

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER  
AND  
Ms. PADMAVATHY S, ACCOUNTANT MEMBER**

IT(TP)A Nos.729/Bang/2017
Assessment year : 2012-13

Trane Technologies India Pvt. Ltd., [formerly Ingersoll Rand Climate Solutions Pvt. Ltd.], <b>PAN : AACCS 9663E</b>  8 <sup>th</sup> Floor, Tower D, IBC Knowledge Park, No.4/1, Bannerghatta Main Road, Bengaluru – 560 029.	Vs.	The Assistant Commissioner of Income Tax, Circle 3(1)(1), Bengaluru.
ASSESSEE		RESPONDENT

Assessee(s) by	:	Shri Ankur Pai, CA
Respondent by	:	Shri Sumer Singh Meena, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	13.07.2022
Date of Pronouncement	:	25.07.2022

**ORDER**

*Per Padmavathy S., Accountant Member*

This appeal of the assessee is against the final orders of assessment, dated 31.01.2017 passed by the AO u/s. 143(3) r.w.s. 144C(13) of the Income-tax Act, 1961 [the Act] relating to the assessment year i.e., AY 2012-13.

2. The assessee is engaged in the business of providing installation, commissioning and other services for chillers and building automation systems (“BAS”) equipment sold by its AE in India including provision of repair and maintenance services. The assessee filed return of income on 26.11.2022 declaring total income of Rs.19,62,36,020. In pursuance of the amalgamation of Trane Technologies India Pvt. Ltd., with the assessee (Ingersoll-Rand Climate Solutions Private Limited), as per order of the Hon’ble Delhi High Court dated 1.4.2011, the assessee filed revised return of income on 6.8.2013 at a loss of Rs.2,78,32,580.

3. The assessee has entered into the following international transactions with its Associated Enterprise (AE)

S No	Nature of international transaction	Amount (Rs.)	Method adopted by Assessee
1	Income from service provided for installation / commissioning of chillers	4,93,16,224	TNMM
2	Import of tools for servicing of chillers and BAS equipment	2,01,60,127	TNMM
3	Sale of finished goods (spare parts) under warranty charged back to the AE	1,43,80,118	TNMM
4	Import of consumables and spare parts	8,80,62,239	TNMM
5	Cost contribution	45,11,845	TNMM
6	Reimbursement of expenses	10,72,445	TNMM
7	Purchase of traded goods	12,99,71,651	RPM
8	Marketing and support services	16,48,21,456	TNMM
9	Recovery of expenses	32,27,197	No method
10	Trade receivables	1,53,12,625	No method
11	Trade payables	16,77,42,891	No method

4. The case was selected for scrutiny and reference was made to the TPO. The TPO vide order dated 25.1.2016 made the following adjustments :-

S No	Nature of international transaction	Amount (Rs.)
1	Cost contribution on account of management fees	45,11,845
2	Purchase of traded goods	1,76,55,963
3	Installation and commissioning segment	5,29,35,751
		<b>7,51,03,559</b>

5. The AO passed the draft assessment order dated 21.03.2016 with proposed TP adjustment of Rs.7,51,03,559/- and also proposed adjustment towards interest attributable to inventory of Rs.1,54,64,904/-. Aggrieved the assessee filed its objections before the DRP. The DRP upheld the order of the TPO towards cost contribution on account of management fees. In relation to the contention of the assessee that the goodwill was pertaining to the Distribution segment and not Installation and commissioning segment, the DRP directed the TP Officer to verify the same and consider the depreciation on purchase of goodwill while computing the operating cost and operating profit of the Distribution of Cold Storage Equipment Segment (Trading segment). The DRP provided relief to the assessee and directed the deletion of addition made on account of interest attributable to inventory. The directions of the DRP enhanced the TP adjustment to Rs. 8,32,57,562. Consequently the AO passed the final assessment order. Aggrieved, the assessee is in appeal before the Tribunal.

6. Ground Nos. 1 & 2 are general in nature requiring no specific adjudication.

**Adoption of Resale Price Method (RPM) as Most Appropriate Method(MAM) for distribution of Cold Storage Equipment Activity (Trading Segment) – Ground 7**

7. The assessee imports traded goods from its AE for its trading / distribution activities and is responsible for undertaking all the logistic management activities including transportation from ports, customs formalities, ensuring proper warehousing of its finished goods, etc. The assessee adopted RPM as the most appropriate method (“MAM”) for determining the arm’s length nature of the international transactions undertaken with respect to the segment of distribution of Cold Storage Equipment (“Trading segment”) to its AEs. After applying certain filters, the search of the databases yielded a set of 3 comparable companies with arithmetic mean profit margin of 11.56 percent (Refer page 506 of Paper book). Since the gross profit margin of the assessee at 19.71% was higher than average gross profit margin of the comparable companies at 11.56%, the international transactions in the Trading segment were concluded to be at arm’s length.

8. The TPO during the course of TP proceedings rejected the RPM and chose TNMM as MAM. The TPO computed the operating margin of the Assessee at -10.79%. The TPO further selected 2 comparables with arithmetic mean of 1.16% and arrived at a TP adjustment of Rs.1,76,55,963 by stating that there was no response from the assessee to the show cause issued.

9. The DRP upheld the TP adjustment on the basis that the assessee has paid substantial amount as goodwill for acquisition of business in this segment and the payment of goodwill will distort the result in RPM, thereby confirming the application of TNMM as MAM for benchmarking the purchases made by the assessee in this segment. Further, the DRP while considering the contention of the assessee that the goodwill was not pertaining to the Installation and commissioning segment, the DRP directed the TPO to verify the same and consider the depreciation on purchase of goodwill while computing the operating cost and operating profit of the Distribution of Cold Storage Equipment Segment (Trading segment). With regard to assessee's objection that sufficient opportunity was not provided by the TPO, the DRP held that sufficient opportunity was provided in the DRP proceedings, which are extension of the TP proceedings and assessee cannot have any grievance on this count. The directions of the DRP resulted in enhancement of the TP adjustment to Rs. 7,87,45,717.

10. Before us, the Id. AR reiterated that the TPO did not afford sufficient opportunity to the assessee to justify the adoption of RPM. The TPO's show cause notice dated 21.1.2016 was received by the assessee on 28.1.2016 for reply by 25.1.2016 [pg. 96 of PB] and therefore there was no proper opportunity to the assessee to justify the adoption of RPM. b. The assessee further submits that the DRP has raised the issue of the effect of goodwill on RPM for the first time in its order and the assessee did not get sufficient opportunity to file its submissions to the same. The Id. AR drew our attention to the order of

the DRP in page 9 where it is observed that the assessee has been adopting RPM as the MAM for the Trading segment in the preceding years till AY 2008-09 and the methodology was accepted by the TP Officer. The Id. AR submitted that the assessee is engaged in trading of HVAC, chillers and residential cooling solutions and operates only as a pure reseller and does not add any value to the product which could be seen from the P&L account where there are no purchases with any addition [pg. 444 to 464 of PB]. Without prejudice to the above the Id. AR alternatively, submitted that in case TNMM is decided as MAM, then the assessee should be allowed to consider depreciation on goodwill as non-operating expense for computing the margin of the assessee.

11. The Id. DR supported the orders of the lower authorities.

12. We have considered the rival submissions and perused the material on record. We notice that this issue was dealt with by the coordinate Bench of the Tribunal in the case of *AO Smith India Water Heating Pvt. Ltd., in IT(TP)A No.176/Bang/2015 dated 8.2.2018* and it was held as under:-

“16. Having heard the rival submissions and from a careful perusal of the record, we find that undisputedly the assessee is a trading company and carries out distribution and marketing of products of AOS group in India. It imports water filters from AO Smith China and sells them in India. AOSmithIndia is, according to the TP document, a distributor of AOS Water Heaters in India. The Tribunal has examined the most appropriate method in the case of distributor to determine the ALP for the international transactions. In the case of *Horiba India (P.) Ltd. (supra)*, the

Tribunal has held that in the case of a distributor where the goods are purchased from the AE and resold to other independent entities without any value addition, then the resale price method should be reckoned as most appropriate method. One of the main reason given by the TPO as well as the DRP is that the assessee is full fledged/full risk distributor and performing host of functions, therefore RPM should not be taken as the most appropriate method, because all these functions require huge cost which may not represent the gross profit margin. This contention of the revenue was rejected by the Tribunal and it was held that in comparable controlled transaction scenario, a normal distributor will undertake all kinds of functions which are related to sales of the product. The things like market research, sales & marketing, warehousing, controlled quality and also risks like market risk, credit risk, etc. are undertaken by any distributor for the sale of the products. The Tribunal further held that what is important to see is whether there is any value addition or not on the cost purchased for resale. If there is no value addition to the finished goods purchased from the AE are sold in the market as it is, then gross profit margin earned on such transactions become a determining factor to analyse the gross compensation after the cost of sales. Accordingly the Tribunal held that the RPM is the most appropriate method.

17. Similarly, in the case of Bose Corpn. (P.) Ltd. (supra), the assessee company was engaged in the business of distribution of sound and audio assistant for individual customers and public places. It was a wholly owned subsidiary of Bose Corporation, USA. During the relevant year, assessee purchased furnished goods from its AE and resold the same in India to unconnected parties. The assessee adopted resale price method (RPM) as most appropriate method (MAM) for determining the ALP of the said international transactions. The profit level indication (PLI) adopted by the assessee was gross profit/sale and the assessee has made itself tested party for the purpose of international transactions. The TPO rejected the transfer pricing study of the assessee and opined that transactional net margin method was to be applied for determining ALP of international transactions under question. While determining the issue as to which is the most appropriate method in case of distributor, the Tribunal has held that the resale price method (RPM) is the most appropriate

method and directed the TPO to calculate margin of the comparables by using RMP. The relevant observation of the Tribunal is extracted hereunder for the sake of reference:

"8.1 At this juncture, we note the mandate of Rule 10C which defines the 'Most appropriate method' Sub-rule (1) of Rule 10C states that: "For the purposes of sub-section (1) of section 92C, the most appropriate method shall be the method which is best suited to the facts and circumstances of each particular international transaction, and which provides the most reliable measure of an arm's length in relation to the international transaction." Sub-rule (2) of Rule 10C lists certain factors which should be taken into account in selecting the most appropriate method as specified in sub-rule (1). These factors, inter alia, include ©, the availability coverage and reliability of data necessary application of the method'; and (d) the degree of comparability existing between the international transaction and the uncontrolled transaction.....'

8.2 An overview of the factors prescribed for choosing the most appropriate method ,indicates that firstly, the data necessary for application of the given method should be available and secondly, the uncontrolled transactions should be functionally similar, if not identical. A company, in order to be ranked as comparable under the RPM, should preferably be engaged in doing similar activity as that of the assessee or at least of the same genus of the activity, with a different product. The Ld. TPO himself has categorized the comparables chosen by the assessee as traders akin to computer industry or engaged in trading of instruments. As the basic requirements under rule 10(c)(1) are fulfilled by these comparables and that the Ld. TPO has not brought on record any evidence to prove material difference between the assessee and the comparables so selected, we direct the Ld. TPO to calculate the margin of the comparables by using RPM."

18. In the case of L'Oreal India (P.) Ltd., similar dispute was raised before the Hon'ble High Court of Bombay. In that case, assessee had business in 2 segments viz., manufacturing and

distribution. In respect of business of distribution, the TPO suggested transfer pricing adjustment by applying the TNMM and rejected the resale price method (RPM) adopted by the assessee because the TPO found that assessee was incurring loss consistently and hence the price police was not at arm's length. The Hon'ble High Court, having examined all aspects have finally concluded that RPM is the most appropriate method. The relevant observation of the Hon'ble High Court is extracted hereunder for the sake of reference:

"7. After having perused the relevant part of the order passed by the Commissioner and the Tribunal on this question, we are in agreement with Mr. Pardiwalla that the Tribunal did not commit any error of law apparent on the face of the record nor can the findings can be sold to be perverse. The Tribunal has found that the TPO has passed an order earlier accepting this method. The Tribunal has noted in para 19 of the order under challenge that this method is one of the standard method and the OECD (Organization of Economic Commercial Development) guidelines also state in case of distribution or marketing activities when the goods are purchased from associated entities and there are sales effected to unrelated parties without any further processing, then, this method can be adopted. The findings of fact are based on the materials which have been produced before the Commissioner as also the Tribunal. Further, it was highlighted before the Commissioner as also the Tribunal that the RPM has been accepted by the TPO in the preceding as well as succeeding assessment years. That is in respect of distribution segment activity of the Assessee. In such circumstances, and when no distinguishing features were noted by the Tribunal, it did not commit any error in allowing the Assessee's Appeal. Such findings do not raise any substantial question of law. The Appeal is devoid of merits and is, therefore, dismissed. There would be no orders as to costs."

19. Copy of the order of the Tribunal in the case of L'Oreal India (P.) Ltd., is also placed on record to demonstrate as to under what circumstances the RPM was considered to be most appropriate

method. Similarly, in the case of Mettal Toys India (P.) Ltd. (supra), the Tribunal again reaffirmed its view that in the case of distributor, the RPM is the most appropriate method by holding that ultimate aim of the transfer pricing is to examine whether price of the margin arising from the international transactions with a related party is at ALP or not. The determination of the approximate ALP is a key factor for which most appropriate method is to be followed. Therefore, if at any stage of the proceedings, it is found that by adopting one of the prescribed method other than choosing earlier, the most appropriate ALP can be determined, the assessing authorities as well as the appellate authorities should take into consideration such a plea raised before them provided it is demonstrated as to how a change in the method will produce better or more appropriate ALP on the facts of the case. The Tribunal accordingly rejected the contention of the Revenue and directed the TPO to adopt RPM instead of TNMM for computing the ALP.

20. Turning to the facts of the case, we find that undisputedly, assessee is a distributor of AOSmith China which is involved in the manufacture of water heaters and sells the water heater imported from AOSmith China in India without making any value addition to the product, in a similar type of case, it has been repeatedly held by the Tribunal and the Hon'ble High Court of Bombay that in case of distributor, whether the product is being sold to the uncontrolled entities without making any value addition RPM is the most appropriate method and should be preferred over TNMM. Accordingly, we set aside the order of the AO, passed consequent to the direction of the DRP in this regard and direct the AO/TPO to adopt the RPM as the most appropriate method.”

13. In the given case the assessee is in the business of the trading business of transport refrigeration without making any value addition. Considering the binding decision of the coordinate bench of the Tribunal in the case of AO Smith India Water Heating Private Limited (supra) and the fact that sufficient opportunity was not provided to the assessee before the TPO, we remit the issue back to the TPO/AO to do

fresh benchmarking analysis adopting RPM as MAM after reasonable opportunity of being heard to the assessee.

14. The light of the decision of Ground no.7 on the application of RPM as MAM the alternate ground raised through ground no 3 & 4 for considering the depreciation on goodwill as non-operating expenses has become academic. Ground Nos.5, 6 and 8-11 are supplementary grounds to Ground Nos. 3, 4 and 7 and therefore all these grounds are dismissed.

### **Cost Contribution Charges – Ground 12**

15. For the subject AY 2012-13, the Assessee had paid Rs.45,11,845/- to its AE in respect of the cost contribution charges. The cost contribution charges are paid by the Assessee towards services received from the AE in the areas of strategy and continuous improvement initiatives, administration, finance and treasury, taxation, legal matters, public affairs, etc. The Assessee is part of the global group having subsidiaries in various countries across the world all of these entities are integrated by means of group's information system operations platform. The various activities/services which are centrally performed can be rendered only by the personnel from the AE who are fully integrated with group's business. The charges for the services rendered by the AE are allocated to all subsidiaries across the world and this allocation is done using a uniform allocation policy/key. The Assessee makes payment to the AE for the direct and indirect services availed as management consultancy charges which are linked and

related to the core business of the Assessee. Therefore, the transaction of cost contribution charges were aggregated with the transactions related to the business and benchmarked under TNMM.

16. The TPO has held that the Assessee has not been able to give evidence in respect of specific services received by it from the AE. The TPO treated the arm's length price ("ALP") of the management consultancy charges and technical consultancy charges as 'Nil' under CUP as the most appropriate method ("MAM"). The TPO made an adjustment of Rs.45,11,845/- towards cost contribution charges. The DRP upheld the order of the TP Officer determining the ALP of the cost contribution charges as 'Nil'.

17. The Id AR submitted that the issue is covered in its favour by the decision of this Hon'ble Tribunal in the case of group entity i.e. Ingersoll-Rand Technologies and Services Private Limited ("IRTSPL") for AY 2011-12 in IT(TP)A No.89/Bang/2016. It was submitted that the Hon'ble Tribunal has relied on its earlier decision in other group entity case viz., Ingersoll Rand India Ltd. ("IRIL"), (2016) 67 taxmann.com 328 [IT(TP)A No.228/Bang/2015] and has deleted the addition made towards cost contribution charges. The Id. AR also submitted that the nature of expenses incurred by the assessee for AY 2012-13 which is available at page 306-309 of the paper book is similar to the expenses incurred by IRTSPL. The Id.AR drew our attention to the basis of allocation is based on headcount and annualized sales (page 320-328 of paper book) and submitted that the

assessee is a group entity of the Ingersoll-Rand Group and hence the above case laws squarely apply to its case.

18. We heard the rival submissions and perused the material on record. We notice that the coordinate bench of the Tribunal in the case Ingersoll-Rand Technologies and Services Private Limited (supra) has considered the same issue and held as under:

“12. We have considered the submission of the Ld AR with respect to the cost contribution charges which is paid for cost allocation done by the group and that a similar cost is getting allocated to Ingersoll Rand India Ltd using the same allocation methodology. The contention of the Ld AR that the decision of the coordinate bench is applicable to the assessee’s case has merits. Respectfully following the decision of the coordinate bench, we delete the transfer pricing adjustment made by the TPO. This issue is held in favour of the assessee.

13. With regard to the issue of treating cost construction charges as a separate class of transaction and applying CUP as the most appropriate method as against TNMM, we notice that the Hon’ble Tribunal while rendering the decision in the case of Ingersoll Rand India Ltd (supra) has also addressed the issue of adopting CUP as the most appropriate method for the cost contribution charges in para 23 as extracted above. In assessee’s case the TPO has treated the cost contribution charges as a separate class of transaction quoting that there is no restriction that the TP should be done only at enterprise level and also on the basis that it is an intra group transaction. From the details of services and the benefits received from these services as submitted by the Ld AR, the payment made towards these charges are integral part of the core business of the assessee. Considering the decision of the Hon’ble Tribunal in Ingersoll Rand India Ltd (supra) and the facts of the present case we are of the considered view that the TPO is not justified in applying CUP is the most appropriate method for computing the ALP treating the cost contribution charges as the most appropriate method.”

19. Considering the facts of the present case and respectfully following the decision of the coordinate bench of the Tribunal we are of the view that the TPO is not justified in applying CUP is the most appropriate method for computing the ALP treating the cost contribution charges as the most appropriate method and the adjustment of Rs.45,11,845/- towards cost contribution charges is deleted.

20. Ground No.13 and 16 are consequential and does not need specific adjudication and therefore dismissed

21. The issue of short grant of credit of TDS and advance tax raised by the assessee vide ground Nos. 14 & 15 is remitted to the AO for verification and grant of correct credit of TDS and advance tax.

22. The assessee has raised an additional ground (Ground No.17) stating that AO has not granted set off of brought forward business loss and unabsorbed depreciation loss totalling to Rs.52,87,09,140 against the adjustments made in the final assessment order. This ground does not require any fresh investigation into facts and it was prayed for admission of the additional ground, which reads as follows:-

“17. Non-grant of credit of brought forward loss

Notwithstanding and without prejudice to the grounds taken against the adjustments made by the learned AO, the learned AO has erred in not granting set off of brought forward losses, as disclosed in the return of income, against the adjustments made in the assessment order.”

23. We have considered the rival submissions and perused the material on record on the admission of additional ground. The additional ground goes to the root of the matter not requiring fresh investigation into facts. Therefore, following the *Hon'ble Supreme Court judgment in the case of M/s National Thermal Power Co. Ltd. Vs. CIT, 229 ITR 383 (SC)*, the additional ground is admitted for adjudication.

24. The TPO/AO is directed to recomputed the ALP / final income of the assessee in accordance with the directions given in this order. While doing so the AO is directed to consider the issue of brought forward business and depreciation loss and set-off the same in accordance with law after providing opportunity of being heard to the assessee.

25. In the result, the appeal of the assessee is partly allowed.

Pronounced in the open court on this 25<sup>th</sup> day of July, 2022..

Sd/-  
( GEORGE GEORGE K. )  
JUDICIAL MEMBER

Sd/-  
( PADMAVATHY S. )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 25<sup>th</sup> July 2022.

*/Desai S Murthy /*

Copy to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.