

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

BEFORE SHRI R.S.SYAL, VP AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.1911/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

INA Bearings India Pvt. Ltd.  
Plot No.A3, Talegaon Industrial Area,  
Navalkh Umbre, Tal. Maval Talegaon,  
Pune-410 507.  
PAN : AAACI7163H

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax,  
Circle-11, Pune.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1940/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

The Assistant Commissioner of Income Tax,  
Circle-11, Pune.

.....अपीलार्थी / Appellant

**बनाम / V/s.**

INA Bearings India Pvt. Ltd.  
Plot No.A3, Talegaon Industrial Area  
And Floriculture Area, Village- Ambi,  
Navlakha Umbre, Tal. Maval Talegaon,  
Pune-410 507.  
PAN : AAACI7163H

.....प्रत्यर्थी / Respondent

Assessee by : Ms. Amrin Pathan &  
Shri Sandeep Shah

Revenue by : Shri Sandip Garg, CIT

सुनवाई की तारीख / Date of Hearing : 30.07.2019

घोषणा की तारीख / Date of Pronouncement : 30.07.2019

**आदेश / ORDER****PER PARTHA SARATHI CHAUDHURY, JM :**

These cross appeals preferred by the assessee and the Revenue emanates from the order of the Ld. CIT(Appeals)-13, Pune dated 01.05.2017 for the assessment year 2012-13 as per the grounds of appeal on record.

These cases were heard together. Since issues common and facts are similar, these cases are being disposed of vide this consolidated order.

2. At the time of adjudicating the issues involved in assessee's appeal in ITA No.1911/PUN/2017, the Ld. AR appraised the Bench that the issue relating to this appeal of assessee is with regard to the payment of fees for management services and whether it involves any transfer pricing addition. The Ld. AR further submitted that this issue is covered in favour of the assessee by the decision of Co-ordinate Bench of the Tribunal, Pune in assessee's own case in the preceding assessment year i.e. 2011-12 in ITA No.150/PUN/2017 and in ITA No.282/PUN/2017.

3. On examination of submissions made by the assessee, we are of the view that if the issue raised in the present appeal is decided in favour of the assessee, in such circumstances, the appeal of Revenue would become infructuous. In this backdrop, it has to be examined whether fees for management services can be aggregated with other international transactions for showing the same at Arm's Length Price. The Tribunal in assessee's own case for assessment year 2011-12 on the issue has observed and held as follows:

*"6. Section 92(1) of the Income-tax Act, 1961 (hereinafter also called 'the Act') provides that: 'Any income arising from an international transaction*

shall be computed having regard to the arm's length price.' The procedure for computation of arm's length price has been set out in section 92C. Sub-section (1) of section 92C provides that: 'The arm's length price in relation to an international transaction shall be determined by any of the following methods, being the most appropriate method .....'. A bare reading of section 92C(1) brings out that the ALP is required to be determined of 'an' international transaction. The term 'international transaction' has been defined in section 92B to mean : 'a transaction between two or more associated enterprises, either or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on the profits, income, losses or assets of such enterprises, .....'. It is discernible from the above definition of the 'international transaction' given in section 92B that it refers to 'a transaction' between two or more associated enterprises. The term 'transaction' has been defined in section 92F(v) and also in Rule 10A(d) of the Income-tax Rules, 1962. The Rule defines the term 'transaction' to include: 'a number of closely linked transactions.' On going through the above provisions, it becomes palpable that the arm's length price is essentially determined on transaction-by-transaction approach for each international transaction separately; and for that purpose, a transaction in singular also includes plural for closely linked transactions. In other words, where the transactions are not closely linked, then their ALP should be determined separately and such determination of ALP of 'an' international transaction as per section 92C(1) of the Act should be done as per the most appropriate method. To put it simply, each international transaction is viewed separately and independent of other international transactions for determining its ALP. It is impermissible to combine more than one unrelated international transaction for determining their ALP in a unified manner when such transactions are diverse in nature.

7. It is simple and plain that cross subsidization of international transactions in a combined approach is impermissible. It is overt from section 92(1) of the Act that if an international transaction is recorded showing a lower income than its ALP income, then it is the higher ALP income, which is considered for the purpose of computation of the total income. Section 92(3) of the Act manifests that the provisions of this section shall not apply in a case where the computation of income having regard to ALP has the effect of reducing income chargeable to tax. The net effect of section 92(3) is that if transacted value income from an international transaction is more than its arm's length income, then, the arm's length income should be discarded and the actual income should be considered. To sum up, it is the higher of actual income or the arm's length income from an international transaction, which is taken into consideration for computing the total income. It does not mean that an actual more income from an international transaction vis-a-vis its arm's length income should be combined with another unrelated transaction which gives actual income less than its arm's length income and then both of them be processed together so as to set off the income (Transacted income minus arm's length income) from the first transaction with the potential income arising from the second transaction (arm's length income minus transacted income). When we consider more than one separate transaction under the combined umbrella of TNMM, it is quite possible that a probable addition on account of transfer pricing adjustment arising from one or more of the international transactions may be grabbed by the income from another international transaction giving higher income on transacted value.

8. The Hon'ble Punjab & Haryana High Court in *Knorr Bremse India (P) Ltd. Vs. ACIT (2016) 380 ITR 307 (P&H)* considered the question of

*aggregation of international transactions. Their Lordships held that several transactions between two or more AEs can form a single composite transaction if they are closely linked transactions and the onus is always on the assessee to establish that such transactions are part of an international transaction pursuant to an understanding between various members of a group. The Hon'ble High Court observed that in case of a package deal where each item is not separately valued but all are given a composite price, these are one international transaction. It went on to hold that where a number of transactions are priced differently but on the understanding that the pricing was dependent upon the assessee accepting all of them together (i.e. either take all or leave all), then it is also one international transaction. But it will be on the assessee to prove that although each is priced separately, but they are provided under one composite agreement. It still further held that each component may be priced differently also, but it will have to be shown that they are inextricably linked that one cannot survive without other.*

9. *Merely because purchase of goods and acceptance of services lead to manufacture of final product, it does not follow that they both are dependent transactions. What is pertinent to note in the extant case is that the transaction of payment of Fees for Management services and Import of Raw material and Traded goods etc. have been done with different AEs. Hence there can be no question of any package deal or any such understanding or any inextricable link between these transactions as one not surviving without the other as has been spelt out in the case of Knorr- Bremse (supra).*

10. *The assessee in Magneti Marelli Powertrain India Pvt. Ltd. vs. DCIT (2016) 389 ITR 469 (Delhi) entered into agreement with its A.E. for acquiring technology required for the purpose of manufacturing. It applied the TNMM to benchmark its international transactions of import of raw materials, sub-assemblies and components, payment of technical assistance fees, payment of royalty, payment of software and purchase of fixed assets. All these were categorized under one broad head, that is, "Manufacturing of automotive components" and shown to be at ALP. The TPO rejected the assessee's entity level approach applied to benchmark the international transactions including Technical assistance fees and proceeded to determine the ALP of the Technical assistance fees separately. The Tribunal approved the TPO's stand on segregation of payment of Technical assistance fee. The Hon'ble Delhi High Court admitted the question in this regard - 'Whether the Income Tax Appellate Tribunal was right in holding that royalty and technical assistance fee did not form part of a composite transaction and have to be treated as two separate transactions for the purpose of benchmarking and computing arms length price?' The Hon'ble High Court answered this question against the assessee, thereby affirming the view of the Tribunal that aggregation of the transaction of payment of Technical fees with other international transactions under the common TNMM was not correct. Restoring the matter to the TPO/AO, it held that the TNMM should be separately applied for determining the ALP of the international transaction of payment of Technical fee. We note that the facts of the instant case are rather on a weaker wicket. In that case, the Hon'ble High Court did not approve clubbing of 'Technical fees' with other transactions under the Manufacturing segment as without technical know-how even the production could not have been possible. Extantly, we are dealing with a situation in which the assessee is trying to club the transaction of payment of Fees for Management services with others, which is a step further away from technical know-how, in the process of manufacturing.*

11. *In view of the foregoing discussion, it is held that the international transaction of payment of Fees for Management services cannot be clubbed with other international transactions for showing the same at ALP. It needs to be benchmarked separately as has been held by the authorities below. We, therefore, countenance the view canvassed by the TPO in rejecting the aggregation approach adopted by the assessee.*"

Therefore, following the aforesaid view, it is clear that fees for management services cannot be aggregated with other international transactions for showing the same at Arm's Length Price.

4. That another aspect with regard to management support services, it is held by the Transfer Pricing Officer at Para 8.2.14 of his order that it is in the nature of 'stewardship activities'. However, the Tribunal for assessment year 2011-12 has held that these do not qualify as 'stewardship activities' by observing as under:

*"24. We have noticed the description of services performed by Schaeffler China under the broader heads by observing that such activities extend to "Business Development", "Finance & Controlling Services", "Human Resources services, "Purchasing/Procurement services", "Supply chain Management services", "Process and Information services" and "Distribution sales services" etc. It is ergo patent that such services are in the nature of normal business services performed with a view to enable the assessee to carry out its business operations producing effect on the assessee company. In our opinion, these do not qualify as 'stewardship activities'. The impugned order is overturned pro tanto."*

5. That further, the Transfer Pricing Officer has taken Arm's Length Price at 'Nil' as per discussion given at Page 97 Para 8.11 of his order with regard to "Management Support Services". The Tribunal for assessment year 2011-12 in its order on the issue has held as follows:

*"30. Notwithstanding the above, we now proceed to examine if the ALP of the international transaction of payment of 'Management support services fees', is at ALP?"*

31. *The assessee has placed on record a benchmarking analysis for provision of Management services by Ernst & Young (China) advisory limited, China for the financial year ending on 31<sup>st</sup> December, 2009. There is another Cost Verification Procedure Report by Ernst & Young for*

*the financial years ending 31st December, 2009 to 2011, a copy of which is available at page 1326 onwards of the paper book. This Cost Verification Procedure Report also covers the year under consideration. It has been mentioned in this report that the services fee charged to INA India is determined based on hourly rates and time taken for the services. It further provides total invoices amount includes service fees calculated above as well as business tax and surcharges. It has been mentioned in the Cost Verification Procedure Report, that "the invoices issued to INA India were determined based on the actual hours incurred and consistent with the pricing policy of the service fee charges which for the year is 5%." From the above report, it is overwhelmingly manifest, which also emanates from the Agreement between the assessee and Schaeffler China under which such services were provided, that the service fee is actual cost incurred by Schaeffler China plus a mark-up of 5%. The authorities below have not disputed the correctness of the invoices raised by Schaeffler China. Though no separate ALP determination of the international transaction of payment of Management services fees is available for the year under consideration, but one thing which is clear is that the payment of Rs.5,65,53,971/- and odd to Schaeffler China is towards actual expenses incurred plus 5% mark-up, which is in the nature of Cost plus method prescribed under rule 10B(1)(c) of the I.T. Rules. Even if, we proceed with the assumption that the mark up of 5% is not at ALP, which should be as low as 1% or even less than that, still the difference arising on account of such mark-up going even up to 0% in a comparable uncontrolled situation, would be within +/-5% range, not requiring any transfer pricing adjustment.*

*32. To sum up, it is held that the assessee entered into an agreement with Schaeffler Holding (China) Co., Ltd for receipt of "Management support Services", for which separate benchmarking was required to be done. Such services were actually rendered. These services are not in the nature of stewardship or shareholder activity. The payment to Schaeffler Holding (China) Co. Ltd. at the actual costs incurred in providing such services plus 5% mark-up is at ALP, which does not require any transfer pricing addition. We, therefore, set aside the impugned order by holding that the international transaction of payment of Fees for Management services at Rs.5,65,53,971/- is at ALP, which does not require any transfer pricing addition. The addition so sustained in part by the ld. CIT(A), is directed to be deleted in full."*

Therefore, issues before us in conformity with the findings of the Coordinate Bench of the Tribunal, Pune for assessment year 2011-12 answered in favour of the assessee.

6. In the result, **appeal of the assessee in ITA No.1911/PUN/2017 is allowed.**

7. Since we have allowed the appeal of the assessee, cross appeal filed by the Revenue becomes infructuous and hence, is liable to be dismissed. We order accordingly.

8. In the combined result, **appeal of the assessee in ITA No.1911/PUN/2017 is allowed and appeal of the Revenue in ITA No.1940/PUN/2017 is dismissed.**

Order pronounced on 30<sup>th</sup> day of July, 2019.

Sd/-  
**R.S.SYAL**  
**VICE PRESIDENT**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 30<sup>th</sup> July, 2019.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-13, Pune.
4. The CIT-1, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "सी" बेंच,  
पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

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आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	30.07.2019	Sr.PS/PS
2	Draft placed before author	30.07.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		