

THE INCOME TAX APPELLATE TRIBUNAL
"J" Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Ramlal Negi (JM)

I.T.A. No. 731/Mum/2017 (Assessment Year 2012-13)
I.T.A. No. 6869/Mum/2017 (Assessment Year 2013-14)

M/s. Mubea Automotive India Private Limited (known as Mubea Automotive Components India Pvt. Ltd. w.e.f. April 1, 2015) Survey No. 1072, Post: Pirangut, Taluka: Mulshi District Pune-412111. PAN : AA ACT9025D (Appellant)	Vs.	ITO-3(2)(2) Mumbai (Respondent)
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Assessee by	Shri Ajit Kumar Jain & Shri Siddesh Chaugule
Department by	Shri Manish Kumar Singh
Date of Hearing	11.4.2019
Date of Pronouncement	28.6.2019

O R D E R

Per Shamim Yahya (AM):-

These are appeals by the assessee against the orders of the Assessing Officer for A.Y. 2012-13 and 2013-14 respectively passed pursuant to direction of learned Dispute Resolution Panel (DRP).

2. Since issues are common and appeals were heard together, these are being consolidated by this common order.

3. Common issue raised is against transfer pricing adjustment with relationship to international transaction of legal and professional fees.

A.Y. 2012-13

4. Brief facts of the case are as under :-

Mubea Group Is engaged in serving the customers all over the world for around 90 years now. Mubea group is known for its innovative lightweight design and is engaged in the production of heavy duty spring components and related products. Mubea Automotive India Private Limited (MAIPL) was incorporated in the March 2007, It is a subsidiary of Mubea international GmbH. During the initial years of operations, MAIPL was mainly engaged in trading activities and providing market support services to its Group entities. MAIPL started its manufacturing operations only in FY 2010-11. During FY 2011-12, MAIPL was engaged in manufacturing of engine components like spring band clamps and engine valve spring, for the automobile industry. During the financial year ended 31 March 2012, the assessee entered into the following international transactions with its Associated Enterprises ('AEs') and adopted the following approach in its TP study report for benchmarking its international transactions:

Sr. No.	Nature of international transaction	Amount (in Rs.)
1.	Purchase of raw material, spares and consumables.	140,296,510
2.	Purchase of finished goods	34,850,652
3.	Sale of goods	115,725,045
4.	Purchase of fixed assets	99,108,323
5.	Legal and professional charges	3,230,205
6.	Loan taken	2,686,761
7.	Interest expenses	3,940,925
8.	Reimbursement of expenses	2,801,037

by Uncontrolled Price Method

5. The assessee applied CUP method for transactions as the most appropriate method. The assessee aggregated the international transaction of legal and professional fees (along with other transactions) and benchmarked the same using Transactional Net Margin Method ('TNMM') as a secondary method by using a corroboration approach since the transactions were inextricably linked to each other based on assessee's operations. The learned Transfer Pricing Officer (TPO) considered the arm's length price of legal and professional fees as Nil by mentioning following reasons:-

- The assessee did not produce any primary evidence to show that the services are actually rendered by the AE except describing the nature of services allocation of cost. At arm's length, the parties dealing in similar circumstances would have such evidence in possession.
- The assessee did not produce any evidences regarding the actual services rendered by the AE and how they would be quantified at an arm's length condition.
- From the details submitted by the assessee, it does not show the utility of services rendered and an arm's length condition. This shows that these charges are not linked with actual services
- The assessee could not produce the details and quantum of expenditure incurred by the AE in rendering these services even though he was specifically asked to produce such details for corroborating the claim.
- Merely providing a description of various services could not justify the price charged in intra-group services. The assessee only described various services rendered by the AE, but did not give the details of actual amount spent by the AE while rendering these services as such dealing between two independent parties would invariably boil down to the actual expenditure incurred in connection with such services and mark-up thereon.

6. Upon assessee's objection DRP considered submissions of the assessee and also evidence submitted. Learned DRP noted that the assessee started manufacturing operations during financial year 2010-11 and during initial years, support services were availed efficient operation. For F.Y. 2011-12, and some part of F.Y. 2012-13, assessee paid legal and professional charges amounting to Indian rupees 32,30,205 and 16,30,349 respectively. However, from A.Y. 2013-14 onwards no legal and professional fees were charged. The assessee submitted details of emails communication and other evidence. Further the assessee submitted that legal and professional services were rendered as intangible services and represents support functions and thus the same cannot be measured in metric units. Learned DRP further noted the assessee used CUP as the primary method and has applied TNMM as corroborative method during F.Y. 2011-12 aggregating the international transaction of legal and professional fees alongwith other transactions. DRP

proceeded to note that action of the assessee in use of alternative method, being TNMM to justify transaction of legal and professional services is examined. It observed that even after use of entity level method, if it is felt that individual transactions need to be examined separately TPO is not precluded to examine such transactions in further details. It held that use of entity level TNMM does not preclude separate benchmarking of independent transactions by TPO, if such transactions are capable of being benchmarked separately. Therefore the DRP referred to CUP method applied by the assessee as most appropriate method (MAM). DRP referred to the submissions that the assessee has availed legal and professional services from AE. DRP also noted it has been contended that adequate documentation has been maintained evidencing receipt of service and benefit obtained therefrom. DRP noted that transfer pricing study report TPSR does not contain any details with reference to availability of CUP or the data based on which payment for legal and professional services have been treated to be at arm's length. Thereafter the DRP referred to the evidence submitted by it. It noted that there was an agreement between two parties for separate service. DRP noted that agreement between two parties, the invoice details and the evidence submitted by the assessee were examined. It noted that the agreement represents a general agreement with reference to rendering of service. It noted that emails submitted by the assessee-company do not reflect specific service rendered by the AE but redressal of queries generated by the assessee. DRP noted that the assessee is a subsidiary of the company rendering the above services. The services so rendered represent services which are in the realm of share holder activity. Finally DRP referred to two specific claims of the assessee and directed as under :-

“Before me, the assessee has made two specific claims. It has claimed that one expatriate from an AE has worked with the assessee for an entire year and the cost of this expat amounting to Rs 24,05,392/- has been borne by Muhr Und Bender and this has not been separately charged to the assessee by the AE, The appellant has enclosed copy of return of income of this expat with the submissions. The AO/TPO is directed to examine the expenditure on this expat and the factum of his rendering of

service in India and also the fact that his salary was not reimbursed by the assessee. In case the facts are found true, the salary paid to him should be reduced from the legal and professional services suggested for adjustment.

The assessee has also claimed that it has obtained ISO certification from a third party for which payment was made by the AE and no reimbursement was claimed by the AE. The AO/TPO is directed to examine this claim and in event of the claim being true, suitable credit should be given to this amount from the amount of legal and professional charges sought to be adjusted.”

7. Against the above order, the assessee is in appeal before us. We have heard both the counsel and perused the records. We find that in the present case the assessee has obtained legal and professional services from its AE under an agreement. The same has been claimed to the benchmarked by adopting CUP as well as TNMM. TPO has given no reasons whatsoever rejecting transfer pricing study report of the assessee. He has simply stated that evidences for the services were not submitted for A.Y. 2012-13. However, DRP noted that evidences of support services were given before the DRP. DRP granted relief on two counts as mentioned above but for rest, DRP in effect held that these services should have been free of charge as they are between the holding company and subsidiary company. We fail to understand as to how an international transaction between two AEs can be deemed by DRP to be free of charge when there is an appropriate agreement to this effect. Details of emails between parties have been submitted evidencing factum of services rendered barring two issues. Despite this, all other expenditure has been rejected. For A.Y. 2013-14 also TPO despite noting that details of evidences were produced, the Assessing Officer observed that how this cost is arrived at is not mentioned then he jumps to the conclusion that there was no benefit out of it to the assessee. This shifting approach of TPO is not sustainable. The international payments were done for services rendered by the AE in accordance with the agreement entered. The TPO was to determine whether the prices paid were at arm's length, instead of examining the arm's length price the TPO erroneously went around looking for as to what was cost of the

same to AE. In the same breath he held that there was no benefit to the assessee

8. We find that this approach of the authorities below is not at all sustainable. No cogent reasons whatsoever have been submitted for rejection of TPSR by the assessee. The transfer pricing study report submitted by the assessee duly reflected that the transactions were at arm's length. Without cogently rebutting transfer pricing study report of the assessee, the TPO has rejected the same. After rejecting the same TPO has not mentioned as to what should be the appropriate method. We note that there is an agreement between the parties for rendering of services. Evidences of rendering of services have been provided. For A.Y. 2012-13, the DRP is of the opinion that since the services were from the holding company the same should be free of cost and hence there should not be any price for that. For A.Y. 2013-14, the authorities below are of the opinion that no benefit accrues to the assessee by the services. The issue was determination of arm's length price of services rendered by the AE in accordance with the agreement. In our considered opinion there is considerable cogency in the submission of learned Counsel of the assessee that the authorities below have not at all rejected the benchmarking approach of the assessee rather they traveled beyond the brief to hold that these services should either be free or no benefit accrues to the assessee. We find that it is not the case that the payments made are not in accordance with the agreement between the parties. In these circumstances, taking the arm's length price of the entire amount of legal and professional services as nil by the subjective opinion of the authorities below that they should be either free of cost or that they are not at all beneficial to the assessee is not at all sustainable. That revenue authorities should not sit in the shoes of businessmen to decide upon the need of expenditure is settled law.

9. Accordingly, in the background of the aforesaid discussion and precedent, we direct that adjustment be deleted.

Order has been pronounced in the Court on 28.6.2019.

Sd/-
(RAMLAL NEGI)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 28/6/2019

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai