IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I' : NEW DELHI)

SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

Stay Appln. No.190/Del/2023
(in ITA No.7960/Del./2019)
(ASSESSMENT YEAR : 2012-13)
in / and
ITA No.7960/Del./2019
(ASSESSMENT YEAR : 2012-13)

Stay Appln. No.191/Del/2023
(in ITA No.7961/Del./2019)
(ASSESSMENT YEAR : 2015-16)
in / and
ITA No.7961/Del./2019
(ASSESSMENT YEAR : 2015-16)

Avery Dennison (India) Pvt. Ltd., P – 24, Green Park Extension, New Delhi – 110 016.	vs.	DCIT, Circle 3 (2), New Delhi.

(PAN : AAACA6163D)

(APPELLANT) (RESPONDENT)

ASSESSEE BY : Shri Vishal Kalora, Advocate
Shri S.S. Tomar, Advocate
Shri Ankit Sahani, Advocate
Shri Yishu Goel, AR
REVENUE BY : Shri R.D. Burman, CIT DR

Date of Hearing : 01.06.2023
Date of Order : 06.06.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

These appeals are preferred by the assessee against the orders of Assessing Officer passed pursuant to the directions of the ld. CIT (A)/ Dispute Resolution Panel (DRP) for the concerned assessment years.

2. The grounds of appeal in both the assessments years taken by the assessee read as under :-

> "ITA No.7960/Del/2019 (AY 2012-13)
>
> 1. That on facts and circumstances of the case and in law, the AO erred in assessing the income of the Appellant under the normal provisions of the Act at INR 270,517,350 in pursuance to the directions of the Dispute Resolution Panel ("DRP"), as against the returned income of INR 40,245,490 returned.
>
> 2. That on the facts and in the circumstances of the case and in law, the order passed by the learned Assessing Officer ("AO") is bad in law and void ab-initio as the same has not been passed in confirmation to the provisions of section 144C of the Act.
>
> 3. That on the facts and in the circumstances of the case and in law, the AO / DRP / TPO erred in making an adjustment to the Appellant's international transaction of receipt of intra-group services with its Associated Enterprises ("AEs") alleging that it does not satisfy the arm's length principle envisaged under the Act and thereby making an adjustment of INR 230,271,861 and in doing so have grossly erred in:
>
> 3.1. Ignoring the specific directions of the Honourable Income Tax Appellate Tribunal ("Hon'ble Tribunal") wherein the need and benefit test for the intra-group services had been accepted and the matter was referred to the Ld. AO/ Ld. TPO only for verifying the rendition of the services.
>
> 3.2. Not appreciating the fact that since the Hon'ble Tribunal has accepted the need and benefit test for the intra-group services; the arm's length price of the said intra-group services

cannot be assumed to be Nil and the adjustment made ought to be deleted;

3.3. Ignoring the specific evidences such as Management Representation Letters ("MRLs") from AEs, Travel details, hotel details, etc. which were submitted by the Appellant based on the specific request of the Ld. TPO during the hearings;

3.4. Ignoring the decisions of the Hon'ble High Court and the Hon'ble Tribunal for earlier as well as subsequent assessment year(s) wherein Transfer Pricing adjustment on account of intra group services has been deleted."

<u>ITA No.7961/Del/2019 (AY 2012-13)</u>

1. That on facts and circumstances of the case and in law, the AO erred in assessing the income of the Appellant under the normal provisions of the Act at INR 550,932,230 in pursuance to the directions of the Dispute Resolution Panel ("DRP"), as against the returned income of INR 8,07,85,870.

2. That on the facts and in the circumstances of the case and in law, the order passed by the learned Assessing Officer ("AO") is bad in law and void ab-initio.

3. That on the facts and in the circumstances of the case and in law, the AO erred in making a reference to the Transfer Pricing Officer ("TPO") by not appreciating that such a reference suffers from jurisdictional error as no reasons have been recorded in the assessment order based on which he reached the conclusion that it was 'necessary or expedient' to refer the matter to the TPO for computation of the arm's length price ("ALP") as is required under section 92CA(1) OF THE Income Tax Act, 1961 ("Act").

4. That on the facts and in the circumstances of the case and in law, the AO / DRP / TPO erred in making an adjustment of INR 47,01,46,362 on account of international transaction of receipt of intra-group services with its Associated Enterprises ("AEs") alleging that it does not satisfy the arm's length principle and the Appellant has not been able to demonstrate the

need, benefit and rendition of such services; and in doing so have grossly erred in :

4.1. Not appreciating that the intra group services received by the Appellant were intrinsically linked to the business operations of the Appellant for its two business segments i.e. Self Adhesive Materials ("SAM") and Retail Information & Branding Solutions ("RBIS");

4.2 Not appreciating the business model of the Appellant and rejecting the Appellant's economic analysis of benchmarking closely interlinked transactions using

Transactional Net Margin Method ('TNMM') and arbitrarily applying Comparable Uncontrolled Price ("CUP") method only to a fragment of services;

4.3. Failing to appreciate that the services received from the AEs are part of a package of composite agreements which cannot be unbundled, especially when the DRP / TPO have accepted the bundled approach for a segment of services;

4.4. Ignoring documents, cost allocation methodology and analysis provided by the Appellant and placing reliance on previous year's conclusion that the services availed by the Appellant from its AE were in nature of 'duplicate' and "shareholder" services which have not conferred any commercial benefit upon the Appellant.

4.5. Not appreciating that the DRP / TPO cannot question the commercial wisdom of the Appellant and the benefit received by the Appellant from the receipt of intra-group services and can only ascertain the arm's length price payable for such services;

4.6. Not appreciating that the DRP / TPO, while applying CUP method failed to apply any comparable uncontrolled transaction price/ data for computing the arm's length price for the intra-group services received by the Appellant; and

> 4.7. Not appreciating that even at a transactional level, the margin earned by AEs from provision of intra-group services were at arm's length.
>
> 5. That on the facts and in the circumstances of the case and in law, the AO erred in granting short-credit of TDS.
>
> 6. Without prejudice to the above grounds, the AO erred in incorrectly computing the amount of interest under section 234B."

3. Since the facts are similar in both the appeals and the appeals were heard together, we are adjudicating both the appeals by this common order. For the sake of convenience, we are adjudicating with the facts and figures from the AY 2012-13.

4. Briefly stated the facts necessary for adjudication of the controversy at hand are : M/s. Avery Dennison (P) Pvt. Ltd., the taxpayer is a subsidiary of Avery Dennison Corporation, USA and is into the manufacturing and trading of pressure sensitive adhesive material, self-adhesive paper, self-adhesive film, tape, sheets, tags and labels in its two segments, namely, Pressure Sensitive Material (PSM) AND Retail Branding Information Solutions (RBIS).

5. The taxpayer in its TP analysis characterized itself as a routine manufacturer assuming normal risks associated with such operation. During the year under assessment, the taxpayer returned international transactions entered into with its AE in Form No.3CEB as under :-

S.No.	*Description of the transactions*	*Amount (Rs.)*
1	*Purchase of material*	*1,029,235,500*
2	*Purchase of Traded material*	*124,206,127*
3	*Receipt of services*	*282,046,989*
4	*Reimbursement of expenses paid*	*16,218,343*
5	*Reimbursement of expenses received*	*32,086,979*
6	*Rendering of services*	*48,809,183*
7	*Sale of material*	*406,287,680*
8	*Packing material*	*58,168*
9	*Purchase of stores, spares*	*3,675,216*
10	*Computer software and licence fee paid*	*57,127,321*
11	*Purchase of fixed assets*	*9,068,947*
12	*Repair & Maintenance*	*3,718,586*
13	*Selling commission paid*	*182,539,808*
14	*Rebate*	*93,719,213*

6. Originally, except international transactions qua intra group services, all other international transactions were accepted to be at arm's length. The TPO originally proposed an adjustment of Rs.28,20,46,989/- in relation to intra group services. However, later, he accepted another amount of Rs.5,17,75,129/- in intra-group services at arm's length price by relying upon the orders passed by the ld. DRP in AYs 2010-11 & 2011-12. Hence, the proposed adjustment now was Rs.23,02,71,861/- which was also upheld by the DRP. TPO by relying upon the order passed by the ld. DRP in AYs 2010-11 and 2011-12 applied CUP method for benchmarking the international transactions qua intra group services and thereby proposed an adjustment of Rs.23,02,71,861/-.

7. In first round, the ITAT remanded the issue to the file of TPO to examine the evidence of intra group services afresh. In the second round,

ITAT again remanded the matter to the TPO to examine the evidence of intra group services afresh by TPO.

8. Assessee took the matter to Hon’ble High Court. Hon’ble High Court upon assessee’s appeal set aside the orders of ITAT for AYs 2012-13 and 2015-16 and directed that ITAT should examine the issue and appreciate the evidences.

9. In these circumstances, we have heard both the parties and perused the records.

10. Ld. Counsel for the assessee submitted that the issue involved in the present appeals is squarely covered in assessee’s own case for the Assessment Years 2007-08, 2008-09, 2010-11, 2011-12, 2014-15 & 2016-17 wherein the similar adjustment on account of intra-group services received by the assessee had been made by the CIT(A) and DRP. As against such adjustments, the assessee had preferred appeals before this Tribunal and the Tribunal has allowed the appeals in favour of the assessee wherein the Tribunal has accepted that intra-group services received by the assessee in the respective years to be at Arm’s Length. As against the order of the Tribunal, the Department had approached the Hon'ble High Court for the Assessment Years 2007-08 to 2011-12 which has been dismissed by the Hon'ble High Court. Therefore, ld. counsel submitted that the present appeals may be allowed.

11. Per contra, ld. DR for the Revenue relied upon the orders of TPO/ CIT (A). He also referred certain paragraphs from the orders of the ITAT for AYs 2012-13 & 2015-16, which have been set aside by Hon'ble High Court. On a query about detailed evidence of intra-group services furnished by the assessee, Ld. DR submitted that he is on rotation duty and has not been able to go through these.

12. We have heard both the parties and appreciated the material carefully. We note that the assessee has furnished enormous evidences which point out that intra group services have in fact been received by the assessee. Moreover, the agreement is a composite one and authorities below have allowed part of the same and treated part of the same not allowable. On similar facts, ITAT has deleted the adjustment for several years and the Revenue's appeal against them has been dismissed by Hon'ble High Court. The matter came before the Tribunal originally in AY 2009-10 in ITA No.4720/Del/2017 wherein ITAT has held as under:-

> "19. Before us, the ld. AR submitted that the ITAT, in the Assessee's own case for AY 2007-08 and AY 2008-09, after understanding the nature of the Assessee's business operations and the nature of various intra-group services received by the Assessee held that there existed a direct, nexus between the intra-group services received by the Assessee vis-a-vis the revenue earned/cost incurred by the assessee.
>
> 20. Hence, the Co-ordinate Bench of ITAT held that these services are intrinsically linked to the core business operations of the assessee and cannot be analysed in isolation. The relevant

extract from the ruling of the Co-ordinate bench of ITAT Delhi in Assessee's own case for AY 2007-08 is as under:

> "20. On perusal of the TP Study, we observe that each transaction are interlinked with each other. We notice that the assessee has treated the agreement as a whole, and has applied TNMM, in respect of the services received to arrive at the ALP. It is observed that the Id. CIT(A) accepted the contentions of the assessee that; intra group services were received by the assessee as per the agreement, and that these are critical, and linked to the core business operations of the assessee. However, the Ld. CIT(A) held that certain services specified in the agreement did not result in any benefit to the assessee.
>
> 21. All the services received are part of composite contracts/agreements which in our view cannot be unbundled...
>
> 23. From the above discussion we are of the considered opinion that the agreement is an intrinsic one and that it is wrong to split the same and hold that some services are at arm's length and some services are not.
>
> 24. The Ld. CIT(A) accepted TNMM to arrive at the ALP, in respect of certain services received by the assessee and in the same breath, has rejected the analysis undertaken by the assessee under the TNMM in respect of other services. We are informed by the assessee that, the authorities have accepted TNMM as MAM in the subsequent years. The revenue has to be consistent in its approach. In our view, the TPO analysis of the assessee using TNMM as the MAM has to be accepted. When there is an agreement for services and certain services out of a bundle of services are undisputedly rendered, the entire agreement has to be viewed as a whole. Whether the services have actually resulted in a benefit to the assessee or not is not material. The conclusion of the Ld. TPO that the services have not resulted in any benefit and no independent entity would have made such a payment is in the realm of surmised and conjunctures and not backed by any material. Thus, the ALP determined by the

> assessee company is accepted and the TPO adjustment is deleted."

21. The relevant extracts of Co-ordinate Bench of ITAT Delhi in its own case for the A.Y. 2008-09 in ITA No. 4934/Del/2014 and 4869/Del/2014 is as under:

> "33. Further, the Id. DR had raised a contention that the assessee has not demonstrated how the services received are beneficial to the assessee. We are of the opinion that, ascertaining whether a service has actually benefitted the taxpayer or not is not within the prerogative of the Tax Authorities. To avail a service or not is a commercial decision which cannot be challenged by the Tax Authorities."

22. The Co-ordinate bench of ITAT in the Assessee's case for AY 2008-09 held that OECD guidelines end an aggregated benchmarking approach in a situation, where the underline transactions are closely linked to the core business operations. The relevant extracts in this regard are reproduced below:

> "28. We are of the considered opinion that, with regard to PSM and RIS segments, the mark-up charged by the AEs is within the +/-5% range, allowed under second proviso to section 92C of the Indian Income Tax Act, 1961. Accordingly, these services can be considered to be at arm's length; and with regard to of GVP services, VIPFS services and Ticketing Hub Services, the service charges paid by the assessee, represents the actual cost incurred by the AEs, without applicable of any mark-up. Accordingly, these can be considered to be at arm's length.
>
> 30. We have perused the OECD guidelines which has recommend an aggregate benchmarking approach in situation, where the underline transactions are closely linked to the core business operations. Principle of aggregation, is a well-established rule in transfer pricing analysis. This principle seeks to combine all closely linked transactions wherein arm's length price can be determined for a number of transactions taken together...

> 31. The assessee is predominantly a manufacturer and the services received by the assessee from its AEs are intrinsically linked to the core business operations of the assessee, in the following form:
>
> a. Based on the support provided by the AEs in terms of marketing services and strategic services, the assessee is able to achieve higher sales, both in terms of higher sales quantity and sales prices.
>
> b. Based on the support provided by the assessee in terms of operations and logistics the assessee has been able to procure raw materials at lower costs. Accordingly, the impact of such support services is received by the assessee in the form of lower direct costs.
>
> 32. We observe that there exists a direct nexus between the revenue earned/ cost incurred by the Assessee and the majority intra-group services received, it would be incorrect to analyse the intra-group services received as a single element of cost in isolation..."

23. Further, the Department has also filed appeal against the order of ITAT before Hon'ble Delhi High Court. Hon'ble Delhi High Court has held that the view taken by the ITAT is plausible one and does not warrant any interference. The relevant extracts of the order of Hon'ble Delhi High Court are as under:

> "The contention of the assessee was that agreement between the assessee and its AE was a composite one and could not be split up for the purposes of holding that some services are at arm's length and some are not. The ITAT appears to have agreed with the above contention of the assessee on viewing the agreement as whole. It was not within the purview of the TPO to determine if some of the services resulted in any actual benefit to the assessee or not."

24. Since, the order of the ld. CIT(A) is based on the order of the ITAT Delhi and the Hon’ble High Court of Delhi, in the

absence of any change in the material facts and the proposition of law, we decline to interfere with the considered decision of the ld. CIT(A).”

13. We find that the above order applies on all fours to the present appeals. Here also from the composite agreement, some have been accepted at arm’s length price and some have been treated as not acceptable at arm’s length price. Huge details of intra-group services have been furnished by the assessee. Respectfully following the precedent from the ITAT and Hon’ble High Court, we uphold the contention of the assessee and delete the TP adjustment.

14. Our above order applies *mutatis mutandis* to ITA No.7961/Del/2019 for AY 2015-16.

15. Since we have already disposed off the appeals as above, the stay applications become infructuous.

16. In the result, both the appeals filed by the assessee are allowed and the stay applications are dismissed as infructuous.

Order pronounced in the open court on this 5th day of June, 2023.

Sd/- **(CHALLA NAGENDRA PRASAD)** **JUDICIAL MEMBER**	**sd/-** **(SHAMIM YAHYA)** **ACCOUNTANT MEMBER**

Dated the 5th day of June, 2023
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Copy forwarded to:

1.Appellant
2.Respondent
3.CIT
4.CIT (A)
5.CIT(ITAT), New Delhi.

AR, ITAT
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