IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI A.K. GARODIA, ACCOUNTANT MEMBER

IT(TP)A No.1169/Bang/2011
Assessment year : 2007-08

Safran Engineering Services India Pvt. Ltd., (formerly Safran Aerospace India Pvt. Ltd.), CSRIE, # 32, Grape Garden, 17th 'H' Main Road, VI-Block, Koramangala, Bangalore – 560 095. **PAN: AAFCS 9003D**	Vs.	The Deputy Commissioner of Income Tax, Circle 12(3), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri K.R. Vasudevan, Advocate
Respondent by	:	Shri Sanjay Kumar, CIT(DR)(ITAT)-3

Date of hearing	:	01.12.2016
Date of Pronouncement	:	25.01.2017

O R D E R

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the assessee against the assessment order passed consequent to the order of the DRP *inter alia* on various grounds which are as under:-

"A. **Transfer Pricing adjustment under section 92CA of the Income-tax Act, 1961 ("the Act") amounting to Rs. 6,19,19,430/-**

- The learned TPO/ DRP/ AO erred in considering the arm's length price to be "Nil" for the following payments made by Safran Engineering Services India Private Limited to its associated enterprise:

  - towards dedicated program manager for the benefit of Safran Engineering Services India Private Limited - Rs. 85,75,192

  - towards information technology services - Rs. 1,33,73,214

  - towards salary cost of deputed managing director - Rs. 12,758,352

  - towards cost of support services provided by associated enterprise - Rs. 27,212,672

- The learned TPO/ DRP/ AO erred in not accepting the arm's length justification of the above mentioned payments using the Transactional Net Margin method.

- The learned TPO/ DRP/ AO erred in selecting Comparable Uncontrolled Price Method ("CUP") as the most appropriate method for justifying the payments made by Safran Engineering Services India Private Limited towards the dedicated program manager, payment of information technology services, towards salary cost of deputed managing director and towards the management services provided

by the associated enterprise for the benefit of Safran Engineering Services India Private Limited.

- The learned TPO/ DRP/ AO erred in not appreciating Safran Engineering Services India Private Limited has made the above mentioned payments to the Associated Enterprises following the principles of arm's length standard only to recover the same from the Associated Enterprises for the software services rendered, where the latter has held to be at arm's length.

- The learned TPO/ DRP/ AO erred in not appreciating the documentary proof submitted in relation to the recovery of the above payments made by Safran Engineering Services India Private Limited from the Associated Enterprises by way of billings made for the services rendered.

- The learned TPO/DRP/AO erred in concluding that "no services" were rendered by associated enterprise and further erred in concluding that the arm's length payment by Safran Engineering Services India Private Limited should be zero.

- The learned TPO/DRP/AO erred in not considering the merits of the case in the transfer pricing assessment as the transfer pricing order contained certain facts which do not pertain to Safran Engineering Services India Private Limited.

B. Re-computation of deduction under section 10A of the Act.

- The learned AO has erred in re-computing the deduction under section 10A of the Act at Rs. 5,28,25,283 as against the claim of Rs.5,75,10,771.

- The learned AO has erred in reducing the telecommunication expenses of Rs. 37,72,598/- and expenditure in foreign currency of Rs. 3,15,36,705/- from Export Turnover alone. The learned AO ought to have reduced the same from the Total Turnover when they have reduced the same from Export Turnover.

- The learned AO has erred in not relying on the decision of the Jurisdictional High Court Karnataka in a batch of appeals, dated 30th August, 2011.

C. **Interest under section 234B & 234D of the Act.**

The assessing officer has erred in levying interest under section 234B & 234D of the Act

The appellant craves leave to add, alter and modify the above grounds during the course of the appeal.

For the above and any other grounds which may be raised at the time of hearing, it is prayed that the adjustments be dropped/deleted."

2. During the course of hearing, the ld. counsel for the assessee has contended that ground (b) relating to deduction u/s. 10A is covered by the judgment of jurisdictional High Court in the case of *CIT v .Tata Elxsi Ltd. (349 ITR 98) (Karn)* wherein it was held that the expenses reduced from the export turnover should also be reduced from the total turnover. Since the issue is covered by the judgment of jurisdictional High Court in the aforesaid case, we set aside the assessment order and direct the AO to recompute the deduction u/s. 10A in the light of judgment of jurisdictional High Court in the case of *Tata Elxsi Ltd. (supra)*.

3. The remaining issues relate to the TP adjustment u/s. 92CA of the I.T. Act. During the course of hearing, the ld. counsel for the assessee has contended that the TPO has adopted the CUP method for determining the arm's length price (ALP) of the international transactions, to which the assessee has no objection, but invited our attention to the order of the Tribunal in assessee's own case for the AY 2006-07 which is immediately preceding the impugned assessment year with the submission that in the

earlier AY, the evidence filed by the assessee was not examined by the TPO and the Tribunal has restored the matter to the AO/TPO with a direction to readjudicate the issue and re-determine the ALP in accordance with law. Similar is the position for the impugned assessment year as the TPO has not taken into account the evidence filed by the assessee before him. Therefore, it was contended that the matter should be restored back to the TPO/AO to re-examine the evidence filed by the assessee and after having analysed the same, the ALP may be determined.

4. The ld. DR did not object to this proposition as he admitted that some evidence was not taken into account by the TPO while determining the ALP of international transactions.

5. Having carefully examined the rival submissions, we find that undisputedly certain evidence filed by the assessee was not examined by the TPO while determining the ALP. Similar was the position in AY 2006-07 where the Tribunal has restored the matter back to the AO/TPO to re-examine and re-analyse the evidence filed by the assessee in order to determine the ALP of the international transactions. The relevant observations of the Tribunal are extracted hereunder for the sake of reference:-

> "8.3 Having regard to the rival contentions and the material on record, we agree with the contentions of the learned counsel for the assessee that the AO cannot make/disallow the entire expenditure claimed by the assessee to be management fee on the ground that the assessee has not proved the commercial benefit

from such payment. As held by the Hon'ble Delhi High Court in the case of M/s.EKL Appliances (supra), it is not necessary for the assessee to show that any legitimate expenditure incurred by him was incurred out of necessity or that it has resulted in any profit or income either in the same year or in any of the subsequent years but the only condition to be satisfied is that the expenditure should have been incurred wholly and exclusively for the purpose of business and nothing more. In the case before us, though the learned counsel for the assessee has drawn our attention to various invoices raised by the AE on the assessee, we find that the documents filed by the assessee as evidence before the DRP and also before us in support of his contention that the AE has rendered services to the assessee for which management fee has been paid has not been verified or considered by them. When the assessee claims that the assessee has paid the management fee to the AE, no doubt the burden is on the assessee to prove that it has received services from its AE. But when the assessee has produced such material before any of the authorities below it is also the duty of the authorities to consider the same before coming to any conclusion on merits. In view of the same, without verification of proper evidence, it not justified to come to the conclusion that payment of management fee of Rs.1.55 crore is unwarranted. In view of the same, we set aside the order of the AO on this issue and remit the issue to the file of the AO/TPO for re-adjudication of the issue and re-determination of the arm's length price in accordance with law. The assessee shall also be given an opportunity to produce all the relevant materials before the AO and the assessee shall co-operate with the AO for early determination of the arm's length price by the AO/TPO. Needless to mention, the assessee shall be given a fair opportunity of hearing."

6. Since on similar set of facts, the Tribunal has restored the matter to AO/TPO to re-examine the evidence filed by the assessee and to re-determine the ALP having analysed the same, we find no justification to take a contrary view in this appeal. Accordingly we set aside the order of

AO/TPO and restore the matter to his file to re-determine the ALP after having examined and analysed the evidence filed by the assessee.

7. In the result, the appeal of the assessee stands allowed for statistical purposes.

Pronounced in the open court on this 25th day of January, 2017.

Sd/-	Sd/-
(A.K. GARODIA)	(SUNIL KUMAR YADAV)
Accountant Member	Judicial Member

Bangalore,
Dated, the 25th January, 2017.

/D S/

Copy to:

1. Appellant
2. Respondents
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.