

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'I': NEW DELHI)  
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No:- 6654/DEL/2019  
(Assessment Year: 2013-14)**

JCIT (OSD)/ Dy. Commissioner of Income Tax, International Taxation, Circle-Gurgaon, Gurgaon.	Vs.	M/s Lummus Technology Heat Transfer BV -India Brach Office 2 <sup>nd</sup> Floor, Infinity Tower B, DLF Cyber City, Ph.- II, Gurgaon.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>PAN No: AABCA9045K</b>		

**ITA No:- 6842/DEL/2019  
(Assessment Year: 2013-14)**

Lummus Technology Heat Transfer BV, 2 <sup>nd</sup> Floor, Infinity Tower-B, Cyber City, Ph- II, Sector 25A, Gurgaon-122002.	Vs.	Deputy Commissioner of Income Tax, International Taxation, Circle-Gurgaon, HSIIDC Building, Udyog Vihar, Phase-V, Gurugram-122002.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>PAN No: AABCA9045K</b>		

**Revenue By :** Shri Vishal Kalra, Adv.  
Ms. Reema Malik &  
Snigdha Gautam, Adv.

**Assessee By** : Ms. Garima Sharma, Sr. DR

**Date of Hearing** : 11.01.2024

**Date of Pronouncement** : 16.02.2024

**ORDER**

**PER SHAMIM YAHYA, A.M.**

These are cross appeals arising out of the order of Ld. Commissioner of Income Tax (Appeals) -43, New Delhi, dated 29.05.2019 pertaining to Assessment Year 2013-

14. The grounds of Revenue's appeal read as under:

**"Grounds of Appeal M/s Lummus Technology Heat Transfer BV for AY 2013-14**

*1. Whether, on the facts and in circumstances of the case, the Ld. CIT(A) has erred in deleting the addition on account of sales/services rendered by head office by holding that the fact of earlier years 2008-09 and 2009-10 were similar to this assessment year (Addition Rs. 1,51,40,183/-).*

*2. Whether, on the facts and in circumstances of the case, the Ld. CIT(A) has erred in deleting the adjustment completely on two components of IGS namely HR Recruitment (Addition Rs. 2,62,500/-) and telephone and communication (Addition Rs. 1,86,498/-) by merely relying upon the sample bills without verifying the specific functions performed by the A.E. and also without verifying whether any services were actually rendered.*

*3. Whether, on the facts and in circumstances of the case, the Ld. CIT(A) has erred in holding that financial management, auditing and reporting has been stated to be have been carried out by the AE and giving a finding without any basis that 50% expenses are genuine. |*

*4. The appellant craves to add, amend, modify or alter any grounds of appeal at any time or before the hearing of the appeal."*

1.1 The grounds of Assessee's appeal read as under:

*"1. That on the facts and circumstances of the case and in law, the learned CIT(A) has erred in partially upholding the adjustment made by the Ld. Assessing Officer (AO)/ Transfer Pricing Officer ("TPO") in respect of payment made by the Appellant to its AEs for receipt of intra-group services.*

*1.1 That on the facts and circumstances of the case and in law, the CIT(A) has erred in determining the Arm's Length Price ("ALP") of professional services received from AE, on ad-hoc basis, ie 50% of the actual payment (i.e. 50% of INR 18,20,232) made by the Appellant, in holding that receipt of such services was not undertaken at ALP.*

*1.2 That on the facts and circumstances of the case and in law, the AO/ CIT(A)/ TPO have grossly erred in not taking cognizance of the material adduced by the Appellant to justify that the services were actually received and the same benefitted the Appellant.*

*1.3 That on the facts and circumstances of the case and in law, the AO/ CIT(A)/ TPO, have erred in questioning the necessity and commercial expediency of the professional services received and the business acumen of the Appellant.*

*2. That on the facts and circumstances of the case and in law, the AO has erred in initiating penalty proceedings under section 271(1)(c) of the Act.*

*The Appellant prays to leave, to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before, or at, the time of hearing of the appeal"*

2. Apropos to Departmental appeal ground no. 1 (Corporate Tax Ground), at the outset, on this issue, Ld. Counsel for the assessee stated that the issue is covered by the order of the Hon'ble Tribunal in the assessee's own case for Assessment Years 2006-07, 2008-09, 2009-10 and 2010-11. He further submitted that the Department has not filed an appeal in respect of this issue before the Hon'ble High Court for Assessment Years 2006-07, 2009-10. He further stated that the for Assessment Year 2008-09, the SLP filed by the Department before the Hon'ble Supreme Court has been dismissed by the order dated 16.08.2022. He further stated that the Ld. CIT(A) examined the factual similarity in respect of contracts and scope of work undertaken by the Head Office with the 3<sup>rd</sup> Party Indian customers and decided the issue in favour of the assessee.

3. Per contra, the Ld. Departmental Representative (Ld. DR) relied on the orders of the Assessing Officer.

4. Upon careful consideration, we find that the aforesaid issue is fully covered by the decision of the Coordinate Bench of ITAT in assessee's own case. The Ld. CIT(A) has followed the same and passed the following order:

*"5.1.2 It is seen that these Grounds pertain to Corporate tax submissions. The appellant has submitted that the aforesaid contentions have also been accepted by the Hon'ble Delhi bench of ITAT. Reliance is placed on the decision of the Hon'ble Delhi bench of ITAT in the case of the Appellant for the AY 2006-07 which has been followed in the ITAT order for the AY 2008-09 and for AY 2009-10 (order dated March 23, 2018 in ITA no. 047/D/2014) wherein, the Hon'ble ITAT held as under:*

*"It has been concluded that the assessee must have received a sum equal to its declared receipts in respect of direct transactions between the HO and its Indian customers and the further presumption is that it is in nature of fees for technical services. We are unable to appreciate the logic of the AO in drawing inferences, one after the other and the conclusions reached in this regard. There is no material worth the name to suggest, even remotely, that the assessee was rendering services to its head office or the Indian clients in respect of direct transactions between them. There is absolutely no bedrock for such presumption. The learned DR was required to invite our attention towards any material indicating the assessee's involvement in the direct transactions between the head office and Indian customers. In the name of reply, he took us through certain portions of the draft assessment order in which there is a reference to certain invoices of the HO indicating the role of the assessee in such direct transactions. On a careful scrutiny of the dates of such invoices, it can be seen that they relate to the financial year 2004-05 relevant to the preceding assessment year 2005-06. A copy of the assessment order for the A.Y. 2005-06 has been placed on record. It can be seen from such order dated 17.12.2007, that no addition was made in respect of such presumptions of the Assessing Officer. It is further relevant to note that the assessee's accounts were examined by the TPO, who has not pointed out even a single rupee expense attributable to the direct transactions between HO and Indian customers. When this is the position obtaining in this case, we fail to comprehend as to how an income can be estimated in this regard. Such addition made by the Assessing Officer is, therefore, directed to be deleted. This ground is allowed."*

*5.1.3 The aforesaid position was also followed by the CIT(Appeal)-44 in her order for the Assessment Year 2011-12. During the course of present years appeal, the appellant was asked as to whether the contracts in the present year were similar to the contracts in question in Assessment Year 2006-07, 2008-09, 2009-10, 2010-11 and 2011-12. The*

*appellant in his submissions has indicated the similarity between the contracts in its supplementary submission.*

<i>Parameters</i>	<i>Contract undertaken in subject AY i.e AY 2013-14</i>	<i>Contract undertaken in AY 2008-09 and 2009-10</i>
<i>Name of the vendor</i>	<i>Larsen and Toubro Limited (refer Annexure 1)</i>	<ul style="list-style-type: none"> <li>• <i>Larsen and Toubro Limited (refer Annexure 2 for AY 2008-09)</i></li> <li>• <i>Indian Oil Corporation Limited (refer Annexure 3 for AY 2009-10)</i></li> <li>• <i>Haldia Petrochemicals Limited (refer Annexure 4 for AY 2009-10)</i></li> </ul>
<i>Scope of work</i>	<i>Supply of replacement radiant coils, welding consumables and oval gaskets for H-700</i>	<ul style="list-style-type: none"> <li>• <i>Supply of radiant coils, transfer line exchangers, burners, including supply of spares, accessories and consumables</i></li> <li>• <i>Supply of case pipe and spring</i></li> </ul>
<i>Mode of delivery of</i>	<i>Delivery of goods shall be made on FCA/ FOB basis at the port of shipment / airport</i>	<ul style="list-style-type: none"> <li>• <i>Delivery of goods shall be made on FOB/ FCA basis at the port of shipment /airport.</i></li> </ul>
<i>Receipt of consideration</i>	<i>Consideration for supply of goods was received in HO's bank account outside India</i>	<ul style="list-style-type: none"> <li>• <i>Consideration for supply of goods was received in HO's bank account outside India.</i></li> </ul>

*5.1.4 From the tabulated format, it is seen that substantively, there is not mattering difference between the earlier years's contracts for which consideration has been received under the present assessment year. In view of this fact, the ground is decided in favour of the appellant keeping the decision of the Honourable Tribunal and the predecessor CIT(Appeals) 's view in this regard."*

4.1 We find that the issue has been appropriately examined by the Ld. CIT(A) and he has followed the earlier orders of the ITAT. Upon carefully consideration, we find that the issue is covered by the decision of Co-ordinate Bench of ITAT. Accordingly, we uphold the Ld. CIT(A)'s order. Hence this ground of Revenue stands dismissed.

5. Apropos Transfer Pricing Adjustment – Departmental Ground No. 2 and 3 and Assessee's Ground No. 1. On this issue, it is noted that the assessee has received the following services from its AEs:

- HR Recruitment Services (INR 2,62,500/-)
- Telephone and Communication (INR 1,86,498/-)

- Accounting Services (comprising of accounting and financial reporting services) (INR 18,00,000/-)

5.1 In its TP study, the assessee has benchmarked this transaction by aggregating it with the primarily transaction of provision of engineering and design services and TPO has benchmarked the transaction at Nil by observing that basic documents were not provided and cost benefit analysis has not been given. The CIT(A) deleted the addition on account of HR Recruitment and Telephone and communication services. However, Ld. CIT(A) sustained 50%, ad hoc adjustment of Rs. 9,00,000/- in Professional Services.

6. Against this order, the Revenue and the assessee are in cross appeals before us.

We note that the Ld. CIT(A) adjudicated on the issue as under:

*"5.4.3 On the issue of merits, Justifying the adjustment in ALP, the appellant has communicated that the payments made were primary for the following three heads:*

<b>Receipts of IGS</b>	<b>Associates Enterprise</b>	<b>Amount (INR)</b>
HR recruitment	Lutech Resources India Private Limited	2,62,500
Telephone & Communication	CB & I India Private Limited	1,86,498
Professional Services	CB & I India Private Limited	18,20,232
<b>Total</b>		<b>22,69,230</b>

*5.4.4 The appellant also furnished sample bills in respect of HR recruitment services, telephone and communication services and professional services. The bills furnished by the appellant have been examined. In respect of the first two entries, i.e. HR recruitment services and telephone and communication services, it is evident from the bills that certain functions with reference to recruitment have been carried out by associated enterprises. The appellant has made payments for the said recruitments and the quantum of payments is also clearly referenced towards employees recruited. Therefore, the position of the assessing officer, that no services were rendered or the benefit accruing from rendering of those services for HR recruitment as Nil is not correct. The adjustment to the extent of Rs. 2,62,500 is therefore deleted.*

*On the telephone and communication services also, it is clear that the said payment is on account of sharing of a common primary rate interface (PP Line services) availed from Dharti Airtel. PRI Line has been installed in the name of the associated entity which passes periodic bills of Airtel. The line is shared by the appellant for telecommunication, internet, etc. It is seen that the said payment is primarily Reimbursement of Telephone and communication charges used by the appellant. Therefore, at the same time, on this account, treating the service component as Nil is also unfounded. The appellant is granted relief from payment towards telephone and communication services to an extent of Rs. 1,86,498.*

*5.4.6 The third component in the addition pertains to professional services. The appellant has stated that the appellant received guidance/support on accounting and financial reporting issues including BSS on accounting, advice for internal audit preparation and internal controls, assistance on the administration of the delegation of authority guide. The Appellant's business conduct policies and guidelines are entirely managed by CB&I.*

*5.4.7 The appellant states that for such services, the sum of Rs. 18 lacs had been paid to the AE. The appellant has also stated that these services availed included assistance in implementation of policies and guidelines for governing the appellant's business conduct. The nature of the services have been examined. It is clear that the rates fixed for the services do not actually reflect or indicate any concrete benefit arising to the recipient, i.e the appellant in this regard. The appellant has made payments to an associated entity for a very general and broad set of services. These services termed as intra-group services are primarily used to exercise control on the associated entity and making payment for such services does not warrant any definite benefit to the payer. The services are actually a part of control exercised by the entity performing the service in its subordinate entity. The proficiency in accounting and management according to the said set of skills and ethics is basically enforced so that the associated entity exercises adequate control. The benefit accrued cannot be quantified. Nevertheless, it is seen that financial management, auditing and reporting has been stated to be have been carried out by an associated entity. To classify the value of such services as Nil is also incorrect as has been done by the assessing officer. It is more appropriate and reasonable to accept the 50% of these expenses on IGS as genuine expenses from which adequate benefit has accrued to the appellant. As a result, adjustment to an extent of Rs. 9 lacs is upheld."*

6.1 On careful perusal of the order of Ld. CIT(A), it is evident that the assessee has submitted sample bills, which were duly examined by the Ld. CIT(A) and on the examination of the same, he has deleted the addition on account of HR Recruitment Services and Telephone and Communication Services. As regards professional services the Ld. CIT(A) has given a finding that these services termed as intra-group services

are primarily used to exercise control on the associated entity that these services are actually a part of control exercised by the entity performing the service in its subordinate entity. However, the Ld. CIT(A) observed that to classify the value of such services as Nil is also incorrect and he has granted a relief of 50%. In our considered opinion, the Ld. CIT(A) has passed a well reasoned order and we do not need to interfere in any way. Accordingly, we uphold the same.

7. In the result, both revenue and assessee's appeals are dismissed.

Order Pronounced in the Open Court on 16.02.2024

Sd/-

**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

Sd/-

**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

Dated: 16/02/2024  
(Pooja)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**  
**ITAT NEW DELHI**

Date of dictation	14.02.24
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	