

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'C' PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1592/PUN/2019

निर्धारण वर्ष / Assessment Year : 2011-12

M/s. Faurecia Automotive Seating India Private Limited, Plot No. T-187, Pimpri Industrial Area, B.G. Block, Bhosari, Pune 411 026 PAN : AADCS8694Q	Vs.	ACIT, Circle-9, Pune
Appellant		Respondent

Assessee by Shri Ajit Jain and
Shri Siddhesh Chaugule
Revenue by Shri Sunil Kumar
Date of hearing 19-05-2022
Date of pronouncement 20-05-2022

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the final Assessment order dated 03-09-2019 passed by the Assessing Officer u/s.143(3) read with sections 144C(13) and 254 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2011-12.

2. The only issue raised in this appeal is against the transfer pricing addition of Rs.11,63,92,994/- made by the AO in the international transaction of "Professional Charges paid".

3. Succinctly, the factual matrix of the case is that the assessee filed return declaring total income of Rs.6.26 crore. Certain international transactions were reported in Form No. 3CEB. The Assessing Officer (AO) made a reference to the Transfer Pricing Officer (TPO) for determining the arm's length price (ALP) of the international transactions. The TPO took up the international transaction of "Professional Charges paid" with transacted value of Rs.11,63,92,994/-, which the assessee had aggregated with other transactions in applying the Transactional Net Margin Method (TNMM) method on aggregate basis. He did not concur with the assessee's aggregation approach and the consequent application of the TNMM. Hence, he proceeded to determine the ALP of the international transaction under Comparable Uncontrolled Price (CUP) method. Here it is necessary to mention that other international transactions have been accepted at ALP. Since the assessee could not establish the receipt of services to the satisfaction of the TPO, he determined Nil ALP of the international transaction. The assessee remained unsuccessful before the Dispute Resolution Panel (DRP). The matter was brought before the Tribunal. Vide order dated 22-02-2017 in the first round, the Tribunal restored the matter to the AO/TPO for deciding the issue afresh.

4. In the instant round of proceedings, the TPO observed that the assessee was engaged in manufacturing sliders in the Manesar plant and seat frames in the Pune plant used for vehicle seats. He called upon the assessee to establish the receipt of services from the Associated Enterprises (AEs) against which the payment of Rs.11.63 crore was made. The assessee submitted that it paid Rs.7.59 under the Service Agreement with Faurecia, France and Rs.4.04 crore under Cost Sharing Agreement with Faurecia, France. Under the Service Agreement, the assessee was provided various services. Since the assessee could not produce evidence of availment of services to the satisfaction of TPO and further as no benefit was found by him to have been received by the assessee from such services, the TPO held that no services were received and determined Nil ALP of the international transaction by applying the CUP method. The assessee remained unsuccessful before the DRP, which led it to approach the Tribunal.

5. We have heard the rival submissions and perused the relevant material on record. The issue under consideration is the ALP determination of the international transaction of 'Professional charges paid' for availing intra-group services, which the assessee had aggregated with other international transactions under the

TNMM, but the TPO segregated it and determined Nil ALP under the CUP method. As such, we need to answer if the TPO was justified in (i) segregating the international transaction under consideration; (ii) concluding that no services were availed by the assessee; and determining the Nil ALP.

I. WHETHER AGGREGATION APPROACH IN THE INSTANT CASE IS CORRECT?

6.1. Payment under the international transaction of “Professional Charges Paid” to its AE in France is a *quid pro quo* for the receipt of intra-group services availed by the assessee from its AEs. The assessee paid in respect of services received under two agreements with Faurecia, France, namely, Service Agreement and Cost Sharing Agreement. Under the Service Agreement, the assessee was provided services in the nature of General Management; Sales and Marketing; Accounting; Control and Tax; Legal Insurance and Real Estate; Human Resources; Production Purchasing; Manufacturing and Quality. Under the Cost Sharing Agreement, the AE rendered Research and Development services pertaining to Designing concepts; Developing Technical and Feasible concepts and Engineering studies etc. The assessee aggregated payment of intra-group services along with other international transactions of Purchase

of raw material components, Purchase of spare parts and Payment of Royalty etc. for demonstrating that all the transactions were at ALP. The TPO segregated the international transaction of “Professional Charges Paid” and proceeded to determine its ALP independently. The primary question is if the TPO was justified in segregating the international transaction under consideration.

6.2. Section 92(1) of the Act provides that any income arising from ‘an international transaction’ shall be computed having regard to its arm’s length price. Section 92C(1) provides for the computation of the ALP and mandates to follow one of the prescribed methods as the most appropriate method, which, *inter alia*, include the TNMM, as was applied by the assessee on aggregate basis. Payment for intra group services is admittedly a ‘transaction’ in terms of section 92F(v) of the Act. The term ‘transaction’ has been defined in Rule 10A(d) as including ‘*a number of closely linked transactions*’. It, therefore, boils down that the term ‘transaction’ also includes a plural of transactions. However, the caveat is that in order to cover plural of transactions within the ambit of the term ‘transaction’ under Rule 10A(d), it is *sine qua non* that such number of transactions must be closely linked. If they are not closely linked, then there can be no

question of their aggregation for the purpose of determining the ALP under the Rules.

6.3. In one sense, closely linked transactions mean similar or alike transactions of purchase or sale etc. of goods or services. To put it simply, if there are several transactions of, say, purchase of similar goods or goods with minor variations, then instead of finding the ALP of each such transaction individually, it satisfies the prescription of closely linked transactions if these are combined and benchmarked in an aggregate manner. The Hon'ble Punjab & Haryana High Court in *Knorr-Bremse India P. Ltd. VS. ACIT (2016)380 ITR 307 (P&H)* has dealt with three circumstances in which the aggregation is permissible. First, in case of a package deal where each item is not separately valued but all are given a composite price, these are to be taken as one international transaction. Two, where a number of transactions are priced differently but on the understanding that the pricing was dependent upon the assessee accepting all of them together (i.e. either take all or leave all), then also they should be viewed as one transaction. But it will be on the assessee to prove that although each is priced separately, but they were provided under one composite agreement. Three, where each component was priced differently, but they are inextricably linked in such a way that one

cannot survive without the other. The Hon'ble High Court held that merely because purchase of goods and acceptance of services leads to manufacture of final product, it does not follow that they are dependent transactions requiring aggregation.

6.4. On going through the nature of the international transaction of payment of Professional Charges under consideration, it is clear that the same is not closely connected with the other international transactions of Purchase of raw material components, Purchase of spare parts and Payment of Royalty etc. Further, it is not covered under any of the three situations as taken note of by the Hon'ble High Court. Here it is befitting to take note of the judgment of the Hon'ble Delhi High Court in *Magneti Marelli Powertrain India Pvt. Ltd. vs. DCIT (2016) 389 ITR 469 (Delhi)* holding that Royalty and technical assistance fee do not form part of a composite transaction and have to be treated as two separate transactions for computing their arm's length price.

6.5. On an overview of the nature of intra-group services availed by the assessee *vis-à-vis* the transactions of Purchase of raw materials and spare parts etc., along with Royalty, it gets overt that the international transaction under consideration is not closely linked with other transactions that the assessee aggregated with. The

contention of the Id. AR that the intra-group services should be clubbed with the other transactions as the Manufacturing was not possible without availing intra-group services is farfetched and cannot be accepted. If we accept the contention of the Id. AR for aggregation on the basis of some nexus between the receipt of intra-group services and the manufacturing activity, then each and every international transaction would require consolidation because all the transactions ultimately aim at carrying on the business activity. The aggregation can be justified in the case of closely linked transactions and not remotely linked transactions. Acceptance of the Id. AR's argument would set at naught the judicial decisions discussed above, which have countenanced the segregation approach. We, therefore, hold that the DRP was justified in upholding the view of the TPO in segregating the international transaction of "Professional Charges paid" to be processed independent of other international transactions.

II. WHETHER INTRA-GROUP SERVICES WERE AVAILED?

7.1. The TPO determined NIL ALP on the ground that the assessee did not furnish evidence of receipt of services and further no benefit was established by the assessee from receipt of services. In our opinion, the relevant consideration is the incurring of *bona fide* expenditure and availing the services, which may or may not lead to

increase in revenue. Application of “benefit test” is not warranted in determining the ALP of an international transaction of payment for intra-group services.

7.2. The TPO as also the DRP have held that the assessee did not avail any services. In this regard, we turn to the Services Agreement under which the assessee availed the services. This Agreement came into force from 01-01-2010. Exhibit-1 lists the nature of services as General Management, Communication; Sales and Marketing; Program management; Accounting, Control and Tax; Legal, Insurance and Real Estate; General Management of Information; Systems organization and Information System. The assessee has distinctly provided the description of services under each such head. Summary of the receipt of services is available at page 306 onwards of the paper book. The first head under which the assessee availed services is ‘General Management’. There is an e-mail dated 24-02-2011 pertaining to Marc Canarelli (Operations director of mechanisms division, France) who visited India in connection with setting up of Manesar plant. E-mail dated 21-03-2011 from Marc Canarelli provides his observations from the visit. Copy of trail of the e-mails in this regard has been provided at page 316 to 319 of the paper book. Then there is an e-mail dated 03-01-2011 inviting

Philippe Varlet (Vice President, HR, Faurecia Automotive Seating, France) to the assessee in India for business purpose. Copy of such e-mail is placed at page 320 of the paper book. Similarly, there are other General Management services. The next intra-group service is of 'Sales and Marketing'. There is an e-mail dated 19-01-2011 from Faurecia, Japan to the assessee in India discussing Changes/Modifications in the orders placed by Maruti. A copy of such an e-mail is available at pages 339 to 341 of the paper book. There is another e-mail for issuing nomination letter to Faurecia Management Company Ltd. Shanghai, China for Maruti discussing the quotation shared by China on behalf of Faurecia, India. There are series of e-mails under Sales and Marketing. The next is 'Program Management' services. There is an e-mail communication dated 09-07-2010 from Francis Dussuchale to some employee of the assessee regarding his visit to India for FES Audit and providing detailed purpose and schedule of visit. A copy of such an e-mail is available at page 446 of the paper book. Similarly, there are other FES Audit e-mails. There is another e-mail dated 06-12-2010 exchanged between the assessee's employee and an employee of French company requesting change of GL Account description and assigning, copy of such e-mail is available at page 557 of the paper

book. Under the heading `Legal, Insurance and Real Estate`, there is an e-mail dated 29-10-2010 from Legal Department of the Group France to the assessee highlighting the recommendations, observations and conclusions from the Fire audit conducted by legal team. Copy of such an e-mail is available at page 628 onwards of the paper book. There are series of other e-mails under this broader head. Similarly, there are e-mails under the heading `Human Resource` services giving details about the group's strategies, guiding principles and tools that will enable Faurecia to attract and appoint talent with necessary skills and qualifications. There are other e-mails containing document providing detailed description of career interview process. There is an e-mail dated 23-07-2010 from Andre Pierre to the assessee's employee in India providing job description for the position HSE Engineer. Similarly, there are series of e-mails under the heading `Production Purchasing, Manufacturing` delving into Plant Manager training Programme, Logistics, Welding Time plan, Control plan, Engineering functional milestone checklist etc. Similarly, there are e-mails under the heading `Quality`, which talk about Health, Safety and Environment Review Document, Quality Specifications, Quality self-assessment and Environment diligence assessment report.

7.3. Turning to the Cost Sharing Agreement, there are e-mails about Presentation- Design, Change proposal to solve S/R issue on Suzuki YN recliner assembly Latch modification. There are e-mails from pages 1206 to 1219 concerning change in Design recliner and latch lock for all Faurecia customers; details of changes made in the design and approval; SMC approval for change in latch design presentation. Then, there are e-mails regarding Securitization Rate (SR) training; Visit Report; Presentation-FAS Suzuki G2 pumping command cam broken; Manesar Layout workshop; Feedback on SMC query; YP test reports, etc. The above description of the necessary documents and e-mail communications running into more than 1000 pages of the paper book amply prove that the assessee availed services under the Service Agreement and Cost Sharing Agreement. The TPO referred to e-mails in a generalized manner without going into their contents. In our considered opinion, the detailed e-mail communications between the assessee and its AEs abundantly prove that the AEs rendered services to the assessee under the two Agreements, which the assessee undoubtedly availed. We, therefore, hold that the authorities below were not justified in coming to the conclusion that the assessee did not avail any services.

III. ALP OF THE TRANSACTION :

8.1. The assessee applied the TNMM on aggregate basis for showing that the international transaction under consideration was also at ALP. The TPO rejected such an aggregation and in our opinion rightly so for the reasons adduced *supra*. After rejecting the TNMM on aggregate basis, the TPO proceeded with the determination of the ALP of the transaction by applying the CUP method. In the absence of the assessee proving to his satisfaction that the services were actually availed, the TPO held the ALP of the international transaction at Nil under the CUP method. Ergo, it is ostensible that we are not confronted with a situation in which the TPO did not apply any of the specified methods for determining the ALP of the transaction, which would have otherwise vitiated his order. He expressly invoked the CUP method and then determined the Nil ALP because the assessee, in his opinion, did not prove the receipt of services. We have held hereinabove that the assessee did avail services. Once it is established that the assessee availed intra-group services, then the next step is to determine its ALP. No details about comparables of the international transaction were either provided by the assessee or taken note of by the TPO. In these circumstances, we set aside the impugned order on this count and

direct the AO/TPO to determine the ALP of the international transactions of “Professional Charges paid” afresh in accordance with law. It is hereby clarified that all the methods for determination of the ALP are open before the TPO, who is competent to adopt anyone of them. Similar is the position about the selection of tested party. After the advent of *Virtusa Consulting Services Private Ltd. Vs. DCIT (2021) 282 Taxman 95 (Madras)*, an assessee or its AE can be taken as a Tested Party depending upon the fact that which out of the two is a least complex party to the controlled transaction and facilitates the ALP determination in a proper manner. Needless to say, the assessee will be allowed a reasonable opportunity of hearing in such fresh determination of the ALP of the international transaction.

9. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the Open Court on 20th May, 2022.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 20th May, 2022
सतीश

आदेश की प्रतिलिपि □ प्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The respondent
3. The CIT(A)-13, Pune
4. The PCIT-5, Pune
5. DR, ITAT, 'C' Bench, Pune
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	19-05-2022	Sr.PS
2.	Draft placed before author	20-05-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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