

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH " A "**

**BEFORE SHRI ABRAHAM P GEORGE, ACCOUNTANT MEMBER AND
SHRI VIJAY PAL RAO, JUDICIAL MEMBER**

I.T.(T.P)A. No.659/Bang/2012 (Assessment Year : 2007-08)		
M/s. AXA Technologies Shared Services Pvt. Ltd., RMZ Infinity, Tower B, 2 nd & 4 th Floor, NO.3, Old Madras Road, Bangalore-560 016 PAN AAFCA 0850L	Vs.	Dy. Commissioner of Income Tax, Circle 11(1), Bangalore.
Appellant		Respondent.

Appellant By : Shri T. Suryanarayana, Advocate. Respondent By : Shri K.R. Narayan, JCIT (D.R)
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Date of Hearing : 29.6.2016.

Date of Pronouncement : 25.07.2016.

ORDER

Per Shri Vijay Pal Rao, J.M. :

This appeal by the assessee is directed against the order dt.12.3.2012 of Commissioner of Income Tax (Appeals)-IV, Bangalore for the Assessment Year 2007-08.

2. The assessee has raised the following grounds :

“ The grounds hereinafter taken by the Appellant are without prejudice to one another.

- 1. That the order passed by the learned Commissioner of Income Tax (Appeals) - IV, Bangalore, to the extent prejudicial to the Appellant, is bad in law and liable to be quashed.*
- 2. That the learned CIT (Appeals) erred in upholding the rejection of economic analysis performed by the Appellant in the Transfer Pricing documentation which justified the arm's length nature of its international transactions.*
- 3. That the learned CIT (Appeals) erred in upholding application of Comparable Uncontrolled Price (CUP) method as the appropriate method to determine the arm's length nature of payment of management fees disregarding application of Transactional Net Margin Method (TNMM) applied by the Appellant in the Transfer Pricing documentation.*
- 4. That the learned CIT (Appeals) erred in ignoring the detailed documents provided by the Appellant during the appeal proceedings in support of the services] benefits received by the Appellant against the payment of management fees and consequently concluding that the Appellant has not received any service or economic benefit against the payment.*
- 5. That the learned CIT (Appeals) erred in not appreciating the actual business model of the Appellant in respect of rendition of the Information Technology (IT) enabled Services to its Associated Enterprises and thereby completely ignored the fact that the receipt of services towards management fees is closely linked to the provision of IT enabled Services.*
- 6. That the learned CIT (Appeals) erred in adjudicating on the necessity for payment of management fees rather than determining the arm's length nature of such payment.*
- 7. That the learned CIT (Appeals) erred in not providing his comments on the arm's length nature of the international transaction of rendering IT enabled Services even after considering payment of management fees as part operating cost.*

That the Appellant craves leave to add to and / or alter, amend, rescind or modify the grounds taken hereinabove before or at the time of hearing of this appeal.”

3. The profile of the assessee was recorded by the TPO in para 2.1 as under :

“ 2.1 Profile

AXA Technology Services India Pvt. Ltd. incorporated during the year 2005, is engaged in providing IT Infrastructure services to AXA Group operating companies. The company is set up under the Software Technology Park Scheme, AXA Tech India is engaged in the business of remote systems administration, data processing and general consulting services in the field of software, production of computer programmes and export of software data and is providing different types of back office support services in the insurance sector.”

4. The assessee was providing Information Technologies Enabled Services (ITES) to its Associated Enterprise (AE) in addition to the services rendered to other entities in India. The financial as well as international transactions reported by the assessee are recorded by the TPO in para 2.4 and 2.5 as under :

“2.4 Financial Information of Axa Technology Services for F.Y. 2006-07 :

Particulars	Overseas Services Rs.	Domestic Services Rs.	Others Rs.	Total Rs.
Op. Revenue	12,90,36,321	25,43,43,902	1,71,56,463	40,05,36,686
Op. Cost	10,57,65,616	23,18,59,159	46,61,588	34,22,86,363
Op. Profit	2,32,70,705	2,24,84,743	1,24,94,875	5,82,50,323
Add : Other Income :	- 1,82,58,941			<u>1,09,99,380</u>
Less : Interest :	<u>- 72,59,561</u>			<u>6,92,49,703</u>
Profit Before Tax				
Op. Profit / Cost %	22%			

2.5 International transactions :

S.No.	Description of the transaction	Amount Rs.
1	IT Enabled Services	12,90,36,321
2	Management Fees paid	1,08,51,106

The Taxpayer vide its reply dated 29.09.2010 has submitted the details of management support fees paid Rs.1,08,51,106. The taxpayer has reduced the Management Fees from cost and has submitted a revised PLI of both Overseas and Domestic Services as under :

Particulars	Overseas Services Rs.	Domestic Services Rs.	Others Rs.	Total Rs.
Op. Revenue	12,90,36,321	25,43,43,902	1,71,56,463	40,05,36,686
Op. Cost	9,87,50,728	23,18,59,159	46,61,588	33,52,71,475
Op. Profit	3,01,85,593	2,24,84,743	1,24,94,875	6,52,65,211
Add : Other Income :	- 1,82,58,941			
Less : Interest :	<u>- 72,59,561</u>			<u>1,09,99,380</u>
Profit Before Tax				<u>7,62,64,591</u>
Op. Profit / Cost %	30.56%			

The assessee bench marked its international transactions by consolidating ITES as well as Management Fees and worked out the operating margin at entity level and then compare the same with the comparable price. The TPO has also examined the management fees paid by the assessee separately and

determined the ALP of the management fees at Nil. The TPO has questioned the justification of payment of management fees to the AE on the ground that the assessee has failed to prove that it derives economic benefit from the alleged management services. Thus the TPO / A.O applied the test of benefit obtained by the assessee by receiving the alleged management services from the AE. On appeal, the CIT (Appeals) confirmed the action of the TPO/A.O and also observed that the assessee has failed to establish that the assessee has received the alleged management services from the AE which has benefitted it.

5. Before us, the learned Authorised Representative of the assessee has submitted that the assessee produced all relevant records and copies of the agreement under which the management fees was paid to the AE. The learned Authorised Representative has further contended that the assessee benchmarked its transactions of providing ITES to the AE which includes the payment of the management fees. Even otherwise the TPO cannot held that the ALP of the management fees at Nil. As required under the provisions of Chapter X what is determined is ALP by comparing with the independent and uncontrolled price. The TPO cannot apply the test of benefit and justification of payment of management fees while determining the ALP of management fees

paid by the assessee. In support of his contention, he has relied upon the decision of the Delhi Bench of the Tribunal in the case of Ranbaxy Laboratories Ltd. Vs. ACIT 68 taxman.com 322, the judgment of Delhi High Court in the case of CIT Vs. EKL Appliances Ltd. 345 ITR 241, AWB India P. Ltd. Vs. DCIT 50 taxman.com 323 (Delhi-Trib.) and Dresser Rand India P. Ltd. Vs. Addl. CIT 13 taxman.com 82 (Mum.).

6. Apart from this the learned Authorised Representative has also pointed out that the department has also accepted the ITES as well as management fees as an integrated transaction under the advance pricing agreement dt.28.3.2016 under Section 92CC of the Act. Thus the learned Authorised Representative has submitted that when the department in principle has accepted the ITES and management fees as a composite transaction then the TPO/A.O cannot take a different view and make an adjustment by segregating the management fees from ITES. He has filed a copy of the Advance Pricing Agreement.

7. On the other hand, the learned Departmental Representative has relied upon the orders of the authorities below and submitted that the CIT (Appeals) has given a finding that the assessee has failed to prove that the assessee has

received the management services from the AE and therefore when the assessee has failed to establish that the expenditure has been incurred wholly and exclusively for the purpose of business then the same is not allowable.

8. In a rejoinder, the learned Authorised Representative has submitted that the explanation submitted before the CIT (Appeals) placed at page 37 of the paper book wherein the assessee submitted all relevant details and documents in support of the claim.

9. We have considered the rival submissions as well as the relevant material on record. We find that the assessee bench marked its international transactions by computing the operating margin at entity level which is not as per the provisions of Transfer Pricing because the international transactions has to be tested by comparing with uncontrolled and unrelated price. When the assessee earns the revenue of more than 50% from the non-AE clients then the bench marking of the international transactions by taking the results at entity levels is not appropriate therefore we do not approve such methodology applied by the assessee in bench marking the international transactions. However the TPO has segregated the ITES from management fees and found that the international transactions of ITES exclusive of management fees at

arm's length. The action of the TPO in determining the ALP of management fees at NIL is not justified because the assessee has paid the management fees under the agreement wherein the services provided by the AE has been enlisted. Therefore, without giving a finding that the assessee has also incurred expenditure in respect of the same services over and above the management fees paid to the AE it cannot be said that the assessee has not received the alleged management services. Thus only when it is found that the assessee has also incurred the expenditure on account of the same services and also paid the management fees to the AE then the TPO/A.O may come to the conclusion that the assessee has paid the management fees without availing the services from the AE. Even otherwise when the management fees paid under the agreement and there is no finding by the authorities below that the same services also availed by the assessee separately from 3rd party and booked the expenditure in the profit and loss account then determination of the ALP at NIL is not acceptable. The assessee has filed the agreement under which the management fees was paid to the AE along with the relevant record and the department has accepted the management fees along with ITES under the Advance Pricing Agreement dt.28.3.2016 then making a separate adjustment by

the TPO by determining the ALP of management fees at Nil is contrary to the stand of the department itself while agreeing to the advance pricing agreement. We find in the Advance Pricing Agreement dt.28.3.2016, the department has accepted the international transactions recorded in Clause 3 at arm's length as under :

"3. Covered Transaction.

The international transactions of provision of Information Technology Infrastructure and IT support services. Intercompany charges including -

- Payment of management fees*
- Payment of business consultancy charges*
- Payment of guarantee commission*
- Payment of other expenses such as communication expenses, contractor expenses, repairs and maintenance and transversal charges*
- Payment towards people soft maintenance*
- Payments towards internet charges and software expenses*
- Training expenses*
- Software expenses*
- Payments towards service charges*
- Payments towards web hosting and maintenance*
- Any other inter-company charge of similar nature*

Between the appellant and its AEs, as described in Appendix I, shall be the covered transactions for the Agreement and the Agreement shall apply only to these international transactions."

Though the price accepted by the department under said agreement are not applicable for the year under consideration however, on principle the management fees is accepted along with the other service and the ALP for ITES

as well as other services including the payment of management fees has to be determined on composite transaction basis. The TPO has not examined the matter by considering the management fees as part of the operating cost for the purpose of testing the ITES as per provisions of section 92 of the Act. Accordingly, we set aside the matter to the record of the TPO/A.O for reconsideration of the same afresh in terms of the above observations.

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

Order pronounced in the open court on 25.07.2016.

Sd/-
(ABRAHAM P GEORGE)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard File.

By Order

Asst. Registrar, ITAT, Bangalore