INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I-1": NEW DELHI

BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA Nos. 8346 & 8347/Del/2018
Asstt. Years: 2013-14 & 2014-15

ACIT, Circle-8(1) New Delhi – 110 002	Vs.	EFS Facilities Services (India) Pvt. Ltd. Unit No. 2A, Uppal Plaza, M-6, Jasola, Sarita Vihar, New Delhi – 110 025 PAN AACCD8364M
(Appellant)		**(Respondent)**

Department by:	Shri Sandeep Kumar Mishra, Sr. DR
Assessee by :	Shri Abhishek Jain, CA
Date of Hearing	21/02/2022
Date of pronouncement	11/04/2022

O R D E R

PER ASTHA CHANDRA, JM

These two appeals by the Revenue are filed against the order of the Ld. Commissioner of Income Tax (Appeals)-3, Delhi **("CIT(A)")** dated 9.10.2018 pertaining to the assessment year 2013-14 and 2014-15.

2. The solitary ground raised by the Revenue in the assessment year 2013-14 is as under :-

"Ld. CIT(A) erred in law and on the facts of the case in deleting the addition of Rs. 3,11,06,565/- made by AO on account of disallowance of support service charges to ultimate holding company in absence of evidence of service availed."

3. The assessee company (previously known as Dalkia India Pvt. Ltd.) is a 99.9% Indian subsidiary of EMCOR Facilities Services Mauritius Ltd. which is a subsidiary of EMCOR Facilities Services Group Ltd., UAE ("**EMCOR Group**"), the ultimate holding company of the assessee. The assessee deals in Specialist Engineering Services. The assessee undertakes annual maintenance contract of all utility equipment either through the Original Equipment Manufacture or by self-performance. The assessee has a capability to self-perforce Electrical Panel, Transformer, Air Handling, Units, Pumps, Water Treatment Plant, Cooling Tower, Ductable AC Units etc.

3.1 The assessee filed its return of income declaring a loss of Rs. 4,78,16,076/- on 29.11.2013. The case was selected for scrutiny through CASS. Statutory notices alongwith questionnaire were issued which were duly responded by the assessee. The assessee submitted details/documents which were placed on record of the Ld. Assessing Officer **("AO").** The books of accounts of the assessee were called for and examined by the AO on test check basis.

3.2 During the previous year relevant to the assessment year 2013-14 the assessee entered into the following international transactions with its Associated Enterprises **("AEs")**:-

S. No.	Type of International transaction	Total value of transaction (Rs.)
i.	Technical Support Fee	1,86,64,886.39
ii.	Intra Group Service-Employee Secondment	34,11,787.50
iii.	Intra Group Service-Executive time	84,20,984.08
iv.	Cost Recharge for Expenses-with Mark-up	6,08,907.17
v.	Cost Recharge for Expenses-with Mark up	21,57,272.00

vi.	Corporate Guarantee issued	N.A.
vii.	Transaction arising as a result of Business Restructuring/Reorganization	84,53,260.00

3.3. The Ld. AO made a reference to the Transfer Pricing Officer **("TPO")** under section 92CA of the Income Tax Act 1961 **("Act")** for ascertaining arm's length price **("ALP")** of the above transactions. The Ld. TPO vide order dated 18.10.2016 has proposed to make the following adjustments :-

S. No.	Type of International Transaction	Total Value of Transaction (Rs.)
1.	Intra Group Service - Employee Secondment	34,11,787
2.	Business Restructuring	12,29,949
	Total	46,41,736

3.4. The remaining transactions were duly accepted by the Ld. TPO and no adjustments were proposed by him with respect to the remaining transactions. The Ld. AO after receiving the order of the Ld. TPO made the addition of Rs. 46,41,736/- as proposed by the Ld. TPO.

3.5 During the assessment year 2013-14, the assesee availed various services from EMCOR Group. The total expenses considered under support service charges amounted to Rs. 3,11,06,565/- comprising of the following transactions:

Transaction	Amount (Rs.)
Technical Support Fee	1,86,64,886.39

Intra Group Service-Employee Secondment	34,11,787.50
Intra Group Service-Executive time	84,20,984.08
Cost Recharge for Expenses-with Mark-up	6,08,907.17
Total	**3,11,06,565.00**

Over and above the addition of Rs. 46,41,736/- as proposed by the Ld. TPO, the Ld. AO further made an addition of Rs. 3,11,06,565/- on account of disallowance of support service charges paid by the assessee to EMCOR Group by observing, inter alia that the assessee has failed to prove with evidence that the expenditure for support service charges has been incurred by the assessee for the purposes of its business and that the ultimate holding company (EMCOR Group) has actually rendered services to the assessee.

4. On appeal the Ld. CIT(A) deleted the addition of Rs. 3,11,06,565/- made by the Ld. AO in respect of support service charges by recording the following findings :-

"3.1 I have considered the TP Order, the assessment order, the TP study of appellant and the submissions of appellant. The appellant has produced detailed agreements, invoices and debit notes towards:

-Technical Support Fee

-Intra Group Service-Employee Secondment

-Intra Group Services- Executive time

-Cost Recharges for Expenses- With Mark up

With respect to Technical Support Fee, the AR of appellant produced the agreement between EFS India and EMCOR Group which clearly indicates that EMCOR Group granted EFS India, the right to use its Trade Mark and EFS India will pay consideration for using its trade mark. Therefore, out of Rs. 2,74,04,735/- representing expenses of support service charges Rs. 1,67,54,133/- was paid for technical assistance, licensing and marketing fee in respect of technical

assistance, brand and central marketing services i.e. fees for using the Trade Mark of EMCOR Group by EFS India. Also, in the instant case, the agreements permitting the EFS India to make use of the trade mark EMCOR Group did not create any asset nor did they confer any right of a permanent nature in favour of the appellant. Hence the expenditure is revenue expenditure and fall within the ambit of the section 37(1) of the Act.

The appellant also placed reliance on the following judgments:

- *In Empire Jute Co. Ltd. v. CIT [1980] 124 ITR 1*
- *[1996] 218 ITR 427 (MAD.) HIGH COURT OF MADRAS CIT v. Aquapump Industries*
- *[2010] 323 ITR 498 (MP) HIGH COURT OF MADHYA PRADESH CIT v. Khemchand and Motilal Jain Tobacco Products (P.) Ltd. which held that payment of royalty for use of trade mark is allowable as revenue expenditures.*
- *[1998] 231 ITR 598 (Gujarat) High Court Of Gujarat CIT v. Raipur Mfg. Co. where Gujrat High Court held that The expenditure incurred by the assessee-company for payment of the trade mark was a revenue expenditure.*
- *[1987] 34 Taxman 184 (Bombay) High Court Of Bombay Gannon Norton Metal Diamond Dies Ltd. v. Commissioner of Income-tax where it was held that payments made by assessee-company to a foreign company in accordance with collaboration agreement to provide technical know-how but not to furnish any secret or patented process to assessee or to allow assessee to use, collaborators' trade mark or name were to be treated as revenue expenditure.*

3.2 Also, the appellant has grossed up TDS and deposited the same. Considering the above, the expenses can be regarded for business use and is revenue in Nature. With respect to Intra Group Service-Employee Secondment, EFS India has entered into an agreement with EMCOR Group, whereby' EMCOR Group had seconded its employee to work with

EFS India to facilitate transition from DIPL, under the ownership of Dalkia International, to EFSI, under the ownership EFS Group. Further, the seconded employee is also to assume the position of Financial and Commercial Manager of EFSI. An agreement (Secondment agreement) has been entered into between EFS India and EMCOR Group for the secondment of Mr. Ashish Bhatia. This agreement is of date September 21, 2012 and is annexed to the statement. Article 1 of the agreement relates to the purpose of the agreement reads as under (relevant part):

"1.1 Whilst seconded on a full time basis, seconded may continue to work for EFS

1.2 The Seconded employee shall be based at EFS's office at New Delhi. "

Article 3 relates to the employment situation / subordination. Relevant portion of the article provides as under:

"During the time of its secondment, the seconded employee shall continue to be paid his salary by EMCOR"

Article 6 related to the consideration for the seconded employee which EMCOR Group will charge from EFS India:

"EMCOR shall, in turn, invoice EFS India (Formerly DIPL) for the secondment of employee at the following rates:

Name	*Title*	*Monthly Compensation (in AED)*
Ashish Bhatia	*Finance and Commercial Manager*	*24,813.00*

Para 5 of the article 6 provides that

"EFS, India shall be liable to withhold the tax on salary paid to seconded employee in India u/s 192 of the Income tax Act, 1961 and duly deposit the same with the government of India, on behalf of EMCOR, UAE"

3.3 The appellant has deposited TDS on the salary of the seconded employee and has furnished Form 16 and other relevant documents supporting the same. With respect to Intra Group Services Executive time,

based on the documents provided by the appellant, EFS India required a comprehensive range of management skills and other specialized services for ensuring reliable and continuous supply of services to its clients in India. Thus, EMCOR Group agreed to provide EFS India with such management and other specialized services so as to help EFS India in carrying out its operations effectively in India. These services include Management and Personnel Management, Information Systems, Financial and Accounting advice, Advice and technical support, Credits and risk and Marketing Services.

Further, in view of the fact that TDS has been deposited on the expense, the assessing officer seems to have erred in disallowing the expense.

3.4 With respect to cost recharges for Expenses the appellant has provided copies of Debit note along with the copy of invoices. Also, the pricing mechanism adhered to is that the total amount charged on EFSI by EFSG is equal to the actual cost incurred by the latter. Since there is no mark-up involved and merely represents a cost to cost recharge, the assessing officer erred in disallowance the expense.

3.5 The Reason for disallowance of TDS of Rs 27,40,474/- paid as contractual obligation recorded by the assessing officer is as under:

"TDS of Rs. 27,40,474/- u/s 195 of the Act which was actually income tax liability of M/s Emcore Facilities Services Group limited in India under the Income tax act is not allowable in the hands of the asses see as any liability of any type of income tax of income in India is not an allowable expense in any assessee. It is not possible for this office to decide whether the non-resident have any permanent establishment in India or not. This can only be decided by the respective assessing officer in India. The assessee also failed to establish what tax treatment have been done by those non-residents while filing their income tax return in India. So I have no other option other than to proceed based on the facts and material available on the records and disallow TDS in the hand of assessee being income tax liability of the non-resident i.e. M/s Emcore Facilities Services Group Limited u/s 40(a) of the Act. "

- The Hon'ble Mumbai ITAT in case M/S Bob Cards Ltd., Mumbai vs Department Of Income Tax on has held that

"We have heard the rival submissions and perused the material placed before us in the case under consideration. AO has admitted that from the agreement entered into between the assessee-company and the Master/VISA Card agencies, the assessee company had to bear the tax liability. Payment of TDS was made in pursuance of the agreement entered in to between the assessee company and the VISA/Master card International. In our opinion payment made as a result of a contractual liability is an allowable expenditure. FAA has rightly placed reliance on the case of Standard Polygraph Machines P. Ltd (supra) in this regard. Secondly, we find that the same issue has been decided in favour of the assessee by the orders of the Tribunal delivered for earlier AYs. T Bench of the ITAT, Mumbai has decided the issue. "

3.6 In the Present case, EFSI has entered into contract with EFSG under which all the taxes will be borne by the EFSI. Therefore, EFSI has duly paid all the TDS liability arising out of the contractual obligation. The Reliance is placed on the above mentioned pronouncement of ITAT Mumbai in case of M/S Bob Cards Ltd., Mumbai vs Department Of Income Tax, held that payment made as a result of contractual liability is an allowable expenditure. The same view has been expressed by the High Court of Madras in case of Commissioner of Income-tax v. Standard Polygraph Machines (P.) Ltd.[2002] 124 Taxman 669 (Madras), where it was held that "The Tribunal had held that the amount paid by the assessee as income-tax on the amount paid to the foreign collaborator was only in discharge of the liability of the collaborator which the assessee had undertaken to pay as part of the agreement entered into with the foreign collaborator for receiving the technical know-how under the agreement. The amount so paid as tax had been held to be an amount payable by virtue of the terms of the agreement between the collaborator and the assessee. Had the collaborator not been assured of the assessee's undertaking the liability, the collaborator would have charged higher fee to cover the liability for taxes. It was only on the assurance of the assessee that the liability would be met by the assessee, that the collaborator had agreed to receive the sum specified in the agreement. Hence, the Tribunal was right in its view that the amount so paid by the

assessee was only in discharge of a liability which it had undertaken in terms of the agreement entered into between the assessee and the collaborator and it, therefore, formed part of the consideration for the agreement relating to know-how. "

In view of the fact that the TPO considered all these transactions in the order of TPO, relevant extracts of which have been reproduced at para 2.1 above and TP adjustment was only suggested for employee secondment of Rs. 34,11,787/- and business restructuring of Rs. 12,29,949/-, these issues should not have been re-examined by the assessing officer afresh. Considering the above discussion and judgements quoted by the appellant, assessing officer is directed to delete the disallowance of Rs. 3,11,06,565/-. The ground of appeal is allowed."

5. Aggrieved, the Revenue is in appeal before us challenging order of the Ld. CIT(A) for the deletion of disallowance/addition of Rs. 3,11,065,565/- made by the Ld. AO.

5.1 The Ld. DR defended the action of the Ld. AO in making the impugned addition. He submitted that the Ld. CIT(A) admitted the evidence of the agreements (i.e. License agreement and Secondment agreement between the assessee and EMCOR Group) **("Agreements")** without allowing an opportunity to the Ld. AO to examine the same. He vehemently argued that by making reference to the TPO, the Ld. AO is not debarred from applying any of the provisions of the Act to determine the correct tax liability of the assessee. The Ld. DR alleged that the Ld. TPO did not apply his mind to the payment of Rs. 3,11,06,565/- by the assessee to EMCOR Group.

5.2 The Ld. AR assailed the arguments of the Ld. DR. He argued that the Agreements were submitted before the Ld. AO who on perusal thereof noted the nature of services rendered to the assessee by EMCOR Group. Therefore, the allegation of the Ld. DR that the Ld. CIT(A) admitted any evidence without allowing opportunity to the Ld. AO is contrary to the material on record. The Ld. AR pointed out that the impugned addition is over and above

the proposed adjustment made by the Ld. TPO which is not in conformity with the provisions of section 92CA(4) of the Act. Not only this the impugned addition comprises of Rs. 34,11,787/- on account of intra group service – Employees Secondment which was proposed by the Ld. TPO for adjustment thereby implying double addition. Hence, the appeal of the Revenue ought to have been restricted to the sum of Rs. 2,76,94,778/- (i.e. Rs. 3,11,06,565 – Rs. 34,11,787). He submitted that the Ld. CIT(A) deleted the impugned addition after applying his mind to all the details and documents which were already on records.

6. We have carefully considered the rival submission of the parties, thoroughly went through the orders of the Ld. AO/CIT(A) and perused the material on record. It is a case of reference under section 92CA made by the Ld. AO to the Ld. TPO in respect of international transaction entered into by the assessee company with its AEs during the previous year relevant to the assessment year 2013-14. During the proceedings before the Ld. TPO, the assessee submitted the documentations prescribed under rule 10D of the Income Tax Rules, 1962 and other details. The Ld. TPO took notice of the entire international transactions as furnished in Form 3CEB, issued show cause notice dated 24.9.2016 to the assessee in respect of payment of Rs. 34,11,787/- for Employee Secondment and payment of Rs. 84,53,260/- for Business Restructuring. After considering the contentions of the assessee, the Ld. TPO disallowed whole of the amount of Rs. 34,11,787/- for Employee Secondment and Rs. 12,29,949/- out of payment for Business Restructuring. He, accordingly, passed order under section 92CA(3) of the Act on 18.10.2016 proposing total adjustment of Rs. 46,41,736/- with the remarks that this shall be treated as the cumulative adjustment under section 92C of the Act. In his order dated 31.01.2017 under section 144C read with section 143(3), the Ld. AO added back the said amount of Rs. 46,41,736/- to the income of the assessee under section 92CA(4) of the Act. It is also observed that during the course of assessment proceedings, the assessee submitted the Agreements which were perused by the Ld. AO (para

4.3 of the Ld. AO's order) who took notice of the nature of services (support services and other specialised services) rendered to the assessee by the recipient of the impugned amount of Rs. 3,11,06,565/- namely EMCOR Group. However, the Ld. AO disallowed the said expenditure for the reason that he was not satisfied that it was incurred for the purposes of business of the assessee and that the services were actually rendered to it.

6.1 In the backdrop of the above factual matrix we do not find any substance in the arguments advanced by the Ld. DR that the Ld. CIT(A) admitted evidence of Agreements without affording opportunity to the Ld. AO as the same were already on the records of the Ld. AO which he duly mentioned in his assessment order. We are also unable to convince ourselves that the Ld. TPO did not apply his mind to all the international transactions entered into by the assessee with its AEs while making adjustment under section 92C of the Act necessitating the Ld. AO to make additional impugned adjustment of Rs. 3,11,06,565/- by resorting to the provision of section 37(1), section 40(a)(i) and section 40A(2) of the Act.

6.2 We now proceed to deal with argument of the Ld. DR that section 92CA does not debar the Ld. AO to make adjustment over and above what adjustment is proposed by the Ld. TPO, in his assessment order passed after the receipt by him of the Ld. TPO's order under section 92CA(3) of the Act. Let us reproduced the relevant portion of section 92CA, the heading of which is 'Reference to Transfer Pricing Officer' :-

*"**92CA.** (1) Where any person, being the assessee has entered into the international transaction in any previous year, and the Assessing Officer considers it necessary or expedient so to do, he may, refer the computation of the arm's length price in relation to the said international transaction under section 92C to the Transfer Pricing Officer.*

(2) Where a reference is made under sub-section (1), the Transfer Pricing Officer shall serve a notice on the assessee requiring him to produce or cause

to be produced on a date to be specified therein, any evidence on which the assessee may rely in support of the computation made by him of the arm's length price in relation to the international transaction referred to in sub-section (1).

(3) On the date specified in the notice under sub–section (2), or as soon thereafter as may be, after hearing such evidence as the assessee may produce, any information or documents referred to in sub-section (3) of section 92D and after considering such evidence as the Transfer Pricing Officer may require on any specified points and after taking into account all relevant material which he has gathered, the Transfer Pricing Officer shall, by order in writing, determine the arm's length price in relation to the international transaction in accordance with sub-section (3) of section 92C and send a copy of his order to the Assessing Officer and to the assessee.

(4) On receipt of the order under sub–section (3), the Assessing Officer shall proceed to compute the total income of the assessee under sub-section (4) of section 92C in conformity with the arm's length price as so determined by the Transfer Pricing Officer."

6.3 A bare reading of the above provision reveals that the AO may refer the computation of the ALP in relation to the international transaction, with the previous approval of the Commissioner. Where a reference is made to the TPO, he will allow the assessee to produce the evidence in support of the computation made by the assessee of the ALP of the international transaction. After hearing such evidence etc. and after taking into account all relevant materials, the TPO shall pass an order in writing determining the ALP in accordance with Section 92C(3) and send a copy of his order to the AO and to the assessee.

6.4 Sub-section (4) of section 92CA is substituted in the statute book w.e.f. 1.6.2007. Prior to its substitution sub-section (4) read as under :-

"(4) On receipt of the order under sub-section (3), the Assessing Officer shall proceed to compute the total income of the assessee under sub-section (4) of section 92C having regard to the arm's length price determined under sub-section (3) by the Transfer Pricing Officer."

The amended sub-section (4) provides that on receipt of the order of the TPO, the AO shall proceed to compute the total income of the assessee under section 92C(4) in conformity with the ALP as determined by the TPO. This provision is mandatory. By using the expression "shall" no discretion is provided to the AO. He shall have to compute the total income of the assessee in accordance with the ALP as determined by the TPO. In taking this view we are supported by the decision of Delhi Bench of the Tribunal in the case of Tiaujin Tiaushi Biological Development Co. Ltd. vs. DCIT [2015] 37 ITR 260 (Trib.) (Delhi). In this case, it is held that the TPO's order is binding on the AO who has no choice but to pass an order in conformity with the order of the TPO post amendment to section 92CA(4) w.e.f. 1.6.2007.

6.5 Our view is also supported by the CBDT Instruction No. 15/2015 dated 16.10.2015. Para 5 thereof refers.

6.6 The decision of Bangalore Bench of the Tribunal in Herbalife International India (P) Ltd. vs. ACIT (2016) 65 Taxmann.com 143, is also very relevant. In that case during the previous year relevant to assessment year 2008-09 the assessee had paid administrative service fee to its AE. Transaction of payment of administrative service fee was declared by the assessee as international transaction and was also subjected to transfer pricing provisions. The AO allowed only 2% of turnover and balance was disallowed under section 40A(2) of the Act. On these facts when the matter was brought before the Tribunal by the assessee, the Tribunal decided in favour of the assessee holding that the AO having considered transaction being international transaction and making a reference to TPO for

determination of ALP, could not go back to the provision of section 40A(2) for determining reasonableness of price paid by the assessee.

6.7 The decision of Bangalore Bench of Tribunal in Herbalife International India (P) Ltd. (supra) applies with full force to the case at hand before us. The crux of the matter is that once the transaction is undisputedly subject matter of chapter X 'Special Provisions relating to Avoidance of Tax' of the Act, then other general provisions of the Act cannot be applied simultaneously.

6.8 We, therefore, hold that the arguments of the Ld. DR is bereft of any legal substance.

7. Perusal of the appellate order of the Ld. CIT(A) extracted in para 4 above reveals that the Ld. CIT(A) recorded his findings that the TPO considered all international transactions in his order and TP adjustment was only suggested to Employees Secondment of Rs. 34,11,787/- and Business Restructuring of Rs. 12,29,949/- and therefore, these issue should not have been re-examined by the AO afresh. We entirely agree with above findings of the Ld. CIT(A). We are of the view that the Ld. CIT(A) has deleted the impugned addition of Rs. 3,11,06,565/- made by the Ld. AO after recording cogent reasons backed by precedents. We, therefore, decline to interfere with the order of the Ld. CIT(A).

8. In the result, the appeal of the Revenue for assessment year 2013-14 fails and is dismissed.

9. We now take up the Revenue's appeal for assessment year 2014-15. It relates to disallowance of Support Service charges of Rs. 2,56,09,858/- paid by the assessee to its ultimate holding company (EMCOR Group) and consequent addition to the income of the assessee. For this year the Ld. AO did not make reference to the TPO and made the impugned addition

following his order of the preceding year. On appeal, the assessee submitted that assessee availed the various services from EMCOR Group and made payment of Rs. 1,78,33,609/- being Technical Support Fee and payment of Rs. 77,76,249/- being Intra Group Services - Executive time amounting in all to Rs. 2,56,09,858/. The Ld. CIT(A) incorporated the submission of the assessee in his order and recorded his findings which is as under against which the Revenue is in appeal before us :-

"2.1 I have carefully considered the arguments of the AR of appellant, the documents produced during appeal proceedings the assessment order and various case laws referred to by the assessing officer and counsel of the appellant. The AR of appellant has produced detailed agreements, invoices and debit notes towards:

-Technical Support Fee and

-Intra Group Services- Executive time

With respect to Technical Support Fee, the appellant relied on the agreement between EFS India and EMCOR Group which clearly indicates that EMCOR Group granted EFS India, the right to use its Trade Mark and EFS India will pay consideration for using its trade mark. Therefore, out of Rs 2,56,09,858/- representing expenses of support service charges of Rs 1,78,33,609/- were paid for technical assistance, licensing and marketing fee in respect of technical assistance, brand and central marketing services i.e. fees for using the Trade Mark of EMCOR Group by EFS India.

Also, in the instant case, the agreements permitting EFS India to make use of the trade mark EMCOR Group did not create any asset nor did they confer any right of a permanent nature in favour of the assessee. Hence the expenditure is revenue in nature and falls within the ambit of section 37(1) of the Act.

The appellant also placed reliance on the following judgments:

- *In Empire Jute Co. Ltd. v. CIT [1980] 124 ITR 1*
- *[1996] 218 ITR 427 (MAD.) HIGH COURT OF MADRAS CIT v. Aquapump Industries*

- *[2010] 323 ITR 498 (MP) HIGH COURT OF MADHYA PRADESH CIT v. Khemchand and Motilal Jain Tobacco Products (P.) Ltd. which held that payment of royalty for use of trade mark is allowable as revenue expenditures.*
- *[1998] 231 ITR 598 (Gujarat) High Court Of Gujarat CIT v. Raipur Mfg. Co. where Gujrat High Court held that the expenditure incurred by the assessee-company for payment of the trade mark was a revenue expenditure.*
- *[1987] 34 Taxman 184 (Bombay) Gannon Norton Metal Diamond Dies Ltd. v. Commissioner of Income-tax where HIGH COURT OF BOMBAY held that payments made by assessee-company to a foreign company in accordance with collaboration agreement to provide technical know-how but not to furnish any secret or patented process to assessee or to allow assessee to use, collaborators' trade mark or name were to be treated as revenue expenditure. Also, the assessee has deposited TDS on the same. Considering the above, the expenses can be regarded for business use and held to be revenue in nature.*

2.2 With respect to Intra Group Services Executive time, based on the documents provided by the appellant, EFS India required a comprehensive range of management skills and other specialized services for ensuring reliable and continuous supply of services to its clients in India. Thus, EMCOR Group agreed to provide EFS India with such management and other specialized services so as to help EFS India in carrying out its operations effectively in India. These services include:

a. Management and Personnel Management
b. Information Systems
c. Financial and Accounting advice
d. Advice and technical support
e. Credits and risk
f. Marketing Services

Considering the nature of services availed by EFS India and the fact that TDS has been deposited on the expense, the assessing officer seems to have erred in disallowing these expenses. This issue was also adjudicated by me in the order of appellant for AY 2013-14 vide order dated 09.10.2018 in appeal No. 44/18- 19, where these items were found to be not liable for TP adjustment. In AY 2014-15 no reference was made to the TPO. However, the principle of consistency is applicable. Considering the documents and judgements relied upon by the Appellant, Assessing Officer is directed to delete the disallowance of Rs. 2,56,09,858/-. Hence, this ground of appeal is allowed."

10. Before us, no new plea was taken by the Ld. DR. All his arguments in respect of the same addition have been dealt with by us earlier in our order of the preceding assessment year 2013-14. The submissions of the Ld. AR also remained the same.

11. We have once more carefully perused the orders of the Ld. AO/CIT(A) and arrived at the same conclusion that the Ld. CIT(A) has recorded cogent reasons supported by the precedents with which we agree. Hence we endorse his findings and hold that the impugned disallowance/addition is not justified and the Ld. CIT(A) rightly deleted the impugned addition/disallowance. Accordingly, the appeal of the Revenue for assessment year 2014-15 also fails.

12. In the result, both the appeals of the Revenue for assessment year 2013-14 and 2014-15 are dismissed.

Order pronounced in the open court on 11th April, 2022.

sd/-	**sd/-**
(DR. B.R.R. KUMAR)	**(ASTHA CHANDRA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMEBR**

Dated: 11/04/2022

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Copy forwarded to-

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	