

IN THE INCOME TAX APPELLATE TRIBUNAL  
"J" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)  
AND

SHRI MANISH BORAD (ACCOUNTANT MEMBER)

I.T.A. No.2357/Mum/2015  
(Assessment year 2010-11)

&

IT(TP)ANo.119/Mum/2016  
(Assessment year 2011-12)

Dy. Commissioner of Income-tax- 1(3)(1), Mumbai	vs	M/s Rabo India Finance Ltd 20 <sup>th</sup> Floor, Tower-A, Peninsula Business Park, Senapati Bapat Marg Lower Parel, Mumbai-400 013 PAN : AAACR6065R
<b>APPELLANT</b>		<b>RESPONDENT</b>

Appellant by	Shri Vatsalya Saxena [CIT(DR)]
Respondent by	Shri Nitesh Joshi (AR)

Date of hearing	11-08-2021
Date of pronouncement	13-08-2021

**ORDER**

**Per: Saktijit Dey (JM):**

Captioned appeals by the revenue are in respect of the same assessee and arise out of two separate orders/directions of learned Dispute Resolution Panel (DRP), Mumbai pertaining to assessment years 2010-11 and 2011-12. Since, common issues have been raised in both the appeals, they are taken up for disposal together.

2. In ground 1 of both the appeals, the revenue has challenged the decision of learned DRP in partly accepting the payment made by the assessee towards intra group services.

3. Briefly the facts are, the assessee, a resident company, is wholly owned subsidiary of Rabo Bank International Holdings VV and is part of Rabo group having its head office in Netherland. In the financial years relevant to the assessment years under dispute, assessee had paid Rs. 19,00,48,432/- and Rs.20,50,83,718/- respectively to its overseas associated enterprises (AEs) for availing various support services. Though, the assessee had claimed the payment made to the AEs towards intra group services to be at arm's length by applying comparable uncontrolled price (CUP) method; however, the TPO was not convinced. After calling for necessary details and examining them, he found that certain expenses incurred by Rabo Bank, Netherlands (hereinafter called the head office) and Rabo Bank, Singapore (hereinafter called the regional office) for providing support services have been allocated to various group entities without any mark up. He observed, both the head office and regional office have developed an indirect charging method to allocate the cost to various group entities on an appropriate basis, such as, head count estimate of time spent, actual use, etc. However, from the details available, he found that the services rendered are for varied purposes like global credit risk, global market risk, communications, global IT, audit, global finance management, tax, legal, etc. which are provided by the group on centralized basis for uniformity amongst all Rabo group entity across the world. After verifying the details, the TPO observed

that some of the services rendered by head officer and regional office are in duplication, in terms of this being paid for separately by the assessee as well as being charged by the AEs. In this context, he specifically referred to communications, IT, legal and professional services, training and audit. He observed, there is no clarify why this is being done when all these services are being available in India. Further, he observed, certain activities are in the nature of shareholders' activities/stewardship carried out for the benefit of the shareholders of the group and not for the benefit of the assessee per se. Therefore, there was no necessity for the assessee to make payment for such activity. He observed, under normal circumstances, no independent party would pay for such services to any other entity. Alleging that the assessee failed to demonstrate how it has benefited from the services supposedly rendered by the group entity, the TPO held that the ALP of the services rendered has to be taken as nil under CUP method. Accordingly, he proposed the entire amount paid by the assessee towards intra group services towards adjustment in both the assessment years under appeal. Assessee challenged the aforesaid decision of the TPO before learned DRP. After considering the submissions of the assessee in the context of facts and materials on record, learned DRP partly accepting assessee's claim, determined the ALP of the intra group services at Rs.1,12,09,239/- and Rs.1,13,55,072/- for assessment years 2010-11 & 2011-12, respectively. Being aggrieved with the decision of learned DRP, the revenue is before us.

4. The learned departmental representative, taking us through various observations of the TPO submitted, the assessee has failed to furnish evidence to

demonstrate that either any services were rendered or even if rendered, they resulted in real benefit to the assessee. Further, he submitted, payment for certain services have been made both to parties in India and to the AEs. Therefore, it is not known why at all the assessee required such services from the AEs. He submitted, the assessee has made payment for certain services both, to the AEs at regional level and head office. Therefore, there is duplication in services rendered. He submitted, the DRP, while partly accepting the claim of the assessee has overlooked various deficiencies pointed out by the TPO. Thus, he submitted, the issue may be restored back to the AO/TPO for reconsideration.

5. The learned counsel for the assessee submitted, all documentary evidences relating to the intra group services were submitted before the TPO as well as learned DRP. He submitted, while the TPO has not properly appreciated the facts and evidences brought on record and has determined the ALP at nil without really following any of the prescribed methods, learned DRP has examined, in detail, entire factual aspect and partly accepted the payment made by the assessee towards intra group services. In this regard, he drew our attention to various observations of the learned DRP on the issue. He submitted, the services rendered by the AEs certainly has benefited the assessee, as, without those services, it would have been difficult on the part of the assessee to carry on its activities. Further, he submitted, while completing the assessment in case of head office, the assessing officer has given a categorical finding that support services have been provided to the Indian entity and has accordingly attributed 80% of the payment received to the PE in India. Thus, he submitted, on the one hand the

revenue cannot say that no service has been rendered to the Indian entity and on the other hand attribute profit from the services rendered to the PE. Thus he submitted, DRPs direction on the issue should be sustained. Further, he submitted, the determination of ALP at nil by the TPO without following any prescribed method is illegal and unsustainable. Thus, he submitted, DRPs directions should be upheld. In support of his contention, learned counsel relied upon the following decisions:-

1. CIT v. Dhanrajgirji Raja Narasingirji ITA 91 ITR 544 (SC)
2. CIT v. Lever India Exports Limited ITA No. 1306/2014, 1307/2014 & 1349/2014 (Bombay High Court)
3. CIT v. Lever India Exports Limited ITA No. 1306/2014, 1307/2014 & 1349/2014 (Bombay High Court)
4. CIT v. Merck Ltd ITA 272/2014 (Bombay High Court)
5. Commissioner of Income Tax-LTU vs SI Group India Limited ITA 447/2017 (Bombay High Court)
6. CIT vs M/s Cushman and Wakefield (India) pvt Ltd ITA 475/201 2 (Delhi High Court)
7. Principal Commissioner of Income-tax v. R.A.K. Ceramics India (P.) Ltd I.T.TA NO. 595 OF 2016 (Andhra Pradesh High Court)
8. Merck Limited vs DCIT ITA No. 1946/Mum/2014 ITA No. 1222/Mum/2015 ITA No. 1172/Mum/2015
9. Millward Brown Market Research Services India Private Limited vs DCIT I.T.(TP) A. No. 932/Mum/2016
10. Henkel Chembond Surface Technologies Ltd. v. Assistant Commissioner of Income Tax, IT APPEAL NO. 1049 (MUM.) OF 2016

6. We have considered rival submissions and perused materials on record. It is evident, the primary reasons, based on which the TPO has determined the ALP of the payment made towards intra group services at nil is there are duplication in payment made and secondly, the assessee has failed to establish the benefit derived from such services and thirdly some payments are towards shareholders'

activity from which the assessee could not have derived any benefit. As can be seen from the facts on record, the assessee has benchmarked the payment made towards intra group services applying CUP method. It is an accepted factual position that provision of intra group services is based on actual cost without any mark up. It is also evident, the assessee has received various kind of services from its group entities based in Singapore as well as in Netherlands. Though, the TPO has not discussed in detail the factual aspects relating to the nature of services rendered as well as payment made, however, learned DRP has exhaustively dealt with them. On a perusal of the order of learned DRP, we find from the regional office cost allocation summary, services were rendered under various categories, such as, regional management, regional finance and control, regional business and the regional GPM, cost have been allocated under 35 heads. After examining the facts in detail, learned DRP has allowed payments made only under two heads, viz, IT infrastructure and human resources.

7. Except the aforesaid two items, payments made under all other heads have been disallowed by learned DRP. Similarly, from head office cost allocation summary we find that out of 36 different heads under which cost allocation has been made, learned DRP has allowed payment made only under a single head, viz. credit risk management, that too, a small lump sum amount. On perusing facts available on record we find that IT Infrastructure and human resource services have actually been rendered by the regional office in Singapore. Having examined material on record, learned DRP has given a categorical factual finding that the payment made towards IT Infrastructure is supported by credible evidence. Same

is the case with the payment towards human resource services. Even, insofar as payment made towards credit risk management, learned DRP has given a factual finding that the evidence furnished did not indicate that more than one employee would have devoted the entire time during the year for the benefit of the assessee. Accordingly, learned DRP has allowed a small part of the payment made on adhoc basis.

8. Thus, the aforesaid factual position clearly reveals that the assessee has not only received certain services from other group entity, but it has also benefited from such services. Pertinently, in course of hearing, a query was made to the learned counsel for the assessee, whether the assessee has accepted the directions of learned DRP. In reply, it was submitted by the learned counsel that though, the assessee had preferred an appeal against the directions of learned DRP; however, ultimately, the assessee has settled the dispute under the Vivad se Vishwas Scheme. Thus, the directions of learned DRP have attained finality. Be that as it may, after considering the overall facts and materials on record, we are of the considered opinion that learned DRP, after properly dealing with the entire factual aspect involved in the issue, has determined the ALP. Whereas, the revenue has not brought any material on record to controvert the factual finding of learned DRP. Further, the payments allowed by learned DRP have no duplication.

9. At this stage, it would be relevant to observe that while completing the assessments in case of the head office, the assessing officer has attributed 80% of

the payment made towards intra group services to the PE in India. Thus, in case of the head office, the revenue has accepted that services have been rendered to the Indian entity. Thus, in view of the aforesaid, we do not find any merit in the grounds raised. Accordingly, they are dismissed.

10. The next common issue as raised in ground 2 relates to deletion of addition made on account of notional interest charged on alleged loan advanced to Rabo Bank, London. Briefly the facts are, Tata Tea, UK wanted to avail loan of GBP 160 million for its business. Since, the quantum of loan required by Tata Tea, UK was substantially high, neither the assessee nor the AE, viz. Rabo Bank, London were in a position to extend such huge loan. Thus, the assessee through its AE facilitated availing of such loan by a consortium of banks and financial institutions with Rabo Bank, London, as lead lender. Being a facilitator of the loan, the assessee was remunerated with a percentage of interest earned. While completing assessment in case of the assessee in assessment year 2006-07, the assessing officer concluded that the has advanced GBP 37.50 million equivalent to Rs.297.71 crores to Rabo Bank, London was actually advanced by the assessee. Accordingly, the assessing officer added back the amount under section 69 of the Act. While considering assessee's objection, learned DRP, having found that actually the assessee had not advanced any loan to Rabo Bank, London, deleted the addition. Against the directions of learned DRP in assessment year 2006-07, the revenue preferred appeal before the Tribunal. During the pendency of the said appeal, the TPO, while completing the proceedings under section 92CA(3) of the Act for the impugned assessment years, charged notional interest on the

alleged loan of GBP 37.5 million by treating it as interest chargeable on the advance by Rabo India to Rabo London. Relying upon its own directions in assessment year 2006-07, learned DRP deleted the adjustment.

11. Before us, it is a common point between the assessee and the revenue that the issue is squarely covered by the decision of the Tribunal in assessee's own case in assessment years 2006-07 and 2007-08.

12. Having considered rival submissions, we find that while considering the issue of addition of alleged loan of GBP of 37.5 million, made under section 69 of the Act in assessment year 2006-07 and addition of notional interest on such loan in assessment year 2007-08, the Tribunal, in ITA Nos.1584/Mum/2014 and 1583/Mum/2014 dated 26-03-2021, while recording a categorical finding of fact that no such loan of GBP 37.5 million was advanced to Rabo Bank, London has upheld the directions of learned DRP on the issue. The findings of the Tribunal in this regard are, as under:-

*"9. We have heard the submissions made by rival sides at length and have examined the documents on record. In ground No. 1 and 2 of the appeal, the Revenue has assailed the finding of DRP in deleting the addition of Rs.297.71 Crores (GBP 37.5 million) made under section 69 of the Act. The contention of Revenue is that the assessee was part of consortium that had extended loan to Tata Tea UK. The Revenue has placed reliance on letters dated 27/07/2011 and 06/09/2011 written by one Mr. Chirag Vajani. Financial Controller of the assessee to the TPO in assessment proceedings for A Y 2008-09, In letter dated 27/07/2011 the list of participants that had extended credit facility to Tata Tea UK has been given. The name of assessee figures in that list and against the*

*name of the assessee it has been mentioned that the assessee has extended credit facility to the tune of GBP 37.5 million. In the subsequent letter dated 06/09/2011 Chirag Vajani repudiated that the assessee was part of syndicate for extending loan. However, he stated that the assessee was paid participation/commitment fee of GBP 1,50,000 @ 0.40% of the credit allocation. The aforesaid letters do create an impression that the assessee in some manner was part of consortium that extended credit facility to Tata Tea UK. Later, Chirag Vajani retracted from the statements made in the aforesaid letters by filing an affidavit dated 04/03/2013 (page 1044 to 1047 of the paper book).*

*10. Further, to substantiate that the assessee was not part of consortium that had extended credit facility to Tata Tea UK, the assessee furnished various documents which inter-alia include; confirmation from Rabobank London (at page 958 of the paper book), Global Substitution Certificate giving list of participants (at pages 961 and 962 of the paper book), communication dated 19/09/2011 and 28/09/2011 from Rabobank London (at pages 1033 and 1034 of Paper Book), a communication dated 17/01/2013 from Rabobank Singapore regarding credit allocation of Rabobank London (at pages 1036 and 1037 of the paper book). From perusal of documents furnished by the assessee, inevitable conclusion that can be drawn is that the assessee was only instrumental in originating transaction for extending credit facility to Tata Tea UK. The assessee forwarded the opportunity to Rabobank London, its AE. Since, exposure to credit facility sought by Tata Tea UK was substantial, Rabobank London along with other participating banks/financial institutions formed a consortium for extending the credit facility. Rabobank London vide letter dated 28/9/2011 (at page 1034 of paper book) has given the details of constituents of consortium and the credit facility extended by each of **them**. Rabobank London retained GBP 77.5 million and syndicate contributed GBP 82.5 million:*

	<i>Name of the participating member</i>	<i>Amount of loan disbursed during FY 2005-06 (BGP)</i>
	<i>Citibank</i>	<i>20,000,000</i>
	<i>Royal Bank of Scotland</i>	<i>20,000,000</i>
	<i>Allied Irish Bank</i>	<i>14,166,667</i>
	<i>HBOS</i>	<i>14,166,667</i>
	<i>Lloyds TSB</i>	<i>14,166,667</i>
		<i>82,500,000</i>

*In the aforesaid communication it is again reiterated that the loan to Tata Tea UK was granted by Rabobank London from funds in its Balance Sheet after borrowings from the market and in syndication with other members. No part of the loan provided to Tata Tea UK was funded by the assessee or any entity acting on behalf of the assessee. It was further clarified that Rabobank London provided loan on its own behalf and not on behalf of the assessee.*

*11. In the present case, the reason for invoking provisions of section 69 of the Act germinates from the contents of letters dated 27/07/2011 and 06/09/2011 written by one of the employee indicating that the assessee has extended loan of GBP 37.50 million as per part of syndicate and the participation/commitment fee of GBP 1,50,000 has been received by the assessee. Apart from the said letters, there is no other material on record to corroborate that the assessee in any manner participated in extending loan facility to Tata Tea UK as part of consortium/syndicate. In the first place the Assessing Officer has failed to take note of the fact that the contents of letter on the basis of which addition u/s.69 of the Act was made, were retracted by way of affidavit. Further, the addition cannot be made solely on the basis of*

*phraseology of the submissions made during proceedings. There has to be substantive evidence on record to corroborate with the statements.*

*12. The findings of the TPO and the Assessing Officer in draft assessment order that the assessee has advanced loans from undisclosed sources is merely based on surmises and conjunctures. It is a well settled legal proposition that suspicion, howsoever strong, cannot take place of evidence. Except from the letters referred above there is no material to back the observations made by the TPO/AO. On the contrary, the assessee has furnished various documents to substantiate that the assessee was not part of syndicate that has extended loan facility to Tata Tea UK, however, the same have been ignored by the TPO and the assessing officer while passing the draft assessment order. In the absence of any cogent evidence, the Revenue has failed to discharge its onus while alleging that there was an outflow of funds from India by assessee or receivables from Rabobank London have been squared off for diversion of funds to syndicate for advancing loan to Tata Tea UK. The assessee cannot be expected to prove negative. The onus is on the Department to substantiate that the assessee has advanced amount to Rabobank London for loan to Tata Tea UK or assessee's funds have been diverted in any manner to fund part of said loan. We find that the TPO and the assessing Officer in draft assessment order has placed reliance solely on the letters furnished by an employee of the assessee without there being any corroborative evidence for making addition u/s. 69 of the Act.*

*13. The second limb of presumption is that the commitment charges received by the assessee are in fact, part of interest income on the loan advanced. The assessee has clarified that the role of assessee was limited to identifying and referring the opportunity to Rabobank London. Rabobank London is the lead arranger for the loan and the other financial institutions/banks joined hands to form a consortium for extending loan facility to Tata Tea UK. The assessee is remunerated for the services rendered by way of share in upfront fee, participation/commitment fee. The share in participation/commitment fee at some percentage (0.40%) of the credit allocation of GBP37.5 million was the method of remunerating the assessee for the functions performed. Since, we have already held that the assessee had not participated in extending loan facility to Tata Tea UK through the consortium in any manner whatsoever, the remuneration received by the assessee in lieu of the services rendered cannot be termed as interest income of the assessee from the alleged advancing of loan. The aforesaid income received by the assessee has already been offered*

*to tax, this fact has not been disputed by the Revenue, We find no merit in ground No. 1 and 2 raised by the Revenue in appeal, the same are dismissed, accordingly."*

13. Facts being identical, respectfully following the aforesaid decision of the co-ordinate bench in assessee's own case, we uphold the decision of learned DRP by dismissing the ground raised in both the appeals.

14. In the result, both the appeals are dismissed.

Order pronounced on 13/08/2021.

Sd/-

sd/-

<b>(MANISH BORAD)</b>	<b>(SAKTIJIT DEY)</b>
<b>ACCOUNTANT MEMBER</b>	<b>JUDICIAL MEMBER</b>

Mumbai, Dt : 13/08/2021

Pavanan

Copy to :

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2. Respondent
3. The CIT concerned
4. The CIT(A)
5. The DR,ITAT, Mumbai
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By Order

Asstt.Registrar, ITAT, Mumbai