

आयकर अपीलिय अधिकरण  
मुंबई पीठ "के"  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री एमालगण लेखा सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH " K", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
आअसं. 6112/मुं/2014 (नि. व. 2009-10)  
ITA NO. 6112/MUM/2014(A.Y.2009-10)

M/s. Damico Ship Ishima India Private Limited.  
A-202/203, City Point, J.B.Nagar,  
Andheri (East), Mumbai – 400 059  
PAN: AAICS-2005-C

..... अपीलार्थी/Appellant

बनाम Vs.

Assist. Commissioner of Income Tax.,  
Circle 9(1), Aaykar Bhavan, M.K.Road,  
Mumbai 400 020 .

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Jitendra Jain

प्रतिवादी द्वारा/Respondent by : Shri Satya Pinisetty

सुनवाई की तिथि/ Date of hearing : 07/02/2022

घोषणा की तिथि/ Date of pronouncement : 05/05/2022

**आदेश/ORDER**

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-15, Mumbai dated 16/07/2014 for the Assessment Year 2009-10.

2. The brief facts of the case as emanating from records are: The assessee is a subsidiary of Sirius Ship Management SRL, Geneva, Italy. The assessee is engaged in providing services pertaining to Ship Management, Ship Navigation,

Ship Operation, Ship Accounting, Ship Advisory/Supervision, implementation/ Maintaining/training of plant maintenance system, etc. The assessee entered into agreement with its AE Damico Societa Navigazione SPA SPA, Rome ,Italy for providing aforesaid services. The said agreement is dated 02/01/2007 and is at pages 40 to 45 of the paper book. The agreement spells out scope of services provided by the assessee. As per Clause IV.2 of the agreement, the services rendered by assessee are broadly categorized under following heads:

- (1) Planned maintenance configuration;
- (2) Planned maintenance implementation;
- (3) Planned maintenance start up;
- (4) Planned maintenance documentation;
- (5) Planned maintenance and ship board personnel; and
- (6) Planned maintenance management.

The assessee is required to furnish quarterly report on the activities and services provided. As per the agreement the assessee is remunerated for rendering Planned Maintenance (PM) Services @ USD 11,10,000 per month. During the period relevant to assessment year under appeal, the assessee entered into following international transactions with its Associated Enterprises (AEs):

- (1) Manpower Recruitment;
- (2) Technical Services for ship;
- (3) Services to Foreign Collaborators;
- (4) Reimbursement of Expenses; and
- (5) Seafarer's Salary Payment.

The Transfer Pricing Officer (TPO) after examining the transactions made adjustment in respect of; (i) Reimbursement of expenses Rs.14,40,822/- and (ii) Seafarers salary payment Rs.13,29,120/-. Based on the order passed by TPO dated 21/01/2013, the Assessing Officer passed assessment order dated 18/03/2013 u/s.143(3) r.w.s. 144C(3) of the Income Tax Act, 1961 [in short 'the Act'] . The assessee carried the issue in appeal before the CIT(A). The CIT(A) dismissed the appeal of assessee in toto and confirmed the addition. Now, the assessee is in second appeal before the Tribunal.

3. Shri Jitendra Jain appearing on behalf of the assessee submitted at the outset that he is not pressing ground No.1(c). In so far as ground No.1(a) and 1(b) assailing adjustment on account of reimbursement of expenses, the Id.Counsel for the assessee submitted that the TPO has proceeded on erroneous presumption that the expenses are not debited to P&L Account. Whereas, in fact these expenses have been debited to P&L Account. The Id.Counsel for the assessee referred to the P&L Account of the assessee for the year ended 31/03/2009. The Id.Counsel for the assessee pointed that under the head Operating Expenses, the expenditure have been debited. The Id.Counsel for the assessee further referred to Schedule-13 at page 12 of the Paper Book wherein various expenditure viz. Cost of Human Resources, Administrative Expenses, Advertisement and Sales Promotion Expenses, Traveling Expenses, etc. are mentioned. The Id.Counsel for the assessee further referred to the statement of P&L Account for the period ended 31/03/2009 at page 46, wherein under EMS/Crew training expenditure, the details of expenditure are given. The Id.Counsel for the assessee contended that in subsequent Assessment Years, i.e. Assessment Year 2010-11 and 2011-

12, the CIT(A) has allowed the expenses and the same has been accepted by the Revenue.

3.1 In respect of ground No.2, the Id.Counsel for the assessee submitted that the TPO/CIT(A) has erred in holding that the assessee has not benchmarked the transaction of providing services of Crew Remittance and hence, made adjustment of Rs.13,29,942/-. The ALP is determined by estimating Rs.3/- per. Thousand rupee of crew remittance. The Id.Counsel for the assessee submitted that the assessee has offered Rs.26,81,537/- on account of income received from Services to Foreign Collaborators. The income from this activity is also reflected in notes to account under the head 'related party disclosure' , as well as in Form 3CEB at page-26 of the paper book. The Id.Counsel for the assessee pointed that the same has been reflected in P&L Account under the head Other Income, the details are given in Schedule -12. The Id.Counsel for the assessee referred to page 12 of the Paper Book, wherein under Schedule -12 income from Services to Foreign Collaborator has been shown. The Id.Counsel for the assessee explained that the assessee received salary from foreign ship owners which were to be distributed to the crew working on the ship. The said amount was received in HSBC Bank account of the assessee. As per the instruction of the assessee, the bank would transfer salary to the individual account of the crew. The Id.Counsel for the assessee referred to the bank statement of HSBC Bank at page -55 of the Paper Book to show that the amount has been received by the assessee from its AE and the instructions to the Bank for transferring the funds to the individual account at page 59 to 60 of the paper book. The Id.Counsel for the assessee further referred to the statement showing income from Foreign Collaborators for the period ended 31/03/2009 at page -71 of the

paper book. The Id.Counsel for the assessee further submitted that the assessee earned USD 12 per Seafarer and the same has been reflected in the P&L Account under the head Service to Foreign Collaborators. The Id.Counsel for the assessee further submitted that Seafarers salary is not routed through P&L Account and only the service charges received by the assessee are credited to the P&L Account under the head 'Other Income'. The assessee had explained this transaction before the CIT(A), however, the CIT(A) failed to appreciate the same. The Id.Counsel for the assessee submitted that in Assessment Year 2010-11 the TPO has accepted that the assessee is charging for the services rendered for remitting salary to the crew and hence, made no addition.

4. Per contra Shri Satya Pinisetty representing the Department defended the impugned order. The Id. Departmental Representative made alternate prayer that the issues can be restored to CIT(A) for re-examination.

5. We have heard the submissions made by rival sides and have perused the orders of authorities below. In ground No.1 of appeal, the assessee has assailed adjustment of Rs.14,40,822/- on account of Reimbursement of Expenses. A perusal of the TPO order shows that the TPO adopted Arms Length Price (ALP) margin of 27.90% on increased operating cost and made adjustment of Rs.14,40,822/- . The TPO has considered the cost as only pass through expenses without appreciating the fact that these are expenses incurred by the assessee for earning fee for providing PM Services. The Id.Counsel for the assessee pointed that in Assessment Year 2010-11 and Assessment Year 2011-12, the CIT(A) has granted relief to the assessee and the Revenue is not in appeal. A copy of the order passed by CIT(A) dated

13/02/2015 for Assessment Year 2010-11 is placed on record at page -101 of the paper book. The relevant extract of the findings of CIT(A) are reproduced herein below:

*“6. I have considered the AO’s order well as the appellant A,R’s submission. Having taken note to the same, I find that the expenses have been reimbursed to the appellant by its AE for whom the appellant has provided PMS services. As detailed in the appellant’s submission, it is evident that these expenses which were reimbursed were exclusively incurred by the appellant specially earning the income of technical fees in terms of agreement with the A.E. Therefore, the expenses which were termed as international transaction by the TPO for determining the mark up for profit, in my considered view cannot be cost base of the appellant. Having taken note of the decision of the Hon’ble Delhi High Court in the case of Cushman and Wakefield (India) Pvt Ltd, [2014] 367ITR 730 (Del), I consider it proper and appropriate to hold that the proposed adjustment made by the TPO and the addition made thereof by the AO was completely unjustified and inaccurate. Accordingly, the addition so made by the AO is deleted. In the result, this ground of appeal is allowed.”*

The CIT(A) in assessment year 2011-12 has allowed the claim of assessee and deleted the adjustment for identical reasons. The Id.Counsel for the assessee stated at Bar that the Department has accepted the order of CIT(A) in assessment year 2010-11 and assessment year 2011-12 as no appeal is filed against the said orders. The Revenue has not been able to controvert the fact that in subsequent Assessment Years, the Revenue has accepted the order of CIT(A) in allowing the claim of assessee in respect of cost incurred for providing PM Services. In the facts of the case we see no reason to sustain the adjustment hence, ground No.1(a) and 1(b) of the appeal are allowed.

6. The Id.Counsel for the assessee stated at Bar that he is not pressing ground No.1(c) of the appeal, according the same is dismissed as such.

7. In ground No.2 of appeal, the assessee has assailed adjustment of Rs.13,29,942/- on account of fees charged for remittance to Seafarers salary. We find that the TPO and the Assessing Officer has made adjustment on this account under the presumption that for providing services of Crew

Remittance, the assessee has not received any service charges. The assessee before us after referring to the P&L Account for the Financial year ended on/31/03/2009 has demonstrated that for disbursing of Seafarers salary, the assessee has earning USD 12 Per Seafarer. This fact is evident from sample invoice placed on record by the assessee at pages 72 to 75 of the paper book as well as the statement showing income from foreign collaborators at page 71 of the paper book. The assessee has further pointed that income from Services to Foreign Collaborators is reflected in P&L Account under the head 'Other Income'. It is further pointed that in subsequent assessment year i.e. 2010-11, the TPO has accepted this transaction and no adjustment has been made. The order of TPO dated 20/01/2014 for assessment year 2010-11 is added at page – 86 of the paper book. From perusal of document on record, it is evident that assessee has charged for the services rendered in respect of crew remittance, hence, the adjustment made by the TPO on wrong assumption of facts is uncalled for, hence, deleted. The assessee succeeds on ground No.2.

8. In the result, appeal by the assessee is partly allowed in the terms aforesaid.

Order pronounced in the open court on Thursday the 05<sup>th</sup> day of May, 2022.

Sd/-

( M. BALAGANESH)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 05/05/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

**\प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/The CIT(A)-
4. आयकर आयुक्तCIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt.Registrar)ITAT, Mumbai