

**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.728/Bang/2017
Assessment year : 2012-13

Ingersoll-Rand Technologies & Services Pvt. Ltd., PAN: AAACI 2961B 8 th 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.
APPELLANT		RESPONDENT

Appellant(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 manufacture and trading of pneumatic and power tools. It filed return of income on 26.11.2012 declaring an income of Rs.20,24,23,817. The case was selected for scrutiny through CASS and subsequently notice u/s. 143(2) of the Act was issued to the assessee. The case was referred to the Transfer Pricing Officer (TPO) to determine the arm's length price [ALP] for international transactions of the assessee with its Associated Enterprise [AE]. As per the Transfer Pricing study, the assessee has entered into the following international transactions with its AE during the year under consideration

S No	Nature of international transaction	Amount (Rs.)	Method adopted by Appellant
1	Sale of finished goods	23,17,16,797	TNMM
2	Recovery of expenses	5,49,42,770	At cost
3	Purchase of raw materials	8,88,85,546	TNMM
4	Purchase of finished goods	11,59,10,592	TNMM
5	Cost contribution on account of management consultancy	2,68,18,518	TNMM
6	Service income	82,12,36,529	TNMM
7	Purchase of tools for testing purposes	17,06,470	TNMM
8	Payment towards technical consultancy	1,36,61,615	TNMM
9	Purchase of fixed assets	6,48,900	TNMM
10	Reimbursement of expenses	68,90,300	TNMM
11	Trade receivables	21,16,42,186	Other method
12	Trade payables	11,47,54,178	Other method

3. The TPO determined an adjustment to the ALP by making the following adjustments :-

S No	Nature of international transaction	Amount (Rs.)
1	Cost contribution on account of management consultancy	2,68,18,518
2	Payment towards technical consultancy	1,36,61,615
3	Provision of engineering design services (KPO services)	20,67,69,435
4	Trade receivables	80,47,694
5	Reimbursement of expenses	68,90,300
		25,41,39,868

4. The DRP vide directions dated 20.12.2016 disposed of the objections of the Assessee. The DRP upheld the adjustment made by the TP Officer towards cost contribution on account of management consultancy and payment towards technical consultancy. Further, in relation to the issue of notional interest on receivables, the DRP confirmed the rate adopted by the TP Officer however, directed the TP Officer to net-off the AE receivables and payables if the details were submitted by the Assessee within 15 days of receipt of the order. In relation to the Engineering design services segment, the DRP upheld the characterization made by the TP Officer treating the segment as KPO and retained the comparables selected by the TP Officer in his benchmarking analysis. The DRP however, directed the TP Officer to compute mean of working capital adjustment in respect of the comparables. The DRP also rejected the Assessee's arguments and upheld the adjustment made by the TP Officer towards reimbursement of expenses.

5. The AO passed the final assessment order as per the directions of the DRP. The assessee aggrieved by the final assessment order is in appeal before the Tribunal.

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

Cost contribution charges for intra group services (Ground No.3)

7. The cost contribution charges paid for intra group services rendered by the AE was aggregated with all other international transactions and assessee adopted Transactional Net Margin Method [TNMM] as the most appropriate method [MAM]. The cost contribution charges are paid by the assessee towards services received from the AE in the areas of information technology, human resources, central finance functions and other services. The assessee is part of the global group having subsidiaries in various countries across the world and all of these entities are integrated by means of group's information system operations platform. It is submitted that 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.

8. During the course of proceedings u/s. 92CA of the Act, the TPO accepted the benchmarking adopted and all the international transactions as being at arm's length price [ALP], except for cost contribution charges. The TPO considered the cost contribution charges as a separate class of transaction and applied CUP method as the most appropriate method for computing the ALP and made an estimate towards this adjustment and determined the ALP as NIL on the ground that there is no evidence on record to prove that services were actually requested for and they were actually received. He also stated that the assessee did not provide any evidence substantiating that the charge is justified and that similar services were available in the open market comparable with the rate paid to the AE. The DRP confirmed the determination of ALP at NIL by the TPO.

9. Before us, the Id. AR submitted that the cost incurred by the parent company for rendering various support services is apportioned amongst all the entities across the globe by means of an allocation mechanism and that the details of allocation were submitted to the lower authorities which is at pages 525 to 533 of PB. The Id AR brought to our attention that this issue was decided by the coordinate Bench of the Tribunal in assessee's own case for AY 2010-11 wherein the aggregation was upheld by adopting TNMM as the most appropriate method. Further the Id AR submitted that the facts of AY 2011-12 and 2012-13 are identical and the nature of expenses incurred by the Assessee for AY 2012-13 is available at page 99-100 and 115-116 of the paper book. The Id AR also submitted that b. The cost

contribution agreement under which the Appellant received the services was the same for AY 2011-12 and 2012-13 and the copy of the agreement is available at page 275-289 of the paper book.

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

11. We have considered the rival submissions and perused the material on record. We notice that the coordinate Bench in assessee's own case for AY 2010-11 in IT(TP)A No. 89/Bang/2016 dated 24.3.2012 has dealt with a similar issue and held as follows:-

“11. We heard the rival submissions and perused the material on record. We notice that the coordinate bench of the Tribunal in the case of IngersollRand India Ltd., (supra) has considered the similar issue wherein Tribunal has held the appeal in favour of the assessee by deleting the DRP adjustment made towards cost contribution charges. The Hon'ble Tribunal in IngersollRand India., has held that—

"22. We find that the Mumbai Bench of the Tribunal in the case of Dresser-Rand India (P.) Ltd. v. Addl. CIT [2011147 SOT 423/13 taxmann.com 82 upheld the payment of cost contribution charges and deleted the additions made by the AO observing as follows :-

- It is only elementary that how an assessee conducts his business is entirely his prerogative and it is not for the revenue authorities to decide what is necessary for an assessee and what is not.
- An assessee may have any number of qualified accountants and management experts on his rolls, and yet he may decide to engage services of outside experts for auditing and management consultancy; it is not for the revenue officers to question assessee's wisdom in doing so.

- Whether a particular expense on services received actually benefits an assessee in monetary terms or not is not even a consideration for its being allowed as a deduction in computation of income, and, by no stretch of logic, it can have any role in determining arm's length price of that service.
- The real question which is to be determined in such cases is whether the price of this service is what an independent enterprise would have paid for the same.
- Similarly, whether the AE gave the same services to the assessee in the preceding years without any consideration or not is also not relevant.
- The Assessee has filed a huge compilation of papers, including copies of reports, emails and other documents evidencing the rendering of services.

There is no infirmity in this contribution being taken as an arm's length contribution to the costs.

There is no objective way in which use of services can be measured and as is the commercial practice even in market factors driven situation, the costs are shared in accordance with some objective criterion, including sales revenues and number of employees.

In any case, the assessee has adopted TNMM as most appropriate method, and the revenue authorities have neither made an effort to show as to how this method is not appropriate to the facts of this case, nor shown as to which other prescribed method of ascertaining arm's length price of services received will be more appropriate to these facts.

23. Similarly, in the case of AWB India (P) Ltd. v. Addl. CIT [IT Appeal No. 4454 (Delhi) of 2011], the Delhi Bench of the Tribunal had noted that the assessee had produced evidence and that the contents of thereof were found to be "amply supportive" of the assessee's claim. The TPO had rejected TNMM and adopted CUP method for determining ALP. The Tribunal held that the TPO

remained 'oblivious' to the fact that Rule 10B(1)(a) stipulates 'comparable' and 'uncontrolled' transactions while applying the CUP method. Only a general observation was made by the TPO that no independent party would have made payment in uncontrolled circumstances.

24. In view of the above decisions of the Delhi Bench of the Tribunal in the case of Dresser-Rand India (P.) Ltd. (supra) and A WB India (P.) Ltd. (supra), we delete the addition of Rs. 1,53,40,000 towards TP adjustment on account of payment of cost contribution charges made by the assessee."

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 IngersollRand 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 IngersollRand 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 IngersollRand 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.”

12. For the year under consideration the TPO has computed the ALP with regard to cost contribution charges as NIL under CUP method. Therefore respectfully following the decision of the coordinate bench of the Tribunal, we delete the adjustment made in this regard. This ground is allowed in favour of the assessee.

Characterisation of Engineering Design Service (EDS) as KPO (Ground Nos.4 & 5)

13. The assessee is rendering Engineering Design Services [EDS] to its AE. It adopted TNMM as the most appropriate method and Operating Profit to Total Cost as the Profit Level Indicator [PLI]. The calculation of the PLI by the assessee is as under:-

Particulars	Amount in INR'000
Operating Income (OI)	852,656,366
Operating Cost (OC)	780,366,677
Operating Profit (OP)	72,289,689
OP/OC	9.26%

The assessee applying various filters chose the following comparables.

S. No	Name of the comparable company	PLI (%)
1.	Acropetal Technologies Ltd.	11.94
2.	Cades Digitech Pvt. Ltd.	7.47
3.	F C I Technology Services Ltd.	8.56
4.	Mindtree Ltd.	10.14
5.	Tata Elxsi Ltd.	9.38
	Arithmetic Mean	9.50

14. The assessee benchmarked the transaction of the above comparables with mean margin of 9.5% and therefore concluded that the ALP of the assessee for transactions with its AE is at arm's length.

15. The TP Officer rejected the TP documentation maintained by the Appellant and re-characterized the EDS segment as a KPO and applied fresh filters to choose comparables and arrived at a margin of 35.76% and without considering the working capital adjustment which resulted in a TP adjustment of Rs.20,67,69,435. The DRP upheld the order of the TP Officer characterizing the EDS segment as a KPO. The DRP however directed the TP Officer to compute mean of working capital adjustment in respect of the comparables thereby revising the TP adjustment to Rs. 19,89,65,768.

16. Before us, the Id. AR submitted that the for AYs 2008-09 & 2009-10 in the case of Ingersoll Rand International (India) Pvt Ltd the TPO had recharacterized the EDS as KPO and the coordinate bench of the Tribunal remanded the matter back to the TPO for fresh consideration. The Id.AR further submitted that the EDS business of the assessee is similar to the services rendered by Ingersoll Rand International (India) Pvt Ltd which has been considered by this Hon'ble Tribunal and that the assessee being a captive service provider bears limited risk and does not bear market risk or IPR risk as it is borne by the AE (page 719-720 of the paper book). The Id. AR also submitted that the AE is involved in research and development activities and provides basic design to the assessee and the assessee,

upon the receipt of the basic design and guidance from the AE, perform the design and engineering services. The services provided by the assessee therefore should be characterized as a design and engineering support service provider (under the guidance of the AEs) Therefore it was the submission of the ld.AR that it would be incorrect to compare the Appellant with the companies engaged in full-fledged development activities and being a captive service provider, the assessee does not own any product or any intangible with respect to the services rendered. The ld.AR therefore prayed that the matter requires to be remanded to the TP Officer to conduct fresh benchmarking analysis considering comparables providing 'Engineering Design Services' and not KPO companies and also submitted that if this prayer is accepted, all the issues in ground Nos. 6 to 13 would become infructuous.

17. We have considered the rival submissions and perused the material on record. We notice that the coordinate Bench of this Tribunal in the Ingersoll Rand International (India) Pvt Ltd for AYs 2008-09 & 2009-10 in IT(TP)A Nos.1557/Bang/2012 & 259/B/2014 had dealt with a similar issue and held as follows:-

“11. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The main dispute between the assessee and the department is with regard to characterization of services rendered to its AE. The assessee claims that services rendered to its AE are in the nature of engineering design services. The TPO has accepted the fact that the assessee is into mainly engineering design services; however, he has characterized the services

rendered by the assessee to AE as ITES/BPO services. We find that although the assessee is mainly into the activity of providing engineering design services but, it is also into the activity of providing ITES services to its AE which is evident from the fact that the assessee has itself in its TP study has accepted the fact that the proportion of ITES and the integration services rendered to its AE when compared with the engineering as well as outsourcing services is very insignificant and hence the international transactions have been aggregated to determine the ALP. When the assessee is having different stream of services including engineering design services and ITES services, it has to furnish complete segmental details while carrying out its TP study. But, the assessee has aggregated its services while carrying out TP study to determine ALP of international transactions with AE. At the same time, the TPO has recharacterized services rendered to the AE into ITES services without assigning any reasons as to how services rendered by the assessee are coming within the ambit of ITES services. Therefore, we are of the considered view that there are some lapses from both sides while determining ALP of international services with AE. We, further, noted that the Co-ordinate Bench of ITAT, in the case of Continental Automotive Components (India) (P.) Ltd. (supra) has considered identical issue and restored the issue back to the file of the TPO/AO for characterization of services rendered by the assessee to its AE. Therefore, considering the facts and circumstances of this case and also consistent with view taken by the Co-ordinate Bench, we restore the issue to the file of the TPO for denovo consideration and to decide the issue of characterization of services rendered by the assessee to its AE. We, further, noted that as observed by the learned DR although the assessee is deriving revenue from two segments, but failed to provided separate segmental details in its TP study and therefore the assessee is directed to segregate its services into engineering design services and ITES services for the purpose of determination of ALP of international transactions with its AE.”

18. The assessee in the given case too has aggregated the transactions and therefore Respectfully following the above decision of the coordinate bench of the Tribunal, we remit the issue back to the

TPO for *de novo* consideration with similar directions and to decide the issue of characterization of services rendered by the assessee to its AE, after providing reasonable opportunity of being heard to the assessee. The assessee is directed to provide the required details in this regard and cooperate with the proceedings. Ground Nos. 6 to 13 relating the adjustment made in the EDS segment have become academic in the light of the issue being remitted back to the TPO and hence dismissed as such.

Notional interest on receivables (Ground Nos.14 to 19)

19. The assessee for the AY 2012-13 had trade receivables of Rs.21,16,42,186/- from its AE and also had trade payables of Rs.11,47,54,178/- to its AE. (refer page 729 of paper book). The assessee concluded that the trade receivables were at arm's length as the corresponding international transactions were determined. The TPO treated the trade receivable as a separate international transaction and adopted a notional interest on the same at @ 3.8025% which resulted in an adjustment of Rs. 80,47,694. The TP Officer used the loan spread average during the period range of 04.01.2011 to 04.01.2012.

20. The DRP had directed the TP Officer to adopt the rate of interest equivalent to average cost of borrowed funds and to consider the netting off after allowing the credit period of 30 days both for payables and receivables. The DRP directed the assessee to file the details with regard to receivables and payables at the beginning of the previous

year and details of the invoices raised during the previous year within 15 days of receipt of the order. The assessee however could not furnish the details within the stipulated time and hence the TPO has rejected the contention of the assessee. The DRP further directed the TPO to restrict the TP adjustment (interest computation) to the period of the relevant AY. However the TPO has failed to give effect to the same

21. In this regard, the Id. AR submitted that assessee has receivables both from AE and non-AEs [Sch. 15 of the financials at page 642 of the PB] and submitted that interest chargeable to AE on the receivables should be benchmarked with that of non-AE by adopting internal CUP method. He submitted that the assessee is not charging any interest on the non-AE receivables and hence imputing interest on AE receivables is not tenable. He further submitted that the TPO did not consider that there are outstanding balances payable to AE and even if interest was to be imputed, it could be computed only on the net amount. He also submitted that the TPO had arrived at the interest on receivables without granting any credit period.

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

23. We have considered the rival submissions and perused the material on record. In our opinion, the impugned issue is squarely covered by the decision of the coordinate Bench of the Tribunal in the case of ISG Novasoft Technologies Ltd [IT(TP)A No.3284/Bang/2018]. The relevant conclusion of the Tribunal is as under:

“24. We have heard both the parties and perused the material on record. The ld. AR fairly conceded that outstanding amount on account of sales/services billed to AE akin to loan advanced by assessee is an international transaction. As held by the Hon'ble Delhi High Court in the case of Avenue Asia Business Advisors (P.) Ltd. v. DCIT [2017] 398 ITR 120 (Del), there should be TP adjustment on this count after making proper TP study by the TPO after considering the period of credit enjoyed by the comparables and also applicable LIBOR rate in the place of AEs for benchmarking the rate of interest to arrive at the ALP. With these observations, we remit the issue in dispute to the file of AO/TPO to benchmark the interest rate in the light of the decisions cited by ld. DR. Further, we make it clear that the TPO should compute the interest only for the relevant assessment year after going through the relevant agreements entered by the assessee with AEs while computing the ALP.”

24. Respectfully following the decision of the coordinate bench of the Tribunal we remit the issue to TPO/AO with a similar direction.

Reimbursement of expenses to AE (Ground No.20)

25. During the year under consideration, the assessee has paid an amount of Rs.68,90,300 to its AE as reimbursement towards certain administrative expenses incurred by the AE on behalf of the assessee. These expenses have been routed through the profit and loss account of the assessee and have been considered a part of the operating cost base for computing operating margins. The assessee aggregated the reimbursements with main business activity under TNMM in the manufacturing segment, trading and services segment. Since the margin of the assessee in the manufacturing, trading and services segment is higher than comparable margin, the assessee treated that the reimbursement of the expenses are at arm's length. The TPO

concluded by treating the ALP of reimbursement at NIL for failure to provide substantive documentation in respect of reimbursement claimed by the assessee. Before the DRP the assessee submitted the break-up of the reimbursements along with the invoices raised by the AE and also submitted that the nature of expenses are travel expenses, network charges and other expenses pertaining to its employees incurred by the AE. However the DRP confirmed the order of the TPO on the basis that no evidence was furnished to substantiate the genuineness of the expenses.

26. Before us, the Id. AR also submitted that the expenses reimbursed by the assessee to the AEs is primarily in the nature of travel expenses, network charges and other expenses pertaining to its employees which have been incurred by the AEs on behalf of the assessee for administrative convenience and that these expenses have been cross-charged to the AE without any mark-up. The Id. AR submitted that the relevant details were furnished before the TPO and the DRP which have not been considered by them.

27. In view of the submissions of the Id. AR, that the details furnished in terms of the break-up of the expenses (page 241 of Paper book) along with the invoices raised by the AE (page 235-240 of Paper book) were not verified by the TPO/DRP we remit this issue back to the AO/TPO for consideration of evidence submitted by the assessee and to decide the issue in accordance with law after providing reasonable opportunity of being heard to the assessee.

28. Ground Nos.21 & 22 were not pressed at the time of hearing and dismissed as such.

29. In result the appeal of the assessee is partially allowed.

Pronounced in the open court on this 25th day of July, 2022..

Sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Sd/-
(PADMAVATHY S.)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 25th July 2022.

/Desai S Murthy /

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.