

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

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI RAHUL CHAUDHARY, JM

**ITA No. 1100/MUM/2016**

(Assessment Year 2011-12)

**ITA No. 1112/MUM/2017**

(Assessment Year 2012-13)

3A Composites India Pvt. Ltd

Unit No. 852, 5<sup>th</sup> Floor,

Building No. 8,

Solitaire Corporate Park,

Andheri (East)

Mumbai-400 093

**(Appellant)**

ITO-11(3)(1)

4<sup>th</sup> Floor, Aayakar Bhavan,

M.K. Road,

Mumbai-400 020

**(Respondent)**

**PAN No. AACCA9548A**

**Assessee by**

: Shri Mihir Naniwadekar, DR

**Revenue by**

: Ms. Samruddhi Dhananjay  
Hande, DR

**Date of hearing:** 15.09.2022

**Date of pronouncement:** 12.12.2022

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. These are two appeals of the same assessee for A.Ys. 2011-12 and 2012-13 involving similar issues, both parties argued on similar lines, therefore, both these appeals are disposed of by a common order.
02. ITA No.1100/Mum/2016 is filed by the 3A Composites India P. Ltd. (the appellant/ assessee) against the assessment order passed under Section 143(3) read with

section 92CA(3) of the Income-tax Act, 1961 (the Act) dated 27<sup>th</sup> January, 2016, wherein the total income of the assessee is assessed at ₹1,62,82,680/- against the return income of ₹ nil. The assessee is aggrieved with the assessment order and has preferred this appeal on following grounds:-

**ITA No. 1100/Mum/2016**  
**For 2011-12**

*"1. The learned authorities erred in rejecting the assessee's objections and confirming the adjustment of ₹ 1,35,64,604/- made to the international transaction of payment of budgeted cost allocation and related expenses i.e. management services fee.*

*2. The learned authorities erred in confirming the adjustment under transfer pricing provisions even in the absence of any loss of tax in India, and in the absence of any motive to erode tax base or to shift profits outside India.*

*3. The learned authorities erred in confirming determination of ALP at 'Nil' in respect of payment made to 3A Technology & Management AG, Switzerland [erroneously stated as 3A Composites (China) Ltd., China] in accordance with 'Group Master Agreement' towards budgeted cost allocation and related expenses i.e. management service charges. The authorities below failed to appreciate that the payments were made in accordance with regular business, that the transactions were at arm's length,*

*and that it is not open to the authorities to effectively re-write the contractual obligations of the assessee.*

*4. The learned authorities erred in failing to appreciate that the assessee had duly filed necessary evidence to indicate availing of common services and allocation of relevant costs to the group entities including the assessee. The authorities erred in not properly appreciating the Group Master Agreement which was in fact regularly acted upon by all parties, and erred in selectively relying on certain clauses in the agreement without considering the agreement in its entirety. They also failed to appreciate the significance of the other evidence duly placed on record by the assessee.*

*5. In any event and without prejudice to the above, the Authorities erred in arriving at the arms' length price at 'Nil' and that too, without using any one of the specified transfer pricing methods. They erred in holding that even if the benefit arising from the services cannot be questioned u/s. 37(1); it can still be questioned under transfer pricing provisions.*

*6. The learned authorities erred in holding that the assessee had failed to demonstrate that the allocation key used by AE represents the most appropriate key. In fact, the basis adopted by the assessee and its group concerns represents the most appropriate manner of allocation of the relevant costs. The authorities also erred in holding that the legal obligation of benchmarking was not duly complied with.*

*7. The learned authorities erred in directing allowing of deduction only to the extent of ₹ 3,56,668/- out of aggregate amount of ₹ 71,79,799/- which was erroneously added back by the assessee while computing its total income."*

03. For assessment year 2012 - 13 the assessee has filed an appeal against assessment order passed u/s 143 (3) read with Section 92 CA (3) of the income tax act, 1961 dated 23/12/2016, wherein the directions u/s 144C (5) of the income tax act, 1961 issued by the learned dispute resolution panel - 3, Mumbai dated 30/9/2016 were Incorporated and transfer pricing adjustment of Rs. 63,15,925/- was made on account of arm's-length price of payment of budgeted cost allocation and related expenses i.e. management services fee at rupees nil.

**ITA No. 1112/MUM/2017**  
**(Assessment Year 2012-13)**

*"1. The learned authorities erred in rejecting the assessee's objections and confirming the adjustment of Rs 63,15,925 made to the international transaction of payment of budgeted cost allocation and related expenses i.e., management services fee.*

*2. The learned authorities erred in confirming the adjustments under transfer pricing provisions even in the absence of any loss of tax in India, and in the absence of any motive to erode tax base or to shift profits outside India.*

*3. The learned authorities erred in confirming determination of ALP at 'Nil' in respect of payment made to 3A Technology & Management AG,*



*Switzerland (from April, 2011 to August, 2011) and 3A Composites International AG, Switzerland [from September, 2011 to March, 2012] in accordance with 'Group Master Agreement' towards budgeted cost allocation and related expenses i.e. management service charges. The authorities below failed to appreciate that the payments were made in accordance with regular business, that the transactions were at arms' length, and that it is not open to the authorities to effectively re-write the contractual obligations of the assessee.*

*4. The learned authorities erred in failing to appreciate that the assessee had duly filed necessary evidence to indicate availing of common services and allocation of relevant costs to the group entities including the assessee. The authorities erred in not properly appreciating the Group Master Agreement which was in fact regularly acted upon try all parties, and erred in selectively relying on certain clauses in the agreement without considering the agreement in its entirety. They also failed to appreciate the significance of the other evidence duly placed on record by the assessee.*

*3. In any event and without prejudice to the above, the Authorities erred in arriving at the arm's length price at 'Nil' and that too, without using any one of the specified transfer pricing methods. They erred in holding that even if the benefit arising from the*

*services cannot be questioned u/s 37(1); it can still be questioned under transfer pricing provisions.*

*6. The learned authorities erred in holding that the assessee had failed to demonstrate that the allocation key used by AE represents the most appropriate key. In fact, the basis adopted by the assessee and its group concerns represents the most appropriate manner of allocation of the relevant costs. The authorities also erred in holding that the legal obligation of benchmarking was not duly complied with.*

*7. The learned authorities erred in not following the decision of the Hon'ble Kolkata ITAT in the case of Nalco India Ltd. v. DCIT, Circle-10, Kolkata [ITA No. 529/Kol/2008 & ITA No. 1256/kol/2009].*

*8. The learned authorities failed to appreciate that disallowance of interest paid on account of late payment of TDS, TCS, Service Tax of ₹ 3,66,837/- includes a sum of ₹ 3,33,685/- [10,547+3,23,138] on account of late payment of Service Tax & Sales Tax which is fully allowable and ought not have been disallowed."*

04. Brief facts of the case shows that assessee is a company engaged in manufacture and sale of Aluminum composite. Assessee imports aluminum coils from its Associated Enterprises from China. It manufactures Aluminum composite using the coils as raw materials and sales the composite to fabricators and builders. The holding company of the assessee is a Singapore entity. Assessee

for AY 2011-12 filed its return of income declaring total income of Rs. Nil after claim for set off of brought forward business losses. As the case of the assessee was picked up for scrutiny. As assessee has entered into several international transactions, the case of the assessee was referred to the learned Transfer Pricing Officer for determination of Arm's Length Price. The transactions of the assessee which was reported between the party is the budget cost allocation and related expenses of ₹1,35,64,604/- which is benchmarked by the assessee adopting CUP method. Assessee was questioned. Assessee submitted that above payment have been made in pursuance of group master agreement copy of which was submitted on 12<sup>th</sup> May, 2014. Assessee also explained the rendition of the services vide letter dated 26<sup>th</sup> June, 2014. Therefore, the assessee submitted that the payment made by the assessee is commensurate with the benefit received by the assessee company.

05. The learned Transfer Pricing Officer was of the view that the evidence placed by the assessee is only in the form of emails and debit notes. The learned TPO found that it is a cost sharing agreement where the assessee's share is allocated at ₹1356460/-. As the assessee has not explained, what is the total expenditure incurred by the assessee and whether the services have been received by the assessee or same have been requested by the assessee. According to the learned TPO mere emails does not establish that services have been received or

requested by the assessee. the learned Transfer Pricing Officer found that assessee has also failed to show the benefit of the above cost allocation. Accordingly, he held that in absence of any evidence or explanation, the claim of the assessee cannot be allowed and accordingly, he proposed an adjustment of ₹1,35,64,604/- by passing an order under Section 92CA (3) of the Act on 26<sup>th</sup> December, 2014. Based on this, the draft assessment order was passed determining the total income of the assessee at ₹ 1,87,64,680/-.

06. The assessee filed an objection before the learned Dispute Resolution Panel-3, Mumbai (the learned DRP). Assessee also filed additional evidence before the learned DRP as per letter dated 9<sup>th</sup> November, 2015. The learned DRP also obtained remand report in respect of additional evidence and thereafter, rejected the arguments of the assessee and confirmed the adjustment at ₹1,35,64,604/- to the international transaction of payment of management services fee.
07. Based on this, the final assessment order was passed on 27<sup>th</sup> January, 2016, determining the total income of the assessee at ₹1,62,62,680/-. Aggrieved with the assessment order assessee is in appeal before us.
08. The learned Authorized Representative submitted that assessee has paid the amount of ₹1,35,64,604/- towards budgeted cost allocation and related expenses. The above sum was paid in pursuance of group master agreement



dated 31<sup>st</sup> October, 2009 for provision of certain services in the nature of management support services. The cost is allocated amongst the various group entities. The areas of services are finance, risk management, pension accounting, tax compliances, internal audit, corporate communication, information technology and human resources and legal services. He further submitted that the research and development expenses of ₹1,30,63,515/- and telephone and internet expenses of ₹5,01,089/- were the total expenditure allocated to assessee by AE. He also explained the nature of services covered under the agreement with respect to the benefit derived. He referred to letter dated 11<sup>th</sup> February 2014. He submitted that there is a saving of interest cost, benefits of access to emails server and access to export market. He further referred that there are 17 different software licenses which are available to the assessee. Accordingly, there is a definite benefit derived by the assessee. He also referred to month wise allocation of budgeted cost of Associated Enterprises to the various group entities and the share of the assessee is only 1.90% of the total cost. Accordingly, he submitted that assessee has proved the need test, benefit test, services rendition test of above services. He further stated that before the learned Dispute Resolution Panel details of the working of actual expenditure incurred by the Associated Enterprises duly certified by the management was also submitted. He submitted that the actual expenditure incurred by the Associated Enterprises for providing common services, were billed after adding 5%

markup. He therefore, submitted that the order of the learned Transfer Pricing Officer and direction of the learned Dispute Resolution Panel are not sustainable. Thus, according to him, the ground no. 1 to 6 should be allowed.

09. Coming to ground no.7, he submitted that out of the various business expenditure incurred, the assessee himself added an amount of ₹71,79,799/- out of which the learned Dispute Resolution Panel has allowed the claim of ₹3,56,668/-. The above sum was erroneously added back by the assessee while computing its total income. He referred to paragraph no.5.8 of the direction of the learned Dispute Resolution Panel. He submitted that assessee has incurred an expenditure of ₹71,79,799/-, which were wrongly added back in the computation of total income but is allowable expenditure. When the claim was made before the learned Dispute Resolution Panel they allowed only the deduction of Rs.3,56,668/-. He submitted that in some occasion it has been held to be disallowable for the reason of non-deduction of tax at source and should be allowed as and when the tax is paid to the credit of the Government of India.
010. On ground no 1 to 6, learned Departmental Representative vehemently supported the orders of the lower authorities. It was stated that assessee has failed to prove the receipt of services and benefit derived there from. Therefore, the learned lower authorities have correctly determined the Arm's Length Price of the services at Nil.



011. With respect to ground no.7, it was stated that the learned Dispute Resolution Panel has given detail reasons for sustaining the disallowance and therefore, there is no error in the order of the learned Assessing Officer.
012. We have carefully considered the rival contentions and perused the orders of the lower authorities. On ground no.1 to 6, we find that the only dispute is with respect to the Arm's Length Price of budgeted cost allocation and related expenses amounting to ₹1,35,65,605/- paid by the assessee and benchmarked adopting the CUP method, ALP of which is determined by the Id. TPO at Rs Nil. Before us, the assessee has filed paper book containing 159 pages and at page no.75 to 90, placed the agreement based on which the above cost allocation was paid to Associated Enterprises. The assessee has entered into the above agreement on 31<sup>st</sup> October, 2009. Services are described in clause no.3 of the agreement annexed as annexure-3. The services are in the field of finance, sustainable growth human resources, legal and other small services such as information and technology, etc. The remuneration was to be paid in the manner that total cost incurred by the learned Associated Enterprises which would be marked up by 5%. The payment was required to be made on monthly basis. The allocation keys were also explained in Annexure-4 to the agreement. The allocation key was combination of net sales and capital employed. The assessee has also submitted various invoices consisting of the above payment. The invoices also show the manner of



delivery of such services as well as the rate allocated. The assessee has also demonstrated the various benefits received by it on account of these services. It was also the claim of the assessee that in the past the aforesaid expenses have been allowed undisturbed in the earlier transfer pricing adjustment. It was also claim of the assessee that since the cost charged by the Associated Enterprises is commensurating with the services, same is at arm's length. The learned Transfer Pricing Officer has determined the Arm's Length Price of the above transaction at ₹ nil holding that the assessee has failed to show the need test, benefit test, etc. The learned Dispute Resolution Panel also even after obtaining the details of actual expenditure incurred and allocation keys did not agree with the contention of the assessee. The learned DRP further held that the agreement and debit notes are required to be corroborated by other contemporaneous evidence reflecting the actual receipt of services. The learned Dispute Resolution Panel also held that assessee has failed to show the receipt test, benefit test and therefore, upheld the order of the learned Transfer Pricing Officer. In the present case, we find that despite furnishing all the evidences necessary, the learned Transfer Pricing Officer and the learned Dispute Resolution Panel has held that assessee could not show the rendition of the services and the benefit derived. According to us, the assessee has produced all the relevant evidences. The benefit derived has to be seen from the perspective of the businessman. The assessee has also shown various



software, for which licenses are available to the assessee. The learned Transfer Pricing Officer and the learned Dispute Resolution Panel have further not stated that what further evidences are required when the assessee has submitted the actual cost statement of the group cost and also demonstrate the allocation keys.

013. So far as the documentation of the services are concerned, assessee has maintained detailed description of the categories of the intragroup services provided, identity of the beneficiaries and reasons justifying that each category of services and rational for provision of such services, description of the benefits or expected benefits of each category of services, description of the selected allocation keys and the reasons justifying that such allocation keys, written contracts, calculations in the determination of the cost incurred certified by the management and calculation showing the application of the specified allocation keys. Accordingly, the learned transfer pricing officer should have examined these documents, appropriateness of the cost incurred, appropriateness of allocation keys employed and calculation of allocation keys. If any further documents are required, resulting on examination of the above documents may be obtained. Before examining this basic documents, the lower authorities could not have determined the arm's-length price of these services at Rs. nil.



014. In view of this, the learned Transfer Pricing Officer as well as the learned Dispute Resolution Panel are not correct in determining the Arm's Length Price of the international transaction at ₹ nil. The duty cast upon the Transfer Pricing Officer is to determine the Arm's Length Price of the international transaction of the share of group fees allocated to the assessee. In view of this, we set aside the ground no.1 to 6 of this appeal back to the file of the learned Transfer Pricing Officer to determine the Arm's Length Price in accordance with the provisions of the law.
015. Coming to ground no. 7 , the fact shows that assessee has made disallowance of ₹71,79,799/- in its return of income with respect to five different type of expenditure, the disallowance was made by the assessee on the basis of the tax audit report. The assessee on being aware of the above error requested the learned Assessing Officer to allow the above expenditure. The assessee submitted vide letter dated 23<sup>rd</sup>Jan, 2015 that above expenditure has been wrongly pointed out by the assessee as disallowable. Assessee also submitted the details of such expenditure and stated that it has deducted tax at source and paid same before the due date of filing of the return and therefore, same is not disallowable. Even before the learned Dispute Resolution Panel, it was submitted that assessee has disallowed wrongly management services expenditure of ₹39,70,523/- which was reversed during the financial year itself vide credit note dated 13<sup>th</sup> May, 2010 and therefore, the same is neither an expense



claimed by the assessee and therefore there is no reason of disallowance of the same. It was further stated that interest expenditure of ₹25,90,443/- includes a sum of ₹13,68,370/- which has been capitalized and not claimed as expenditure therefore, same is not disallowable. It was further stated that the entire interest of ₹25,89,000/- was wrongly disallowed. The learned Dispute Resolution Panel rejected the contention of the assessee with respect to the management service charges. It was found that the evidences furnish by the assessee is not enough and assessee has not furnished the gap of relevant ledger account. With respect to the interest expenditure, the claim of the assessee was found to be acceptable with respect to the capitalization of the expenditure but with respect to the other interest, no relief was allowed to the assessee. On careful examination, we find that though assessee has reversed the management services charged by way of a credit note nothing is debited to the profit and loss account, its disallowance is not proper. However, if the assessee shows the reversal of the entries by way of producing the ledger accounts before the learned Assessing Officer we direct the learned Assessing Officer to delete the above disallowance on proper verification. With respect to the interest expenditure, if the same has not been claimed as allowable expenditure, there is no reason that same should be disallowed. However, assessee is required to demonstrate that the interest expenditure of ₹12,21,731/- is incurred for the purpose of business. On the balance sum, which has been capitalized

by the assessee, naturally, no disallowance could have been made. However, we set aside ground no.7 of the appeal back to the file of the learned Assessing Officer for verification of the claim of the assessee. The assessee is directed to demonstrate before the learned Assessing Officer about the liability of such expenditure. The learned Assessing Officer may examine the same and if finds that there is no expenditure claimed by the assessee on account of management fees, the disallowance deserves to be deleted. With respect to the interest expenditure the issue needs to be verified about the liability of interest expenditure. Accordingly, ground no.7 is partly allowed.

016. In the result, the appeal of the assessee for A.Y. 2011-12 is allowed for statistical purposes.

**ITA No. 1112/Mum/2017**  
**For A.Y. 2012-13**

017. The appeal of the assessee for A.Y. 2012-13 is against the assessment order passed by the learned Assessing Officer dated 23<sup>rd</sup> December 2016. In this appeal also as per ground no.1 to ground no.7, the assessee has challenged the determination of Arm's Length Price of international transaction of budgeted cost allocation and related expenses i.e. management service fees amounting to ₹63,15,925/- at ₹ nil. Both the parties confirmed that the facts and circumstances of the case are identical to the appeal of the assessee for A.Y. 2011-12. As the identical issue has been decided by us in that appeal, for the similar reasons and directions, we set aside the issue back to the file of the



learned Transfer Pricing Officer to determine the Arm's Length Price of the international transaction of management fees. Accordingly, ground no.1 to 7, are allowed for statistical purposes with above direction.

018. No arguments were advanced on ground no.8 and therefore, same is dismissed. Accordingly, appeal filed for the A.Y. 2012-13 is partly allowed for statistical purposes.

019. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 12.12.2022.

Sd/-  
(RAHUL CHAUDHARY)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated:12.12.2022

*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