

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH “K”, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.336/M/2022  
Assessment Year: 2017-18**

M/s. Kongsberg Maritime CM India Pvt. Ltd., EL-145, TTC Industrial Area, MIDC, Mahape, Navi Mumbai – 400 710 <b>PAN: AAACU4687L</b>	Vs.	Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income-tax Officer, National Faceless Assessment Centre, Delhi – 110002
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Himanshu Sinha, A.R.  
Revenue by : Shri Anoop Hiwase, D.R.

Date of Hearing : 23 . 03 . 2023  
Date of Pronouncement : 28 . 04 . 2023

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

Appellant, M/s. Kongsberg Maritime CM India Pvt. Ltd. (hereinafter referred to as ‘the taxpayer’) by filing the present appeal sought to set aside the impugned order dated 25.01.2022 passed by the Assessing Officer (AO) in consonance with the orders passed by the Transfer Pricing Officer(TPO)/Commissioner of Income Tax (Appeals)[CIT (A)] under section 143(3) r.w.s.

144C(13) read with section 144B of the Income-tax Act, 1961 (for short 'the Act') qua the assessment year 2017-18 on the grounds inter alia that:-

*"That on the facts and in circumstances of the case and in law, the Ld. Assessing Officer ("AO") Ld Transfer Pricing Officer ("Ld. TPO") based on directions of the Hon'ble Dispute Resolution Panel ("DRP") has:*

General Ground

1. *erred by making adjustment/ disallowances of INR 3,21,74,747 to the total income filed the Appellant*

Transfer Pricing Grounds

Determination of Arm's Length Price ("ALP") for Provision of marketing support services, Provision of application engineering services and Provision of after-sales support services

2. *violated the principal of natural justice by not providing any show cause notice/opportunity of being heard to the Appellant before proposing an adjustment on account of the captioned international transactions.*

3 *erred in not accepting the economic analysis conducted by the Appellant in accordance with the provisions of the Act read with Income-tax Rules, 1962 ("the Rules"), and modifying the economic analysis for determination of ALP in connection with the captioned international transactions by the Appellant and holding that the international transactions are not at arm's length.*

4. *erred in applying inappropriate search filter and rejecting Accuspeed Engineering Services India Pvt Ltd solely on account of persistent losses i.e. losses in 2 years out of total 3 years (ie. current year plus previous 2 years) with respect to international transaction pertaining to application engineering services*

5. *erred in rejecting functionally comparable company ie Deisin Private Limited as comparable to the Appellant for determining ALP for international transaction pertaining to provision of application engineering services*

6. *erred in not considering additional companies which were rejected in the TP documentation basis insufficient financial information or financial information at the time of preparation of TP documentation and proposed by the Appellant as additional comparables during the course of DRP proceedings basis financial*

*information available at that time, without providing any justification on functionality of the comparables.*

7. *erred in rejecting the claim of Appellant for making suitable adjustments to account for differences in the risk profile of the Appellant vis-à-vis the comparables.*

*Determination of ALP for Availing of Supply Chain Management Services as Nil*

8. *erred in not accepting the economic analysis conducted by the Appellant in accordance with the provisions of the Act read with the Income-tax Rules, 1962 ("Rules") pertaining to availing of supply chain management service from Associated Enterprise ("AE") and holding that the international transaction is not arm's length.*

9. *erred in determining the ALP for the impugned transaction to be Nil without applying any one of the prescribed methods under section 92C of the Act.*

10. *exceeded their jurisdictional reach by challenging the commercial expediency and business decisions of the Appellant (ie. questioning the requirement to pay for the intra-group services availed by the Appellant).*

11. *erred by not giving due cognizance to the fact that the Appellant could not have availed such services from unrelated parties.*

12. *erred by concluding that the services received by the Appellant from its AE were duplicate in nature.*

13. *erred in considering the cost allocation for the services availed by the Appellant as ambiguous.*

14. *erred in not giving due cognizance to the information and documents submitted by the Appellant for demonstrating the receipt of services by the Appellant and the benefits derived from such services.*

15. *erred in disregarding the fact that cost associated with these management services has already been allocated to the support service segments of the Appellant and such allocated cost has been considered in the cost base for the application of mark-up. Accordingly, if these management charges are disallowed, then the same shall also be reduced from the operating cost base of the respective support service segments.*

16. *failed to understand that in the prior years where facts of these impugned transactions were same and similar services were rendered, the Hon'ble ITAT has accepted that these services were availed by the Appellant and directed the erstwhile Ld. AO/ TPO to delete the*

*addition while pronouncing its judgement in Appellant's own case for AY 2012-13 and AY 2013-14.*

*Determination of ALP for Bank Guarantee*

*17. erred by misconstruing the nature of transaction and holding that guarantee was provided by Appellant on behalf of group entity to customers in India whereas it is a case of assistance by the AE to Appellant in securing bank guarantee for Appellant's contract with the Indian customer and therefore no bank guarantee fee is liable to be paid by the AE to the Appellant.*

*Initiation of Penalty proceedings under section 270A of the Act*

*18. erred in proposing initiation of penalty proceedings under section 270A of the Act.*

*The above grounds are without prejudice to each other. The Appellant craves to leave to add, withdraw, alter, modify, amend or vary the above grounds of appeal before or at the time of hearing.”*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the taxpayer M/s. Kongsberg Maritime CM India Pvt. Ltd. (KMCIPL) earlier Rolls and Roys Marine India Pvt. Ltd. is a wholly owned subsidiary of Ulstein Holdings AS, primarily into rendering support services to its Associates Enterprises (AEs) and after sales support services to customer of related parties in Indian market either on behalf of AEs or under the direct contract with third party customer. The case was referred for determination of arms length price (ALP) qua the large value of international transactions entered into by the taxpayer with its AEs.

3. During the year under assessment the taxpayer entered into international transactions with its AEs as under:

<b>Nature of Transaction</b>	<b>Amount in Rupees</b>	<b>Method adopted for bench marking</b>
Provision of marketing support	55,214,065	TNMM using OP/OC as PLI

services		
Provision of application engineering services	223,616,051	TNMM using OP/OC as PLI
Secondment of employees	5,969,709	TNMM using OP/OC as PLI
Provision of after sale support services	23,215,206	TNMM using OP/OC as PLI
Purchase of spares and tools	53,167,256	TNMM using OP/OC as PLI
Provision of clearing and forwarding services	12,871,418	TNMM using OP/OC as PLI
Availing of supply chain management services	15,325,293	TNMM using OP/OC as PLI
Availing of repair, maintenance and commissioning service	71,448,127	Other method
Other Income	56,507	TNMM using OP/OC as PLI
Provision of IT services	537,982	TNMM using OP/OC as PLI
(BAAN cost for ERP implementation)		
Legal and professional fees	1,024,926	Other method as prescribed under rule 10AB
Availing of training services	3,616,443	Other method as prescribed under rule 10AB
Recovery of expense	3,404,168	Other method as prescribed under rule10AB
Bank guarantee charges	4,78,402	Other method as prescribed under rule10AB
Bank guarantee		Other method as prescribed under rule10AB
Assets employed	50,386,600	--
Software	18,05,918	--

4. Declining the contentions raised by the taxpayer the Transfer Pricing Officer (TPO) proceeded to propose the adjustment of Rs.33459209/- to the ALP of international transactions qua market

support services, engineering support services and sales support services. The TPO has applied the working capital adjusted margin while computing the ALP adjustment. Accordingly the TPO made the TP adjustment on account of ALP of international transactions as under:

<b>Particulars</b>	<b>Amount (Rs.)</b>
On provision of marketing support services	20,33,551
On provision of engineering application and related services	1,09,77,480
On provision of after sales and related services	50,32,586
On availing supply chain management services	1,53,25,293
On guarantee provided on behalf of AE	90,299
<b>Total adjustment</b>	<b>3,34,59,209</b>

Hence the total TP adjustment of Rs.3,34,59,209/- is proposed to be made in respect of the international transactions entered into by the assessee with its AEs for A.Y. 2017-18.”

5. Taxpayer carried the matter before the Ld. DRP by filing objections who has partly allowed the objections raised by the taxpayer. Feeling aggrieved with the impugned order passed by the Ld. DRP the taxpayer has come up before the Tribunal by way of filing the present appeal.

6. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

**Ground No.1**

7. Ground No.1 is general in nature, hence no specific finding is required.

**Grounds No.2 to 6**

8. During the year under consideration the taxpayer was engaged in rendering application engineering support services to its AE which includes conversion of 2D models for listed parts of the piping assembly supplied by the AE into 3D models and completing the drawing sheets for the AE using tolls, databases and specific instructions/guidelines provided by the AE.

9. The taxpayer in order to benchmark this transaction with its AE applied transactional net margin method (TNMM) with operating profit to the operating costs ratio (OP/OC) as profit level indicator (PLI) by choosing 4 comparables with mean margin of 4.16% as against tax payer's PLI of 6.44% and found its transaction at ALP. However, the Ld. TPO by rejecting the three comparables chosen by the taxpayer namely Atlantis Lab Pvt. Ltd., Accuspeed Engineering Services India Pvt. Ltd. & Desein Private Limited computed the mean margin of 11.67% and thereby proposed an adjustment of Rs.1,67,59,155/-.

10. Before the Ld. DRP the taxpayer chosen 4 additional comparable companies, whose data was not available at the time of TP analysis but the Ld. DRP upheld the order passed by the Ld. TPO by rejecting the contentions raised by the taxpayer.

11. Undisputedly the Ld. TPO/Ld. DRP has accepted the TNMM with OP/OC as PLI adopted by the taxpayer. Now the taxpayer has

raised only issue seeking inclusion of three comparables namely Atlantis Lab Pvt. Ltd., Accuspeed Engineering Services India Pvt. Ltd. & Desein Private Limited. We would examine the suitability of these comparables vis-à-vis taxpayer as under:

**(1) Atlantis Lab Pvt. Ltd. (Atlantis)**

This comparable was taken by the taxpayer as additional comparable company before Ld. DRP and claimed to be functionally comparable vis-à-vis taxpayer. We have examined the annual report of Atlantis available at page 17 to 36 of the supplementary paper book wherein it is shown to be engaged in providing engineering design services, deriving its major revenue from rendering product design using CAD, CAM, CI and digital technology tool design, simulation and data migration services as is evident from the order passed by the Ld. DRP. However, the Ld. DRP has not considered the same. Since functional profile of Atlantis vis-à-vis taxpayer appears to be comparable, we direct the Ld. TPO to consider this comparable after providing opportunity of being heard to the assessee.

**(2) Accuspeed Engineering Services India Pvt. Ltd. (Accuspeed):**

The Ld. DRP rejected this comparable on the ground that Accuspeed has suffered losses in the last 3 years. The Ld. A.R. for the taxpayer took us to the financials of Accuspeed available at page 1 to 12 of the supplementary paper book wherein it has shown profit of Rs.9.77 lakhs in A.Y. 2014-15 and stated that the Ld. TPO has taken incorrect view. When a company is functionally comparable it cannot be solely rejected on the ground that it has

suffered losses. So we direct the Ld. TPO to reexamine it after providing opportunity of being heard to the assessee.

**(3) Deisin Private Limited (Deisin):**

The Ld. TPO has rejected this comparable on the ground that it is into rendering management consultancy services, deriving 33% of its income from the same, which fact has been denied by the assessee. The Ld. A.R. for the taxpayer contended that Deisin is a power plant engineering consultancy, operation and maintenance service provider and consultancy portion of services rendered by it includes carrying out feasibility service, technical assistance such as site survey and review, design and detailed engineering services including 3D modeling inspection and testing services.

We have perused the annual report of Deisin available at page 13 to 16 of the supplementary paper book which shows that Deisin is a leading engineering consultancy organization broadly providing services for coal/ignite fire, power plant as well as gas based combined cycle power plant including feasibility status and selection of site, preparation of detail project report and environment impact status etc. which appears to be near to the functional profile of the taxpayer. So we refer this issue to the Ld. TPO to decide afresh after providing opportunity of being heard to the taxpayer. Consequently Grounds No.2 to 6 are determined in favour of the taxpayer for statistical purposes.

**Ground No.7**

12. Ground No.7 is not pressed, hence, the same is dismissed as not pressed.

**Grounds No.8 to 16**

13. Undisputedly the taxpayer during the year under consideration has availed of supply chain management services from its AE namely Rolls Royce Singapore Pte. Ltd. which are as under:

*“Technical support-RRMIPL avails technical support from its AE which includes online support and provision of technical manuals to be used by RRMIPL for provision of after sales support services, etc.*

*HR support/Training services - RRMIPL avails the services of its AE with respect to HR support in the nature of technical training for its employees via WEBEX software and learning management system established by the AE giving them access to performance evaluators and management training progress.*

*Product training - The AE provides product training to engineers of RRMIPL to upgrade their technical skills.*

*Other services - The AE also renders support in providing bank guarantees to Indian customers of RRMIPL for after sale support services or orders for spares, identifying insurance needs of RRMIPL, etc.”*

14. It is also not in dispute that for availing of aforesaid services by the taxpayer, the AE was remunerated at cost + markup of 6.52%, which is to the tune of Rs.1,53,25,293/-.

15. The Ld. TPO after declining the contentions raised by the taxpayer that the cost qua the management services has already been allocated to the support service segments of the taxpayer proceeded to determine the ALP of the aforesaid services at nil, that too, without applying any one of the prescribed methods under section 92C of the Act.

16. The Ld. A.R. for the taxpayer challenging the impugned determination of ALP at nil contended that identical issue has already been decided by the co-ordinate Bench of the Tribunal in taxpayer's own case for A.Y. 2012-13 & A.Y. 2013-14 vide

separate orders dated 25.03.2021 & 05.02.2020 passed in ITA No.689/M/2017 & ITA No.7424/M/2017 respectively.

17. However, on the other hand, the Ld. D.R. for the Revenue contended that the transaction undertaken by the taxpayer with its AE during assessment year 2012-13 and 2013-14 are different and basket of services is also different from earlier years and as such services of this year have to be benchmarked independently. The Ld. D.R. for the Revenue further contended that entire testing is not only need base but whether services are rendered also need to be proved.

18. We have perused the order passed by the co-ordinate Bench of the Tribunal in taxpayer's own case for A.Y. 2012-13 and 2013-14 (supra) available at page 1160 to 1190 of the paper book. Absolutely there is no change of business model and transaction undertaken by the taxpayer with its AE in A.Y. 2012-13 & 2013-14 vis-à-vis year under consideration. The Ld. TPO has merely determined the ALP of the services at nil by challenging the commercial expediencies and business decision of the taxpayer. It is settled principle of law that the Ld. TPO is to make the transfer pricing analysis in order to determine the ALP and is not required to determine whether there is a service or not from which the taxpayer was benefited.

19. The Ld. TPO has also proceeded to determine the ALP of international transactions at nil without applying any prescribed method under section 92C of the Act and rule 10B of the rules and such an adhoc approach in determining the ALP is not sustainable in the eyes of law.

20. Co-ordinate Bench of the Tribunal in the order passed in taxpayer's own case for A.Y. 2012-13 & 2013-14 (supra) has replied all the queries raised by the Ld. D.R. while supporting the order by Ld. TPO as well as the Ld. DRP. For facility of reference operative part of the findings given in the co-ordinate Bench of the Tribunal in taxpayer's own case for A.Y. 2012-13 & 2013-14 (supra) are extracted as under:

*“19. We have considered rival submissions in the light of the decisions relied upon and perused the material on record. As could be seen, the Transfer Pricing Officer has disallowed the payment made towards Intra Group Services (Corporate Fee) primarily on the reason that the assessee failed to furnish required documentary evidences to show that it has received such services from the AEs and further, to show that it has been benefited by such services. Further, the Transfer Pricing Officer has observed that in an arm's length scenario, no independent party would have made such payment to another party. Thus, the Transfer Pricing Officer has held that as per CUP method, the payment made is not at arm's length and ultimately has determined the arm's length price of such payment at nil. On a perusal of the aforesaid order of the Transfer Pricing Officer, it is very much clear that he has mentioned that the arm's length price has to be determined by applying CUP method. However, factually, he has not done so. It is very much clear that the Transfer Pricing Officer has not brought even a single comparable to justify the applicability of CUP. Rather, it is evident, the Transfer Pricing Officer has determined the arm's length price at nil on the reasoning that the assessee has not received the service and has not proved the benefit test. Though, learned DRP has upheld the aforesaid decision of the Transfer Pricing Officer, however, accepting without prejudice submissions of the assessee, they have granted partial relief by holding that since the cost is charged back to the AEs with mark-up, no addition can be made if the payment and receipt are to the very same AE. Be that as it may, the issue before us is, whether the Transfer Pricing Officer can determine the arm's length price of an international transaction at nil without following any approved method and whether he can apply the benefit test. On a careful reading of the relevant statutory provisions i.e., section 92C and rule 10B, we are of the considered opinion that the Transfer Pricing Officer cannot determine the arm's length price of a international transaction at nil on purely ad-hoc basis without applying any one of the prescribed methods. In the facts of the present case, though, the Transfer Pricing Officer has mentioned that CUP is the most appropriate method, however, it is very much clear that he has neither applied CUP method as per letter and spirit of rule 10B(1)(a) nor has followed any other prescribed method*

*while determining the arm's length price at nil. In our considered opinion, the Transfer Pricing Officer is not authorized under the statute to do so. Therefore, the adjustment made by the Transfer Pricing Officer with regard to the arm's length price of the Corporate Fee cannot be sustained. Our aforesaid view is well supported by the judicial precedents cited by the learned Authorised Representative. As regards the contention of the learned Departmental Representative for restoring the issue to the Assessing Officer, we are of the view that there is no necessity to do so in the facts of the present case, as all the required evidences relating to the issue are already on record and have been considered by the Transfer Pricing Officer and learned DRP. In fact, after perusing the evidences available on record, learned DRP has recorded a categorical finding that receipt of service is ascertainable. Learned DRP has upheld the action of the Transfer Pricing Officer by merely observing that the benefits received by the assessee is not proved and further the assessee has not proved that such services were really required by the assessee. In our considered opinion, the aforesaid decision of the Revenue authorities cannot be upheld in view of the ratio laid in the judicial precedents cited before us. Accordingly, we delete the addition made on account of adjustment made to the arm's length price of Corporate Fee. Grounds are allowed."*

21. When receipt of services by the taxpayer from its sales has not been disputed by the Revenue, the same cannot be disallowed merely on the ground that the taxpayer has not been able to prove the benefits and that the taxpayer has not demonstrated the need for such services. The co-ordinate Bench of the Tribunal has addressed all these issues in taxpayer's own case in the earlier years. During the year under consideration the taxpayer has also brought on record documents to prove the availing of services viz. inter-company invoices, cost allocation details, email communication, training details etc. before the Ld. TPO as well as the Ld. DRP, now the issue cannot be remanded back to the Ld. Lower Revenue Authorities to decide afresh as contended by the Ld. D.R. for the Revenue. Moreover, determining the ALP of international transactions on adhoc basis without applying the prescribed method given under section 92C and rule 10B is not sustainable in the eyes of law. Ld. DRP despite noticing that the identical issue has

already been determined by the Tribunal in taxpayer's own case in the earlier years has just upheld the order passed by the Ld. TPO by observing that "the issue is yet to receive finality from the higher judicial forums, hence upheld the findings of AO/TPO". These findings are against the judicial protocol. The Ld. D.R. for the Revenue has failed to bring on record, if orders passed by the co-ordinate Bench of the Tribunal in taxpayer's own case for A.Y. 2012-13 & 2013-14 (supra) relied upon by the taxpayer have been overruled or stayed by any higher judicial forum.

22. Moreover, the Ld. DRP has not discarded/negated the additional evidence brought on record by the taxpayer but just upheld the order passed by TPO in order to keep the issue alive.

23. In view of what has been discussed above and following the orders passed by the co-ordinate Bench of the Tribunal in taxpayer's own case for A.Y. 2012-13 & 2013-14 (supra), we are of the considered view that the adjustment on account of ALP made by the AO on adhoc basis without resorting to any prescribed method given under section 92C and rule 10B of the Act is not sustainable in the eyes of law, hence the addition made on account of adjustment to ALP is ordered to be deleted. Hence, ground Nos.8 to 16 are determined in favour of the taxpayer.

**Ground No.17**

24. Ld. TPO/DRP has made adjustment of Rs.90,299/- on account of ALP determination of bank guarantee by holding that the guarantee was provided by the taxpayer on behalf of the AE to customer in India. However, the Ld. A.R. for the taxpayer contended that it is only a case of assistance given by the AE to the taxpayer in the capacity of a shareholder in securing bank guarantee

from State Bank of India for taxpayer's own contract with Indian customer i.e. Indian coast guard and as such no fees receivable in the hands of assessee for such guarantee provided by the AE to the taxpayer.

25. We have perused the supporting document qua this transaction available at page 1191 to 1199 of the paper book which shows that the contract has been entered into by the taxpayer and not its AE. In view of the matter, this issue requires to be revisited by the Ld. TPO by providing opportunity of being heard to the assessee.

**Ground No.18**

26. Ground No.18 is consequential in nature and hence no specific findings are required.

27. Consequently the appeal filed by the taxpayer is partly allowed for statistical purposes.

**Order pronounced in the open court on 28.04.2023.**

**Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 28.04.2023.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

*//True Copy//*

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.