

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

IT(TP)A No.89/Bang/2016
Assessment year : 2011-12

Ingersoll-Rand Technologies and Services Pvt. Ltd., 8 th & 9 th Floor, Tower C & D, IBC Knowledge Park, No.4/1, Bannerghatta Main Road, Bengaluru-560 029. PAN – AAACI 2961 B	Vs.	The Asst. Commissioner of Income-tax, Circle-3(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri
Revenue by	:	Shri _____, CIT(DR)

Date of hearing	:	22.03.2022
Date of Pronouncement	:	24.03.2022

ORDER

Per Padmavathy S, Accountant Member

This appeal of the assessee is against the order u/s 143(3) r.w.s 144C of the Income-tax Act (the Act) dated 27/11/2015 passed by the ACIT, Circle-1(2)(1). The order is in pursuant to the directions of the DRP vide order dated 14/10/2015.

The brief facts of the case

2. The assessee (earlier known as Ingersoll Rand Industrial Products Pvt. Ltd.), is a private limited company which is a 100% subsidiary of Ingersoll Rand Plc. Ireland. The assessee filed the return of income declaring an income of rs.7,67,63,823/- on 26/11/2011. The return was taken up for scrutiny and since the assessee had international transactions, the case was referred to TPO. The TPO made an adjustment of Rs.1,75,39,613/- by making an adjustment in respect of cost contribution charges. The draft assessment order was passed by the AO wherein the AO incorporated eleven disallowances pertaining to the various expenses claimed by the assessee. Aggrieved, the assessee filed its objections before the DRP who confirmed the additions made by the AO and also the TP adjustments. The final order was passed in pursuant to the directions of the DRP. The assessee is in appeal before us against the final order.

3. The assessee raised six grounds pertaining to transfer pricing adjustments and thirty seven grounds pertaining to the various disallowances made by the AO. Ground No.38 is consequential in nature. Before the Tribunal the assessee also raised additional grounds with regard to deduction in respect of 'education cess on income-tax' and 'secondary and higher education cess on income-tax' for the year under consideration. However the assessee did not press the additional grounds in view of the change in law in terms of

retrospective amendment introduced by the Finance Bill 2022. Hence, this ground is dismissed as not pressed.

4. The main issue contended by the assessee in this appeal are as follows:-

- i. TP adjustment made on account of cost contribution charges on an estimate basis disregarding the fact that that cost is allocated on a rational global basis. (Ground No.1, 5 & 6)
- ii. Treating cost construction charges as a separate class of transaction and applying the Comparable Uncontrolled Price Method (CUP) as the most appropriate method as against the Transaction Net Margin Method as applied by the assessee (Ground No. 2 to 4)
- iii. In the corporate tax, the main issue contended by the assessee is towards the disallowance made by the AO on various expenses claimed by the assessee on the contention that supporting documents in terms of invoices were not submitted. (Ground No. 1 to 37 under Corporate Tax)

5. We will first take up issues pertaining to transfer pricing adjustment. The assessee is in the manufacture and trading of pneumatic power tools and spares accessories. The assessee lays great emphasis on pre & after sales service to customers to help customers select appropriate technology and products. The company's operations can be broadly classified into 2 major schemes i.e. manufacturing of

tools and pumps and trading of security products and tools.
International transactions reported by the assessee are as under:-

Sl.No	Nature of international transaction	AY 2011-12	Method adopted for ALP
1	Sale of finished goods	19,32,57,464	TNMM
2	Recovery of Expenses	10,13,422	At Cost
3	Purchase of raw materials	6,32,61,638	TNMM
4	Purchase of finished goods	7,59,87,205	TNMM
5	Cost Contribution on account of Management Consultancy	2,40,69,613	TNMM
	Total	35,75,89,342	

In the proceedings u/s 92CA of the Act, the TPO had accepted the bench marking adopted and accepted the international transactions as being at arm's length price for all the transactions except for cost contribution charges. The cost contribution charges are paid by the assessee towards services received from the Associated Enterprise (AE) in the areas of information Technology, Human Resources, Central Finance Functions and other services. The assessee is part of the global group having subsidiaries in various countries across the world all of these entities are integrated by means of group's information system operations platform. The various activities/services which are centrally performed can be rendered only by the personnel from the AE who are fully integrated with group's

business. The charges for the services rendered by the AE are allocated to all subsidiaries across the world and this allocation is done using a uniform allocation policy/key. The assessee makes payment to the AE for the direct and indirect services availed as management consultancy charges which are linked and related to the core business of the assessee. Therefore, the transaction of cost contribution charges were aggregated with the transactions related to the business and benchmarked under TNMM.

6. The TPO during the proceedings made an adjustment towards this cost contribution charges. The TPO considered the cost contribution charges as a separate class of transaction and applied CUP method as the most appropriate method for computing the ALP of this particular class of transaction. While making the TP adjustment applying CUP method, the TPO made an estimate towards this adjustment after taking into account, the cost of personnel, time spent etc. After the estimation, the TPO concluded that out of the total payment of Rs.2,40,69,613/-, Rs.65,30,000/- is the reasonable amount for providing the services and hence made an adjustment of Rs.1,75,39,613/-.

7. Aggrieved, the assessee raised objections before the DRP. The DRP confirmed the TP adjustments stating that it is a settled law that ALP of each international transaction is to be determined separately and that TNMM at entity level cannot be applied to justify the ALP of

Intra group services. The DRP also relied on its own order with regard to the similar adjustment in assessee's own case which was a subject matter of decision of the DRP for the asst. year 2010-11, citing that there are no changes in the facts of the case during the year under consideration. The DRP also mentioned that the assessee failed to demonstrate the genuineness of the expenses by the AE as well as its allocation amount to various groups and that it has received / benefited from such services to the extent claimed. The AO gave effect to the directions of the DRP in the final order.

8. Aggrieved by order of the AO, the assessee is in appeal before the Tribunal.

9. The Id.AR submitted that the coordinate bench of the Tribunal in the case of other group entity viz., Ingersoll Rand India Ltd., (2016) 67 taxmann.com Ltd., 328 has deleted the addition made towards cost contribution charges. The Id.AR submitted that the issue under consideration is similar to the facts of the assessee's case also. The Ld AR drew our attention to the fact that the cost contribution charges paid by the assessee and Ingersoll Rand India Ltd is towards the same services received from the group and the allocation key / methodology is uniform for both the entities. Hence the Ld AR submitted that the decision of the Hon'ble Tribunal in the case of Ingersoll Rand India Ltd (supra) is squarely applicable to the assessee's case and prayed for consideration of a similar decision.

10. The ld.DR relied on the written submissions.

11. We heard the rival submissions and perused the material on record. We notice that the coordinate bench of the Tribunal in the case of Ingersoll Rand India Ltd., (Supra) has considered the similar issue wherein Tribunal has held the appeal in favour of the assessee by deleting the DRP adjustment made towards cost contribution charges. The Hon'ble Tribunal in Ingersoll Rand India., has held that

“22. We find that the Mumbai Bench of the Tribunal in the case of Dresser-Rand India (P) Ltd. v. Addl. CIT [2011]47 SOT 423/13 taxmann.com 82 upheld the payment of cost contribution charges and deleted the additions made by the AO observing as follows:-

- It is only elementary that how an assessee conducts his business is entirely his prerogative and it is not for the revenue authorities to decide what is necessary for an assessee and what is not.*
- An assessee may have any number of qualified accountants and management experts on his rolls, and yet he may decide to engage services of outside experts for auditing and management consultancy; it is not for the revenue officers to question assessee's wisdom in doing so.*
- Whether a particular expense on services received actually benefits an assessee in monetary terms or not is not even a consideration for its being allowed as a deduction in computation of income, and, by no stretch of logic, it can have any role in determining arm's length price of that service.*
- The real question which is to be determined in such cases is whether the price of this service is what an independent enterprise would have paid for the same.*

- *Similarly, whether the AE gave the same services to the assessee in the preceding years without any consideration or not is also not relevant.*

- *The Assessee has filed a huge compilation of papers, including copies of reports, emails and other documents evidencing the rendering of services.*

There is no infirmity in this contribution being taken as an arm's length contribution to the costs.

There is no objective way in which use of services can be measured and as is the commercial practice even in market factors driven situation, the costs are shared in accordance with some objective criterion, including sales revenues and number of employees.

In any case, the assessee has adopted TNMM as most appropriate method, and the revenue authorities have neither made an effort to show as to how this method is not appropriate to the facts of this case, nor shown as to which other prescribed method of ascertaining arm's length price of services received will be more appropriate to these facts.

23. Similarly, in the case of AWB India (P) Ltd. v. Addl. CIT [IT Appeal No.4454 (Delhi) of 2011], the Delhi Bench of the Tribunal had noted that the assessee had produced evidence and that the contents of thereof were found to be "amply supportive" of the assessee's claim. The TPO had rejected TNMM and adopted CUP method for determining ALP. The Tribunal held that the TPO remained 'oblivious' to the fact that Rule 10B(1)(a) stipulates 'comparable' and 'uncontrolled' transactions while applying the CUP method. Only a general observation was made by the TPO that no independent party would have made payment in uncontrolled circumstances.

24. In view of the above decisions of the Delhi Bench of the Tribunal in the case of Dresser-Rand India (P.) Ltd. (supra) and A WB India (P.) Ltd. (supra), we delete the addition of Rs. 1,53,40,000 towards TP adjustment on account of payment of cost contribution charges made by the assessee."

12. We have considered the submission of the Ld AR with respect to the cost contribution charges which is paid for cost allocation done by the group and that a similar cost is getting allocated to Ingersoll Rand India Ltd using the same allocation methodology. The contention of the Ld AR that the decision of the coordinate bench is applicable to the assessee's case has merits. Respectfully following the decision of the coordinate bench, we delete the transfer pricing adjustment made by the TPO. This issue is held in favour of the assessee.

13. With regard to the issue of treating cost construction charges as a separate class of transaction and applying CUP as the most appropriate method as against TNMM, we notice that the the Hon'ble Tribunal while rendering the decision in the case of Ingersoll Rand India Ltd (supra) has also addressed the issue of adopting CUP as the most appropriate method for the cost contribution charges in para 23 as extracted above. In assessee's case the TPO has treated the cost contribution charges as a separate class of transaction quoting that there is no restriction that the TP should be done only at enterprise level and also on the basis that it is an intra group transaction. From the details of services and the benefits received from these services as submitted by the Ld AR, the payment made towards these charges are integral part of the core business of the assessee. Considering the decision of the Hon'ble Tribunal in Ingersoll Rand India Ltd (supra) and the facts of the present case we are of the considered view that the

TPO is not justified in applying CUP is the most appropriate method for computing the ALP treating the cost contribution charges as the most appropriate method.

14. On the corporate tax the AO made the following disallowances:-

- a) Depreciation on addition to fixed assets
- b) Commission paid to dealers
- c) Adhoc disallowance of staff expenses
- d) Ad hoc disallowance of Misc. expenses
- e) Disallowance of bad debts & advances written off
- f) Adhoc disallowance of advertisement & promotion expenses
- g) Adhoc disallowance of travelling expenses
- h) Adhoc disallowance of repairs & maintenance expenses
- i) Disallowance of Provision for warranty
- j) Disallowance of Cost contribution expenses -
- k) Disallowance of Legal & professional expenses

The main reason as contended by the AO for making these additions is that the assessee did not produce books of accounts, bills and vouchers for verification of transaction, thereby has not established the genuineness of the transaction . The AO made adhoc disallowances of 25% in the case of staff welfare expenses, misc. expenses, advertisement expenses, travel and conveyance expense, repairs and maintenance expenses and in rest of the cases disallowed the entire amount claimed by the assessee as an expenditure. The cost of construction expenses besides being added as TP adjustment is also disallowed while making addition towards corporate taxes hence

resulting in double addition. The DRP upheld the order of the AO stating that the bills have not been produced by the assessee.

15. Aggrieved by the final order passed in pursuant to the DRP direction, the assessee is in appeal before the Tribunal.

16. The Id.AR submitted that during the course of asst. proceedings, the AO did not ask for copies of invoices for verification and the copies of bills for the expenses were never specifically called for. The Ld.AR in this regard placed on record copies of the notices issued on 6/8/2013 and 27/8/2013 wherein the Ld AR brought to our notice that the AO only called for details of expenses and not the invoice copies. The Ld.AR filed three paper books with the copies of invoices under various heads as additional evidences before the Tribunal.

17. The Ld.DR supported the view taken by the lower authorities.

18. We have heard the rival submissions and perused the materials on record. The assessee has produced as additional evidence, in the form of invoice copies before the Tribunal. The additional evidence now produced go to the root of the issue of disallowance since the core reason for the disallowance made by the AO as confirmed by the DRP is the non-production of invoices by the assessee. For a proper adjudication of the issue and for substantial cause, the same is admitted and taken on record. Invoice copies submitted by the

assessee and taken as additional evidences require thorough examination to check the genuineness of the expenses and the allowability thereon. Hence, we remand the matter back to the AO. The assessee is directed to submit the evidences in terms of invoices before the AO and is directed to co-operate with the AO in the proceedings. It is needless to say that the reasonable opportunity of being heard should be given to the assessee. The grounds raised are allowed in favour of the assessee for statistical purposes.

19. In the result, the appeal of the assessee is allowed

Order pronounced in court on 24th March, 2022

Sd/-

(GEORGE GEORGE K)
Judicial Member

Sd/-

(PADMAVATHY S)
Accountant Member

Bangalore,
Dated, 22nd March, 2022
/ vms /

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.

1. Date of Dictation
.....
2. Date on which the typed draft is placed
before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
.....
4. Date on which the fair order is placed
before the dictating Member
5. Date on which the fair order comes back to the Sr.
P.S.
6. Date of uploading the order on
website.....
7. If not uploaded, furnish the reason for doing so
.....
8. Date on which the file goes to the Bench Clerk
.....
9. Date on which order goes for Xerox &
endorsement.....
10. Date on which the file goes to the Head Clerk
.....
11. The date on which the file goes to the Assistant
Registrar for signature on the order
.....
12. The date on which the file goes to dispatch section
for dispatch of the Tribunal Order
.....
13. Date of Despatch of Order.
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