

**IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI KULDIP SINGH, JM

**ITA No. 2531/Mum/2022**  
(Assessment Year: 2018-19)

Jungheinrich Lift Truck India Private Limited 203 204, 2 <sup>nd</sup> Floor Delphi A Wing, Central Avenue, Hiranandani Business Park, Powai, Mumbai-400 076 <b>(Appellant)</b>	Vs.	Asst. Commissioner of Income Tax Circle 15(2)(2) Mumbai <b>(Respondent)</b>
<b>PAN No. AACCCJ7808G</b>		

**Assessee by** : Shri Ketan Ved &  
Shri Abdul Kadir Jawadwala,  
ARs  
**Revenue by** : Shri Mehul Jain, Sr. AR

**Date of hearing:** 15.03.2023  
**Date of pronouncement :** 12.06.2023

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by the assessee against the assessment order by The Assistant Commissioner Of Income Tax, Circle 15 (1) (2), Mumbai (The Learned AO) for assessment year 2018 - 19 dated 31/7/2022 passed in pursuance to the direction of the learned CIT DRP - 1, Mumbai - 3 (the learned DRP) dated 27/6/2022 determining total income of the assessee at ₹ 3,36,19,430/-.
02. Assessee has preferred appeal on following grounds :-

*"The appellant objects to the order dated 31 July 2022 passed by the Assistant Commissioner of Income-tax, 15(1)(2) (learned AO") under section 143(3) read with section 144C(13) of the Income Tax Act, 1961 (the Act) pursuant to the directions issued by the Hon'ble Dispute Resolution Panel - 1 (learned DRP) on the following grounds:*

*1. Erred in making an adjustment in respect of reimbursement of expenses*

*1.1 The learned Transfer Pricing Officer ("TPO")/ Assessing Officer ("AO")/ DRP has erred in computing the Arm's Length Price ("ALP") of the international transaction pertaining to "Reimbursement of expenses" amounting to INR 32,51,464 at NIL without appreciating the fact that such expenses are third party costs which are reimbursed to Associated Enterprises (AES") on cost-to-cost basis, without any mark-up.*

*1.2 Without prejudice the reimbursement of expenses should be allowed, the learned TPO/ AO/ DRP erred in not appreciating the fact that the Assessee had applied Transactional Net Margin Method at whole entity level and therefore the same is also benchmarked under the same.*

*1.3 The learned TPO/ AO/ DRP erred in not appreciating the fact that the AES of the Assessee incurred certain expenses pertaining to travelling, SAP related charges, advertising, etc. which were initially borne by the AES and then cross-charged to the Assessee. The Assessee subsequently reimbursed these expenses incurred by its AES on cost-to-cost basis, without any mark up. Such expenses are purely for administrative convenience and therefore the same should be allowed.*

1.4 The learned TPO/ AO/ DRP erred in not appreciating the fact that reimbursement of expenses do not involve a separate provision of services by the AE, as such reimbursements are incurred for the purpose of the administrative convenience of the Assessee. Further, Hon'ble DRP has incorrectly assumed the reimbursement as an intra group services while determining the arm's length price as nil. Such cost reimbursed by the Assessee to its AE is similar to the price typically charged in the third- party scenario.

2. Disallowance of foreign exchange loss on remittances under section 43AA of the Act amounting to Rs 3,65,84,150

2.1 The learned AO erred in making an addition of Rs. Rs. 3,65,84,150 under section 43AA of the Act in respect of foreign exchange loss incurred on remittances made during the financial year 2017-18.

2.2 The learned AO erred in holding that the evidence provided by the appellant to substantiate the loss claimed of Rs.3,65,84,150 are forged.

2.3 The learned AO / learned DRP has erred in holding that the appellant has not filed any record or evidence i.e., sample copies and bank statement to suggest that such expenses were incurred for the purpose of business of the appellant. The learned DRP ought to have appreciated that below documents were filed in the course of DRP proceedings, to which no cognizance has been taken:

-Invoice copies

*-Extract of bank payment references*

*-Bill of lading*

*2.4 The learned AO erred in not appreciating all the evidence provided by the appellant and came to erroneous conclusion based on surmise and conjecture.*

*2.5 The learned DRP erred in holding that the appellant has not produced any record before the lower authorities to suggest that the said expenditure has been incurred wholly and exclusively for the purpose of business of the appellant.*

*2.6 The learned AO erred in treating the foreign exchange remittance loss claimed by the appellant as bogus and disallowed the same under section 43AA of the Act.*

*2.7 The learned AO erred in not issuing remand report as requested by the learned DRP for passing their directions.*

*2.8 The learned AO / learned DRP ought to have appreciated the foreign exchange gain of earlier years was duly offered to tax by the appellant. However, the foreign exchange loss incurred during the year under consideration has not been allowed.*

*2.9 The learned AO / learned DRP ought to have appreciated that out of the realized foreign exchange loss of Rs.3,65,84,150, the appellant has disallowed loss of Rs.1,02,05,646 pertaining to capital assets in the return of income filed by the appellant for AY 2018-19. The appellant therefore*

*submits that there is a double disallowance to the extent of Rs.1,02,05,646.*

### *3. Penalty proceedings*

*3.1 The learned AO/ learned DRP erred in initiating penalty proceedings under section 270A of the Act.*

*3.2 The appellant submits that the learned AO / learned DRP ought to have appreciated that the appellant has disclosed all the material facts to substantiate the explanation offered during the course of the assessment proceedings. In view thereof, the appellant has not under-reported/ misreported income as per section 270A of the Act.*

*3.3 The appellant prays that the learned AO be directed to drop the penalty proceedings initiated under section 270A of the Act.*

*4. The appellant craves leave to add to, amend, alter, vary, omit or substitute the aforesaid grounds of appeal or add a new ground or grounds of appeal at any time before or at the time of hearing of the appeal as it may be advised."*

03. We find that the ground number 3 of the appeal against initiation of penalty proceedings is premature, does not require adjudication hence dismissed.
04. Before referring to the grounds of appeal, we refer to the facts of the case. Brief facts of the case shows that assessee is a company engaged in the business of buying and selling of trucks and spares and also engaged in agency business, renting of trucks, installation services, warranty services and maintenance activities for the lift trucks. Assessee filed its return of income at rupees Nil. Return of income was picked up

for scrutiny. As assessee has entered into international transaction of import of tracks and export of trucks along with compensatory payments as well as reimbursement of expenditure, reference was made for determination of arm's-length price to The Assistant Commissioner Of Income Tax Transfer Pricing 2 (3) (1), Mumbai (the learned TPO) for examination of arm's-length price of the international transaction.

05. The only international transaction in dispute is reimbursement of expenses, which has been determined by the assessee to be at arm's-length price by adopting any other method. During the year under consideration the assessee has paid ₹ 3,251,464/- to its associated enterprise and claimed the same amount to be on account of reimbursement of expenses. In transfer pricing study report it was stated that associated Enterprises incurred certain expenses such as travelling, consulting and advertisement, which are initially borne by the associated enterprise and then cross-charged to the assessee company without any markup. The assessee submitted that these transactions were undertaken for administrative convenience and having regard to the fact that the transactions were undertaken on cost to cost basis the said transactions were considered by the assessee company to be in compliance with the arm's-length principle on application of other method as the most appropriate method.
06. The learned transfer pricing officer disputed the above transaction asking the assessee to furnish back to back invoices of the expenses incurred by the AE and explanation for necessity of such arrangement. Assessee could furnish only three Sample debit notes raised by the associated Enterprises on the assessee and the narration of expenses stated in the above debit notes is corporate licensing and maintenance including Microsoft and ASAP for three quarters whereas the

transfer pricing study report it was mentioned that the reimbursement pertain to travelling consulting and advertisement expenses. Therefore the learned TPO was of the view that assessee has failed to furnish the documentary evidences such as back to back invoices to substantiate the reimbursement of expenses claim and further as no other details are provided by the assessee company to verify the correctness of the claim and the amount and further the nature of expenses mentioned in the debit notes and the transfer pricing study reports are also at variance, accordingly he made an adjustment of ₹ 3,251,464/- determining the arm's-length price of the same at Rs. Nil. Accordingly, order under section 92CA (3) of the act was passed on 27/7/2021 proposing the above adjustment.

07. The learned AO further noted that assessee has claimed foreign exchange loss of ₹ 69,539,201/-. The learned AO found that the foreign remittance loss of ₹ 36,584,150 incurred by the assessee was not supported with detailed calculation of the loss. Assessee furnished the date of booking and the date of payment of purchases, expenses reimbursement and freight charges on account of which foreign remittance loss of the above amount is claimed. On questioning, the assessee submits that the loss of this amount is on account of foreign remittances and pertained to realized losses. Assessee also stated that foreign exchange loss pertaining to capital items have already been disallowed by the assessee in the return of income thus, balance loss claimed by the assessee is of revenue nature and therefore same is allowable. Assessee submitted the details of the foreign exchange remittances showing the amount of expenditure in foreign currency, date of booking of expenditure in the books of accounts, exchange rate on date of booking of expenditure in the books of accounts, amount of expenditure debited to profit and loss account on date of booking, date of actual

payment of expenditure, exchange rate on date of payment of expenditure and consequent loss of foreign exchange in the above transaction. Assessee further explained that ₹ 6,963,346/- is unrealized forex gain for assessment year 2017 – 18 which is reversed in this year. The learned AO rejected the claim of the assessee and disallowed the foreign exchange loss of ₹ 43,547,496 including foreign remittance loss of ₹ 36,584,150/- for the year and opening reversal of ₹ 6,963,346/- under section 43AA of the act.

08. Accordingly the draft assessment order under section 144C of the act was passed on 29/9/2021 wherein in the normal computation of income the learned assessing officer made an adjustment proposed by the learned transfer pricing officer of ₹ 3,251,464 and further made a disallowance of foreign exchange loss under section 43AA of the act of ₹ 43,547,496/- determining the total income at ₹ 40,582,774/-.

09. While determining the V book profit also the learned assessing officer made the above two adjustment to the book loss declared by the assessee.

010. Assessee preferred objection before the learned dispute resolution panel wherein the directions were issued on 27/6/2022

- i. rejecting the objections against the transfer pricing adjustment holding that assessee did not provide any primary evidence to show that the services were actually rendered by the associated enterprises and all the documentation provided by the assessee does not prove availing of any services therefore it held that the claim of the reimbursement of expenses deserve to be rejected.

- ii. With respect to the disallowance of foreign exchange loss on remittance under section 43AA of the act amounting to ₹ 36,584,150, where the assessee filed the additional evidences and remand report was sought from the learned assessing officer which was never received by it in time before passing of the direction, the learned dispute resolution panel held that the assessee has not produced any record before the lower authorities to suggest that the said expenditure is been incurred wholly and exclusively for the purposes of the business of the assessee. When the assessee has failed to produce any material evidence to suggest that such expenditure has been laid out for the purposes of the business of the assessee, the same cannot be allowed. Accordingly the disallowance of foreign exchange loss on remittance of ₹ 36,584,150 was also rejected.
- iii. With respect to the disallowance of foreign exchange loss amounting to ₹ 6,963,346 which was pertaining to financial year 2016 – 17 and being reversal entry, the learned dispute resolution panel directed the learned assessing officer to delete the addition.
011. Accordingly the learned AO passed the assessment order under section 143 (3) read with section 144C (13) of the act dated 31/7/2022 wherein the transfer pricing adjustment of ₹ 3,251,464 and disallowance of foreign exchange loss on remittance under section 43AA of the act of ₹ 36,584,150 was retained in the total income of the assessee was determined at ₹ 33,619,430/-. The book profit was also increased by the above to adjustments, consequently book profit was determined at ₹ 36,921,437/-.
012. The assessee is aggrieved with the above order and is in appeal before us. We heard the rival contention and perused

the orders of the lower authorities as well as the paper book filed by the assessee.

013. Ground number 1 is with respect to the reimbursement of expenditure where the learned assessing officer has determined the arm's-length price of the international transaction at Rs. Nil for the reason that assessee has failed to furnish the requisite details with respect to the actual rendition of the services, benefit derived by the assessee and services are rendered not duplicative in nature. The assessee submitted only the simple invoices before the lower authorities. Only 3 sample debit notes raised by AE were produced before lower authorities. Those were also produced before us at page number 256 – 258 of the paper book. On perusal of these debit memos, we find that the narration of the services are in a foreign language. Except the address of the assessee and the amount in Euro, everything else is in foreign language. The three invoices/debit notes shows that two debit notes are of Euro 9225, and one debit note of Euro 11,118. In the transfer pricing study report at page number 67 of the paper book refers to the expenses with related to travelling, consulting, advertisement etc whereas before the learned dispute resolution it was claimed that these are certain expenses pertaining to travelling, SAP related charges and advertisement. It is merely a statement by the assessee before the lower authorities that it is a cost-to-cost payment . However assessee did not furnish any back-to-back invoices of those expenses incurred. The English words in the debit notes refers to the Microsoft and SAP details for three quarters. The two quarters pertaining to 2017 and first quarter of 2018. The details are not also supported by any agreement. We fail to understand that how the lower authorities have reached at a conclusion on the 3 Sample debit notes which are in a foreign language. Assessee has also not narrated the facts properly that how the above expenditure

cross-charged to the assessee company by its associated enterprises. Even the complete breakup of the expenditure showing the nature of expenditure was also not submitted. In view of this we set-aside ground number [1] of the appeal back to the file of the learned transfer pricing officer with a direction to the assessee to substantiate the nature of such expenditure, and how such expenditure have benefited to the assessee. The learned TPO may examine the same and decide the issue afresh in accordance with the law.

014. Second ground of appeal is with respect to disallowance of foreign exchange losses. During the course of assessment proceedings the learned assessing officer asked the assessee about the details of the foreign exchange loss of ₹ 69,539,201/- the assessee submitted the summary of such losses and also bifurcated that into revenue account as well as on capital account. Assessee also submitted a detailed with respect to the amount credited on the income side and amount debited on expenditure side. The learned assessing officer disallowed the same holding that assessee could not furnish the complete detail. Before the learned dispute resolution panel the assessee submitted the additional evidences. Those evidences are uploaded on ITBA website and AO was asked to furnish the remand report. Before the passing of the direction by the DRP, no such remand report from the AO was received. There is no finding of learned dispute resolution panel that whether such additional evidences were admitted or not. However the learned dispute resolution panel agreed with the finding of the learned AO. On reading of page number 27 of the direction of the learned dispute resolution panel, it is apparent that assessee was asked to provide the detail within the period of 2 days only. Therefore, it is apparent that assessee was not provided enough time to furnish the requisite details. The learned dispute resolution panel has also not given any finding on the same. The assessee has also made certain



mistakes of mentioning the currency for both the rates as euro instead of USD. The learned DRP upheld the disallowance holding that there is no evidence submitted by the assessee that the expenditure of foreign I exchange loss is allowable as business expenditure. The additional evidence furnished by the assessee shows that the assessee submitted description of expenditure, foreign currency in which transaction was incurred, amount of expenditure in foreign currency, date of booking, exchange rate used on date of booking, amount of expenditure booked in Indian rupee, date of actual payment, exchange rate on date of payment, resultant foreign exchange gain or loss, landed cost number, invoices number, vendor details and bank payment reference. All these details conclusively shows that the assessee has incurred foreign exchange loss during the course of business transaction. Without examining these details, it is unfair to treat the expenditure incurred on foreign exchange loss by the assessee as non business expenditure. In view of this, we set-aside the whole issue back to the file of the learned assessing officer with a direction to examine the claim of the foreign exchange loss incurred by the assessee. The assessee is directed to demonstrate before the assessing officer that such loss has been incurred during the course of the business and how it is accounted for. The learned AO after examination of these details, decide the issue afresh. Accordingly, ground number 2 of the appeal is allowed with above directions.

015. In the result appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court 12.06.2023.

Sd/-  
(KULDIP SINGH)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 12.06.2023



*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,

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai