

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

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

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

आयकर अपील सं./I.T.A.Nos.2581/Chny/2017 & 122/Chny/2018

निर्धारण वर्ष /Assessment years : 2013-14 & 2012-13

M/s.Rotork Controls India Pvt. Ltd., Vs. Deputy Commissioner of
23B,Ambattur Industrial Income Tax,
Estate(North), Ambattur, Corporate Circle 5(2),
Chennai 600 098. Chennai.

[PAN AAACR 3438 C]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Ms.Abhinaya Ramanujam,C.A
प्रत्यर्थी की ओर से /Respondent by : Mrs.V.S.Sreelekha,CIT,D.R

सुनवाई की तारीख/Date of Hearing : 14-11.2018
घोषणा की तारीख /Date of Pronouncement : 14-11-2018

आदेश / O R D E R

PER GEORGE MATHAN, JUDICIAL MEMBER

I.T.A.Nos.2581/Chny/2017 is an appeal filed by the assessee against the order of the Commissioner of Income-tax (Appeals)-3,Chennai in appeal No.189/2016-17/A-3 dated 30.06.2017 for the assessment year 2013-14, and ITA No.122/Chny/2018 is an appeal filed by the assessee against the order of the Commissioner of Income-tax

(Appeals)-3,Chennai in appeal No.262/2016-17/A-3 dated 29.09.2017 for the assessment year 2012-13. Since the issues in both the appeals are identical, these appeals are disposed off through a common order.

2. Ms.Abhinaya Ramanujam represented on behalf of the Assessee, and Mrs.V.S.Sreelekha represented on behalf of the Revenue.

3. It was submitted by Id.A.R that the issues involved in these appeals are Transfer Pricing issue. It was a submission that the assessee is in the business of manufacturing actuators, which are installed onto valves for carrying out the function of regulating transportation of liquids/gases through pipe lines. It was a submission that assessee's business in four streams were considered under Transfer Pricing Study; first one being 'Import of Raw materials and components', the second one 'Sale of Valve actuator', the third one 'Rendering of services (Research & Development)' and the last one 'Management and Technical Fees'. It was a submission that in respect to 'Import of Raw materials and components', Sale of Valve actuator' and 'Rendering of services (Research & Development)', no adjustment was found necessary. In respect of 'Management and Technical Fees' paid by the assessee to its Associated Enterprises(A.E), the Transfer

Pricing Officer (TPO) took a view that the Transactional Net Margin Method (TNMM) could not be applied, and consequently, the Comparable Uncontrolled Price (CUP) Method was applied. It was a submission that by applying the CUP method as it was found that there was no other comparable to that of the assessee, the Id. Assessing Officer /Id.TPO adopted the 'Technical Support Services' more specifically the Management Services at 'Nil'. The TPO accepted the claim of assessee in respect of the 'Operational Support Services' and the reimbursements. It was a submission that the issue was now squarely covered by the decision of the Co-ordinate Bench of this Tribunal in the case of M/s.Bonfiglioli transmissions Private Limited., in I.T.A.No.2977/CHNY/2017 vide order dated 14-05-2018 wherein in para Nos. 8 to 10, it has been held as under:-

"8. In respect of Ground Nos.11 to 13, it was submitted by the Id.A.R that the assessee had made payments for Corporate Services availed by the assessee from its A.Es. Ld.A.R drew our attention to the agreement entered into by the assessee with its A.Es at page No.393 of the paper book. It was submitted that the agreement was between the parent company, Bonfiglioli Riduttori Spa (BRI), Italy and 20 subsidiaries. The assessee was shown at party No.16 in the said agreement. It was submitted that there were four types of services provided i.e. Information & Technology services, Accounting & Finance, Quality control system & Marketing services. It was submitted that Id. Assessing Officer allowed the claim of information technology fees, but held that there was no necessity for the assessee to make any payments

towards the marketing fees, Financial controlling fees as also quality controlling fees. It was a submission that these were aggregated amounts payable by the assessee in respect of expenditure incurred by the parent company. The Id.A.R drew our attention to the decision of Hon'ble Delhi High Court in the case of CIT vs. EKL Appliances Ltd., (345 ITR 241) wherein the Hon'ble Delhi High Court had held as follows:-

"22. Even rule 10B(1)(a) does not authorise disallowance of any expenditure on the ground that it was not necessary or prudent for the assessee to have incurred the same or that in the view of the Revenue the expenditure was unremunerative or that in view of the continued losses suffered by the assessee in his business, he could have fared better had he not incurred such expenditure. These are irrelevant considerations for the purpose of rule 10B. Whether or not to enter into the transaction is for the assessee to decide. The quantum of expenditure can no doubt be examined by the Transfer Pricing Officer as per law but in judging the allowability thereof as business expenditure, he has no authority to disallow the entire expenditure or a part thereof on the ground that the assessee has suffered continuous losses. The financial health of the assessee can never be a criterion to judge allowability of an expense ; there is certainly no authority for that. What the Transfer Pricing Officer has done in the present case is to hold that the assessee ought not to have entered into the agreement to pay royalty/brand fee, because it has been suffering losses continuously. So long as the expenditure or payment has been demonstrated to have been incurred or laid out for the purposes of business, it is no concern of the Transfer Pricing Officer to disallow the same on any extraneous reasoning. As provided in the OECD guidelines, he is expected to examine the international transaction as he actually finds the same and then make suitable adjustment but a wholesale disallowance of the expenditure, particularly on the

grounds which have been given by the Transfer Pricing Officer is not contemplated or authorised.

23. Apart from the legal position stated above, even on the merits the disallowance of the entire brand fee/royalty payment was not warranted. The assessee has furnished copious material and valid reasons as to why it was suffering losses continuously and these have been referred to by us earlier. Full justification supported by facts and figures have been given to demonstrate that the increase in the employees' cost, finance charges, administrative expenses, depreciation cost and capacity increase have contributed to the continuous losses. The comparative position over a period of five years from 1998 to 2003 with relevant figures have been given before the Commissioner of Income-tax (Appeals) and they are referred to in a tabular form in his order in paragraph 5.5.1. In fact there are four tabular statements furnished by the assessee before the Commissioner of Income-tax (Appeals) in support of the reasons for the continuous losses. There is no material brought by the Revenue either before the Commissioner of Income-tax (Appeals) or before the Tribunal or even before us to show that these are incorrect figures or that even on the merits the reasons for the losses are not genuine."

It was a submission that similar expenses have not been claimed separately in the accounts of the assessee. It was submitted that assessee was entitled to its claim of expenditure.

9. In reply, Id.D.R submitted that corporate services expenditure cannot be aggregated. It was a submission that the order of TPO/A.O and direction of the DRP is liable to be sustained on this issue.

10. We have considered the rival submissions and perused the materials available on record. Admittedly the business of the assessee is a consolidated one. The services referred under

'Corporate Services' are intrinsically linked to its manufacturing and sales activity. These two services cannot be separately demarcated. Corporate services are the services rendered, which has helped the assessee in generating the business in respect of marketing and trading. This being so, in view of the decision of Hon'ble Delhi High Court in the case of CIT vs. EKL Appliances Ltd., referred to supra, the Id. Assessing Officer is directed to allow the assessee's claim of the Corporate Services expenditure incurred by assessee. Consequently, Grounds Nos.11 to 13 of the assessee stand allowed."

The Id.A.R drew our attention to pages 51-55 of Paper Book, which was in Appendix-A being the supporting documents demonstrating the flow of Management and Technical Services. The Id.A.R also drew our attention to pages 56 to 67 of the Paper Book which show the copies of the various E-mails between the assessee and its AE. It was a submission that the 'Management fees' could not be taken as 'Nil' and the payments have been made on the basis of the agreement between the assessee and its A.Es taking into consideration the number of man hours. It was a submission that the addition as confirmed by the order of Ld.CIT(A) is liable to be deleted.

4. In reply, the Id.D.R vehemently supported the orders of Id.TPO and the Ld.CIT(A). It was a submission that there was no need for the assessee to pay the 'Management Fees' and 'Management Fees' are more than technical services. It was a submission that the order of the CIT(Appeals) was liable to be upheld.

5. We have considered the rival submissions. As it is noticed that the issue in the appeal is squarely covered by the decision of the Co-ordinate Bench of this Tribunal in the case of M/s.Bonfigioli transmissions Private Limited., referred to supra, respectfully following the decision of Co-ordinate Bench of this Tribunal, and as the assessee has proved the incurring of the expenditure on Management Fees, the addition, as made by the Id.A.O/TPO and confirmed by the Ld.CIT(A), stands deleted.

6. In the result, both the appeals of the assessee for assessment years 2013-14 & 2012-13 are allowed.

Order pronounced in the open court after conclusion of hearing on 14th November, 2018, 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: 14th November, 2018.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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