

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I-1' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.3219/Del./2018
(ASSESSMENT YEAR : 2014-15)**

DCIT, Circle 1, vs.
Faridabad.

M/s. Knorr Bremse India Pvt. Ltd.,
51/4, KM Stone, Vill & PO,
Baghola, Delhi Mathura Road,
Palwal.

(PAN : AAACK4739P)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ved Jain, CA

REVENUE BY : Shri M. Barnwal, Senior DR

Date of Hearing : 23.12.2020

Date of Order : 22.01.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, DCIT, Circle 1, Faridabad (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the impugned order dated 09.03.2018 passed by the Commissioner of Income-tax (Appeals), Faridabad qua the AY 2014-15 on the grounds inter alia that :-

“On the facts and in the circumstances of the case, the Ld. CIT (A) has erred on facts and in law in deleting the addition of Rs.6,97,61,263/- made by the AO rejecting the TNMM method applied by the assessee and used cup method for benchmarking the transaction of Intra Group Services (professional consultancy services and management fee for support services).”

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : Knorr Bremse India Pvt. Ltd. (KB India), the taxpayer is a wholly owned subsidiary of Knorr Bremse Asia Pacific (Holding) Limited (KB Hongkong). The taxpayer is into manufacturing of airbrake sets of passenger cars and wagon coaches, shock absorbers for passenger cars and locomotives, distributor valves, computer control brake system, tread break unit, brake accessories and other related products. The manufacturing facility is located at Faridabad, Haryana and main customer of its products is Indian Railways. During the year under assessment, the taxpayer entered into international transactions with its Associated Enterprises (AEs) as reported in Form 3CEB as under:-

S. No.	International Transaction	Segment	Value of transaction (INR)	Most Appropriate Method Selected by KB India
1	Purchase of raw materials and consumables	Manufacturing division	75,28,54,193	Transactional Net Margin Method (“TNMM”)
2	Sale of finished goods	Manufacturing division	22,59,36,431	

3	Purchase of capital items	Manufacturing division	4,09,86,947	
4	Payment or processing charges	Manufacturing division	11,83,230	
5	Purchase of finished goods for resale	Distribution division	14,48,60,341	
6	Provision of support services	Distribution division	2,32,46,998	
7	Professional charges	Distribution division	2,08,59,802	
8	Provision of SAP Development support services	Service Division	3,14,74,960	
9	Provision of Designing Engineering Services	Service Division	6,00,63,471	
10	Availing of Management support services	Common segment – Manufacturing distribution and service	2,50,03,636	Since these transactions are closely linked with manufacturing, Distribution and software segment of KB India. Accurate division of these between the three segments is not possible. However, since all these three segments of KB India are at arm's length, these transactions have also been considered to be at arm's length.
11	Availing of Information Technology Consultancy Services	Common segment – Manufacturing distribution and service	4,47,57,627	
12	Reimbursement of miscellaneous expense to AEs	Others	1,37,82,156	Other Method as per Rule 10AB
13	Reimbursement of miscellaneous expense from AEs	Others	3,66,52,177	
14	Interest on ECBs availed in FY 2011-12	Others	1,17,37,884	Comparable Uncontrolled Price Method (“CUP”)

4. Ld. TPO questioned two transactions undertaken by the taxpayer with its AEs viz. professional consultancy services (information technology) and fee for management support services to be not at Arm's Length Price (ALP) and determined their value as 'NIL'. Ld. TPO after rejecting the Transactional Net Margin Method (TNMM) as the Most Appropriate Method (MAM) applied by the taxpayer to benchmark its aforesaid two international transactions applied Comparable Uncontrolled Price (CUP) method and determined the ALP of these international transactions as 'NIL' and thereby made an adjustment as under :-

Sl.No.	Particulars	Amount
1	Adjustment on account of Professional Consultancy Services (Information Technology)	4,47,57,627
2	Adjustment on account of Fee for Management Support Services	2,50,03,636
	Total Adjustment made by AO	6,97,61,263

Assessing Officer (AO) accordingly assessed the total income of the taxpayer at Rs.50,83,94,553/-.

5. The taxpayer carried the matter before the ld. CIT(A) who has deleted the additions made by the TPO/AO on account of ALP adjustment by allowing the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the Revenue authorities below in the light of the facts and circumstances of the case.

7. The Revenue has challenged the deletion of addition of Rs.6,97,61,263/- by the Id. CIT (A) made by the AO on the ground that Id. CIT (A) has erred on facts and law by rejecting the CUP method applied by the Id. TPO/AO in order to benchmark the international transactions qua Intra Group Services (professional consultancy services and management fee for support services).

8. Id. DR for the Revenue challenging the order passed by the Id. CIT (A) relied upon the order passed by the TPO/AO. However, Id. AR for the taxpayer contended that this issue is covered in favour of the taxpayer in **its own case for Assessment Years 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13 decided by the Tribunal**. The Revenue has challenged the order passed by the Tribunal for AYs 2007-08, 2009-10 & 2010-11 before the Hon'ble Punjab & Haryana High Court and their appeals have been dismissed **vide order dated 10.12.2019 passed in ITA 8535/2018 (O&M), ITA 105/2019 (O&M) & ITA 104/2019 (O&M)**.

9. Undisputedly, facts qua the year under assessment are identical to the earlier years as there is no change in the business

model of the taxpayer in entering into international transactions with its AEs. This fact has not been controverted by the Id. DR for the Revenue during the course of arguments.

10. We have perused the order passed by the Id. CIT (A) qua the issue in controversy who has followed the order passed by the Tribunal in assessee's own case in earlier years and the order passed by the Tribunal has been confirmed by Hon'ble jurisdictional High Court.

11. We have also gone through the order passed by the Hon'ble Punjab & Haryana High Court for Assessment Years 2007-08, 2009-10 & 2010-11, available at pages 67 to 72 of the paper book, wherein following questions of law has been framed and disposed off as under:-

“6. The following questions of law have been raised in ITA No. 8535 of 2018:-

1.) Whether, on the facts and in circumstances of the case and in law, the Hon'ble ITAT was right in law in deleting adjustment made by the TPO on account of Infra Group Services without appreciating that the TNMN is not most appropriate method in determining the ALP of Infra Group Services?

2.) Whether on the facts and in circumstances of the case and in law, the Hon'ble ITAT was right in holding that segregation of the transaction of Infra Group Services was not correct and permissible?

3.) Whether on the facts and in circumstances of the case and in law, the Hon'ble ITAT was right in ignoring the findings of the TPO/AO that services were not received by the assessee from A.E.?”

7. *It is the contention of Mr. Tajender Joshi, Ld. Counsel for the Revenue that the Tribunal had fallen in error in rejecting the Cup Method employed by the TPO and accepting the TNMM used by the assessee in its transfer pricing analysis. It was also argued that the ITAT has not passed the order as per the directions/ observations given by this Court in the order dated 06-11-2015. He relied on the observations made by this Court in above said order and contended that this court did not held that the CUP method applied by the TPO was wrong and TNM method was required to be applied. The counsel for the revenue further contended that the ITAT had fallen in error in accepting TNMM as the most appropriate method for evaluation of international transactions including Intra Group Services.*

8. *The Tribunal while deciding the application of method for determining the Arm's Length Price held as under:-*

"...In the present case, the TPO although applied the CUP method but nothing was brought on record to substantiate that the AE provided the similar services to an independent enterprise in comparable circumstances. He also did not bring on record any instance where comparable services were provided to an independent enterprise in the recipient market. Therefore, in our opinion, in the assessee's case the CUP method was not the most appropriate method. On the contrary, the assessee rightly applied the TNMM method as most appropriate method because it was difficult to apply the CUP method or the cost plus method. Therefore, the TNMM was the most appropriate method in the absence of a CUP which is applicable where the nature of the activities involved, assets used, and risk assumed are comparable to those undertaken by an independent enterprise."

9. *On a pointed query by the Bench whether in terms of Rule 10C read with Section 92C of the Income Tax Act and Rules, the Transfer Pricing Officer had referred to any comparables to apply the Cup Method in the facts and circumstances of the case, the counsel could not indicate any instance where an independent entity had availed of services and had not paid any remuneration for the same.*

10. *In light of the above, the conclusion of the ITAT could not be faulted as the same was inconsonance with the provisions of the Act and the Rules. The contention of the Counsel for the revenue cannot be accepted as the Tribunal while upholding the TNMM Method has observed that the other methods prescribed under the Act namely the CUP or Cost Plus Method being not applicable in the facts and circumstances of the case, the*

Respondent Assessee could only resort to TNMM as the most appropriate method to show that its profit margin from international transactions was at arm's length.

11. Further, the Tribunal has concluded that the expenses paid to the employees of the A.E. were in the nature of reimbursement of their salaries without any mark up. Thus, the payment per se was to third party employees and not to any related party for services rendered. In light of the findings of the fact arrived at by the ITAT, the questions of law raised are answered against the revenue and in favour of the assessee.

12. Accordingly, all the three appeals stand dismissed.”

12. Following the orders passed by the coordinate Bench of the Tribunal in **taxpayer's own cases in ITA No.5886/Del/2012 for AY 2008-09 order dated 23.08.2016 & ITA Nos.2277 & 2278/Del/2017 for AYs 2011-12 & 2012-13 order dated 07.08.2020** and order passed by the **Hon'ble Punjab & Haryana High Court in AYs 2007-08, 2009-10 & 2010-11 order dated 10.12.2019** qua the controversy at hand in taxpayer's own case, we are of the considered view that this issue is no longer res integra because time and again it has been held that TNMM is the MAM to benchmark the international transactions entered into by the taxpayer with its AE qua professional consultancy services (information technology) and fee for management support services but TPO, for the reasons best known to him and to our mind to generate unnecessary litigation, proceeded to apply the CUP method by applying same reasoning applied in the earlier years.

So, Id. CIT (A) has rightly deleted the additions by following the orders passed by the Tribunal and Hon'ble Punjab & Haryana High Court (supra) passed in taxpayer's own case. Consequently, the appeal filed by the Revenue is dismissed.

Order pronounced in open court on this 22nd day of January, 2021.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 22nd day of January, 2021
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.DRP
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**