

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI**

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER, AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.3472/Mds/2016
निर्धारण वर्ष /Assessment Year: 2012-13

M/s.Dymos Lear Automotive India
Pvt. Ltd., Plot No.A6 & A7, SIPCOT
Industrial Estate, Irungattukottai,
Sriperambudur, Kanchipuram
District, Tamil Nadeu-602 117.

Vs. The Asst. Commissioner of
Income Tax, Corporate
Range-1, Chennai.

[PAN: AACCD 7225 K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Mr.Sandeep Bagmar, Adv.
: Mr.Milind Madhukar Bhusari,
CIT

सुनवाई की तारीख/Date of Hearing

: 31.05.2017

घोषणा की तारीख /Date of Pronouncement

: 31.05.2017

आदेश / O R D E R

PER GEORGE MATHAN, JUDICIAL MEMBER:

ITA No.3472/Mds/2016 is an appeal filed by the assessee against the Order of Dispute Resolution Panel-2, Bangalore, in F.No.552/DRP-2-BNG/2015-16 dated 29.08.2016 & 08.09.2016 for the AY 2012-13.

2. Shri Milind Madhukar Bhusari, CIT represented on behalf of the Revenue and Shri Sandeep Bagmar, Advocate represented on behalf of the assessee.

3. At the time of hearing, it was submitted by the Ld.AR that the only issue in the assessee's appeal was against transfer pricing adjustment made in respect of payment of technical and management service fee to M/s.Dymos, Korea. It was a submission that the assessee is in the business of manufacturing of automobile seats. It was a submission that M/s.Dymos, Korea was 65% shareholder in the assessee company and all the design and technical drawings of the seats were made by M/s.Dymos, Korea and the assessee was only doing manufacturing of seats in India. It was a submission that the assessee had paid Rs.2.09 Cr. as technical and management service fee to M/s.Dymos, Korea. It was a submission that the assessee had turn over nearly Rs.765.00 Cr. and the net operating profit was nearly Rs.28.74 Cr. giving a profit margin of 3.17%. It was a submission that the assessee had applied TNMM method and in its TP report, no adjustment was called for. It was a submission that the TPO applied CUP method and held that the transfer pricing adjustment of the entire technical and management service fee paid to M/s.Dymos, Korea was liable to be added back under the transfer pricing adjustment.

4. At the time of hearing, it was fairly agreed by both the sides that the first issue was squarely covered by the decision of the Co-ordinate Bench

of this Tribunal in the assessee's own case for the AY 2010-11 in ITA No.928 & 943/Mds/2015 & CO No.48/Mds/15 wherein the Co-ordinate Bench of this Tribunal as held as follows:

13. We have heard both the parties and perused the material on record. The main plea of the Ld.A.R is that to achieve projected Revenue. The assessee incurred management fees expenses and there is no necessity of TP adjustments on this issue. Further, he submitted that all international transaction on aggregate basis to be considered to determine the ALP. Further, it was stated in the absence of identical un-controlled price, the CUP method was not possible. Hence, TNMM method is most appropriate. At this stage, we are of the opinion that it is not appropriate to comment on the method to be followed whether TNMM or CUP to determine the ALP. First of all, the TPO/AO has to ascertain whether Technical Management service expenses are at arm's length or not, as compare to the actual sales achieved by the assessee. Accordingly, he has to reconsider the issue afresh. In the light of our observation in assessee's appeal, this issue is remitted to the file of AO for fresh consideration.

5. It was further clarified by the Ld.AR that for the AY 2010-11, the TPO had allowed the issue as per the directions of the Tribunal and no adjustment was made.

6. We have considered the rival submissions. As it is noticed that the issue in appeal before us in respect of the transfer pricing adjustment in regard to the technical and management service fee paid by the assessee to M/s.Dymos, Korea is squarely covered by the decision of the Co-ordinate Bench of this Tribunal in the assessee's own case for the AY 2010-11, respectfully following the decision of the Co-ordinate Bench of this Tribunal in the assessee's own case referred to supra, the issue in this appeal is also restored to the file of the AO to the identical directions as given by the Co-ordinate Bench of this Tribunal in the assessee's own case for the AY 2010-11.

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

Order pronounced in the Open Court on 31st May, 2017, at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A. MOHAN ALANKAMONY)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 31st May, 2017.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF