

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

**Before Sh. Saktijit Dey, Vice President  
Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 538/Del/2022 : Asstt. Year: 2013-14**

Avery Dennison (India) Pvt. Ltd., P-24, Green Park Extension, New Delhi-110016 (APPELLANT)	Vs	ACIT, Circle-1(1), New Delhi-110002 (RESPONDENT)
<b>PAN No. AAACA6163D</b>		

**Assessee by : Sh. Ankit Sahani, Adv. &  
Sh. Vishal Kalra, Adv.  
Revenue by : Sh. Rajesh Kumar, CIT-DR**

<b>Date of Hearing: 06.12.2023</b>	<b>Date of Pronouncement: 04.03.2024</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by assessee against the order dated 28.02.2022 passed by the AO u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961.

2. Following grounds have been raised by the assessee:

*"1. That on facts and circumstances of the case and in law, the AO erred in assessing the income of the Appellant under the normal provisions of the Act at INR 41,30,30,744, in pursuance to the directions of the Dispute Resolution Panel ("DRP"), as against the returned income of INR 16,10,50,670.*

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

3. *That on the facts and in the circumstances of the case and in law, the AO / DRP / TPO erred in making an adjustment to the Appellant's international transaction of receipt of intra-group services with its Associated Enterprises ("AEs") alleging that it does not satisfy the arm's length principle envisaged under the Act and thereby making an adjustment of INR 25,19,80,074 and in doing so have grossly erred in:*

3.1. *Ignoring the order passed by the Honorable ("Hon'ble") High Court wherein the Hon'ble High Court has directed the Ld. TPO to verify the evidences afresh i.e. uninfluenced by any observations made by the Hon'ble Income Tax Appellate Tribunal ("Tribunal") in its order;*

3.2. *Ignoring the specific directions of the Hon'ble Tribunal wherein the need and benefit test for the intra-group services had been accepted and the matter was referred to the AO / TPO only for verifying the rendition of the services and therefore, the arm's length price of the said intragroup services cannot be assumed to be Nil and the adjustment made ought to be deleted;*

3.3. *Ignoring the contemporaneous evidences submitted by the Appellant for each kind of intra group service received;*

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

3. At the outset, the Id. AR submitted that the issue has been covered in the assessee's own case for the past eight years. The Id. DR disputing the submissions of the assessee argued that certain points have not been examined by the adjudicating authority in the earlier years and the instant case cannot be adjudicated based on the outcome of the orders for

the earlier years. It was argued that the assessee has to prove the allowability of expenditure every year and has to prove the factum of rendering of services for each year independently.

4. The Id. DR submitted his arguments in writing which are as under:

".....

*The present litigation is second round of litigation, and before proceedings further the sequence of event are discussed below:-*

*In the first round of litigation, the AO has made additions on account of Intra Group Services because the assessee has failed to furnish necessary evidence to substantiate services rendered and also failed to show that such services are not in the nature of share holder services/duplicative services. As the assessee failed to discharge the burden of providing these services accordingly the Arms Length Price of service was taken as nil and adjustments was made. The Hon'ble DRP also confirmed TPO's order.*

*The assessee preferred in appeal before the Hon'ble ITAT and the Hon'ble ITAT vide its order in ITA No. 7183/Del/2017 dated 15.06.2018 has set aside the appeal of the assessee to the file of AO/TPO. The relevant directions of the Hon'ble ITAT, being pertinent are given below:-*

*4.13 The facts and circumstances and the intragroup services involved in the year under consideration are identical to the facts and circumstances and the intragroup services availed in assessment year 2012-13, thus respectfully following the finding 18 ITA No.7183/Del/2017 of the Tribunal (supra), we*

*restore the matter of determining arm's-length price of the intra-group services to the file of the Ld. AO/TPO for deciding in view of the direction of the Tribunal in assessment year 2012-13 as reproduced above. It is needless to mention that assesses shall be afforded adequate opportunity of being heard. Thus, ground No. 3 to 3.7 of the appeal are allowed for statistical purposes.*

*Aggrieved with the order of the Hon'ble ITAT, the assessee approached Hon'ble Delhi High Court and Delhi High Court in its decision in 1TA No. 219/2019 and C.M No 10766/2019 has dismissed the assessee's appeal and being pertinent, the relevant extract of the decision of the Hon'ble High Court is reproduced below:-*

*The only question which the assessee urged in this appeal under Section 260A of the Income Tax Act is that even while remitting the matter for reconsideration and verifying the evidence pertaining to intra-group services for the purpose of ALP determination, certain adverse observations with respect to the quality of evidence were made for Assessment Year 2012-13, which have been followed for the current year (Assessment Year 2013-14).*

*This court has considered the submissions of the parties. It goes without saying that the observations of the tribunal for the previous years can be at best a guide. Nevertheless, in order to allay any apprehensions, the TPO is directed to carry out the task uninfluenced by any adverse observations, contained in the order of the tribunal, impugned in the present case (dated 27.06.2018 in paras 4.12 and 4.13).*

*Further in line with the above stated order of the Hon'ble Delhi High Court and the Hon'ble Tribunal, the case was again*

*decided independently on the basis of the facts and evidences by the TPO/AO and adjustment of Rs. 25,19,80,074/- is again recommended on account of Intra Group Services. The main basis of the additions/adjustments made by the TPO are given below(mentioned at page 89-90 & 98-99 of appeal set):*

*(1) The assessee has failed to substantiate with evidence that Intra Group Services have actually been rendered to it.*

*(2) The relevant documentary evidence, as asked for, with regard to rendering of service has not been provided and merely copies of certain e-mail exchange between the personnel of the group have been submitted which failed to establish that Intra Group Services have been provided. The assessee has not been able to provide the documents with regard to the requisition of the service made, to the AO's and also could not prove the cost incurred in the hands of the AE with regard to such services.*

*Based on the above, the AO concluded that the assessee has failed to discharge the initial onus cast upon it and at max, even if the services are received they are mainly incidental or duplicative in nature.*

*The assessee has mainly argued that this issue of Intra Group Services is clearly covered by the earlier orders of Hon'ble Delhi High Court and the Tribunal in the case of the assessee only. The assessee's case is of receipt of Intra Group Services from its AEs and the AO has disallowed the amount paid for IGS because assessee has failed to establish such rendering/receipt of services by the assessee company. Reference is made to the decision of the Hon'ble Delhi High Court in the case of assessee for A.Y. 2013-14 only, wherein the Hon'ble High Court has clearly held, (wherein a similar ground was*

*raised by assessee ) after considering assessee's submission, has dismissed the assessee contention and clearly stated that the observation of the Tribunal for the previous year can be at best be the guide but it cannot be taken as precedent specially for Intra Group Services which are mainly dependent on rendering services for each year based on the evidences produced.*

*Further the assessee has also cited the recent decision of the Hon'ble Tribunal in ITA No. 7960/Del/2019 and 7961/Del/2019 for A.Y. 2012-13 and 2015-16 respectively. From the perusal of the above order (para 11), it is seen that the department could not furnish its comments on the evidences furnished by the assessee with regard to Intra Group Services. Further the Hon'ble Tribunal has merely relied in its earlier order for A.Y. 2009-10. Also the Hon'ble Tribunal based its decision on the composite Agreement however no discussion on the evidence furnished for Intra Group Services has been made in the order (para 13) Thus it can be safely said that the evidence has not been examined by the Hon'ble Tribunal in the above referred recent order for the A.Y. 2012-13 and 2015-16.*

*Moreover, as the issue in the case of assessee is mainly rendering of services accordingly it is humbly submitted that the decision of the earlier years cannot be taken as precedents because for each year rendering of services is different and it has to be established by evidences. The onus for establishing receipt of services from the Associated Enterprise has to be discharged on year to year basis by the assessee company and there are various decision of the Hon'ble High Court/Hon'ble Tribunal which clearly says that in case of Intra Group Services, each year is different one and assessee has to establish rendering of services for each year.*

*Even in the case of assessee, the Hon'ble High Court has clearly mentioned that the earlier years observations, at max can be taken as a guide, meaning thereby they cannot be taken a conclusive argument for proceedings of Intra Group Services for subsequent years. Reference is invited to the order of the Hon'ble Delhi ITAT in the case of Akzo Nobel India Pvt. Ltd. 137 taxmann.com 369 wherein while deciding that the assessee could not prove the receipt of Intra Group Services by providing requisite documents, has also stated that the Hon'ble Tribunal decision will not prejudice assessee claim in other A.Y, as it has to be decided based on the evidences produced to establish the claim of the receipt of services from AEs. The relevant extract of the Hon'ble Tribunal orders is reproduced below:-*

*"8. We have considered rival submissions and perused the materials on record. Undisputedly, the issue in dispute is with regard to determination of ALP of certain intra-group services claimed to have been received by the assessee from its AE. It is the contention of the assessee that certain administrative services have been received from the AE for which payment has been made to the AE. However, on careful perusal of the order passed by the TPO and learned first appellate authority, it is evident, there is a concurrent finding of both the authorities that the assessee failed to furnish even an iota of evidence to demonstrate that administrative services were actually rendered by the AE and the assessee has received such services. On a specific query made by the Bench to demonstrate the receipt of services from AE through cogent evidence, including, any communication with the AE, learned counsel for the assessee expressed his inability to furnish any evidence and repeated his submission to restore the matter back to the Assessing Officer for enabling the assessee to*

*furnish evidence, if any. We are unable to accept the aforesaid submission of learned counsel for the assessee. When the assessee has failed to furnish any evidence either before the departmental authorities or before us to demonstrate that administrative services, indeed, were rendered by the AE and the nature and scope of such services, in our view, no useful purpose would be served in restoring the matter back to the Assessing officer for reconsidering the issue. In view of the aforesaid, we do not find any valid reason to interfere with the decision of learned Commissioner (Appeals) on the issue. However, at this stage, we must make it clear, we have come to the aforesaid conclusion based on the facts involved in the impugned assessment year, wherein, the assessee has failed to furnish cogent evidence to demonstrate that administrative services were actually received from the AE. Therefore, this decision of ours may not prejudice assessee1's claim in any other assessment year, as, it has to be decided based on the evidences produce to establish the claim of receipt of services from AE. Ground no. 3 along with sub-grounds are dismissed." This decision of the Hon'ble Tribunal has also been confirmed by the Hon'ble High Court of Delhi in 145 taxmann.com 468 vide order dated 27 September 2022. Again the issue was of Intra Group Services and applicability of the decision of the Hon'ble High Court for other years. The Hon'ble Delhi High Court has held that each year is separate unit and governed by its peculiar facts. Being pertinent, relevant extract of the Hon'ble High Court decision is reproduced below:-*

*"6. This Court is also of the view that every Assessment Year is a separate unit which is governed by its own peculiar facts. Further, the ITAT in the impugned order has clarified that its decision would not prejudice the assessee's claim in any other*

*assessment year, as it has to be decided based on the evidences produced to establish the claim of receipt of services from AE.”*

*Similar decision has also been arrived by various other Courts/Tribunals and reference is made to the decision of the Hon'ble Tribunal in the case of Safran Engineering Services India Pvt. Ltd. 89 taxmann.com77 (Bengaluru). The relevant extract of the order of the Hon'ble Tribunal is given below:*

*11. On the principle of consistency, we hold that each assessment year is separate and distinct. The principles of res judicata have no application to income-tax assessment proceedings. Simply because in the preceding year, this expenditure came to be allowed without any probe or enquiry it does not preclude the AO from making the enquiries on these issues.’*

*11. Now, in the present case, assessee-company had not discharged the onus of proving the receipt of services before lower authorities. Despite opportunities given to the assessee-company, no attempt was made by the assessee-company to lead necessary evidence in support of receipt of actual services from the AE. The submission of the assessee-company that an opportunity may be granted to the assessee-company to discharge onus, cannot be accepted because it is settled principle of law that the assessee-company cannot be accepted, because it is settled principle of law that the assessee-company cannot be given a second innings to make good its case.*

*Thus from the above, it is clearly proved that the various Courts/Tribunals including jurisdiction High Court of Delhi /Delhi Tribunal have held that each year is distinct and*

*different and it is to be governed by facts and circumstances of each year. Thus the assessee contention that the issue of services is covered by earlier years decision is not of any consequence because in the case of Intra Group Services, assessee has to establish receipt of services with convincing evidence/details for each year, which assessee has failed to prove and accordingly its case cannot be taken as precedent from earlier years decision.*

***Analysis of the documents /evidence furnished with regard to services rendered***

*Before analyzing the individual documents, it is first necessary to refer to the comments of the Hon'ble 1TAT for A.Y. 2013-14 wherein reliance was made on the decision of A.Y. 2012-13. The directions of the Hon'ble Tribunal for A.Y. 2012-13 after considering the documents. In ITA No. 5578/Del/2016 are very pertinent and reproduced below:-*

*"4.12 We have heard the rival submissions and perused the relevant material on record. This is undisputed that in the immediately preceding assessment year i.e. 2012-13, the issue of arm's length price of intra-group services has been restored back to the file of the Ld. AO/TPO by the Tribunal in Avery Dennison (India) (P.) Ltd. v. DCIT taxmann.com Trib). The finding of the Tribunal on the issue in dispute is reproduced as under:*

*"13. We have perused the orders of the coordinate bench as well as Hon'ble High Court. To determine ALP of intra group services according to us it is necessary for TPO to assess (a) need test, (b) benefit test, (c) rendition test, (d) duplication test and (e) share holder Activity Page 10 of 13 test. It is also accepted that need test and benefit test are required to be*

*examined from the perspective of a businessman and not from the perspective of the revenue. Services may be required by a person for its business need and at the time of availing it, the benefit accruing to that person is perceived, such benefit may or may not accrue but if services are rendered the payment is required to be made for those services subject to the other conditions. Off course no independent person pays for the Activities/services which are duplicate in nature. Person may also not pay for the services which he is not required to carry out but by other such as shareholders to protect their investments and control interest. It may not be possible always that direct and tangible benefit can be demonstrated by concrete evidence by the assessee. Therefore, if it is found that the normal business justifies the need of those services and it has some perceivable benefit then revenue cannot question payment for those services provided those services are rendered and are neither duplicative or in the nature of share holder services. This is for the simple reason that unless the services are rendered which are neither duplicate and are not share holder Activity then only any independent person would be willing to pay for those services. This is a necessary ingredient for determination of ALP of intra group services. As the earlier orders passed by the coordinate bench for Assessment Year 2007-08 to AY 2011-12 also concerning the same agreement which is also before Id TPO for determination of ALP of intra group services, we respectfully following the order of the coordinate bench hold that need test and benefit test are already satisfied for determination of ALP of those intra group services and therefore for this year also we hold that such test questioned by the Id TPO is incorrect as the services concerned are pertaining to the same agreement which has been examined by the coordinate*

*benches in case of assessee for earlier years. However, the rendering of such services is subject to determination for each Assessment Year independently based on the evidences for rendering of the services. Therefore the assessee is required to demonstrate with credible evidence to satisfy that such services have actually been rendered by the foreign AE to the assessee for the year. Evidences of services which have been submitted before the Id TPO for the following services are as under:*

<i>SI No.</i>	<i>Relevant IGS</i>	<i>Evidences Submitted before TPO</i>
		<i>Marketing Support Services</i>
1.	<i>Marketing Support Services</i>	<i>Marketing - Product Brochures</i>
		<i>Email: Tracking Commercialized End use Projects via S5.com</i> <i>Email: SF.corn-May figures</i>
		<i>Email: Beer in India</i>
		<i>Product Size of ADIPL and ADC</i>
		<i>Email-Coca cola India RFS Solutions for Modern Trade &amp; Juices</i>
		<i>Email- HFS India need your help</i>
		<i>Email-Improved draft business plant Multitrip</i> <i>Email-2011 OGSM</i>
		<i>Email: Bisleri - Vedica Mineral Water</i>
		<i>Email: Samples of MZ2001 to each countries</i> <i>Email: Samsung IMD1 label MZ1081 sample</i> <i>Email. Need forecast for MZ 2000 and MZ 2001 for 2012</i>
		<i>Email: Mew projects from LPM-AP Durables Strategy Deployment Meeting</i> <i>Email- Re: New projects from LPM-AP Durables Strategy Deployment Meeting</i>
		<i>Email - Dust Repellant Coat</i>
		<i>Email: Converting College Email-Group teleconference</i> <i>Email Regional Beer ami Team Meeting</i> <i>Email: Global Beverage</i>
2.	<i>Operations and Logistics Support</i>	<i>Email- Re : IN4 Updates, July 15 2011</i> <i>Email: IN4 Startup Raw material estimates</i> <i>Email- Re: IN4 Installation Plans</i>
		<i>Email- Safety Checklist/Ale-</i>
		<i>Email- Re: Fw: INI Trial Mate-a Ae-=! </i>

		<i>Sample Purchase Agreement YFY Glassine Paper and price list</i>
		<i>Email - Re: Drum Meter suppliers</i>
		<i>Email. Samples of MZ20C1 to each countries Email. Samsung IMDI label MZ1081 samples Email: Need forecast for MZ231 n± WJ001 to-2D12</i>
3.	<i>Technical assistance services</i>	<i>Email- Re: Fw: issue with IN3 HM BUR current</i>
4.	<i>Labour law and employee relations</i>	<i>RE. FLDP Program Document</i>
		<i>Salary benchmarking report Email: Deck for today session managing your own development plans Email: Pre read for India Talent Council Meeting Trading Calendar</i>
5.	<i>Financial Services</i>	<i>Email RE S&amp;P 500 Sector Revenue forecast Update EMAIL Global Finance Quarterly Call Reminder Email: Q3 Forecast Revenue</i>
6.	<i>Accounting and Administration services</i>	<i>NA</i>
7.	<i>Management information systems</i>	<i>NA</i>
8.	<i>Corporate Support centre (CSC) Services</i>	<i>RE Cynthia Case ADIM 000000554296 Resolves for oracle mapping Email: Oracle User Access Rights Remote Support for Oracle Accounting Software Oracle Lotus Notes email support</i>
9.	<i>Ticketing HUB</i>	<i>Exhibit II TRIM Background and overview Internal Document-Satellites training manual (TRIM) Internal Document- Sample screenshots of TRIM Orders</i>
10.	<i>GVP Service and strategic support</i>	<i>Email : Upcoming APAC Q3 2012 Attestation-Policy Exception Intercompany database Email: RBIS Controllershship Training series HEM Training Presentation Product Training HTT Product Training</i>
11.	<i>VIPFS Services</i>	<i>List of RBO's</i>

14. We have carefully analysed whether the evidences submitted by the assessee are sufficient to conclude that

*services have actually been rendered by the foreign AE or not. Coming to the Paper Book at Page 235-253 we found that it is a marketing broacher for labeling solutions. We failed to understand that how this marketing broacher can show that the marketing support services have been rendered by AE. Page Nos. 254 to 259 is with respect to some conference call and webinar. Further the mails at Page No. 262 to 262 are with respect to 'Beer in India' which is just the information asked with respect to some connectivity as well as communication from Executive Vice President. Page No. 263 to 280 is a product finder and similarly some of the mails are very general and pertaining to team meetings and teleconference between the two parties. Similarly we have also perused such evidence with respect to other services also as per chart produced before us. Startlingly, assessee himself has not submitted any proof with respect to accounting administrative services and management information system listed at SI No. 6 and 7 of the chart. With respect to financial services only sector revenue forecast and Q3 forecast revenue were mentioned. Therefore, on analysis of the above documents we found that there are no proper evidences led before the Id TPO that services have infact been Actually rendered by the AE. It is expected from the assessee for proper benchmarking to lead evidence with respect to each of the nature of services with respect to each class of services mentioned in the above chart with corresponding manner of rendering of the services, the time lag of initiation of services and closure of the services. The evidences produced are apparently very general and do not show the rendering of the services. In view of this we set aside the appeal of the assessee to the file of Id TPO/AO for verifying the evidence of rendering of the services by the AE*

*with respect to nature of each of the services listed in the agreement. The assessee is also further directed to lead proper and credible evidence with respect to nature of services and how and when those services have been rendered by the AE. It is also made clear that AO shall not question the need and benefit arising out of these services as the same have been conclusively decided by the order of the coordinate bench for earlier years in the case of the assessee itself. In the result the appeal of the assessee with respect to ground No. 1, 2, and 3 are allowed with above direction accordingly."*

*The above findings are with respect to the first round of litigation. In the second round of proceedings again ,the similar additions were made and the Hon'ble ITAT vide its order dated 05.06.2023 in ITA No. 7960 and 7961/ Del/2019 for A.Y. 2012-13 & 2015-16 has given relief to the assessee. However from the perusal of the order of the Hon'ble ITAT in the second round, it is seen that the evidences furnished were not examined and decision was based on the decision in A.Y. 2009-10. Further unfortunately even the department could not make a submission with regard to the evidences furnished by assessee for A.Y. 2012-13 and A.Y. 2015-16 which has been decided by the Hon'ble Tribunal recently. (Para 11).*

*Thus, after perusal of the Hon'ble ITAT's order, it is respectfully submitted that the evidences with regard to intra group services have not been examined and it is essential that the same should be examined at length and only after that decision should be arrived at by the Hon'ble Tribunal. And this was precisely the reason why the undersigned sought time from the Hon'ble Bench to argue the matter in*

*detail because the assessee contention of treating the issue of IGS services covered from earlier years orders and more recently from the order passed by the ITAT on 05.06.2023 in 1TA No. 7960 and 7961/ Del/2019 for A.Y. 2012-13 & 2015-16 is clearly not tenable because as stated above, the documents/evidences of IGS has not been completely examined.*

*Without prejudice to above, the comments of the department on the evidences submitted are given below:-*

*(1) page no. 59 to 213 are the sample product brochures which has been submitted as part of IGS the brochures have been examined and it appears that these are related to the adhesive materials /labels etc. supplied by Avery Group to various customers across the globe and it has nothing to do with the services received by the assessee company*

*(2) From the perusal of the various international transactions undertaken by the assessee company with its AEs it is seen that assessee company transacts with its AEs on many activities like purchase/ sale of raw material/goods/services, rendering of service/reimbursement of expenses etc. and these marketing brochures appears to be related with those services and there price /cost has already been included in those services so it is unfair on part of the assessee to show them as separate IGS. Further only showing some of the brochures as example and without explaining how these brochures constitute IGS is of no relevance and accordingly this evidence is rejected.*

*(3) Page no. 214 to 259 these are the e-mails correspondence between group personal the assessee has claimed these as support services with regard to marketing*

*however these e-mails appeared to with regard to the material purchased /sold by assessee company to its AEs and again does not prove in itself any rendering of services also some of the e-mails are with regard to training and travel plans (page 251 to 254) and again general in nature.*

*(4) Page 260 to 293 are some of the e-mail corresponding claimed to be on account of technical support services. First of all, these are general e-mails and secondly these e-mails pertain to the various materials which are purchased by assessee company from its AEs and its cost is already factored in the cost of other materials and cannot be taken as separate IGS.*

*(5) page no. 294 to 330, these are again e-mails between various group companies and mostly contain information with regard to supply of material, tracking of material , shipment reports etc. also page no. 309 to 315 are related to some presentation with regard to quarterly reports of materials group and this appears to be the general presentation because all the AEs have made such presentation and again there is no component of IGS as such presentation are usually made to HQ/holding company by all MNCs. The other papers are regard to certain other products /service reports etc.*

*(6) Page no. 331 to 369 is with regard to first a training programme for a particular executive which is very normal as to have a common approach for HR, the holding companies regularly conducts such programmes for its employees /employees of AEs because they want to have common stands/knowledge on any particular issue. From page no. 340 to 369 contains some bench mark position report with regard to various heads and again this is in the form of general MIS*

*created for analysis purpose by all the MNCs. Page 373 to 377 are in relation to periodic analysis of the various issues relating to finance by some Mr. Margaret Chung/AP/Avery Dennison which appears to be mainly related to normal review by finance side and nothing more that.*

*(7) page 378 to 399 are the copies of financial hand book /guidelines etc. prepared by the group company. Again these are just the standard manuals prepared by the head office for requiring a common approach by all AEs and at best this is more of asking for a report in common format by holding company and cannot be treated as IGS by any stretch of imagination.*

*(8) page no. 400 to 402, these are again standard e-mails with regard to statutory audits/ printing of pots etc. and certainly does not show any rendering of services.*

*(9) page no. 402 to 458 , the assessee claims these as e-mails correspondence in relation of support services. However, on perusal these appears to be normal corporate communication between employees of two AEs and certainly does not show any rendering of services.*

*(10) Page no. 459 to 483 these are the documents which relate to global learning and development curriculum sent by Vice President of the Avery Group. This document appears to be a training document with regard to leadership development in the group. This activity is a common HR activity undertaken by the holding company for its own benefit in all MNCs. By this activity they develop the local leadership which in future, is used by the company for its own benefit and this also does not convey any rendering of services.*

*(11) page 485 to 525, all these papers are basically related to travel scheduling of the various employees appears to be made for the senior executive from outside to review the assessee company performance, which again is done by all AEs and comes in the ambit of share holder/holding company activity because ultimately if the assessee company performs well it will be the advantage of holding company and AEs only.*

*(12) page 526 to 534 are the tabular presentation of the so called IGS received by the assessee company. This does not need any separate comments because individually the document have already been commented.*

*From the perusal of the above, it is crystal clear that the so called documents pertaining to IGS is nothing but the assessee attempt to somehow prove that they have received the intra group services from its AEs. The common/general e-mail conversation copies have been enclosed which does not show any IGS. Standard brochures /templates /audit schedules /review meetings documents have been placed but again these does not reflect any IGS.*

*Thus, in the end, it is respectfully submitted that the documents/evidences brought before the Hon'ble tribunal clearly fail to show any rendering of services. No FAR analysis, as mentioned by TPO is conducted with regard to functions performed by AE's. Thus the AO has rightly made the adjustments because of clear cut failure of assessee to furnish documents and prove receipt of services. Therefore, assessee case cannot be treated as covered case by any stretch of imagination. Accordingly, the assessee's appeal may kindly be dismissed. Also the Hon'ble bench, if deem fit,*

*can re-fix the case for hearings at any time at its convenience."*

5. The arguments of the Id. DR have been provided to the Id. AR who inturn submitted his rebuttal in writing is reproduced below:

*"1. This is in continuation to the earlier synopsis dated July 10, 2023 filed by the Appellant wherein it has been explained in detail regarding the business carried out by the Appellant under the two segments, i.e., Pressure Sensitive Materials ("PSM") and Retail Branding and Information Services ("RBS"). It is submitted that in relation to the two segments which inter-alia involves manufacture and trading of pressure sensitive and retail branded materials, the Appellant was availing marketing and support services from its Associated Enterprises ("AEs") vide agreement dated October 20, 2010. It is further submitted that various services received under the common agreement were benchmarked on an aggregate basis using Transactional Net Margin Method ("TNMM") and out of host of services availed, the services relating to ticketing hub and VIPFS have been accepted by the Transfer Pricing Officer ("TPO") and the Dispute Resolution Panel ("DRP") in the past and in this year by the TPO itself.*

*2. It may also be pointed out, that this is the second round of litigation and in the first round, the Hon'ble Bench of the Income Tax Appellate Tribunal ("Hon'ble Tribunal") vide order dated June 27, 2018 had remanded the matter back to the file of the TPO by holding that the facts of AY 2013-14 are similar to AY 2012-13 and thus following the order of the AY 2012-13, the matter is remanded back with*

*the specific directions that the TPO shall not go into the need and benefit test for the intra group services ("IGS") and only verify the rendition of such services.*

3. *A perusal of the TPO's order dated January 25, 2021 in the second round clearly shows that the TPO has; (a) again gone into the question of need and benefit which is clearly without jurisdiction; (b) brushed aside all the evidences regarding rendition of services in summarily manner that no document has been filed by the taxpayer. The TPO further, in the same breath has accepted part of the services, i.e., relating to ticketing hub and VIPFS amounting to INR 5,90,30,205, which is historically been accepted by the lower authorities and for balance services amounting to INR 25,19,80,074, arbitrarily computed Nil ALP without the use of any transfer pricing method.*

4. *Be that as it may, as the Tribunal in the first round had relied on the order for the AY 2012-13, it was pointed out to the Hon'ble Bench during the course of hearing that recently vide order dated June 5, 2023 the Hon'ble Tribunal has accepted the contentions of the Appellant that; (a) there is sufficient documentation to prove that services have been rendered; (b) there cannot be a dissection of agreement by holding that part of the services have been rendered and part of the services have not been rendered for which the Arm's Length Price ("ALP") has determined as Nil, especially, when the Agreement is a composite one.*

5. *It was also pointed out to the Hon'ble Tribunal that at page 4 of the written submissions filed earlier the history starts from AYs 2007-08 to 2016-17, wherein the Hon'ble Tribunal has accepted the rendition of services under the composite contract. Further, the High Court as well for AYs*

*2007-08 to 2014-15 has affirmed the order of the Hon'ble Tribunal. It was further pointed out that the Hon'ble Supreme Court for AY 2009-10 has dismissed the SLP bearing No.30100/2023 filed by the revenue by holding that the order of the Tribunal does not call for any interference.*

*6. In other words, what is to be appreciated is that starting from AY 2007-08, vide the above mentioned agreement, the services are being rendered to the Appellant by its AE and accepted by the Hon'ble Tribunal / Hon'ble High Court/ Hon'ble Supreme Court, therefore, a different view in the present year is not called for, especially, when this year was remanded back basis the AY 2012-13 order which has also been decided in favour of the Appellant.*

*7. In the written submissions dated October 13, 2023, Ld. Departmental Representative ("Ld. DR") has again tried to demonstrate that evidence is general in nature and therefore, the Nil ALP determination deserves to be accepted. The Ld. DR has also submitted that the Hon'ble Tribunal orders for AY 2012-13 and 2015-16 should not be followed as in that case, the Ld. DR was not able to rebut the evidence brought on record by the Appellant.*

*8. In this regard, it is submitted that Ld. DR has not appreciated the order of the Hon'ble ITAT, Hon'ble High Court and the Hon'ble Apex Court in letter and spirit and has merely tried to distinguish the same without any basis. For the sake of repetitiveness, it may again be highlighted that the sum and substance of the order of the Appellate Authorities, i.e. ITAT, High Court and Supreme Court is that; (a) it is a composite contract under which the services were being rendered and the same cannot be dissected and accepting part services and determining the ALP for other*

*part as Nil; (b) the services were being rendered right from AY 2007-08 and therefore, in the present year the different view may not be taken stating evidences are general and should be ignored; and (c) the adequate documents have been brought on record to demonstrate the rendition of services. The Ld. DR has further erred in relying upon the following cases:*

*(a) Akzo Noble India Limited vs. ACIT: [2022] 137 taxmann.com 369 which has been affirmed by the High Court and reported as [2022] 145 taxmann.com 468 (Delhi);*

*(b) Safron Engineering Services India (P.) Ltd. Vs. ACIT [2018] 89 taxmann.com 77 (Bang. Tribunal).*

*The facts of above-mentioned cases relied upon by the Ld. DR are completely distinguishable for the reason that in both the above cases no evidence was furnished by the Assessee for demonstrating rendition of services. In fact, in case of Akzo Noble, which was categorically mentioned by the Hon'ble Tribunal that the decision is for this year only and will not prejudice the Assessee's claim for other years. In the instant case before your Honours, it is not the case of no evidence, on the contrary, it is a case where voluminous evidences are being brushed aside holding that no evidence has been filed or are general in nature without appreciating that the services are integral part of the business carried on by the Appellant and it could not have been carried out business in India without the help of these services.*

9. *Lastly, the comments of the Ld. DR regarding the evidences furnished, the same are rebutted in the tabulation annexed as Annexure-A.*

*In view of the above, the facts of the instant year are being identical to the earlier and subsequent assessment years for which the Hon'ble Tribunal, High Court and Supreme Court has already decided in favour of the Appellant, the TP adjustment made in this year amounting to Rs. 25,19,80,074/- by holding the ALP of the international transaction as Nil, deserves to be deleted."*

6. We have heard the arguments of both the parties.
7. On perusal of the material available on record, we find that the issues involved in the appeal before us have been squarely covered in the assessee's own case for the past eight years. The orders of the Tribunal in the case of the assessee for assessment year 2007-10 to 2012-13 and for assessment year 2014-15 to 2016-17 have been perused. The Hon'ble Supreme Court has also dismissed the Special Leave Petition (Civil) filed by the Revenue in Diary No (s) - 30100/2023 for assessment year 2009-10. In view of the factual contents and the decision of the Hon'ble Supreme Court in the SLP filed by the Revenue (supra), the appeal of the assessee is hereby allowed.
8. For the sake of ready reference the details of the orders of the ITAT and the Hon'ble High Court are mentioned below:
  1. Order dated June 05, 2023 passed by the Hon'ble Tribunal in Appellant's own case for AY 2012-13 and 2015-16.
  2. Order dated February 21, 2023 passed by the Hon'ble Delhi High Court ("HC") in Appellant's own case for AY 2012-13 and 2015-16.

3. Order dated April 10, 2023 passed by the Hon'ble Tribunal in Appellant's own case for AY 2016-17.
4. Order dated September 20, 2022 passed by the Hon'ble HC in Appellant's own case for AY 2009-10.
5. Order dated October 11, 2021 passed by the Hon'ble Tribunal in Appellant's own case for AY 2009-10.
6. Order dated July 23, 2019 passed by the Hon'ble HC in Appellant's own case for AY 2014-15.
7. Order dated October 29, 2018 passed by the Hon'ble Tribunal in Appellant's own case for AY 2014-15.
8. Order dated July 18, 2017 passed by the Hon'ble HC in Appellant's own case for AY 2010-11.
9. Order dated July 18, 2017 passed by the Hon'ble HC in Appellant's own case for AY 2011-12.
10. Order dated September 09, 2016 passed by the Hon'ble Tribunal in Appellant's own case for AY 2010-11 and 2011-12.
11. Order dated July 28, 2016 passed by the Hon'ble HC in Appellant's own case for AY 2007-08 and 2008-09.
12. Order dated December 04, 2015 passed by the Hon'ble Tribunal in Appellant's own case for AY 2008-09
13. Order dated December 04, 2015 passed by the Hon'ble Tribunal in Appellant's own case for AY 2007-08.

9. In the absence of any change in the factual contents and the legal proposition taking into consideration, the orders of the authorities for eight earlier years, the appeal of the assessee is hereby allowed.

10. In the result, the appeal of the assessee is allowed.  
Order Pronounced in the Open Court on 04/03/2024.

Sd/-

**(Saktijit Dey)**  
**Vice President**

**Dated: 04/03/2024**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**