

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

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER  
AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

IT(TP)A No.329/Bang/2017
Assessment Year : 2012-13

M/s. Euronet Services India Pvt. Ltd. No.48, Ashok Plaza, Gandhi Bazaar BBMP Ward No.49, K.G. Nagar Basavangudi Bangalore 560 004	<b>Vs.</b>	Deputy Commissioner of Income-tax Circle-2(1)(2) Bangalore
<b>PAN NO : AABCE0288Q</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri K.R. Vasudevan, A.R.
<b>Respondent by</b>	:	Shri Sanjay Kumar, D.R.

Date of Hearing	:	23.12.2021
Date of Pronouncement	:	27.12.2021

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The assessee has filed this appeal challenging the assessment order dated 15.12.2016 passed by the A.O. u/s 143(3) r.w.s. 144C(13) of the Income-tax Act,1961 [‘the Act’ for short] for assessment year 2012-13 in pursuance of directions issued by Ld. Dispute Resolution Panel (DRP). The grounds urged by the assessee relate to the following two issues:-

- a) Transfer pricing adjustment made in respect of payment of Corporate management services

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- b) Computation of deduction u/s 10AA of the Act by not including items that were excluded from export turnover from the total turnover.

2. The facts relating to the case are stated in brief. The assessee company is engaged in the business of processing electronic, financial and payment transactions and ATM shared network. It has entered into several international transactions with its Associated Enterprises (A.E), which inter alia include includes following payments made to its A.E.

<i>Nature</i>	<i>Amount (Rs.)</i>
<i>Switch, AMC, Maintenance fee</i>	<i>2,39,07,366</i>
<i>License fee</i>	<i>2,35,63,800</i>
<i>Corporate Management fee</i>	<i>1,33,20,286</i>
<i>Total</i>	<i>6,07,91,452</i>

3. The A.O. accepted the first two payments to be at arm's length. In respect of payment of corporate management fee, the TPO held that the assessee has failed to prove the arm's length nature of technical and corporate management fee. Accordingly, he took the ALP of corporate management fee at Nil and made transfer pricing adjustment of Rs.1,33,20,286/-. The Ld. DRP also confirmed the same on the reasoning that the assessee did not prove the benefits obtained by it from the services rendered by its A.E.

4. Before us, the Ld. A.R. submitted that the tax authorities have not properly appreciated the fact that the assessee could not have carried on its business activities without availing various facilities provided by the A.E. Besides, the AE has also rendered various services to the assessee as well as other companies in the group all over the world. He submitted that the assessee has furnished certain additional evidences before Tribunal in support of above said

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submissions and prayed that these additional evidences may be admitted. The Ld. A.R. invited our attention to the written submissions furnished by him and submitted that the assessee has explained the necessity of making payment of corporate management fee to its A.E. Accordingly he prayed that this issue may be restored to the file of the AO/TPO for examining the same afresh considering the additional evidences and explanations furnished by the assessee.

5. The Ld D.R, on the contrary, supported the orders passed by TPO and Ld DRP. He also submitted that additional evidences furnished by the assessee requires examination at the end of AO/TPO.

6. We heard rival contentions on this issue and perused the record. The Ld A.R has furnished written submissions, wherein it is stated as under:-

*“2.3 Euronet is an electronic payments provider. The company provides electronic transaction processing services and end-to-end ATM outsourcing services to various large banks and other customers. It offers payment and transaction processing and distribution solutions to financial institutions, retailers, service providers and individual customers. The company operates through three separate operating segments:*

*(a) Electronic Funds Transfer Processing (EFT)*

*(b) ePay (ePay)*

*(c) Money Transfer (RIA)*

2.2 *For rendering the above services worldwide, Euronet USA, the parent company, owns a highly modular transaction processing platform called Integrated Transaction Management (ITM) platform, which has evolved over a period of 20 years involving latest technology architecture. The assessee's data centre operates on this highly efficient processing application ITM and runs on IBM AS400 platform.*

2.3 *For running the business of the assessee, it is necessary that the assessee uses the ITM platform, which is the software product owned by Euronet USA. The assessee is also required to use the various other software*

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*solutions like Card issuing solutions, E-Banking solutions, Value-added solutions etc.*

- 2.4 *These software solutions are unique to the business of the assessee and are required to run Euronet India operations. These solutions have to be obtained from the AE and from no other party, as they are unique to the ITP platform in which the assessee operates.*
- 2.5 *Incidental to the operation of the unique ITP platform, there are certain activities/ services which are related to the operation of the ITP platform which can also be rendered only by the personnel from the AE who are well versed in the activities of the ITP platform and are fully integrated with the Group's business. The assessee paid technical support charges to the AE for the direct and indirect services availed and these charges were classified as "Corporate Management Fee"*
- 2.6 *Therefore, these Corporate Management Fee are linked and related to the core business of the assessee and are a necessary part of the other charges paid to the AE like, Switch, AMC and maintenance fee, license fee etc.*
- 2.7 *Therefore the TPO was wrong in treating these payments as different and distinct from other payments to the AEs and treating the ALP of this payment as Nil, even while allowing the other payments.*

### **3. Nature of services (Page 160 to 163 of PB)**

3.1 *EWI, the parent company, is Euronet's headquarter and does not have any external revenues. The entity EWI performs certain headquarter services for the affiliates, worldwide. These services include administration, general management, finance, treasury, legal and IT functions. These corporate management services are necessary for the running of the business of the assessee.*

3.2 *The nature of the services are*

- *Consulting and management relating to business*
- *Training and advice related to information technology, including computer and network services*
- *Coordination related to various functions like Accounting, auditing, legal, marketing etc*
- *Services related to treasury, finance, tax, cash management etc*

3.3 *These headquarters related costs are allocated among all the Group entities across the Globe in an equally weighted revenue and headcount allocation key (50% revenue weighted and 50 % headcount-weighted)*

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3.4 *TDS had been withheld and paid in India on the payments made to the AE and hence the taxes have been paid in India and there is no reason to doubt the genuineness or the rendering of the services*

**4. Evidences for services rendered**

4.1 *The evidences in the form of agreement, invoices, email correspondences were submitted to the TPO as Annexure to the submissions made, vide letter dated 27.01.2016 (Page No. 161 of PB). However, the TPO disregarded the evidences and had erroneously stated that the assessee did not file any evidence for rendering of the services*

4.2 *As the annexure to the submission dated 27.01.2016 containing the evidences was inadvertently omitted to be placed in the paper book, these evidences have been filed before the Hon'ble Tribunal as Additional Evidence, vide letter dated 9.12.2021*

**4.3 The TPO was wrong in stating that the assessee did not furnish any evidence for receipt of services (Para 3.3 of the TP order)**

4.4 *While the DRP has fairly accepted that the assessee submitted evidences for receipt of services, the DRP has held that the assessee did not prove the tangible benefit received from the services.*

4.5 *Hence, it is submitted that the TPO/ DRP did not examine the evidences submitted before them and had held the ALP to be Nil, based on surmises and conjectures.*

**5. Our Prayer**

5.1 *The TPO/ DRP did not appreciate that the corporate management fees are cost contribution charges, apportioned among the various global entities, as per a specific key and seeking one-to-one link with actual rendition of services is misplaced*

5.2 *The TPO/DRP erred in stating that the evidences were not produced and/or no commercial benefits were proved. The TPO/DRP did not consider the evidences submitted. Nor did the TPO specify the nature of evidences that would be required to be submitted.*

5.3 *It is settled legal principle that the TPO cannot hold the ALP as Nil. Even if he benchmarks the transaction separately, he should conduct a TP analysis and work out the ALP by making a comparability analysis (Hon'ble Bangalore Tribunal in Festo Control)*

5.4 *It is settled principle that the TPO cannot step into the shoes of the businessman and decide how the business should be run. All he can do is make a comparability analysis to decide the ALP (Bombay High Court in ELK Appliances)".*

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7. Having heard both the parties, we are of the view that, in the interest of natural justice, the additional evidences furnished by the assessee requires to be admitted. Accordingly, we admit them. We also notice that the details of various facilities availed by the assessee from its AE as well as the nature of services provided by the AE to the assessee have not been correctly appreciated by the AO/TPO. Accordingly, we are of the view that this issue requires fresh examination at the end of the AO/TPO. Accordingly, we set aside the order passed by the AO on this issue and restore the same to the file of AO/TPO for examining it afresh duly considering the additional evidences furnished and also the information and explanations that may be furnished by the assessee.

8. The next contested by the assessee is with regard to the computation of deduction u/s 10AA. The assessee had claimed deduction of Rs.2,30,44,6530/- u/s 10AA of the Act. On examination of the same, the AO noticed that the assessee has not deducted expenditure such as leased line charges of Rs.8,25,000/-, foreign currency payments of Rs.15.12.365/- and forex loss of Rs.30,031/-. The AO held that these expenses would fall under the category of delivery of articles or tools or computer software outside India or expenses incurred in providing the technical services outside India as per explanation 1(i) to Section 10AA. Accordingly he took the view that these expenses have to be reduced from export turnover while computing deduction u/s 10AA of the Act. However, he held that these expenses are not required to be deducted from 'total turnover'. Accordingly, the AO recomputed the deduction u/s 10AA of the Act at Rs.2,27,16,601/-.

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9. The Ld DRP, in principle, agreed with the view taken by AO. However, Ld DRP noted that the decision rendered by the jurisdictional Karnataka High Court in the case of CIT vs. Tata Elxsi Ltd & others is in favour of the assessee and SLP is pending before Hon'ble Supreme Court. Accordingly, the Ld DRP directed the AO to keep the disallowance made u/s 10AA of the Act as protective addition till the final outcome of the SLP filed in Hon'ble Supreme Court.

10. We heard the parties and perused the record. This controversy has since been settled by Hon'ble Supreme Court in the case of HCL Technologies Ltd (2018)(93 taxmann.com 33)(SC). Accordingly, we restore this issue to the file of AO with the direction to follow the decision rendered by Hon'ble Supreme Court in the above said case.

11. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 27<sup>th</sup> Dec, 2021

**Sd/-**  
**(George George K.)**  
**Judicial Member**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 27<sup>th</sup> Dec, 2021.  
VG/SPS

**Copy to:**

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

By order

Asst. Registrar, ITAT, Bangalore.