

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'I-1' NEW DELHI**

**BEFORE SHRI N. K. SAINI, VICE PRESIDENT
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 5682/DEL/2011 (A.Y 2007-08)

<p>CEVA Freight India Pvt. Ltd. (Now merged with CEVA Logistics India Private Limited w.e.f. April, 1, 2016 vide order dated November 9, 2017 of National Company Law Tribunal) Sewa Tower, Plot No. 19, Sectdor-18, 2nd Floor, Block, C, Maruti Industrial Complex, Udyog Vihar Gurgaon AAACC2674H (APPELLANT)</p>	Vs	<p>DCIT Circle-1(1), Gurgaon 5th Floor, HSIIDC Building, Vanijya Nikunj, Udyog Vihar, Phase-V Gurgaon (RESPONDENT)</p>
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ITA No. 6135/Del/2016 (A.Y 2012-13)

<p>CEVA Freight India Pvt. Ltd. Sewa Tower, Plot No. 19, Sectdor-18, 2nd Floor, Block, C, Maruti Industrial Complex, Udyog Vihar Gurgaon AAACC2674H (APPELLANT)</p>	Vs	<p>DCIT Circle-1(1), 5th Floor, HSIIDC Building, Vanijya Nikunj, Udyog Vihar, Phase-V Gurgaon (RESPONDENT)</p>
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ITA No. 1297/Del/2016 (A.Y 2011-12)

<p>CEVA Freight India Pvt. Ltd. Formerly known as EGL Eagle Global Logistic (India) Pvt. Ltd. 1st Floor, Tower C, DLF Building No. 10 DLF Phase-II, DLF Cyber City, Gurgaon AAACC2674H (APPELLANT)</p>	Vs	<p>ACIT Circle 1(1) Gurgaon (RESPONDENT)</p>
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ITA No. 2434/Del/2014 (A.Y 2009-10)

CEVA Freight India Pvt. Ltd. Formerly known as EGL Eagle Global Logistic (India) Pvt. Ltd. 1 st Floor, Tower C, DLF Building No. 10 DLF Phase-II, DLF Cyber City, Gurgaon AAACC2674H (APPELLANT)	Vs	DCIT Circle 11(1) New Delhi (RESPONDENT)
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ITA NO. 1739/Del/2015 (A.Y 2010-11)

CEVA Freight India Pvt. Ltd. 1 st Floor, Tower C, DLF Building No. 10, DLF Phase-II, DLF Cyber City, Gurgaon AAACC2674H (APPELLANT)	Vs	DCIT Circle 1(1) Gurgaon (RESPONDENT)
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Appellant by	Sh. C. S. Aggarwal, Sr. Adv, Sh. Ram Pratap Mall, Adv, Sh. Karnik Gulati, CA Sh. Anurag Plaha, CA
Respondent by	Mrs. Namita Pandey, Sr. DR

Date of Hearing	16.11.2018
Date of Pronouncement	12.02.2019

ORDER**PER BENCH**

These appeals are filed by the assessee against the Assessment Order dated 07/01/2011 passed by the Assessing Officer u/s 143 (3) read with Section 144C of the Income Tax Act, 1961.

2. The grounds of appeal are as under:-

ITA No. 5682/DEL/2011 A.Y. 2007-08

The addition amounting to Rs. 179,878,755 undertaken by the Learned Deputy

Commissioner of Income-tax, Circle 10(1), New Delhi ("the Ld. AO") vide final assessment order dated September 29, 2011 (received by the Appellant on October 19, 2011) passed under section 143 (3) read with section 144C (13) of the Income Tax Act, 1961 ("the Act") is not in accordance with the law and therefore not sustainable.

Transfer Pricing ("TP") Adjustment - Rs. 179,778,755

That the Hon'ble Dispute Resolution Panel, New Delhi ("the DRP") has erred both in law and on facts by summarily rejecting the Appellant's objections to the draft order dated December 09, 2010 passed by the Ld. AO under section 143(3) read with section 144C(1) of the Act. The Hon'ble DRP while issuing directions under section 144C(5) of the Act did not consider the facts and merits of Appellant's objections to the proposed adjustments, and merely relied on the reasoning given by the Additional Commissioner of Income-tax, Transfer Pricing Officer-1 (2) vide order under section 92CA(3) of the Act dated October 11, 2010 ("TP Order"). On the facts and in the circumstances of the case, the Ld. TPO and the Ld. AO have erred in proposing and the Hon'ble DRP has further erred in confirming the transfer pricing adjustment of Rs. 179,778,755 without due application of mind and without affording a reasonable opportunity of being heard in the matter to the Appellant on the following grounds:

1. The DRP/ Ld. TPO have grossly erred in confirming the addition of Rs. 179,778,755:
 - 1.1. By summarily rejecting/disregarding the comparability analysis without giving any cogent basis and without demonstrating the inadequacy or infirmity in the economic analysis so conducted by the Appellant. In this regard, the Ld. TPO erred in demonstrating correctness of the presumption/ hypothesis so framed to reject the comparability analysis of the Appellant and has accordingly violated the applicable provisions of Section 92C (3) (c) of the Act.
 - 1.2. By misunderstanding/ misinterpreting the functional and risk profile of the Appellant resulting in erroneous application of benchmarking methodology based on his own conjectures and surmises.
 - 1.3. By making modification to the set of comparable companies identified by

the Appellant by applying freight cost-to-freight income ratio based upon his conjectures and surmises. Further, the Ld. TPO has also erred in applying an arbitrary tolerance range of +/- 5 percent (viz. 75 percent to 85 percent) based on freight cost-to-freight income ratio of the Appellant without following a cogent economic basis and without establishing any statistical veracity of the presumption/ hypothesis so framed. The Ld. TPO has erroneously used the taxpayer's data as a fulcrum for computing the tolerance range against the applicable provisions of Section 92F (ii) of the Act and Rule 10B (1) (e) (ii) of the Income Tax Rules, 1962 ("the Rules").

1.4. By disregarding the availability of internal comparables and has accordingly failed to appreciate the use of internal transactional net margin method ("TNMM"). In this regard, the Ld. TPO has failed to understand the similarity in the functional profile of the international segment vis-a-vis the domestic segment and thus has erred in summarily rejecting the analysis so conducted by the Appellant.

1.5. By making self-conflicting averments by using freight cost-to-freight income ratio on one hand and by rejecting the use of cost plus method on the other hand. In this regard, the Ld. TPO has failed to appreciate the statutory impossibility of juxtaposing two benchmarking methods in a single assessment by violating the applicable provisions of Section 92C of the Act.

1.6. By summarily disregarding the Appellant's replies vide submission dated July 26, 2010 in response to the queries raised vide show-cause notice dated July 1, 2010. In this regard, the Ld. TPO has erred:

1.6.1. By computing freight cost-to-freight income ratio in the case of Balmer Lawrie & Co Limited and by not appreciating the nexus of freight cost-to-freight income ratio vis-a-vis the net profit margin ("NPM") of a company.

1.6.2. By rejecting Transport Corporation of India Limited from the set of comparable companies identified by the Appellant on the grounds of "functional dissimilarity" by citing misplaced and inappropriate reasons based on his conjecture and surmises.

1.6.3. By following an inconsistent approach by

accepting Balmer Lawrie & Co Limited having similar functional/ asset profile as that of Transport Corporation of India Limited.

1.7. *By disregarding the approach followed by the Appellant for benchmarking international transaction pertaining to receipt of management services. In this regard, the Ld. TPO has artificially created separate business segments on fallacious assumptions, contrary to the fact that receipt of management services are received in the course of routine business activity and are integral part /inextricably linked to the business model of the Appellant (viz. freight forwarding services).*

1.8. *By assigning NIL value to the value of international transaction in relation to receipt of management services. Further, the Ld. TPO has failed to provide the detailed methodology/ reasoning or CUP data for assigning NIL value to the underlying transaction. The Ld. TPO has also erred by not providing the relevant material available on record which has been relied upon by the Ld. TPO in framing a hypothesis/ presumption in this regard.*

1.9. *By rejecting the profit level indicator used by the Appellant.*

1.10. *By not providing any subsequent opportunity of hearing. In this regard, the Ld. TPO has not discussed the arguments/ comments against the response to the show cause notice issued prior to framing the order u/s 92CA (3) and has not passed a speaking order.*

1.11. *By relying upon data of the comparables for financial year 2006-07 only, disregarding the multiple year data approach followed by the Appellant. Further, the Ld. TPO has also erred in laws and on facts by relying upon updated data of the Comparables which was not available to the Appellant at the time of maintenance of Transfer Pricing Documentation within the time-frame mentioned in Rule 10D(4) of the Income Tax Rules.*

1.12. *By not allowing the benefit of (+/-) 5 percent as provided in the proviso to Section 92C (2) of the Act, while determining the arm's length price of the international transactions of the Appellant.*

1.13. *By misconstruing the function, asset and risk profile of the Appellant and erred by not allowing suitable adjustments to the margins of the comparable*

companies.

Corporate Tax Adjustment - Rs. 100,000

2. The Ld. AO has grossly erred in making an addition of Rs. 100,000:

2.1. By disallowing Rs. 100,000 under Section 14A of the Act disregarding that no expenditure has been incurred by the appellant in relation to exempt income

2.2. (Without prejudice to the above) By making adhoc disallowance of Rs. 100,000 on the basis of surmises and conjectures and without any basis. The disallowance has been made by the Ld. AO contrary to the direction given by the Hon'ble DRP to establishing a nexus between the exempt income and expenditure incurred

2.3. By levying the interest u/s 234B and 234D of the Act.

2.4. By withdrawing interest u/s 244A of the Act as no interest u/s 244A of the Act has been granted to Appellant earlier.

2.5. By initiating penalty for furnishing inaccurate particulars of income.

The above 'Grounds of Appeal' are all independent and without prejudice to one and another. The Appellant craves leave to supplement, to cancel, amend, add and/or otherwise alter/modify any or all the grounds of the appeal stated hereinabove."

ITA No. 2434/Del/2014 A.Y. 2009-10

1. Transfer Pricing Adjustment - Rs. 12,09,03,662

That the Hon'ble Dispute Resolution Panel, New Delhi ("the DRP") has erred both in law and on facts by summarily rejecting the Appellant's objections to the draft order dated March 08, 2013 passed by the Ld. AO under Section 143(3) read with Section 144C(1) of the Act. The Hon'ble DRP while issuing directions under Section 144C(5) of the Act did not consider the facts and merits of Appellant's objections to the proposed adjustments, and merely relied on the reasoning given by the Additional Commissioner of Income-tax, Transfer Pricing Officer -1 (1) vide order under Section 92CA(3) of the Act dated January 15, 2013.

1.1. On the facts and in the circumstances of the case, the Ld. TPO and the Ld. AO have erred in proposing and the Hon'ble DRP has further erred in confirming

the transfer pricing adjustment without due application of mind and without affording a reasonable opportunity of being heard in the matter.

1.2. *The Ld. TPO has erred in law and on facts in not adhering to the directions of DRP by not allowing relief to the Appellant of Rs. 1,28,98,385 on account of intra-group services received from EGL Eagle Global Logistics LP for various IT solutions offered to the Appellant.*

1.3. *The Ld. TPO has erred in law and on facts by summarily disregarding the approach followed by the Assessee for benchmarking international transaction pertaining to receipt of management services without assigning any cogent reasons.*

In this regard, the Ld. TPO has artificially created separate business segments on fallacious assumptions, contrary to the fact that management services are received in the course of routine business activity and are integral part /inextricably linked to the business model of the Assessee (viz. freight forwarding services).

1.4. *The Ld. TPO has erred in law and on facts by assigning 'NIL' value to the value of international transaction in relation to receipt of management services except charges relating to IT solutions provided by EGL Eagle Global Logistics LP, USA.*

Further, the Ld. TPO has failed to provide the detailed methodology/ reasoning or CUP data for assigning 'NIL' value to the aforesaid transaction.

2. *The Ld. AO has erred on the facts and in the circumstances of the case and in law, in disallowing and the Hon'ble DRP has erred in confirming the disallowance of Rs. 1,79,495 under Section 14A of the Act read with Rule 8D of the Rules:*

- *by not appreciating that Ld AO has himself admitted that neither any direct nor indirect expenditure has been incurred by appellant in relation to earning of exempt income and hence no disallowance can be made under residuary clause of Rule 8D;*
- *disregarding that since no expenditure has been incurred by the appellant in relation to exempt income, therefore, provisions of section 14A read with Rule*

8D cannot be invoked;

- without recording a finding that any specific and identifiable expenditure has been incurred by the appellant for earning exempt income.*

3. The Ld. AO has erred on facts and in law in directing levy of interest under Section 234B and 234C of the Act.

4. The Ld. AO erred on facts and in law in initiating penalty proceedings under Section 271(1) (c) of the Act for concealment / furnishing inaccurate particulars of income.

The Appellant prays for leave to add, alter, rescind from or withdraw any of the above grounds of appeal at or before the time of hearing of the appeal.

ITA NO. 1739/Del/2015 A.Y. 2010-11

1. Transfer Pricing Adjustment - Rs. 13,25,27,364

That the Hon'ble Dispute Resolution Panel, New Delhi ("the DRP") has erred both in law and on facts by summarily rejecting the Appellant's objections to the draft order dated March 25, 2014 passed by the Ld. AO under Section 143(3) read with Section 144C(1) of the Act. The Hon'ble DRP while issuing directions under Section 144C(5) of the Act did not consider the facts and merits of Appellant's objections to the proposed adjustments, and merely relied on the reasoning given by the Additional Commissioner of Income-tax, Transfer Pricing Officer-1 (1) vide order under Section 92CA(3) of the Act dated November 25, 2013.

1.1. On the facts and in the circumstances of the case, the Ld. TPO and the Ld. AO have erred in proposing and the Hon'ble DRP has further erred in confirming the transfer pricing adjustment without due application of mind and without affording a reasonable opportunity of being heard in the matter.

1.2. While confirming the transfer pricing adjustment, Hon'ble DRP has placed reliance on DRP's own directions in Appellant's case for AY 2009-10. Hon'ble DRP has erred on facts in considering that arm's length price for intra-group services is held 'nil' in directions for AY 2009-10. Whereas, intra-group charge pertaining to information technology paid by the Appellant to EGL Eagle Global

Logistics, USA were held to be at arm's length by Hon'ble DRP in directions for AY 2009-10.

1.3. The Ld. TPO has erred in law and on facts by summarily disregarding the approach followed by the Assessee for benchmarking international transaction pertaining to receipt of management services without assigning any cogent reasons.

In this regard, the Ld. TPO has artificially created separate business segments on fallacious assumptions, contrary to the fact that management services are received in the course of routine business activity and are integral part /inextricably linked to the business model of the Assessee (viz. freight forwarding services).

The Ld. TPO in law and on facts by assigning 'NIL' value to the value of international transaction in relation to receipt of management services. Further, the Ld. TPO has failed to provide the detailed methodology/reasoning or CUP data for assigning 'NIL' value to the aforesaid transaction.

2. On the facts and in the circumstances of the case and in law, the Ld. A.O has erred in disallowing and the Hon'ble DRP has erred in confirming the disallowance of Rs.1,88,852/- u/s 14A of the Act read with Rule 8D of the Rules:

- By not appreciating that Ld AO has himself admitted that neither any direct nor indirect expenditure incurred by appellant in relation to earning of exempt income and hence no disallowance was made under residuary clause of Rule 8D;*
- disregarding that since no expenditure has been incurred by the appellant in relation to exempt income, therefore, provisions of Section 14A read with Rule 8D cannot be invoked;*
- without recording finding that any specific and identifiable expenditure has been incurred by the appellant for earning exempt income.*

The Ld. A.O has erred on facts and in law in directing levy of interest under Section 234B and 234C of the Act.

4. The Ld. AO erred on facts and in law in initiating penalty proceedings

under Section 271(1) (c) of the Act for concealment/ furnishing inaccurate particulars of income.

The Appellant prays for leave to add, alter, rescind from or withdraw any of the above grounds of appeal at or before the time of hearing of the appeal.

ITA No. 1297/Del/2016 A.Y. 2011-12

1. Transfer Pricing Adjustment - Rs. 20,25,42,955

That the Hon'ble Dispute Resolution Panel, New Delhi ("the DRP") has erred both in law and on facts by summarily rejecting the Appellant's objections to the draft order dated February 17, 2015 passed by the Deputy Commissioner of Income Tax, Circle 1(1), Gurgaon under Section 143(3) read with Section 144C(1) of the Act. The Hon'ble DRP while issuing directions under Section 144C(5) of the Act did not consider the facts and merits of Appellant's objections to the proposed adjustments, and merely relied on the reasoning given by the Additional Commissioner of Income-tax, Transfer Pricing Officer- I (1), New Delhi vide order under Section 92CA(3) of the Act dated November 03, 2014.

1.1 *On the facts and in the circumstances of the case, the Ld. TPO and the Ld. AO have erred in proposing and the Hon'ble DRP has further erred in confirming the transfer pricing adjustment without due application of mind and without affording a reasonable opportunity of being heard in the matter.*

1.2 *On the facts and in the circumstances of the case, the Ld. TPO has erred by summarily disregarding the approach followed by the Appellant for benchmarking international transaction pertaining to receipt of management services without assigning any cogent reasons.*

In this regard, the Ld. TPO has artificially created separate business segments on fallacious assumptions, contrary to the fact that management services are received in the course of routine business activity and are integral part /inextricably linked to the business model of the Appellant (viz. freight forwarding services).

1.3 *On the facts and in the circumstances of the case, the Ld. TPO has erred by assigning 'NIL' value to the value of international transaction in relation*

to receipt of management services. Further, the Ld. TPO has failed to provide the detailed methodology/ reasoning or CUP data for assigning 'NIL' value to the aforesaid transaction.

1.4 On the facts and in the circumstances of the case, the Ld. TPO have erred by summarily disregarding the Appellant's submission dated October 14, 2014 despite taking the same on record. Further, Hon'ble DRP has also erred in law and facts by disregarding Appellant's submissions made before Hon'ble DRP and the Ld. TPO.

2. Corporate Tax Adjustment-Rs.1,92,585/-

2.1 On the facts and in the circumstances of the case and in law, the Ld. AO has erred in disallowing and the Hon'ble DRP has erred in confirming the disallowance of Rs. 1,92,585 under Section 14A of the Act read with Rule 8D of the Rules:

- by not appreciating that Ld AO has himself admitted that neither any direct nor indirect expenditure has been incurred by appellant in relation to earning of exempt income and hence no disallowance can be made under residuary clause of Rule 8D;
- disregarding that since no expenditure has been incurred by the appellant in relation to exempt income, therefore, provisions of section 14A read with Rule 8D cannot be invoked;
- without recording finding that any specific and identifiable expenditure has been incurred by the appellant for earning exempt income.

Without prejudice to the above, on the facts and in the circumstances of the case and in law, the Ld. AO has erred in considering 0.5% of opening value of investments as against 0.5% of average value of investments while computing disallowance and the Hon'ble DRP has erred in confirming the disallowance of Rs. 1,92,585 under Section 14A of the Act read with Rule 8D of the Rules.

ITA No. 6135/Del/2016 A.Y. 2012-13

1. Pricing Adjustment - Rs. 29,29,71,236

That the Hon'ble Dispute Resolution Panel, New Delhi ("the DRP") has erred

both in law and on facts by summarily rejecting the Appellant's objections to the draft order dated February 19, 2016 passed by the Assistant Commissioner of Income Tax, Circle 1(1), Gurgaon under Section 143(3) read with Section 1MC 1 of the Act. The Hon'ble DRP while issuing directions under Section 144C(5) of the Act did not consider the facts and merits of Appellant's objections to the proposed adjustments, and merely relied on the reasoning given by the Deputy Commissioner of Income-tax, Transfer Pricing Officer-1 (2)(1), New Delhi ("Ld. TPO") vide order under Section 92CA(3) of the Act dated January 15, 2016.

1.1. On the facts and in the circumstances of the case, the Ld. TPO and the Ld. AO have erred in proposing and the Hon'ble DRP has further erred in confirming the transfer pricing adjustment without due application of mind and without affording a reasonable opportunity of being heard in the matter.

1.2. On the facts and in the circumstances of the case, the Ld. TPO has erred by summarily disregarding the approach followed by the Appellant for benchmarking international transaction pertaining to receipt of management services without assigning any cogent reasons.

In this regard, the Ld. TPO has artificially created separate business segments on fallacious assumptions, contrary to the fact that management services are received in the course of routine business activity and f-e integral part / inextricably linked to the business model of the Appellant (viz. freight forwarding services).

1.3. On the facts and in the circumstances of the case, the Ld. TPO has erred by assigning 'NIL' value to the value of international transaction in relation to receipt of management services. Further, the Ld. TPO has failed to provide the detailed methodology/ reasoning or CUP data for assigning 'NIL' value to the aforesaid transaction.

1.4. On the facts and in the circumstances of the case, the Ld. TPO have erred by summarily disregarding the Appellant's submission dated December 22, 2015 and not allowing the Appellant adequate time to submit cost allocation sheets for intra group services received by the Appellant. Further, Hon'ble

DRP also erred in law and facts by disregarding Appellant's submissions made before Hon'ble DRP, and the Ld. TPO.

In addition, Hon'ble DRP has also erred in law and facts by summarily disregarding allocation sheets filed with the Hon'ble DRP as additional evidences, despite accepting the same on record.

Corporate Tax Adjustment - Rs. 5,12,90,218

On the facts and in the circumstances of the case and in law, the Ld. AO has erred in not allowing the claim action of additional income of Rs. 5,12,90,218 erroneously booked in accounts and offered to tax in return of income filed for subject assessment year by not appreciating that:

- During subject assessment year certain erroneous accounting entries were passed and erroneously credited the Profit and Loss Account under the head "Net gain on foreign currency transactions and translation".*
- The said error was rectified during AY 2014-15 (or FY 2013-14) by debiting the Profit and Loss Account under the head foreign currency transactions and translation account and the said amount was suo moto disallowed by the appellant in the computation of income for AY 2014-15 being prior period item;*
- The said amount pertains to AY 2012-13 and in AY 2014-15 it reflects reversal of additional income erroneously included in subject assessment year i.e. AY 2012-13 and therefore no allowance has been claimed for the said amount either in AY 2012-13 or in AY 2014-15.*

2.2. On the facts and in the circumstances of the case and in law, the DRP has erroneously mentioned "Consignment handling services" account instead of "Freight" expense account in its directions although the appellant has only mentioned the "Expense" account in its submissions made before the DRP. The appellant has also filed rectification application before the DRP to rectify its directions to this effect being mistake apparent from record.

2.3. On the facts and in the circumstances of the case and in law, the Ld. AO has erred in not allowing the claim by not appreciating that the said amount of Rs. 5,12,90,218 is included in "Freight" account instead of

"Consignment handling services" account since the appellant has produced ledger accounts of "Freight" expense account and "foreign currency exchange gain/loss" account and correlated the entries in both the ledger accounts."

We are taking up ITA No. 5682/Del/2011 for A.Y. 2007-08 first.

3. The assessee company is engaged in business of freight forwarding services, consignment handling services and other services. The freight forwarding services are carried out through air and ocean. Other services include custom clearances, storage and warehousing services. E-return non digitally signed declaring total income of Rs. 14,37,37,780/- was filed on 30.10.2007. The hard copy of the return was submitted on 14.11.2007. The return was processed u/s 143(1) of the Income Tax Act, 1961. The case was selected for scrutiny. Notice u/s 143(2) was issued on 22.09.2008 which was duly served upon the assessee. The case was assigned to ACIT Circle 10(1). Therefore, fresh notice u/s 143(2) along with notice u/s 142(1) of the Act and with a detailed questionnaire was issued on 13.10.2010 which was also duly served upon the assessee. In response to these notices, Chartered Accountant/Authorised Representative of the assessee attended from time to time and the details as required was filed before the Assessing Officer which was placed on record after perusal. During the year under consideration, the assessee company made the international transaction with the associated enterprises of total value of more than Rs. 15.0 crore and a reference was made to Transfer Pricing Officer u/s 92CA(3) of the Act, in respect of international transaction entered into by the assessee during F.Y. 2006-07. The transfer pricing order dated 11.10.2010 was passed directing the Assessing Officer to make total addition of Rs. 17,97,78,755/- in respect of payment of management fee (Rs.5,16,58,369/-) and income from freight forwarding (Rs.12,81,20,386/-). The Assessing Officer passed draft assessment order and the assessee filed objections before the Dispute Resolution Panel (DRP). The

DRP with certain direction disposed off the objections of the assessee vide order dated 08.08.2011. Thereafter, the Assessing Officer made addition on account of arm's length price for Rs. 17,97,78,755/- and on account of disallowances under Section 14A of the Act for Rs. 1,00,000/-.

4. Being aggrieved by the Assessment Order, the assessee filed the present appeal before us.

5. The Ld. AR submitted that the TPO held that transaction of payment made by the assessee to its AEs on account of management consultancy services of Rs.5,16,58,369/- should be segregated from the transaction of freight forwarding. The Ld. AR further submitted that after segregating the aforesaid transaction, the TPO computed the NCP of the transaction of freight forwarding at 9.03% as against the NCP of 6.10% computed by the assessee from both the transactions. The Ld. AR submitted that in respect of the payment of management fee, the TPO applied CUP method and computed the arm's length price of the aforesaid transaction at NIL, however, in respect of the transactions of freight forwarding and cargo handling, he accepted the TNMM as most appropriate method adopted in the TP study and Accountant's Report in Form 3CEB by the assessee. However, the TPO concluded that the payment of Rs. 5,16,58,369/- as management service fee was not at arm's length and by the application of CUP, the arm's length price of this transaction was reduced to Nil. The TPO also observed that PLI used shall be OP/TC as the assessee has higher portion of uncontrolled transaction on the cost side and the Arithmetic Mean of comparables was at 15.91% and made an upward adjustment of Rs. 12,81,20,386/-. The adjustment made by him are tabulated as under:

Sr. No.	Particulars	ALP as per assessee (INR)	ALP as per this order (INR)	Difference (INR)	Method adopted & accepted
1	Payment of Management fee	5,16,58,369	NIL	5,16,58,369	CUP adopted by the TPO. Aggregated approach followed by the assessee
2	Income from freight forwarding	2,03,29,93,910	21,61,14,296	12,81,20,386	TNMM

The Ld. AR submitted that in respect of the transaction of freight forwarding and cargo handling services, the TPO did not dispute the most appropriate method selected by the assessee. However, the TPO held that since the freight cost is a key driver as such, same should be used as diagnostic tool for selection of the comparable and therefore he applied a filter of freight cost/freight income. The TPO held that since the freight cost/freight income of the assessee is 80.90% as such, he applied a range of 75%-85% (freight cost/freight income) for selection of the comparables. The Ld. AR submitted that by applying the aforesaid filter, the TPO selected only 2 comparable which are as under:

- i. Balmer, Lawrie & Co. Ltd.

ii. Gordon Woodroffe Logistics Ltd.

The Ld. AR submitted that the TPO applied a filter of freight cost/freight income for selection of the comparables and by applying the aforesaid filter has taken entity as a whole, which is totally arbitrary and contradictory. The Ld. AR submitted that if only segmental data of the Balmer, Lawrie & Co. Ltd. is taken and on the segmental data aforesaid filter of freight cost/freight income is applied then the ratio would be 35.17% and therefore, the aforesaid comparable would become incomparable even as per the filter of the TPO. Thus, the Ld. AR submitted that even if the aforesaid filter is applied correctly, the comparable Balmer, Lawrie & Co. Ltd. would be rejected and in such circumstance, NPM of assessee would not require any adjustment under Section 92CA(3) of the Act. The Ld. AR further submitted that Balmer, Lawrie & Co. Ltd. earns its revenue from manufacturing, trading, turnkey projects and services and operates in different business segments such as industrial packaging, logistics services, travel and tours, greases and lubricants and others. Besides that Balmer, Lawrie & Co. Ltd. is government company and was granted status of mini ratna I PSC in A.Y. 2006-07. Therefore, there is difference in functional profile of Balmer, Lawrie & Co. Ltd. from the assessee company. The Ld. AR relied upon the decision of the Hon'ble Delhi High Court in case of Rampgreen Solutions P. Ltd. v. CIT 377 ITR 533. Therefore, the Ld. AR submitted that this comparable should not be considered.

6. The Ld. DR relied upon the order of the TPO/ Assessing Officer. The Ld. DR further submitted that Balmer, Lawrie & Co. Ltd. is comparable chosen by the assessee only in its TP study.

7. We have heard both the parties and perused all the relevant material available on record. As regards to the first issue of Transfer pricing in respect of the transaction of freight forwarding and cargo handling services, the TPO did not dispute the most appropriate method selected by the assessee.

However, the TPO held that since the freight cost is a key driver as such, same should be used as diagnostic tool for selection of the comparable and therefore he applied a filter of freight cost/freight income. The TPO held that since the freight cost/freight income of the assessee is 80.90% as such, he applied a range of 75%-85% (freight cost/freight income) for selection of the comparables. While doing so, the TPO has not looked into the functions of the comparable i.e. Balmer, Lawrie & Co. Ltd. In fact, the TPO's own filters are not in proportionate with the range of 75%-85% (freight cost/freight income) for selection of the said comparable. Therefore, we direct the TPO/AO to exclude this comparable from the list of the comparables.

8. As regards to corporate issues, the Ld. AR submitted that the Assessing Officer has not recorded any satisfaction that the assessee has incurred expenditure to earn an income which is exempt. The Ld. AR further submitted that the provision of Section 14A, sub-section (3) specifies the provision of Section 14A(2) would also apply where the assessee makes a claim that there is no expenditure incurred. In order to disallow the expenditure u/s. 14A there must be a live nexus between the expenditure incurred and the income not forming part of the total income. No notional expenditure can be apportioned for the purpose of earning exempt income unless there is an actual expenditure in relation to earning the income not forming part of total income.

9. The Ld. DR relied upon the Assessment order.

10. We have heard both the parties and perused all the relevant material available on record. The assessee claimed that no expenditure was incurred to earn the exempt income. In fact, assessee could not establish that it has not claimed any expenditure on exempt income. Therefore, we do not see any valid ground to interfere in the findings given by the Assessing Officer. Ground No. 2 is dismissed.

11. As regards Ground Nos. 3, 4 and 5, the same are consequential, hence are not adjudicated at this juncture.

12. In result, appeal being ITA No. 5682/Del/2011 A.Y. 2007-08 filed by the assessee is partly allowed for statistical purpose.

13. Now we are taking up the ITA No. 2434/Del/2014 for A.Y. 2009-10. As regards the issue of Transfer pricing relating to intra group services which arose in A.Y. 2009-10, the Ld. AR submitted that the expenses are interlinked. It was further submitted that for A.Y. 2005-06 and 2006-07, the TPO did not dispute that the management fee has been paid to its AE for the services provided by the AEs to the assessee company and these services are interlinked transaction with the freight forwarding services, whereas for A.Y. 2007-08, the TPO took the value of the transaction at Nil by benchmarking the payment of management fee as separate transaction. For A.Y. 2008-09, the assessee company furnished TP documentation, however, transactions of the assessee was not disturbed. Thereafter again from A.Y. 2009-10 to 2012-13, the TPO treated the payment of management fee as separate transaction. The Ld. AR submitted that the assessee did not incur expenditure outside India other than to have made payment to the AEs by way of reimbursement under the agreement and on the terms and conditions as had been entered into. The Ld. AR submitted that various evidences were submitted before the TPO/AO. In fact, the TPO accepted that services were rendered and received by the assessee, still held that arms length value of the management fee is Nil and accordingly made an upward adjustment. The Ld. AR submitted that the TPO has not taken into consideration the evidences given by the assessee.

14. The Ld. DR relied upon the Assessment Order and the order of the TPO.

15. We have heard both the parties and perused all the relevant material

available on record. It is pertinent to note that the TPO did not dispute the fact that the management fee has been paid to its AE for the services provided by the AEs to the assessee company and these services are interlinked transaction with the freight forwarding services, whereas for A.Y. 2007-08, the TPO took the value of the transaction at Nil by benchmarking the payment of management fee as separate transaction. For A.Y. 2008-09, the assessee company furnished TP documentation, however, transactions of the assessee was not disturbed. Thereafter again from A.Y. 2009-10 to 2012-13, the TPO treated the payment of management fee as separate transaction. Thus, the TPO/AO ignored the evidences filed by the assessee company. The assessee did not incur expenditure outside India other than to have made payment to the AEs by way of reimbursement under the agreement and on the terms and conditions as had been entered into. To support the case of the assessee company, various evidences were submitted before the TPO/AO by the assessee. The TPO accepted that services were rendered and received by the assessee. Once the rendering and receiving of the services were not disputed which is supported by the evidences, the TPO is not correct in holding that arms length value of the management fee is Nil and accordingly making an upward adjustment. Therefore, the finding of the TPO is not correct and this addition does not sustain. Ground No. 1 is allowed.

16. As regards to Ground No. 2 regarding disallowance u/s 14A, the Ld. AR submitted that no further investment has been made and therefore no expense incurred. The change in investment balance is on account of re-investment of dividend income. Thus, the Ld. AR submitted that this addition does not sustain.

17. The Ld. DR relied upon the Assessment Order and the order of the TPO.

18. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that no further investment has been

made and therefore no expense incurred. The change in investment balance is on account of re-investment of dividend income, since the "ABN AMRO Cash Mutual Fund" plan was a Dividend Reinvestment Plan. Thus, Ground No. 2 is allowed.

19. In result, appeal being ITA No. 2434/Del/2014 for A.Y. 2009-10 is allowed.

20. Now we are taking up ITA No. 1739/Del/2015 A.Y. 2010-11. As regards the Transfer Pricing issue, the same is identical with that of A.Y. 2009-10, therefore, the findings expressed hereinabove are applicable in the present assessment year as well. Ground No. 1 is therefore, allowed.

21. As regards Ground No. 2, relating to disallowance u/s 14A, the same is also identical with that of A.Y. 2009-10, therefore, the findings expressed hereinabove are applicable in the present assessment year as well. Ground No. 2 is therefore, allowed.

22. In result, appeal being ITA No. 1739/Del/2015 for A.Y. 2010-11 is allowed.

23. As regards ITA No. 1297/Del/2016 for A.Y. 2011-12 and ITA No. 6135/Del/2016 for A.Y. 2012-13, issue relating to Transfer pricing, the same is identical with that of A.Y. 2009-10, therefore, the findings expressed hereinabove are applicable in the present assessment year as well. Ground No. 1 is therefore, allowed.

24. As regards to Ground No. 2 the Ld. AR submitted that the issues relating to Ground No. 2 contested therein may be remanded back to the Assessing Officer. The Ld. DR did not object for the same. Therefore, we are remanding back the issue of Section 14A disallowance to the file of the Assessing Officer. Ground No. 2 in ITA No. 1297/Del/2016 for A.Y. 2011-12 and ITA No.

6135/Del/2016 for A.Y. 2012-13 is partly allowed for statistical purpose.

25. In result, appeals being ITA No. 1297/Del/2016 for A.Y. 2011-12 and ITA No. 6135/Del/2016 for A.Y. 2012-13 filed by the assessee are partly allowed for statistical purpose.

Order pronounced in the Open Court on 12th February, 2019.

Sd/-

(N. K. SAINI)
VICE PRESIDENT

Dated: 12/02/2019
R. Naheed

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	27 .11.2018
Date on which the typed draft is placed before the dictating Member	27 .11.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	12.02.2019
Date on which the final order is uploaded on the website of ITAT	12.02.2019
Date on which the file goes to the Bench Clerk	12.02.2019
Date on which the file goes to the Head Clerk	