for payment of technical assistance fees to its foreign associate Enterprise and the TPO had observed that Assessee did not undertake any cost benefit analysis or any benchmarking exercise at the time of entering into the agreement. The court observed that the initial burden is upon Assessee to prove that the international transaction was at ALP but Assessee was unable to explain why he had paid technical assistance fee which did not form part of composite transaction. But in the case at hand, the assessing officer has accepted that Assessee had received technology from Cummins Inc. - Associate Enterprise and the rate of royalty payment was made on exports. The TPO has also accepted that Assessee has used the TNMM method as the most appropriate method to benchmark its international transactions under the manufacturing activity including royalty that it had paid on the export sales as well. The TPO has accepted the TNMM method as the most appropriate method to benchmark Assessee's international transactions under the manufacturing activity but decided to separately benchmark the royalty. This is what has been held not permissible (and we respectfully agree with this view) in *Magneti Marelli* (supra), where paragraph 16 reads as under:

> *"16. As far as the second question is concerned, the TPO accepted TNMM applied by the assessee, as the most appropriate method in respect of all the international transactions including payment of royalty. The TPO, however, disputed application of TNMM as the most*

> *appropriate method for the payment of technical assistance fee of ` 38,58,80,000 only for which Comparable Uncontrolled Price ("CUP") method was sought to be applied. Here, this court concurs with the assessee that having accepted the TNMM as the most appropriate, it was not open to the TPO to subject only one element, i.e payment of technical assistance fee, to an entirely different (CUP) method. The adoption of a method as the most appropriate one assures the applicability of one standard or criteria to judge an international transaction by each method is a package in itself, as it were, containing the necessary elements that are to be used as filters to judge the soundness of the international transaction in an ALP fixing exercise. If this were to be disturbed, the end result would be distorted and within one ALP determination for a year, two or even five methods can be adopted. This would spell chaos and be detrimental to the interests of both the assessee and the revenue. The second question is, therefore, answered in favour of the assessee; the TNMM had to be applied by the TPO/AO in respect of the technical fee payment too.*
>
> *(emphasis supplied)*

11 Therefore, the TPO having accepted that TNMM method applied by Assessee was the most appropriate method in respect of all the international transactions including payment of royalty cannot dispute application of TNMM method as the most appropriate method for the payment of royalty only for which CUP method was sought to be applied. We would concur with Mr. Mistri that having accepted the TNMM method as the most appropriate, it was not open to the TPO to subject only one element, i.e, payment of royalty, to an entirely different CUP method. The adoption of a method as the most appropriate one assures the applicability of one standard or criteria to judge an international transaction. Each method is a package in itself, as it were, containing the necessary elements that are to be used as filters to judge the soundness of the international transaction in an ALP fixing exercise. If this were to be disturbed, the end result would be distorted and within one ALP determination for a year, two or even five

methods can be adopted. This would spell chaos and be detrimental to the interests of both Assessee and the revenue.

12 Further the Tribunal was totally incorrect in saying that accepting aggregation of royalty payment with other international transactions under the manufacturing segment for the Assessment Year 2006-2007 was in the context of an earlier agreement under which the royalty was paid. But Assessee having entered into a new agreement on 16th September 2010 with Cummins Inc. under which the technical support was received for which payment of royalty was made by Assessee for the year under consideration and hence they need not follow the earlier approach of the Tribunal. This is because the new agreement on which reliance has been placed by the Tribunal was dated 16th September 2010, and even after the said agreement was entered into, for the Assessment Year 2011-2012 to Assessment Year 2014-2015 the TPO himself had accepted the benchmark of the international transaction of payment of royalty under the aggregation approach along with transactions of the manufacturing segment. The Tribunal failed to recognize that the royalty agreement for the years under consideration was the same agreement. We have to notice that neither the TPO nor the DRP had even whispered or mentioned in their orders about any facts being different from the earlier orders. In such situation, the Tribunal was not justified in taking a different view for these three assessment orders. The Apex Court in ***Radhasoami Satsang Vs. CIT***[3] has

3. (1992) 193 ITR 321 (SC)

held that in the absence of change in material facts, the department is bound by the previous decision.

13 Once the Tribunal in its earlier orders has held that the transaction of payment of royalty for use of technology is inextricably linked with manufacturing activity and should be aggregated with other international transactions in the manufacturing segment for the purposes of benchmarking the same, and the TPO having accepted the aggregating of international transaction of payment of royalty with other international transactions in the manufacturing segment and not drawn any adverse inferences in respect of such aggregation of royalty payment under identical agreement, the Tribunal should have followed the order of the co-ordinate bench rendered under identical facts. More so, when in a majority of the years from the Assessment Year 2006-07 up to the Assessment Year 2014-15 it was under the very same agreement and the orders were passed after thoroughly scrutinising the international transactions entered into by assessee, the transfer pricing report obtained and the transfer pricing documentation maintained.

14 Therefore, we answer all the three questions in favour of assessee.

15 Appeals accordingly allowed. No order as to costs.

(FIRDOSH P POONIWALLA, J.) (K.R. SHRIRAM, J.)

Meera Jadhav