

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'I', NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT  
AND  
DR. BRR KUMAR, ACCOUNTANT MEMBER**

**ITA No. 3811/Del/2017  
Assessment Year: 2010-11**

Denso Haryana Pvt. Ltd.,  
B-1/D-4, Ground Floor, Mohan  
Cooperative Industrial Estate,  
Mathura Road, Badarpur,  
New Delhi.

**PAN:AAACD6817F**

(Appellant)

Versus DCIT, Circle 10(1),  
New Delhi.

(Respondent)

Assessee by : Sh. Himanshu S. Sinha, Adv.  
Sh. Bhuwan Dhoopar, Adv.  
Revenue by : Sh. Rajesh Kumar, CIT-DR

Date of hearing : 04.09.2023  
Date of pronouncement: 17.11.2023

**ORDER**

Captioned appeal by the assessee arises out of order dated 13.12.2016 of learned Commissioner of Income-tax (Appeals)-44, New Delhi pertaining to assessment year 2010-11.

2. Ground Nos. 1 & 2 are general in nature, hence, do not require adjudication.

3. In ground No. 3, the assessee has challenged addition of Rs.72,27,543/- being the transfer pricing adjustment on account of payment made towards intra-group services.

4. Briefly, the facts relevant to this issue are, the assessee, a resident corporate entity, is stated to be engaged in the business of manufacturing automobile components including fuel pumps, fuel injectors, idle speed control valves, electronic control units, AC amplifiers, armatures, holder bearings etc. Additionally, the assessee had purchased and sold products such as, oxygen sensors, diesel injections and variants of fuel pumps, fuel injectors etc. As stated, the assessee is a wholly owned subsidiary of DENSO, Japan. The Transfer Pricing Officer (TPO) has further stated that the assessee is a routine manufacturer of automobile components and uses all the valuable intellectual property rights, know-how, copyrights and other commercial or marketing intangibles such as brand names, trademarks etc. owned by the DENSO group.

5. In the year under consideration, the assessee entered into various international transactions with its overseas associated enterprises (AEs). The details of which are as under :

<b>Nature of International Transaction</b>	<b>Amount in INR</b>
Import of raw material and components	205,23,60,236
Import of finished goods	172,84,07,356
Import of capital goods	12,40,40,466
Export of finished goods	4,22,25,268
Payment of royalty	10,63,39,944
Payment for technical services	1,43,31,239
Payment of application cost	4,11,32,802
Payment for receipt of services	72,27,543
Payment of training fees	41,25,616
Provision of services	1,81,905
Cost allocation from group companies	27,62,398
Cost recharges to group companies	48,87,986

6. Considering the aforesaid transactions, except cost recharges to group companies, as closely linked transactions the assessee adopted aggregate approach and clubbed all the transactions together to benchmark for determination of Arm's Length Price (ALP) by selecting transactional net margin method (TNMM) as most appropriate method with operating profit to total cost as profit level indicator. Since the margin of the assessee computed at 16.23% was more than the

average margin of the comparables, working out to 2.12%, the transactions with AEs were claimed to be at arm's length.

7. While examining the benchmarking done by the assessee, the TPO accepted assessee's approach in respect of all transactions except two, which are payments made towards intra-group services amounting to Rs.72,27,543/- and payment made towards import of capital goods amounting to Rs.12,40,40,466/-.

8. In so far as the transactions relating to payment for intra-group services is concerned, the TPO was of the view that since, it is an altogether separate transaction, it cannot be clubbed with other transactions, but has to be benchmarked independently. Having come to such conclusion, the TPO issued show cause notice to the assessee to furnish various information/details relating to the payment made towards intra-group services.

9. In response to the show cause notice, the assessee furnished a detailed reply vide letter dated 15.10.2013 with information/details called for. In the said reply, the assessee also justified the aggregate approach adopted for benchmarking under TNMM. The TPO, however, was not convinced with the submissions of the assessee. He was of

the view that in terms of section 92B of the Income-tax Act, 1961, different classes of transactions have to be benchmarked separately. After analysing the submissions of the assessee and details furnished, he observed that the assessee has only referred to broad category of services received without identifying the services actually availed during the year. He observed that no contemporaneous documentary evidence was furnished by the assessee to show that the services have actually been received. He observed, the assessee merely furnished invoices showing payment for services, which, in no way, conveyed the desire to obtain specific services or the rendition of actual services. Thus, he observed that in absence of such crucial information, assessee's contention that specific services have been received, for which it did not have expertise or logistics, is not tenable. He further observed that even if some services were received, the assessee failed to demonstrate that it resulted in actual benefit to the assessee. Thereafter, referring to OECD guidelines and various judicial precedents, the TPO concluded as under :

- "The taxpayer has not been able to prove the benefits that it had derived from the services purportedly provided by the Expats. No independent entity would pay for such services without any cost benefit: analysis.

- The taxpayer has not furnished any evidence as to the cost benefit analysis with regard to the independent local employees. No third party would like to avail services without any cost benefit analysis with regard to Expats vs. independent employees.
- No documentation has been produced by the taxpayer to support its claim for the receipt of services.
- The benchmarking done by the taxpayer is not in accordance with the law and therefore CUP method is required to be applied in this case.”

10. The TPO observed, though the assessee might have been benefited from services rendered by the AE in general, however, such incidental benefits do not give rise to intra-group services and cannot be regarded as giving rise to arrangement subject to arm's length pricing as stipulated in OECD guidelines. Thus, he observed that the payment made by the assessee towards intra-group services is not at arm's length. After rejecting the benchmarking of the assessee, the TPO proceeded to benchmark the transaction by applying comparable uncontrolled price (CUP) method. While doing so, he observed, since no third party will make similar payment in an uncontrolled situation, there cannot be any comparable uncontrolled transaction. Thus, he held that by applying CUP method, the ALP has to be determined as nil. Accordingly, he proposed the entire payment made towards intra-

group services as transfer pricing adjustment to be made at the hands of the assessee.

11. In terms with the order passed by the TPO, the Assessing Officer made addition while framing draft assessment order. The assessee contested the aforesaid addition before learned first appellate authority. However, learned first appellate authority upheld the adjustment.

12. Before us, learned counsel appearing for the assessee has submitted as under :

“It is submitted that Ld. TPO/CIT(A) erred in applying CUP to benchmark the international transactions of 'Payment for receipt of services'. For application of CUP method, the first step that is required is the determination of the price of comparable uncontrolled transaction. Such price is then compared with the value of the international transaction to arrive at the arm's length price. Relevant extract of Rule 10B(1) of the Income Tax Rules, 1962 ("the Rules") reads as under:

- “(a) comparable uncontrolled price method, by which:*
- (i) the price charged or paid for property transferred or services received in a comparable uncontrolled transaction or a number of such transaction, is identified*
  - (ii) such price is adjusted to account for differences, if any, between the international transaction or the specified domestic transaction and the comparable uncontrolled transactions or between the enterprises entering into such transactions, which could materially affect the price in the open market;*
  - (iii) the adjusted price arrived at under sub-clause (ii) is taken at arm's length price in respect of the property transferred or services provided in the international transaction or the specified domestic transaction.”*

6.1 It is submitted that the Ld. TPO and Ld. CIT(A) determined the arm's length price at Nil on an assumption that no third party would agree to pay for these services and failed to bring on record any uncontrolled transaction.. The Hon'ble Delhi Income Tax Appellate Tribunal "**(ITAT)**" in the case of **AWB India Pvt Ltd (ITA No. 4454/Del/2011)** has held that TPO cannot discard TNMM and apply CUP method to determine the arm's length price without stipulating the comparable uncontrolled transaction. A general observation by the TPO that no independent party would have made payment in such uncontrolled transaction does not give TPO a valid ground to apply CUP method. Reliance is also placed on the following judgments where similar views have been expressed by the Tribunal:

- **CWT India (P) Ltd v ACIT: [2019] 109 taxmann.com 182 (Mumbai - Trib.)**
- **Bright Point India (P) Ltd vs ACIT: [2017] 89 taxmann.com 182 (Delhi-Trib.)**
- **DCIT v Danisco (India) Pvt Ltd: [2015] 63 taxmann.com 174 (Del-Trib.)**
- **Metalsa India Private Limited v. DCIT [2022] 134 taxmann.com 160**
- **Dow Chemical International (P.) Ltd. v. DCIT [2021] 126 taxmann.com 312 (Mumbai – Trib.)**
- **Deputy Commissioner of Income Tax v. Apollo Gleneagles Hospital Ltd. [2023] 150 taxmann.com 210 (Kolkata - Trib.)**
- **Merck Ltd. v. ACIT [2021] 133 taxmann.com 506 (Mumbai - Trib.)**

**Economic Analysis carried out by the Appellant : aggregation of the transactions**

6.2 During the year, the Appellant had entered into multiple international transactions with its AEs including the receipt of intra-group services. The services availed by the Appellant are in the nature of planning services, safety and environment support, procurement support, information system support and HR support which are integral and significant for the operational efficiency of the Appellant . These services directly aid the Appellant in increasing its efficiency, reduce its risks and costs and improve its revenues. Accordingly, the receipt of services are closely and intrinsically linked with core business activity of the Appellant i.e. manufacturing of automobile components. Thus, as provided in the TP documentation, for the economic analysis, an aggregation approach has been adopted where all transactions have been grouped together.

6.3 It is submitted that the Ld. TPO/ CIT(A) failed to take into cognizance the circumstances under which the services were received by the Appellant. The Ld. CIT(A) rejected the aggregation approach because according to CIT(A), the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ("**OECD Guidelines**"), provide that it is preferable to benchmark each international transaction separately. That may be so, however, this is not the complete picture. OECD Guidelines in Para 3.9 provide that,

*"3.9.... Ideally, in order to arrive at the most precise approximation of arm's length conditions, the arm's length principle should be applied on a transaction-by-transaction basis. However, there are oftensituations whereseparate transactions are so closely linked or continuous that they cannot be evaluated adequately on a separate basis."*

Therefore, the correct principle is that though the transactions have to be separately benchmarked but if the transactions are so closely interlinked that they cannot be evaluated adequately on a separate basis, they can be aggregated. TNMM is the most appropriate method to benchmark the aggregated transactions. In this regard, the Hon'ble Delhi High Court in **Sony Ericsson Mobile Communications India (P.) Ltd. V. CIT [2015 55 taxmann.com 240 (Delhi)** had made the following observations:

*"91. In case the tested party is engaged in single line of business, there is no bar or prohibition from applying the TNM Method on entity level basis. The focus of this method is on net profit amount in proportion to the appropriate base or the PLI. In fact, when transactions are inter-connected, combined consideration may be the most reliable means of determining the arm's length price. There are often situations where closely linked and connected transactions cannot be evaluated adequately on separate basis. Segmentation may be mandated when controlled bundled transactions cannot be adequately compared on an aggregate basis. Thus, taxpayer can aggregate the controlled transactions if the transactions meet the specified common portfolio or package parameters."*

6.4 It is submitted that after having accepted TNMM as the most appropriate method for transactions aggregated together, it is not open to the TPO to cherry pick and single out a transaction (intra group services in the present case) and benchmark it using an entirely different method i.e. CUP. Reliance is placed on the judgment of the Hon'ble Delhi High Court in the case of **Magneti Marelli Powertrain India Pvt. Ltd vs. DCIT 389 ITR 469 (Delhi)** which has been affirmed by the Hon'ble Supreme Court vide **order dated November 3, 2017 in SLP (C) No. 15244 of 2017**. Further, reliance is also placed on the Delhi ITAT

decision of ***BG Exploration and Production India Ltd. vs. JCIT (2017) 82 taxmann.com 446*** wherein it was held that when intra-group services are inter-linked to the main business activity of the Appellant, they should be benchmarked together by adopting TNMM.

- 6.5** The action of the Ld. TPO/CIT(A) in disregarding the bundled approach followed by the Appellant to determine the value of the transaction at arm's length and determining the arm's length price of the transaction as NIL is completely erroneous and unreasonable. This is especially so in view of the fact that the Appellant's net profit margin (on which income tax has been paid) is significantly higher than that of the comparables (around 8 times). In fact the profit margin of the Appellant is even higher than OEMs like Maruti Suzuki which is a market leader having significant market share and dominance. Neither the Ld. TPO or the Ld. CIT(A) have disturbed or commented on the high profit margin of the Appellant.
- 6.6 It is relevant to note that during the previous financial years also the Appellant had entered into similar transactions with its AEs. During these years, the Ld. TPO accepted the transfer price of these international transactions to be ALP and had no adverse findings on the same. Further, it is pertinent to note that there has been no change either in the function-asset-risk profile in AY 2010-11 from the previous years.

#### **Summary of TPO's approach in Appellant's own case in earlier years**

<b>Nature of International Transaction</b>	<b>Summary of TPO's approach in earlier years</b>	<b>Page reference</b>
Payment for receipt of services	Transfer price was accepted at arm's length by TPO in AY 2006-07, AY 2008-09 and AY 2009-10.	Refer pages 536-541 of paperbook Volume III

- 6.7 Reliance is placed on Hon'ble Supreme Court's judgement in *Radhasoami Satsang vs. CIT (193 ITR 321)* where the principle of res judicata/ rule of consistency was laid down. Further, reliance in this regard is placed on following decisions wherein the Hon'ble Tribunal have held similarly in the context of ALP determination:

- **Honda Siel Power Products Ltd (ITA No: 5713/Del/2011)**
- **Brintons Carpets Asia P Ltd. Vs. Dy. CIT Circle 1(1) Pune (ITA No.1296/PN/10)**
- **Humboldt Wedag India Pvt Ltd [TS-242-ITAT-2022(DEL)-TP]**

- **Avery Dennison (India) P Ltd [TS-514-ITAT-2021(DEL)-TP]**

**Ld. TPO does not have the power to make a wholesale disallowance to NIL and ask for a cost-benefit analysis:**

6.8 It is submitted that Ld. TPO has erred in disallowing the entire expenditure incurred by the Appellant for availing the services from AEs on the assumption that no benefit accrued to the Appellant in lieu of the services availed and business needs of a company must be viewed from a business perspective. It is settled law, that TPO does not have power to adjudicate on allowance/disallowance of an expenditure claimed by the Appellant. The powers of the TPO are governed by Chapter X of the Act under which he can only make an adjustment to arrive at the arm's length price of an international transaction. The Hon'ble Delhi High Court in the case of **CIT v EKL Appliances [2012] 345 ITR 241 (Para 22)** has held that Rule 10B(1) of the Rules does not give TPO the power to disallow an expenditure on the ground that it was not necessary or prudent for the Appellant to have incurred the same.

6.9 Reliance is also placed on the following judgments as well:

- **Commissioner of Income Tax-I v. Cushman and Wakefield (India) (P.) Ltd. [2014] 46 taxmann.com 317 (Delhi)**
- **Knorr-Bremse India Pvt Ltd v CIT: [2016] 380 ITR 307(P&H HC)**
- **Dresser Rand India Pvt Ltd v ACIT: [2011] 13 taxmann.com 82 (Mumbai-Trib)**
- **Hive Communications (P) Ltd vs CIT: [2012] 353 ITR 200(Del HC)**
- **CIT v Lumax Industries Ltd [ITA No. 102/2014, order dated 28.10.2015]**

**Without prejudice argument: copious evidence was furnished which was unjustifiably disregarded by the Ld. TPO**

6.10 It is submitted that the Appellant has availed services from its AE(s) amounting to Rs. 72,27,543/- to conduct its business efficiently and effectively. To avail these services, the Appellant entered into an entrustment agreement with its AE (*Pages 1044 to 1050 of the paper book Vol-III*) under which it availed various services/training ranging from planning, procurement, human resources and information systems in India. These services are utilized by the Appellant in its overall operations and serve as a business generating

and maintaining tool for it. The Appellant has not received any similar services from any third party in or outside India.

- 6.11 The AE(s) renders such services to all group companies within Asia region. As mentioned in the entrustment agreement the AE(s) charge for these services on cost-plus 4% basis. The cost is allocated between regional entities by applying a reasonable allocation basis of time spent. The same allocation basis is applied to all other Denso affiliates that receive similar services and the same is evidenced by a management certificate. *(Refer page 527 of paperbook Volume III – management certificate)*
- 6.12 It is submitted that the Denso group knows the in-house and proprietary systems, processes and technical aspects better, and is better equipped to provide more efficient, effective and economical support services across functions, whether technical/ engineering or administrative. Denso International Asia Co. Ltd. (**'DIAT'**) is the regional entity responsible for providing continuous support to all Denso entities operating in the APAC region including India for providing various services ranging from planning services, safety and environment support, procurement support, information system support and HR support.
- 6.13 The Appellant receives above-mentioned support in planning for optimizing the resources engaged in the India operations and staying competitive by having access to top-of-the-line and state-of-the-art technology available with the Denso Group/AEs. The receipt of these services helps the Appellant to bring synergies in its overall operations, and in order to maintain a high level of efficiency and quality in the manufacturing activity. These are enabling support services because of which the Appellant is provided updated knowledge, information, best practices that are required for its business operations.
- 6.14 The Appellant has received benefits from the services provided by the group company according to their business requirement. The AE(s) share **quarterly reports** to all group companies including the Appellant, mentioning the **services provided, performance evaluated and suggested measures for improvement** in that particular quarter *(Refer pages 546 to 574 and 657 to 696 of paperbook Volume III)*. Copy of the invoices along with backup (on sample basis) have also been submitted by the Appellant. *(Refer pages 529 to 534 and 1051 to 1056 of paperbook Volume III)*
- 6.15 The Appellant had submitted various documentary evidence during the course of assessment proceedings before Ld. TPO as well Ld. CIT(A). The following table provides a summary of services received by the Appellant:

Services	Description of services and tangible benefits received to the extent possible to quantify	Documents/ Information	Reference in paperbook
Planning Services	<p>Services relating to the business planning in region, as:</p> <ol style="list-style-type: none"> <li>Strengthen and improve regional management system</li> <li>Organize and run meetings and try to resolve the common issue among group companies.</li> </ol> <p><u>Benefits received:</u></p> <ol style="list-style-type: none"> <li>Cash improvement and profit improvement</li> <li>Increase in turnover</li> <li>Effective execution of business</li> <li>Access to skill and expertise</li> </ol>	<ol style="list-style-type: none"> <li>Minutes and the Agenda of the Asia Presidents conference. These also contain the names of the senior personnel who had attended the planning meeting.</li> <li>Quarterly reports sent by the AEs to the Appellant mentioning the services provided, performance evaluated and suggested measures for improvement</li> </ol>	<p><i>Refer pages 575 to 579 of paperbook Volume III</i></p>
Safety and environment	<p>Develops serious disaster prevention activity, support to establish of safety, health and environment management system, support function improvement.</p> <p><u>Benefits received:</u></p> <ol style="list-style-type: none"> <li>Compliance with industry safety norms. Avoid any unfair legal cost / penalty</li> <li>Lesser health issues of employees which enable them to</li> </ol>	<ol style="list-style-type: none"> <li>3S Implementation Manual: It comprises information and best practices on improving environmental safety issues</li> <li>“Environmental Performance Data Survey Document”- The AE has undertaken a survey to improve the environmental performance.</li> <li>Co2 Basic unit</li> </ol>	<p><i>Refer pages 580 to 602 of paperbook Volume III</i></p>

Services	Description of services and tangible benefits received to the extent possible to quantify	Documents/ Information	Reference in paperbook
	<p>perform regular work throughout the year.</p> <p>c. Lesser quality issues</p> <p>d. Help in reduction of compensation costs to employees, etc.</p>	<p>result (Energy Saving Data): Documents the analysis done to help reduce the usage of energy.</p> <p>d. Denso Eco Factory data (DECO) Factory Data.</p>	
Information System	<p>Develop and maintain a common system, upgrade and maintain Server, upgrade IT environment, internet gateway management, internet web access control, Anti-virus software updating and maintenance support and remote access gateway management.</p> <p><u>Benefits received:</u></p> <p>a. Reduced fixed cost and enhancement in quality</p> <p>b. Reduced man hours and inventory amount i.e. Time and cost saving</p> <p>c. Clear IT issue and counter measure</p> <p>d. Centrally managed server</p> <p>e. Free of cost Platforms / software's</p> <p>f. Automated processes</p> <p>g. Economies of scale</p>	<p>a. Documents in relation to the server monitoring provided by the AEs.</p> <p>b. Supporting WSUS (Windows Security Update Service)</p> <p>c. Configuring VPN Tunnel for region Note Server India</p> <p>d. Copy of presentation for the India IS meeting</p> <p>e. Presentation for the Regional Data Centre, E-mail services, E-mail policy &amp; Operational Rules etc.</p>	<p><i>Refer pages 637 to 655 and 985 to 1014 of paperbook Volume III</i></p>
Procurement	Assists in selecting the	a. Quarterly reports	<i>Refer pages</i>

Services	Description of services and tangible benefits received to the extent possible to quantify	Documents/ Information	Reference in paperbook
	<p>“materials and parts supplier” to reduce purchase cost by order volume for the group companies, assists in new material, help in negotiating the price of material centrally, assists in standardizing cost calculation method.</p> <p><u>Benefits received:</u></p> <ol style="list-style-type: none"> <li>a. Strengthen cost effectiveness, supplier basement and procurement function</li> <li>b. Management of KPI and progress of important activities resulting in cost saving in millions</li> <li>c. Material cost down and savings in material cost</li> </ol>	sent by the AEs to the Appellant mentioning the services provided, performance evaluated and suggested measures for improvement	<i>546 to 574 and 657 to 696 of paperbook Volume III</i>
Human resource	Establish system for local management, plan and run management training programs for expatriates and local management, promote global HR program, support on training at each group company regarding improvement facilities preparation of training material, selection of internal instructor and selection of employees to attend each training and	<ol style="list-style-type: none"> <li>a. Training manual on how to train the trainers titled "How to Instruct".</li> <li>b. Denso Job Instruction manual</li> <li>c. “Newly promoted person training - competency development manual</li> <li>d. Denso Management - A strategic</li> </ol>	<i>Refer pages 603 to 636 and 697 to 984 of paperbook Volume III</i>

Services	Description of services and tangible benefits received to the extent possible to quantify	Documents/ Information	Reference in paperbook
	<p>run globally common training etc.</p> <p>Benefits received:</p> <ul style="list-style-type: none"> <li>a. Human Resource development</li> <li>b. Recruitment of suitable candidate and cost saving by avoiding consultant</li> <li>c. Identify and Implementing further improvements in compensation structure</li> <li>d. Human resource development and recruitment of suitable talent</li> <li>e. Effective compliance with labour laws</li> <li>f. Lesser rate of attrition thereby savings time and cost of the Appellant</li> </ul>	<p>management approach</p> <p>e. Problem solving skill module</p>	

Ld. CIT(A) has recorded the above in his order. However, he has disregarded the same without providing any reason whatsoever,

**The intra-group services availed cannot be classified as duplicative or shareholder services**

6.16 It is further submitted that the services are not duplicative in nature as alleged by the Ld.TPO/CIT(A). The Ld. TPO in his order has recorded that since the Appellant itself has incurred personnel expenses amounting to Rs. Rs. 22,75,69,660/- and legal and professional expenses amounting to Rs. 1,99,31,437, the services received from its AE are duplicative in nature. It is submitted that this finding of Ld. TPO/CIT(A) is not correct for the simple reason that the nature of services received from the AE and services performed by the Appellant are completely different and there is no overlap between them.

The cost of intra-group services pertains to services availed from overseas employees of the AE who are specialists in their field and assist all the group companies in the region. These are specialized services provided by Appellant's AE to all its affiliates in ASEAN region including the Appellant. On the other hand, the personnel expenditure and legal and professional expenses are purely local expenses incurred on local personnel and professionals.. To understand the meaning of duplicative activities, reliance is placed on Para 7.11 of OECD Guidelines, 2022, which provides that:

*"In general, no intra-group service should be found for activities undertaken by one group member that merely duplicate a service that another group member is performing for itself, or that is being performed for such other group member by a third party"*

Therefore, what needs to be seen is whether the Appellant has performed the services independently it has availed from its AE. The authorities below have not found any evidence or provided any basis to show that there is any such duplication of services. Mere examination of Appellant's profit & loss account no conclusion in this regard can logically be drawn. Thus, the CIT(A) has given unsubstantiated findings that there is duplication of services. (Refer pages 290 and 297-298 of paperbook Volume II for P&L account)

6.17 The Ld. CIT(A) has erred in giving a finding that the services availed are shareholder services. It is humbly submitted that the activities performed cannot be regarded as shareholder activities. As regards the shareholder activities, the OECD Guidelines have provided the following guidance,

*"7.9. A more complex analysis is necessary where an associated enterprise undertakes activities that relate to more than one member of the group or to the group as a whole. In a narrow range of such cases, an intragroup activity may be performed relating to group members even though those group members do not need the activity (and would not be willing to pay for it were they independent enterprises). Such an activity would be one that a group member (usually the parent company or a regional holding company) performs solely because of its ownership interest in one or more other group members, i.e. in its capacity as shareholder.*

To demonstrate what kind of activities are classified as shareholder activities, some examples have been provided in the OECD Guidelines as below in Para 7.10

*"7.10. ....b) Costs relating to reporting requirements (including financial reporting and audit) of the parent company including the*

*consolidation of reports, costs relating to the parent company's audit of the subsidiary's accounts carried out exclusively in the interest of the parent company, and costs relating to the preparation of consolidated financial statements of the MNE (however, in practice costs incurred locally by the subsidiaries may not need to be passed on to the parent or holding company where it is disproportionately onerous to identify and isolate those costs);*

*d) Costs relating to compliance of the parent company with the relevant tax laws;*

*e) Costs which are ancillary to the corporate governance of the MNE as a whole"*

The Hon'ble ITAT in **GE Money Financial Services (P.) Ltd. v. ACIT [2016] 69 taxmann.com 420 (Delhi-Trib.)** has also defined the shareholder activities as follows in Para 37:

*"f...Generally shareholder services are those services which are not a. required by the assessee. e. does not fulfill the need test but are required by the ownership for the purposes of maintaining and safeguarding its own interest.*

*b. which are not actually received by the assessee and those services are received by the owner for safeguarding ownership interest.*

*c. which does not have any potential possible and foreseeable benefit likely to accrue to the assessee as it gives benefit to the owner."*

It is submitted that the services availed in the present set of facts do not either fall within the scope and examples of shareholder activities given in OECD Guidelines or the scope as defined by the Hon'ble Tribunal. The services pertain to planning, HR, IT and procurement support which are solely concerned with the business operations of the Appellant. The service provider being a group entity, being fully aware of the business operation of the appellant, is better equipped to provide more efficient, and effective support services. The direct benefit of having centralized services is the certainty that such services will be available when required and that the quality of services is consistent. The authorities have made bald assertions that the services are for group benefit without substantiating the findings with any sort of evidence and hence this finding should be set aside."

13. Learned Departmental Representative submitted, the assessee in course of proceedings before the departmental authorities has failed

to furnish any cogent evidence to establish actual rendition of services by the AE and the cost benefit to the assessee. He submitted, few email correspondence and invoices are of general nature and do not provide any insight into the nature of services availed by the assessee. Drawing our attention to the TP study report of the assessee placed in the paper book, he submitted that as per the operational structure of the group, the assessee has to perform local manufacturing, local sales and marketing and after sales support. He submitted, as per the organisation structure of the assessee given in the TP study report, it is fully manned with Managing Directors, Directors, General Managers, Sr. General Manager heading various teams. Thus, he submitted, the assessee itself is fully capable and has the requisite personnel to perform all kinds of services including the services stated to have been received from the AE. He submitted, the assessee is in-charge of entire procurement and planning and is an ISO certified company. He submitted, the documentary evidences furnished by the assessee do not demonstrate the specific nature of services received and the benefits derived. He submitted, the so called services claimed to have been received by the assessee, are general in nature and would fall

within the shareholders activity, therefore, cannot be treated as intra-group services. He submitted, the burden is entirely on the assessee not only to demonstrate that services were actually received from the AE, but also the benefit derived. He submitted, in the facts of the present appeal, the assessee has failed to prove such fact. He submitted, when various transactions entered by the assessee are not closely linked, the aggregate approach cannot be adopted. Thus, he submitted, the TPO was justified in proceeding under CUP method and since, there could not have been any comparable uncontrolled transaction in similar situation, he has taken the ALP at nil. In support of such contention, he relied upon the following decisions :

- (i). International Flavours and fragrances (India) P. Ltd. vs. DCIT, (2023) 152 taxmann.com 196.
- (ii). Akzo Nobel India Ltd. vs. Addl. CIT (2022) 136 taxmann.com 369.
- (iii). Akzo Nobel India Ltd. vs. Addl. CIT (2022) 145 taxmann.com 468 (Delhi).

14. We have considered rival submissions and perused materials on record. As discussed earlier, the assessee has entered into various international transactions with its AE during the year. Except the

transactions relating to cost recharges to group companies, the assessee has aggregated all other transactions and benchmarked them by applying TNMM. Undisputedly, the Assessing Officer has accepted assessee's benchmarking under TNMM in respect of all the transactions except two of the transactions, viz., import of raw materials and components and payment for receipt of services. In respect of these two transactions, the TPO has applied CUP method and determined the ALP at nil.

15. The issue arising for consideration is, when assessee's aggregate approach under TNMM has been accepted by the TPO in respect of other transactions, such as, import of finished goods, import of capital goods, payment for royalty, payment for technical services, payment for application cost, payment of training fees, cost allocation from group companies, is there any necessity to segregate these two transactions including payment towards intra-group services ? In our view, the TPO was not justified in selectively picking of only a couple of transactions for different treatment. As discussed earlier, the assessee has entered into 12 transactions with AE. Except one transaction, rest eleven transactions have been benchmarked by the assessee under

TNMM by adopting the aggregate approach. While the TPO has accepted assessee's approach in respect of nine transactions, he has segregated two transactions including the transaction relating to intra-group services. Thus, it is not a case where the TPO has entirely disbelieved assessee's claim that the transactions are closely linked transactions. Therefore, in our view, the approach adopted by the TPO to segregate this payment made towards intra-group services is unsustainable.

16. Though, learned Departmental Representative has relied upon the decision of the coordinate Bench in case of International Flavours and Fragrances (India) Pvt. Ltd. (supra) to emphasise that aggregate approach is not acceptable, however, in our view, the decision is factually distinguishable, as in case of International Flavours and Fragrances (India) Pvt. Ltd. (supra), the assessee itself adopted different methods for different sets of transactions. Whereas, in the present case, the assessee has clubbed all the transactions together and adopted TNMM for benchmarking. Even otherwise also, assuming that the payment made towards intra-group services has to be benchmarked separately, it needs to be examined whether the

approach of TPO in determining the ALP at nil by apply CUP method is acceptable.

17. The main reasoning of the TPO to discard assessee's benchmarking under TNMM is, the assessee has failed to prove the need test and the benefit test. As could be seen from the materials placed on record, there is an agreement between the group entities for intra-group services. Further, in course of proceedings before the TPO, the assessee has furnished voluminous evidences, which demonstrate that the assessee has received various services such as planning services, safety and environment services, information system, procurement services, human resource services. Under the planning services, the assessee has received services relating to business planning so as to strengthen and improve regional management system and to organize and run meetings and try to resolve the common issue among group companies. In this context, the assessee has placed on record the minutes and agenda of the Asia Presidents conference containing the name of the senior personnel who had attended the planning meeting. Assessee has also placed on record quarterly reports sent by the AEs to the assessee mentioning the

services provided, performance evaluated and suggested measures for improvement. The assessee has also demonstrated the benefits received by way of cash improvement and profit improvement, increase in turnover, effective execution of business and access to skill and expertise. Under safety and environment services, the assessee has received various services to develop serious disaster prevention activity, support to establish safety, health and environment management system, support function improvement. Necessary supporting evidence towards receipt of such services have been placed on record. Assessee has also demonstrated the benefits received from such services regarding compliance with industry safety norms, avoid any unfair legal cost/penalty, lesser health issues of employees enabling them to perform regular work throughout the year, lesser quality issues etc. It has also helped in reduction of compensation cost to employees. Under the information system services, the assessee was helped to develop and maintain a common system, upgrade and maintain server, upgrade IT environment, internet gateway management, internet web access control, anti-virus software updating and maintenance support and remote access

gateway management etc. The receipt of such services was also supported by documentary evidences placed in the paper book. These services have benefited the assessee in reducing fixed cost and enhancement in quality, reducing man hours and inventory amount, clear IT issues and counter measure, centrally managed server, free of cost platforms/software, automated processes, economies of scale etc. In the procurement services, the assessee received services including assistance in selecting the materials and parts supplier to reduce purchase cost by order volume for the group companies, assistance in new material, help in negotiating the price of material centrally, assistance in standardizing cost calculation method etc. Such services have benefited the assessee to strengthen cost effectiveness, supplier basement and procurement function, management of KPI and progress of important activities resulting in cost saving in millions, material cost down and savings in material cost etc. Under human resource service, the assessee received help to establish system for local management, plan and run management training programs for expatriates and local management, promote global HR program, support on training at each group company regarding improvement

facilities, preparation of training material, selection of internal instructor and selection of employees to attend each training and run globally common training etc. Such services have benefited the assessee in human resource development, recruitment of suitable candidates and cost saving by avoiding consultant, identify and implementing further improvements in compensation structure, human resource development and recruitment of suitable talent, effective compliance with labour laws, lesser rate of attrition thereby saving time and cost etc.

18. Thus, as can be seen from the aforesaid facts, not only the assessee has received services from AE, the services have resulted in tangible benefit to the assessee. In fact, both the Assessing Officer and learned first appellate authority to some extent have agreed that the assessee had received certain services from AE. However, they have rejected assessee's claim by observing that such services are general in nature and may fall within shareholders activity. In our view, the conclusion drawn by the departmental authorities are not based on materials on record, but more on conjectures and surmises. When the assessee has furnished evidences to demonstrate that services indeed

were received from AEs, the departmental authorities cannot ignore such evidences. In any case of the matter, the TPO could not have determined the ALP at nil under CUP method without bringing on record any comparable uncontrolled transaction.

19. So far as the decisions relied upon by the learned Departmental Representative, on carefully going through them, we are of the view that they have been decided on their own facts, hence, not applicable to the present case. Both in case of International Flavours and Fragrances (India) Pvt. Ltd. (supra) as well as in case of Akzo Nobel India Ltd.(supra), the Bench has recorded a categorical finding of fact that the assessee failed to furnish substantive evidence to prove rendition of services. However, the facts are different in the present case, as the assessee has furnished cogent evidence to prove rendition of services by the AE. In view of the aforesaid, we hold that the transfer pricing adjustment suggested by the TPO and addition made by the Assessing Officer in pursuance thereof, is unsustainable.

20. In ground No. 4, assessee has challenged the addition made on account of TP adjustment made to the price paid for purchase of fixed asset.

21. Briefly, the facts are, as discussed earlier, in the year under consideration, the assessee had paid an amount of Rs.12,40,40,466/- towards import of the capital goods from the AE. The assessee has benchmarked the transaction by clubbing it to various other transactions under TNMM. The TPO segregated these transactions and proceeded to benchmark it independently by applying CUP method. While doing so, he determined the ALP of the transaction at nil. The reason being, according to the TPO, the mark-up of 11% applied to the sale price of the capital goods is without any basis, as the assessee failed to provide any contemporaneous documentary evidence for deducing the expenses of sale department, corporate department, packing cost plus transportation cost, interest cost/profit margin. He further observed that no basis is provided as to how the sales margin of 8%, the interest cost of 1% and profit margin of 2% was applied by the AE. Thus, ultimately he held that the mark-up of 11% charged by the AE on the sale of fixed asset is not allowable. Accordingly, he determined the ALP of the payment made towards purchase of fixed asset at Rs.11,17,48,311/- resulting in adjustment of Rs.1,22,92,314/-. When the matter came up before learned first

appellate authority, he granted partial relief to the assessee by allowing a mark-up of 2% on the written down value on account of expenses.

22. Before us, learned counsel appearing for the assessee has submitted as under :

7.1 “The Appellant purchased certain small value capital goods worth Rs. 124,040,466 from its AEs which were utilized by the Appellant for the purposes of manufacture of automotive components. During the year, the Appellant has purchased around 300 items from its AEs. These were mostly in the nature of tools to be used as part of machines. These goods were supplied by the AEs on cost plus a markup of 11%.

7.2 These capital goods are proprietary items which are specific to Denso Group. They are either manufactured by Denso Corporation, Japan or any of the other Denso Group entities . Accordingly, the nature, specifications, quality etc. of the fixed assets under consideration is unique to Denso Group. Detailed break-up of all the fixed assets purchased from each of its AEs: *(Refer pages 118 to 125, 176 to 182 of paperbook Volume II)*. Copies of invoices along with bills of entry on sample basis have been submitted during the course of proceedings, *refer pages 193 to 249 of paperbook Volume II*.

Name of AE	Amount in INR	Nature of asset purchased
Denso Corporation	10,13,51,588	Injectors, LCR Meters, AC-Project-ECUs, EFC-AC-Connectors, UC Inj-mmd-Lasers, Relief Valve Heat Caulking M/Cs, Terminal Glue Application M/Cs, Hot Plate Welding M/Cs, Air Leak Inspection M/Cs, EFC-Eng-ECUs, Wet-Leak-Tester-Modif, UC Injector Projects, 942I-IMV-Diesels, High Speed Cameras etc.
Denso (Thailand) Co. Ltd.	32,14,959	
Denso Wave Inc.	6,076	
Denso International Asia Pte Ltd.	41,590	
Denso (Guangzhou Nansha) Co. Ltd.	1,85,48,592	
Denso Tool & Die (Thailand) Co. Ltd.	8,77,661	
<b>Total</b>	<b>124,040,466</b>	

**TNMM approach should be respected: on merits, as well as on principles of consistency and reasonableness**

- 7.3 The Appellant has benchmarked the said international transaction by using entity level TNMM with OP/OC as PLI calculating to 16.23% which is much higher than the working capital adjusted arm's length margin of comparable companies i.e. OP/OC of 2.12%.
- 7.4 As discussed above, the Appellant had multiple international transactions during the year which are closely and intrinsically linked with core business activity of manufacturing of automobile components and accordingly, by applying the aggregation approach were benchmarked together on entity level basis using TNMM. (Please refer paras 6.4 to 6.6) Reliance is placed on the following decisions:
- **Samsung India Electronics Pvt. Ltd. v. ACIT [ITA No. 6813/Del/2017]**
  - **Cadence Design Systems (India) (P.) Ltd. v. ACIT [2019] 108 taxmann.com 416 (Del - Trib.)**
- 7.5 It is submitted that the manner of computation of arm's length price is set out in section 92C(1) of the Act which provides that the arm's length price in relation to an international transaction shall be determined by any of the methods given in the provision, being the most appropriate method, having regard to the nature of transaction or class of transaction etc. Amongst others, there is Comparable uncontrolled price (CUP) method and TNMM. It is submitted that to benchmark an international transaction, the first step that is required is the determination of the price of comparable uncontrolled transaction. Such price is then compared with the value of the international transaction to arrive at the arm's length price. However, the TPO/CIT(A) instead of benchmarking the transaction and comparing it with an uncontrolled transaction, simpliciter disallowed a certain percentage of the markup charged by the AEs. This failure of Ld. TPO/CIT(A) to apply any method to benchmark the said transaction is violation of Section 92C r.w. Rule 10B of the Rules. For this, reliance is placed on **EKL Appliances (supra)**, and the decisions cited in Para 6.10 of this synopsis.
- 7.6 Furthermore, the Ld. TPO and Ld. CIT(A) while disturbing the ALP of two international transactions, have accepted TNMM for the remaining 8 transactions of the manufacturing business. As held by the Hon'ble Delhi HC in **Magnetti Marelli (supra)**, it is not open for the tax authorities to accept TNMM for a segment as a whole and then subject one individual item of expense to another method (like CUP).

- 7.7 It is pertinent to note that the value of fixed assets purchased by the Appellant has been accepted by the customs authorities ( Special Valuation Branch order).
- 7.8 It is relevant to note that during the previous financial years also the Appellant had entered into similar transaction with its AEs. During these years, the Ld. TPO accepted the transfer price of the international transaction to be ALP and had no adverse findings on the same. Further, it is pertinent to note that there has been no change either in the function-asset-risk profile in AY 2010-11 from the previous years.

**Summary of TPO's approach in Appellant's own case in earlier years**

<b>Nature of International Transaction</b>	<b>Summary of TPO's approach in earlier years</b>	<b>Page reference</b>
Purchase of fixed assets	Transfer price was accepted at arm's length by TPO in AY 2006-07, AY 2008-09 and AY 2009-10.	Refer pages 250-255 of paperbook Volume II

- 7.9 Reliance is placed on Hon'ble Supreme Court's judgement in *Radhasoami Satsang vs. CIT (193 ITR 321)* where the principle of res judicata/ rule of consistency was laid down. Further, reliance in this regard is also placed on decisions cited in Para 6.21 of this synopsis.

**Without prejudice argument: Appellant has provided a secondary analysis as well**

- 7.10 Even though, this international transaction was benchmarked under TNMM by clubbing the same with other transactions, the Appellant had also submitted a secondary benchmarking analysis before the Ld. CIT(A). In this benchmarking, the Appellant has done a secondary analysis by taking the foreign AEs as the tested party and accordingly benchmarked the profit mark-up charged by the AEs. (Refer pages 148 to 170 of paperbook Volume II for additional benchmarking analysis)

- 7.11 A summary of the results of the additional benchmarking is as follows:

<b>No. of comparable companies</b>	<b>Region</b>	<b>3 years average OP/OC</b>
9	Asia Pacific	12.38%

(Refer pages 139, 148 to 170 of paperbook Volume II)

**7.12** As can be seen from the above, even if TNMM is applied by considering AEs as the tested party, then also, the international transaction is as per the arm's length standard as provided in the Indian TP regulations. (*Refer pages 147, 172 of paperbook Volume II for management certificate from Denso Corporation, Japan evidencing the cost of asset transferred and profit mark-up charged thereon*)

**7.13** However, the CIT(A) rejected the analysis as provided by the Appellant and accepted the ad-hoc adjustment proposed by the TPO after allowing 2% of the markup pertaining to administrative and transportation cost.

7.14 The CIT(A) rejected the above additional benchmarking analysis by stating that the selected comparable companies are engaged in manufacturing while the Denso group entities are not engaged in manufacturing the goods that were imported by the Appellant. . Herein the CIT(A) has erred by:

- Erroneously ignoring the fact that all the assets imported are Denso's proprietary assets and are manufactured within Denso Group.
- principal business activity of AEs is also manufacturing.

**7.15** These facts are clearly recorded in the FAR analysis of the transfer pricing report of the Appellant. The Ld. CIT(A) has also erred by ignoring the evidence furnished by the Appellant by way of backup working of expense incurred by the AE on account of supply of these capital assets (on sample basis). (*Refer page 191 of ofpaperbook Volume II*)

**7.16** It may also be noted that the total value of **these purchases amounts to only 1.67% of the turnover of the Appellant i.e., Rs. 7,107,941,517/-**. Even when these purchases are compared to the gross value of fixed assets, then also these comprise only 3.43% of the total value of fixed assets owned by the Appellant, i.e., Rs. 3,613,067,013/-. Thus, all the purchases pertain to items required for the manufacturing activity and comprise only a small and minuscule part of the overall consumption of fixed assets by the Appellant.

23. Whereas, learned Departmental Representative submitted that these are all used goods, hence, there is no rationale in charging mark-up by the AE.

24. Having considered rival submissions and perused materials on record, we find that the fact that assessee has purchased certain capital goods has not been disputed or denied by the departmental authorities. In fact, the TPO has determined the ALP at the cost of the goods purchased while disallowing the mark-up. While doing so, the TPO has not benchmarked the transaction under any one of the available methods. Whereas, learned Commissioner (Appeals) has allowed 2% mark-up on the written down value of the expenses. Thus, as could be seen, the approach adopted both by TPO and learned Commissioner (Appeals) is purely adhoc and not in accordance with Rule 10B. The fact that similar transaction was accepted by the TPO in past assessment years has not been countered by the department, though they have simply stated that each assessment, being a separate unit, the decision taken in earlier assessment years would not be applicable. The departmental authorities have failed to bring out any factual dissimilarity between the earlier years and the impugned assessment year. In any case of the matter, the approach of the TPO and learned Commissioner (Appeals) in determining the ALP is not in

accordance with the transfer pricing provisions. Therefore, we are inclined to delete the adjustment.

25. Other grounds, being consequential, do not require adjudication.

26. In the result, appeal is allowed.

Order pronounced in the open court on 17/11/2023.

Sd/-

**(DR. BRR KUMAR)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SAKTIJIT DEY)**  
**VICE-PRESIDENT**

Dated: 17.11.2023

\*aks/-