

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 3849/Del/2018
(Assessment Year: 2014-15)

Iris Worldwide Integrated Marketing Pvt. Ltd, Unit No. 303, 3 rd Floor, Veritas Business Suites Building, Behind IBIS Hotel, Gold Course Road, Sector-53, Gurgaon (Appellant) PAN: AABCI6361E	Vs.	DCIT, Circle-2, Gurgaon (Respondent)
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Assessee by :	Shri Upvan Gupta, Adv
Revenue by :	Shri Siddharth B. S. Meena, Sr. DR
Date of Hearing	02/11/2023
Date of pronouncement	16/01/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No. 3849/Del/2018 for AY 2014-15, arises out of the order of the Commissioner of Income Tax (Appeals)-2, Gurgaon [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 375/2016-17 dated 26.03.2018 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 25.11.2016 by the Assessing Officer, DCIT, Circle-2, Gurgaon (hereinafter referred to as 'Id. AO').

2. The assessee has raised the following grounds of appeal :-

"1. That on the facts and circumstances of the case, the Commissioner of Income-tax (Appeals) - 2, Gurgaon ['CIT(A)'] grossly erred in upholding the action of the assessing officer in making an addition of Rs.67,77,463 on account of management service fees to the returned income of the appellant under the provisions of section 37(1) of the Income- tax Act, 1961 ('the Act').

1.1 That the CIT(A) grossly erred on facts and in law in confirming the aforesaid addition made by the assessing officer on the basis that details/ evidences of

services provided in consideration for management service fees has not been submitted by the appellant.

1.2 That the CIT(A) grossly erred on facts and in law in confirming the aforesaid addition made by the assessing officer without appreciating that the management service fees has been regularly and consistently charged in books of accounts by the appellant every year.

1.3 That the CIT(A) grossly erred on facts and in law in confirming the aforesaid addition made by the assessing officer without appreciating that the incurrence of management service fees was a business necessity for the appellant.

1.4 That the CIT(A) grossly erred on facts and in law in confirming the aforesaid addition made by the assessing officer without appreciating that the expenditure incurred by appellant on account of management service fees during the relevant assessment year was properly verified and audited by the statutory and tax auditors of the company and found the same to be genuine (since no adverse comments were reported by respect thereof).

1.5 That the CIT(A) grossly erred on facts and in law in confirming the aforesaid addition made by the assessing officer without appreciating that the expenditure on account of payment of management service fees was certified to be at arm's length by the Chartered Accountant under the transfer pricing laws of India, after evaluating the services received by the appellant in consideration thereof.

1.6 That the CIT(A) grossly erred on facts and in law in confirming the aforesaid addition made by the assessing officer without appreciating that the expenditure on account of management service fees was properly explained by the appellant before the CIT(A)/ assessing officer and evidences of services provided by recipient of such fees were also duly provided.

1.7 That the CIT(A) grossly erred on facts and in law in confirming the aforesaid addition made by the assessing officer without appreciating that the management service fees was confirmed as received by the foreign recipient as well in lieu of services provided by them to the Indian entity.

1.8 That the CIT(A) grossly erred on facts and in law in confirming the aforesaid addition made by the assessing officer without appreciating that the onus lied upon the assessing officer to bring on record evidences as to same being non-genuine or un-reasonable."

3. Though the assessee had raised several grounds of appeal before us, we find that the only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the disallowance of management service fees of Rs 67,77,463/- in the facts and circumstances of the instant case.

4. We have heard the rival submissions and perused the materials available on record. The assessee company is the subsidiary of Iris Nation Worldwide Limited, the holding company which provides assistance in various matters to its subsidiaries in return in which the holding company charges some fees to recover the cost which has been incurred while providing the above services. The services include the Human Resource(HR), finance, technology and legal support to the subsidiary company. The assessee furnished the copy of management service agreement dated 27.10.2011 entered by it with Iris UK-Associated Enterprise (AE) in pages 72 to 81 of the Paper Book. Article II of the said agreement speaks about scope of services as under:-

"2.1 Scope of Services

The Services shall consist of the following:

(a) IHR support, including but not exclusively

- i. recruitment and selection support and advice as appropriate;*
- ii. compensation and benefits support including salary reviews and benchmarking);*
- iii share incentive scheme advice and performance management advice,*
- iv. management reporting,*

(b) Technology support, including but not exclusively

- i. support of IT and telecommunications*

(c) Finance Support, including, but not exclusively

- i. assisting in administrative and accounting services, advise with respect to the establishment and operation of control procedures and functions*
- ii. assisting in management, cost, accounting and financial control ie negotiate and arrange for appropriate financing, and guarantee facilities, supervise the implementation of such arrangements and co- ordinate ongoing compliance and reporting requirements required by such arrangements,*

(d) Provision of legal support, including but not exclusively

- i. Activities related to corporate housekeeping throughout the region, eg corporate records, shareholder register, legal history of the company, signature powers, minutes of the board of directors etc;*
- ii. Assist in litigation, for example assisting and coordinating negotiations of disputes, reviewing and amending documents that have been provided by the external lawyers and ensuring follow-up on pending litigations;*
- iii. Provision of any regulatory advice to all subsidiaries, in relation with evolution of legislations;*
- iv. Advising subsidiaries on day-to-day contract and legal matters.*
- v. Review of customer, distribution, supply contracts, finance related contracts;*

- vi *Provision of legal support in related to Intellectual Property and competition.*
- vii *Management of IPR/trademarks*
- (e) *Provision of administration services*
- (f) *such further similar management services SA Iris Nation Worldwide Limited may reasonably be able to provide*

2.2 Standard of Performance

In providing Services hereunder, Iris Nation Worldwide Limited shall act, and shall cause its officers, employees and agents to act, in accordance with Applicable Laws and in a reasonably prudent manner, but neither Iris Nation Worldwide Limited nor any director, officer, employee or agent thereof shall be liable to Iris Nation Worldwide Integrated Marketing Private Limited for any error of judgment, mistake of law or for any loss incurred in connection with the Services provided by Iris Nation Worldwide Limited hereunder, except for any loss resulting from willful misfeasance, bad faith, gross negligence or the reckless disregard of obligations under this Agreement on the part of Iris Nation Worldwide Limited or any of its directors, officers, employees or agents."

5. Article III of the said agreement speaks about compensation for services as under:-

"ARTICLE III

COMPENSATION FOR SERVICES

3.1 Compensation for Services

The costs of providing the Services should split between "pass-through " costs and "value-added costs. Examples of pass through costs are professional fees, insurance premiums, reasonable travel and living expenses for employees of Ins Nation Worldwide Limited away from the normal place of residence whole engaged in providing Services. An arm's length profit mark-up should be added to the value-added costs and charged to the Recipient, with pass-through costs being charged to the Recipient without a mark-up.

(b) That is to say, as compensation for the services provided pursuant to this agreement, Iris Nation Worldwide Integrated Marketing Private Limited shall pay to Iris Nation Worldwide Limited a fee equal to Iris Nation Worldwide Limited's direct costs and indirect overhead costs of providing the Services plus a surcharge of 7.5% on all such costs. This mark up shall be reviewed periodically to ensure any charges under this agreement are at arm's length. For greater certainty Iris Nation Worldwide Limited's costs shall include the salaries and benefits of all staff performing the services for Iris Nation Worldwide Integrated Marketing Private Limited (whether or not actually paid by Iris Nation Worldwide Limited) and all out-of-pocket expenses incurred by Iris Nation Worldwide Limited or its officers, employees or personnel, in providing the Services hereunder

(c) Iris Nation Worldwide Limited shall invoice Iris Nation Worldwide Integrated Marketing Private Limited monthly for the fees payable to it for the preceding month.

(d) The fee shall be payable within 30 (sixty) days of the end of the following month.

(e) The amounts to be paid pursuant to this agreement do not include any value added tax, goods and services taxes or other similar taxes that may be payable in respect of the Services.”

6. Similarly another agreement was entered into by the assessee with another AE -Iris Singapore for which agreement copy was also furnished. The assessee furnished the invoices raised by Iris Singapore and Iris UK towards the management service fees before the lower authorities. We find that there is no dispute for the lower authorities on the mark up charged by the Associated Enterprise (AE). The assessee pleaded that the transactions of payment of management service fees were not subject matter of reference to Learned Transfer Pricing Officer (TPO) for determination of Arm's Length Price (ALP). The Id. AO proceeded to disallow the said expenditure claimed on account of management service fees on the ground that the assessee was not able to prove the rendition of services by the AE for which the fee was paid. The assessee reiterated his submissions before the Id. CIT(A). The Id. CIT(A) asked the assessee to submit some evidences regarding actual occurrence of management service fees for which the AE has charged. The assessee furnished the copies of e-mails exchanged between them and the AEs for providing technical assistance in terms of finance and other related areas. The Id. CIT(A) on perusal of those e-mails observed that the nature of services mentioned therein are very general in nature and do not indicate any specialized kind of the advise which was made by the AE for which payment of management service fee was paid. With these observations, the Id. CIT(A) upheld the action of the Id. AO.

7. The Id.AR before us argued that the payment of management service fees was made for taking the various services listed in the scope of services referred supra by the assessee company and it is based on group recharge cost made by the AE on the assessee. Moreover, he argued that the said payment was being

made from the year 2007 onwards. The said expenditure was being allowed by the revenue in earlier as well as in subsequent years and hence there is no need to take a divergent stand during the year under consideration. Per Contra, the Id DR vehemently argued that the assessee could not establish what services were actually required by it from the AEs. Eventhough, all the services are mentioned in the agreement, out of which, what services were actually rendered by the AEs to the assessee were not established by the assessee. The Id. AO had doubted the genuineness of the expenditure incurred per se on the impugned issue.

8. It is the fact that management service fee has been paid to the AEs by the assessee from the year 2007 onwards. The agreement referred above is a continuing agreement from earlier years, where the said payment was allowed as deduction by the revenue. Hence going by the principle of consistency, there is no need to take a divergent stand by the revenue for the year under consideration. Eventhough, no reference was made by the Id. AO to the Id. TPO u/s 92CA(1) of the Act for determination of ALP, still the Id. AO is entitled to look into the allowability of the expenses and the propriety of the transaction in terms of section 37(1) of the Act. But while doing so, the Id. AO cannot merely step into the shoes of the businessman as to why the said expenditure is to be incurred. It is well settled that commercial expediency of the transaction need to be looked into from the angle of the businessman and not from the point of the revenue. The businessman knows his interest best. In the instant case, the assessee had duly furnished all the copies of master service agreement together with the invoices raised by the AEs on it towards management service fees. The scope of services has been defined elaborately in the master service agreement. The assessee had also furnished the sample e-mails exchanged between the assessee and the AEs proving the rendition of services for which management service fees is paid. Moreover, the payment of group recharge cost is required to be paid in order to have common HR policy, common accounting policies and principles, etc in consonance with the global policies which would have a direct bearing on preparation of consolidated financial statements of the group. Hence it is quite normal in every multinational group to have a common server at one place,

common access code, common HR, common accounting policies etc. The common administration costs incurred by the parent group would be recharged on all the subsidiaries spread across the globe. Hence we hold that the management service fees paid by the assessee would be squarely allowable deduction u/s 37(1) of the Act. Accordingly, the grounds raised by the assessee are allowed.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 16/01/2024.

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 16/01/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi