

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted Through Virtual Court)

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 162/Rjt/2018
Assessment Year: 2012-13**

The ACIT, Gandhidham Circle, Gandhidham-Kutch (Appellant)	Vs	M/s. Woco Tech Polymere Kandla Ltd. Plot No. 341-344, Sector-IV, KSEZ, Kandla, Gandhidham PAN:AAACW5389B (Respondent)
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**Assessee Represented: Shri K.M. Gupta, A.R.
Revenue Represented: Shri Shramdeep Sinha, CIT-DR**

Date of hearing : 17-05-2023
Date of pronouncement : 31-05-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Revenue as against the Appellate order dated 01.02.2018 passed by the Commissioner of Income Tax (Appeals)-3, Rajkot, arising out of the assessment order passed under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2012-13.

2. The solitary ground raised by the Revenue reads as under:

1. The Ld. CIT(A) has erred on facts and in law in deleting an ALP adjustment of Rs.1,66,51,440/- by this office in the order u/s. 92CA(3) of the Income Tax Act, 1961 to the total income of the assessee on account of the services received under TSF agreement.

It is therefore, prayed that the order of Ld. CIT(A) be set aside and that of A.O. be restored to the above extent.

3. The brief facts of the case is that the assessee is a company engaged in the manufacture of high quality rubber parts, rubber to metal, rubber to plastic bonded parts at Kandla SEZ, Gujarat for automotive industry particularly for its overseas customers. For the Assessment Year 2012-13, the assessee filed its Return of Income on 28.11.2012 declaring total income of Rs.69,811,880/-. The case was selected for scrutiny assessment and referred to Transfer Pricing Officer (TPO) for determination of Arm's Length Price of the assessee's international transaction undertaking during the year.

3.1. The assessee is a Joint Venture ('JV') of WOCO Franz Josef Wolf Holding GmbH ("WOCO Germany") and Motherson Sumi Systems Ltd. ("MSSL"), Noida. The Ld. TPO after considering the various submissions of the assessee with respect to international transaction of Technical Services Fees (TSF) paid to Associated Enterprises held that the payments were duplicating in nature and therefore the TSF paid by the assessee to "WOCO Germany" as Nil and made an upward adjustment of Rs. 1,66,51,440/-.

4. Aggrieved against the final assessment order, the assessee filed an appeal before Ld. Commissioner of Income Tax (Appeals). Ld. CIT(A) following the decision of the Tribunal in assessee's own case

for the earlier Assessment Years 2006-07 to 2011-12 deleted the upward adjustment made by the TPO on TSF as follows:

"...6.1 The appellant has raised multiple grounds but the basic grievance relates to action of the TPO in upward adjustment of Rs.16651440/- to the total income of the appellant. This upward adjustment has been made in respect of payment of TSF(Technical Services Fees) to Associate Enterprises, Woco Germany of the sum of Rs.16651440/- TPO concluded that payment of TSF to Woco Germany was duplicative in nature and thereby there was no need for the Appellant to make any such payment for TSF. Consequently, the Ld. TPO proceeded to hold that the ALP of the technical service fee so paid by the Appellant to Woco Germany is NIL. It is apparent from the submissions made by the appellant that similar issue was there within the same factual matrix in AY 2011-12 wherein similar adjustment was made by the TPO which was confirmed by the DRP. The Ld. AR has informed that this issue stands covered by the order of the Hon'ble ITAT Rajkot in appellant's own case wherein various grounds raised by the Appellant has been considered by the Hon'ble ITAT, Rajkot in the Appellant's own case (ITA No. 89 and 3208/Ahd/11, 2637/Ahd/12, 474/Ahd/14, 63 and 593/RJT/2015) who have proceeded to delete the impugned upward adjustment The relevant part of the said order is being reproduced as under.

(Quote)"[115] As regards appeals for the assessment years 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12, there is one common issue in all these years, and that is with regards to arm's length price adjustment in respect of technical services fees paid for assistance in the use of knowhow and technology received from Woco Germany. The quantum of these ALP adjustments are as follows:

2007-08	Rs 1,47,77,405
2008-09	Rs 1,61,95,898
2009-10	Rs 2,35,87,058
2010-11	Rs 2,64,40,263
2011-12	Rs. 1,48,43,000

[16] Learned representatives fairly agree that whatever we decide, on this issue, for the assessment year 2006-07 will apply mutatis mutandis for these years as well. In the assessment year 2011-12, however, there is a small variation. This is the year in which instead of agreement with Woco Sharjah, a separate agreement with Woco Germany was entered into for the technical services fees. Under this agreement, the assessee has paid a fixed fees of Euros 2,40,000. Once again the stand of the revenue is that since all these services are already available to the assessee under the original agreement for transfer of technology, no other services were required and the arm's length price for services under this agreement is NIL. This argument must fail for the reason, and In view of our categorical finding, that scope of technology transfer agreement and the technical services, even though interlinked, is quite distinct and separate.

[17] In any event, in addition to establishing arm's length price under the TNMM, the assessee has performed a supplementary CUP analysis which shows that the fees for technical services was at an arm's length, as shown below:

Assessment Years	Average rate per day which would have been charged by the	Amount independent enterprise would have paid based on the	Amount charged by the AEs
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	<i>independent enterprises (In Euros)</i>	<i>number of man days visited by AEs personnel</i>	
2007-08	718.31	4,62,767	2,50,000
2008-09	759.62	6,87,427	2,81,350
2009-10	856.74	5,32,183	3,55,354
2010-11	907.61	4,23,316	3,89,068
2010-11	907.61	3,00,373	2,40,000

(18) No specific infirmities are pointed out in the above, save and except for the ones discussed above, in the course of our order for the assessment year 2006-07, which we have rejected on merits. Obviously, we have no reasons to take any other view of the matter for these assessment years as well.

(19) In the light of our discussion above, as also respectfully following our own order for the assessment year 2006-07, these ALP adjustments must also stand deleted. The action of the authorities below is treating arm's length price for technical services fees at NIL thus stands vacated. The assessee gets the relief accordingly.

(20) So far as the appeals for the assessment years 2007-08, 2008-09, 2009-10 and 2010-11 are concerned, no other additions, disallowances or ALP adjustments are called into question.

[21] In the result, therefore, these four appeals (for the assessment years 2007-08, 2008-09, 2009-10 and 2010-11) must also, therefore, be held to be allowed in the terms indicated above.

[22] In the assessment year 2011-12, however there is one more issue involved, and that involves the question whether an issue, not raised in the draft assessment order, can at all be raised in the assessment order in the case of assessee eligible for approaching the Dispute Resolution Panel. We will take up this appeal now.

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[30] The assessee has also raised some other legal issues including core legal issues on merits of admissibility of deduction under section 10AA and on impermissibility of reference to the TPO- without affording the assessee an opportunity of hearing before doing so, but, having decided the matter on merits, we see no need to deal with these issues. All those issues and the related grounds of appeal have, in the light of the assessee having succeeded on merits as above, been rendered academic and infructuous.

[31] In the result, the appeal for the assessment year 2011-12 is also allowed. To sum up all the appeals are allowed in the terms indicated above. Pronounced in the open court today on 29th day of September 2016."(Unquote)
6.2 Respectfully following the order reproduced above the upward adjustment made by the TPO/AO following his similar stand in AY 2011-12 in current year of Rs.1665540/- is deleted.

7.0 In effect appeal is allowed."

4. The Ld. Counsel Shri K.N. Gupta appearing for the Assessee submitted before us a Paper Book consisting of the order passed by the Co-ordinate Bench of the Tribunal in ITA No. 89/Ahd/2011 and others. Thus the Ld. Counsel for the assessee submitted that the issue is covered in favour of the assessee and the present department appeal is liable to be dismissed.

5. Ld. CIT-DR Shri Shramdeep Sinha fairly admitted that this issue is covered against the Revenue by the order of the Co-ordinate Bench decision of ITAT in earlier years, however the details of further appeal to High Court of Gujarat is not verifiable.

6. Recording the same, the present appeal filed by the Revenue is hereby dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 31-05-2023

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 31/05/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
राजकोट