

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

**IT(TP)A No. 780/Bang/2013**

**Assessment Year : 2007-08**

3M India Limited, Plot No.48-51, Electronic City, Hosur Road, Bangalore – 561 229. <b>PAN: AAACB 5724H</b>	Vs.	The Additional Commissioner of Income Tax, Large Taxpayers Unit (LTU), Bangalore.
APPELLANT		RESPONDENT

**IT(TP)A No. 796/Bang/2013**

**Assessment Year : 2007-08**

The Deputy Commissioner of Income Tax, Large Taxpayers Unit (LTU), Bangalore. JSS Towers, 100 Ft. Ring Road, Banashankari III Stage, Bangalore-560085	Vs.	3M India Limited, Plot No.48-51, Electronic City, Hosur Road, Bangalore – 561 229. <b>PAN: AAACB 5724H</b>
APPELLANT		RESPONDENT

Assessee by	:	Shri Mukesh Bhuttani, Advocate
Revenue by	:	Ms. Neera Malhotra, CIT(DR), ITAT, Bangalore.

Date of hearing	:	18.03.2021
Date of Pronouncement	:	15.06.2021

## **ORDER**

*Per N.V. Vasudevan, Vice President*

These are cross appeals by the Assessee and revenue against the order dated 15.3.2013 of CIT(A), LTU, Bangalore, in relation to assessment year 2007-08.

2. The only issue that arises for consideration in these cross appeal is the addition made to the total income on account of determination of Arms Length Price (ALP) in respect of international transaction carried out by the assessee with its Associated Enterprise (AE).

3. The assessee is a company engaged in varied business activities like industrial markets, administrative and specialty markets, healthcare markets, traffic and safety market. During the previous year the assessee had transactions with its AE in various segments of its business. The assessee made a payment of Rs.8,68,88,000 to its AE viz., 3M Singapore in respect of administrative and business support services rendered by 3M Singapore. In accordance with the provisions of section 92 of the Income Tax Act, 1961 ('Act'), the price paid by the assessee to its AE has to satisfy the arm's length price (ALP) test. The dispute in these appeals is with regard to determination of ALP in respect of international transaction whereby assessee made payment to its AE for administrative and business support services.

4. The Transfer Pricing Officer (TPO), to whom the determination of ALP was referred to by the AO under the provisions of section 92CA of the Act, called for several details in his letter dated 16.2.2010 viz., documentation and evidence to show that the above services were actually rendered by the AE to the Assessee, evidence to show that tangible and

direct benefit derived by the Assessee in paying the above amounts to the AE, valuation of such services if rendered between two independent parties under similar circumstances, invoices raised by AE on the assessee, ledger account of the services in books of assessee, basis of apportionment of cost by the AE for provision of Intra-Group Services [IGS] to the assessee as well as other group companies, the basis on which the cost of providing IGS was arrived at, copy of agreement for rendering IGS, invoices to show that IGS were actually rendered and other details.

5. The assessee in reply to the aforesaid letter of the TPO dated 16.02.2010, furnished reply dated 11.3.2010 along with enclosures. Enclosures are debit note raised by the AE for providing business support services, agreements with AE for rendering IGS dated 1.1.2003 between Assessee and 3M Asia Pacific Pvt.Ltd. (3M APAC) ( also referred to as “3M Singapore”), basis of cost allocation by the company providing IGS to the various entities across the world. The reply of the Assessee dated 11.3.2010 and annexures thereto are at page 298 to 562 of the Assessee’s paper book. It was the plea of the Assessee that the following documentary evidence supports its plea for substantiating the price paid to the AE for IGS, viz.,

Description	Page No.
- Intercompany services rebilling agreement dt.1.1.2003 between 3M APAC and Assessee	330-334
- Intercompany services rebilling agreement between 3 M APAC with 3M Vietnam	335-339
- Overview of the major costs that are billed as part of Support Service Fee and the types of services rendered	340-343

- Details of Cost allocated from APAC Singapore to 3M India, which includes cost actual incurred by 3M Singapore and allocated to all the APAC countries & Recharge from other APAC countries to	344-374
- Copy of E-mail received from APAC Singapore explaining the details of IT related support Services rendered during	375-378
- Service level agreement for the year 2006 explaining the IT implementations	379-396
- E mail on the detailed road Map for implementation of FIFO IT Project with timelines	397-399
- Email from APAC Singapore on 2006 R&D Activities	400
- Explanation on 2006 related R&D Activities done for India. With each APAC Staff in R&D	401-403
- Email from Wai Peng Poon with Attachment for Trip itenary & visit details	404
- Wai Peng Poon Trip Details explaining the itenary & purpose of his visit	405
- Email from Chizzy Nnamchi for Sales/Marketing/Business Support related Services	406
- Document prepared for India explaining Compatibility of Hollow Glass Spheres for Oil & Gas Markets.	407-433
- Flyer for Oil & Gas Markets	434-445
- Flyer for best practice application for oil & Gas Markets	446-452
- Flyer for Cement system for Long Term Integrity	453-487
- Summary of Chizzy Nnamchi Visit - email explaining the Visit Details	488-489

- Explaining the process of the Program change Management ,i.e. any changes to the IT Applications including up gradations	490-491
- ICAP shipment — changes and updates to ICAP application	492-562

6. The TPO gave the following findings on the submissions filed by the Assessee: (i) The invoices raised by the Assessee did not speak about the nature of services rendered. The taxpayer only mentioned about various services with support of invoices without any primary evidence to show that such services were actually rendered. (ii) The TPO analysed the business model and operation of the Assessee and noticed that the Assessee is a manufacturer and marektere of a wide variety of products catering to the industrial, automotive, speciality material, healthcare, traffic and safety, consumer and office and construction markets. The TPO noticed that the Assessee was importing raw materials from the AE besides importing finished products for resale and these constituted 59% and 51% respectively in the trading and manufacturing segments respectively. The TPO also observed that the Assessee sends significant portion of its revenues on research and Development and had invocation centre in Bangalore. The growth momentum of the Assessee was due to general economic growth and various sectors in which it was dealing and therefore the benefit that accrues to the Assessee has to be judged keeping in mind the factors mentioned above. (iii) The TPO thereafter noticed that the claim of the Assessee that services were rendered by the AE was based on visits of certain personnel to India and he found that the Assessee failed to give cogent evidence to show that the expenditure incurred in connection with visits really materialized into the Assessee getting the benefit of the personnel who visited India. (iv) With reference to Information Technology

services claimed to have been received by the Assessee from its AE, the TPO observed that only E-mails were provided to support rendering of services by the AE and there was no primary evidence to show that services were actually rendered. (v) The TPO analysed the business development and marketing support services, data processing and information technology and systems support, engineering, laboratory and technical support services, internal consultancy services, legal support services, finance accountancy, cash and banking management support services claimed to have been rendered by the AE to assessee.

7. The conclusion of the TPO on the payments made towards IGS to the AE has been summarized by the TPO in his order at paragraph-4.5 of the order u/s.92CA of the Act and the gist of the same is as under:

(a) The taxpayer's payment of administrative and business support service fee is not linked with actual services rendered.

(b) The taxpayer did not give the bifurcation and nature of services rendered by the AE under various heads within the administrative and business support services fee paid and also did not submit the amounts paid in respect of each of such service provided by the AE.

(c) When independent parties make any such huge payments, they would do so only by an agreement such that both parties know beforehand the basis on which payments are to be made for the services that are received by the recipient. But the agreement produced by the taxpayer did not have any clause on the quantification of services except saying that the same would be based on actual man hours spent by the persons of the AE rendering services.

(d) The taxpayer did not produce any primary evidence to show that the services are actually rendered by the AE except describing the nature of services and submitting the copy of invoice raised by the AE. At arm's length, the parties dealing in similar circumstance: would have such evidence in possession.

(e) The taxpayer did not produce any evidence regarding the actual services rendered by the AE, the man-hours spent by the personnel (as per the agreement, this is mandatory), the amount spent by the AE and how they would be quantified at an arm's length condition.

(f) As per the agreement of the taxpayer with the AE regarding the services, the taxpayer is obliged to pay only for those services valued at based on actual man-hours spent by the personnel of AE. But, the copy of invoice produced or the details submitted by the taxpayer, did not show the nature of services rendered and quantification of the same in terms of man-hours spent and man-hour charges paid etc. This shows that the administrative and business support services fees are not linked with actual services but way to siphon of the profits with minimum incidence of tax.

(g) The taxpayer could not produce the details and quantum of expenditure spent by the AE in rendering services in connection with administrative and business support fees even though he was asked specifically.

(h) Just by describing various services, it will not suffice to justify the price charged in into, group services. The taxpayer is only describing various services rendered by the taxpayer but did not give the actual amount spent in respect of these expenses, as such

dealing between two independent parties would invariably boils down to the actual expenditure incurred in connection with such services and mark-up thereon. It also did not show whether any charge is required at an arm's length.

(i) When the taxpayer has capabilities in itself or capable of getting these services locally is most of the services, it could not show what are the special services received by it and if received, whether at arm's length, charge is required and if charge is required, whether it arm's length, charge is required and if charge is required, what is the charge payable at arm's length. The taxpayer is incurring sufficient amounts under various heads under which the taxpayer alleged to have received services from the AE and hence could not justify the duplicate charge paid for same services which could have been obtained by itself locally.

The conclusion of the TPO on the payment of IGS was that the taxpayer's administrative and business support service fee is nothing but siphoning off profits from India with minimum incidence of tax as the taxpayer has paid only 10%, when compared to the tax rate of 40% (30% tax + 10%, when compared to the tax rate of 40% (30% tax + 10% dividend tax) if the same was shown as profits and remitted as dividend. The taxpayer did not prove the arm's length nature of administrative and business support services fee paid to AEs. The following were the final conclusion of the TPO:

“To sum up, the payment of the administrative and business support fee in the case of the taxpayer is not at all justified. There is no proof of any service having actually been rendered by the AE. The existing facts and circumstances amply show that the services even if rendered by the AE were mere duplication of the functions being carried out by the taxpayer on his own and independently. The ALP of the payment made for administrative and business support services is determined as Rs.NIL under CUP method.

**Thus the arm's length price of administration and business support service fee paid is treated as Rs. Nil under CUP method and the entire payment of administration and business support service of Rs. 8,68,88,000/- is treated as an adjustment U/s 92CA.**

**Thus, the above amount of Rs.8,68,88,000 is treated as transfer pricing adjustment u/s.92CA for the financial year 2006-07.”**

8. The addition suggested by the TPO in his order was incorporated in the draft order of assessment passed by the AO. The Assessee did not prefer any objection before the Dispute Resolution Panel (DRP) u/s.144C of the Act, against the draft order of Assessment but preferred appeal before CIT(A) against the final order of assessment passed by the AO wherein the addition suggested by the TPO on account of determination of ALP was added to the total income of the Assessee.

9. Before CIT(A), the Assessee gave a detailed break-up of the sum of Rs.8,68,88,000/- which was as follows:

Particulars	Amount (USD)	Amount (INR)
Debit Note Value for the Year	13,32,921.69	
Exchange rate	45.87	
Debit Note Value in INR		6,11,41,118
Withholding Tax at 16.83% Grossing up		1,23,72,310
Service Tax at 12.24% on Basic Value		74,83,673
Total APAC service billing		8,09,97,101
Provision for Jan 07 to Mar 07		2,50,00,000

Reversal of Provision for Jan 06 to Mar 06		(1,35,00,000)
Recharge to 3M E&C Portion		(56,09,101)
Amount debited to P&L account for FY 2006-07		8,68,88,000

10. Before the CIT(A), the Assessee furnished copies of the Taxpayers Counterfoil for the payment of withholding tax of Rs. 1,23,72,310/- and challan for payment of service tax of Rs. 74,83,673/-. The Assessee firstly contended that the actual cost alongwith the 10% mark-up charged by 3M Singapore was only Rs. 6,11,41,118. It was contended that that only the said sum should be considered for determination of ALP. It was further pointed out that out of the total amount debited of Rs. 8,68,88,000/- the Assessee itself added back provision of Rs. 2,50,00,000/- made in its books for the period January 2007- March 2007. This sum also cannot be considered as payment for IGS and be subject matter of determination of ALP.

11. The CIT(A) agreed with the plea of the Assessee as above and held that out of the total amount debited of Rs. 8,68,88,000/- the Assessee itself added back the provision of Rs. 2,50,00,000/- made in its books for the period January 2007- March 2007. Out of the remaining Rs.6,18,88,000/-, Rs. 1.99 crores (Rs. 1.24 lakhs +0.75 lakhs) comprises of withholding tax/service tax and that no TP adjustment is required on the provision made and the withholding and service tax paid. To this extent the Assessee was allowed relief by the CIT(A).

12. As regards the remaining sum that was paid as IGS, the assessee reiterated that administration and business support fees were allocated to

all the 3M group globally pooled in all the IT and related costs to 3M Singapore which was in turn allocated to the group companies. The basis for cost allocation made by 3M Singapore along with the allocations to 3M India was provided by the Assessee as under:-

Basis of allocation of APAC cost to countries	Amount (USD)	Amount (USD)
	Total APAC Cost	Allocated to India
a) Total Outlaying to Subsidiaries - Cost pooled into Singapore	22,495,713.96	815,578.00
a) 3M Singapore cost base - Direct and Indirect costs	2,338,896.51	517,344.00
Total cost	24,834,610.47	1,332,922.00
Percentage of total expense allocated to 3M India	5.37	

It was submitted that 3M Singapore's cost base consisted of two portions:-

1. 3M Singapore's direct and indirect costs; and
2. Budgeted time cost incurred by other regional personnel based out of other locations in the Asia Pacific region and invoiced to 3M Singapore (pooling of costs into 3M Singapore by other 3M entities in Asia Pacific region)

It was pointed out that the amount allocated to 3M India was only 5.37% of the total cost incurred by the 3M group. The Assessee provided details of cost apportionment adopted for various 3M entities including 3M India under each head (i.e. lab & technical services, marketing & sales support, business development, IT etc) in the written submission dated 11-03-2013. The budgeted time costs of department-wise personnel who possess a regional role, but were based out of

different countries in the Asia-pacific region were also furnished. The Debit Note raised by 3M Singapore on the Assessee was also furnished. The Assessee also produced corroborative evidence relating to services rendered by 3M Singapore vide submission dt.11-03-2013. It was contended that the administration and business support services rendered during the FY relevant for AY 2007-08 comprised of the following:-

- a) IT support services
- b) Sales & Marketing support services
- c) Laboratory and technical support services

The Assessee gave a description of the nature of each of the services so rendered by the AE.

13. As regards, IT support services provided by 3M Singapore, they were broadly captured under three main categories as under:-

- COFS/DM project implementation
- ICAP & application support
- IT support services

The nature of services rendered as above were given as below:

- a) System performance
- b) System availability
- c) Security control
- d) Capacity planning
- e) System Management and configuration
- f) Workstation management
- g) Integrated file system management
- h) Problem management
- i) Back up and recovery
- j) Tape media management
- k) Disaster recovery
- l) Network monitoring
- m) Documentation
- n) Application change

- o) Production job schedule
- p) Data transmission agent
- q) ICAP upgrade
- r) Application support
- s) SSEA IT project implementation - supply chain, finance, sales and marketing
- t) FIFO project implementation

14. The CIT(A) gave the following findings with regard to the claim of the Assessee in respect of IT Support Services:

“10.4 In view of the forgoing analysis, considering the long term benefits arising from the implementation of the IT support systems and primarily due to the fact that the systems implementation and support services has been duly corroborated by the appellant, I am of the view the the appellant has been able to more than adequately justify the expenditure incurred on IT support to the tune of Rs. 56.20 lakhs.”.

Thus the payment by the Assessee to AE in respect of IT support services were accepted as at Arm's Length by CIT(A).

15. With regard to Sales & Marketing Support Services the CIT(A) wanted primary evidence with regard to the contention of the Assessee that services were rendered by the two personnel Wai Peng Poon and Chizzy Nnamchi. The Assessee in it's written submission dated 11-03-20913 had contended that they had visited India for meeting prospective clients and that Chizzy Nnamchi was involved in rendering certain sales/ marketing and business support related services during AY 2007-08 for the Assessee and that his responsibilities included strategic planning, business planning and marketing, training on oil and gas industry processes, products and application training, training on business process tools such as key account mapping and management, channel selection and customer visits. It also included developing AFE process for CPP plant in Ahmedabad. It was

contended that Chizzy Nnamchi had visited India during AY 2007-08 to also carry out customer visits to ONGC, IDT, Halliburton, 67, Schlumberger and Reliance and also provide training to the new person and also sales team for cementing.

16. The CIT(A) was not satisfied with the claim of the Assessee and he held that rendering of services had not been proved by the Assessee. The following were the conclusion of the CIT(A) in this regard:

“10.6 On a careful examination of the limited evidence filed by the appellant and in view of the inability to establish even prima facie that sales and marketing support services to the tune of Rs. 4.77 crores was actually rendered by 3M Singapore to 3M India. I have no alternative but to reject the appellant's claim and uphold the TPO's stand to the extent of ALP adjustments made with respect to the sales and marketing support services.”

17. With regard to the payment for provision of support services received in relation to laboratory and technical from 3M Singapore, the Assessee claimed that those services can be bifurcated into the following

- a) Technical service/sales service
- b) Production services
- a) Significant product and process modification for the improvement of existing business
- b) Product and process development for related new business
- c) Product and process development for unrelated new business
- d) Basic and applied research/technology building
- e) Service to R&D

The details of the services rendered in each of the above mentioned categories was claimed to be provided by the AE.

18. The CIT(A) was not satisfied with the claim of the Assessee and he held as follows:

“10.8 With regard to Laboratory and Technical Support, the appellant did not furnish any evidence to substantiate its claim that laboratory and technical support were rendered by 3M Singapore to the appellant. Under the circumstances I have not other alternative, but to uphold the ALP adjustment made by the TPO.”

19. One of the finding of the TPO for not regarding the price paid as at Arm's length was the decline in assessee's profitability due to increase in administrative and business support service fee. This finding was challenged by the Assessee in the appeal before CIT(A). The CIT(A) accepted the Assessee's contention that the TPO had erred in concluding that the increase in administrative and business support service fee had not resulted in higher profitability, as the fee paid constituted only a miniscule percentage of the overall costs and other business factors were ignored. Consequently, Ground 6 raised by the Assessee in this regard was allowed by the CIT(A).

20. The Assessee also challenged before CIT(A) that the TPO's conclusion that the transaction had been undertaken by the Assessee to shift profits to other jurisdictions. The CIT(A) held that there was no motive to evade tax and the transfer pricing documentation and arm's length price is arrived at in good faith, without any intention of avoidance of tax in India. The CIT(A) also held that as held in the case of Dresser - Rand India Private Limited (ITA No. 8753/Mum/2010) and in Abhishek Auto Industries Limited Vs. DCIT (2010-TII-54-ITAT-DEL-TP) the TPO cannot intervene on the commercial expediencies involved in the arrangements between AEs. Ground 7 raised by the Assessee in this regard was also allowed by the CIT(A).

21. The Assessee also challenged the findings of the TPO that the AE need not be additionally compensated for the administrative and business support services in Ground No.8 raised by the Assessee before CIT(A). The Assessee had undertaken a separate transfer pricing analysis for the payment of administrative and business support service charges to the AE and had not aggregated this transaction with any other international transaction (of import of raw materials for manufacture and import of finished goods for trading etc.) However the TPO rendered a finding that large amount of imports from AEs sufficiently compensate for any value addition received from AE and need not be paid additionally for the administrative and business support services. On the above finding of the TPO, the CIT(A) agreed with the plea of the Assessee that when the TPO has accepted the price paid to the AEs for the raw materials consumed and the finished goods as arm's length, there can be no basis to hold that the AE had been overcompensated by way of higher import price. The CIT(A) also found force in the contention of the Assessee that in the event the TPO combines the transaction with that of import, the same would be at arm's length since the margin as per TNMM is much higher than the margin of comparable companies.

22. Aggrieved by the order of CIT(A) in sustaining addition on account of Sales and marketing support services, Laboratory and technical support services and sales and marketing services, the Assessee is in appeal before the Tribunal. The revenue is aggrieved by the order of the CIT(A) in allowing relief in so far as provision of IT support services and is in appeal before the Tribunal.

23. Before us, the gist of grounds of challenge to the order of the CIT(A) by the Assessee is that the learned CIT(A) has erred in law and facts, by upholding the addition of Rs. 3,64,11,750 made by the learned Assessing

Officer ("AO")/Transfer Pricing Officer ("TPO") on account of adjustment to the arm's length price of the payments made by the Assessee to its Associated Enterprise ("AE") towards sales & marketing support services and laboratory & technical support services; and in concluding that no services has been rendered by 3M Singapore and no benefit arose from administrative and business support services (for sales & marketing services and laboratory & technical services) provided by 3M Singapore.

24. The gist of the grounds of appeal of the revenue is that the Ld.CIT(A) erred in allowing relief to the Assessee, when the Assessee did not show by supporting evidence that IT services were in fact rendered by 3 M Singapore and the Ld.CIT(A) erred in accepting the assessee's request of rejecting the CUP method adopted by the TPO.

25. As far as determination of ALP for provision of intra-group services [IGS] is concerned, the Id. counsel for the assessee drew our attention to the various evidence that was filed by the assessee in respect of its claim that the sum paid to the AE for IGS was at arm's length. Our attention was also drawn to the evidence filed before the DRP. The Id. counsel also placed reliance on the judicial pronouncements in the case of *TNS India Pvt. Ltd. v. ACIT, ITA No.944/Hyd/2007, order dated 22.1.2014* and the decision of the Hon'ble Bombay High Court in the case of *CIT v. Lever India Exports Ltd. (2017) 78 taxmann.com 88*. In those decisions, the Hon'ble Bombay High Court took the view that when the determination of ALP by the assessee for advertisement expenses had not been disputed on the parameters set out in Chapter X and relevant rules and when determination of ALP is done by the TPO *de hors* section 92C, such determination of ALP cannot be sustained. His submission was that the approach adopted by the TPO in the present case was also in ignorance of the TP study carried out by the assessee and without following the procedure for determination of

ALP as laid down in Chapter X of the Act and the relevant rules. Our attention was drawn to the decision of the Hon'ble Delhi High Court in the case of *CIT v. Cushman & Wakefield, ITA 475/2012 judgment dated 23.5.2014* and Hon'ble Punjab & Haryana High Court decision in the case of *Knorr Bremise India Pvt. Ltd. v. ACIT, 380 ITR 307 (P&H)* wherein the principles have been laid down for determining the ALP in respect of intra-group services.

26. The Id. DR, on the other hand, placed strong reliance on the order of the TPO and the grounds of appeal of the revenue in so far as the appeal of the revenue is concerned and the directions of the CIT(A) in so far as the appeal of the Assessee is concerned. According to the learned DR, even the evidence filed by the Assessee does not establish the requirement of law that services were rendered by the AE to assessee for which the assessee made payment. She laid emphasis on the fact that there is no evidence brought on record to show what was cost incurred by the AE for providing IGS and merely filing the key allocation to various entities worldwide would not be of any significance. According to the learned DR, the assessee has also not explained the basis of allocation of IGS expenses. He submitted that what is the basis of cost to 3M Singapore has not been explained in the TP analysis.

27. We have given a careful consideration to the rival submissions. Multinational groups use Intragroup services transactions to shift profits from a country, where lower income tax rate exists. Therefore, the intragroup transactions have caught the interest of the tax authorities and are being constantly monitored. In respect of IGS, the requirement of law as laid down in several judicial pronouncements has to be first seen. The Hon'ble High Court of Delhi in the case of ***EKL Appliances Limited [(2012) 209 Taxman 200]*** as well as *Cushman & Wakefield India Private Limited ITA No.475/2012 dated 23.5.2014 367ITR 730 (Del)*, held that whether a

third party – in an uncontrolled transaction with the Taxpayer would have charged amounts lower, equal to or greater than the amounts claimed by the AEs, has to perforce be tested under the various methods prescribed under the Indian TP provisions. In the context of cost sharing arrangement, the Hon'ble High Court opined that concept of base erosion is not a logical inference from the fact that the AEs have only asked for reimbursement of cost. This being a transaction between related parties, whether that cost itself is inflated or not only is a matter to be tested under a comprehensive transfer pricing analysis. The basis for the costs incurred, the activities for which they were incurred, and the benefit accruing to the Taxpayer from those activities must all be proved to determine first, whether, and how much, of such expenditure was for the purpose of benefit of the Taxpayer, and secondly, whether that amount meets ALP criterion.

28. The following aspects would require consideration in order to identify intra group services requiring arm's length determination:

- \* 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?

Whether payment made to AE meets ALP criterion will be determined, keeping in mind all the above factors, as well.

29. Keeping in mind the principles emanating from the aforesaid decisions, we shall now proceed to examine the material on record to see the nature of services received by the Assessee and as to whether the same were at Arm's Length.

30. We have examined the evidence filed by the assessee in respect of the claim that the assessee received IGS from AE for which it made payment. The TPO called upon the Assessee to describe the nature of IGS provided by the AE and evidence to show that services were actually rendered by the AE to the Assessee. The TPO also wanted the Assessee to provide evidence to show tangible and direct benefits desired by the Assessee, the basis of quantification of the sum payable by the Assessee to the AE and whether the payments by the Assessee to the AE for IGS would be the same between independent parties, i.e., whether the payment for services would be at Arms Length under the Corporative Uncontrolled Price (CUP) method of determining ALP.

31. The Assessee vide its letter dated 11.03.2010 (a copy of which together with annexures thereto are at pages 298 to 562 of the Assessee's Paper Book) gave details. These details i.e., the description of these documents have already been given in the earlier part of this order. In paragraph 1.1 of its reply dated 11.03.2010 submitted that the following as the list of specific services which the Assessee received from AE.

- (a) For Business Development, strategies are deliberated and determined by 3M global management team.

- (b) Information on potential business opportunities.
- (c) Data processing is done by Assessee on software platforms developed by 3M group.
- (d) Assessee receives valuable engineering and technical support inputs from 3M group.
- (e) Legal support concerning infringement of copyright / trademarks.
- (f) Strategy Inputs, internal financial reporting Framework Policy Inputs.

32. The evidence in support of the Assessee having received services from the AE is in the form of emails (copies at pages 375 to 378, 397-399, 400, 404, 405, 406, 488 and 489). The documents at pages 330-334 and 335 to 339 are agreements for rendering services. The document at pages 340-343 and 344-374 are details of common costs and its allocation to various group entities. The document at pages 379 to 396 is Agreements for rendering IT services. These documents do not establish or show the nature of services rendered by the AE to the Assessee.

33. The emails at page 379 are exchange of mails and are with reference to period March 2018. Its relevance to previous year relevant to Assessment Year 2007-08 is not explained. The emails at pages 379 to 378 are general mails and do not show or can be said to be evidence of services having been rendered by the AE. The email at pages 397 to 399 are dated March, 2010 and make a reference to IT services for the period 2004 to 2007. There is reference to nature of service rendered by the AE with reference to IT services. There is no material brought on record to show that these services were actually rendered by the AE to the Assessee.

A general description of services rendered without supporting documents would not be sufficient.

34. The emails at pages 400 to 406 also do not throw any light on the nature of services rendered and how they were relevant to the business of the Assessee. At page 401 there is a reference to Indian Agenda August, 2006 in a mail by WP Poona of Singapore to Grace which is forwarded to the Assessee's office in India. The Agenda at Page 405 is vague and lacks details on relevance of the meeting with reference to the business of the Assessee and supporting documents. The email at Page 406 is by Chizzy Nnamchi of Singapore to Assessee's Office in India. It has six attachments. Again the relevance of these documents to the business of the Assessee and how it benefitted the Assessee with supporting documents are not given. The mails at Pages 488 to 489 by the very same person also suffers from similar infirmities. The other documents are about business prospect reports and their relevance and benefit to the business of the Assessee are not spelt out anywhere.

35. The assessee has also given an overall summary of evidence of services received from the AE.

<b>Sl. No.</b>	<b>Details</b>	<b>Brief Explanation of the content of the Annexure</b>
A2	Cost Allocation Details	Details of cost allocated from APAC Singapore to 3M India, which includes cost actually incurred by 3M Singapore and allocated to all the APAC countries and recharge from <b>other</b> APAC countries to India.
B1	Email for IT Support Service Fee agreement 2006.	Copy of e-mail received from APAC Singapore explaining the details of IT related support services rendered during 2006.

B2	Service Level Agreement for IT Support Services details	Service Level Agreement for India for the year 2006 explaining the IT Implementations
B3	Email on Implementation of FIFO —Inventory (First in First Out) IT Protect	Explains the detailed road Map for implementation of FIFO IT project <b>with timelines</b>
	Email from APAC Singapore on 2006 R&D Activities	Explains 2006 related Research & Development activities Performed for 3M India.
B5	Details from APAC Singapore on 2006 R&D Activities	Explains
B6	Email from Wai Peng Poon — APAC Singapore on India Trip	Email with attachment for trip itenary & visit details
B7	Wai Peng Poon Trip Details	Explains the itenary & purpose of his visit
B8	Email from Chizzy Nnamchi for Sales/Marketing/Business Support related Services	Explains : 1. Nature of services provided in these areas for increase of presence in India and expansion of business of 3M India. 2. Trip Reports if any of APAC personnel visit to India for imparting Training / organizing Seminars etc./launch of new products /expansion of business etc . 3. Product Catalogues /Training Manual etc . evidencing the same
B9	3M Hollow Glass Spheres Model	Document prepared for India explaining compatibility of HDS for
B10	Flyer for Oil & Gas Markets	Document prepared for India explaining answers for the requirements for Oil & Gas Markets.
B11	Flyer for best practice application for oil & Gas Markets	Flyer explains the best practice application for Oil & Gas markets
B12	Flyer for Cement system for Long Term Integrity	Presentation prepared for CEMETECH 2006 EXPO at Vishakapatnam

B13	Summary of Chizzy Nnamchi Visit	Extract from e-mail explaining the visit details
B14	PLC —Program Change Management	Explains the process of the Program Change Management i.e. any changes to the IT Applications including up gradations which are monitored and done by Global IT Team
B15	ICAP V4.0 Shipments - By Date	<p>ICAP shipments refer to the changes made to the IT applications, which is sent by Global CT team in the form a patches (referred to as shipments). These set of documents explain the details of each shipment received during the year 2005 and how the same is applied to our IT applications.</p> <p>These shipments are basically for changes or updates to the existing IT applications which is required for the day to day operations.</p>

36. As far SI.No.A2 of the aforesaid chart is concerned, is the cost allocation basis of costs incurred by AE globally and allocation to the Assessee for India but there is no evidence to substantiate rendering of such services by the AE to the Assessee nor benefit that the Assessee derived from such services. As far as SI.No.B1 & B2 of the chart above is concerned, it relates Information Technology Services which is stated to be claimed under an agreement to render service but existence of such agreement without evidence to substantiate services rendered is not of much significance. SI.No.B3 of the chart given above refers to implementation of FIFO Inventory for IT Project. Again the supporting documents to show rendering of services is absent. SI.No.B4 to 14 is

concerned, we have already referred to these documents in the earlier paragraphs and given our conclusions thereon. As far as document in Sl.No.15 is concerned, it relates to ICAP Project. From this document, it is difficult to decipher as to what services were rendered by the AE. From this one cannot say that the services stated therein were in fact rendered by the AE and other aspects regarding the cost to the AE and the benefit the Assessee received. Therefore the Assessee has to show as to how the services referred to in the chart were in fact rendered by the AE. On the evidence on record, we cannot say that the payment by the Assessee for IGS is at Arm's Length or to say that it is not at Arm's Length. The Assessee has to establish and show that it satisfies the parameters as laid down in judicial pronouncements referred in the earlier paragraphs of this order. The CIT(A) in our view allowed relief to the Assessee in so far as it relates to rendering of IT services without any evidence whatsoever.

37. We have already set out the arguments of assessee on the aforesaid services. We find that these documents are general in nature and do not prima facie establish the requirements for testing the payment as at Arm's Length in the light of the parameters laid down in the decisions referred in the earlier paragraph. However, we are of the view that the Assessee should be given an opportunity to demonstrate ALP as per the parameters laid down in the decisions referred in the earlier paragraphs. In fact the case of the Assessee in the present AY 2007-08 is similar to AY 2006-07 and on almost identical facts, we remanded the issue to the AO/TPO for decision afresh. In the given facts and circumstances, we deem it fit and proper to remand the issue of determination of ALP to the TPO/AO afresh. We are of the view that the Assessee should be directed to let in cogent evidence and explain the evidence already on record or any other evidence to show the rendering of IGS by the AE and other parameters that need to be satisfied to establish the ALP of the price paid for IGS as laid down in

judicial pronouncements referred to in the earlier part of the order. We accordingly set aside the impugned order and remand the issue to the TPO/AO for consideration afresh. However the decision of the CIT(A) with regard to exclusion of TDS paid and Service tax as payments made by the Assessee for IGS is acceptable and we confirm the said conclusion. The decision of the CIT(A) holding that the payment for IT services are at ALP is set aside for consideration afresh.

38. In the result, the appeal of the assessee is treated as allowed for statistical purpose and that of the Revenue partly allowed for statistical purpose.

Pronounced in the open court on this 15<sup>th</sup> day of June, 2021.

**Sd/-**  
**(CHANDRA POOJARI)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(N.V. VASUDEVAN)**  
**VICE PRESIDENT**

Bangalore,  
Dated, the 15<sup>th</sup> June, 2021.  
/NS/\*

Copy to:

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

By order

Assistant Registrar,  
ITAT, Bangalore.