IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER

IT(TP)A No.1218/Bang/2016
Assessment year : 2005-06

M/s. Flowserve India Controls Pvt. Ltd., Plot No.4, 1-A, #8, EPIP, Whitefield, Bangalore – 560 066. **PAN : AAACF 3286 G**	Vs.	The Assistant Commissioner of Income Tax, Circle – 11[3], Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri. K. R. Vasudevan, Advocate
Revenue by	:	Dr. P. V. Pradeep Kumar, Add. CIT

Date of hearing	:	25.04.2019
Date of Pronouncement	:	14.06.2019

O R D E R

Per Jason P Boaz, Accountant Member

This appeal by the assessee is directed against the order of CIT(A)-3, Bangalore, dated 31.03.2016 for Assessment Year 2005-06.

2. Briefly stated, the facts of the case are as under:

2.1 The assessee, an Indian company, a wholly owned subsidiary of Flowserve Corporation, USA, is engaged in the manufacture of pumps, industrial

control valves and parts thereof and precision making seals. For Assessment Years 2005-06, the assessee filed its return of income on 31.10.2005 declaring total income of Rs.10,85,72,730/-. The case was taken up for scrutiny and a reference under section 92CA of the Income Tax Act, 1961 (in short 'the Act') was made by the Assessing Officer (AO) to the Transfer Pricing Officer (TPO) in respect of determination of the arms length price (ALP) of the international transactions entered into by the assessee with its Associated Enterprises (AE) in the period under consideration. The TPO passed an order under section 92CA of the Act dated 31.10.2008 proposing a transfer pricing (TP) adjustment of Rs.1,05,53,532/- in respect of Management Service Fee paid to its AE. After receipt of the TPOs order dated 31.10.2008, the AO passed the order of assessment dated 31.12.2008 under section 143(3) of the Act whereby the assessee's income was determined at Rs.12,55,58,332/-, after, *inter alia*, incorporating the TP adjustment of Rs.1,05,53,532/- proposed by the TPO.

2.2 Aggrieved by the order of assessment dated 31.12.2008 for Assessment Year 2005-06, the assessee preferred an appeal before the CIT(A)-3, Bangalore, who disposed off the appeal vide the impugned order dated 31.03.2016 allowing the assessee partial relief.

3. The assessee, being aggrieved by the order of CIT(A)-3, Bangalore, dated 31.03.2016 for Assessment Year 2005-06 has preferred this appal before this Tribunal wherein it has raised the following grounds:

1) Transfer Pricing

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

a) The learned Assessing Officer ("learned AO"), learned Transfer Pricing Officer ("learned TPO") and the learned Commissioner of Income Tax Appeals ["learned CIT(A)"] have grossly erred in law and facts of the case in proposing a transfer pricing adjustment

under section 92CA of the Income-tax Act, 1961 ("the Act") towards the payment made for certain intragroup services received by the Appellant.

b) The learned AO, the learned TPO and the learned CIT(A) erred in not appreciating the additional evidences furnished by the Appellant and by proposing a transfer pricing adjustment towards the payments made for intragroup services relating to Sales and Marketing services; Employee relations & Human Resources Services; Treasury & Legal Services and Strategic Management Services.

c) The learned AO, the learned TPO and the learned CIT(A) have erred in not allowing the entire payment made for Sales and Marketing services received from the AE by the Appellant and in restricting the same to the extent of export sale made to third parties only.

d) The learned AO, the learned TPO and the learned CIT(A) erred in concluding that the benefit received from the Sales and Marketing services can only be linked to the revenues earned from third-party exports.

e) The learned AO, the learned TPO and the learned CIT(A) erred in concluding that the Sales and Marketing services received by the Appellant are primarily in the nature of brand promotion activities and therefore are in the nature of 'shareholder activities'.

f) The learned AO, the learned TPO and the learned CIT(A) erred in concluding that the Employee Relations and Human Resource Services received by the Appellant have not yielded any specific tangible benefit to the Appellant for which a third party would be willing to pay and were primarily for the benefit of the group as a whole.

g) The learned AO, the learned TPO and the learned CIT(A) erred in in concluding that the Treasury and Legal services received by the Appellant are very generic and have not yielded any specific tangible benefit to the Appellant

h) The learned AO, the learned TPO and the learned CIT(A) erred in concluding that Strategic Management Services rendered by the AE have not yielded any direct benefit or economic advantage for the Appellant.

i) The learned AO, the learned TPO and the learned CIT(A) failed to appreciate the fact that the intragroup services received by the Appellant are integral to the manufacturing/ service operations of

the Appellant and therefore cannot be evaluated for benchmarking purpose independently.

j) The learned AO, the learned TPO and the learned CIT(A) failed to appreciate the fact that the mark-up on cost earned by the Appellant for the manufacturing/ service operations are after considering the payment made for the intragroup services and the same has been concluded to be at arm's length by the learned AO/learned TPO.

k) The learned AO and the learned TPO erred in applying Comparable Uncontrolled Price ("CUP") Method as the most appropriate method for benchmarking the payment made of intragroup services received by the Appellant and thereby rejecting the benchmarking analysis undertaken in the transfer pricing documentation of the Appellant.

l) Without prejudice to the argument of the Appellant that CUP is not the most appropriate method for benchmarking the international transaction pertaining to payment for intragroup services, the learned AO/learned TPO failed to identify any comparable transaction for application of CUP as the most appropriate method and thereby failed to apply the method appropriately in accordance with the applicable law. Further, the learned CIT(A) erred in upholding the above approach of the learned TPO/learned AO in disallowing payments made for some of the intragroup services

2) Corporate Tax

a) The learned AO and the learned CIT(A) erred in disallowing the provision of warranty while computing the total income of the Appellant.

b) The learned AO and the learned CIT(A) erred in not acknowledging the fact that warranty is an obligation of the Appellant as part of the sale contract.

c) The learned AO and the learned CIT(A) erred in not appreciating the fact that the provision of warranty is done on a mercantile system of accounting which is a recognised system of accounting as per Section 145 of the Income tax Act, 1961.

d) The learned AO and the learned CIT(A) erred in concluding that provision of warranty can be allowed only on actual payment and in not appreciating that the sale price of goods includes the warranty costs.

e) The learned CIT(A) erred in upholding the action of the learned AO and by concluding that the Appellant has not computed provision for

warranty expenses on a scientific basis and has created an adhoc provision.

f) The learned CIT(A) has failed to appreciate the submissions made by the Appellant on the methodology of creating warranty provision.

g) The learned AO erred in in levying interest under Section 234B, 234C & 234D of the Act which are consequential in nature.

TRANSFER PRICING [GROUND (1) a to l]

4.1 In the appeal proceedings before us, the learned AR of the assessee submitted that the only issue involved in the grounds related to Transfer Pricing (1) a to l (supra) is the payment of Management Service Charges paid to its AE. The TPO held the ALP of the management service fees to be NIL and proposed a TP adjustment of the entire payment of Management Service Fee of Rs.1,05,53,532/- to its AE.

4.1.2 According to the learned AR, the assessee had, for the later Assessment Years 2006-07 to 2011-12, filed application for Mutual Agreement Procedure (MAP) proceedings under Article 25 of the India – USA Double Taxation Avoidance Agreement (DTAA) with respect to the TP adjustments made towards payment of Management Service charges. It is submitted that the MAP proceedings had got concluded vide Resolution dated 31.05.2017 and the conclusions of the MAP proceedings and the decision on margins was conveyed by the AO vide letter dated 27.07.2017 (copy filed) under the MAP proceedings, whereby the assessee had got partial relief and certain adjustments had been sustained. The assessee had agreed to the Resolution under the MAP proceedings.

4.1.3 It was also submitted that for the intermediate year; i.e., Assessment Year 2006-07, the assessee had filed additional evidences before the

Tribunal and the Co-ordinate Bench of this Tribunal in its order in IT(TP)A No.1366/Bang/2010 dated 23.02.2017 had remanded the issue of ALP of Management Service charges to the file of the TPO/AO for fresh determination (copy of ITAT order filed). According to the learned AR, pursuant to the aforesaid remand by the Tribunal, the TPO has passed orders making adjustment to the Management Charges / Services, in consonance with the MAP resolution (copy of TPO's order dated 20.11.2017 placed on record). In this regard, it was submitted that the authorities below did not have the benefit of the MAP Resolution when they passed the impugned order of assessment for Assessment Year 2005-06 on 31.12.2008 and therefore it was prayed that the matter be remanded back to the file of the TPO for fresh examination in the light of the decision under the MAP process, as has been done for Assessment Year 2006-07.

4.2 The learned DR for Revenue had no objection to the proposal to remand the matter to the file of the TPO/AO for fresh examination / adjudication in accordance with the MAP resolution as had been done in Assessment Year 2006-07.

4.3.1 We have considered the submissions and examined the issue before us. The assessee has two manufacturing divisions; 1) manufacturing pumps and 2) manufacturing valves. The assessee also renders engineering and design services to its AEs. The segmental details of the three segments has been provided by the assessee and the TPO has accepted the transactions related to these three segments to be at arm's length and did not propose any TP adjustment. However, the TPO had determined the ALP of Management Service Charges paid to the AE at NIL and proposed adjustment of the entire amount and accordingly the AO has added the same to the income of the assessee while concluding the assessment for Assessment Year 2005-06. On specifically being

queried at the Bar, the learned AR for the assessee submitted that the roll back scheme of MAP proceedings did not cover the year under consideration, i.e., Assessment Year 2005-06 and therefore the assessee could not file MAP application for this year. Considering the factual matrix of the case, as discussed above, we deem it appropriate to remand the issue of determination of the ALP of Management Service Charges back to the file of the TPO for fresh determination, in the light of the developments discussed above. Needless to add, the AO/TPO shall afford the assessee adequate opportunity of being heard and to furnish details / submissions required in relation to this issue, which shall be duly considered before deciding the matter. We hold and direct accordingly. Consequently, the grounds raised by the assessee on this issue are allowed for statistical purposes.

Corporate Tax [2) a to g]

5.1 The only issue raised in these grounds 2(a) to (g) (supra) is in respect of provision for warranty. From an appraisal of the details on record, it is seen that in the course of assessment proceedings, the AO observed that the assessee had created a provision for warranty amounting to Rs.38,07,040/- during the year under consideration. The AO disallowed them on the grounds that the assessee did not furnish the details regarding the methodology or the basis of computing the said provision. The CIT(A) has also rendered a finding that inspite of asking for the same, the assessee did not furnish the details relating to computation of the provision for creating the said provision. In the absence of these basis details, the CIT(A) upheld the action of the AO in disallowing the same.

5.2 Before us, the learned AR of the assessee furnished a chart showing the details of the opening balance, provision created and actual claims over the years. It was submitted that the provisions created are in tandem with the actual claims

over the years and hence may be allowed. We, however, find that the details of the actual provisions created and the methodology adopted for creating the provisions were not furnished. In these circumstances, we are in agreement with the CIT(A), that in the absence of such details, it will not be possible to make a determination that the provisions have been made on a scientific and proper basis. We, therefore, finding no merit in the averments put forth, dismiss the grounds 2(a) to (g) raised on this issue.

6. In the result, the assessee's appeal for Assessment Year 2005-06 is partly allowed for statistical purposes.

Order pronounced in the open court on this 14th day of June, 2019.

Sd/-	Sd/-
(N. V. VASUDEVAN)	**(JASON P BOAZ)**
Vice President	**Accountant Member**

Bangalore.
Dated: 14.06.2019.
/NS/*

Copy to:

1. Appellants
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.