

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

BEFORE SHRI S.S.GODARA, JM
AND SHRI G.D. PADMAHSHALI, AM

आयकर अपील सं. / ITA No.311/PUN/2021
निर्धारण वर्ष / Assessment Year : 2016-17

A Raymond Fasteners India P.Ltd.,
G. No. 259, 276/8B,
Nighoje, Chakan,
Taluka – Khed,
Pune – 410 501.

PAN : AAGCA7184G

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Circle -8, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri M.P.Lohia
Revenue by : Shri B.Y.Chavan

सुनवाई की तारीख / Date of Hearing : 30.08.2022
घोषणा की तारीख / Date of Pronouncement : 16.09.2022

आदेश / ORDER

PER S. S. GODARA, JM :

1. This assessee's appeal for AY 2016-17 arises against the National Faceless Assessment Centre's assessment dated 31.05.2021 framed in furtherance to the CIT(DRP-3), Mumbai -1' s directions dated 11.03.2021 in DIN & Order no. ITBA/DRP/F/144C(5)/2020-21/1031413958(1), in proceedings u/s 143(3) r.w.s. 144C r.w.s. 144B of the Income Tax Act, 1961; in short "the Act".

Heard both the parties. Case file perused.

2. The assessee raises the following substantive grounds in the instant appeal :-

- “1. *erred in assessing the total income at INR 8,17,88,857 as against declared total income of INR 4,73,92,440 by the Appellant.*

Grounds of appeal in relation to management support services

Not appreciating the documentary evidences submitted by the Appellant

2. *erred in considering the international transaction pertaining to payment for management support services as a shareholder’s activity and saying that no benefit is received by the Appellant or the benefit is remote or for the benefit of entire group and by not appreciating the documentary evidence submitted by the Appellant;*

Not considering the relief granted by the Learned Transfer Pricing Officer (‘TPO’) in the remand report

3. *Erred in not considering the relief granted by Learned TPO in the remand report. The Hon’ble DRP has passed directions without taking into consideration the relief granted;*

Rejected the aggregate/ combined transaction approach

4. *erred in benchmarking the transaction of payment for management support services by rejecting the aggregate/combined transaction approach adopted by the Appellant;*

Arm's Length Price of payment of management support fees considered as NIL

5. *erred, in facts and circumstances of the case, by computing the arm's length price ('ALP') of the international transaction of payment for management support services to its Associated Enterprises as Nil;*

Not following any of the methods prescribed under Section 92C of the Act for determination of ALP

6. *erred in not applying any one of the prescribed methods recognized under section 92C of the Act for determination of ALP of international transaction pertaining to payment for management support fees;*

Levy of penalty under section 274 read with section 271(1)(c) of the Act

7. *erred in initiating penalty proceedings under section 274 read with section 271 (1)(c) of the Act;*

Levy of interest under sections 234A, 234B, 234C and 234D of the Act on account of addition made to the total income

8. *Erred in incorrectly levying interest under section 234A, 234B, 234C and 234D of the Act.*

The Appellant craves leave to add, alter, vary, omit, amend or delete one or more of the above grounds of appeal before, or at the time of, hearing of the appeal, so as to enable the learned Appellate Commissioner to decide this appeal according to law.”

3. The assessee’s solitary substantive grievance raised herein seeks to reverse the learned lower authorities action making arms length price adjustment “ALP” amounting to Rs.3,43,96,417/- regarding its international transactions with overseas associate enterprises “AE”s in the nature of management support services.

4. It emerges during the course of hearing the instant issue of management support services between the parties is no more res integra as the tribunal’s learned coordinate bench order in assessee’s appeal itself ITA No. 2065/PN/2019 for A dated 29.07.2022 as restored the same back to the AO /TPO as follows:-

“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 3 ITA No.2065/PUN/2019, A.Y. 2015-16 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 4 ITA No.2065/PUN/2019, A.Y. 2015-16 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 5 ITA No.2065/PUN/2019, A.Y. 2015-16 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."*

5. Faced with this situation and in absence of any distinction on facts or law involved in both these assessment years, we adopt judicial consistency to restore the foregoing main issue back to the AO /TPO in very terms for his contiguous adjudication in consequential proceedings. Ordered accordingly.

6. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the Open Court on this 16th day of September, 2022.

Sd/-

(G.D. PADMAHSHALI)
लेखा सदस्य/ **ACCOUNTANT MEMBER**

Sd/-

(S.S. GODARA)
न्यायिक सदस्य/**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 16th September, 2022.

Ashwini

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-National e-Assessment Centre, Delhi.
4. The CIT-3, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "सी" बेंच,
पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्ड फ़ाइल / Guard File. आदेशानुसार / BY ORDER,
// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

ITA No.311/PUN/2021
A.Y. : 2016-17
 A Raymond Fasteners India P.Ltd.,

S.No.	Details	Date	Initials
1	Draft dictated on	02.09.2022	
2	Draft placed before author	06.09.2022	
3	Draft proposed & placed before the Second Member		
4	Draft discussed/approved by Second Member		
5	Approved Draft comes to the Sr. PS/PS		
6	Kept for pronouncement on		
7	Date of uploading of Order		
8	File sent to Bench Clerk		
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R.		
11	Date of Dispatch of order		