

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH 'B', BANGALORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER  
AND  
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

**IT(TP)A No.446(B)/2012  
(Assessment year : 2005-06)**

The Deputy Commissioner of Income-tax,  
Circle-12(2), Rashthrohana Bhavan,  
Bangalore

Appellant

**Vs**

M/s Payne (India.) Pvt.Ltd.,  
Survey No.46, Jala Hobli,  
Doddajala Village,  
Bangalore-562 157  
**PAN No.AAFCB 1955H**

Respondent

**Assessee by : Shri Suryanarayana, Advocate  
Revenue by : Dr. P.K.Srihari, Addl. CIT**

**Date of hearing : 09-07-2015**

**Date of pronouncement : 24-07-2015**

**ORDER**

**PER SHRI VIJAY PAL RAO, JM:**

This appeal by the revenue is directed against the order dated 24-01-2012 of CIT(A) for the assessment year 2005-06.

2. The revenue has raised the following concise grounds;

*"1. The order of the ld.CIT(A) in so far as it relates to the following grounds is opposed to law and facts of the case.*

*2. The ld.CIT(A) erred in holding that intra group services are at arm's length as the assessee failed to establish that services were rendered by AE for the direct benefit of the assessee.*

3. The only issue arises from the grounds raised by the revenue is whether the intra group services rendered by the AE to the assessee are at arm's length. The assessee entered into various international transactions which include import of raw materials and packing material, export of finished goods, purchase of finished goods, import of capital goods, payment of intra group services and reimbursement of Director's salary and travel expenses. All the above international transactions were clubbed by the assessee to determine the arms length price under Transaction Net Margin Method (TNMM). The assessee had profit margin on cost at entity level was 33.31% as compared to mean margin on cost of the comparables selected by the TPO at 10.11%. The TPO accepted TNMM as most appropriate method for determination of ALP in respect to all other international transactions except the payment for intra group services. The assessee is making the payment for intra group services with a mark-up of 5.8% whereas the TPO has determined the ALP in respect of the group services at nil by holding that the intra group services did not result increase any profit margin.

4. On appeal, the CIT(A) has allowed the payment for intra group at cost by excluding the mark-up of 5.8% and accordingly, directed the AO/TPO to make the adjustment to the extent of 5.8% mark-up of cost. Thus, the limited dispute before us in the revenue's appeal is restricting the adjustment by the CIT(A) only to the extent of mark-up on cost as against the entire payment of intra group services made by the TPO.

5. We have heard the learned DR as well as the learned AR and considered the relevant material on record. The assessee has made the payment towards the cost contribution on account of intra group services. The AO as well as the TPO has not disputed the actual cost of services which is contributed by the assessee, though the AE of the assessee has allocated the cost with the mark-up of 5.8%. The TPO has determined the ALP of group services at nil on the ground that the services has not resulted in any increase in the profit margin of the assessee. It is pertinent to note that the computation of ALP by the TPO at nil is contrary to the provisions of transfer pricing as well as rules provided under the Act. The only issue before the TPO was to consider the arm's length price of the services received by the assessee. Once the services received by the assessee is not in dispute than, the dispute is only the ALP of such services. In the case in hand the dispute was further narrowed only in relation to the mark-up charged by the AE on the cost. The CIT(A) has already disallowed the mark-up and determined the ALP at cost of the

group services which has been contributed by the assessee. We further note the CIT(A) has noted that the fact for assessment year 2008-09, the payment of intra group services was accepted by the TPO at arm's length under the TNMM where the percentage of profit on cost of assessee at entity level was only 16.31% in comparison to the current years margin at 33.31%. We find that for the assessment year 2008-09, the TPO has accepted the payment made for intra group services as under;

*“ However, from the submissions made by the taxpayer and facts of case, it is seen that the payment is made towards ‘cost contribution’ and the taxpayer has also submitted the payment is in nature of ‘reimbursement of allocated costs’ which amounts to 6.99% of the local allocation made the Filtrona UK Limited to all the AEs at a mark-up of 5.8%. As it is evident from the facts and submissions, the payment is clearly for the ‘cost contribution’ and therefore, there should not be any mark-up on such allocations made by the Parent Company. Hence, for the same reason, the mark-up of 5.8% paid towards ‘cost contribution’ is not at arm's length and the ALP for the mark-up is treated as nil which amounts to Rs.2,15,140/-.*

*Thus, the above excess amount being adjustment u/s 92CA of Rs.2,15,140/- is treated as transfer pricing adjustment u/s 92CA for assessment year 2007-08”.*

6. In view of the above facts and circumstances of the case, we do not find any error or illegality in the order of the CIT(A) qua this issue of accepting the payment for intra group services at cost. Accordingly, the appeal of the revenue is dismissed.

7. In the result, the appeal filed by the revenue is dismissed.

Pronounced in the open Court on the 24-07-2015.

**Sd/-**  
**(JASON P BOAZ)**  
**ACCOUNTANT MEMBER**

D a t e d : 24-07-2015

Place: Bangalore

**am\***

**Copy to :**

- 1 Appellant
- 2 Respondent
- t3 CIT(A) Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

**Sd/-**  
**(VIJAY PAL RAO)**  
**JUDICIAL MEMBER**

By order,

AR, ITAT, Bangalore