



IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI PAVAN KUMAR GADALE, JM**

ITA No. 1009/MUM/2015
(Assessment Year 2010-11)
ITA No. 2133/MUM/2016
(Assessment Year 2011-12)
ITA No. 2009/MUM/2017
(Assessment Year 2012-13)
ITA No. 6502/MUM/2017
(Assessment Year 2013-14)
ITA No. 6090/MUM/2018
(Assessment Year 2014-15)
ITA No. 6130 /MUM/2019
(Assessment Year 2015-16)
ITA No. 932 /MUM/2021
(Assessment Year 2016-17)
ITA No. 2452 /MUM/2021
(Assessment Year 2017-18)

MWH India Pvt. Ltd.
168, Udyog Bhavan,
Sonawala road,
Goregaon (East
Mumbai-400 063

(Appellant)

Vs.

The Dy. Commissioner of Income
Tax
Circle 12(3)(2),
Aaykar Bhavan
Maharshi Karve Road,
Mumbai-400 020

(Respondent)

PAN No. AAACA4613L

Assessee by : Shri Niraj Sheth, AR
Revenue by : Shri Samuel Pitta, DR

Date of hearing: 15.12.2022
Date of pronouncement : 27.02.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. This is the bunch of 8 appeals of M WH India private limited (the assessee/appellant) for assessment year 2010 - 11 to 2017 - 18 involving similar issue, parties also argued them together, submitted a common chart, facts and circumstances for all these years are identical, therefore, heard together and disposed of by this common order.
02. Assessment year 2010 - 11 is with respect to ITA No. 1009/Mum/2015 filed by the assessee against the assessment order passed by the Dy. Commissioner of Income Tax-12(3)(2), Mumbai (the learned Assessing Officer) on 8th January, 2015 under Section 143(3) read with section 144C (13) of the Income-tax Act, 1961 (the Act), passed in pursuance to the direction issued under Section 144C(5) of the Income-tax Act, 1961 (the Act) by the Dispute Resolution Panel- IV, Mumbai (the learned DRP) on 19th December, 2014, wherein the objections of the assessee against the draft order passed on 7th March, 2014, incorporating the adjustment proposed by the learned Transfer Pricing Officer- (1)(8), Mumbai (the learned TPO) as per order under Section 92CA(3) of the Act, dated 24th January, 2014, proposing an adjustment of Arms Length Price of international transaction of payment towards corporate charges was made and confirmed by the learned Dispute Resolution Panel is in challenge.
03. Assessee is a company engaged in the business of engineering, plant commissioning, design and build, performance monitoring and related service in the filled of waste water management. It



started a new division to provide and receive engineering design services to the MWH group. This division is registered under the Software Technology Parks of India (STPI) scheme. The assessee provides different type of services. The scope of services offered by assessee is comprehensive and include field of investigation, lab-work, feasibility studies, treatability studies for process design, project appraisals, detailed engineering plant commissioning, design and build, performance monitoring, training, programme management. It also provides GIS and related activities in the field of water supply, treatment, etc. It also provides different services to third parties as per the specific requirement of the customer.

04. It also possesses in-house expertise and facilities for undertaking field analysis, investigation related to water supply.
05. Assessee filed its return of income for A.Y. 2010-11 on 15th October, 2010 at a loss of ₹32,42,369/-. As the assessee has entered into six different types of international transactions, reference was made to the learned TPO for determination of Arm's Length Price. The learned TPO examined the international transaction of payment by the assessee towards corporate charges of ₹1,17,42,745/-. The learned Transfer Pricing Officer asked the assessee to justify the payment of above sum and also issued a show cause notice that why it should not be treated as nil in conformity of the view taken by the learned Transfer Pricing Officer during the previous years.
06. Assessee objected to the same and submitted that the corporate costs are incurred which includes cost of office of the President, Chairman and CEO, corporate planning and development, corporate accounting, tax, Finance and Treasury functions,

corporate legal services and risk management, Professional indemnity insurance, corporate resource management, corporate communications and global IT networks. It was stated that centralization of cost leads to significant growth, cost saving and a consistent framework. It was further stated administrative, financial, marketing requires cost has also impact on the overall business of the assessee company. Therefore it cannot be said that it's arm's-length price is RS. Nil.

07. The learned Transfer Pricing Officer on examination of the submission of the assessee held that the intra group services transactions as Cross-charges is an independent transaction required to be analyzed under the Comparable Uncontrolled Price (CUP) method. He referred to OECD guidelines and held that no charge should be paid for the intra group services which the taxpayer is performing by it also. He further, held that the taxpayer has to prove that the services are rendered and commensurate benefits derived there from. He further held that the services are duplicative in nature and are in the form of shareholder' activity. Due to this an independent third party would not have made payment for this service. Accordingly, he treated the Arm's Length Price of management fees paid of ₹1,17,42,745/- as nil. The above adjustment was proposed by the order dated 24th January, 2014 passed under Section 92CA (3) of the Act by the learned Transfer Pricing Officer.
08. On receipt of the order of the learned Transfer Pricing Officer, the learned Assessing Officer passed a draft assessment order on 7th March, 2014 incorporating the above addition. The learned Assessing Officer further noted that the assessee has unbilled receivable of ₹4,29,93,962/- and the above sum is required to be

included as income. The assessee did not reply and therefore, the learned Assessing Officer made an addition of the above sum to hold that unbilled revenue is recognized income of the assessee. It was also found that there is a mismatch between interest on fixed deposits disclosed in accounts of ₹43,41,094/- and amount shown in form no.26AS of ₹47,73,296/-. Therefore, the addition of ₹ 4,32,202/- was made and the draft assessment order was passed at a total income of ₹1,55,77,962/-.

09. The assessee preferred the objection before the learned Dispute Resolution Panel. Vide ground no.2, the learned Dispute Resolution Panel vide Para no. 6.3 to 6.7 upheld the order and the learned Transfer Pricing Officer of determining the Arm's Length Price of intra group services of ₹1,17,42,745/-at rupees nil. With respect to the addition of unbilled revenue, the learned Dispute Resolution Panel held that the assessee failed to substantiate that whether the unbilled Revenue shown as asset in the balance sheet has been offered by assessee as income. As no details were furnished, the addition was upheld. With respect to the addition of mismatch between the income recorded in accounts and income shown in form no. 26AS of bank interest was also confirmed as same was not reconciled. Such directions were passed on 19th December, 2014. Based on this, the final assessment order was passed on 9th January, 2015, assessing the total income at ₹5,19,26,540/-. Assessee is aggrieved with that and is in appeal before us.
010. In ITA No.1009/Mum/2015, assessee has raised three grounds of appeal as under:-

“1:0 Re: Adjustment of Rs. 1,17,42,745/- on account of the payment of management charges:

1:1 The Assessing Officer/the Dispute Resolution Panel/the Transfer Pricing Officer have erred in considering the services for which management charges were paid by the Appellant to its Associated Enterprises ("AES") as shareholder activities and consequently making an upward adjustment of Rs. 1,17,42,745/- to the total income of the Appellant by holding that the arm's length price in respect thereof was Nil.

1:2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the international transaction relating to payment of the management charges entered into by the Appellant with its AEs could not be regarded as shareholder's activities and, therefore, the stand taken by the Assessing Officer/the Dispute Resolution Panel/the Transfer Pricing Officer in this regard is misconceived, erroneous and incorrect.

1:3 The Appellant submits that the Assessing Officer be directed to delete the upward adjustment of Rs. 1,17,42,745/- made by him to the Appellant's total income and to re-compute its total income and tax thereon accordingly.

2:0 Re: Addition of Rs. 4,29,93,962/- on account of unbilled receivables:

2:1 The Assessing Officer/ the Dispute Resolution Panel have erred in treating the amount of Rs.4,29,93,962/- being unbilled receivables reflected in the Balance Sheet as the income of the Appellant.

2:2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the

subject the unbilled revenue has already been considered by it as its income and hence no addition whatsoever in respect thereof is called for on this count as it amounts to a double addition and the stand taken by the Assessing Officer/the Dispute Resolution Panel in this regard is misconceived, erroneous and incorrect.

2:3 The Appellant submits that the Assessing Officer be directed to delete the addition of Rs.4,29,93,962/- and to re-compute its total income and tax thereon accordingly.

3:0 Addison of Rs. ₹32,202 on the basis of Individual Statement [“ITS”]

3:1 The Assessing Officer/the Dispute Resolution Panel have erred in making an addition of Rs 4,32,202/- to the total income of the Appellant for the year on the basis of an alleged ITS mismatch

3:2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject they said un-reconciled entry cannot be treated as its income and the stand taken by the Assessing Officer/ the Dispute Resolution Panel of making an addition merely on the basis of AIR information and without bringing any evidence on record that the unreconciled entry of Rs.4,32.202/- is the income of the Appellant is misconceived, incorrect, erroneous and illegal.

3:3 The Appellant submits that the Assessing Officer be directed to delete the addition of Rs. 4,32,202/- so made by him and to re-compute its total income and tax thereon accordingly.

4:0 Re: General:



4:1 The Appellant craves leave to add, alter, amend and/or substitute all or any of the foregoing grounds of appeal at or before the hearing of the appeal.”

011. The learned Authorized Representative drew our attention to Paper Book filed by the assessee containing 192 pages. Another Paper Book was also filed wherein the remand report of the learned Assessing Officer, rejoinder of the assessee and additional evidences filed before the learned Dispute Resolution Panel were also placed on record. The learned Authorized Representative further submitted that the assessee has submitted the copy of the invoices, agreement, emails, cost allocation details, etc. however, despite this, the learned Transfer Pricing Officer has determined the Arms Length Price of the international transactions at ₹ nil. He referred to page no. 1 to 77 of the Paper Book to show that vide letter dated 9th January, 2014, the complete details were filed before the learned Transfer Pricing Officer. He also submitted that for A.Y. 2009-10, identical issue arose in case of the assessee of determination of Arms Length Price wherein though in the final order addition on this account was made and therefore, addition was deleted. He otherwise submitted that assessee has provided all the details which proves the rendition of services, need of the services, benefit arising from the above service and further, those services are not duplicative or shareholders activity. In view of this submission, the learned Transfer Pricing Officer and Dispute Resolution Panel have wrongly determined the Arms Length Price of these services at ₹ nil. He submitted that in determining the Arms Length Price the learned Transfer Pricing Officer and the Dispute Resolution Panel has not adopted any method. It was also submitted that the additional evidence submitted by the assessee showing the



rendition of the services as well as the benefit derived by the assessee were completely ignored by the learned dispute resolution panel. He therefore submitted that the determination of the arm's-length price at rupees nil of the intragroup services is not proper.

012. With respect to the addition on account of unbilled services, He submitted that the above amounts are outstanding as current assets of the assessee. He submits that the above amount represents the work performed by the assessee till the end of the accounting year for which bill is yet to be raised. This income is always credited to the profit and loss account and therefore, it can be shown as an asset as unbilled revenue in current assets. He submits that when the income is already offered once, addition of the same once again amounts to double addition. He referred to the order of the co-ordinate Bench for A.Y. 2009-10, wherein vide order dated 3rd October, 2022 vide paragraph no.11, the issue was restored for verification of the above. He submitted that there is no objection if the same is also restored to the file of the learned Assessing Officer to that limited extent. With respect to the submission made before the learned Assessing Officer, he referred to the assessment order as well as the submission before the learned Dispute Resolution Panel. With respect to the third ground on account of addition being difference between financial accounts and form no.26AS, assessee submitted that merely because there is a difference between form no.26AS and financial statement, the addition cannot be made. He further submitted the copy of letter dated 24th June, 2014, 5th May, 2014 and the statement of the assessee to show that merely if there is a difference, the addition cannot

be made. Accordingly, he submitted that the addition deserves to be deleted.

013. The learned Departmental Representative supported the order of the learned Transfer Pricing Officer and submitted that if the assessee does not satisfy the need test, the rendition test, benefit test, duplicative test and shareholder activity test, the Arms Length Price deserves to be deleted at ₹ nil. There is a specific method adopted by the learned Transfer Pricing Officer which is CUP method as in the similar circumstances, nobody would have paid any sum to a third party. On other issues, he relied on the orders of the lower authorities.
014. We have carefully considered the rival contention and perused the orders of the lower authorities. The fact shows that assessee has made payment of 1,17,42,745/- as corporate charged to 5 different entities. The payment was made by the assessee for provision of corporate services to the assessee for illegal, advisory, technical and financial direction and support. The assessee has entered into an agreement with all these five entities, which are placed at page number 12 to 68 of the paper book. Assessee also explained that how the charges are raised on the assessee. It explained that in some of the cases 2% of external sales are recovered from assessee, in some cases there is an allocation of expenditure. The copies of invoices were placed before the learned assessing officer. With respect to the rendition of the services, assessee submitted the details of emails received. Thus, the claim of the assessee is that based on agreements, emails and invoices of the associated enterprises proves that assessee has received those services. Before the learned dispute resolution panel assessee submitted email



correspondence between the assessee and its associated enterprises to demonstrate that the services are availed from the associated enterprise and to justify the payments toward the corporate charges. The learned TPO in the remand proceedings held that these evidences are not sufficient to show that assessee has received any services and the benefits are derived out of it. Accordingly in the remand order the learned TPO reiterated the original TP order. In rejoinder submitted by the assessee on 10 December 2014 stating that these emails, agreements clearly shows that there is a rendition of the service and looking at the nature of the services assessee has received the benefits. It was further stated that merely because the learned TPO says that it is duplicative services and shareholders activity , , the arm's-length price of the same cannot be determined at rupees nil. We find that the nature of the services rendered to the assessee are with respect to IT network, legal services and risk management, planning and development and certain cost locations. We find that based on email submitted before the lower authorities, it cannot be said that the arm's-length price of the services is nil. It is not the case of the learned transfer-pricing officer that the values of the services provided by the associated enterprises to the assessee are Nil. Further the documents submitted by the assessee also do not conclusively fulfill (1) need test, (2) rendition test, (3) benefit test, (4) duplicative test and (5) shareholders activity test. On looking at the services it is apparent that some of the services have overlapped these tests. However, it cannot be said that even the IT network services should have a nil arm's-length price. Further looking at most of the services it is found that they are low value adding services and therefore the focus should be more to the process adopted by the assessee and associated enterprises then evaluation of



evidences such as email, reports as well as other correspondences. But that does not mean that even in absence of such details the low value adding services cannot be tested with respect to its arm's-length price. Further it is the duty of the assessee to substantiate that international transaction entered into is at arm's-length. In view of this we set-aside this issue back to the file of the learned transfer pricing officer/AO with a direction to the assessee to substantiate all the above five tests before the learned assessing officer/TPO and justify that they are at arm's-length. The learned AO/TPO is directed to verify the claim of the assessee and then determine the arm's-length price of such transaction. Needless to say that an opportunity of hearing be granted to the assessee. Accordingly ground number one of the appeal is allowed for statistical purposes.

015. Coming to the ground number 2 where there is an addition on account of on unbilled receivable shown by the assessee of ₹ 42,993,962. On careful analysis of the facts we find that the method adopted by the assessee for accounting these unbilled services is that on completion of a specified percentage of work on a project the proportionate income is recognized in the profit and loss account by crediting the revenue income and debiting the unbilled receivable income. When subsequently on completion of the project or on achieving the preset milestone the final invoices raised on the customer and the entry passed in the accounts at that stage amount is debited to the customer's account by crediting the unbilled receivable account. This shows that assessee is creating work in progress at the end of the year of the ongoing projects by crediting the same to the profit and loss account and creating a work in progress in the form of unbilled receivable. The learned AO, DRP has misconstrued the



same and made the addition. Though in earlier years the issue has been set-aside to the file of the learned assessing officer for verification, however we do not find any reason to set-aside back to the file of the learned assessing officer because in unbilled receivable account being a debit balance could not have been created without making a credit entry to the revenue account. Before us the annual accounts are placed in the paper book. According to schedule P (A) (VI) clearly shows that unbilled receivable consisting of work in progress in respect of unfinished contracts are valued on the basis of percentage of the completion method, whereby the revenue is realized by reference to the stage of completion of the contract activity at the end of the accounting year. Provisions are made for anticipated losses for contracts to be completed in future. The revenue recognition is shown that it is recognized as per percentage of completion method on looking at the income from services rendered shown in the profit and loss account it is apparent that assessee has credited the same amount to the income and expenditure account. Therefore it is clear that, in addition once again by the learned assessing officer will result into double addition. However, as in earlier years the issue has been set-aside back to the file of the learned assessing officer for the limited verification to ascertain whether the amount of unbilled services have been included in the gross income of the assessee or not, Accordingly we direct the learned AO to delete the addition after this verification.. Accordingly ground number 2 of the appeal of the assessee is allowed.

016. Ground number 3 of the appeal is with respect to the addition on account of difference between the financial statements of the assessee and form number 26AS with respect to the interest



income. The learned assessing officer has made the addition, which is confirmed by the learned dispute resolution panel. We find that assessee has placed before us complete details of the reconciliation at page number 86 to 96 of the paper book. Merely because the reference between the income shown in financial statement and income shown in tax deduction at source statement (26AS) should not arise generally as an addition unless it is found that assessee has failed to account for certain income which are reflected in tax deduction at source statement. In view of this, it is clear that there is a difference between these two statements, it is also the duty of the assessee to show reconciliation before the assessing officer and demonstrate that no income accrued during the year has not been shown in the profit and loss account/offered for income. In view of this ground number three is set-aside to the file of the learned assessing officer with a direction to the assessee to produce the reconciliation statement. The learned AO may verify the same and decide the issue thereafter in accordance with the law. Accordingly ground number 3 of the appeal of the assessee is allowed with above direction.

017. Ground number 4 is general in nature, no arguments were advanced, therefore, same is dismissed.
018. In the result appeal of the assessee for assessment year 2010 - 11 is allowed with above direction for statistical purposes.
019. For assessment year 2011 - 12 in ITA number 2133/M/2016 assessee has raised identical grounds.
020. Ground number one is with respect to the adjustment on account of arm's-length price of the international transaction of payment



of management fee/corporate cost amounting to ₹ 23,032,255 which is determined by the learned transfer pricing officer at rupees nil and confirmed by the learned dispute resolution panel. The facts are identical to the ground number 1 of the appeal of the assessee for assessment year 2010 - 11. We have set-aside this ground back to the file of the learned AO/TPO. Therefore for the similar direction we set-aside ground number one of the appeal back to the file of the learned AO/TPO with similar direction. Accordingly same is allowed

021. Ground number two of the appeal is with respect to addition on account of unbilled serviceable amounting to ₹ 45,666,320/- which is identical to ground number 2 of the appeal of the assessee for assessment year 2010 - 11. This ground of appeal involves identical facts and circumstances, for assessment year 2010 - 11 we have allowed the claim of the assessee. Therefore for the similar reasons ground number 2 of the appeal of the assessee is allowed.
022. Ground number 3 of the appeal is with respect to non-granting of tax credit amounting to ₹ 128191/-. The claim of the assessee is that it is entitled to the full tax credit. The learned assessing officer is directed to examine the claim for the credit of about tax credit. If it is found in accordance with the law, same may be granted as credit. Ground number 3 is allowed.
023. Ground number 4 is general in nature and therefore same is dismissed.
024. Accordingly ITA number 2133/M/16 for assessment year 2011 - 12 is partly allowed for statistical purposes.



025. ITA number 2009/M/2017 for assessment year 2012 - 13, ITA number 6502/M/2017 for assessment year 2013 - 14, ITA number 6090/M/2018 for assessment year 2014 - 15, ITA number 6130/M/19 for assessment year 2015 - 16, ITA number 932/M/21 for assessment year 2016 - 17 and ITA number 2452/M/21 for assessment year 2017 - 18 has identical grounds.
026. The first ground in all these appeal is with respect to adjustment on account of payment towards shares service expenses/corporate charges. The assessee has paid those charges to its associated enterprises which are determined at arm's-length price by the learned TPO/DRP at rupees nil. The facts are identical to ground number 1 in the appeal of the assessee for assessment year 2010 - 11 wherein we have set-aside the whole issue back to the file of the learned assessing officer/transfer pricing officer with a direction to the assessee. With similar direction we set-aside these grounds back to the file of the learned transfer pricing officer for fresh determination of arm's-length price of these intragroup services. Accordingly ground number 1 (in ITA number 2015 - 16 where it is ground number 2) are allowed with above direction.
027. For all those years starting from assessment year 2012 - 13 to assessment year 2017 - 18 there is an addition on account of unbilled receivables. This issue has already been decided in the case of the assessee for earlier assessment year as well as in assessment year 2010 - 11 wherein the issue has been set-aside to the file of the learned assessing officer to determine whether there is a double addition on this account or not. Accordingly for similar verification, this ground of the appeal for all these years are set-aside to the file of the learned AO. Accordingly for all



these years ground relating to addition on account of unbilled receivable is allowed with above direction.

028. For assessment year 2012 - 13 the assessee has not been granted credit for tax deduction at source of ₹ 912,536/-. For assessment year 2013 - 14 similarly tax credit of ₹ 28,300,548 is denied. On careful consideration, we direct the learned assessing officer to verify the above credit and if same is found in accordance with the law, Grant the same. In the result ground with related to non-granting of credit for tax deducted at source to the assessee is allowed for assessment year 2012 - 13 and 2013 - 14 with above direction.

029. Ground number 4 for assessment year 2012 - 13 and 2013 - 14 and ground number three with respect to the assessment year 2014 - 15 to 2017 - 18 are general in nature, no arguments were advanced, and therefore same are dismissed.

030. In the result all these eight appeals filed by the assessee are allowed for statistical purposes with above direction.

Order pronounced in the open court on 27.02.2023.

Sd/-
(PAVAN KUMAR GADALE)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 27.02.2023

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