

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'I' NEW DELHI]**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND**

SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

I.T.A. No. 624/DEL/2020 (A.Y 2013-14)

ACIT, Rewari Circle, Rewari. (APPELLANT)	Vs	M/s. Nippon Leakless Talbro Pvt. Ltd., 125-A, Sector : 6, HSIIDC Growth Centre, Bawal, Rewari, PAN No. AACCN0630J (RESPONDENT)
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Appellant by	Shri V. K. Aggarwal, A. R. Ms. Sweta Bansal, C. A.;
Respondent by	Ms. Anupama Singla, Sr. D. R.;

Date of Hearing	07.12.2022
Date of Pronouncement	23.12.2022

ORDER

PER SHAMIM YAHYA, AM :

1. This appeal by the Revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals), Rohtak [hereinafter referred to CIT (Appeals)] dated 15.11.2019 pertaining to Assessment Year 2013-14.

2. The Revenue has raised the following substantive grounds of appeal:-

“1. Whether on the facts and circumstances of the case and in law, the Ld CIT(A), Rohtak, has erred in deleting the addition of Rs. 1,87,85,430/- on account of disallowance of Management fees, whereas the A.O. had made this addition after proper verification during the time of assessment.

2. Whether on the facts and circumstances of the case and in law, the Ld CIT(A), Rohtak, has erred in deleting the addition of Rs. 1,64,99,452/- out of the addition of Rs. 1,78,42,430/- on account of disallowance by allocation of common expenses, whereas AO, had made this addition after proper verification during the time of assessment.”

3. Brief facts of the case are that assessee filed the return of income for the Assessment Year 2013-14 on 30.11.2013 declaring total taxable income of Rs 8,28,31,060/-. During the year under consideration, the assessee company is engaged in the business of manufacturing of automotive parts and components from its plants at Bawal (Rewari) and Haridwar. The details of the returned income are as under :-

Sr. No.	Particulars	Amount (Rs)
1.	Income from business/profession	12,20,26,413/-
2.	Gross total income	12,20,26,413/-
3.	Less: Chapter VIA deduction	3,91,95,355/-
4.	Total taxable Income (round off)	8,28,31,060/-

Subsequently, the case was selected for scrutiny under CASS and accordingly notice under section 143 (2) dated 03.09.2014 was issued which duly served upon the assessee. Further notice u/s 142(1) along with questionnaire was issued from time to time during the assessment proceedings. Assessing Officer assessed the taxable

income at Rs 11,94,72,864/- as against Rs 8,28,31,060/- declared by the appellant by disallowing Rs 1,87,85,430/- on account of management fees paid to M/s Talbros Automotives Components Ltd. and M/s Nippon Leakless Corporation Japan; allocating an amount of Rs 1,78,42,874/- on account of various expenses towards Haridwar Unit and disallowing the same alleging that excess expenditure has been claimed in the taxable unit; adding Rs 13,500/- on account of alleged income revised from Dakshin Haryana Bijli Vitran Nigam.

4. On assessee's appeal the ld. CIT (Appeals)] noted the submission that an identical issue have been dealt with by ITAT in assessee's own case for assessment year 2010-11 and thereafter the same has been followed for assessment years 2011-12 and 2012-13. Hence he held that the issues are squarely covered in favour of assessee.

5. The ld. DR also could not controvert that ITAT's order is already there and the ld. CIT (Appeals) has followed the same.

6. As regards the issue of disallowance of Rs.1,87,85,430/- on account of management Fees paid to M/s. Talbros Automotives Components Ltd. And M/s. Nippon Leakless Corporation, Japan, the ld. CIT (Appeals) decided this issue in favour of assessee by following the order of ITAT in earlier years. The ld. CIT (Appeals) dealt with the issue as under:-

“The appellant company is a joint venture between M/s Nippon Leakless Corporation, Japan and Talbros automotive components Ltd. and their shareholding pattern is 60% and 40% respectively. The appellant is engaged in manufacturing of

automotive parts and components from its plant at Bawal, Rewari. The appellant company has entered into a tripartite agreement dated 01/10/2007 with M/s Nippon Leakless Corporation, Japan and Talbros Automotive Components Ltd. vide which the Japanese company was to provide technical services like identifying the capital equipment and their commissioning, training the operating staff, testing the raw material, technical discussions and presentation with customers etc. and the Indian company was to provide management services in various field as under: -

- i. Over viewing the secretarial functions and statutory compliances under various laws.
- ii. Obtaining necessary clearances and approvals from Govt. Authorities and other agencies, wherever required.
- iii. Advising on corporate governance.
- iv. Representing the company in front of the existing and prospective customers.
- v. Soliciting the business and negotiating prices and other contracts.
- vi. Finalization of annual accounts and statutory audit.
- vii. Establishing costing system and maintain cost records.
- viii. Support in preparation of various returns under the Excise, Sales tax and Income tax laws.
- ix. Arranging funds wherever required from Banks and Financial Institutions.
- x. Help in recruiting key personnel.

xi. Assistance in identifying and validating local sources of raw materials and other inputs.

xii. Guidance in implementing quality procedures and attaining system certification.

6. Similarly, the Japanese company was to provide the following services :-

i. Representing the assessee in technical discussions and presentations with the customers to participate in new product development.

ii. Product design and development of new Gaskets.

iii. Testing and validating indigenous raw material at Japan, wherever requisite facilities are not available in India.

iv. Selection of capital equipments.

v. Deputing necessary personnel to commission capital equipments and train operating staff, wherever required.

7. The company has about 7/8 employees for managing all the functions of the company, other than manufacturing, e.g. Sourcing, Vendor certification, Sales promotion, Dealing/follow up with customers, Financial matters, Accounting, Statutory compliances, Secretarial and various other administrative and commercial issues. These people are at middle management/junior levels and require regular support by a team of professionals at Talbros Automotive Components Ltd.

8. At the time of setting up of Nippon Leakless Talbros Pvt. Ltd., it was a conscious decision taken by the joint venture partners to adopt a lean and thin management structure so as to avoid duplication of resources which might remain under utilized at the joint venture company. In order to achieve this objective, it was decided that majority of the technical services on day to day basis will be provided by Nippon Leakless Corpn. Japan, through its technical staff whereas majority of the

managerial and administrative services as mentioned above will be provided by Talbros Automotive Components Ltd.

9. A Management Fee Agreement to this effect was duly executed in Oct., 2007 for a period of five years and the same was submitted to Reserve Bank of India and registered with the Regional Director, Ministry of Corporate Affairs. The approval was further given vide letter dated 18/05/2012 for the period up to 30/09/2012. Accordingly, the management fees was given to both the JV Partners on the profit earned upto 30/09/2012 only. The compensation to the two joint venture partners for these services was linked to the profits of the company as it was a new venture and the joint venture company could not have taken the liability of fixed overheads. The Japanese company was given 20% of profit before tax and the Indian Company was given 10% of profit before tax.

TPO Order

10. The Ld. TPO vide his order dated 14/10/2016 u/s 92CA131 has held that no adverse inference is drawn in respect of the international transactions as well as domestic transactions u/s 40A12) undertaken by the assessee. In spite of this, the Ld. AO has disallowed the payment of Management fees. In fact, the findings of Ld. TPO u/s 92CA(3) are binding on the Ld. AO u/s 92CA(4) but he completely ignored this provision and made the addition. Similar disallowance has already been deleted by Hon'ble ITAT, New Delhi in Assessment Year 2010-11.

Principle of consistency

11. The Management fees paid to the Indian company as well as Japanese company has also been deleted by Hon'ble ITAT, New Delhi in A. Y. 2010-11. Further, similar disallowance in respect of payment to TACL has also been deleted by your predecessor in A. Y. 2008-09, 2011-12 and 2012-13. The Ld. AO has not disallowed the management fees paid to Japanese company in AY 2008-09, 2009-10, 2011-12 & 2012-13 after

due deliberation. Since there is no change in facts, the principle of consistency also, the management fees may kindly be allowed and disallowance be deleted.”

7. As regards the payment to M/s. Nippon Leakless Corporation, Japan, the Id. CIT (Appeals) similarly deleted the addition following ITAT's order for earlier years. The Id. CIT (Appeals) held as under:-

“I have carefully considered the facts of the case, assessee's submissions, assessment order and find that the addition on this issue is the same as was made in earlier years. During the course of appellate proceedings it was observed that relief was given to the assessee by Hon'ble ITAT for AY **2010-11** by observing that no material evidence was brought on record while making disallowance u/s 40A (2) of the Act while making payments to the sister concern TACL on account of management fees and no comparable fair market value of the services rendered was brought on record so as to hold that value paid to sister concern was excessive or unreasonable. Accordingly a letter was written to the DCIT Circle, Rewari for examining the case record and give his comments on this issue. In his reply the AO submitted that opportunity was given to the company for justifying this expenditure but there was no specific reply. It is seen that the AO has also not brought on record any fair market value (FMV) to counter the claim made by the assessee and has made the addition only by discussing that the services rendered were a general description and the claim of expenditure in this regard was not justified as services could not be co-related with the fees paid . However, neither during assessment proceedings nor during appellate proceedings when the matter was referred back, any comparable case/FMV was brought on record (as observed by Hon'ble ITAT in the assessee's case of AY 2010-11 on this issue). The case laws relied upon by the AO in the assessment order have been distinguished by the assessee as discussed above and it is seen that in these cases there were comparative cases to support assessee's contention which is missing here. As regards payment to NLC, TPO has made a favourable observation and in the earlier years also the decision has been in favour of assessee. Considering that Hon'ble ITAT in the assessee's case for A. Y. 2010-11 has already been deleted by

the Hon'ble ITAT. Delhi in IT (TP) A No. 475/Del/2015 vide order dated 28/08/2015 and relief on this issue has also been given in AY 2011-12 & 2012-13 and respectfully following the decisions of jurisdictional ITAT in assessee's own case, **this ground of appeal is allowed.**"

8. As regards allocation of common expenses, ld. CIT (Appeals) noted that ITAT in assessee's own case for earlier years has given certain directions. The ld. CIT (Appeals) obtained remand report from the Assessing Officer pursuant to the directions of ITAT in earlier years and following the same he granted considerable relief to the assessee as under:-

"During the course of appellate proceedings a letter was sent to the AO to examine the books of accounts and workout proper allocation of expenses between Hardwar & Bawal unit on the basis of directions issued by Hon'ble ITAT Delhi in para 19 of its order dated 22.12.2017 in case of the assessee for AY 2008-09, 2011-12 and 2012-13. In this order, Hon'ble ITAT had directed that after identifying the common expenditure between the taxable and tax exempt unit, the AO should examine whether the allocation key should be based on product ratio or turnover ratio because there would be certain expenses for example sales promotion, packing and freight which should be allocated on product ratio, however, certain expenses like salary of Managing Director, common travelling expenses. auditors remuneration should be turnover wise.

As per the **remand report** of the AO, on examination of the books of accounts, it was found that except the following expenses all other expenses pertaining to each unit have been debited in the respective books of accounts maintained separately in each unit:-

- i) Expenses pertaining to Managing Director in the form of salary, travelling expenses and rent. No Remuneration is paid to other directors.

- ii) Auditor remuneration.
- iii) Foreign exchange fluctuation expenses.

The assessee emphasized that it is maintaining separate books of accounts and separate bank accounts for Haridwar unit as well as Bawal unit. All the expenses pertaining to each unit are directly debited in that unit. Though the assessee has requested that if all any allocation is to be made, it should be made in the product ratio in respect of expenses pertaining to MD and Auditor Remuneration yet it will be more reasonable to allocate these expenses in the turnover ratio. Accordingly, allocation in respect of expenses pertaining to MD and Auditor Remuneration for A.Y. 2013-14 in turnover ratio comes to Rs.13,82,297/- and Rs.1,30,093/- respectively as against the suggestion by the assessee for Rs.4,26,060/- and 40,098/- respectively on product ratio method. As regards claim for foreign exchange fluctuation, the same has been taken on actual basis. The amount comes to Rs.4,38,655/- for A.Y. 2013-14. Therefore, it is opined that, further allocation of expenses for A.Y. 2013-14 has to be done at Rs.19,51,045/- (13,82,297 + 1,30,093 + 4,38,655) as against Rs.9,04,813/- as suggested by the assessee.

A perusal of the unit wise P&L A/c shows that the following expenses have not been properly allocated and there is no plausible reason why they should not be allocated to the Haridwar unit also –

Particulars	Haridwar Unit	Bawal Unit	Consolidated
Travelling Expenses	35,674	22,37,012	22,72,686
Sales Promotion expenses		2,37,886	2,37,886
Loss on Sales of fixed Assets		1,06,552	1,06,552
-Miscellaneous expenses	14,02,428	70,89,481	84,91,909

Thus as per the direction of Hon'ble ITAT Delhi in assessee's case for Assessment Years 2008-09, 2011-12 & 2012-13, it is held that the expenditure incurred on sales promotion, loss on sales of fixed assets and miscellaneous expenses should be allocated product ratio wise between the two units. The travelling expenses of the Directors should be allocated turnover ratio wise. As regards the expenditure on auditor fees, remuneration to the M.D. and foreign exchange fluctuation expenditure, I agree with the finding of Assessing Officer in the remand report (as discussed in para 5.2.2 above) i.e. "Though the assessee has requested that if all any allocation is to be made, it should be made in the product ratio in respect of expenses: pertaining to MD and Auditor Remuneration yet it will be more reasonable to Allocate these expenses in the turnover ratio. Accordingly, allocation in respect of expenses pertaining to MD and Auditor Remuneration for Assessment Year 2013-14 in turnover ratio comes to Rs.13,82,297/- and Rs.1,30,093/- respectively as against the suggestion by the assessee for Rs.4,26,060/- and 40,098/- respectively on product ratio method. As regards claim for foreign exchange fluctuation, the same has been taken on actual basis. The amount comes to Rs.4,38,655/- for Assessment Year 2013-14". The Assessing Officer is directed to compute the taxable income of the assessee accordingly."

9. Against this order Revenue is in appeal before us.

10. We have heard both the parties. The ld. Counsel for the assessee submitted that the issue is squarely covered in favour of the assessee by the series of ITAT orders referred to above.

11. Per contra the ld. DR could not dispute the above proposition that the facts in the present case are any different from the one existing in assessee's own case decided earlier. Accordingly following the said above precedent, we do not find any infirmity in the order of the ld. CIT (Appeals) and we uphold the same.

12. In the result, appeal filed by the Revenue stands dismissed.

Order pronounced in the Open Court on : 23.12.2022.

**Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER**

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated : 23/12/2022

MEHTA

Copy forwarded to :-

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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