

आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, PUNE

**BEFORE SHRI R.S. SYAL, VICE PRESIDENT
 AND
 SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No.2065/PUN/2019
निर्धारण वर्ष / Assessment Year : 2015-16

A Raymond Fasteners India Private Limited,
 G. No. 259, 276/8B, Nighoje, Chakan,
 Taluka-Khed, Pune – 410501

PAN : AAGCA7184G

.....अपीलार्थी / Appellant

बनाम / V/s.

Assistant Commissioner of Income Tax,
 Circle – 8, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri M.P. Lohiya,
 Shri Rajendra Agiwal and
 Shri Nikhil Tiwari
 Revenue by : Shri Koteswara Rao

सुनवाई की तारीख / Date of Hearing : 25-07-2022
 घोषणा की तारीख / Date of Pronouncement : 29-07-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the final assessment order dated 16-10-2019 passed by the ACIT, Circle-8, Pune u/s. 143(3) r.w.s. 144C(13) of the Act for assessment year 2015-16.

2. Ground No. 1 raised by the assessee is general in nature, hence, requires no adjudication.

3. Ground Nos. 2 to 6 raised by the assessee challenging the action of TPO/DRP in not appreciating the documentary evidences, remand report, etc. and determining the ALP at Nil in respect of international transaction of Management Support Services.

4. We note that the assessee entered into 12 international transactions amongst which the only dispute in respect of payment for receipt of Management Support Services to an extent of Rs.2,15,19,980/- vide ground Nos. 2 to 6. The assessee adopted TNMM as the most appropriate method and claimed Rs.2,15,19,980/- as ALP at entity level. The TPO proposed upward adjustment by holding that the assessee did not prove receipt of services with proper documentation and evidences. The contention of ld. AR is that the TPO did not examine the issue in respect of any method but held no services and benefit received by the assessee which is not justified. We note that the assessee filed additional evidences before the DRP and to that effect, remand report sought from the TPO. The said remand report filed from Page Nos. 61 to 70 of Appeal Memo. Considering the said remand report, the DRP held that the evidences in respect of some charges were proved and no benefit derived by the assessee. Before us, the ld. AR filed paper book containing Page Nos. 1 to 512 and referred to Page Nos. 392 to 496 of the paper book and submits that the assessee filed all the evidences in respect of receipt of services availed from Raygroup, France and drew our attention to Page No. 246 of

the paper book. Further, he also drew our attention to Page Nos. 250 and 251 and submitted that the Exhibit 1 shows that the Raygroup invoicing of cost in respect of its functions and allocation keys and Exhibit 2 provides the details of its clients. Further, he drew our attention to Page Nos. 500 to 504 and argued that all the said Email correspondence clearly shows receipt of services by the assessee.

5. The ld. DR, Shri Koteswara Rao submits that the assessee did not furnish any details in respect of services received and benefits derived before the TPO. He referred to last page of remand report and argued that the assessee could not produce any evidence in respect of administration and finance, communication and market and sales and business development. Copies of documents as relied on by the ld. AR does not show receipt of services and correspondence from Email shows only at group level. The TPO/DRP has given ample opportunity to the assessee and the assessee failed to submit evidences in respect of administration and fiancé, communication and market and sales and business development and placed reliance strongly on the order of DRP.

6. The assessee determined the ALP at entity level but however the TPO disregarded the same and held the determination of ALP is to be made on transaction level because the said international transaction in respect of management support services is not intra group level. In our considered opinion, the TPO was fully justified in segregating the international transaction of intra group services from the other transactions because it is not interlinked with the other transactions. It is only in case of

interlinked transactions that one can process them on aggregate basis. As international transaction of intra group services is totally different from the other transactions, we uphold the view of the TPO in segregating it and then processing it separately for ALP determination.

7. The AO/TPO took a view that the assessee did not receive any intra group services and as such, there was no question of making any payment in view thereof. It has further held that the assessee should have demonstrated some benefit received from such services in its business operations.

8. We find the evidences about the receipt of services in respect of international transactions of market and support services from Page Nos. 500 to 504 and its details at Page Nos. 415, 422 and 429 which clearly show that the assessee received services from Raygroup SAS and on perusal of the remand report also the TPO held that the assessee proved receipt of some services by way of additional evidences. He however held the assessee failed to furnish evidences in respect of administration and finance, communication and market and sales and business development. The DRP also in its order in Para No. 4.7 held the same. On perusal of record and with submissions, we find that the assessee has proved the receipt of such services as well.

9. On the question of the TPO's view point about the arising of some benefit to the assessee because of the services, we find that the same is not correct. It is a settled legal position that arising or not arising benefit is not

an essential criterion for claiming deduction as business expenditure. The mere fact that the assessee received the services, itself enables it to claim the deduction. If the view adopted by the TPO is taken to logical conclusion, then no businessman will ever suffer loss. We, therefore, hold that the benefit test applied by the TPO cannot be approved.

10. Having found that the assessee did receive intra group services from its AE, the next question is the determination of its ALP. The assessee has nowhere determined the ALP of transaction on individual basis. The TPO determined Nil ALP on the premise that since, the assessee did not receive any services, there was no question of making any payment in view thereof. We have overturned the impugned order on the question of receipt of services by holding that the intra group services were actually received by the assessee. In that view of the matter, the ALP of the international transaction needs to be determined afresh. We, therefore, set aside the impugned order and direct the AO/TPO to determine the ALP of international transaction of intra group services afresh as per the law after allowing reasonable opportunity of hearing to the assessee.

11. Ground No. 7 raised by the assessee has assailed the initiation of penalty proceedings u/s. 274 read with section 271(1)(c) of the Act and the same is pre-mature at this stage. Accordingly, the same is dismissed.

12. In ground No. 8 the assessee has assailed charging of interest u/s. 234B and 234C of the Act. The charging of interest u/s. 234B and 234C is mandatory and consequential. Accordingly, ground No. 8 is dismissed.

13. In the result, the appeal of assessee is partly allowed for statistical purpose in the terms aforesaid.

Order pronounced in the open court on 29th July, 2022.

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

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 29th July, 2022.

रवि

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-13, Pune
4. The Pr. CIT-5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "सी" बेंच,
पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune