

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'K' BENCH  
MUMBAI**

**BEFORE: SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
&  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.7136/Mum/2012  
(Assessment Year :2007-08)**

M/s. HSBC Asset Management (India) Pvt. Ltd., 3 <sup>rd</sup> Floor, Mercantile Bank Chamber, 16, Veer Nariman Road, Fort, Mumbai – 400 001	Vs.	Deputy Commissioner of Income Tax-1(1), Mumbai C-10/703, Pratyakshkar Bhavan, Bandra Kurla Complex, Mumbai-400 051
<b>PAN/GIR No.AABCH0007N</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**ITA No.7088/Mum/2012  
(Assessment Year :2007-08)**

Assistant Commissioner of Income Tax-1(1), Mumbai R. No.579, Aayakar Bhavan Mumbai	Vs.	M/s. HSBC Asset Management (India) Pvt. Ltd., 314, Dr. D.N.Road, Fort, Mumbai – 400 001
<b>PAN/GIR No.AABCH0007N</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Porus Kaka / Shri Divesh Chawla / Shri Tejas Mhatre
Revenue by	Shri Satya Pinisetty
<b>Date of Hearing</b>	<b>09/02/2022</b>
<b>Date of Pronouncement</b>	<b>20/04/2022</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M):**

These cross appeals in ITA No.7136/Mum/2012 & 7088/Mum/2012 for A.Y.2007-08 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-15, Mumbai in appeal No.CIT(A)-15/Arr-110/11-12 dated 20/09/2012 (Id. CIT(A) in short) against the order of assessment

passed u/s.143(3) r.w.s. 144C(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 31/01/2011 by the Id. Dy. Commissioner of Income Tax-1(1), Mumbai (hereinafter referred to as Id. AO).

2. Though the assessee has raised several grounds of appeal, the only effective issue to be decided in this appeal is with regard to the transfer pricing adjustment made in respect of international transaction on provision of non-binding investment advisory services by the assessee.

3. We have heard rival submissions and perused the materials available on record. The facts as stated in the order of the Id. TPO are as under:-

The assessee company was incorporated on 12/12/2001 as a private limited company in India. HSBC Securities & Capital Markets (India) Private Limited holds 75 percent of the share capital of the Company and remaining share capital is held by resident Indian individuals. The assessee's principal activity is to act as an investment manager for HSBC Mutual Fund in India. The assessee manages the investment portfolio and provides various administrative services to the Fund. The assessee is also engaged in providing portfolio Management services to High Net Worth Individuals (HNIs). It also acts as an investment advisory manager for its Associated Enterprise (AE).

During the year, the following international transactions were entered into by the assessee with its associated enterprises:

Sr. No.	Name of the Associated Enterprises	Nature of International Transaction	Amount (in Rs.)
1.	The Hongkong and Shanghai Banking Corporation Limited - India Branches	Sales of headsets and telesets	290,226
2		Brokerage paid	20,762,796
3		Bank charges	225,122
4	HSBC Investments (Hongkong) Limited	Advisory fees received / receivable	108,740,842
5	Sinopia Asset Management (Asia Pacific) Limited	Investment advisory fees paid	526,918
6	The Hongkong and Shanghai Banking Corporation Limited - India Branches, India Branches	Rent and utilities charges paid	21,713,849
7		Reimbursement towards credo costs	900,000
8	HSBC Group Investment Business Limited, London	Cost allocation towards Central and Regional support	11,842,942
9		Cost Allocation towards staff training	507,865
10	The Hongkong and Shanghai Banking Corporation Limited- Hongkong Branches	Cost allocation towards software development & other IT services	18,258,074
11	HSBC Investments (Hong Kong) Limited	Cost allocation towards Risk Management Support.	772,686

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3.1. In respect of provision of non-binding investment advisory services to its AEs and advisory fees received thereon to the extent of Rs.10,87,40,842/-, the Id. TPO observed that during the year, the assessee has rendered non-binding investment advisory services to its associated enterprise and received a sum of Rs. 10,87,40,842/-. Based on the contractual arrangement, the assessee was allowed to earn margin as a percentage of the fund for which the assessee has provided non-binding advisory services.

3.2. Based on the functional analysis and the available comparable data, the assessee selected the Transactional Net Margin Method (TNMM) using net cost plus mark-up ("NCP") as the Profit Level Indicator (PLI) as the Most Appropriate Method (MAM) to review the arm's length nature of assessee's international transactions of provision of non-binding investment advisory services from an Indian transfer pricing perspective.

3.3. Based on the Transfer Pricing Study Report (TPSR), a set of 6 independent companies that perform broadly similar functions as carried out by assessee were selected. The weighted average NCP earned by comparable independent companies range from (-) 16.76 per cent to 16.85 per cent with arithmetic mean of 9.68 per cent.

3.4. The Id. TPO observed that assessee had earned a NCP of 203.34% from the provision of non-binding investment advisory services it rendered to its AE. The Id. TPO rejected the segmental reporting of the assessee and benchmarked the international transaction with AE at entity level. The Id. TPO determined the final list of comparable companies

engaged in the business of asset management and selected 15 comparable companies thereon and arrived at the arithmetic mean margin of the comparables at 68.93% as under:-

Sr. No.	Name of the Company	NCP%
1	Canbank Investment Management Services L.	40.44
2	HDFC Asset Management Company Limited	113.76
3	IL & FS Investment Managers Ltd.	97.90
4	Jeevan Bima Sahayog Asset Management Company Ltd.	NA
5	Kotak Mahindra Asset Management Co. Ltd.	20.34
6	ICICI Prudential Asset Management Company Ltd.	42.27
7	Principal PNB Asset Management Company P. Ltd	31.78
8	Reliance Capital Asset Management Limited	51.26
9	S R E I Venture Capital Limited	223.35
10	SBI Fund Management Private Limited	51.48
11	Sundaram BNP Asset Management Company Ltd	83.66
12	UTI Asset Management Company private Limited	70.56
13	Unit trust of India Investment Advisory Services Ltd	134.17
14	Taurus Asset Management Company Ltd.	-51.21
15	Tata Asset Management Limited	55.25

	Arithmetic Mean	68.93

3.5. Accordingly, the Id. TPO determined the transfer pricing adjustment of Rs.3,24,26,766/- by using Transactional Net Margin Method (TNMM) at entity level for benchmarking as under:-

The entity level TNMM is worked out as under:-

<b>Particulars</b>	<b>Amount (Rs.)</b>
<b><u>Income</u></b>	
Investment Advisory Income (AE Income)	108,740,842
Other Income as per financial (Non-AE Income)	538,528,357
Total Income as per Financials	647,269,199
<b><u>Expenses</u></b>	
Total expenses as per Financials	563,785,393
Net Profit	83,483,806
NCP (%)	14.81 %
[i.e. Net Profit / Total Expenses as per financial %]	

Accordingly, the adjustment worked out is as follows

<b>Particulars</b>	<b>Amount (Rs.)</b>
Total cost as per financial (A)	563,785,393
NCP Mark-up as per comparable @ 68.93%	388,617,271
Total Revenue as per comparable (C=A+B)	952,402,664

Revenue as per financials (from above table)	647,269,199

Particulars	Amount (Rs.)
(D)	
Difference in Revenue (E = C- D)	275,032,449
% of AE Income with total revised income (D)	11.79
Amount of Adjustment [C*D]	32,426,766

3.6. We find HSBC AMC (assessee herein) has rendered non-binding investment advisory services to HSBC Investments (Hongkong) Ltd., for the HSBC Gilt India Fund (HGIF) Indian equity fund. The assessee has obtained SEBI concurrence vide letter dated 21/09/2004 to provide the aforesaid services in respect of the off-shore funds. The assessee provided non-binding investment advisory services to HSBC (HK) in respect of certain funds managed by HSBC(HK) which invests in equity and equity equivalent securities of companies listed on stock exchange or other regulated markets of India. The funds in respect of which HSBC (HK) had approached HSBC AMC (assessee herein) for providing investment advisory services are collectively referred as "off-shore funds". The activities performed by assessee under the investment advisory services agreement primarily consist of rendering non-binding investment advisory services to HSBC (HK) and assessee is not be held responsible in any manner for the investment decisions taken by HSBC (HK) on the basis of advisory services provided. The assessee explained the entire process involved in rendering its functions before the lower authorities as under:-

- *HSBC HK requires details regarding potential Indian investee companies in which HSBC HK can invest. The process of selection of potential companies begins with their identification. HSBC AMC collects information regarding potential sectors across the various industries, prospective companies and capable management groups, which may be considered for evaluation purposes, bearing in mind the investment criteria of HSBC HK,*
- *Based on the investment criteria, HSBC AMC shortlists the companies based on information from its own network and various channels like newspapers, articles published in journals/maga/Jnes, bankers etc. ...*
- *HSBC AMC organises the conferences / meetings with the potential investee companies / public sector units to discuss on HSBC HK proposed investment in India.*
- *The companies (compiled as above) are then further evaluated by HSBC AMC by analyzing their past performance, growth potential of both the company and the industry in which it is operating and several other factors. For this purpose, HSBC AMC interacts with the potential investee companies. This process enables HSBC AMC to shortlist companies for further analysis based on various parameters.*
- *Further, HSBC AMC prepares a detailed presentation covering issues regarding the potential investee company's fundamentals, financial position, etc. for further review of HSBC HK.*
- *Based on the due diligence report of selected proposed investee companies, the investment committee of HSBC HK evaluates the various proposal based on the advice of HSBC AMC for making investment in India. Based on the decision taken by the committee, HSBC HK takes the final decisions for accepting or rejecting HSBC AMC 's proposal.*
- *HSBC AMC also assists HSBC HK in monitoring the performance of the existing or new investee companies. HSBC AMC helps HSBC HK in preparing quarterly reports comprising operating results, financial positions and marketing prospects, and annual statements of audited accounts of investee companies.*
- *HSBC AMC advises HSBC HK on ensuring compliance with relevant statutory or legal or regulatory requirements which may exist in India to facilitate the investment by HSBC HK into India.*

3.7. The functions performed by assessee as detailed hereinabove are not disputed by the Revenue before us.

3.8. It was submitted that assessee does not undertake any significant research and development in relation to the transactions under consideration that may have lead to the development of non-routine intangibles. Accordingly, the assessee does not own any significant non-

routine intangibles for rendering investment advisory services. It was also submitted that assessee is a low risk service provider as it is rendering only non-binding investment advisory services to its AE. We find that assessee had selected comparable companies for benchmarking the aforesaid provision of non-binding investment advisory services by taking the comparable companies engaged in investment advisory sector. But the same had been rejected by the Id. TPO and the Id. TPO included 15 comparable companies as detailed hereinabove and benchmarked the assessee's international transaction and determined the ALP thereon. But we find that the entire list of 15 comparable companies chosen by the Id. TPO had been rejected by this Tribunal in the case of Carlyle India Advisors Pvt. Ltd., vs. ACIT reported in 53 SOT 267(Mumbai) dated 04/04/2012. In the said Tribunal order, IDC India Ltd., which was included as a comparable by the assessee was considered as a good comparable with assessee providing non-binding investment advisory services. It is pertinent to note that services rendered by the assessee are similar with the services rendered by Carlyle India Advisors Pvt. Ltd., This Tribunal order in 53 SOT 267 was subsequently approved by the Hon'ble Jurisdictional High Court reported in 32 taxmann.com 23 dated 22/02/2013. We find that in yet another decision, the Hon'ble Jurisdictional High Court in the case of PCIT vs. Blackstone Advisors India Pvt. Ltd., reported in 114 taxmann.com 220 (Bombay High Court) dated 11/03/2019 had approved the decision of Mumbai Tribunal, wherein, ICRA Management Consultancy Services Ltd., was sought to be included as a good comparable with an assessee engaged in providing investment sub-advisory services which are similar to non-binding investment advisory services provided by the assessee herein. It is pertinent to note that ICRA Management Consultancy Services Ltd., was also included as a comparable by the assessee in its TP study report.

3.9. We are inclined to agree to the arguments advanced by the Id. AR that if all the 15 comparables chosen by the Id. TPO are rejected ; IDC India Ltd and ICRA Management Consultancy Services Ltd., are included, the assessee's margin would be well within the tolerance band of +/-5% of the comparables' margin. In the aforesaid decision relied upon, both ICRA and IDC had been sought to be included as a good comparable with assessee's providing non-binding investment advisory Services. Hence, they are directed to be included as a good comparable with the assessee. Similarly, 15 comparables chosen by the Id. TPO were rejected in the aforesaid decision. This fact was not disputed by the revenue before us. Accordingly, the Id.TPO is hereby directed to exclude those comparables. Accordingly, the assessee's margin would be well within the tolerance band of +/-5% with the comparables margin as stated by the Id. AR. Accordingly, there would be no need for making any adjustment to arm's length price in respect of provision of non-binding investment advisory services. The Id. TPO is hereby directed to delete the addition made in this regard. In any case, we find that the Id. TPO grossly erred in taking entity level TNMM for the purpose of benchmarking instead of confining himself only to international transaction carried out with the AEs. The entire evidences in this regard were duly submitted by the assessee vide pages 405-450 of the paper book filed before us together with the workings thereon. Hence, the observations of the Id. TPO that the details were not made available by the assessee which warranted him to resort to entity level benchmarking is factually incorrect. Accordingly, the grounds raised by the assessee are allowed.

**ITA No.7088/Mum/2012- Revenue Appeal (A.Y.2007-08)**

4. The ground No.1 raised by the Revenue is challenging the action of the Id. CIT(A) directing the Id. TPO to exclude Unit Trust of India Investment Advisory Services Ltd., from the set of comparables.

4.1. We have heard rival submissions and perused the materials available on record. We find that all the 15 comparables chosen by the Id. TPO has been directed to be removed in the assessee appeal hereinabove. Hence, the adjudication of ground No.1 raised by the Revenue becomes academic.

5. The ground No.2 raised by the Revenue is challenging the action of the Id. CIT(A) in deleting the disallowance of Rs.1,18,42,942/- being cost allocation towards central and regional support services and Rs.91,29,037/- being 50% of Rs.1,82,58,074/- towards software development and other IT services.

5.1. We have heard rival submissions and perused the materials available on record. We find that assessee has received services from HSBC (HK) and HSBC Group Investment Business Ltd., (London), (HSBC, London) towards software development and other IT services for Rs.1,82,58,074/- and central and regional support services for Rs.1,18,42,942/-. The assessee in its TP study report determined its international transactions with HSBC(HK) and HSBC(London) to be in consonance with arm's length principle. The assessee submitted the TP study report and other requisite information together with detailed explanations and submissions and evidences before the Id. TPO that were called upon from time to time. For providing aforesaid services, both HSBC (HK) and HSBC (London)

have charged certain costs to the assessee based on appropriate allocation key. The details of cost allocation keys used for the purpose of allocation of cost to the assessee were duly documented in the TP study report and were submitted before the Id. TPO. In fact, the Id. TPO asked the assessee to furnish the details of cost allocation such as brief description on the nature of service availed, copy of agreement, working sheets of cost allocation and other relevant documentary evidences. In response thereto, the assessee made detailed submissions vide letter dated 28/03/2010 wherein it submitted various documentary evidences establishing the fact that assessee had actually availed the services from AEs and that the cost has been allocated by using appropriate allocation keys for the year under consideration. The assessee also submitted the copy of agreement, copy of invoice on sample basis as required by the Id. TPO. In respect to the further show-cause notice issued by the Id. TPO, the assessee provided further detailed submissions vide letter dated 15/10/2010 containing the details of working sheet issuing the allocation of cost along with basis of allocation cost adopted. The assessee also provided the details of benefit test as regards both the cost allocation transactions as required by the Id. TPO and global transfer pricing policy was also submitted to establish the fact that the cost has been properly allocated and accordingly, it was submitted that the transactions carried out by the assessee were at arm's length. No further queries were raised by the Id. TPO thereafter. Infact, the Id. TPO himself has recorded in para 8 d of his order that on perusal of the details submitted by the authorised representative of the assessee, it was observed that IT servers are located at UK for which payment is to be made to AE in Hong Kong and that since all the details regarding the basis of gross allocation base of the cost has not been submitted, it was not possible to ascertain whether Indian entity has been charged at arm's length. Accordingly, the Id. TPO

concluded that the transactions of cost allocation was not at arm's length and proceeded to make an adhoc disallowance of 50% of Rs.1,82,58,074/- and proposed an adjustment of Rs.91,29,037/- thereon. Similarly, in respect of determination of ALP of Central and Regional support services availed by the assessee, the Id. TPO determined the ALP of the said international transaction at Rs.Nil and made an adjustment of Rs.1,18,42,942/- in the order passed u/s.92CA(3) of the Act.

5.2. From the perusal of the above facts, which remain undisputed and uncontroverted by the Revenue before us, we find that the entire transfer pricing adjustment in respect of cost allocation has been made by the Id. TPO completely on an adhoc basis without carrying out the benchmarking analysis by following any of the prescribed methods provided in the statute. We find that during the year end consideration the assessee had incurred software development and other IT service related expenses of Rs.1,82,58,074/-. It was submitted that HSBC (HK) has rendered certain technology and support services including accessing, storing or processing of data to HSBC group entities located all over the globe. An agreement dated 01/02/2006 to this effect has been entered into between the parties. The expenses incurred by HSBC (HK) for providing these services were allocated without any mark-up to the HSBC group entities based on actual usage of computer resources in terms of computer unit. It was also submitted that technology and support services were provided by the AE to the assessee from time to time pursuant to submission of work, which may include development services and IT system services. The various other support services rendered by AE to the assessee are as under:-

- *IT Hardware Support- It ascertains the requirements for routers for efficient load handling;*
- *Helpdesk for email and other communication queries and new requests handling;*

- *Configuration of engineering software's and tools required in business;*
- *Helpdesk for common software's used;*
- *Data-base administration support;*
- *Upgradation of platforms and servers;*
- *Roll-outs for technology enabled solutions;*
- *Negotiating for enterprise licenses resulting in price-benefits passed on to the Appellant (prices were fixed on global basis);*
- *24x7 support and onsite warranty for all enterprise solutions as a part of global negotiations.*

5.3. It was specifically submitted that with respect to the above services, the cost allocation that has been made to the assessee was purely based on cost to cost basis based on actual usage. Further, we find that assessee had submitted the following documents to the Id. TPO to demonstrate the fact that services had indeed been obtained from the AE as under:-

- *Copy of the inter-company agreement for providing above mentioned services is attached herewith as Annexure G.*
- *Copy of the invoice or debit notes raised by HSBC HK along with the working sheet showing the allocation of costs towards the various IT costs such as data centre cost, distributed support cost and IT Development cost are attached herewith as Annexure H.*
- *On sample basis, with regard to IT costs, we are providing herewith the details such as project name, total cost, basis of allocation and the name of beneficiaries as Annexure I. "*
- *Standard allocation methodology for each type of IT support and IT services along with the details of relevant cost pool and unit of cost computation is attached herewith as Annexure J.*

5.4. Hence, it could be safely concluded that assessee had indeed availed the aforesaid services and derived benefits thereon by incurring the cost paid to AE on the basis of cost allocation based on cost allocation case depending on actual usage without any mark-up thereon. Hence, the assessee duly discharged its onus of justifying the

claim of expenses paid to its AE towards cost allocation of software development and other IT services. In any case, the Id. TPO ought not to have disallowed 50% of the said expenditure on an adhoc basis. The Id. TPO is duty bound to determine the ALP of an international transaction only by following any of the five prescribed methods provided in Rule 10B of the Income Tax Rules and not otherwise. This issue is no longer res integra in view of the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Johnson & Johnson Ltd,. reported in 80 taxmann.com 337 (Bombay High Court) dated 07/03/2017 wherein it was held as under:-

*4. Regarding question (D) :—*

- (a) *The respondent assessee paid to its Associated Enterprises (AE), technical know how royalty of 2%. The Transfer Pricing Officer (TPO) by order dated 24th March, 2005 restricted the technical know how royalty paid by the respondent assessee to its AE at 1% instead of 2%, as claimed. In terms of the determination dated 24th March, 2005 of the TPO on the above issue amongst others, an assessment order dated 28th March, 2005 for the subject Assessment Year was passed by Assessing Officer under Section 143(3) of the Act.*
- (b) *Being aggrieved with the order dated 28th March, 2005 of the Assessing Officer, the respondent assessee preferred an appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. By an order dated 22nd March, 2007, the appeal of the respondent assessee on the issue of royalty payable on technical know how, allowed the appeal. It inter alia held that restricting the royalty paid on account of technical know how to 1% was arbitrary and ad-hoc. Inasmuch as, there were no reasons justifying the restriction of the technical know how royalty paid by the respondent assessee to its AE at 1%. Moreover, it also records the fact that the TPO did not determine the ALP of the technical know how royalty by adopting any of the methods prescribed under Section 92C of the Act.*
- (c) *Being aggrieved, the Revenue carried the issue in appeal to the Tribunal. By the impugned order dated 20th August, 2013 the Tribunal dismissed the*

*Revenue's appeal inter alia upholding the order of the CIT(A).*

- (d) *We find that the impugned order of the Tribunal upholding the order of the CIT(A) in the present facts cannot be found fault with. The TPO is mandated by law to determine the ALP by following one of the methods prescribed in Section 92C of the Act read with Rule 10B of the Income Tax Rules. However, the aforesaid exercise of determining the ALP in respect of the royalty payable for technical know how has not been carried out as required under the Act. Further, as held by the CIT(A) and upheld by the impugned order of the Tribunal, the TPO has given no reasons justifying the technical know how royalty paid by the Assessing Officer to its Associated Enterprise being restricted to 1% instead of 2%, as claimed by the respondent assessee. This determination of ALP of technical know how royalty by the TPO was ad-hoc and arbitrary as held by the CIT(A) and the Tribunal.*
- (e) *In the above view, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.*

5.5. Respectfully following the same, we direct the Id. TPO to delete the transfer pricing adjustment made in the sum of Rs.91,29,037/- towards cost of allocation on an adhoc basis.

5.6. As stated earlier, the assessee had also incurred Central and Regional support services related expenses of Rs.1,18,42,942/-. We find that HSBC Group Investment Business Limited, London ('HSBC London') has rendered certain central and regional support services to HSBC group companies located all over the globe including the assessee. Under these services, HSBC London assisted HSBC Group entities to review the current business model and administration policy so as to improve the business efficiency and achieve process standardization. For these services, each of the HSBC Group entities was required to pay charges to HSBC London corresponding to the appropriate proportion of the internal operations

costs (absorbing both direct and indirect cost) plus a mark-up that has been determined by HSBC London in accordance with UK and OECD transfer pricing guidelines. For providing central and regional support services, HSBC London charged 5 percent mark-up on the internal operation costs incurred by HSBC London. Based on the type of expenses, the allocation of each of HSBC London's internal operational costs was computed using appropriate allocation key. However, where HSBC London is merely passing on the charges of the third parties, no mark-up was charged by HSBC London to HSBC group entities. These costs specially include the costs of HSBC Group's internal audit function which is charged to HSBC London.

5.7. We further find that the aforesaid charges were also paid by the assessee for availing services from its AE with regard to general management, marketing, risk management, finance, human resource services, investment services, product services and cash / treasury services. Further, we find that assessee had submitted the following documents before the Id. TPO it demonstrated the fact that services had indeed been obtained from the AE:-

- *Copy of inter-company agreement for providing central and regional, support services is attached herewith as Annexure K.*
- *Copy of invoices raised by HSBC London towards the above mentioned services availed by the Appellant is attached herewith as Annexure L.*
- *Actual working sheet showing the allocation of various costs towards the central management expenses and Intra-INV expenses which forms part of the invoices is attached herewith as Annexure M. This clearly evidences the charge of actual costs being allocated to the Appellant.*
- *Summary of expenses along with the recovery methodology adopted by HSBC London for allocating the costs as discussed hereinbefore is attached herewith as Annexure N.*

- *Working sheet showing the planning analysis demonstrating estimated costs being worked out for the services that were proposed to be rendered at the start of the year is attached herewith as Annexure O. This evidences bonafide intention by the Group to cross charge costs as accurately as possible.*
- *Further, appellant attached the copy of Transfer Pricing Documentation undertaken by HSBC Global Asset Management Ltd for managing the group's investment management (AMG) businesses as Annexure P. The purpose of undertaking the Transfer Pricing Documentation is to document, for transfer pricing purposes, the types of services being provided, the nature of the costs being charged and the mark-up applied. From the said Transfer Pricing Documentation, it is clear that various types of value added services are provided for the benefit of the Appellant.*
- *Further, appellant attached the working sheet showing the allocation of costs in support of the above-mentioned Transfer Pricing Documentation as Annexure Q.*

5.8. For providing the aforesaid services, the AE had charged certain costs on the assessee based on appropriate cost allocation key. In these circumstances, it could not be said that assessee had not provided any documentary services to support its claim of payment of cost allocation charges to its AE for availing various services as detailed hereinabove. In any case as stated supra, the Id. TPO had merely determined the ALP of this international transaction at Rs.Nil without benchmarking the same by using any of the prescribed methods provided in Section 92C read with Rule 10B of the Income tax Rules. Reliance again is placed on the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Johnson & Johnson Ltd., referred to supra. Accordingly, we direct the Id. TPO to delete the transfer pricing adjustment made in the sum of Rs.1,18,42,942/- in respect of cost allocation towards central and regional support services. The ground No.2 raised by the Revenue is hereby dismissed.

6. The ground No.3 raised by the Revenue is challenging the deletion of disallowance of prior period expenses of Rs.10,51,576/-.

6.1. We have heard rival submissions and perused the materials available on record. We find that assessee has incurred expenditure of business promotion activities like marketing expenses for promoting various schemes of HSBC mutual fund amounting to Rs.2,23,24,218/- during the year under consideration. Out of this, a sum of Rs.10,51,176/- were disallowed by the Id. AO on the ground that they are prior period expenses. The assessee submitted that out of aforesaid disallowance of Rs.10,51,176/-, invoices were received by the assessee during the F.Y.2006-07 relevant to A.Y.2007-08 for Rs.10,00,972/- and payments were also made thereon during the A.Y.2007-08. The evidences in this regard are enclosed in pages 117-119 of the paper book. From the evidences, it is evident that the said expenses have been crystallized during the year under consideration. It is not a case of the Revenue that these expenses were indeed claimed as deduction by the assessee in A.Y. 2006-07 itself. The genuineness of the expenditure together with its business purpose is not doubted by the Revenue. Hence, the same cannot be subject matter of disallowance merely on the ground that bills were dated prior to 31/03/2006 in respect of services rendered prior to 31/03/2006. Admittedly these invoices were received only during A.Y.2007-08 and the expenditure has been crystallized during the year. In these circumstances, the said expenditure cannot be disallowed. Accordingly, we direct the Id. AO to grant deduction for Rs 10,00,972/-.

6.2. The Id. AR during the course of arguments submitted that a sum of Rs.50,205/- represent expenses inadvertently accounted in the

A.Y.2007-08 which was rectified in A.Y.2007-08 as the same was already granted in A.Y.2006-07. Similarly, we find a sum of Rs.50,205 was debited on 10/04/2006 as expenditure on payment basis and the same was reversed on 11/04.2006 and credited to the same business promotion account. However, proper explanation has not been granted by the assessee in this regard. Hence, the disallowance made by the Id. AO treating the same as prior period expenses is hereby confirmed.

6.3. Accordingly, in view of the aforesaid observations, the ground No.3 raised by the Revenue is hereby partly allowed.

7. In the result, appeal of the Revenue is partly allowed.

### **8. TO SUM-UP**

<b>ITA NO.</b>	<b>AY</b>	<b>APPEAL BY</b>	<b>RESULT</b>
<b>7136/Mum/2012</b>	<b>2007-08</b>	<b>Assessee</b>	<b>Allowed</b>
<b>7088/Mum/2012</b>	<b>2007-08</b>	<b>Revenue</b>	<b>Partly Allowed</b>

Order pronounced on 20/04/2022 by way of proper mentioning in the notice board.

**Sd/-**  
**(VIKAS AWASTHY)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 20/04/2022  
KARUNA, sr.ps

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**