

**IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI KULDIP SINGH, JM

**ITA No. 2156/MUM/2017**

(Assessment Year 2012-13)

Ingration India Pvt. Ltd 1605 Rupa Solitaire, Millennium Business Park, Thane, Belapur Rd, Mahape, Navi Mumbai- 400 710	Vs.	The income tax officer 15(20)(1) 2 <sup>nd</sup> Floor, Aaykar Bhavan, M.K.Road, Mumbai- 400 020
<b>(Appellant)</b>		<b>(Respondent)</b>

**PAN No. AAEECC1920C**

**Assessee by** : Shri. Ketan Ved.  
**Revenue by** : Ms. Samruddhi D Hande, SR AR

**Date of hearing:** 27.07.2022.  
**Date of pronouncement:** 20.10.2022.

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by the Ingration India Private Ltd (The appellant/Assessee) against the assessment order passed under section 143(3) read with section 144C (1) of the Income Tax Act, 1961 (the Act) on 25/01/2017 by the Income Tax Officer-15(2)(1), Mumbai (the Assessing Officer) wherein the return of income filed by the assessee on 29/11/2012 declaring loss of ₹17,96,482/- was assessed at ₹ 1,34,66,184/- by making an adjustment of arm's length price of international transaction by ₹ 1,52,62,664/-.

02. The assessee has raised following ground of appeals:

*"The Appellant objects to the order dated 25 January 2017 (received on 10 February 2017) passed under section 143(3) r.w.s. 144C (13) of the Income-tax Act, 1961 ('Act') by the Income Tax Officer- 15(2)(1), Mumbai ('Assessing Officer' or 'AO') for the Assessment year 2012-13 on the following grounds:*

*The grounds stated here under are independent of, and without prejudice to one another.*

***Direct Tax- Set-off of unabsorbed depreciation***

1. *The learned Assessing Officer erred in not setting-off the unabsorbed depreciation of ₹ 94,63,449/- as determined by order dated 24 June 2016 giving effect to the appellate order for A.Y. 2011-12 against the assessee income of ₹ 1,34,66,180/- of the Appellant for the current assessment year. Further, the Appellant submits that has no objection for the withdrawal of the set-off in respect of aforesaid unabsorbed depreciation allowed in A.Y. 2013-14, if allowed in A.Y. 2012-13.*

***Transfer Pricing:***

1. *The learned Assessing Officer/ Transfer Pricing Officer ('TPO') under the directions of the Hon'ble Dispute Resolution Panel (DRP), erred in making an upward adjustment of ₹ 1,52,62,664/- to the total income of the Appellant, under section 92CA(3) of the Act in respect of the various*

*international transactions entered into by it with its Associated Enterprises (AEs') during the year ended 31 March 2012.*

- 2. The learned Assessing Officer/TPO, while making the aforesaid adjustment of ₹ 1,52,62,664/- under the directions of the Hon'ble DRP, erred in considering the arm's length price of the international transaction of payment of regional service fees and headquarters fees at NIL value without providing any cogent reasons and not appreciating the facts of the case in their proper perspective.*
- 3. The learned Assessing Officer/TPO erred in not appreciating the detailed economic analysis and benchmarking analysis conducted by the AEs and submitted before them and the DRP during the course of the assessment proceedings, with respect to payments made by the Appellant towards regional fees, headquarter fees and royalty.*
- 4. The learned Assessing Officer/TPO erred in disregarding the detailed substantial documentary evidence maintained and furnished by the Appellant under section 92d of the Act read with Rule 10D of the Income-Tax Rules, 1962 ('the Rules) and not appreciating the factual details, submissions and various documentary evidence demonstrating benefits to the Appellant made towards regional service fees and headquarter fees.*

5. *The learned Assessing Officer/TPO erred in not giving due consideration to the additional evidence filed and the explanations provided in the reply to the remand report filed before the Hon'ble DRP to relation to regional service fees, headquarter fees and royalty.*
  6. *The learned Assessing Officer/TRO failed to appreciate in the proper perspective the computation of arm's length price in accordance with the Transactional Net Margin Method prescribed under section 92C(1) of the Act read with Rule 10B(1)(e) of the Rules.*
  7. *The learned Assessing Officer/TPO erred in not considering in the proper perspective the Customs Special Valuation Branch Order (SVB Order) stating that royalty amounts are not embedded in the import price of the starches.*
  8. *The learned Assessing Officer/TPO in concluding that no benefit has arisen to the Appellant from the royalty agreement entered into by it with its AE.*
  9. *The learned Assessing Officer/TPO erred in initiating penalty proceedings under section 271(1)(c) of the Act."*
03. Only ground in this appeal with respect to the transfer pricing adjustment was pressed. The brief fact of the case shows that, assessee is accompany engaged in the business of trading of modified and

other form of starches. Assessee purchases finished starch product from related parties for distribution in India. Assessee has entered into several international transactions. However, the dispute in this appeal is with respect to payment of regional fees of ₹ 71,60,700/- paid to National Starch Limited PTE Limited, payment of management fees of ₹18,60,449/- paid to National Starch LLC and payment of royalty for use of intangibles amounting to ₹62,41,515/- paid to Corn Products Development Incorporation.

04. The learned TPO, on reference held that
- a. payment of regional fees of ₹ 71,60,700/- is the services claimed to have been received fall under passive association benefits. The assessee is not the manufacturer hence, R&D facilities cannot be a requirement for the assessee. However, the assessee has sharing expenses of the AE under this head. The benefit received for other services are also not clearly laid out, no methodology for determination of markup has been furnished by the assessee and the basis for allocation key is not properly justified hence, ALP of the same is determined at ₹ Nil.
  - b. With respect to payment of management fees of ₹ 18,60,449/- the learned Transfer Pricing Officer determined ALP at ₹ Nil in absence of

any concrete evidence of benefit received was shown.

c. With respect to the payment of royalty for use of intangibles amounting to ₹ 62,41,515/- paid to Corn Products Limited. Learned TPO noted that royalty is agreed percentage of net sales ranging from 1-4 percent depending upon the categorization of products. Assessing Officer noted that assessee has purchased the goods from associated enterprise and sales in its open market, therefore, assessee is not making any value addition to the products. The assessee being a distributor only sales the goods in open market and earns profit and therefore payment of royalty for trademark and know how does not arise at all. The assessee claimed to have been payment mainly on trademark, but the assessee has purchased the goods for sale and the payments relating to every segment are already included in the purchase price and therefore separate payment for royalty does not arise. Accordingly, the arm's length price for payment of royalty is also treated at ₹ Nil.

05. Accordingly, total downward adjustment of ₹1,52,62,664/- was made by the order under section 92CA (3) of the Act dated 29/01/2016 passed by the DCIT transfer pricing range, 2(3)(2) Mumbai (the



learned TPO) was made. Consequent, to that draft assessment order was passed on 14/03/2016.

06. Assessee filed objection before the learned Dispute Resolution Panel who passed its direction on 28/12/2016 confirming the action of the learned TPO.
07. Accordingly, the assessment order dated 25/01/2017 was passed wherein TPO adjustment of ₹ 1,52,62,664/- was confirmed.
08. Therefore, assessee aggrieved with that order has preferred appeal before us. The learned authorized representative submitted that
- i. assessee has availed the services of its associated enterprises with respect to payment of regional fees and payment of management fees. He submitted detailed chart containing six services involved in regional service fee giving the brief description and further several evidence produced in the form of E-mails as evidence of services received and consequent benefit arising out of those services.
  - ii. With respect to the management charges, he also submitted a chart giving brief description of five different kinds of services involved therein and evidence in the form of E-mail correspondence as well as consequent benefit received. He further submitted that the

assessee has given a detailed of benefit derived by it from these services. He submitted that a learned TPO without showing anything that the claim of the assessee of benefit is not correct has determined the ALP at ₹ Nil.

iii. With respect to the royalty charges, he submitted that royalty has been paid as per the agreement and further National Starch LLC is producer and distributor of specialty starch having certain technical, industrial, commercial and scientific information of value and therefore, the royalty paid by the assessee cannot be determined at ₹ Nil. It is also paid for using its intangibles on the products distributed in Indian market. It was also stated that the learned TPO rejected the claim only for the reason that assessee is not a manufacturer.

09. The learned DR vehemently supported the order of the learned TPO and direction of the learned DRP.

010. We have carefully considered the rival contentions as well as the orders of the lower authorities. The assessee is in the business of importing modified food starch from the affiliate companies and selling the same in Indian market. It caters to the FMCG food sector and precisely processed food segments. Assessee has paid payment of regional fees of ₹ 71,60,700/- to its Singapore associated enterprise as per the agreement, it was stated that the company



has only 10 individuals to manage its India operation and out of that 5 employees were involved in food sales, 1 employee in industrial starch sales and 1 employee in finance and administration etc showing that it did not have adequate human resources to perform the functions for which services of AE is availed. It was stated that assessee does not have dedicated staff for the various services included therein. The assessee has listed six kind of services which were provided for by the Singapore office to the assessee. Further, assessee has also incurred headquarter management fees amounting to ₹ 18,60,449/- to its AE which performs central corporate and administrative services for the benefit of all its foreign affiliates. The claim of the assessee is with that these services are also 7 different kinds of services and are not duplicative in nature. These are also backed by an agreement. The assessee has benchmarked services under transactional net margin method. We find that both these services are in the nature of intra group services. To prove that an independent third party would have paid for the services, assessee need to establish and demonstrate by reasonable level of evidence and documentation that these services were required (need test), those were rendered (rendition test), resulted into benefit to the assessee (benefit test) and also are not duplicative in nature. Further, any third independent party would not have paid for

these services only if same were shareholders' activity. Neither the TPO nor the assessee made any effort to demonstrate the same either in TPSR or in TP order. Therefore, both these services are required to be looked into from this angle.

011. With respect to the payment of royalty of ₹ 62,41,515/-, the claim of the assessee is that despite it is not a manufacturer, same are used as intangibles on the products distributed in Indian market. The royalty payments were also made in terms of the agreement. The claim of the assessee that by paying the royalty, the assessee gets a right to use trademark and knowhow to market the products in India which in term increases its customer base. The assessee also claimed that it's established with the primary object of distribution of modified starch in Indian market. Therefore, it is never to be a manufacturer.

012. The assessee benchmarked all these above three transactions on an aggregate basis using transactional net margin method as the most appropriate method. The claim of the assessee is that net operating margin of the assessee is higher than the comparable companies and therefore it is at arm's length. The learned TPO has determined ALP of royalty at ₹ Nil. The assessee claims that the MNE group has a global royalty policy which is common across all regions. The agreement entered into is

also containing standard clauses. Picking one of the standard clause from that agreement cannot be used against the assessee. The royalty payment by using trademark and patent is only for the sale of the product. As assessee is engaged in FMCG food sector, the assessee would require know how about the product information, product specification, application and formulation for its customers. Assessee also stated that, without trademark the assessee would not earn such a markup.

013. The learned TPO has determined the ALP of royalty and other two IGS at ₹Nil. As of these three international transactions have not been benchmarked properly, we set aside them back to file of the learned TPO with direction to the assessee to demonstrate the requisite test for intra group services and as well as the need and benefit of the use of trademark and patent involved in payment of royalty. The learned TPO may verify the evidence – documentation produced by the assessee and then determined arm's length price of these three transactions.
014. In view of this, we set aside Ground No 1-8 of the appeal to the learned TPO and allow it for statistical purposes.
015. As no other grounds were pressed before us, same were dismissed.



016. In the result appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 20.10.2022.

Sd/-  
(KULDIP SINGH)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 20.10. 2022

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai