

**IN THE INCOME TAX APPELLATE TRIBUNAL " K", BENCH
MUMBAI**

**BEFORE SHRI M.BALAGANESH, AM
&
SHRI RAVISH SOOD, JM**

ITA No.1361/Mum/2017

(Assessment Year : 2012-2013)

M/s Ipsos Research Pvt. Ltd. (in which Synovate India Private Limited has been amalgamated), Lotus Corporate Park, Unit No.1701, 17 th Floor, F Wing, Off Western Express Highway, Goregaon (East), Mumbai-400063	Vs.	ACIT-2(2)(1), Mumbai
PAN No.AACE 1157 B		
(Appellant)	..	(Respondent)

Assessee by	Shri Nishant Thakkar/Jasmin Annalsadvals
Revenue by	Shri Manjunath K/Anand Mohan, CITDR
Date of Hearing	29/11/2019
Date of Pronouncement	11/12/2019

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.1361/Mum/17 for the assessment year 2012-2013 arises out of the direction issued by the Id. Dispute Resolution Panel-1, Mumbai (in short the 'DRP') in Objection No.71, dated 08.12.2016 u/s.144C(5) of the Income Tax Act, 1961 (hereinafter referred to as Act) against the draft assessment order passed u/s.144C(1) of the Act by the Assessing Officer, dated 14.03.2016 for the assessment year 2012-2013.

2. Though the assessee has raised various grounds of appeal before us, we find that the only effective issue to be adjudicated in this appeal is with regard to adjustment made in the sum of Rs.7,50,68,892/- to Arms Length Price (in short 'ALP') in respect of shared services at Rs.Nil.

3. Brief facts as recorded in the order of Id. TPO are that the assessee is a market research company. The assessee submitted that during the year under consideration it was part of Aegis Group PLC, U.K. Aegis Group PLC is the parent company of Aegis Media and Synovate. Aegis Media is an independent media communication network, and Synovate is a global market research company. Synovate employs about 6000 staff across 80 countries. The assessee (i.e. erstwhile Synovate India Pvt Ltd) merged with IPSOS Research Pvt. Ltd with effect from 01/04/2012 vide order of the Hon'ble Bombay High Court dated 03/05/2013. This is the last year of operation of the assessee. The details of international transaction entered into by the assessee during the year are as follows :-

SI.No	Particulars	Amount in INR	Method applied
1.	Market research services rendered to Associate Enterprises.	19,75,13,974	TNMM (Internal)
2.	Market research services received from AEs	6,81,63,101	TNMM (Internal)
3.	Cost contribution arrangement	7,50,68,892	TNMM (Internal)
4.	Reimbursement of expenses from AE(Received)	18,12,43,341	At Cost + markup
5.	Reimbursement of expenses to AE(Paid)	40,87,318	At Cost

From the aforesaid table, the Id.TPO in respect of international transaction recorded in SI.No.1,2,4 & 5 accepted the same to be at Arm's Length Price(ALP) by accepting the Most Appropriate Method (in short 'MAM') applied by the assessee thereon. However, with regard to the international transaction towards cost of shared services in the sum of Rs.7,50,68,892/- pursuant to cost contribution arrangement, for which the assessee had applied Internal Transaction Net Margin Method (in short 'TNMM') as most appropriate method, the assessee stated that it had paid shared resources fee to its Associate Enterprises(AEs) Synovate Management Services Ltd., United Kingdom (in short 'SMSL'), wherein the assessee had benchmarked the value of services by having a markup of 6% on the actual cost incurred thereon. The assessee submitted before the Id. TPO the Shared Resources Allocation Agreement entered into between SMSL and Synovate Group Companies, which includes the assessee. It was submitted that Agreement states that all group companies have a continuing need for shared services regarding advice and assistance in the areas of business development, client liasoning, planning, financing, accounting, legal and personal matters, communication, branding and public affairs etc. The Agreement further stated that the group companies nominate SMSL to aggregate the full costs and then share these costs among group companies on a continuing basis. It is agreed that SMSL may charge a markup percentage on the total actual cost. The assessee submitted a letter from Deloitte LLP, UK, that the markup charged by SMSL on shared resources for the year ended 31st

December, 2009 is 6% and the same is at arm's length based on an external comparability study performed by Ceteris, US LLC in 2007.

4. Ld.TPO directed the assessee to justify the payment made for management charges in respect of cost contribution arrangement by furnishing the following details :-

- a. *List the various categories of services?*
- b. *Describe the nature of each service category in detail?*
- c. *List all the beneficiaries from each of the service?*
- d. *What is the total cost base?*
- e. *Furnish the break-up of total cost base into various categories of intra-group services?*
- f. *What are the keys used to allocate cost base within service recipient group members? What is the basis of cost allocation/contribution?*
- g. *Submit the details of other group entities to whom costs are allocated?*
- h. *Need test - Explain the rationale for the provision of services within the context of the business of the MNE?*
- i. *Evidence test - Have the services been actually provided in order to meet the specific need of the recipient of the services (assessee)?*
- j. *Benefit test - Provide a description of the benefits derived from each category of services? What are the economic and commercial benefits derived from each category of services? Furnish quantification of such benefits?*
- k. *Allocation Keys - Describe the selected allocation keys and the reasons justifying that such allocation keys produce outcomes that reasonably reflect the benefits received?*
- l. *Submit written contracts or agreements for the provision of services identifying the entities involved, the nature of the services, and the terms and conditions under which the services are provided?*
- m. *Furnish the documentation and calculations showing the determination of the cost pool and of the mark-up applied thereon, in particular a detailed listing of all categories and amounts of relevant costs?*
- n. *Submit the calculations showing the application of the specified allocation keys?*
- o. *Is any mark-up applied on the costs? If so, what is the basis for the mark-up charged? Justify the mark-up charged through detailed benchmarking studies?*
- p. *Whether any tax was deducted on the payment made to the AE on account of intra-group services? If so, furnish details? Had the AE offered this amount of intra-group services payment received for taxation in India and filed its return of Income in India?*

- q. *Copy of agreement for the Cost-Contribution Arrangement specific to assessee?*
- r. *Is there a global transfer pricing policy for the group? If so, furnish a copy of the same?*
- s. *Purpose of payment to AE? What services were rendered by AE? What services were availed by assessee? What are the various service heads?*
- t. *Did assessee ask for any of the above services claimed to have been rendered by its AE? Submit evidence for assessee having asked its AE for these services?*
- u. *Who rendered the services? Are there any cost centres?*
- v. *Were the services actually rendered by the AE to the assessee? Submit evidence? Submit tangible documentary evidence?*
- w. *In what ways had the assessee benefitted from the services claimed to have been rendered by AE and availed by assessee? Submit tangible documentary evidence?*
- x. *Give a list of the personnel who rendered these different services (service heads) specifically to the Indian company (assessee) along with their names, address, qualification, designation, no. of man- hours spent for Indian assessee? Are there any dedicated employees in AEs who are rendering these services to assessee? Submit evidence of time-sheets in this regard?*
- y. *Furnish supporting documentation to substantiate ALP of the Cost Contribution arrangement?"*

The assessee furnished written submission in response to the aforesaid queries. The assessee also stated that the shared services resources agreement was entered into for the first time with effect from 01.01.2008 and the cost thereon was accepted to be at arm's length from the assessment year 2008-2009 onwards. The main crux of the arguments of the assessee was that the assessee pays cost of shared services with markup of 6% to its AE for receiving services from the concerned AE. These transactions are routed through a central/common coordinating company i.e. SMSL, wherein the assessee will raise a bill/debit note on SMSL in respect of cost plus 6% under the shared services agreement and SMSL in turn would bill the concerned AE which has delivered

services actually to the assessee with the same amount of cost plus 6%. In other words, the SMSL will not make any profit on the said transaction and is merely a pass-through entity/a special purpose vehicle/common coordinating company among various AEs across the country for global coordination. The assessee also submitted that this cost plus 6% charges has been subsumed in the final sale value of services rendered to the AEs and proceeds towards sale of services from AEs were received accordingly and the said proceeds of sale of services from AE has been accepted by the Id. TPO to be at arm's length. In other words, the amount paid by the assessee pursuant to shared services agreement with SMSL has been observed as a cost in the final sale value of services received from AE. It is the case of the assessee that once the sale value of services from AE has been accepted to be at arm's length, the cost plus 6% markup paid to AE under shared services agreement alone cannot be considered to be at ALP. The assessee further stated that it receives support services from SMSL in the field of commercial, financial, accounting, legal matters, logistics, development and engineering, sales and meeting etc. for the benefit of its overall business activity. Thus, the company as a whole benefited from its services. Hence, the payment made by SIPL for availing its support services from SMSL has been allocated to each business segment (ie. AE segment, Non-AE segment Local, Non-AE segment International, receipt of market research services for resale to local customers in India) in proportion to the revenue/sales to

SIPL's main business activity i.e. provision of market research services, which are reproduced below :-

Segment	Revenue	Direct Cost	Gross Profit	General overheads & Intra group service cost	Net Profit	NP ratio
Services rendered to the Associate Enterprise (Source:	197,513,974 (Annexure B-2)	69,367,892 (Annexure B-2)	128,146,082 (Annexure B-2)	84,618,581 (Above Table)	43,527,501	22.04%
Services rendered to the Non Associate Enterprise-International (Source:	121,088,440 (Annexure B-3)	64,015,601 (Annexure B-3)	57,072,839 (Annexure B-3)	51,876,491 (Above Table)	5,196,347	4.29%
Services rendered to the Non Associate Enterprise-Domestic (Source:	543,438,083 (Annexure B-4)	257,820,154 (Annexure B-4)	285,617,929 (Annexure B-4)	232,818,764 (Above Table)	52,799,165	9.72%
Total	862,040,498	391,203,647	470,836,850	369,313,837	101,523,014	11.78%

5. The assessee submitted that after allocation of Shared Resources Allocation Fees paid to SMSL, the margins earned on AE Transactions are significantly higher than the margins earned from Non AE transactions and domestic transactions. The profit earned by SIPL from receiving market research services from AEs on which SIPL conducted further analysis and sold the same to the local third parties in India (after allocating proportionate-support services cost) can be compared to the profit margin earned by SIPL from providing market research services to local third parties in India (after allocating proportionate support services cost) as shown below :-

Segment	Revenue	Direct Cost	Gross Profit	General overheads & Intra group service cost	Net Profit	NP ratio
Services rendered to the Associate Enterprise (Source:	197,513,974 (Annexure B-2)	69,367,892 (Annexure B-2)	128,146,082 (Annexure B-2)	84,618,581 (Above Table)	43,527,501	22.04%

Services received from AE and further sold to Third Party (Source:	35,631,407 (AnnexureD-1)	14,693,516 (Annexure D-1)	20,937,891 (Annexure B-3)	15,265,143 (Above Table)	5,672,748	15.92%
Services rendered to third party without importing service from AE (Source:	579,824,365 (Annexure D-2)	265,302,243 (Annexure D-2)	314,522,122 (Annexure D-2)	248,407,310 (Above Table)	66,114,813	11.40%
	8112,969,747	349,363,651	463,606,096	348,291,034	115,315,062	

Note: General Overheads & Intra group service cost include support services from SMSL

6. The assessee submitted that as can be seen from above, after allocation of Shared Resource Allocation Fees paid to SMSL, the margins earned on AE Import transactions are significantly higher than the margins earned from Non AE Import transactions & domestic transactions. Accordingly, the assessee pleaded that the consideration paid by it to SMSL for receiving the support services from SMSL could be said to meet with the arm's length principle.

7. Ld.TPO asked the assessee to produce the following documents :-

- a) *Documents supporting the calculation of cost-based charges, for example, direct costs plus a reasonable proportion of indirect costs, and adequate records to permit verification of such costs;*
- b) *Documents supporting the mechanism used to determine the amounts to be apportioned among associated enterprises, Please submit details of time allocated to Indian AE on the basis of time sheets and on the basis of sales and documentation supporting any review of the applicability of the chosen mechanism. Submit adequate records to permit verification of such costs.*
- c) *Documents supporting the selection of keys for apportionment among several associated enterprises, including reasons why particular keys were considered the most appropriate in the circumstances of the case;*

- d) *Documentation created in the undertaking of a functional analysis of the various group members providing and receiving services to establish the relationship between the relevant services and the members' activities and performance.*

Ld. TPO observed that the assessee failed to provide the above mentioned documents which form the heart for the basis of allocation management charge.

8. The Id. DR in its written submission filed before us has submitted as under :

Argument of the Assessee-

1. The assessee has mainly argued that the intra group services were utilised in the business for commercial expedience. Exact quantification of services is neither possible nor required and it was not necessary to allow the deductions for the costs incurred for such services. The assessee has argued that since the entity level margin is at ALP, no TP adjustment is required to be made. It is also argued that by taking the intra group services, the turnover and the operating margins have increased and it justifies the benefits received from intra group services and therefore the payment made is justified.

2. Determination of Intra-group Services at "Nil"

2.1 The OECD Guidelines on Intra Group Services- The relevant Paras of the OECD guidelines on intra-group services in Chapter VII are reproduced below:

7.5 There are two issues in the analysis of transfer pricing for intra group services.

One issue is

- whether intra-group services have in fact been provided. The other issue is*
- what the intra-group charge for such services for tax purposes should be in accordance with the arm's length principle. Each' of these issues is discussed below.*

B.1 Determining whether intra-group services have been rendered

7.6 Under the arm's length principle, the question whether an intra group service has been rendered when an activity is performed for one or more group members by another group member should depend on whether the activity provides a respective group member with economic or commercial value to enhance its commercial position, This can be determined by considering whether an independent enterprise in comparable circumstances would have been willing to pay for the activity if performed for it by an independent enterprise or would have performed the activity in house for itself. If the activity is not one for which the independent enterprise would have been willing to pay or perform for itself, the activity ordinarily should not be considered as an intra-group service under the arm's length principle.

7.11 In general no intra-group service should be found for activities undertaken by one group member that merely duplicate a service that another group member is performing for itself, or that is being performed for such other group member by a third party. An exception may be where the duplication of services. is only temporary, for example, where an MNE group is reorganizing to centralize its management functions. Another exception would be where the duplication is undertaken to reduce the risk of a wrong business decision (e.g. by getting a second legal opinion on a subject).

7.12 There are some cases where an intra-group service performed by a group member such as a shareholder or coordinating centre relates only to some group members but incidentally provides benefits to other group members. The incidental benefits ordinarily would not cause these other group members to be treated as receiving an intra-group service because the activities producing the benefits would not be ones for which an independent enterprise ordinarily would be willing to pay.

7.13 Similarly, an associated enterprise should not be considered to receive an intra-group service when it obtains incidental benefits attributable solely to its being part of a larger concern, and not to any specific activity being performed.

7.23 While every attempt should be made to charge fairly for the service provided, any charging has to be supported by an identifiable and reasonably foreseeable benefit. Any indirect-charge method should be sensitive to the commercial features of the individual case (e.g. the allocation key makes sense under the circumstances), contain safeguards against manipulation and follow sound accounting principles, and be capable of producing charges or allocations of costs that are commensurate with the actual or reasonably expected benefits to the recipient of the service.

7.25 The allocation might be based on turnover, or staff employed, or some other basis. Whether the allocation method is appropriate may depend on the nature and usage of the service.

Thus, the OECD guidelines clearly provide that first of all, the taxpayer has to prove that the services are actually rendered and received. The second aspect of intra group services is the quantification of such services in terms of actual expenditure incurred and commensurate benefits derived there from. The third aspect is arm's length price for such services, if the same requires payment at arm's length. If the assessee fails at the first stage, the TPO will be unable to determine ALP of such Intra group transactions.

2.2 Evidences, Correspondences, e-mails fail to demonstrate any benefit received- The TPO and DRP have closely examined the evidences of intra group services as produced and determined the ALP of the services at Rs. NIL. No further evidence is produced. The reasons arriving at the conclusion are-

1. The nature of services as claimed in the e-mails/documents/evidence as filed in the Paper Book, are actually general correspondences between the assessee and its AE. On perusal of the contents of these e-mails. It is clear that these are general notes and exchange of information. The nature of communication in these e-mails is of the nature which would be entered into between the group entities of any group. They do not show any specific and distinct services rendered by the AE, for which any separate charge needs to be paid by the assessee to its AE. In other words, on perusal of these e-mails it is clear that it cannot be considered as services rendered for which entity acting on arm's-length basis, would agree to make any payment.

2. None of the evidences provided by the assessee demonstrate the benefits received by the assessee from such services. Quantification of services is necessary to justify the price paid in an arm's length situation. It has also not been able to give separate details of costs paid for each service stated to have been availed. All that is stated is that costs incurred by AE have been reimbursed on allocation basis. However details of such costs incurred by AE and actual evidence thereof have not been furnished. At most some services that assessee might have received under the Agreements can be termed as shareholder activities or stewardship services. No payment is required to be made for such services to independent third parties.

3. The application of the arm's length pricing under inter group services is to see whether the charges paid by the assessee reflect the same charges for the services that would have been paid

between independent parties dealing at arm's length for comparable services under comparable circumstances. An arm's length entity would be willing to pay for an activity only to the extent that the activity confers on it a benefit of economic or commercial value.

4. The expected benefit must be sufficiently 'direct and substantial so that an independent recipient, in similar circumstances, would be prepared to pay for it. If no benefit has been provided (or was expected to be provided) or the benefit is so remote, the service cannot be charged for.

5. The assessee's level of documentation and evidences should be such that it should clearly reflect the services actually rendered by the AEs to the taxpayer. If the services are actually rendered, the level of documentation will automatically show that a tangible and direct benefit is derived by the taxpayer in paying the above amounts to the AEs. Narrating various services will not sufficient to justify the price charged in intra group services. The taxpayer has to prove with proper documentation and evidence that the services are actually rendered and received and that payment is commensurate with the benefit derived there from.

6. When expenditure is incurred for the benefit of the group as a whole, no charging of such expenditure is required as such expenditure is not incurred in connection with any individual member of the group and the benefit of such expenditure would be available to all the members of the group.

7. When any expenditure is incurred by the AE for stewardship or share holder activities, then the same need not be charged to other group entities, as held in various judicial decisions. Unless it is shown that tangible and direct benefit is derived by such payment or that the payment made is commensurate with the benefit that is derived or expected to be derived when parties deal with each other at arm's length, the arm's length price of such payment for intra group services would be treated as either Rs. Nil or to the extent it is shown that the benefit actually derived from such payment.

2.3 Further, even if for argument sake, it is taken that these documents show that some services have been rendered, whether these had some value and if yes, the cost incurred for that and the benefit received have not been established by the assessee. The assessee has also not demonstrated that the price paid was such that an independent entity would have paid for such services for the benefits (if any) received by it. Further the details of total cost incurred for rendering of the service by the AE, the number of entities in the group to whom such cost has been allocated, entity wise details of the allocation key (say the quantum of time spent on each of the entity to whom the cost has been allocated) and the

amount allocated to each entity on the basis of such allocation key etc. are not provided at any forum.

2.4 The business exigency, as claimed by the assessee is relevant for allowability of deduction u/s 37 of the Act but it is not relevant at all to determine the ALP of an International Transaction. Therefore, the argument and the case laws, related to business necessity are irrelevant to determine the ALP of Intra Group Services.

3. Before the DRP, the assessee has taken the stand that it had demonstrated benefits from the receipt of services with documentation on sample basis. Further in its submissions the assessee states that it is not possible to produce entire and concrete evidence for the receipt of services. The DRP has correctly held that this is against the provisions of law which mandates that proper documentation has to be maintained by the assessee to justify the ALP. If the assessee does not follow the law, the consequences will follow.

4. The assessee has not bench marked the international transactions of Intra Group Services claimed to be received, which is clearly violation of law. It has not shown how the various transactions are closely linked and how they cannot be evaluated adequately on a separate basis. The allocation of cost was to be done on the basis of the equivalent cost in the Indian market conditions as evident from Rule 10B(2)(d). It is well settled principle that in the domain of intra group services, the onus lies on the assessee to establish that

- a. The services were requested for;*
- b. They are backed-by an agreement;*
- c. The services were actually rendered/ availed; and,*
- d. These services were availed at a price lower than what would have been chargeable in the local market,*
- e. The cost to the AE in providing such services is established.*

As stated in the preceding paragraphs, copies of the e-mails, standard templates or the agreement per se do not substantiate the receipt of services by the assessee. The assessee has failed to establish that the services were actually availed and that there was no duplication of services.

5. Judicial decisions relied upon-

5.1 In this Bangalore ITAT in the case of M/s Gem Plus India Private Limited in ITA number 352/Bang/2009 when in at para 20 the following has been held:

"20. We heard both sides in detail and also perused the records of the case including the paper book filed by the assessee company running in to 390 pages. The necessary facts of the case have already been discussed in paragraphs above. On examination of the facts and circumstances of the case and the terms of the agreement entered into by the assessee and its Singapore associate, the TPO has come to certain pertinent observations in her order. She has observed that the terms prescribed in the agreement in respect of the payments to be made by the assessee company are independent of the nature and volume of services, if any rendered by the Singapore Associate This is a vital observation made by the TPO which goes to the root of the issue. The function of the TPO is to compare the payments made by the assessee company for services received if any and to see whether those payments are comparable. In a given scenario, the TPO has to examine whether the payments were ALP conducive. Therefore it is very imperative on the part of the assessee to establish before the TPO that the payments were made commensurate to the volume and quality of services and such costs are comparable. The payment terms as pointed out by the TPO are independent of the nature or volume of services. The assessee has defeated in this primary examination itself. The TPO is also justified in making a pertinent observation that the expenses are apportioned by Singapore affiliate among different country centers on the basis of their own agreements and not on the basis of the actual services rendered to the individual units. It is in addition to the above fundamental flaw that the TPO has made a clear findings that there are no details available an record in respect of the nature of services rendered by Singapore affiliate to the assessee company. Therefore, we are of the considered view that the TPO is justified in holding that the assessee has not proved any commensurate benefits against the payments of service charges to the Singapore affiliate. Therefore, the ITO is justified in making the adjustment of ALP under sec. 92CA of the Income-tax Act 1961."

5.2 Further, attention is also invited to the decision of M/s Deloitte Consulting India Pvt. Ltd. in ITA no. 579, 1272, 1273/Mum./2011, wherein the following has been held:

"39. On the issue as to whether the TPO is empowered to determine the ALP at "nil", we find that the Bangalore Bench of the Tribunal in Gem plus India Pvt. Ltd. (supra), held that the assessee has to establish before the TPO that the payments made were commensurate to the volume and quality service and that such costs are comparable. When commensurate benefit against the payment of services is not derived, then the TPO is justified in making an adjustment under ALP."

40. In the case on hand, the TPO has determined the ALP at "nil" keeping in view the factual position as to whether in a comparable case, similar payments would have been made or not in terms of the agreements. This is a case where the assessee has not determined the ALP. The burden is initially on the assessee to determine the ALP. Thus, the argument of the assessee that the TPO has exceeded his jurisdiction by disallowing certain expenditure is against the facts. The TPO has not disallowed any expenditure. Only the ALP was determined. It was the Assessing Officer who computed the income by adopting the ALP decided by the TPO at "nil".

45 In our view, under similar circumstances a uncontrolled comparable company would not incur such expenditure. Hence, the ALP is rightly determined at "nil". As no expenditure would have been incurred, there is no necessity to apply a particular method to arrive at such conclusion. In fact, by all the five methods or anyone of them, when applied to the fact that there is no necessity of payment, the result of "nil" ALP will come."

5.3 Further, attention is also invited to the decision of MIs Knorr-Bremse India Pvt. Ltd. in ITA no. ITA no. 5097/Del/2011, wherein the following has been held

7.2. The appellant in the present case also did not demonstrate as to how the transaction by transaction approach in his case is not possible. It has also not been shown as to whether there has been any real or tangible benefit by carrying such international transactions with the AEs. The comparable uncontrolled price method ("CUP" method), for the subject transactions being most direct method for determining arm's length price and chosen as most appropriate method in this case by TPO, therefore, cannot be faulted with. We, therefore, do not find any error in rejecting the TNMM method applied by the assessee and determination of ALP by applying CUP method for Benchmarking international transactions in a case like this. The DRP also cannot be said to have erred in approving the CUP method adopted by the TPO for Benchmarking international transactions with the AE. The assessee's ground on this count being devoid of any merit stands rejected.

9.2. After hearing the parties with reference to material on record, we find that the authorities below have not conclusively held that the assessee could not enter into such a transaction nor had they disallowed the same by holding that such an expenditure is not assessee's business expenditure. The ORP as well as the authorities below have merely elucidated that the payments are reimbursement in respect of Ms. Rita Rieken and other personnel's case to serve the interest of share holders. By saying so they have only described the circumstance under

which the international transaction has been entered by the appellant, so as to test the benefit that can be said to have reached the assessee. It, therefore, cannot be said to have questioned the commercial expediency of such transactions entered by the appellant. The I. T. rules contain exhaustive detail regarding nature of information and documents which are required to be maintained by the assessee. Rule 100(1) of the I. T. Rules, 1962 also mandates the maintainability of record of uncontrolled transactions to be taken into account in analysing the comparability of the international functions entered into by the assessee. It, therefore, is obligatory on part of the appellant to maintain such record and produce the same before the TPO to show that it has benchmarked the international transaction at ALP. This obligation, however, has not been discharged by the assessee.

9.3. The appellant in the present case is also not shown to be willing to pay any amount for such services, if it were, so provided by an independent enterprise or if the same would have been performed in house. The ORP is found to have considered these services as non-beneficial for the recipient and did not take it as chargeable services. The perusal of e-mails and other contemporaneous record only goes to reveal that incidental and passive association benefit has been provided by the associate enterprise. In this view of the matter there could neither be any cost contribution or cost reimbursement nor payment for such services to the AE. The TPO, therefore, has rightly adopted Nil value for benchmarking the arm's length price in respect of both these services. We, therefore, do not find any reason to inter/ere with the well reasoned conclusion reached by the AO on this count. The grounds raised in appeal in this respect, therefore, stand rejected."

5.4 ITAT Bangalore in the case of M/s Fosroc Chemicals India Private Limited (supra) has held as under:

32. In fact in Assessee's own case the Tribunal on identical facts remanded the issue of determination of ALP to the TPO. The direction of the Tribunal has already been extracted in the earlier part of this order. The facts and circumstances are identical in the present assessment year and therefore the order of the AO is set aside and the issue remanded to the TPO/AO with identical directions as was given in Assessee's own case in A Y 07-08. In a case where expenses are actually reimbursed with no mark-up, than as observed by the Hon'ble Delhi High Court, the transaction being an expense transaction, the tax base erosion can happen only if the costs said to have been reimbursed are inflated. In such a situation the question would be to determine as to whether the costs claimed to have been apportioned between the various group companies has not

been inflated or whether they are allocated on a proper basis. As a first step the TPO generally considers following aspects in order to identify intra group services requiring arm's length remuneration:

- Whether services were received from related party.*
- Nature of services including quantum of services received by the related party.*
- Services were provided in order to meet specific need of recipient of the services.*
- The economic and commercial benefits derived by the recipient of intra group services.*
- In comparable circumstances an independent enterprise would be willing to pay the price for such services?*
- An independent third party would be willing and able to provide such services?*

33. The answers to above questions would enable to determine if the Assessee has received intra group services which requires arms' length remuneration. Determination of the arm's length price of intra-group services would thus involve:-

I. Identification of the cost incurred by the group entity in providing intra group services to the related party.

II. Understanding the basis for allocation of cost to various related parties i.e., nature of allocation keys.

III. Whether intra group services will require reimbursement of expenditure along with markup.

IV. Identification of arm's length price of markup for rendering of services.

34. Question as to whether intra group services are duplication of services for which the AE has already paid in addition to what is paid by way of allocation is also to be looked into. If the AE charges a mark-up for IT(TP)A No.148/Bang/2014 & SP No.107/Bang/2014 Page 26 of 29 the services rendered, than the ALP of such mark-up will have to be determined.

35. The Assessee has in the present case filed material before the TPO to demonstrate the nature of services rendered. In the paper book filed before us the index of the paper book gives a description of the service. We are of the view that the above description alone would not suffice. As we have already seen

the TPO had specifically called upon the Assessee to give details of the services rendered and how the same were utilized by the Assessee and its relevance for the Assessee's business. The evidence filed by the Assessee in this regard is in the form of e-mails between parties, reports etc. As to how the evidence filed by the Assessee was actually useful in its business has also to be highlighted as the Assessee will be the best person to know these facts which are within its knowledge. It is only if such a stand is taken by the Assessee can the TPO take the issue forward to arrive at a proper conclusion. In our opinion filing of voluminous correspondence, reports etc., would not be a proper way of discharge of Assessee's burden to establish the ALP of expenditure in question. We would therefore direct the Assessee to comply with the queries raised by the TPO in his show cause notice which has been set out in his order u/s.92CA of the Act. The Assessee has also given the breakup of costs incurred by the parent company and the basis of apportionment. The same has not been considered at all by the TPO. The findings of the DRP with regard to the nature of services as given in a IT(TP)A No.148/Bang/2014 & SP No.107/Bang/2014 Page 27 of 29 chart in the earlier part of this order are general without reference to the material filed by the Assessee. The findings are purely on surmises and cannot be sustained in the absence of any material on the basis of which such conclusions were arrived at being set out in the DRP's directions.

6. Conclusion- In view of the judicial precedents as well as the facts on record, there is no doubt that the TPO has rightly determined the ALP of intra-group services at Rs. nil. The assessee has failed to demonstrate that it has received services or that it benefited from such services as claimed. It has further failed to demonstrate the incurrance of cost by the AE as well as its allocation among the various group entities. In the instant case, the TPO has not questioned the commercial expediency of such transaction entered into by the assessee, rather, has only worked out the arms length price of the purported service. The perusal of the (e-mails and other contemporaneous record only goes to show that incidental and passive association benefits have been provided by the AE. In this view of the matter, there could neither be any cost contribution nor payment for such service to the AE. Further, as no expenditure would have been incurred, there is no necessity to apply, a particular method to arrive at such conclusion.

Hence, the orders of the TPO and DRP deserved to be upheld.”

9. We have heard the rival submissions and perused the materials available on record on the impugned issue and also the judicial pronouncements that were relied upon by both the sides at the time of hearing. We find that the benchmarking study conducted by the assessee

based on Functions performed, Assets Employed and Risks assumed (FAR) with respect to receipt of services under the Shared Resources Allocation Agreement (i.e the issue in dispute before us) reveal that the assessee had adopted Internal Transactional Net Margin Method (Internal TNMM) as the MAM based on segmental data after rejecting Comparable Uncontrolled Price (CUP) method for want of availability of comparables, among other prescribed methods. The segmental data relied upon has been duly audited and the same was furnished before the Id TPO by the assessee during the course of transfer pricing assessment proceedings. We find that the assessee applied Internal TNMM as the MAM for justifying the mark up of 6%. The Id TPO observed in his order that the assessee vide letter dated 23.12.2015 filed the Shared Resources Allocation Agreement between SMSL and Synovate Group Companies. We find that the said agreement states that all group companies have a continuing need for shared services regarding advice and assistance in the areas of business development, client liasoning, planning, financing, accounting, legal and personnel matters, communication, branding and public affairs etc. The agreement further states that the group companies nominated SMSL to aggregate the full costs and then share these costs among group companies on a continuing basis. It is agreed that SMSL may charge a mark up percentage on the total actual cost. The assessee had submitted a letter from Deloitte LLP, UK that the mark up charged by SMSL on shared resources for the year ended 31.12.2009 was 6% and the same was at Arm's Length based on an external comparability study performed by Ceteris, US LLC in 2007.

9.1. We find from the audited segmental data submitted before the Id TPO , the margin from services rendered to International AE's is 22.04%, whereas the margin from services rendered to other international Non-AEs is 4.29%. Even at entity level, the margin of the assessee is 11.78% and the Comparable Average Margin is (-) 0.54%.

9.2. We find that in respect of Cost Contribution Agreement Charges paid to SMSL, the Id TPO disagreed with the contentions of the assessee and held that the ALP of Rs 7.50 crores paid to SMSL should be NIL on the following grounds:-

- (a) the assessee had failed to demonstrate that services had been rendered/received.
- (b) that the evidences furnished only demonstrates services rendered were in the nature of shareholder/stewardship activities.
- (c) that the assessee had failed to show and quantify the benefits derived pursuant to incurrance of cost contribution charges and
- (d) the assessee has failed to demonstrate what an independent entity would be willing to pay for the services.

9.3. We find that during the course of the assessment proceedings, the assessee has filed the following details as called for :-

- a. Vide letter dated 23.12.15 - Explaining its TP analysis in general and filing of TP Study, benefits chart, etc. which is enclosed in Page 523 of Paper Book Volume 2.
- b. Vide letter dated 12.01.2016, the Id TPO's enquiry into the income earned from services rendered under the Shared Resources Allocation Agreement was replied.
- c. Vide letter dated 18.1.16, the assessee filed a reply as to why ALP on Shared Resources Allocation Agreement payments should not be taken at Nil as showcaused by the Id TPO. The said reply is enclosed in page 779 of the Paper Book Volume 4.
- d. Documentary evidences for rendering of services were filed before the Id TPO, which are enclosed in Pages 544 to 778 of Paper Book Volume 3.

9.4. We find that the Id DRP by its order dated 08.12.2016 upheld the order of the Id TPO by adopting its findings for Asst Year 2011-12. The Id DRP however observed in its order that there is no dispute on the truthfulness of the details filed by the assessee.

9.5. We find that the Id AR drew our attention to a detailed write up on how the group operates as a whole and the interplay between the various group companies, which is enclosed in Global TP Study Report by Deloitte at pages 126 to 129 of Paper Book Volume 1. He argued that from a reading of the said write-up, it becomes evident that in order to maintain efficiency and uniformity in quality, it is crucial for the group to be able to share its knowledge within the group and also seek assistance of other group companies to render services to global/multinational clientele. He submitted that due judicial notice should be taken of the fact that the arena in which the assessee is functioning, it will be difficult to imagine a successful business entity in the global environment without receipt of the services which carries huge intrinsic and creative value. The Id AR vehemently argued that the assistance of the group companies of the assessee is necessary for providing the market research services, thereby making the assistance provided under the Shared Resources Allocation Agreement. He drew our attention that to Pages 432 to 435 of Paper Book Volume 2 comprising of TP study report proving the fact of inter-dependence. He submitted that owing to international presence of the assessee group, it would be imperative that the assessee maintains uniformity in quality in the services rendered and unless there is such uniformity in quality, it would be impossible for its group companies to rely on the services rendered by it or such group companies vouch for the quality to its MNC clients on behalf of its other group companies including the assessee. We find lot of force in the said argument of the Id AR in as much as in order to main uniformity in quality of services rendered, the assistance of group companies is necessary under Centralised Sharing of Services Agreement and by consolidating all the services among the

group entities, it results in avoiding duplication of services and achieving economies of scale. In recognition of the abovementioned facts, Shared Resources Allocation Agreement was executed on 31.12.08 with effect from 01.01.08. We find that the background and necessity of entering into this agreement is detailed in the recitals A to J of the said agreement at Pages 99 and 100 of Paper Book Volume 1. We find that as per the said agreement, each group company had agreed to provide services to each other vide Clause 5 thereon. The details of services that gets covered within the ambit of said Shared Resources Allocation Agreement are enclosed in Schedule 1 at Page 108 of Paper Book Volume 1. We find from the perusal of Clause 6 of the said agreement, it specifically excludes from within its ambit, the services which are in the nature of shareholder services or services which have been provided by the group company to another for the exclusive benefit of the other. Hence the argument of the revenue that the services rendered are in the nature of shareholder activities cannot be accepted as the same is without any basis. We find that as per Clauses 11 and 12 of the said agreement, SMSL is appointed as a pooling entity for all costs incurred by each of the group companies in rendering the shared services and thereafter to allocate the same to the various group companies based on benefits the respective companies had derived.

9.6. In so far as the income of Rs. 6,41,18,520/- from rendering services under the Shared Resources Allocation Agreement is concerned, the same is earned on a cost plus 6% basis and the same has been found to be at ALP by the Id TPO. It is pertinent to note that this receipt of income had also emanated out of the very same Shared Resources Allocation Agreement. We find that the Id TPO having accepted that the income earned by the assessee under the Shared Resources Allocation Agreement of Rs 6.41 crores is at ALP, how then can the Id TPO or the Id DRP say that no services have been rendered under the Shared Resources Allocation Agreement. This is a contradictory stand taken by

the lower authorities. We also find that the Id TPO had in para 7.2 of his order had stated that no services have been rendered by SMSL and then in the same paragraph, he had stated that services rendered are in the nature of shareholder/stewardship activity proving his contradiction. Moreover, in arriving at the conclusion that ALP for the services rendered under the Shared Resources Allocation Agreement is Nil, the Id TPO had stated that the assessee had failed to demonstrate that any independent person would be willing to pay a price for such services and that the assessee had failed to show a valid CUP. This statement of the Id TPO clearly establishes the fact that the services were indeed rendered by SMSL to the assessee.

9.7. We find that the Id AR vehemently submitted that for the purposes of accounting, the services mentioned in Schedule 1 of Shared Resources Allocation Agreement, have been divided into various segments and sub segments as listed in detail in the Global TP study at Pages 131 to 230 of Paper Book Volume 1 and in the assessee's TP study for the year under consideration at Page 457 to 475 of Paper Book Volume 2. Both the Global TP study as well as the assessee's TP study for the year under consideration give, not only a detailed functional analysis but also explain how such shared service is beneficial to the group companies. For example:

(a) Under the head Global Client Relationships (OCR), a global team manages client relationship at global level. These relationships are overseen by OCR Key account directors, who each work with the key account community to service the client at the local, regional and global level. A detailed description can be found in the Global TP study at Page 168 of Paper Book Volume 1 and in the assessee's TP study at Page 470 of Paper Book Volume 2.

(b) Similarly, the working of Censydiam Institute which provides training and accreditation to Synovate group staff on the Censydiam approach, developed by the Institute, a detailed description of the functions of Censydiam Institute and its benefits can be found in the Global TP study at Page 172 of Paper Book Volume 1 and in the assessee's TP study at Page 471 of Paper Book Volume 2.

9.8. We find considerable force in the arguments of the Id AR that there is a binding agreement between parties to render services and contribute costs ; that there is a recognition by all group entities of the need for such services ; that SMSL is a special purpose vehicle existing for the sole purpose of pooling of costs ; that no costs for rendering of any shareholder/stewardship services are charged under the Shared Resources Allocation Agreement and that no costs for rendering any exclusive group company specific services are charged under the Shared Resources Allocation Agreement.

9.9. We find that the Id TPO had questioned the evidence furnished on the ground that the documents furnished only show general correspondence with no evidence of benefit received. In this regard, we find that the assessee had benefitted from the services rendered under the Shared Resources Allocation Agreement by way of earning income from group AEs as also from MNCs. We find that the Id AR argued on without prejudice basis that the Id TPO cannot sit in judgment over the benefit claimed to have been received by the assessee from the services received by placing reliance on the following decisions in support of his proposition:-

- (a) McCann Erickson -24 taxmann.com 21 (Del)
- (b) AWB India (P) Ltd. - 152 ITD 770 (Del)
- (c) Schneider Electric - 82 taxmann.com 364 (Ahd)
- (d) Sabic Innovative Plastics India Ltd. - 186 TTJ 214 (Ahd)

The Id AR drew the attention of the bench to the relevant operative portion of the aforesaid decisions to drive home the point that the Id TPO cannot sit in the judgement over the benefit claimed to have been received by the assessee from the services received from SMSL. The relevant operative portion of the aforesaid judgements are not reiterated herein for the sake of brevity. We find that the Id AR also submitted that the services rendered under the Shared Resources Allocation Agreement are in the nature of advice, guidance, assistance, troubleshooting, maintaining of client relations, etc and the benefits derived out of these services cannot be quantified in monetary terms.

9.10. We find that the Id AR also drew the attention of the Bench to pages 486 to 495 of the Paper Book Volume 2 comprising composition of income of the assessee as under:-

Income from rendering Market Research Services

(a) **To its AEs** (group companies, who have subcontracted work to the assessee):

i. A detailed list of AEs to whom services have been rendered during the year is an annexure to the TP Study of the assessee enclosed in Annexure B-2 at Page 487 of the Paper Book Volume 2.

ii. As per Annexure B-2, the assessee has earned Rs.19.75 crores during the year from rendition of services to its AEs and this constitutes 22.91% of total sales (viz. Rs.86.20 crores) during the year.

(b) **To MNCs** owing to Global Relations including under Global Contracts: The assessee earns income from MNCs in two ways - either by rendering services under Global contracts or under referrals from group companies.

i. Annexure B-3 to the TP Study gives a list of the Foreign Offices of MNCs to whom the assessee has rendered services during the year. The assessee has earned Rs. 12.11 Crores (being approximately 14.05% of total sales) , evidences enclosed in Pages 488 to 489 of Paper Book Volume 2.

ii. Annexure B-4 to the TP Study gives a list of the Indian Offices of both domestic companies as well as MNCs to whom the assessee has rendered services during the year. During the course of the hearing, Annexure B-4 was handed over highlighting in grey the MNCs included in

Annexure B-4 to identify services being rendered to them owing to global relations. Income from such MNCs during the year under consideration aggregates Rs.40.86 Crores (being approximately 47.41 % of total sales) as is evident in Pages 490 to 495 of Paper Book Volume 2.

iii. Examples of Global Contracts entered into with MNCs, resulting into the aforementioned services being rendered were filed before the TPO and are as below:

1. **Global contract with Unilever PLC.**

- a. Agreement at Pages 794 to 867 of Paper Book Volume 4.
- b. Revenue from rendering services to various group companies of Unilever PLC during the year - Rs. 16.54 Crores as evident from Annexures B-3 at Pages 488 to 489 and Annexure B-4 forming Part of TP Study at Pages 492,495 of Paper Book Volume 2.

2. **Global Contract with Shell Inc.**

- a. Agreement at Pages 896 to 928 of Paper Book Volume 4.
- b. Revenue from rendering services to various group companies of Rs. 44.38 lakhs as evidenced in Page 494 of Paper Book Volume 2.

3. **Global Contract with Philip Morris** is enclosed in Pages 930 to 971 of Paper Book Volume 4.

4. **Global Contract with Procter & Gamble** is enclosed in Pages 868 to 895 of Paper Book Volume 4.

(c) What remains after excluding the MNCs from Annexure B-4 is the local business of the assessee with Indian companies, in procurement whereof assistance of the global AEs was not necessitated. The business from such companies during the year was Rs. 13.48 Crores (being / approximately 15.63% of total sales)

The above composition of income shows that approximately 85% [100 - 15.63 (earned from local business – (c) above)] of the business of the assessee is from and on account of Global Relations. Rendition of services and this business would not be possible unless there was support of the group AEs under the Shared Resources Allocation Agreement. We find that these facts and figures are staring on us and cannot be summarily swept under the carpet. We hold that these figures clearly demonstrate the need, necessity of taking services from SMSL

together with the benefits derived by the assessee under the Shared Resources Allocation Agreement.

9.11. Apart from the above, the Id AR filed a Benefit Chart marked as Annexure C stating the description of services, how they were rendered, summary of evidence filed in support and its benefits to the assessee. The said chart also lists down the comments of the Id TPO on the evidence filed as contained in his order (Table 1 Pg. 15 to 24 of the Id TPO's order), enabling its comparison with the material filed and demonstrating that findings/claims of the Id TPO are ex facie incorrect. A perusal of the chart demonstrates that except in the case of services rendered under 2 heads viz. the head Global Finance and Group Legal, the Id TPO has summarily rejected the material produced by saying that the assessee has failed to submit any evidence. We find that the Id AR drew the specific attention of the Bench to the observation of the Id TPO wherein the Id TPO had drawn an adverse inference of non-rendition of service by citing that no evidence has been filed with respect to the service head "Global Motor". The Id AR in this regard, submitted that since no services were rendered to the assessee for the year under consideration, no costs have been allocated to the assessee, and hence it was not possible for the assessee to file any evidence. We appreciate the contention of the Id AR in this regard that there has been no allocation of costs under the head Global Motor to the assessee as could be seen by comparing the cost centres listed at Page 131 of Paper Book Volume 1 with the cost allocation sheet at Page 269 of Paper Book Volume 1.

9.12. With regard to the conclusion drawn by the Id TPO that the services rendered fall in the category of shareholder activity, the Id AR submitted that none of the group companies which have rendered services under the Shared Resources Allocation Agreement are shareholders of the assessee company. To support this factual position, the Id AR submitted

at the time of hearing, an organisational chart of the assessee. We find that the Id AR also drew the attention of the Bench to Page 425 of Paper Book Volume 2 to show the list of shareholders and also the fact that none of the group companies hold any shares in the assessee.

9.13. We further find that the assessee renders Market Research Services to its AEs. This typically happens when the AE has a contract with its client and under the said contract certain India related analysis is required. In such circumstances, the AE subcontracts some part of the work to the assessee. For such work, during the year under consideration, as stated earlier, the assessee has earned Rs.19.75 crores from such services. Similarly, the assessee receives Market Research Services from its AEs. This typically happens when the assessee has a contract with its client and under the said contract certain outside India related analysis is required. In such circumstances, the assessee subcontracts some part of the work to the AE's. For such work, during the year under consideration, the assessee has paid Rs.6.82 crores towards receipt of such services as is evident from Page 435 and 507 of Paper Book Volume 2. The aforesaid international transactions have been benchmarked using Internal TNMM and have been accepted by the Id TPO to be at ALP. We find that while benchmarking the aforesaid international transactions, in the segmentals drawn up by the assessee, the amount paid under the Shared Resources Allocation Agreement has been debited to the respective segments in the ratio of the turnover. The workings for the same is attached to the TP Study Report at Page 486 of Paper Book Volume 2. We find that the assessee had duly submitted these segmental workings duly audited before the lower authorities. We find that the Id TPO has accepted the segmentals so prepared. This demonstrates that the Id TPO agrees that the support and assistance under the Shared Resources Allocation Agreement are integral to rendition of the Market Research Services. Further when the TPO had

accepted the receipts and payments towards the Market Research Services (rendered and received) by the assessee to be at arm's length by applying Internal TNMM, and when, the segmental margin have been arrived at after debiting the payments under Shared Resources Allocation Agreement, which segmentals have been accepted by the Id TPO for benchmarking the Market Research Services and accepting the same to be at arm's length , we find that automatically the payments under the Shared Resources Allocation Agreement also stand benchmarked. It is therefore improper of the Id TPO to then once again separately benchmark payments under Shared Resources Allocation Agreement and subject them to a CUP analysis.

9.14. We further find that the co-ordinate bench of this tribunal in assessee's own case for the Asst Year 2008-09 , being the first year of operation of Shared Resources Allocation Agreement, had upheld the method of benchmarking adopted by the assessee. It is well settled that Internal TNMM based on segmental data would always be preferable over Extenal TNMM. On applying Internal TNMM , the margin from services rendered to international AEs is 22.04% , whereas the margin from services rendered to other international Non-AEs is 4.29%; and hence no adjustment is required to be made with respect to payments made under the Shared Resources Allocation Agreement.

9.15. In any case, we find that the Id TPO ought not to have determined the ALP of the payment made under the Shared Resources Allocation Agreement at Rs Nil.

9.16. We further find that for the Asst Year 2009-10, an amount of Rs 4,96,78,206/- was debited towards cost incurred on Shared Resources Allocation Agreement as enclosed in Page 295 of Paper Book Volume 1. The Id TPO enquired into this management fees and the assessee vide letter dated 26.11.2012 submitted its justification for incurrence of

expenses under the Shared Resources Allocation Agreement. The Id TPO accepted the said payment under the Shared Resources Allocation Agreement to be at ALP as is evident from Page 312 of Paper Book Volume 1. Hence going by the principles of consistency, we hold that the Id TPO ought not to have made any adjustment towards the very same transaction when there is no change in the facts and circumstances of the case.

9.17. We find that the Id DR relied on various case laws at the time of hearing before us and the Id AR had filed a written rebuttal to the same before us as under:-

Knorr Bremse India Pvt Ltd [2016] 380 ITR 307	The decision of the Punjab & Haryana High Court in the case of and Knorr Bremse India Pvt Ltd. has only remanded the matter back to the TPO for fresh adjudication (see Para 52). In fact on remand similar addition was made by the TPO which was the subject matter of adjudication of the Hon'ble ITAT in its decision reported in Knorr Bremse India P. Ltd vs ACIT [(2017) 77 taxmann.com 101]. copy of which is at Sr.No. 15 of the compilation of case laws filed by the Appellant. It is most pertinent to note here that the Hon'ble ITAT has infact deleted the entire addition made on intra group services by upholding the application of TNMM in the absence of any reliable CUP put forth by the TPO. It is therefore submitted that the decision of the Punjab & Haryana High Court does not help the Revenue and infact Order of the Hon'ble Tribunal on remand supports the case of the Appellant.
LG Electronics India Pvt. Ltd. [(2014) 52 taxmann.com 240]	Insofar as the decision in the case of LG Electronics India Pvt. Ltd. (2014) 52 taxmann.com 240] Revenue has placed reliance on the findings in Para 7.2-7.5 to contend that CUP is the most appropriate method and TNMM cannot be used. It is submitted that the said findings cannot be applied for the following reasons; <ul style="list-style-type: none"> • The findings in paragraph 7.2-7.5 have been given by placing reliance on the decision of the Special Bench in the case of LG Electronics India Pvt. Ltd. [2013] 29 taxmann.com 300 (Delhi) (see para 7.2) insofar as impermissibility of a bundled approach to benchmarking is concerned. The decision of the Special Bench in LG Electronic India Pvt. Ltd. (supra) insofar as it rejected applicability of bundled approach to AMP expenses

	<p>is no longer good law in view of the Hon'ble Delhi High Court in the case of Sony Erricsson Mobile Communications India P, Ltd. [2015] 374 ITR 118 in paragraph 82 observes thus:</p> <p><i>82. There is considerable tax literature and text that CUP Method, i.e. Comparable Uncontrolled Price Method, RP Method, i.e. Resale Price Method and CP Method, i. e. Cost Plus Method can be applied to a transaction or closely linked, of continuous transactions. Profits Split Method and TNM Method grouped as 'transactional profit methods', can be equally effective and reliable when applied to closely linked or continuous transactions. Thus, it would be inappropriate to proceed with the arm's length computation methods, with a pre-conceived suppositions on singularity as a statutory mandate. Clubbing of closely linked, which would include continuous transactions, may be permissible and not ostracized. Aggregation of closely linked transactions or segregation by the assessed should be tested by the Assessing Officer/TPO on the benchmark and the exemplar; whether such aggregation/segregation by the assessed should be interfered in terms of the four clauses stipulated in Section 92C(3) of the Act, read with the Rules. It would, among other aspects, refer to the method adopted and whether reliability and authenticity of the arm's length determination is affected or corrupted.</i></p> <ul style="list-style-type: none"> • To the extent reliance is placed on the findings in paragraph 7.2-7.5 requiring demonstration of close connection between the international transaction for applying a bundled approach is concerned, the requirement is admittedly fulfilled in the case of the Appellant <p>Inssofar reliance is placed on the findings contained in paragraph 13 to 13.21 (in the case of LG Electronics India Pvt. Ltd. [<i>supra</i>]) viz. that it is incumbent on an assessee to prove rendition of service to claim deduction, is concerned, the said findings cannot be applied to the instant case for the reason that in the present case the Appellant has infact demonstrated with evidence that services have been rendered and moreover the decision has been rendered before the decision of the jurisdictional High Court in the case of CIT v/s. Lever India Exports Ltd. [2017] 292 CTR 393 and hence the findings in the aforesaid paragraph to the extent they are contrary to the decision of the jurisdictional High Court in the case of Lever India Exports Ltd. (<i>Supra</i>) are no longer good law.</p>
<ul style="list-style-type: none"> • Gemplus India Pvt Ltd [ITA No. 352/Bang/2009] • Deloitte Consulting India Pvt. Ltd. [(2012) 22 taxmann.com 107] • Herbalife International India Pvt Ltd [IT(TP)A No. 1406/Bang/2010 and 	<p>The decisions in the case of Gemplus India Pvt Ltd (see para 20), Deloitte Consulting India Pvt. Ltd., (see para 45), Herbalife International India Pvt Ltd [IT(TP)A No. 1406/Bang/2010 and IT(TP)A No. 924/Bang/2012] (see para 11), Volvo India Pvt Ltd (see para 12), Cranes Software International Ltd</p>

<ul style="list-style-type: none"> IT(TP)A No. 924/Bang/2012] • Madura Coats Pvt. Ltd. [(2017) 77 taxmann.com 104] SKF Technologies [(2016) 68 taxmann.com 318] • Fosroc Chemicals India (P.) Ltd [(2015) 58 taxmann.com 85] • Volvo India Pvt Ltd [(2017) 77 taxmann.com 207] • Cranes Software International Ltd [(2014) 52 taxmann.com 19] • Cook India Medical Devices (P.) Ltd. (2017) 81 taxmann.com 187 • Control Techniques India Pvt. Ltd. (2017) 77 taxmann.com 212 • Safran Engineering Services India Pvt Ltd [IT(TP)A No. 451/Bang/2015] 	<p>(see para 9), Safran Engineering Services India Pvt Ltd (see para 11), and were all cases where the Tribunal had come to a finding of fact that no services had indeed been rendered to the Assessee by its Associated Enterprises therein and it was in those circumstances that the tribunal came to conclusion that in the absence of the assessee establishing that services were indeed received, the Transfer Pricing Officer was justified in taking the arm's length price as "Nil".</p> <p>In the case of Madura Coats Pvt. Ltd. (2017) 77 taxmann.com 104(Para 21), Fosroc Chemicals India (P.) Ltd (2015) 58 taxmann.com 85 (Para 35), Cook India Medical Devices (P.) Ltd. (2017) 81 taxmann.com 187(Para 5.2 & 5.3). and Control Techniques India Pvt. Ltd.(2017) 77taxmann.com 212(Para 5) the Tribunal held that Assessee had failed to establish any evidence and therefore remanded the matter.</p> <p>All of these aforementioned 11 cases are distinguishable inasmuch as:</p> <ul style="list-style-type: none"> • In the facts of the present case, the Appellant has by evidence shown not only the exact services rendered by each of the segments contained in Schedule 1 to the shared resources allocation agreement, but also demonstrated by way of numbers as to how such services have benefited the Appellant (see for example the revenue generated from the global contracts entered into with Unilever etc.). Further the Appellant has also demonstrated that not only has it paid for services under the SSA but has earned a sizeable income (Rs.6.41 crores) from services it has rendered under the SSA. • More importantly, all these decisions are prior to the decision of the jurisdictional High Court in the case of Lever India Exports Ltd.(supra)which has held that it is not within the jurisdiction of the TPO to enquire into the truthfulness of the submission that services are rendered and then negating such submission hold the ALP of the services to be Nil; such an enquiry as to genuineness of the agreement comes within the scope of the AO. In the case of SKF Technologies [(2016) 68 taxmann.com 318] (Para 19), the Tribunal held that where the Assessee submitted that it has evidence to show that there was considerable correspondence to prove the rendition of services then the TPO must consider the same and matter was remanded back by the Tribunal. This decision in fact supports the case of the Appellant.
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Hence it could be safely concluded that the case laws relied upon by the Id DR are factually distinguishable as detailed supra.

9.18. In any case, it would be pertinent to note here that the payment made under Shared Resources Allocation Agreement had been duly subjected to deduction of tax at source, except an amount of Rs 73.81 lakhs which was suo moto disallowed by the assessee for failure to deduct tax at source, and that no refunds have been claimed by the recipients thereon. Hence the actual claim by the assessee for the year under consideration is Rs. 6.77 crores only and therefore it is erroneous to make an addition of the entire amount of Rs.7,50,68,892/-. This is only made as a passive observation by us as we direct the Id TPO to delete the entire adjustment of Rs 7,50,68,892/- made towards payment of cost contribution charges pursuant to Shared Resources Allocation Agreement.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 11/12/2019

**Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER**

Mumbai; Dated 11/12/2019
Prakash Kumar Mishra, Sr.PS

Copy of the Order forwarded to :

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

**Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER**

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai