

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
श्री जी. मंजूनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2095/Chny/2017
निर्धारण वर्ष /Assessment Year: 2013-14

M/s.Control Techniques India-
Pvt. Ltd.,
117-B, Developed Plot,
Industrial Estate,
Perungudi, Chennai-96.

vs. The Dy. Commissioner of
Income Tax,
Corporate Circle-1(2),
Chennai.

[PAN: AAACC 1343 B]
(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Mr.Ashik Sha, CA
: Mr.G. Srinivasa Rao, CIT &
Mrs. R. Anita, JCIT

सुनवाई की तारीख/Date of Hearing

: 17.03.2021

घोषणा की तारीख /Date of Pronouncement

: 12.04.2021

आदेश / ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the final Assessment Order passed by the Assessing Officer u/s.143(3) r.w.s.144C(13) of the Income Tax Act, 1961 (in short "Act") dated 30.06.2017, in turn which was passed in pursuant to the directions of the Dispute Resolution Panel-2, Bangalore, issued u/s.144C(5) of the IT Act, 1961, and pertains to the Assessment Year 2013-14.

:: 2 ::

2. The assessee has raised the following grounds of appeal:

The grounds mentioned herein are without prejudice to one another.

1. *The orders of the learned Assessing Officer (hereinafter referred to as "Id, AO"), the Transfer Pricing Officer (hereinafter referred to as "Id. TPO") and the Honourable Dispute Resolution Panel (hereinafter referred to as "Id. DRP") are contrary to the law, facts and circumstances of the case and in any case, have been made in violation of the principles of equity and natural justice,*

2. *The Id. TPO, the Id. AO and the Id, DRP have erred in concluding the arm's length price of the intra-group services received relating to MIS, Vice President Executive, finance, strategic procurement, etc, (hereinafter referred to as "management services") as nil as against INR 1,51,79,164 determined by the appellant,*

3. *The Id, DRP has erred in not following the directions of this Hon'ble Tribunal in appellants own case for the immediately preceding AY 2012-13, wherein the Hon'ble Tribunal in principle agreed that TNMM as the most appropriate method.*

4. *The Id. TPO, the Id. AO and the Id. DRP have erred in making the adjustment under section 92 of the Act violating the provisions of the law and in excess of their jurisdiction.*

5. *The Id. TPO and the Id. AO and the Id, DRP have erred in holding the arm's length value of management services to be nil without first establishing any reason for the rejection of the appellant's transfer pricing documentation, when the same documentation and benchmarking approach which included the management services as an operating cost was accepted by them as regards the other international transactions.*

6. *The Id. TPO, the Id.AO and the Id, DRP have erred in not accepting the closely linked and integral nature of management services to the appellant's business and in not considering the aggregation approach adopted by the appellant in its benchmarking.*

7. *The Id, TPO, the Id. AO and the Id.DRP have erred in making the adjustment purportedly under the CUP method, without first establishing any comparable uncontrolled transaction to arrive at such a conclusion.*

8. *The Id. TPO, the Id, AO and the Id. DRP have erred in concluding, contrary to the facts of the case, that the appellant did not receive any services from its AEs; that the services received were incidental and in the nature of stewardship or shareholder services; and that the services were duplicative in nature,*

9. *The Id. TPO and the Id. DRP erred in not considering the information and documents submitted by the appellant.*

10. *The Appellant craves leave to add, substitute, amend, delete, or otherwise modify any of the grounds of appeal stated hereinabove before commencement of or at the time of hearing.*

:: 3 ::

3. The brief facts of the case are that the assessee, M/s.Control Techniques India Pvt. Ltd., is the wholly owned subsidiary of M/s.Control Techniques India Pvt. Ltd., UK (CTL-UK). The assessee is engaged in the business of manufacturing and sale of electric drives for electric motors. During the year under consideration, the assessee has reported various international transactions entered into with its Associated Enterprises (in short "AE") which are tabulated below:

Nature of International transaction	Amount (in Rs.)	MAM	PLI	Margin of taxpayer	Margin of comparables
Purchase of raw materials, Components, etc.	277922366	TNMM	OP/Sales	7.06%	5.16%
Payment of management fees	22984500				
Service income	733951				
Warranty charges received	5414352				
Sales	1477162				
Warranty charges paid	134415				
Reimbursement of expenses paid	1038339				
Reimbursement of expenses received	3202737				
Total	312773407				

4. The assessee has adopted Transaction Net Margin Method (in short "TNMM") as most appropriate method and claimed that as a tested party. The assessee has arrived PLI margin of 7.06% and compared with margin of comparables which was at 5.16%. The assessee has aggregated all transactions and bench marked under transaction not margin method. During the assessment proceedings, a reference was made to TPO to determine the ALP of international transactions of the assessee with its AE.

:: 4 ::

The TPO has accepted TNMM selected by the assessee as most appropriate method and has accepted transactions with its AE are at ALP. However, suggested downward adjustment on account of management fees paid to CTL-UK for Rs.1,57,23,722/- on the ground that the assessee has not furnished any evidences to prove that, in fact, services have been availed from its AE and also adoption of TNMM as most appropriate method is correct in the given facts and circumstances of the case and hence, out of total expenditure being payment of management fees of Rs.2,29,84,500/- has allowed, expenses relating to marketing of Rs.72,60,778/- and balance amount of Rs.1,57,23,722/- has been suggested as downward adjustment towards payment on account of management fees.

5. Consequent to the TP adjustment as suggested by the TPO, the AO has passed draft Assessment Order u/s.143(3) r.w.s.144C(13) of the Act on 23.11.2016 and proposed downward adjustment of Rs.1,51,79,164/- towards payment of management fees. The assessee has field its objection against draft Assessment Order before the DRP, Bangalore, and challenged TP adjustment suggested by the TPO along with various evidences. The DRP vide its order dated 17.05.2017 has upheld downward adjustment suggested by the TPO towards payment of management fees on the ground that the assessee has not provided any rationale for adopting TNMM as most appropriate method. The DRP, further, held that each transaction has to be evaluated separately and the nature of expenditure incurred by the assessee, it is difficult to accept the arguments that when all transactions

:: 5 ::

are tested by adopting TNMM as most appropriate method, segregation of few transactions and applying CUP method is incorrect. The DRP, further, held that the assessee has not furnished any evidence to prove that it had received service from its AE with regard to payment of management fees except for marketing services. Pursuant to the directions of the DRP, the AO has passed final Assessment Order on 30.06.2017 u/s.143(3) r.w.s.144C(13) of the Act and made additions of Rs.1,51,79,164/- towards downward adjustment on account of management fees paid to CTL-UK. Aggrieved by the final Assessment Order, the assessee has filed this appeal before us.

6. The Ld.AR for the assessee submitted that the issue is squarely covered in favour of the assessee by the decision of ITAT in assessee's own case for the AY 2012-13, where under identical circumstances, the Tribunal has in principle accepted the arguments of the assessee that when TNMM is adopted as most appropriate method and further, the transactions of the assessee with its AE are accepted at ALP than segregation of one transaction and applying CUP method to determine the ALP is incorrect. However, set aside the appeal to the file of the TPO on the ground that the assessee has failed to file evidences to prove services received from its AE with a direction to the TPO to re-consider the issue. He, further, submitted that after the decision of the ITAT in assessee's own case, the issue is being now settled by the decision of the Hon'ble Delhi High Court in the case of *Magneti Marelli Powertrain India v. DCIT* reported in 389 ITR 469, wherein,

:: 6 ::

the Hon'ble Delhi High Court clearly held that having accepted the TNMM as the most appropriate method, it was not open to the TPO to segregate only one element i.e. payment of technical assistance fee to an entirely different (CUP Method) method. The Hon'ble Supreme Court affirmed the findings of the Hon'ble Delhi High Court while dismissing the SLP filed by the Revenue vide its order dated 25.10.2016. Therefore, now the issue is also settled by the decision of the Hon'ble Supreme Court that when all transactions of the assessee with its AE reckoned under one method i.e. TNMM and transactions are ALP then segregating one element of services and applying CUP Method is incorrect. Therefore, the Ld.TPO and Ld.DRP were erred in applying CUP method to make downward adjustment towards payment of management fees to CTL-UK.

7. The Ld.DR, on the other hand, strongly supporting the orders of the Ld.TPO as well as the Ld.DRP submitted that the TPO has brought out clear facts to prove that the assessee has not filed any evidences to prove the fact of receiving services from its AE. Unless the assessee demonstrate with evidence, receipt of services for payment of management fees, then the question of allowing such expenses should be tested in any one of the suitable method. Further, it is a settled principle of law that CUP method is most appropriate method where this kind of services are availed from its AE. Therefore, the TPO and the DRP has rightly suggested downward adjustment towards management fees paid to its AE and hence, their orders to be upheld.

:: 7 ::

8. We heard both the parties, perused the material available on record and gone through orders of the authorities below. The TPO has suggested downward adjustment of management fees paid to CTL-UK basically on two grounds. The first reason given by the TPO to make TP adjustment is that the assessee has not filed any evidences to prove receipt of services from its AE. The TPO, further, was of the opinion that the services claimed to have received by the assessee from its AE are in the nature of shareholders/stewardship services, which did not give any cost benefit to the assessee. The another reason given by the TPO to suggest TP adjustment is that the method selected by the assessee to compare payment of management fees is not a proper method. Because, if CUP is selected, then it is easy to compare the transactions in a similar scenario, an independent entity would not be willing to pay such amount for services so claimed to have been received by the assessee. We have given our thoughtful consideration to the reasons given by the TPO to make downward adjustment for management fees paid to AE and find that in so far as selection of most appropriate method, although the TPO is correct in selecting CUP method as the most appropriate method but failed to bring on any comparable to test the transactions of the assessee with its AE. Further, it is a settled principle of law by the decision of the various High Courts including the decision of the Hon'ble Delhi High Court in the case of Magneti Marelli Powertrain India v. DCIT that having accepted the TNMM as the most appropriate method in respect of all transactions, it was not

:: 8 ::

open to the TPO to select only one of the services i.e. payment of technical fees to an entirely different (CUP method). The said findings of the Hon'ble High Court has been affirmed by the Hon'ble Supreme Court while dismissing the SLP filed by the Revenue. In fact, the ITAT in the assessee's own case for the AY 2012-13 has taken a similar view and held that it is not open to the TPO to select a different method for one element of services, when it is accepted the entire transactions of the assessee with its AE are at ALP under TNMM. However, the Tribunal has set aside the issue to the file of the TPO to verify the claim of the assessee with evidences of receipt of services from its AE and directed the TPO to allow the expenditure in case the assessee has filed necessary evidences to prove rendering of services by its AE. In the present case, for the impugned assessment year, we are not in agreement with selection of different method (CUP) by the TPO for bench marking one element of service, when entire services received by the assessee from its AE are tested at TNMM. In principle, we agree with the arguments of the Ld.AR for the assessee that segregation of one element of services out of bunches of services received by the assessee from its AE and applying different method for bench marking transaction is not correct, most particularly when TPO has accepted transactions of the assessee with its AE are at ALP under TNMM. However, fact remains that from the orders of the lower authorities, it was noticed that the TPO wanted the assessee to show that services were actually rendered by its AE to the assessee. Unless, the assessee

:: 9 ::

substantiates its claim with necessary evidence including Invoices, if any, raised by the AE for rendering of services, then the claim of the assessee cannot be accepted. Therefore, we are of the considered view that the issue needs to be set aside to the file of the AO for limited purpose verification of facts with regard to rendering of services by the AE to the assessee in connection with payment of management fees. In case, the assessee produced particulars of actual receipt of services, then the TPO is directed to accept the TP study conducted by the assessee by applying TNMM as the most appropriate method and delete TP adjustment made towards management fees.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on the 12th day of April, 2021, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 12th April, 2021.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

4. आयकर आयुक्त/CIT

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF