

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ "सी" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "C", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / **ITA No.609/PUN/2018**
निर्धारण वर्ष / **Assessment Year : 2013-14**

ACIT, Circle-10,
Pune.

.... अपीलार्थी/Appellant

Vs.

M/s. Spicer India Pvt. Ltd.,
29, Milestone, Pune Nashik Highway,
Village- Kuruli, Tal- Khed,
Pune-410501.

PAN : AA ECS1869C

.... प्रत्यर्थी / Respondent

Revenue by : Shri Amol Kamat
Assessee by : Shri R. D. Onkar

सुनवाई की तारीख / Date of Hearing : 19.06.2019	घोषणा की तारीख / Date of Pronouncement: 04.07.2019
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the Revenue against the order of the CIT(A)-6,
Pune dated 20.12.2017 for the assessment year 2013-14.

2. The grounds raised by the Revenue are as under :-

“1. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the adjustment of Rs. 20,38,53,136/- made by the AO/TPO on account of **management services fees** relying on the decision of Hon'ble Pune Bench of ITAT in assessee's **own case for A.Y. 2009-10** and decision of DRP in assessee's own case for A.Y. 2011-12 ?

2. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the adjustment of Rs. 20,38,53,136/- made by the AO/TPO on account of management services fees relying on the decision of Hon'ble Pune Bench of ITAT in assessee's own case for A.Y. 2009-10 and decision of DRP in assessee's own case for A.Y. 2011-12 ignoring the fact that the above decisions were rendered in the context of addition made under section 37(1) and not under section 92CA(3) ?

3. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the adjustment of Rs. 20,38,53,136/- made by the

AO/TPO on account of management services fees without appreciating that the transfer pricing proceedings are different and standards which are applicable to deductibility of expenditure in the context of normal provisions such as section 37 can't be applicable to the transactions between associated enterprises governed by the Transfer Pricing provisions ?

4. *Whether on the facts and circumstances of the case and in law the Ld.CIT(A) erred in deleting the adjustment of Rs. 20,38,53,136/- made by the AO/TPO on account of management services fees relying on the decision of Hon'ble Pune Bench of ITAT in assessee's own case for A.Y. 2009-10 and decision of DRP in assessee's own case for A.Y. 2011-12 ignoring the fact that the assessee has failed to appreciate that not only the evidence regarding rendering of services by the AE has to be adduced by the assessee but the TPO is also mandated to examine whether the payment made is commensurate with the services received and is at Arm's Length Price ?*

5. *Whether on the facts and circumstances of the case and in law the Ld.CIT(A) erred in deleting the adjustment of Rs. 20,38,53,136/- made by the AO/TPO on account of management services fees relying on the decision of Hon'ble Pune Bench of ITAT in assessee's own case for A.Y. 2009-10 and decision of DRP in assessee's own case for A.Y. 2011-12 ignoring the fact that the assessee has failed to prove that the services rendered were commensurate with the price paid for the management services ?*

6. *Whether on the facts and circumstances of the case and in law the Ld. CIT(A) ought to have upheld the adjustment of Rs.20,38,53,136/- made by the AO/TPO on account of management service fees as the management service fees was not linked to any actual services rendered by the AE but was in the nature of matching payment made to another AE, Dana Corporation, USA in form of royalty ?*

7. *Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was justified in deleting the addition on account of warranty provision of Rs.30 lacs placing reliance on the decision of the Hon'ble Supreme Court in the case of Rotork Control Ltd. [314 ITR 62] when scientific basis of the provision of warranty is not conclusively established ?*

8. *The appellant craves leave to add, amend or alter any of the above grounds of appeal."*

3. Summarizing the above grounds, ld. Counsel for the assessee submitted that there are couple of issues raised in the above extracted grounds for adjudication. The first issue relates to the **TP adjustments** *qua* the payment of management services fee of Rs.20,38,53,136/-. The second issue being **Non-TP issue** relates to the disallowance on account of **"warranty provision"** of Rs.30,00,000/-.

4. Briefly stated the relevant facts include that the assessee company is a Joint Venture between the Anand Automotive Systems and Dana

Corporation, USA. The assessee is engaged in the business of manufacturing and sale of axles, propeller shafts, assemblies and components. The assessee is also engaged in exporting activity of its product to Dana Group of USA and India. The assessee filed the return of income declaring total income of Rs.88,33,460/-. Subsequently, the case was selected for scrutiny. As the assessee filed audit report in form 3CEB detailing its international transactions during the year. A reference was made to the TPO u/s 92CA(1) of the Act for determination of arm's length price of the international transactions. The TPO passed an order u/s 92CA(3) of the Act dated 28.10.2016 recommending adjustment on account of (i) Management fees of Rs.20,38,53,136/- and (ii) Royalty payment of Rs.20,38,53,136/-. On receipt of the TPO's order, the Assessing Officer passed draft assessment order u/s 143(3) r.w.s. 144C(1) of the Act on 28.12.2016. Accordingly, the Assessing Officer passed final assessment order u/s 143 r.w.s. 144C(3) of the Act on 20.01.2017 determining the assessed income at Rs.1,29,86,39,730/- by making the following additions/disallowances :

- | | | |
|------|---------------------------|-------------------|
| (i) | TP adjustment u/s 92CA(3) | Rs.40,77,06,272/- |
| (ii) | Warranty provision | Rs.30,00,000/- |

5. Aggrieved with the final order of the Assessing Officer, the assessee preferred an appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee and deleted the additions made by the Assessing Officer.

6. Aggrieved with the said decision of the CIT(A), the Revenue is in appeal before the Tribunal with the above extracted grounds.

7. At the outset, ld. Counsel for the assessee submitted that the said both issues raised in grounds stand covered in favour of the assessee by the order of the Tribunal in **assessee's own case** for the assessment year 2012-13 in ITA No.2948/PUN/2016 dated 11.12.2018. In this regard, ld. Counsel filed the written submission and relevant comments on the **management services fee** being related additions is extracted as under :-

*"The **management service fees** has been paid under the same Corporate Services Agreement dated 14th December, 2004 and renewed thereafter to be effective till 31st Dec. 2015. The said agreement has been entered into between the appellant and related party viz. Anand Group company Asia Investments Private Limited (AIPL). The assessee under the said agreement has availed support in the business areas of Human Resources, Environment health & Safety, Business development & Marketing, Finance and Secretarial, Operational reviews, Governance in terms of Code of conduct, Audit and Administration etc. Management service fees is paid @ 2.85% of sales.*

The learned TPO has commented that the services provided by the AE are shareholder services (Para 2 Page 19 of TPO) and do not require payment of fees. TPO has questioned the necessity of payment. TPO has commented that the e-mails, communication, vouchers are all general evidences without quantitative value attached with such services. The assessee tried to substantiate the ALP on the basis of TNMM.

In the preceding year AY 2010-11 the CITA and A.Y. 2011-12 the DRP upheld addition of management fees. This year also the assessee failed on need test, evidence test and rendition test. (Para 6 Page 29 of TPO).

Learned CIT A has given the finding that the issue is covered in favour of the assessee for the A.Y. 2009-10 by the ITAT and the DRP for the A.Y. 2011-12, there is no reason to differ from the same in the current AY.

In the immediate preceding A.Y. 2012-13 Honourable Tribunal in assessee's own case has deleted the disallowance of management services fees on the backdrop of identical set of facts and by following its own orders for the A.Y. 2009-10 and 2010-11. Reliance is placed on the said decisions.

Reliance is also placed on following decisions

- *Tata Johnson Control Automotive Ltd. Pune ITAT (copy placed on record)*
- *Max India Limited Punjab and Haryana High Court (copy placed on record)*

It is also submitted that it also bears vital notice that SIL has benchmarked its transactions under the TNMM at entity level. (Page 23 of TPO)

Assessee's operating margin on operating revenue comes to 7.5 % vis-a- vis average PLI of OP to Sales 6.53% of external uncontrolled comparables. TNMM is a profit based method and the fees paid for management services for operational and strategic business decisions is an interlinked transaction which is subsumed in the operating cost and has directly contributed to the operating profits of assessee. A rate for the management services fees paid to a related party is thus determined indirectly by selecting a services rate that would give assessee post, management services fees operating profits that are similar to what an unrelated party would earn by using the services. The management services fees is therefore at arm's length. Reliance is placed on the decision of Honourable Pune Tribunal in the case of Walter Tools India P.

*Ltd. ITA 523/PUN/2016 A.Y. 2011-12 (Copy placed on record) wherein on identical facts Hon'ble Bench has held that on the basis of aggregation of the transaction of management service fees with other international transactions at entity level for benchmarking the PLI of assessee, which exceeds the mean PLI of external comparables no TP adjustment cannot be made. **The issue stands covered in favour of the assessee** and it is prayed that the **deletion of upward TP adjustment of Rs.20,38,53,136/- be upheld.**"*

8. Further bringing our attention to the said order of the Tribunal in assessee's own case (supra), ld. Counsel referred to ground no.2 and submitted that the same relates to the **TP adjustment for the management fees** and the same was adjudicated by the Tribunal as per the discussion given in **para 7 to 9** of the order of the **Tribunal in assessee's own** case (supra).

9. On hearing both the sides and on perusal of the order of the Tribunal in assessee's own case (supra) and also the note given by the ld. Counsel for the assessee, we find relevant to extract the said para 7 to 9 of the order of the Tribunal (supra) where the issue of management fees stands allowed in favour of the assessee :-

*"7. Now, coming to sub-ground of appeal No.2 in ground of appeal No.II, where corporate issues have been raised. The first issue raised is against disallowance of **management fees of ₹ 18,56,30,048/-**. The assessee paid management service fees @ 2.85% of net sales for the receipt of specific services for identified and legitimate business needs related to its vital functions viz. HR training, performance appraisal, productivity improvement, value engineering, technical advice, environmental protection, financial budgeting, foreign currency management, etc. The services were provided pursuant to Corporate Services Agreement dated 14.12.2004 entered into with Asia Investments P. Ltd.*

8. The Tribunal in assessee's own case had allowed the said issue in favour of assessee in assessment year 2009-10 vide para 24 at pages 16 and 17 of the order dated 10.02.2017, which has been followed in assessment years 2010-11 and 2011-12. The said findings of Tribunal in assessment year 2009-10 are as under:-

"24. In the facts of the present case, the assessee was paying Royalty to Dana Corporation @ 2.85% and was also paying management fees to AIPL for rendering several types of services at remuneration which was equivalent to the amount of Royalty i.e. 2.85% of sales. The perusal of agreement reflects the nature of services to be provided and the fees to be charged for providing the

said services. The majority of support services are being rendered by the said concern to the assessee and the perusal of expenses debited by the assessee reflects that no major expenses have been incurred by the assessee and the benefits flow from AIPL to the assessee. The said benefits were for smooth carrying on of the business by the assessee and were incurred for the purpose of business. The assessee is the best judge to decide the expenditure it needs to incur for smooth carrying on of its business. The Assessing Officer cannot sit in judgment of businessman position in incurring any expenditure. The Hon'ble Supreme Court in Hero Cycles (P) Ltd. Vs. CIT (supra) have applied the ratio laid down by the Apex court in S.A. Builders Ltd. Vs. CIT(A) and another (2007) 288 ITR 1 (SC) and upheld the scope of commercial expediency, wherein it was held that The expression "commercial expediency" is an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation, but yet it is allowable as a business expenditure if it was incurred on grounds of commercial expediency. Where there is nexus between the expenditure incurred and the purpose of business, then the revenue cannot put itself in the arm chair of the businessman to decide how much of the expenditure is reasonable. Applying the above said proposition laid down by the Hon'ble Supreme Court, we hold that the expenditure incurred by the assessee on management fees in order to facilitate smooth running of its business is an allowable expenditure in the hands of assessee. Similar expenditure has been allowed in the hands of assessee in preceding year. Another aspect of the issue is that the said management fees is to be taxed in the hands of recipient and even the service tax has been paid by the recipient, evidence of which is placed in the Paper Book. Once the commercial expediency of expenditure is established, then the same is to be allowed as business expenditure in the hands of assessee. We hold so. The ground of appeal No.5 raised by the assessee is thus, allowed."

9. *Since the issue has been covered in favour of assessee and there is no change in factual aspects, we find no merit in the orders of authorities below. Accordingly, we **direct the Assessing Officer to delete the addition made on account of disallowance of management service fees.** The sub-ground of appeal No.2 in ground of appeal No.II is thus, allowed."*

10. From the above, it is evident that the Tribunal relied heavily on the **earlier orders of the Tribunal in assessee's own case for the assessment years 2009-10 to 2011-12.** Considering the commonness of the issue, we find it relevant to follow the order of the Tribunal in assessee's own case for the assessment year 2012-13 (supra) and confirm the order of the CIT(A). Accordingly, the relevant grounds on this issue raised by the Revenue are **dismissed.**

11. The second issue relates to the allowability of the “warranty provision”. The Assessing Officer disallowed a sum of Rs.30,00,000/- out of total debit of Rs.1.51 crores and utilized provisions of warranty only Rs.1.21 crores. Similar disallowances were made by the Assessing Officer in the past and the matter reached the Tribunal for adjudication. In this regard, ld. Counsel filed the written submission and the relevant comments on the warranty provision being related additions is extracted as under :-

“Appellant is engaged in the business of manufacture, assembly and sale of Axles, Propeller Shafts and components thereof that are finally used by the Original Equipment Manufacturers (OEMs) in the manufacture of vehicles in the automotive industry segment. The sale order raised by the Customer on appellant invariably has a clause on warranty whereby an obligation is cast on appellant to ensure that the Axles, Propeller Shafts and components thereof are fully operational as per the requirements and specifications laid down by the Customer and desired performance is given to the Customer. The cost of goods sold necessarily include warranty cost. The product/performance warranty period spans 18 months from the date of sale of the products. On the basis of its past experience based on statistical information and technical assessments and review thereof, company creates Warranty provision in its books. Since the liability undertaken by the appellant to carry out the repairs, replacements of damaged part of goods sold by it during the warranty period is an existing accrued liability at the time of sale, the same is claimed as a deduction. Identical issue had come up before the Hon’ble Tribunal in appellant’s own case for the A.Y. 2012-13 and on the backdrop of identical set of facts the entire warranty provision has been allowed.

*(Copy of the order enclosed. Kindly refer Para 12 Page 8). Reliance is also placed on the decision of Hon’ble Supreme Court in the case of **Rotork Controls P. Ltd. reported in 314 ITR 62**. The issue stands covered in favour of the appellant and it is prayed that the order of CIT A be upheld.”*

12. Further, referring to the order of the Tribunal in **assessee’s own case for the assessment year 2012-13** (supra), ld. Counsel for the assessee demonstrated that the identical issue was decided by the Tribunal vide ground no.3 in its order. Bringing our attention to the contents of para 11 and 12 of the order of the Tribunal in assessee’s own case for the assessment year 2012-13 (supra), ld. Counsel submitted that para 12 is operational para and the claim of the assessee was allowed in full for that year. He read out the relevant paras in this regard also. We find it relevant

to extract the said para 12 of the order of the Tribunal in assessee's own case for the assessment year 2012-13 (supra) and the same is extracted hereunder :-

*"12. We find that similar issue of claim of **provision for warranty** had arisen before the Tribunal in assessee's own case in assessment year 2011-12 (supra) and the Tribunal vide para 8 in turn, relying on the decision of the Apex Court in the case of **Rotork Controls India P. Ltd. Vs. CIT** reported in 314 ITR 62 (SC), allowed the claim of assessee. The issue raised in the present appeal is similar where the assessee is following systematic manner of creating provision for warranty and there is no change in factual aspects, hence, we find no merit in the orders of authorities below in not allowing the claim of assessee. Accordingly, we **direct the Assessing Officer to delete the addition of ₹ 56 lakhs**. The sub-ground of appeal No.3 in ground of appeal No.II is thus, allowed."*

13. Considering the commonness of the issue, we are bounded to follow the order of the Tribunal in assessee's own case for the assessment year 2012-13 (supra) and confirm the order of the CIT(A). Accordingly, the relevant grounds on this issue raised by the Revenue are dismissed.

14. In the result, the appeal of the Revenue is dismissed.

Order pronounced on 04th day of July, 2019.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(D. KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 04th July, 2019.
Sujeet

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-6, Pune;
4. The Pr. CIT-5, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "सी" / DR 'C', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune