

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'I-1', NEW DELHI**

**Before Ms. Suchitra Kamble, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**(Through Video Conferencing)**

**ITA No. 4720/Del/2017 : Asstt. Year : 2009-10**

ACIT, Circle-3(2), New Delhi	Vs	Avery Dennison (I) P. Ltd., B-92, 9 <sup>th</sup> Floor, Himalaya House, 23, KG Marg, New Delhi-110001
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACA6163D</b>		

**Assessee by : Sh. S. S. Tomar, Adv.**

**Revenue by : Sh. Surenderpal, CIT DR**

**Date of Hearing: 07.10.2021**

**Date of Pronouncement: 11.10.2021**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the revenue against the order of the Id. CIT(A)-42, New Delhi dated 28.04.2017.

2. The revenue has taken up two grounds pertaining to

1. Intra-group services
2. Interest on receivables

3. Avery Dennison India Private Limited ("the assessee") is a subsidiary of Avery Corporation, USA. Avery Dennison Corporation, ADC acts as the Avery Group's global headquarters, and is primarily responsible for defining, designing, and monitoring the implementation of global

corporate strategies and standards, as well as managing its foreign subsidiaries.

4. Avery Dennison Group ("Avery") is a worldwide manufacturer of pressure-sensitive adhesives and materials, consumer and converted products. Avery's business segment is involved in the production of pressure-sensitive materials, Fasson-brand self-adhesive materials, office products and a variety of tickets, tags, labels and other converted products. Some pressure-sensitive materials are 'converted' into labels and other products through embossing, printing, stamping and die-cutting, whilst others are sold in unconverted form as base materials, tapes and reflective sheeting. These activities fall under Avery's PSM or Materials business. Roll Materials is a major business unit under the PSM Segment.

5. Avery also develops, manufactures and markets a wide range of products for consumer and industrial markets, including peel-and-stick postage stamps, reflective highway safety products, automated retail tag and labeling systems, and specialty tapes and chemicals, graphics imaging media, specialty tapes, tickets, tags, and imprinting equipment for retail and apparel manufacturers. These activities fall under the RIS segment of Avery's business.

6. The RIS Segment's largest product line consists of the Information Brand Management Division ("IBMD") products such as woven and printed labels for the apparel industry, print to order tags and labels marketed as Ticket Express™, identity graphics in the form of printed tags, packaging inserts, J-boards, and pressure adhesive labels. These label and tag

products are manufactured by the RIS Segment of the Assessee and other Avery Group manufacturing affiliates in the RIS segment (collectively referred to as "Avery Manufacturing Affiliates"). The label and tag products are used by retailers in their brand products, referred to as "retail brand owners" or "RBOs". Most of the RBOs are retail apparel companies that operate in the U.S. and Europe.

7. Avery's other two main business segments include Office Products ("OP") and Other Specialty Converting segments. These segments produce a wide array of home and office stationery products, specialty tapes and engineered labels, including radio frequency identification ("RFID") inlays and labels, and other converted products.

8. Avery's major markets are in the office products, data processing, health care, retail, transportation, industrial and durable goods, and food and apparel sectors.

9. ADHK BV is a Hong Kong branch office of the Netherlands entity Avery Dennison Hong Kong B.V. (Netherlands), which is ultimately 100% owned by ADC. ADHK BV is the Asia Pacific regional headquarters of ADC. ADHK BV is responsible for overseeing the operations in Asia Pacific regional countries, and performs a number of services which are of benefit to the Materials segment of its Asia Pacific affiliates.

10. DMC is a wholly owned subsidiary of ADC. It performs a number of services to the benefit of the Avery group affiliates operating in the RIS segment.

**Intra Group Services:**

11. For the conduct of its business of manufacturing and selling of group products a market, the Assessee received various intra-group services from DMC and ADHK BV, which in turn provided a number of critical and operational benefits to the Assessee. A summary of the services received is provided as follows for your reference:

Nature of the International transactions	Amount (in INR)
Sales and marketing	27,508,164
Human Resource	4,616,627
Finance	11,571,204
Technical assistance services	2,645,884
Distribution and Logistics	13,032,332
Payment for selling, marketing, GPD and strategic services	67,445,886
GVP	32,411,450
VIPFS	19,400,122
Ticketing HUB	47,838,053
<b>Total</b>	<b>226,469,722</b>

12. While computing the total income, the AO made the following additions to e as declared by the Assessee in its return of income:

	Nature of addition	<b>Amount (in)</b>
1	Addition in pursuance of impugned order under section 92CA(3) of the Act (on account of intra-group services)	212,101,593
2	Addition in pursuance of impugned order under section 92CA(3) of the Act (on account of accounts receivable)	5,666,322
	<b>Total</b>	<b>217,767,915</b>

13. We find that the AO has held the arm's length price of the intra-group services at "Nil" by applying CUP method on the

ground that no uncontrolled enterprise would have paid any amount for services which do not tantamount to intra group services with demonstrable benefits.

14. In this case, the assessee has received following intra-group services:

Marketing Support Services, Management Services (GVP Services), Operations and Logistics, Ticketing Hub and VIPFS Services in RIS Segment; Marketing Services, Finance, Distribution and Logistics, HR, Technology Deployment in Material Division Segment.

15. The AO while making the addition, made the following observations;

- ✓ The assessee has failed to substantiate that services have actually been rendered to it and benefit has actually been derived by it on the basis of documentary evidence. The assessee has merely furnished copies of certain mails exchanged between the personnel of the Group. None of the above reproduced e-mail exchanges between the employees establish the requirement/specific need of the assessee for their services, the benefit which has accrued to the assessee, or that an independent Party would have been willing to pay another independent party for the services purported to be received by the assessee.
  
- ✓ It is evident from facts stated above that, the assessee did not file any evidence to support a claim that these services

were actually provided to the assessee at its request to meet the specific need of the assessee and that certain tangible and concrete benefits have actually accrued to the assessee.

- ✓ Under uncontrolled circumstances any independent enterprise having skilled and sufficiently trained manpower would not have been willing to pay any third party to do so. In my opinion, services which are incidental or mere duplicity do not fall in the category of intra group services.
- ✓ Incidental benefits, if any, do not give rise to Intra Group Services and cannot be regarded as giving rise to arrangement: subject to arm's length pricing as stipulated in OECD TP guidelines paragraph 7.13 under Chapter VII. These findings-lead to an irresistible conclusion that payments for liaison services allegedly provided by the AEs are not at arm's length price.
- ✓ Moreover, it is seen from the details contained in the transfer pricing report of the assessee submitted under Rule 10D that the assessee had not conducted FAR analysis in regards to these alleged services and had failed to justify the functions performed by the AE for these payments. This is probably a reason that the receipt of alleged services have not been benchmarked under any of the five method prescribed under the Act n the Transfer Pricing report.
- ✓ Furthermore, the assessee has at the time of requisitioning the so-called services, not carried out any cost benefit

analysis at its end. No independent party would agree to incur expenditure without independently ascertaining the value of the goods/services intended to be availed, in the market and that too at the bests negotiated prices. No such effort has been demonstrated to be made at the end of the assessee, which weighs heavily against the normal practises of business prudence.

16. The Id. CIT(A) deleted the addition relying on the orders of the Co-ordinate Bench of ITAT and the Hon'ble Jurisdictional High Court in assessee's own case for the earlier years.

17. Aggrieved the revenue filed appeal before us.

18. During the arguments, the Id. DR unsuccessfully tried to differentiate the facts and law applied in the case of the assessee in the instant year in relation to the earlier years.

19. Before us, the Id. AR submitted that the ITAT, in the assessee's own case for AY 2007-08 and AY 2008-09, after understanding the nature of the Assessee's business operations and the nature of various intra-group services received by the Assessee held that there existed a direct, nexus between the intra-group services received by the Assessee vis-a-vis the revenue earned/cost incurred by the assessee.

20. Hence, the Co-ordinate Bench of ITAT held that these services are intrinsically linked to the core business operations of the assessee and cannot be analysed in isolation. The relevant extract from the ruling of the Co-ordinate bench of ITAT Delhi in Assessee's own case for AY 2007-08 is as under:

"20. On perusal of the TP Study, we observe that each transaction are interlinked with each other. We notice that the assessee has treated the agreement as a whole, and has applied TNMM, in respect of the services received to arrive at the ALP. It is observed that the Id. CIT(A) accepted the contentions of the assessee that; intra group services were received by the assessee as per the agreement, and that these are critical, and linked to the core business operations of the assessee. However, the Ld. CIT(A) held that certain services specified in the agreement did not result in any benefit to the assessee.

21. All the services received are part of composite contracts/agreements which in our view cannot be unbundled...

23. From the above discussion we are of the considered opinion that the agreement is an intrinsic one and that it is wrong to split the same and hold that some services are at arm's length and some services are not.

24. The Ld. CIT(A) accepted TNMM to arrive at the ALP, in respect of certain services received by the assessee and in the same breath, has rejected the analysis undertaken by the assessee under the TNMM in respect of other services. We are informed by the assessee that, the authorities have accepted TNMM as MAM in the subsequent years. The revenue has to be consistent in its approach. In our view, the TPO analysis of the assessee using TNMM as the MAM has to be accepted. When there is an agreement for services and certain services out of a bundle of services are undisputedly rendered, the entire agreement has to be viewed as a whole. Whether the services have actually resulted in a benefit to the assessee or not is not material. The conclusion of the Ld. TPO that the services have not resulted in any benefit and no independent entity would have made such a payment is in the realm of surmised and conjunctures and not

*backed by any material. Thus, the ALP determined by the assessee company is accepted and the TPO adjustment is deleted."*

21. The relevant extracts of Co-ordinate Bench of ITAT Delhi in its own case for the A.Y. 2008-09 in ITA No. 4934/Del/2014 and 4869/Del/2014 is as under:

*"33. Further, the Id. DR had raised a contention that the assessee has not demonstrated how the services received are beneficial to the assessee. We are of the opinion that, ascertaining whether a service has actually benefitted the taxpayer or not is not within the prerogative of the Tax Authorities. To avail a service or not is a commercial decision which cannot be challenged by the Tax Authorities."*

22. The Co-ordinate bench of ITAT in the assessee's case for AY 2008-09 held that OECD guidelines end an aggregated benchmarking approach in a situation, where the underline transactions are closely linked to the core business operations. The relevant extracts in this regard are reproduced below:

*"28. We are of the considered opinion that, with regard to PSM and RIS segments, the mark-up charged by the AEs is within the +/-5% range, allowed under second proviso to section 92C of the Indian Income Tax Act, 1961. Accordingly, these services can be considered to be at arm's length; and with regard to of GVP services, VIPFS services and Ticketing Hub Services, the service charges paid by the assessee, represents the actual cost incurred by the AEs, without applicable of any mark-up. Accordingly, these can be considered to be at arm's length.*

*30. We have perused the OECD guidelines which has recommend an aggregate benchmarking approach in situation, where the*

*underline transactions are closely linked to the core business operations. Principle of aggregation, is a well-established rule in transfer pricing analysis. This principle seeks to combine all closely linked transactions wherein arm's length price can be determined for a number of transactions taken together...*

*31. The assessee is predominantly a manufacturer and the services received by the assessee from its AEs are intrinsically linked to the core business operations of the assessee, in the following form:*

*a. Based on the support provided by the AEs in terms of marketing services and strategic services, the assessee is able to achieve higher sales, both in terms of higher sales quantity and sales prices.*

*b. Based on the support provided by the assessee in terms of operations and logistics the assessee has been able to procure raw materials at lower costs. Accordingly, the impact of such support services is received by the assessee in the form of lower direct costs.*

*32. We observe that there exists a direct nexus between the revenue earned/ cost incurred by the Assessee and the majority intra-group services received, it would be incorrect to analyse the intra-group services received as a single element of cost in isolation..."*

23. Further, the Department has also filed appeal against the order of ITAT before Hon'ble Delhi High Court. Hon'ble Delhi High Court has held that the view taken by the ITAT is plausible one and does not warrant any interference. The relevant extracts of the order of Hon'ble Delhi High Court are as under:

*"The contention of the assessee was that agreement between the assessee and its AE was a composite one and could not be split up for the purposes of holding that some services are at arm's length and some are not. The ITAT appears to have agreed with the above contention of the assessee on viewing the agreement as whole. It was not within the purview of the TPO to determine if some of the services resulted in any actual benefit to the assessee or not."*

24. Since, the order of the Id. CIT(A) is based on the order of the ITAT Delhi and the Hon'ble High Court of Delhi, in the absence of any change in the material facts and the proposition of law, we decline to interfere with the considered decision of the Id. CIT(A).

**Interest on the receivables:**

25. Heard the arguments of both the parties and perused the material available on record. Perused the order of the Id. CIT(A) in details which makes mention below.

26. We find that the Assessing Officer made an adjustment of Rs.56,66,322/- on account of interest on the over-due intra-group receivables, which were pending for more than 30 days. The assessee pointed out that the ratio between the international transactions on the cost side (leading to creation of creditors) and on the revenue side (leading to creation of debtors) is 66:34. The assessee submitted the details of net monthly balance payable to the AEs which are tabulated below:

Month	Amount payable (in INR)
April 2008	100,468,512.31
May 2008	122,926,408.85
June 2008	131,329,666.56
July 2008	122,044,694.25
August 2008	169,014,895.12
September 2008	209,041,292.33
October 2008	207,378,648.26
November 2008	207,604,201.90
December 2008	169,327,332.17
January 2009	126,361,396.40
February 2009	137,857,020.30
March 2009	265,257,673.50

27. The assessee has net monthly balance payable to the AEs as opposed to monthly balance receivable from the AEs as alleged by AO. On the perusal of the above details, it can be seen that each month, there was a balance receivable from the AE.

28. As the interest on intra-group receivable is less than the interest on intra-group payables, therefore, the adjustment on account of interest on overdue intra-group receivable does not hold good.

29. The Assessee had transactions with both AEs and Non-AEs and accordingly, a comparison of outstanding position in terms of debtor days in both the AE as well as non-AE transactions can be done for determining whether the credit period extended to the AEs is at arm's length or not.

30. A summary of such comparison AEs segment and non-AEs segment with regard to the allowance of days for credit is as under:

Particulars	Total Income (A)	Debtors (B)	Debtor Days (C) = (B)/(A) × 360
AE Segments	371,212,528	78,701,922	76
Non-AE Segment	2,407,113,572	579,479,765	87

31. Based on the above, the debtor days given to the AEs are less than the debtor days given to the non-AEs. Further, the Assessee contended that it did not levy any interest on delayed payments made by the non-AEs, despite the fact that the debtor days given to the non-AEs were more than the debtor days given to the AEs and therefore, justified not to charge interest on the delayed payments by the AEs as well. At times 120 days are given to the non-AE entity for payment from billing date.

32. In view of the above discussion, the Id. CIT(A) held that the AO/TPO is not justified to charge interest on receivables without factoring in the payables to the AE/AEs. Having considered the entire facts and found them to be irrefutable, we decline to interfere with the order of the Id. CIT(A).

33. In the result, the appeal of the revenue is dismissed.  
Order Pronounced in the Open Court on 11/10/2021.

Sd/-

**(Suchitra Kamble)**  
**Judicial Member**

**Dated: 11/10/2021**

**\*Subodh Kumar, Sr. PS\***

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**