IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE SUDDALA CHALAPATHI RAO

I.T.T.A.Nos.526 of 2015 & 101 of 2017

DATE: 26.03.2026

Between:
Gulf Oil Corporation Ltd.,
Hyderabad.

…Appellant

AND

The Asst. Commissioner of Income tax,
Circle-2(2), Hyd.bad.

…Respondent

COMMON JUDGMENT: *(per the Hon'ble Sri Justice P.Sam Koshy)*

Heard Mr. Y.Ratnakar, learned counsel for the appellant; and Ms. J.Sunita, learned Senior Standing Counsel for Income Tax Department appearing on behalf of the respondent.

2. Since the issue involved in the instant appeals is one and the same, and the parties are also the same, they are heard together and are decided by this Common Judgment.

3. For convenience, the facts in I.T.T.A.No.526 of 2017 are discussed hereunder.

4. The primary dispute pertains to the payment of royalty on export sales to its Associated Enterprise (AE), Gulf Oil International Mauritius (Inc.).

5. The facts of the case are that during the assessment year 2010-11 the appellant paid royalty of Rs.64,83,281/- on export sales amounting to Rs.25,81,94,932/-, worked out to 2.51% of export sales. This rate was well within the 8% limit approved by the Reserve Bank of India (for short ‘RBI’) and significantly lower than the 9.41% (inclusive of taxes) approved by the Government of India under the royalty agreement. The Transfer Pricing Officer, however, restricted the allowance of royalty to only 1% of export sales, resulting in an arm's length price of Rs.25,81,949/- and consequent disallowance of Rs.39,01,332/-. Aggrieved, the appellant challenged the Transfer Pricing Officer's order

before the Income Tax Appellate Tribunal, Hyderabad Bench 'A'. The Tribunal, *vide* its order dated 20.04.2015 in ITA No.217/Hyd./2015, confirmed the restriction imposed by the Transfer Pricing Officer following its earlier orders on similar issues for previous assessment years. Having exhausted the remedies before the Tribunal, the appellant has now approached the High Court under Section 260A of the Act, raising substantial question of law regarding the correctness of restricting the royalty deduction to 1% when the actual payment was at arm's length price.

6. Learned counsel for the appellant contended that entire royalty payment of 2.51% made to Gulf Oil International Mauritius (Inc.) and its Associated Enterprise was reasonable, commercially justified, and computed at arm's length price.That the royalty paid during the assessment year 2010-11 amounting to Rs.64,83,281/- on export sales of Rs.25,81,94,932/- was well within the limits prescribed by regulatory authorities and was supported by comprehensive benchmarking analysis. The restriction imposed by the Transfer Pricing Officer and subsequently confirmed by the Tribunal, resulting in a disallowance of Rs.39,01,332/-

is contended to be arbitrary, legally untenable, and not supported by the factual matrix of the case.

7. Learned counsel for the appellant further contended that the royalty rate of 2.51% paid to Gulf Oil International Mauritius (Inc.)compares favorably with royalty payments made by third parties and other subsidiaries to their respective Associated Enterprises and parent company hubs. Moreover, the learned counsel for the appellant presented a comparative analysis demonstrating that unrelated third parties paid higher percentages of royalty to other hubs of the Gulf group than what the appellant paid to Gulf Oil International Mauritius (Inc.). Similarly, other subsidiaries within the broader corporate structure paid higher royalty rates to their Associated Enterprises compared to the appellant's payment. This benchmarking exercise clearly establishes that the royalty payment was at arm's length and in line with international transfer pricing principles. It is contended that the Tribunal's failure to give due consideration to this comparative analysis and its mechanical restriction of royalty to 1% without proper justification constitutes a fundamental error in the adjudication process.

8. Learned counsel for the appellant further contended that the royalty rate approved by the RBI was 8% of export sales, and the Government of India had approved a royalty rate of 9.41% (inclusive of taxes) under the applicable royalty agreement. The actual royalty paid at 2.51% was substantially lower than both these approved rates, being less than one-third of the RBIapproved limit and approximately one-fourth of the Government of India-approved rate.Therefore, the existence of such regulatory approvals creates a strong presumption in favor of the reasonableness of the transaction and the Tribunal erred in disregarding this crucial aspect.

9. Learned counsel for the appellant also challenged the Tribunal's reliance on the appellant's acceptance of the 1% royalty restriction for the subsequent assessment years 2007-08 and 2008-09 as justified for restricting the deduction for the assessment year 2010-11. According to the learned counsel for the appellant, the acceptance of 1% rate in subsequent years was a pragmatic decision made to minimize litigation and reduce the quantum of tax disputes, considering the overall litigation burden under the Income Tax Act and this acceptance was expressly

stated to be without prejudice to the appellant's rights and was specific to those assessment years. Therefore, each assessment year constitutes a separate and independent unit of assessment, and the concession granted for one year cannot form the basis for denying legitimate deductions in another year. Thus, the Tribunal's approach of applying the acceptance for subsequent years retrospectively to assessment year 2010-11 violates fundamental principles of tax law and ignores the settled legal position that each assessment year must be evaluated on its own merits based on the facts and circumstances applicable to that specific year.

10. Lastly, the learned counsel for the appellant asserts that the questions raised in this appeal are substantial questions of law that require the intervention of the Hon'ble High Court particularly in the light of the pending Special Leave Petition before the Hon'ble Supreme Court on identical issues for theassessment year 2006-07. Therefore, he prays for the setting aside of the Tribunal's order and restoration of the full deduction of royalty paid at 2.51% of export sales, which represents the actual commercial reality of the transaction which is fully justified under applicable transfer pricing regulations and principles.

11. *Per contra*, the learned Senior Standing Counsel for Income Tax Department contended that the transaction involving the sale of shares by the appellant to M/s.Hinduja Ventures Ltd. was a collusive arrangement designed to create an artificial long-term capital loss. That the appellant had transferred an undertaking worth Rs.63,74,14,000/- (as per book value) in exchange for Rs.97,60,000/- shares and subsequently sold these shares for a mere Rs.2.10 crores resulting in a claimed capital loss of Rs.61,64,14,000/-.Further,no reasonable person would part with an undertaking of such substantial value in exchange for shares that were then sold at a price ‘not even worth the value of a paper’. Since both M/s.Hinduja Ventures Ltd. and the assessee belonged to the same Hinduja group, therefore this was a fabricated transaction between associated enterprises aimed at offsetting the capital loss against long-term capital gains from the sale of land.

12. Learned Senior Standing Counsel for Income Tax Department further contended that the Dispute Resolution Panel (DRP) upheld the Assessing Officer's view and rejected the assessee's objections where the assesseehad misrepresented facts, valuation reports and the valuation of

its assets and shares with the deliberate intention of claiming a long-term capital loss and creating artificial loss, and therefore, the claimed capital loss should be disallowed.Thus, the sale of shares at such a drastically reduced price, especially between group companies, could not be considered a genuine business transaction conducted at arm's length.

13. Learned Senior Standing Counsel for Income Tax Department further contended that the Transfer Pricing Officer conducted a detailed examination of the royalty payments made by the appellant to Gulf Oil International Mauritius (Inc.) and determined that the rate of 2.51% paid on export sales was not at arm's length price andthe benchmarking analysis conducted by the appellant was flawed and did not adequately demonstrate that the royalty payment was comparable to transactions between independent enterprises operating under similar circumstances. The Transfer Pricing Officer applied the appropriate methodologies to arrive at the arm's length price of 1% of export sales which was deemed reasonable considering the services rendered, the benefits derived by the appellant, and the market conditions prevailing during the assessment

year. Therefore, the disallowance of Rs.39,01,332/- representing the excess payment over 1% was correctly computed and legally sustainable.

14. Lastly, the learned Senior Standing Counsel for Income Tax Department further contended that the appellant's acceptance of the 1% royalty rate for subsequent assessment years 2007-08 and 2008-09 contended that this acceptance demonstrates the appellant's own acknowledgment that payments exceeding 1% were not commercially justified or necessary. The appellant here cannot take inconsistent positions across different assessment years, claiming higher deductions for the assessment year 2010-11 while accepting lower rates for subsequent years. While the appellant urges that each assessment year is independent, however, the pattern of acceptance in subsequent years is a relevant consideration in determining the arm's length nature of the transaction for the assessment year 2010-11. It was also emphasized that the Tribunal correctly took into account this subsequent conduct of the appellant as it reflects the commercial reality and the actual value of services rendered by Gulf Oil International Mauritius (Inc.). Therefore, the mere existence of regulatory approvals from the RBI or the

Government of India does not automatically validate the transaction for transfer pricing purposes, as these approvals are granted for different regulatory objectives and do not conclusively establish that the transaction is at arm's length under the Income Tax Act.

15. Having heard the contentions put forth on either side and on perusal of records, the questionsthat arise for consideration in the instant appeal are:-

a) Whether the Tribunal was justified in restricting the allowance of royalty on export sales to only 1% of the sales against 2.51% paid by the appellant to the Gulf Oil International Mauritius (Inc.) (Associated Enterprise)?

b) Whether the Tribunal was correct in confirming the disallowing payment of royalty on export sales to Gulf Oil International Mauritius (Inc.) in excess of 1% of export sales, based on the appellant's acceptance of such restriction for the subsequent assessment years 2007-08 and 2008-09?

16. The first and principal contention of the appellant is that the entire royalty payment of 2.51% made to Gulf Oil International Mauritius (Inc.) was at arm's length price and should have been allowed in full. The appellant has placed considerable reliance on three factors, i.e.,

i. Regulatory approvals granted by the RBI and the Government of India;

ii. Comparative analysis showing that third parties and other subsidiaries paid higher royalty rates; and

iii. The decision of the Pune Bench of the Income Tax Appellate Tribunal in **Kinetic Honda Motor (P) Ltd. vs. Joint Commissioner of Income Tax** (77 ITD 393).

17. We find that these contentions, while appearing persuasive at first glance, do not withstand closer scrutiny when examined in the context of the statutory framework governing transfer pricing under the Income Tax Act. The provisions contained in Sections 92 to 92F of the Income Tax Act constitute a self-contained code for determining the arm's length price of international transactions between associated enterprises. The fundamental objective of these provisions is to ensure that such

transactions are conducted at prices that would have prevailed between independent parties operating at arm's length under comparable circumstances. The determination of arm's length price is a factual exercise that must be undertaken on a case-by-case basis, considering the specific facts and circumstances of each transaction.

18. The appellant’s reliance on regulatory approvals granted by the RBI and the Government of India is misplaced for several reasons. Firstly, these approvals are granted for entirely different regulatory purposes. The RBI approval is concerned with foreign exchange regulations and the remittability of foreign exchange, while the Government of India approval under the erstwhile FERA/FEMA regime was concerned with broader policy considerations relating to technology transfer and industrial development. These approvals do not and were never intended to determine the arm's length price for income tax purposes under the transfer pricing provisions of the Income Tax Act. The statutory scheme for determining arm's length price is distinct and independent and is governed by specific methodologies prescribed under Section 92C of the Income Tax Rules.

19. Secondly, the fact that a particular rate has been approved by regulatory authorities does not create any presumption that the same rate represents the arm's length price. The regulatory ceiling merely indicates the maximum permissible rate for regulatory compliance purposes, not the actual market-driven price that independent parties would negotiate. An approval permitting payment of royalty up to 8% or 9.41% does not mean that any payment below such ceiling is automatically at arm's length. The appellant's argument would lead to the absurd conclusion that any payment made within the regulatory limits would be immune from transfer pricing scrutiny, thereby rendering the entire transfer pricing regime ineffective.

20. Thirdly, the decision in **Kinetic Honda Motor (P) Ltd.**(supra) cited by the appellant does not support the proposition that regulatory approvals conclusively establish arm's length price. That decision must be understood in its own factual context and cannot be mechanically applied to different fact situations. Moreover, even if that decision had held such a proposition,it would not bind this Court, particularly when

the statutory provisions clearly mandate an independent determination of arm's length price based on prescribed methodologies.

21. As regards the comparative analysis presented by the appellant showing that the third parties and other subsidiaries paid higher royalty rates to their respective hubs, the Transfer Pricing Officer and the Tribunal examined this analysis and found it to be inadequate and unreliable for establishing comparability. The determination of arm's length price requires not merely a superficial comparison of royalty rates, but a detailed functional analysis examining the nature and extent of services rendered, the value of intangibles transferred, the benefits derived by the recipient, the economic circumstances of the parties, and numerous other factors that may affect pricing in transactions between independent parties.The record shows that the Transfer Pricing Officer conducted a detailed examination of the royalty payments and concluded that the rate of 2.51% was not at arm's length price based on the specific facts and circumstances of the appellant's case. The Tribunal also examined this determination and found no infirmity in the reasoning or methodology adopted by the Transfer Pricing Officer. The Tribunal's

finding that the royalty at 1% of export sales represents the arm's length price is a finding of fact based on appreciation of evidence and materials on record.

22. The appellant has not demonstrated any perversity or legal infirmity in the Tribunal's findings. The mere fact that the appellant disagrees with the factual conclusions reached by the Transfer Pricing Officer and affirmed by the Tribunal does not render those conclusions erroneous in law. The comparative analysis presented by the appellant was duly considered by the authorities below, and their rejection of the same as inadequate for establishing arm's length price is a matter of factual appreciation that cannot be reopened in this appeal.The appellant’scontention that the Tribunal erred in relying on its acceptance of 1% royalty for the assessment years 2007-08 and 2008-09 to restrict the deduction for the assessment year2010-11, arguing that each assessment year is independent.

23. While this Bench accepts that each assessment year must be assessed independently, the Tribunal's reference to subsequent years was

not the primary basis for its decision. The restriction to 1% was based on the Transfer Pricing Officer's determination of arm's length price after detailed examination. The reference to subsequent acceptance was merely an additional circumstance reinforcing this determination. The appellant's conduct in subsequent years is relevant in evaluating whether royalty at 2.51% was commercially necessary. If the appellant genuinely believed 2.51% was essential, it is unclear why it would accept 1% for immediately succeeding years. The explanation that this was to minimize litigation is unconvincing. The appellant cannot adopt inconsistent positions across years based on litigation convenience.The acceptance of 1% for subsequent years demonstrates that the appellant could continue operations and derive benefits even with the restricted deduction, undermining its argument that 2.51% was necessary and at arm's length.

24. Having examined the contentions raised by the appellant, we find that no substantial question of law arises from the impugned order passed by the Tribunal.The Tribunal applied the correct legal principles and followed the proper methodology prescribed under the transfer pricing provisions, and the fact that the Tribunal's conclusion is adverse

to the appellant does not make it erroneous in law. The appellant has placed reliance on the pendency of a Special Leave Petition before the Hon'ble Supreme Court in relation to assessment year 2006-07 involving similar issues, but the mere pendency of proceedings before a higher forum does not constitute a ground for admitting an appeal under Section 260A of the Income Tax Act or for interfering with the impugned order. Each case must be decided on its own merits based on the facts and circumstances applicable to that case, and unless and until the Hon'ble Supreme Court pronounces a decision laying down a different principle of law, the orders of the authorities below must be given effect to, and this Bench cannot keep matters in abeyance based on speculative possibilities of future judicial developments. Accordingly, we find that no substantial question of law arises from the impugned order passed the Tribunal.

25. It is also pertinent to note that while the assessment year 2006-07 involving a similar issue is pending before the Hon’ble Supreme Court, the appellant in the subsequent years 2007-08 and 2008-09 accepted the allowance of export royalty at 1% and did not challenge the same with

respect to this issue. Moreover, after the passage of two subsequent years in which the appellant acquiesced to the 1% limitation, the appellant filed the present appeal for the assessment year 2010-11 raising serious doubts about the bona fides of the challenge and suggests an inconsistent approach adopted merely for litigation convenience rather than based on genuine commercial necessity or legal conviction.

26. I.T.T.A.No.526 of 2015 thus fails and is accordingly dismissed and consequently I.T.T.A.No.101 of 2017 also stands dismissed.

27. As a sequel, miscellaneous petitions pending if any, shall stand closed. However, there shall be no order as to costs.

P.SAM KOSHY, J

SUDDALA CHALAPATHI RAO, J

Date: 26.03.2026
GSD