

आयकर अपीलीय अधिकरण 'डी' न्यायपीठ चेन्नई में।

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

**माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**

**BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ **ITA No.39/Chny/2017**
(निर्धारण वर्ष / **Assessment Year: 2012-13**)

&

आयकर अपील सं./ **ITA No.3088/Chny/2017**
(निर्धारण वर्ष / **Assessment Year: 2013-14**)

&

आयकर अपील सं./ **IT(TP)A No.92/Chny/2019**
(निर्धारण वर्ष / **Assessment Year: 2015-16**)

Grundfos Pumps India Private Limited No. 118, Old Mahabalipuram Road, Thoraipakkam, Chennai – 600 096.	बनाम/ Vs.	DCIT Corporate Circle -2(1), Nungambakkam, Chennai-600 034.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AAACG-8981-B		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Assessee by	:	Shri S.P. Chidambaram (Advocate) – Ld. AR
प्रत्यर्थी की ओरसे/ Department by	:	Shri S. Palanikumar (CIT) – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	15-09-2022
घोषणा की तारीख / Date of Pronouncement	:	15-09-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AY) 2012-13, 2013-14 & 2015-16 arises out of separate orders of lower authorities.

Assessment Year 2012-13

2.1 The appeal for AY 2012-13 arises out of final assessment order dated 03.11.2016 passed by learned Deputy Commissioner of Income Tax, Corporate Circle-(2)1, Chennai (AO) u/s 143(3) r.w.s. 144C(13) pursuant to the directions of learned Dispute Resolution Panel-2, Bengaluru dated 17.10.2016 u/s 144C(5) of the Act.

2.2 The assessee, vide petition dated 27.07.2022, seek permission to withdraw Transfer Pricing grounds in this year. The Ld. AR submitted that the assessee has received Mutual Agreement Procedure (MAP) resolution from the competent authority and accordingly, these grounds may be permitted to be withdrawn. Considering the same, the transfer pricing grounds raised by the assessee stand dismissed as withdrawn. The only grounds urged in this year are (i) disallowance of interest for delayed payment of taxes for Rs.19.48 Lacs; & (ii) Disallowance of depreciation on UPS. Having heard rival submissions, these grounds are disposed-off as under.

2.3 The assessee claimed deduction of interest paid for Rs.19.48 Lacs for delayed remittance of Tax Deduction at source. The same was denied by Ld. AO. The Ld. DRP confirmed the same by relying on the decision of Hon'ble High Court of Madras in the case of **CIT V/s Chennai Properties & Investment Ltd. (239 ITR 435)** wherein it was

held that the amount of TDS was not an amount of expenditure. The amount not deducted and remitted has the character of tax and has to be remitted to the state and could not be utilized by the assessee for its own business. Therefore, the interest so paid would not be business expenditure for the assessee. Since Ld. DRP has followed the decision of jurisdictional High Court, we find no reason to interfere in the same. This ground stand dismissed.

2.4 The remaining issue in assessee's appeal is depreciation on UPS. The assessee claimed depreciation on UPS system @60% considering the same to be part of computer block. However, rejecting the same, Ld. AO restricted the depreciation to 15% and made addition of Rs.0.16 Lacs. The Ld. DRP upheld the stand of Ld. AO. We are of the considered opinion that UPS is an integral part of computer system and would be eligible for same rate of depreciation as is applicable to computer system. The various decisions of Tribunal have taken the same view. Considering the same, we direct Ld. AO to grant the depreciation as claimed by the assessee.

2.5 The appeal for AY 2012-13 stands partly allowed.

Assessment Year 2013-14

3. In this year, the assessee is aggrieved by Transfer Pricing Adjustments of Rs.988.97 Lacs. The assessee has filed similar petition dated 27.07.2022 wherein the assessee seek permission to withdraw Transfer Pricing grounds in this year. The Ld. AR submitted that the assessee has received Mutual Agreement Procedure (MAP) resolution from the competent authority and accordingly, these grounds may be permitted to be withdrawn. Considering the same, the transfer pricing grounds raised by the assessee stand dismissed as withdrawn. Since

there are no other issues in this year, the appeal stand dismissed as withdrawn.

Assessment Year 2015-16

4.1 In this year also, the assessee has filed similar petition dated 27.07.2022 wherein the assessee seek permission to withdraw Transfer Pricing grounds to the extent of Transfer Pricing Adjustment of Rs.721.27 Lacs which represent adjustment of administration and support services fees paid to Associated Enterprises (AE) namely M/s Grundfos Holdings A/s Denmark. The Ld. AR submitted that the assessee has received Mutual Agreement Procedure (MAP) resolution from the competent authority on this issue wherein 50% of adjustment has been agreed upon to be withdrawn for AYs 2012-13, 2013-14 and 2015-16 with respect to Danish entity. The copy of the same has been placed on record. It could be seen that both parties have concurred with withdrawal of 50% of the adjustment. Considering the same, the grounds raised to that extent stand dismissed as withdrawn.

4.2 The Ld. AR filed modified grounds of appeal and submitted that Transfer Pricing Grounds relating to adjustment of Rs.91.43 Lacs are to be adjudicated in the present appeal. This adjustment represent adjustment of administration and support services fees paid to another Associated Enterprises (AE) namely M/s Grundfos Singapore Pte, Singapore.

4.3 The Ld. AR submitted that this adjustment was not subjected to MAP due to quantum of adjustment. The Ld. AR pleaded for deleting the adjustment. Alternatively, it was submitted by Ld. AR that the same ratio as applied in MAP resolution for Danish entity may be applied for this entity also. However, Ld. CIT-DR, drew attention to the orders of

Ld. Transfer Pricing Officer (TPO) and submitted that the rendering of services is only supported by vague emails etc. and no benefit has accrued to the assessee. Having heard rival submissions, the appeal is disposed-off as under.

4.4 From the perusal of Ld. TPO's order dated 29.10.2018, it could be seen that the assessee has paid fees of Rs.119.14 Lacs to Singapore AE and benchmarked the same using Transactional Net Margin Method (TNMM). The Ld. TPO held that as per OECD guidelines, much of the services as enlisted in the agreement with AE falls within the premises of Shareholder's functions / stewardship services and therefore, does not require any separate payment towards it. The assessee has not adduced evidences for receipt of most of the services. Finally, rejecting TNMM method and applying CUP method, Ld. TPO determined Arm's Length Price of aggregate fees of Rs.1003.58 Lacs as Rs.190.87 Lacs and proposed downward adjustment of Rs.812.71 Lacs. The fees include fees paid to all the AEs during the year. The Ld. DRP confirmed the stand of Ld. TPO against which the assessee is in further appeal before us.

4.5 Upon careful consideration of factual matrix, it could be seen that the assessee has paid aggregate administrative fees of Rs.1003.58 Lacs to Danish Entity as well as Singapore Entity. The substantial fees of Rs.884.44 Lacs has been paid to Danish entity which has been settled under MAP @50% adjustment. The fees paid to Singapore entity is Rs.119.14 Lacs and the nature of the services is the same. Therefore, in our considered opinion, the same approach, as settled in MAP for Danish entity would be applicable for the fees paid to Singapore entity also. Therefore, we direct Ld. AO to restrict the

adjustment to the extent of 50% of Rs.119.14 Lacs and re-compute the income of the assessee. We order so. The appeal stands partly allowed.

Conclusion

5. The appeal for AY 2012-13 and 2015-16 stands partly allowed. The appeal for AY 2013-14 stands dismissed as withdrawn.

Order pronounced on 15th September, 2022.

Sd/-

(V. DURGA RAO)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 15-09-2022

JPV

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

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5.

विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF