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

Before

SRI MANISH BORAD, ACCOUNTANT MEMBER
&
SRI SONJOY SARMA, JUDICIAL MEMBER

I.T.A. No.: 1507/Kol/2018
Assessment Year: 2014-15

&

I.T.A. No.: 2436/Kol/2019
Assessment Year: 2015-16

Almatis Alumina Private Ltd.....Appellant
[PAN: AACCA 2120 N]

Vs.

DCIT, Circle-8(1), Kolkata.....Respondent

Appearances by:

Sh. J.P Khaitan, Sr. Counsel &
Sh. Akhilesh Gupta, A/R, appeared on behalf of the Assessee.

Sh. Manish Kanojia, CIT, D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : July 25th, 2022
Date of pronouncing the order : August 12th, 2022

ORDER

Per Manish Borad, Accountant Member:

The captioned appeals filed by the assessee pertaining to the Assessment Years (in short "AY") 2014-15 & 2015-16 are directed against separate orders passed u/s 144C(13)/143(3) of the Income Tax Act, 1961 (in short the "Act") by ld. DCIT, Circle-8(1), Kolkata [in short ld. "AO"] dated 28.05.2018 & 26.09.2019 respectively.

2. The assessee has raised the following grounds of appeal:

In ITA No. 1507/Kol/2018 for AY 2014-15:

"1. General ground

1.1 That on the facts and in the circumstances of the case, the order of the Ld. Transfer Pricing Officer, (hereinafter referred to as "Ld. TPO") passed u/s 92 CA(3) of the Income-tax Act, 1961, (hereinafter referred to as 'the Act'), subsequently confirmed in part by the Dispute Resolution Panel (hereinafter referred to as "Ld. Panel") and consequently incorporated by the Deputy Commissioner of Income Tax (hereinafter referred to as "Ld. AO") in the assessment order u/s 143(3) r/w S. 144C of the Act, is erroneous on facts and bad in law.

2. International transaction - purchase of raw materials

2.1 That on the facts and circumstances of the case, the Ld. Panel failed to provide due cognizance to the appellant's 'entrepreneurial' functional, asset and risk (FAR) profile in relation to the international transaction of purchase of raw materials.

2.2 That on the facts and circumstances of the case, the Ld. Panel erred in concluding that the Associated Enterprise (AE) cannot be considered as the least complex entity & consequently as tested party, which is in contravention to the arm's length principle, the OECD guidelines, UN guidelines and legal jurisprudence.

2.3 On the facts and the circumstances of the case, the Ld. TPO failed to provide due cognizance to appellant's economic analysis and erred in undertaking a fresh search process with a biased approach, considered a predisposed set of comparables having different functional profile and higher operating margin.

3. International transactions - purchase of finished goods and receipt of commission

3.1 That on the facts and circumstances of the case the Ld. TPO and accordingly the Ld. AO failed to give effect to the directions of the Ld. Panel by not considering the profitability earned by the Appellant evidenced by the audited trading segment; without providing any cogent reasoning; to determine arm's length price of the transaction.

4. Incorrect computation of the appellant's PLI - Without prejudice to the Grounds of Appeal no. 2 and 3

4.1 The Ld. TPO and accordingly the Ld. AO, while computing the profit level indicator of the assessee have erred in considering the

impact of realised foreign exchange loss and losses on account of fraud as operating in nature thereby, resulting in inflated TP adjustment

5. Disallowance of interest paid under section 201(1 A) of the Act

5.1 The Ld. AO erred in law in disallowing interest paid by the Assessee under section 201(1 A) of the Act. The Ld. AO erred in holding that the subject expense is penal in nature and ignored that the same is compensatory in nature, and therefore, allowable under section 37 of the Act as business expenditure.

The appellant craves leave to add to / alter / amend / substitute any of the above grounds of appeal, at the time, before or at the time of hearing of the appeal, so as to enable the Appellate authority to decide this appeal according to law."

In ITA No. 2436/Kol/2019 for AY 2015-16:

"1. General ground

1.1 That on the facts and in the circumstances of the case, the order of the Ld. Transfer Pricing Officer, (hereinafter referred to as "Ld. TPO") passed u/s 92 CA(3) of the Income-tax Act, 1961, (hereinafter referred to as 'the Act'), subsequently confirmed in part by the Dispute Resolution Panel (hereinafter referred to as "Ld. Panel") and consequently incorporated by the Deputy Commissioner of Income Tax (hereinafter referred to as "Ld. AO") in the assessment order u/s 143(3) r/w S. 144C of the Act, is erroneous on facts and bad in law.

2. International transaction - purchase of raw materials

2.1 That on the facts and circumstances of the case, the Ld. Panel failed to provide due cognizance to the appellant's 'entrepreneurial' functional, asset and risk (FAR) profile in relation to the international transaction of purchase of raw materials.

2.2 That on the facts and circumstances of the case, the Ld. Panel erred in concluding that the Associated Enterprise (AE) cannot be considered as the least complex entity & consequently, as tested party, which is in contravention to the arm's length principle, the OECD guidelines, UN guidelines and legal jurisprudence.

2.3 Whether in light of such conduct where the Ld. Panel chose not to follow binding decisions, it is not incumbent on the Hon'ble Kolkata ITAT to relegate the appellant to another round before the Ld.

Panel/lower authority, but to decide the legal issue of considering overseas AE as tested party, for which the facts are already on record.

2.4 On the facts and the circumstances of the case, the Ld. TPO failed to provide due cognizance to appellant's economic analysis and erred in undertaking a fresh search process with a biased approach, considered a predisposed set of comparables having different functional profile and higher operating margin.

3. International transactions - purchase of finished goods and receipt of commission

3.1 That on the facts and circumstances of the case the Ld. TPO and accordingly the Ld. AO failed to give effect to the directions of the Ld. Panel by not considering the profitability earned by the Appellant evidenced by the audited trading segment; without providing any cogent reasoning; to determine arm's length price of the transaction.

4. Incorrect computation of the appellant's PLI - Without prejudice to the Grounds of Appeal no. 2 and 3

4.1 The Ld. TPO and accordingly the Ld. AO, while computing the profit level indicator of the assessee have erred in considering the impact of realised foreign exchange loss as operating in nature thereby, resulting in inflated TP adjustment

5. International transaction - Payment for Administrative Support Services and IT Support Services

5.1 That on the facts and circumstances of the case, the Ld. Panel and accordingly, the Ld. TPO/ Ld. AO have erred in rejecting the economic analysis undertaken by the appellant, with respect to international transactions pertaining to receipt of Administrative Support Services and IT Support Services in accordance with the provisions of the Income-tax Act, 1961 ('the Act') read with the Income-tax Rules, 1962 ('the Rules') for the determination of the arm's length price ('ALP').

5.2 That on the facts and circumstances of the case, the appellant, having furnished the nature of services, pricing of services received from its AEs, the Ld. Panel and accordingly, the Ld. TPO/ Ld. AO without giving any cognisance to the evidences submitted, benchmarking conducted, erred in determining the arm's length price of the services to be nil.

5.3 That on the facts and circumstances of the case, the appellant having established the nature of services, evidences of services, ensuing benefits and pricing of services received from its AEs, the Ld. Panel and accordingly, the Ld. TPO/ the Ld. AO have erred in categorising the provision of Administrative Support Services and IT Support Services to be in the nature of stewardship functions.

5.4 That on the facts and circumstances of the case, the Ld. Panel and accordingly, the Ld. TPO/ Ld. AO have provided no reasoning for disallowance of payments made for IT Support Services, and consequently erred in concluding that the entire process is a part of quality control, supervision and monitoring function of the group.

6. Disallowance of interest paid under section 201(1 A) of the Act

6.1 The Ld. AO erred in law in disallowing interest paid by the Assessee under section 201(1A) the Act. The Ld. AO erred in holding that the subject expense is penal in nature and ignored that the same is compensatory in nature, and therefore, allowable under section 37 of the Act as business expenditure.

The appellant craves leave to add to / alter / amend / substitute any of the above grounds of appeal, at the time, before or at the time of hearing of the appeal, so as to enable the Appellate authority to decide this appeal according to law."

3. Since the issues involved in these appeals are common and identical, these appeals are heard together and are being disposed off by this consolidated order for the sake of convenience and brevity.

4. Brief facts of the case are that the assessee i.e. Almatis Alumina Pvt. Ltd. (in short "AAPL") is a hundred percent subsidiary of Almatis Holdings GmbH, Germany and is primarily engaged in the manufacturing of alumina-based refractories and ceramic raw materials. The local manufacturing activity includes crushing, screening, grinding and packaging of Tabular Alumina CD (Converter Discharged) balls and grinding and packaging of calcined alumina for which company imports raw materials from

its Associated Enterprises (in short the "AEs"). Since the issues are common, we will take the facts of the case for AY 2014-15 for which the assessee e-filed the return on 28/11/2014 declaring NIL income. Return selected for scrutiny through CASS. The draft assessment order u/s 144C(1)/143(3) of the Act was forwarded to the assessee on 14/12/2017. The assessee filed appeal before the ld. Dispute Resolution Panel (in short the "DRP") and vide order dated 03/04/2018 ld. DRP issued directions u/s 144C(5) of the Act which were received on 13/04/2018. Accordingly, the assessment was completed in confirmity with the directions issued by ld. DRP making the upward Transfer Pricing Adjustment (in short "TPA") for the transaction with the AEs at Rs. 15,75,54,541/- and disallowance of interest on TDS made at Rs. 5,49,950/- assessing income at Rs. 12,32,25,170/-. Against the said additions, the assessee is in appeal before this Tribunal. For AY 2015-16 also similar type of adjustments have been made against which also the assessee is in appeal before this Tribunal.

5. At the outset, ld. Counsel for the assessee requested for not pressing ground nos. 4 & 5 for AY 2014-15 and ground nos. 4 & 6 for AY 2015-16. No objection was raised by ld. D/R. We, therefore dismiss ground nos. 4 & 5 for AY 2014-15 and ground nos. 4 & 6 for AY 2015-16 as not pressed.

6. As regards the remaining grounds are concerned the first effective ground i.e. ground no. 2 for AY 2014-15 is that whether the AEs can be considered as a tested party as per Indian Transfer Pricing Regulation and second issue i.e. ground no. 3 is that whether ld. Assessing Officer (in short ld. "AO") failed to give effect

to the directions of ld. DRP by not considering the profitability earned by the appellant evidenced by the audited trading segment without providing any cogent reasoning to determine Arm's Length Price (in short "ALP") of the transaction.

7. As regards the appeal of the assessee for AY 2015-16 is concerned, apart from the above two issues raised in ground no. 2 & 3 one more issue has been raised in ground no. 5 regarding the administrative support services and IT support services received by the assessee from the AEs alleged to be treated in the nature of stewardship functions.

8. At the outset, ld. Counsel for the assessee, Mr. J.P Khaitan submitted that all the above referred issues in the instant appeal for AY 2014-15 and 2015-16 stands adjudicated by this Tribunal in assessee's own case for AY 2012-13 & 2013-14 and the view taken by this Tribunal in favour of the assessee has been further confirmed by the Hon'ble Jurisdictional High Court dismissing the appeal of the Revenue. Ld. Counsel for the assessee thus, vehemently argued supporting the order of the Hon'ble Jurisdictional High Court in the case of *PCIT vs. Almatis Alumina (P.) Ltd.* reported in *[2022] 137 taxmann.com 202 (Calcutta)*. Ld. Counsel for the assessee also took us through the relevant documents and decisions referred in the paper book filed before us.

9. Per contra, ld. D/R though supported the orders of the lower authorities but could not controvert the fact that the issues raised in the instant appeals have been decided in favour of the assessee by the Hon'ble Jurisdictional High Court.

10. We have heard rival contentions and perused the records placed before us. As submitted by the ld. Counsel for the assessee that the common issues raised in the instant appeals stand already adjudicated by this Tribunal in assessee's own case for AY 2012-13 & 2013-14 and the view taken by this Tribunal has been confirmed by the Hon'ble Jurisdictional High Court dismissing the Revenue's appeal and there being no change in the facts of the case, therefore, we will deal with these issues in light of the ratio laid down by the Hon'ble Jurisdictional High Court (*supra*).

11. As regards the common ground no. 2 that *"whether the AEs of the assessee could have been accepted as a tested party for the purpose of determining the ALP"*, we find that the Hon'ble Jurisdictional High Court has decided this issue confirming the view taken by this Tribunal observing as follows:

> *"4. On the first issue, the Tribunal has discussed the same very elaborately. Perusal of the Function, Asset and Risk profile (FAR profile) of the assessee shows that substantial amount of risk is borne by the assessee company and, therefore, has to be treated as a complex entity. In paragraph 15 of the order passed by the Tribunal, the FAR profile of the assessee company has been set out. On going through the same one would agree with the Tribunal that the assessee company is a more complex entity when compared to its AE. The assessee was non-suited from requesting the assessing officer to treat the AE as a tested party largely by observing that the Indian Transfer Pricing Regulations do not permit the same. The correctness of this submission was tested by the Tribunal and held that the assessee cannot be non-suited from treating the AE as a tested party. The characteristics of the AE were also taken note of and it was found on facts that the AE was a least complex entity than that of the assessee. The Tribunal placed reliance on the decision in the case of Dy. CIT v. Quark Systems (P.) Ltd. [2010] 38 SOT 307 (Chd.) In the said decision it was held that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have*

a vested right in injustice being done due to some mistake on its part. Further, in terms of the United Nations Practical Manual of Transfer Pricing for Developing Countries, 2013, India Chapter in Regulation 10.4.1.3 it has been stated that the Indian Transfer Pricing Administration prefers Indian comparables in most cases and also accepts foreign comparables in cases where the foreign associated enterprise is less or least complex entity and requisite information is available about the tested party and comparables. Identical issue was considered in Virtusa Consulting Services (P.) Ltd. v. Dy. CIT [2021] 124 taxmann.com 309/282 Taxman 95 (Mad.). The relevant portion of the judgment is quoted hereinbelow:

> *"20. Now, we move on to consider the issue as to whether the assessee has to be taken as tested party for the purpose of determination of ALP or by applying the least complex theory, the AE outside the Country has to be taken as tested party. The Tribunal while considering the said question proceeded to examine the scheme of transfer pricing as provided under the Act. It referred to section 92B which defines 'International transaction', section 92A which defines 'Associated Enterprise', rule 10D which deals with the most appropriated method for determination of ALP and rule 10B(l)(e) which provides the method for determination of ALP by adopting TNMM. After referring to these statutory provisions, the Tribunal would observe that the main object is to compute the net profit margin realised by the enterprise from the international transaction; the comparison shall be with regard to the transaction of unrelated enterprise from comparable uncontrolled transaction. Thus the Tribunal opined that the net profit margin of the enterprise shall be computed in the international transaction by comparing comparable uncontrolled transaction. The Tribunal noted the definition of Enterprise as defined in section 92F(/77) and reading the said provision along with rule 10B(l)(e) of the Rules, the Tribunal held that the net profit margin of the Enterprise which is in India, has to be determined by applying the Transfer Pricing Regulations. The Tribunal was largely guided by the decision of the Mumbai Tribunal in Aurionpro Solutions Limited, wherein it was held that the tested party for the purpose of determination of ALP is always the assessee and not the AE.*
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> *21. The assessee had referred to the decision of the Delhi Tribunal in Ranbaxy Laboratories Ltd. which was distinguished by observing that the said decision had proceeded on the basis*

of OECD guidelines. The Tribunal further went on to observe that the determination of least complex party and functions performed by the AE outside the Country are not available on record and it is not known the amount of risk assumed by AE and its capital employed and the complexity of the functions performed by it. It is further observed that in the absence of any such documentation with regard to assumption of risk, complex functions, the capital employed, etc., the decision in Ranbaxy Laboratories Ltd. cannot be applied in the case of the assessee unless it is established with material evidence that the AE outside the Country performed least complex operation with a minimum risk. The Tribunal further has observed that the assessee miserably failed to establish functional risk assumed by the AE and in the absence of any material on record with regard to the risk assumed by the AE, the assessee has to be taken as tested party for the purpose of transfer pricing adjustment. Thus, the assessee was non-suited on the ground that they have failed to establish functional risk assumed by the AE outside the Country. This finding appears to be factually incorrect as could be seen from the grounds raised before the Tribunal as well as the grounds which were canvassed before the TPO and specifically raised in the objections filed before the DRP.

22. The Tribunal had distinguished the decision in Ranbaxy Laboratories Ltd. on the ground that the Delhi Bench of the Tribunal has proceeded on the basis of the OECD guidelines. However, we find in paragraph 25 of the judgment of the Tribunal the principles that emerge in selection of tested party has been culled out wherein it has been held that the tested party normally should be the least complex party to the controlled transaction and that there is no bar for selection of tested party either local or foreign party and neither the Act nor the guidelines on transfer pricing provides so and the selection of tested party is to further the object of comparability analysis by making it less complex and requiring fewer adjustment. Therefore, we do not agree with the reasons given by the Tribunal for not considering the decision in Ranbaxy Laboratories Ltd.

23. Furthermore from the grounds canvassed in the miscellaneous application filed before the Tribunal on 28-9-2017, after the impugned order was passed by the Tribunal, would clearly show that all materials were available on file. Therefore,

to non-suit the assessee stating that they miserably failed to establish functional risk is incorrect. If such is the conclusion which we have to arrive at, we have no hesitation to set aside the order of the Tribunal and we shall do so.

24. Before doing so, we may point out the following. The assessee in ground Nos.6 to 8 before the Tribunal had contested the issue relating to consideration of the foreign AE as tested party. The assessee has submitted evidences and documents relating to the assessee's transfer pricing documentation, global transfer pricing reports of the foreign AE at United Kingdom, Australia and German; extracts of inter company service agreement, reconciliation of operating credits earned by the overseas subsidiaries, etc. So far as the risks assumed by the assessee, the same has been elaborately brought out in the TP documentation as could be seen from paragraph 4.03.3 under the sub heading Risks Assumed and paragraph 4.06 under the sub heading Associates Employed. This vital material has not been considered by the TPO but the assessee has been precluded from canvassing the said issue on the ground that the stand taken during the course of TP proceedings was not what was the subject matter of the TP documentation/TP study of the assessee. The question would be whether this could be the reason for rejecting the assessee's plea. This issue has been considered by the Tribunal in several decisions.

25. In Yamaha Motor (P.) Ltd., the question arose as to whether the word 'Associated Enterprise' can be given a restrictive meaning to mean the other party to whom the assessee has sold or purchased goods. It was held that under the Act and the Rules, the words 'Enterprise' and 'Associated Enterprise' have been used interchangeably and the arguments that the Enterprise will mean the assessee and the Associated Enterprise will mean the other party to whom the assessee has sold or purchased goods is incorrect. As could be seen from the definition of Enterprise given in section 92F(h7) and Associated Enterprise as defined in section 92A of the Act, it is evidently clear that the statute does not indicate that 'Enterprise' shall mean the assessee and the 'Associated Enterprise' will mean the other party. As pointed out earlier, the words 'Enterprise' and 'Associated Enterprise' have been used interchangeably. Therefore, the conclusion of the Tribunal in this regard is not sustainable.

26. The Tribunal was largely guided by the decision in Aurionpro Solutions Ltd. The learned senior counsel for the assessee has referred to various decisions of the Tribunal which were rendered subsequently, more particularly, the decision of the Ahemdabad Tribunal in the case of General Motors India (P.) Ltd., which had taken note of the decision of the Mumbai Tribunal in Aurionpro Solutions Ltd. and noted the facts of the said case and held that the said decision cannot be applied as the main issue in Aurionpro Solutions Limited was the percentage of interest to be calculated on the loan advanced by the assessee to its AE. Thus, on facts the decision in Aurionpro Solutions Ltd. could not have been applied to the facts of the assessee's case before us. As already pointed out, it is not a case where there were no material produced by the assessee to establish the functional risk assumed by the foreign AEs. The material was available before the TPO but the TPO non-suited the assessee on the ground that such contention by referring to the foreign AEs as tested party was not part of TP documentation. This finding is incorrect. Interestingly in the case of in the case on hand the TPO rejected the data placed by the assessee in their TP documentation and undertook a fresh search for external comparables and arrived at a final list of 12 comparables. Therefore, when the TPO himself has not attached any sanctity to the TP documentation as submitted by the assessee, could not have foreclosed the assessee from canvassing the issue that the subsidiaries are least complex entities which should be taken note of."

5. In the above decision several others decisions have been referred to and legal principle that can be culled out is that the tested party normally should be the least complex party to the controlled transaction and there is no bar for selection of tested party either local or foreign party and neither the Act nor the guidelines on transfer pricing provides so and the selection of the tested party is to further the object of the comparability analysis by making it less complex and requiring fewer adjustment. This legal principle has been rightly noted by the Tribunal. In fact, this issue had arisen only for the assessment year 2012-13 and forthe assessment year 2013-14, even in the Transfer Pricing Study (TP study) the assessee had taken the AE as a tested party. However, the assessing officer did not agree with the assessee for the said assessment year by referring to the decision in the case of Aurionpro Solutions Ltd. v. Addl. CIT [2013] 33 taxmann.com 187 (Mum. - Trib.). The decision in Aurionpro Solutions Ltd. 's case {supra) was taken note of in Virtusa Consulting Services

(P.) Ltd. 's case {supra) and the decision was distinguished by taking note of the issue which was involved in the said case and the discussion is in paragraph 26 of the judgment quoted above. After noting several decisions, it was held that the Indian Transfer Pricing guidelines issued by the Institute of Chartered Accountants of India vide guidance note on report under section 92E by ICAI and transfer pricing guidelines issued by OECD does not prohibit AE to be a tested party. The Tribunal accepted the stand taken by the assessee that the AE can be selected as a tested party. In the light of the decision in the case of Virtusa Consulting Services (P.) Ltd. {supra) as well as on the factual aspect which has been noted by the Tribunal with regard to the FAR profile of both the assessee company and the AE, we are of the considered view that the finding rendered by the Tribunal is just, proper and legally valid."

12. On perusal of above finding of Hon'ble Court, we find that the same is squarely applicable on the common issue raised in ground no. 2 and we, therefore, respectfully following the ratio laid down by the Hon'ble Court, hold that AEs can be selected as tested party and, thus, reverse the finding of the ld. CIT(A) and allow the common ground no. 2 raised by the assessee for AY 2014-15 & 2015-16.

13. As regards the common ground no. 3 raised by the assessee we notice that the same relates to the International Transaction of purchase of finished goods from AEs and receipt of commission from the AEs and the assessee is aggrieved with the orders of the ld. AO to fail to give effect to the directions of ld. DRP by not considering the profitability earned by the appellant which is evidenced by the audited trading segment and also not providing any cogent reasoning to determine ALP of the transaction. As stated by ld. Counsel for the assessee that this issue is also squarely covered by the judgment of Hon'ble Jurisdictional High Court in assessee's own case, we, on perusal of the order of Hon'ble

Jurisdictional High Court, find that Hon'ble High Court confirmed the view taken by this Tribunal in the case of the assessee in ITA Nos. 726 & 2361/Kol/2017 dated 16/04/2019 by holding as follows:

> *"6. The second issue is with regard to the consideration of the segmental accounts. The facts which are relevant for such purpose are that the assessee purchased goods from AE for sale to third parties and it has also been ad hoc sales of traded finished goods lying in stock to the AE. Further, the assessee has received commission at 3 per cent on account of facilitating the direct sale by AE to third parties in India. So far as the nature of activities of the assessee is concerned, the assessee made purchases only from AEs and received commissions from AEs and there are three AEs in different countries and the TPO took entity level margins of the assessee and made the transfer pricing adjustment on that basis. It appears that the assessee did not raise this issue during the proceedings before the TPO. However, before the DRP the assessee has raised such an issue contending that the assessing officer failed to provide due cognizance to the fact that in relation to the purchase of the finished goods, receipt of commission and sale of finished goods, the assessee was engaged in trading functions and on the contrary selected a set of comparables having different functional profile. The DRP, on noting that such issue was raised by the assessee before it for the first time, forwarded the contention to the TPO for his consideration and submit a remand report. The TPO in his remand report held that the segmentation of profitability provided by the assessee has no basis and is far fetched and not audited. Upon consideration of the remand report submitted by the TPO, the DRP accepted the same and denied relief to the assessee for the assessment year 2012-13. However, for the assessment year 2013-14 and the subsequent assessment year 2014-15 the DRP has accepted the stand of the assessee with regard to the segmentation of the profitability. These factors were taken into consideration by the Tribunal and on facts it was noted that the adjustment can be made only on the basis of the transaction and not on aggregation and, accordingly, accepted the segmentation analysis of the assessee. Noting that the facts are same for the assessment year 2013-14 as well as 2014-15, hence, we find that the conclusion arrived at by the Tribunal cannot be faulted."*

14. We, therefore, respectfully following the ratio laid down by the Hon'ble High Court and observing that there is no change of facts in the instant case, reverse the finding of the ld. CIT(A) and allow the common ground no. 3 raised by the assessee for AY 2014-15 & 2015-16.

15. As far as the third issue raised for AY 2015-16 is concerned the same is with regard to the administrative support services and IT support services which were held to be in the nature of stewardship services and other expenditure claimed by the assessee being disallowed, we find that this issue also travelled before the Hon'ble Jurisdictional High Court and the view taken by this Tribunal in the case of the assessee for AY 2012-13 and 2013-14 was not found to be faulty and the Hon'ble Court dismissed the Revenue's ground on this issue observing as follows:

> *"7. The third issue is with regard to the administrative support services and IT support services, which was has held against the assessee. When the matter was dealt with by the Tribunal, it noted the decision of the Tribunal in the assessee's own case dated 9th June, 2017 for the assessment year 2011-12 and accepted the case of the assessee. In paragraph 39 of the impugned order the order passed by the Tribunal dated 9th June, 2017 for the assessment year 2011-12 has been quoted from which we find that a thorough factual analysis was done by the Tribunal for the said year and noted the following:*
>
> > *"The Assessee does not have a full capacity to provide a range of services to its business and to the personnel working for it. In the interests of economy and efficiency the assessee desired to obtain these services from its associated enterprise Almatis-Germany. Almatis-Germany has expert resources in commercial, financial, accounting and other matters which would be employed for the benefit of the Almatis India. The Almatis India would have access to the resources and would pay appropriate consideration which would be commensurate with the amount*

paid to third party service providers. These support services relate to certain functional categories which have set out in the earlier part of this order and hence, we do not wish to repeat the same. As we have already observed in the earlier part of this order, the practice of multinational enterprises providing intra group services is a global practice wherein, various activities are frequently concentrated for the benefit of the entire group. Since, the multinational group operates globally, such concentration is essential to be able to react in the most flexible and cost effective manner. According to the assessee the benefits derived from availing the above services outweigh the cost incurred in receiving such services. It is also the claim of the Almatis India that with the help of such services it achieved substantial cost efficiencies and hence it would be incorrect to categorise such services to be in the nature of stewardship services. It is the claim of the Assessee that the above services are essential for the operations of the Assessee and had it not received the access to the above services, it would have been required to perform them by itself (in-house) or by hiring experienced service providers."

8. After noting the above facts, the Tribunal held that the assessee has established the nature of services including the quantum of services received from the AE and such services were provided in order to meet specific need of the assessee for such services, economic and commercial benefit derived by the assessee. Thus, we find that the third issue raised by the revenue is entirely factual and no substantial question of law arises for consideration."

16. The above finding of the Hon'ble Jurisdictional High Court is squarely applicable on the instant issues raised before us regarding administrative support services and IT support services being not in the nature of stewardship services and ld. D/R having failed to controvert this fact. We, therefore, respectfully following the ratio laid down by the Hon'ble Court and observing that there is no change of facts in the instant case, reverse the finding of the ld. CIT(A) and allow the above stated ground raised by the assessee for AY 2015-16.

17. In the result, the instant appeals filed by the assessee are partly allowed.

Kolkata, the 12th August, 2022.

Sd/-	*Sd/-*
[Sonjoy Sarma]	[Manish Borad]
Judicial Member	Accountant Member

Dated: 12.08.2022

Bidhan (P.S.)

Copy of the order forwarded to:

1. ***Almatis Alumina Private Ltd., Kankaria Estate, 2nd Floor, 6, Russel Street, Kolkata-700 071.***
2. ***DCIT, Circle-8(1), Kolkata.***
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata