

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES : BENCH "B" HYDERABAD**

**(Through Video Conference)**

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**I.T.A. No. 934/Hyd./2019  
Assessment Year : 2013-14**

M/s Adama India Pvt. Ltd.  
Hyderabad

**vs.** Dy.CIT, Circle 1(1)  
Hyderabad

[PAN: AABCM8797N]

(Appellant)

(Respondent)

For Assessee: Ms. Mahima Goud & Kruthika Prakash, AR  
For Revenue: Shri YVST Sai, CIT D.R.

Date of Hearing : 10/02/2021  
Date of Pronouncement : 04/05/2021

**ORDER**

**PER S.S. GODARA, J.M.**

This assessee's appeal for AY 2013-14 is directed against the CIT(A)-1, Hyderabad's order dated 18.02.2019 in case no. 299/2018-19 involving proceedings u/s 143(3) r.w.s. 92CA(3) r.w.s. 92CA(5) of the Income Tax Act, 1961 (in short 'the Act').

Heard both parties. Case file perused.

The assessee has raised the following substantive grounds in the instant appeal.

1. Receipt of management services

- 1.1. On the facts and in the circumstances of the case and in contrary to law, the Ld. AO / Ld. TPO erred in determining the ALP of the receipt of management services to be Nil without following any of the prescribed methods under section 92C( I) of the Income-tax Act, 1961 ('Act').
- 1.2. On the facts and in the circumstances of the case and in contrary to law, the Ld. TPO erred in going beyond the scope under section 92CA of the Act, in questioning the commercial rationale of the legitimate business expenses incurred by the Appellant and further erred in making the transfer pricing adjustment amounting to INR. 2,84,58,356/- by determining the ALP of receipt of management services to be Nil.
- 1.3. On the facts and in the circumstances of the case and in contrary to law, the Ld. AO / Ld. TPO erred in not appreciating the facts of the case that the receipt of management services is closely linked to the overall business of the Appellant and the same was aggregated under Transactional Net Margin Method ('TNMM'). of Rs.92,33,314/-
- 1.4. On the facts and in the circumstances of the case and in contrary to law, the Ld. AO / Ld. TPO, having considered the transactions aggregated under manufacturing function to be at ALP, erred in not considering an aggregate benchmarking approach for receipt of management services from AE, being a closed linked transaction, in line with the TP documentation maintained by the Appellant.
- 1.5. On the facts and in the circumstances of the case and in contrary to law, the Ld. AO / TPO further erred in not appreciating the fact that

the operating profit earned by the Appellant after considering management services as operating cost falls within the arm's length range of the comparable companies.

1.6. On the facts and in the circumstances of the case and in contrary to law, the Ld. AO / Ld. TPO erred in ignoring the documentation, factual and legal submissions provided by the Appellant to substantiate the benefit, corresponding economic or commercial value derived on receipt of management services.

2. *Interest on outstanding receivables – Rs.73,34,428/-*

2.1. On the facts and in the circumstances of the case and in contrary to law, the Ld. TPO / Ld. AO erred by considering receivables from AEs as a separate international transaction and further erred in making transfer pricing adjustment by imputing interest amounting to INR 2,26,05,726/- on receivables from AEs by ignoring various rulings as submitted by the Appellant.

2.2. Without prejudice to above ground, the Ld. AO / Ld. TPO erred in bringing notional interest to tax without appreciating the fact that neither the AE nor the Appellant has the practice of charging interest on overdue balances from each other.

Without prejudice to the fact that no arm's length determination and consequential TP adjustment is warranted on outstanding receivables, the Appellant would like to raise the following grounds against the computation methodology of the Ld. TPO:

2.3. On the facts and in the circumstances of the case and in contrary to law, the Ld. TPO further erred by adopting the prime lending rate (PLR) of 14.45% per annum as issued by State Bank of India ('SBI')

as an arm's length rate for calculating interest on the receivables from AE, by treating the trade receivables as short term funding.

2.4. On the facts and in the circumstances of the case and in contrary to law, the Ld. TPO erred in adopting 30 days as arm's length credit period based on Appellant's intercompany agreement with AEs on an ad-hoc basis without carrying out any methodical analysis which is complete violation of transfer pricing provisions and against the principles of law.

2.5. On the facts and in the circumstances of the case and in contrary to law, the Ld. TPO further erred in imputing interest on invoice to invoice basis, however failed to compute the weighted average receivables in days for all the invoices raised during the year under consideration.

3. Other grounds:

3.1. On the facts and in the circumstances of the case and in contrary to law, the Ld. AO / Ld. TPO erred in rejecting the transfer pricing ('TP') documentation and the economic analysis undertaken by the Appellant without any robust reasons to determine the arm's length price ('ALP') for receipt of management services.

3.2. On the facts and in the circumstances of the case and in contrary to law, the LdAO/LdTPO erred in not satisfying any of the conditions prescribed u/s 92CA(3) of the Act while making TP adjustments and accordingly the order passed by the Ld.TPO/Ld.AO should be set aside in entirety. Total tax effect: Rs.1,65,67,741/-

**2.** It emerges from a perusal of assessee's foregoing grounds that it has sought to confess the twin issues challenging ALP adjustment qua receipt of management services and interest on receivables; respectively. Coming to the former issue involving sum of Rs.2,84,58,356/- both the learned

representatives contended that right from TPO's order to CIT(A) has gone by benefit test that the sum involved on cost only thereby clinching in the entire payment being disallowed/added in assessee's hands. The CIT(A) detailed discussion to this effect reads as under.

*"5. Ground no. 2 to 8 are with regard to TP adjustment of Rs2,28,33,540/- made on payment for management services availed.*

*5.1 During the assessment proceedings, the Assessing Officer observed that:*

*"The taxpayer made international transactions with its AEs under the manufacturing function as the same are inter-linked with the receipt of management services amounting to Rs.2,84,58,356/ - under TNMM method. The taxpayer has carried out the economic analysis in the TP documentation by clubbing management services under manufacturing function. This office concludes that management transaction needs to be benchmarked separately and cannot be clubbed under manufacturing function. In this regard, show cause notice was issued to the taxpayer to submit the details. In response, the assessee could not justify the benefit received from the receipt of the management services from AE. Therefore, the submissions and TP documentation maintained by the taxpayer are rejected and arm's length price is determined at nil due to following reasons :*

- The TP documentation maintained does not meet the criteria required under Rules 10B and the benchmarking analysis suffers from errors and cannot be relied upon.*

- The taxpayer did not produce any cogent evidence, except a V write-up intercompany agreement, intercompany invoices and email exchanges to demonstrate that management service assistance was actually received.*

- The taxpayer has also not been able to show that has derived any benefit from the alleged assistance from AE. The analysis conducted by the taxpayer is not according to the rules requiring maintenance of TP documentation*

• *The taxpayer has relied on the following case laws in support of benefit test analysis undertaken by the taxpayer which are fact based and cannot be relied upon -*

- *Safran Aerospace India Pvt Ltd (ITANo.1261/Bang/2010)*
- *TNS India Pvt Ltd (ITA No. 944/H/07, 194 & 74/H/08, 793/H/09, 654, 655/H/10 & 7/H/2012)*
- *AWB India Pvt Ltd (ITA No.4454/Del/2011)*
- *AXA Technologies Shared Services Pvt Ltd (IT (TP) A No. 659/Bang/2012)*

*In view of the above, the submissions of the assessee is rejected. The benefits derived out of management services normally depend on the various factors. In this regard, the following points are worth to mention:*

*1. Universally, management services are being treated at arm's length only when it is proved substantially by the taxpayer that such intangibles were actually received and further proving that such services have benefitted it.*

*2. The application of the arm's length principle would be to see whether the amount paid by the taxpayer for the management services reflect the same charges for the intangible that would have been, or would reasonably be expected to be levied between independent parties dealing at arms' length for comparable circumstances.*

*3. How much a comparable independent benefit recipient, 1 under comparable circumstances would be willing to pay for that service?*

*4. Whether as a result of such payment, the recipient of the service, the taxpayer, resulted in any economic or commercial value to enhance its commercial position. 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).*

5. *What is the benefit received/receivable on account of such services for which the amount was paid by the taxpayer. Also quantification of the benefit in terms of value addition achieved by the usage of such services, to the final value of the product and thereby justification for the amount paid.*

6. *The tangible benefit accrued to the taxpayer in this year or coming years. An analysis of profitability of the company in M/S.Adama India Private Limited A.Y.2013-14. the past, present and future years to show that the payment resulted in a tangible benefit.*

7. *Unless it is shown that tangible and direct benefit is derived by payment of such amount 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 would be treated as either Rs.Nil or to the extent it is shown that the benefit actually derived from such payment under CUP method.*

*The submissions could not justify any of the above. Based On above reasons, the submission made by the taxpayer is rejected and ALP of payment to AE for management services is determined at Rs. Nil. "*

5.2 *During the Course of appeal proceedings, With regard to the above ground, the appellant submits as under:*

*'the appellant submitted to the Ld, TPO that it has maintained TP documentation in accordance with the provisions of section 92D read With Rule 10D of the Rules, which provide for the maintenance of TP documentation. The appellant has computed ALP in accordance with the Provisions of the Act read with the Rules before the. due date for filing the return of income. The appellant Submits that in order to benchmark to receipt of management service transaction, the Ld, TPO ought to have adopted anyone of the methods prescribed Under the Provisions Of the statute. The appellant submits that determination of the ALP as Nil and assess the benefit derived by the taxpayer is beyond the jurisdiction of the Ld. TPO. The appellant Submits that it is an accepted principle of law that the arm's length nature of the transaction with*

*AEs needs to be determined by adopting anyone of the methods under section 92C. Further to Submit that the Ld. TPO neither rejected the method followed by the appellate to benchmark the transaction nor adopted any recognized method to determine the ALP of receipt of management services from AE. When the appellant has discharged its onus by providing substantial documentation by demonstrating appropriate necessity for the services rendered and the benefits derived to corroborate the arm's length nature of the transaction, the Ld. TPO's conclusion on determining the ALP as Nil is erroneous and contrary to the provisions of the stature. The case laws referred are as follows:*

- 1. CIT Vs. Walchand & Co., Pvt ltd vide 65ITR 381*
- 2. EKL Appliances Ltd [ITR Nos.1068/2011 & ITA Nos.1070/2011]*
- 3. Schneider Electric India Pvt Ltd [TS-433-ITAT-2017 ((Ahd)(TP)]*

*The management services was aggregated with TNMM under manufacturing function and was considered to meet the arm's length standard from Indian TP regulations. However the AO has taken different stand by considering management services as separate transaction, which needs to be benchmarked separately. The management services availed by the appellant is closely linked to the manufacturing function undertaken by the appellant. Hence, aggregating the same under TNMM would be more sensible approach rather than benchmarking it separately. Further where the management services are closely linked, the benchmarking it separately may not be feasible and may distort the comparability analysis. The TPO was not consistent in his approach and had not followed any of the prescribed methods for benchmarking the management services. The appellant submitted that it had entered into an inter-company with its AE=Makhteshim Agan Singapore PTE Limited or availing management services. The services rendered by the appellant under management services agreement are aimed to enable the appellant to carry out its business operations more efficiently in an increasingly globalized and competitive scenario. Further by having access to such assistance in accounting matters, assistance in process and quality*

*control services, assistance in relation to procurement and sales which include knowledge/know-how and research reports, etc. are the core services availed by the appellant without which appellant would find it difficult to perform efficiently and keep up the expectations of customers in the market. The appellant submits that the services availed by the appellant falls within the explanation of centralized intra-group services as mentioned in the OECD guidelines 2017 on the transfer pricing. The appellant submits that the adjustment on the expenditure on the ground that it was not necessary or prudent is erroneous. [I]f the expenditure or payment has been demonstrated to have been incurred or laid out for the purpose of business, the same cannot be disallowed. The appellant submitted the nature of services availed for the each period with allocation. key. The appellant submitted that it has actually availed services from its AEs and has benefitted out of the services received. Based thereon, the appellant submitted that the adjustment made may be deleted with regard of management services.*

*5.3 I have carefully considered the facts of the case, assessment order and the submissions of the appellant. Keeping in view of the detailed order passed by the TPO which was valued by the Assessing Officer, there is no reason find to interfere in the order passed by the Assessing Officer with regard to the management services. Hence the details submitted by the appellant is not accepted and the addition made by the Assessing Officer is confirmed.*

**3.** Both the learned representatives reiterated their respective stands against and in favour of the impugned TP adjustment relating to receipt of management services in the nature of an intangible transaction.

Case law CIT vs. Cushman and Wakefiled (India) Pvt.Ltd. (2014) 367 ITR 730 (Del) and CIT vs. EKL Appliances Ltd (2012) 345 ITR 241 (Del.) holds that it is not within the domain of the “TPO” to determine the actual benefits derived from the International transactions in issue which needs to be seen from assessee’s view point going by common business prudence only. We make it clear that the assessee has already filed its detailed paper book in the

nature of supportive evidence indicating receipt of management services in day to day functioning from its overseas Associated Enterprises. There is no rebuttal coming from Revenue's side that all the said details lack genuineness which could be taken as the benchmark for arriving at nil 'ALP' thereof. We thus hold that the learned lower authorities action making impugned ALP adjustment of Rs.2,84,58,356/- is not sustainable. The same is directed to be deleted. The assessee succeeds in its first substantive grievance therefore.

**4.** Next comes latter issue of interest on receivables addition of Rs.2,26,05,726/- qua the overdue credit period regarding international transactions between the assessee and its overseas Associated Enterprise learned CIT DR fails to rebut the clinching fact that the TPO as well as the CIT(A) have adopted prime lending rate of 14.5% as issued by the SBI which has no relevance to international transactions forming subject matter of ALP determination mechanism before us. We further make it clear that all the learned lower authorities have failed to adopt even the most appropriate method 'MAM' before adopting SBI lending than LIBOR rate as the interest on receivables benchmark. There is hardly any dispute that chapter X of the Act is a special provision wherein each and every adjustment qua an assessee's international transaction could be made only after adopting the 'MAM' followed by selection of comparables in the very segment only. We thus direct the TPO to delete the impugned latter adjustment on interest on receivables amounting to Rs.2,26,05,726/- as well. The assessee succeeds in both of its substantive grievances.

**This assessee's appeal is allowed in above terms.**

Pronounced in Open Court on 04<sup>th</sup> May, 2021.

Sd/-  
**(L.P. SAHU)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(S.S. GODARA)**  
**JUDICIAL MEMBER**

Dated: the 04<sup>th</sup> May, 2021.

\* gmv

Copy of the Order forwarded to:

1. M/s Adama India Pvt. Ltd., DS -13, IKP Knowledge Park, Survey no.542/2, Genome Valley, Turkapally, Shameerpet, Hyderabad 500 078, Telangana.
2. Dy.CIT, Circle 1(1), Hyderabad.
3. ACIT, Range 1, Hyderabad.
4. CIT(A)-1, Hyderabad.
5. Pr.CIT-1, Hyderabad.
6. DR, ITAT, Hyderabad.
7. Guard File.