

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

**BEFORE SHRI. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI. YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 1689/DEL/2017 (A.Y 2012-13)

Federal Mogul Ignition Products (India) Ltd. G-4, J. R. Complex, Gate No. 4, Mandoli, North East, Delhi PAN No. AAACF4128M (APPELLANT)	Vs	ACIT Circle 9(1) New Delhi (RESPONDENT)
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Appellant by	Sh. Ravi Sharma, Adv, Mr. Rishabh Malhotra, AR & Ms. Subhangi Arora, AR
Respondent by	Sh. Surender Pal, CIT (DR)

Date of Hearing	24.03.2022
Date of Pronouncement	30.03.2022

ORDER

PER YOGESH KUMAR U.S., JM

This is an appeal filed by the Assessee for the Assessment Year 2012-13 against the final assessment order dated 18/03/2016 passed under Section 143(3) r/w Section 144C of Income tax Act, 1961, by ACIT, New Delhi.

2. The grounds of appeal are as under:-

That on the facts and circumstances of the case, and in law:

1. *On the facts and in circumstances of the case and in law, The Ld. Dispute Resolution Panel (DRP)/Transfer Pricing Officer ("TPO") erred in making an adjustment to income of the Appellant*

amounting to Rs. 1,53,10,763 by holding that the international transaction pertaining to availing of corporate management services from the Associated Enterprise does not satisfy the arm's length principle envisaged under the Act. In doing so, the Ld. DRP/TPO grossly erred in:

- 1.1 disregarding the benchmarking approach and methodology followed by the Appellant for determining the arm's length price ('ALP') for availing of corporate management services excluding IT cost in its transfer pricing documentation maintained under Section 92D of the Act read with Rule 10D of the Income-tax Rules, 1962 ('Rules');*
- 1.2 rejecting use of Transactional Net Margin Method ('TNMM') as the most appropriate method for benchmarking impugned international transaction under a combined transaction approach and instead applying Comparable Uncontrolled Price ('CUP') by challenging the commercial wisdom of the Appellant;*
- 1.3 considering the ALP of the transaction to be Nil by inappropriate application of CUP method in contravention of the provision of Rule 10B of the Income Tax Rules, 1962 merely based on presumptions without furnishing details of price charged in any comparable uncontrolled transaction;*
- 1.4 holding that the corporate management services are in the nature of shareholder services and hence unwarranted;*
- 2. That the Ld. AO has grossly erred by proposing to compute interest under sections 234B of the Act mechanically and without recording any satisfactory reasons for the same.*

3. Brief facts of the case are that, during the year under consideration, the assessee engaged in the business of manufacturing spark plugs and marketing products including wiper blades, glow plugs, ignition coil, engine part, oil seals and antifriction bearings etc. During the year, the assessee reported following international transactions in Form 3CEB:-

<i>Sl No.</i>	<i>International Transaction</i>	<i>Amount</i>
1	<i>Purchase of Raw Material, components and finished goods</i>	232,503,748
2	<i>Sale of Finished goods</i>	83,648,859
3	<i>Commission received</i>	7,336,538
4	<i>Availing of corporate management services</i>	4,38,70,088
5	<i>Receipt of management support charges</i>	5,428,651
6	<i>Reimbursement of expenses to AE</i>	650,044
7	<i>Reimbursement of expenses from AE</i>	10,208,942

4. The assessee e-filed its return on 29/11/2012 declaring total income at Rs. 10,45,75,260/-. The case of the assessee was selected for scrutiny under CASS and notice u/s 143(2) and fresh notice u/s 142(1) of the Act have been issued. The Representative of the assessee attended the proceedings from time to time and furnished details.

5. The Ld. TPO in order to determine the Arms Length Price in international transaction undertaken by the assessee during the FY 2011-12, initiated proceedings u/s 92C(A) of the Act. The Representative of the assessee has attended the proceedings and furnished details. The findings of the TPO are hereunder:-

- *“The taxpayer has not been able to prove the benefits that it had derived from the services purportedly by the Expats. No independent entity would pay for such services without any cost benefit analysis.*
- *The taxpayer has not furnished any evidence as to the cost benefit analysis with regard to the independent local employees. No third party would like to avail services without any cost benefit analysis with regard to Expats Vs. independent employees.*
- *No documentation has been produced by the taxpayer to support its claim for the receipt of services.*
- *The benchmarking done by the taxpayer is not in accordance with the law and therefore CUP method is required to be applied in this case.”*

Based on the above findings, Ld. TPO has passed order dated 29/01/2016 under Section 92CA(3) of the Act by rejecting the analysis carried out by the assessee in its transfer pricing study and made adjustment amounting to Rs. 4,38,70,088/- on account of payment made to AE for availing corporate management services and further, computed the Arm's Length Price for the aforesaid services at 'NIL'.

6. As against the order dated 29/01/2016 of the Ld. TPO, the assessee has filed its objection before the Ld. Dispute Resolution Panel ('DRP' for short). Further, the assessee has also filed an application for admission of additional evidence before the DRP. The Ld. DRP has issued directions u/s 144C(5) of the Act vide order dated 01/12/2016 to the TPO for re-computing the Arm's Length price in accordance with the said direction. In response, the TPO vide order dated 19/01/2017 has reduced the Arm's Length Price adjustment to Rs.1,53,10,762/- as against Rs.4,38,70,088/-.

7. In compliance with the directions of the Ld. DRP, the final assessment order has been passed u/s 143(3) of the Act vide order dated 20/01/2017.

8. Aggrieved by the final assessment order passed u/s 143(3) of the Act dated 20/01/2017, the assessee has preferred the present appeal on the grounds mentioned supra.

9. The Ground No. 1 and its sub grounds 1.1. to 1.4 of the appeal are directed against making of the addition on account of Arm's Length Price adjustment amounting to Rs. 1,53,10,764/- for availing of corporate management service from the associated enterprises of the assessee.

10. The Ld. Counsel appearing for the assessee has taken us through the paper book and sought our attentions to the documents and argued that, the assessee had produced sufficient materials to prove that, the services were actually rendered by the AE to the assessee, but the same have not been considered by the lower authorities. Further contended that, the findings of the LD. TPO/DRP/AO that 'the assessee had made payment to its AEs' for intra group services pertaining to corporate management services are not found to exist fully' is contrary to the materials available on record.

11. The reliance has been placed by the Ld. AR on the order of the Coordinate Bench of this Tribunal dated 03/10/2018 in the case of Donaldson India Filter Systems Vs. DCIT (ITA No. 3218/Del/2015) and also on the decision of Coordinate Bench of this Tribunal dated 03/10/2018 in the case of Hwawei Telecommunications (India) Pvt. Ltd. Vs. ACIT (ITA No. 7509/Del/2017).

12. Per contra, the Ld. DR submitted that, the assessee has not brought on record any evidence to show exactly what services were rendered by AE to the assessee. The assessee is not able to prove that, the assessee had indeed took into consideration the value of the services vis-à-vis benefit claimed for the payment made to the service and assessee has not been able to give any

evidence as to what is the benefit that had occurred on the receipt of services. Further, taken us though the “World Wide Cost Allocation Agreement” produced by the assessee and submitted that, the assessee is not a signatory for the said agreement. Further contended that, the assessee had claimed to have availed the service from its AE’s which is an Australian entity, but the payment has been made to the German entity. There is no interaction and the transaction of the Assessee with German entity and there is no service availed from the German Company and the payment of service fee is only an arrangement to change the tax base without any economic substance in the transaction. The Ld. DR has justified the order of the TPO/DRP/AO and further submitted that, the Revenue has no objection to remand the matter to Ld. TPO with a direction to consider all the relevant facts and materials and decide the issue afresh as per Law.

13. We have heard the rival submission on the issue under consideration; we have also gone through the entire materials available on record and gave our thoughtful consideration. The moot grievance of the assessee has that, assessee had produced all the documents to prove that the assessee had availed services from its AE’s, but the authorities below have not considered the materials available on record. On the other hand, the Ld. DR has vehemently disputed the said contention of the assessee.

14. In an identical situation, the Coordinate Bench of the Tribunal in the case of Donaldson India Filter Systems Vs. DCIT (ITA No. 3218/Del/2015) vide order dated 03/10/2018 held as under:_

“18. Moreover Revenue Officer cannot decide while sitting on the armchair of a businessman to decide as to what services are required. So far as question of deriving the benefit of such services is concerned, benefit may always not be the result of any business decision. But, in the instant case, the taxpayer has explained the benefits derived from rendering of services by the AE.

19. Furthermore, when it is not in dispute that the business model of the taxpayer has not undergone any change since 2004 and payment of intra-group services have been formed to be at arm's length by the Revenue by passing detailed order by the TPO for AYs 2008-009, 2009-10, 2011-12 and 2012-13, available at pages 129 to 136 of Case Law Paper book, no reason whatsoever has been given by the ld. TPO to depart from the rule of consistency. No doubt, principle of *res judicata* is not attracted to the income-tax matter but when the business model has not undergone any change and facts and circumstances are identical "rule of consistency" is required to be maintained as has been held by Hon'ble Apex Court in [Radhasoami Satsang vs. CIT](#) - 193 ITR 321.

20. When we examined TP order for AY 2011-12 and 2012-13, available at pages 133 to 136 of the Case Law Paper book, payment of intra-group charges to the tune of Rs.1,26,97,965 and Rs.1,56,08,715/- respectively have been held to be arm's length as per TP analysis conducted by the taxpayer. So, it cannot be held that since payment of intra-group services is increasing day by day, it leads to profit shifting.

21. In view of what has been discussed above, we are of the considered view that issue at hand is required to be remitted back to the TPO/AO to decide afresh in the light of the observation made herein before and in view of the order passed by ld. TPO in preceding and succeeding years. Consequently, the appeal filed by the taxpayer is allowed for statistical purposes. Order pronounced in open court on this 3rd day of October, 2018."

15. Further, the Coordinate bench of this Tribunal in the case of Hwawei Telecommunications (India) Pvt. Ltd. Vs. ACIT (ITA No. 7509/Del/2017) vide order dated 24/02/2021 it is held as under:-

"23. Hon'ble Delhi High Court in case of [CIT vs. Cushman and Wakefield India \(P\) Ltd.](#) (2015) 60 taxmann.com 168 (Delhi) judgment dated 07.05.2015 has held that, "the court first notes that the authority of TPO is to conduct transfer pricing analysis to determine the ALP and not to determine whether there is a service or not from which the assessee benefits."

24. So, following the decisions rendered by the Hon'ble High Court and coordinate Bench of the Tribunal, as discussed in the preceding paras, we are of the considered view that it is beyond the jurisdiction of ld. TPO to determine the benchmarking of technical services and project management services by applying the "benefit test" and "commercial expediency test" rather his jurisdiction is limited to determine the ALP of transactions with the standpoint of a businessman and not by sitting on the chair of the businessman. Moreover, in the instant case, assessee has brought on record plethora of evidence for availing of the technical services and ITA No.7510/Del./2017 payment made for technical services received on the basis of USD 1600 per man-month on actual time spent by the relevant personnel, copy of technical services agreement between the taxpayer and the Huawei, China and also brought on record invoices filed on sample basis for availing technical services, but all these documents have not been examined by the TPO/DRP rather benchmarked the technical services/project management services availed of by the taxpayer from its AE at nil by mechanically dealing with the issue by applying the benefit test and commercial expediency test and has not provided opportunity of being heard to the taxpayer at the time of abruptly applying the other method.

25. So, in the given circumstances, we are of the considered view that this issue is liable to be remitted back to the TPO to decide afresh by examining all the evidences brought on record by the taxpayer and to decide the issue in the light of the decisions discussed in the preceding paras and by following the rule of consistency as in the earlier years i.e. in AY 2004-05 onwards, TPO himself has accepted availing of technical services at arm's length price as determined by the assessee. Needless to say that TPO is to decide the issue afresh by providing an opportunity of being heard to the taxpayer. Consequently, Grounds No.2 to 2.6.5 of ITA No.7509/DEL/2017 (AY 2012-13) and Grounds ITA No.7510/Del./2017 No.2 to 2.5.6 of ITA NO.7510/DEL/2017 (AY 2013-14) are determined in favour of the taxpayer for statistical purposes. GROUNDS NO.3 TO 3.4 OF ITA NO.7509/DEL/2017 (AY 2012-13) ITA NO.7510/DEL/2017 (AY 2013-14).”

16. In view of the above discussions and the orders of the Tribunal, we are incline to remit this issue in dispute to the file of AO/TPO to decide afresh after considering the documents submitted by the Assessee. It is needless to say that, it is the duty of the Assessee to prove that there was actual rendering of the services by AE's to the assessee and the payment has been made to the AE's itself for such services. The said issue shall be decided by the AO/TPO, after providing adequate opportunity to the assessee. Accordingly, the Grounds No. 1 to 1.4 are allowed for statistical purpose.

17. The Ground No. 2 is in respect of proposing to compute interest u/s 234B of the Act, which is consequential in nature, which need not be adjudicated. Accordingly, the Appeal Ground No.2 is dismissed.

18. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the Open Court on this 30th Day of March, 2022

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

**Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Dated: 30/03/2022
*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI