**IN THE INCOME TAX APPELLATE TRIBUNAL**
**MUMBAI BENCHES "H", MUMBAI**

## Before Shri Narendra Kumar Billaiya, Accountant Member & Shri Anikesh Banerjee, Judicial Member

ITA No.2413/Mum/2021: Asst.Year : 2015-2016

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| M/s.Tata Consultancy Services Ltd.<br>9th Floor, Nirmal Building<br>Nariman Point<br>Mumbai – 400 021.<br>PAN : AAACR4849R | vs. | The Deputy Commissioner of Income-tax, LTU-1<br>Mumbai. |
| (Appellant) | | (Respondent) |

ITA No.2477/Mum/2021: Asst.Year : 2015-2016

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|---|---|---|
| The Deputy Commissioner of Income-tax, LTU-1<br>Mumbai. | vs. | M/s.Tata Consultancy Services Ltd.<br>9th Floor, Nirmal Building<br>Nariman Point<br>Mumbai – 400 021. |
| (Appellant) | | (Respondent) |

Revenue by: Ms.Dhivya Ruth J, Sr.DR
Assessee by: S/Shri Porus F.Kaka & Manish Kanth

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| Date of Hearing : 18.06.2024 | | Date of Pronouncement: 21.06.2024 |

## O R D E R

**Per Narendra Kumar Billaiya, AM :**

These are cross appeals by the assessee and the Revenue, preferred against the order dated 10.05.2018 framed u/s.143(3) r.w.s 144C(3) of the Income-tax Act, 1961, for assessment year 2015-2016.

2. The captioned appeals were decided by this Tribunal vide order dated 18.12.2023, but certain issues remained undecided and therefore, this Tribunal in MA Nos.54 & 55/Mum/2024 vide order dated 29.04.2024, recalled the order dated 18.12.2023 for the limited purpose of adjudication of the grounds remained unadjudicated by this Tribunal in its order.

3. The first ground which remained unadjudicated in Revenue's appeal relates to the issue of provision of software technical and consultancy services.

4. The brief facts of the case are that the assessee is a leading global information technology consulting services and outsourcing company having worldwide presence of more than 20 years. TCS provides consultancy services, develops and implements products for customers covering on all matters pertaining to implementation of computer software and hardware systems, management of data processing and information systems and data communication systems. It carries out its overseas operations through a web of foreign subsidiaries which act as marketing and sales support companies of TCS.

5. During the year under consideration, the assessee has reported among others the following international transactions with its AEs:-

| Sr. No. | Nature of transaction | Transaction amount (₹) | Method |
|---|---|---|---|
| 1. | Provision of software and consultancy services | 45359,63,87,176 | TNMM |
| 2. | Availing of services | 1390,75,49,727 | TNMM |
| 3. | Interest received on amount of loan outstanding | 11,199,637 | Other method |
| 4. | Guarantee fees | 295,453,615 | Other method |

6. The present quarrel revolves around is the provision of software and consultancy services. As per the assessee, it has provided software and consultancy

services to its AEs in its transfer pricing study report since the assessee is a software service provider, it assumes responsibility for the deliverables while the sales and marketing, business relation and customer contracting is generally undertaken by the AEs. In its TPSR, the transactions relating to provision of software and consultancy services and availing of services have been aggregated by assessee for the purpose of benchmarking as the rendering of the services in a respective territory for a third party client on the basis of contract received through Associated Enterprises is also supported by onsite service facilities which the AEs provide. The TNMM has been considered as the most appropriate method and for the purpose of benchmarking the following comparables / methodology was used by the assessee:-

| Sr. No. | Name of company | Average NPI |
|---|---|---|
| 1. | Core Education & Technologies Ltd. | 11.03% |
| 2. | Infosys Ltd. | 36.11% |
| 3. | Larsen & Toubro Infotech Ltd. | 26.64% |
| 4. | Mindtree Ltd. | 21.47% |
| 5. | Persistent Systems Ltd. | 34.75% |
| 6. | Tech Mahindra Ltd. | 23.89% |
| 7. | Vakrangee Softwares Ltd. | 20.60% |
| 8. | Wipro Ltd. | 25.04% |
| 9. | Zensar Technologies Ltd. | 25.58% |
| 10. | Mphasis Ltd. | 27.20% |
| 11. | IBM India Pvt.Ltd. | 11.01% |
| 12. | Inautix Technologies India Pvt.Ltd. | 16.88% |
| 13. | Microsoft Corporation India Pvt.Ltd. | 7.76% |
| 14. | Yahoo Software Development India Pvt.Ltd. | 22.53% |
| 15. | HCL Infosystems Ltd. | 20.09% |
| | Mean | 22.04% |
| | Median | 22.53% |
| | 35$^{th}$ Percentile | 20.60% |
| | 65$^{th}$ Percentile | 25.04% |

The assessee has corroborated the above with a peer group analysis and internal TNMM as detailed below:-

| (₹ in crore) | | | | |
|---|---|---|---|---|
| Name of Company | Operating Income | Operating Expenses | Operating Profit | OP/TC |
| Infosys Ltd. | 47,300 | 34,008 | 13,292 | 39.08% |
| HCL Technologies Ltd. | 36,701 | 28,611 | 8,089 | 28.27% |
| Tech Mahindra Ltd. | 191,627 | 163,159 | 28,468 | 17.45% |
| Wipro Ltd. | 41,210 | 32,788 | 8,422 | 25.69% |
| TCS India | 74,857 | 53,940 | 20,917 | 38.78% |

On the basis of the above comparison carried out, the assessee has considered its transactions to be at ALP.

7. During the course of transfer pricing assessment proceedings, the Transfer Pricing Officer was of the firm belief that the facts of the present assessment year are almost identical with those of A.Y. 2014-2015. The TPO observed that the TPO in the earlier years has analyzed the transactions in detail and had concluded that the value addition that was done by the AEs was not significant and hence, the complexity of function performed by the assessee was more than that of the AEs. So the AEs could well be considered as the tested party and appropriate benchmarking could be done considering the value addition as the benchmark for profit comparison in the AE case.

8. Taking note of the earlier years proceedings, a show cause notice was issued to the assessee asking it to explain as to why TAIC and other AEs should not be considered as the tested parties for benchmarking of ALP of the transactions. The assessee was also asked as to why the operating margins of foreign comparables as selected by the TPO for benchmarking in the order for last assessment year shall not be applied with net cost plus as the profit level indicator to determine the Arm's Length Price of the amount of receipts on account of TCS provision of software, technical & consultancy services to its AEs. The assessee filed detailed reply, which

has been considered by the TPO, but not accepted as the TPO based upon his findings on the findings given by his predecessor in earlier assessment year.

9. Since no new facts have been considered by the TPO but the entire proceedings were based upon the findings given in earlier assessment years, it become pertinent to see what was the decision of the co-ordinate bench in earlier assessment years. We find that this Tribunal in ITA No.5713/Mum/2016 and 5823/Mum/2016 for A.Y.2009-2010 has considered a similar quarrel and held as under:-

"*20. We have considered rival submissions and perused the material on record. We have also applied our mind to the decisions relied upon. From the grounds raised by the Revenue, the following three issues arise for consideration – (i) what should be the appropriate PLI; (ii) whether cost of outsourcing / sub–contracting to the TCS should be considered for computing the margin; and (iii) whether the alternative benchmarking furnished by the assessee by treating the AEs as tested party with comparables in the same geographical locations is acceptable. On a careful perusal of the facts on record as well as submissions of the learned Counsel for the parties in the course of hearing as well as in the written note, we are of the view that the decision of learned Commissioner (Appeals) on the aforesaid issues are unassailable. As regards the issue of appropriate PLI, we are of the view that considering the nature of activity performed by the assessee as well as the AEs, it cannot be said that the A.Es are not bearing any risk. Rather the facts on record reveal that the AEs performed the role of risk bearing distributors. It is well brought out by learned Commissioner (Appeals) in his order that the AEs are bearing credit Tata Consultancy Services Ltd. risk and risk of default by client. In fact, the assessee through proper evidences has demonstrated instances where the credit risk with reference to part cancellation of contract has been borne by the AEs without compensation from the assessee. The documentary evidences in this regard furnished by the assessee were thoroughly examined not only by learned Commissioner (Appeals) but they were also produced before us. Thus, from the aforesaid facts, it becomes clear that significant marketing functions are being performed and distribution and marketing risk are being taken by the AEs. On examination of the financials of the subsidiaries it is revealed that some subsidiaries are still making loss at net level which signifies that some risk is being borne by the AEs. It has further been brought on record that the manpower base of AEs performed various functions relating to marketing as well as client co–ordination. The AEs have developed sufficient competency to handle the marketing work independently. The entire contract related work is performed by the AEs,*

*though, in cooperation with the assessee. Thus, it is quite natural that for being a sufficiently motivated work force, the AEs are compensated at return on sales and not merely on value added costs. Therefore, learned Commissioner (Appeals) was justified in directing the Transfer Pricing Officer to adopt the PLI of gross margin on sales. As regards consideration by the Transfer Pricing Officer, the outsourcing / sub–Tata Consultancy Services Ltd. contracting cost to assessee as a pass through cost, learned Commissioner (Appeals) was absolutely correct in observing that the decision of the Transfer Pricing Officer to exclude such costs while computing the margin of the AEs is incorrect. When similar cost incurred by the comparables were not excluded while computing their margin, a different treatment cannot be given to such costs in case of the AEs. Certainly, the aforesaid approach of the Transfer Pricing Officer has resulted in distorting the correct PLI of the AEs. In the aforesaid context, the observations of learned Commissioner (Appeals) are appreciable, wherein, he has observed that the PLI of the AEs and PLI of comparables have not been computed on similar lines by the Transfer Pricing Officer, hence, comparability condition fails. It is further relevant to observe, the alternative benchmarking furnished by the assessee before the Transfer Pricing Officer by considering the AEs in different geographic locations as tested parties with the comparables selected on the basis of the respective geographic locations furnished before the Transfer Pricing Officer were not properly considered. However, in course of appeal proceedings, the learned Commissioner (Appeals) examined them in detail and after a detailed analysis approved some comparables selected by the assessee and also added some new comparables. Whereas, the comparable selected by the Transfer Pricing Officer were not on the Tata Consultancy Services Ltd. basis of any detailed search process. At least, no such analysis is either forthcoming from the order of the Transfer Pricing Officer or could be brought to our notice by learned Departmental Representative. On the contrary, on a thorough and careful reading of the impugned order of learned Commissioner (Appeals), we are of the view that learned Commissioner (Appeals) has taken pains to examine in detail the alternative benchmarking done by the assessee with foreign comparables and after detailed analysis has shortlisted the final comparables to be considered for comparability analysis. No convincing argument or evidence has been brought on record by the learned Departmental Representative to persuade us to disturb the finding of learned Commissioner (Appeals) on these issues. In view of the aforesaid, we do not find any merit in the grounds raised by the Revenue on the issues. Accordingly, grounds are dismissed.*

*21. In view of our decision on the grounds raised by the Revenue, grounds no.7 and 8, in assessee's appeal have become academic, hence, do not require adjudication.*

*22. At this juncture, we must make it clear that our decision hereinabove on the aforesaid grounds would not apply to transfer pricing adjustment made in respect of AEs situated in USA and Tata Consultancy Services Ltd. Netherland, as such issues are covered under the MAP resolution, as discussed earlier.*

> *23. In view of our decision in ground no.10 in assessee's appeal, no separate adjudication of grounds no.11, 12 and 13, in Revenue's appeal is required. Hence, they are dismissed."*

10. On finding parity of facts and the facts that the TPO and the A.O. have passed the decision on the findings given by them in earlier assessment years, respectfully following the decision of the co-ordinate Bench (supra), we hold accordingly. This ground in Revenue's appeal is dismissed and the ground raised in assessee's appeal becomes infructuous.

11. The second issue which remained unadjudicated in Revenue's appeal relates to provision of guarantee. The underlying facts in this issue are that the assessee during the year under consideration has provided guarantees in the nature of performance financial and lease for and on behalf of its various AEs.

12. On perusal of the orders of the authorities below, we find that this is a recurring issue and has been coming from the earlier assessment years. Insofar as the performance guarantee is concerned, the main contention of the assessee is that the charges should be levied only on the component of services performed by the AEs. It is the say of the Counsel that almost 90% of the services are provided by the assessee itself and therefore there is no question of providing any performance guarantee. However, the Counsel fairly conceded that the performance of the Associated Enterprises may be considered as chargeable services, but the charges should be levied only on the component of services performed by the AEs. Similarly, in the case of lease guarantee, the contention of the assessee is that the charges should be levied only on the portion of leased premises occupied by the AEs and fees should not be charged on the portion of premises occupied by the assessee.

13. The contentions of the assessee have been duly considered by this Tribunal while deciding the quarrel in A.Y. 2009-2010. It would be pertinent to first refer to the findings of the CIT(A) for the impugned issue and the same reads as under:-

> *"A. In respect of performance guarantee, the rate to be applied is 0.88 % as against 1.39% in AY 09-10. The premium has changed to USD 1.1 million and the insurance cover to 125 million in this FY. Further according to assessee as against 48% on site revenue in AY 09-10, the figure is 31.72% in this FY making necessary modification. This claim may be verified by AO/TPO and same approach in calculation by CIT(A) in AY 09-10 may be adopted.*
>
> *B. In respect of Finance guarantee, the rate remains unaltered at 0.77% (0.75% +mark up of 0.02%)*
>
> *C. In respect of Lease guarantee, my predecessor CIT(A) has taken the same rate as applicable for performance guarantee. Therefore the rate is to be taken @ 0.88% as against 1.23% in AY 09-10. As the assessee is occupying 40% and the AE is occupying 60%, the guarantee charges should be restricted to 60% only.*
>
> *21.3 The Assessing Officer is directed to re-compute the figure in accordance with the above directions."*

14. This Tribunal in A.Y.2007-2008 in ITA No.3262/Mum/2017 and 3389/Mum/ 2017, following the order of the co-ordinate Bench (supra) for A.Y. 2009-2010 has decided similar quarrel as under:-

> *"35. We have heard the rival submissions and perused the relevant materials available on record. Similar issue arose before the Tribunal in assessee's own case for AY 2009-10, wherein it is held:-*
>
> *"43. We have considered rival submissions and perused the material on record. We have also applied our mind to the decisions relied upon. Insofar as the contention of learned Sr. Counsel for the assessee that provision of guarantee is not an international transaction as per section 92B of the Act, we are unable to accept such contention. In our considered opinion, after introduction of Tata Consultancy Services Ltd. Explanation-(i)(c) to section 92B of the Act, with retrospective effect from 1st April 2002, provision of guarantee to AEs has to be considered as an international transaction. Different Benches of the Tribunal have also expressed similar view on the issue. Therefore, we hold that the provision of guarantee to the AEs is an international transaction. In fact, the aforesaid view has been expressed*

*by the Co-ordinate Bench in WNS Global Services Pvt. Ltd. (supra). Therefore, following the aforesaid decision of the Co- ordinate Bench and the decision of the Hon'ble Jurisdictional High Court in Everest Canto Cylinders Ltd. (supra), we direct the Assessing Officer to charge guarantee commission @ 0.5% per annum both on performance / lease guarantee as well as financial guarantee."*

*Facts being identical, we follow the above order of the Co-ordinate Bench and direct the AO to charge guarantee commission @0.5% per annum both on performance / lease guarantee as well as financial guarantee. In this context , we direct the AO to examine the contentions of the assessee that (i)part of the activity with respective performance guarantee, was performed by the assessee itself, while the remaining services are rendered by the AE and thus, if the performance guarantee is treated a chargeable services, the charges should be levied only on the component of services performed by the AE (ii) part of the premises i.e. 40% during the year under consideration was occupied by the assessee and thus, if lease guarantee is treated as chargeable services, the charge should be levied only for the balance i.e. 60% during the year under consideration.*

*We direct the assessee to file the relevant documents/evidence on the above contentions before the AO."*

15. As mentioned elsewhere, since the lower authorities have followed the orders of earlier assessment years, respectfully following the decision of the co-ordinate Bench (supra), we direct accordingly.

16. This ground is dismissed with above directions.

17. The third issue relates to provision of inter-company loans. The underlying facts in this issue are that the assessee has given loan to its AEs in the prior year primarily for acquisition of downstream subsidiaries by the AEs. It was contended that these loans have been advanced to the AEs for the purpose of the benefit to the assessee itself and hence are quasi-equity in nature. It was further explained that in the case of the loan given to FNS Australia was to acquire and to run a downstream subsidiary. It was also brought o the notice of the TPO that the major portion of the said loan has been converted into equity during the A.Y. 2012-2013 and part of the loan was repaid during the F.Y. 2014-2015. As regards the loan given to TCS

Morocco, the same was advanced so that it could meet its working capital requirement and could carry out expansion. The main contention of the assessee is that there are business and commercial rationale for providing these loans and were provided for the purpose of acquisition, which would benefit in terms of increased business and revenue and are quasi-equity in nature.

18. The TPO rejected the contention of the assessee. The TPO was of the opinion that since the assessee has advanced loan to its AEs and it is recorded so in the books of both the assessee and the AEs, therefore, in form and substance, the nature of the transaction is loan only. Dismissing the contention of commercial expediency, the TPO observed that the facts remains that the assessee and the AEs are two different corporate entities functioning in two geographical boundaries as separate business entities. The TPO also rejected the contention that the loans are quasi-equity as the assessee had option of investing in equity and there was no regulatory bar on the same. Yet, the assessee preferred the debt route. Therefore, the same is a commercial transaction in the form of a loan advanced. The TPO accordingly proceeded by charging arms length interest. Similar quarrel was considered by this Tribunal in A.Y. 2009-2010. The relevant finding of the co-ordinate Bench reads as under:-

> *"37. We have considered rival submissions and perused the material on record. We have also carefully gone through the case law cited before us. Notably, right from the stage of transfer pricing proceeding itself the assessee has taken a stand that loans and advances to the AEs are in the nature of quasi equity, hence, cannot be treated as loan simpliciter. It is relevant to observe, the transfer pricing adjustment made on account of interest is in respect of loans advanced to four overseas AEs. From the details available on record, it is noticed that major portion of loans advanced to TCS Ibero America, is for acquisition of downstream subsidiary and about 20% of the advance was for working capital. Money advanced to TCS FNS Pty. Ltd., Australia, was purely for acquisition of downstream subsidiary. Similarly, advance to TCS Asia Pacific Pty. Ltd., is for acquisition of downstream subsidiary. Only the advance made to TCS Morocco is for working capital requirement. It is further noted, major part of advances made to TCS Ibero America, TCS FNS Pty. Ltd. and TCS Morocco have been converted to equity subsequently. It is also a fact*

*on record that before learned Commissioner (Appeals), the assessee has filed a detailed written submission on 27th March 2014, elaborately discussing the nature of advance made to the AEs and the purpose for which such advances were made. It was submitted by the assessee that the advances made to the AEs were as a part of business strategy and not simply to help the AEs with capital infusion. The assessee has advanced detailed argument stating that advances made to the AEs is a shareholder activity and not advancement of loan. In this context, the assessee has referred to OECD Transfer Pricing Guidelines as well as UK and Australian Regulations. It is evident from the impugned order of the learned Commissioner (Appeals), though, he sketchily Tata Consultancy Services Ltd. referred to some of the submissions made by the assessee, however, he has not at all dealt with them in an effective manner. The learned Commissioner (Appeals), though, has observed that the loans advanced were not merely for downstream acquisition but for a variety of purpose including working capital requirement and other business uses, however, he has not elaborated as to for what other purpose loans were advanced. Without properly dealing with the factual aspect of the issue, learned Commissioner (Appeals) has jumped to the legal aspect and has held that the amount advanced by the assessee is in the nature of loan and has to be benchmarked as such. After considering the submissions of the parties and examining the material on record, we are convinced that various submissions made by the assessee before learned Commissioner (Appeals) have not at all been dealt with. The primary contention of the assessee that the advance made to the AEs is in the nature of quasi equity and falls within shareholder's activity has not been properly addressed by the Departmental Authorities keeping in view the ratio laid down in the relevant case laws. It also requires deliberation whether it can be considered as an international transaction under section 92B r/w Explanation-1(c). Since, the aforesaid legal and factual aspects have not been considered properly, we are inclined to restore the issue to the file of the Assessing Officer for de novo adjudication after due opportunity of being heard to the assessee. The Assessing Officer must examine all relevant facts to find out the exact nature of the advances made to the AEs. He should also examine the applicability of the ratio laid down in the case of DLF Hotel Holdings Ltd. (supra) and any other case laws which may be cited before him. The assessee must be afforded reasonable opportunity of being heard. Ground is allowed for statistical purposes."*

19. Respectfully following the decision of the co-ordinate Bench (supra), we direct accordingly. This ground is allowed for statistical purposes.

20. The last issue relates to the brand royalty fees. The quarrel revolves around is whether Tata Sons Pvt.Ltd. is the legal owner of the trademarks and service marks containing "TATA" including "Tata Consultancy Services" and "TCS" used in

relation to the business of the assessee. The main contention of the assessee is that the name TATA is owned and used by Tata Sons since 1868. Tata Consultancy Services and TCS trademark / Marks are registered in India under Trademarks Acts, 1999, owner being the Tata Sons Limited, which is evident from the certificates exhibit at pages 500-508 of the paper book. Similarly, the Tata Consultancy Services trademark / Mark is registered in overseas countries like Japan, Canada, United States, etc., the owner being the Tata Sons Limited, as per certificates exhibit in the paper book. Even in the prospectus filed with SEBI on 09.06.2004 by TCS it has been categorically mentioned that Tata Sons is the proprietor of the trademark and service mark "TATA". Even in the brand equity and business promotion agreement between TCS and Tata Sons it has been clearly provided that the right to TCS and its subsidiaries to use the TATA name and TATA marks for its internal and external business communications is given by Tata Sons.

21. Based on these undisputed facts, the first appellate authority was of the firm belief that the assessee cannot collect the brand royalty from its AEs worldwide.

22. Before us, the Counsel vehemently stated that the AEs are directly making payments of the brand royalty to Tata Sons.

23. We find that this Tribunal in A.Y. 2014-2015 in ITA No.5199/Mum/2019 and 5904/Mum/2019 has considered a similar quarrel. The relevant finding reads as under:-

> *"84. The TPO was of the view that the assessee has been recognized as one of the big 4 in the information technology for A.Y. 2013-14 and is a very powerful brand and the value of brand has been quantified at 8.2 billion USD as per the annual report. The assessee submitted before the TPO that the brand legally owned by the Tata Sons Limited and so the assessee has no right to charge for fees for the brand.*

*85. The assessee also submitted that the revenue sharing model it follows with the AE also includes the brand royalty remuneration and no additional fees or royalty is needed. The TPO did not accept the submissions of the assessee. The TPO held that the assessee is the actual value contributor and maintains, practices and evidences the value of the brand through its service delivery credentials. Accordingly, the TPO was of the view that it is the assessee, who is entitled for appropriate return for the brand value. The TPO applied 2.9% royalty on the revenue earned by AEs using TCS services to arrive at an adjustment of Rs.1187.06 crores. On further appeal, the CIT(A) deleted the TP adjustments made towards the provision for software an consultancy and adjustment made towards brand royalty fees.*

*86. The ld AR submitted that the coordinate bench in assessee's own case for AY 2012-13 (supra) has allowed the fees paid by the assessee to Tata and Sons Ltd as deduction under section 37(1), thereby accepting the submission that the brand is not owned by the assessee. The ld AR further presented same line of arguments to submit that the TPO is not correct in making any TP adjustment towards the notional fees on the brand that is not owned by the assessee, which the TPO held as to be received by the assessee.*

*87. The ld DR relied on the order of TPO 88. We heard the parties and perused the material on record. We have in the earlier part of this order already held that the fee paid by the assessee towards the brand to Tata and Sons Ltd. is not capital in nature for the reason that the brand is not owned by the assessee. Accordingly there cannot be any royalty that needs to be charged on the brand since assessee is not the owner of the brand and there cannot be any TP adjustment towards the amount that ought to have been received by the assessee towards brand royalty. We therefore see no infirmity in the order of the CIT(A). This ground of the revenue is dismissed."*

24. Similarly, in A.Y. 2013-2014 in ITA No.1769/Mum/2018 and for A.Y. 2012-2013 in ITA No.797/Mum/2018, this issue has been decided as under:-

*"9.1. We have heard rival submissions and perused the materials available on record. We find that assessee had incurred an expenditure in respect of payment towards Tata brand equity and claimed the same as „business expenditure" u/s37(1) of the Act. The assessee had made payment towards subscription fee for carrying out normal business activities of the company. The assessee submitted that the Tata brand always belong to Tata Sons and accordingly, the assessee has made payment to Tata Sons after due deduction of tax at source u/s.194J of the Act. The assessee also submitted that this payment is required to be made annually by all the subscribee"s to Tata Sons towards subscription on the basis of their profitability.*

*There is no question of capitalizing this expenditure as it is a recurring payment by the assessee. The ld. DR vehemently relied on the order of the ld. AO.*

*9.2. We find that this Tribunal in assessee"s group concern"s case of Tata Autocomp Systems Ltd., vs. ACIT in IT (TP)A No.7596/Mum/2012 for A.Y.2008-09 dated 12/06/2013 had addressed very same issue. The decision rendered thereon shall apply mutatis mutandis to this appeal except with variance in figures. The relevant operative portion of the Tribunal order dated 12/06/2013 referred to supra is reproduced hereunder:-*

*2. The issue raised in ground No. 1 relates to the disallowance of ₹ 32,42,666/- made by the A.O. on account of payment made by the assessee to M/s Tata Sons Ltd. on account of subscription towards "TATA" brand equity and business promotion scheme.*

*3. The assessee in the present case is a company which is engaged in the business of providing services to the global automotive industries. The return of income for the year under consideration was filed by it on 30-9-2008 declaring total income of ₹ 51,05,63,935/- which was subsequently revised to ₹ 52,34,36,910/-. In the profit and loss filed along with the said return, an amount of ₹ 32,42,666/- was debited by the assessee on account of subscription paid to Tata Sons Ltd. towards TATA brand equity and promotion scheme. While justifying its claim for the said payment, the following submissions were mainly made on behalf of the assessee before the A.O:-*

*"By entering into the agreement, the assessee became entitle to use and associated itself with TATA name, marks and marketing Indica for the company's products and services.*

*The Tata Sons Ltd., protects and enforces the collective image and goodwill of the Tata Group, organize corporate identity, coordinate major campaign involving promotion and development of Tata name, engage the service of specialist and professional consultants for energizing and enhancing the overall Tata brand etc.*

*By entering into the agreement, Tata Sons Ltd. had granted non exclusive and on assignable subscription to use TATA name and marketing Indica.*

*The assessee justified the payment stating that the main goal to formulate the scheme was to justify a diverse and diffuse enterprise and make it capable of facing the challenge from international brand names, post liberalization.*

*The assessee company has derived huge benefits in the form of increase sales and also other operational efficiencies.*

*In the past assessment years the similar payment has been allowed as deduction. The Assessee relied on the decision in the case of Radhasoami Satsang Vs. CIT (1992)193 ITR 321(SC)".*

*4. The A.O. did not find merit in the above submissions made by the assessee on this issue for the following reasons given in the assessment order:-*

*"The assessee company was incorporated on 17.10.1995 with the name¬ Tata Autocomp Systems Ltd. Therefore, the assessee company had been using the name TATA since then. It is not a case where prior permission was required to use the "TATA" name at the time of incorporation.*

*The aforesaid arrangement of payment of subscription towards brand¬ equity was entered only on 04.06.2001 i.e. more than five years after the incorporation. By using TATA word in its name since then itself gives the assessee right to use TATA brand.*

*Further, it is seen that the major holding (74%) of the assessee¬ company is with Tata Industries Ltd. Tata Motors Ltd, and Tata Sons Ltd. All these three companies have been using the name TATA since long.*

*As regards assessee's submission that the similar claim had been¬ allowed in past, it may be noted that this particular issue was never examined in past. Further, perpetuity of a mistake cannot be allowed to continue. Since, this issue had never been examined in past and had been allowed without any verification, with due respect to the ratio of the decision in the case of Radhasoami Satsang Vs. CIT (1992) 193 ITR 321 (SC), it is submitted that the same is not applicable to the present case.*

*The similar issue is involved in the case of Tata Chemical Ltd. a group¬ company of the Tata Group wherein, DRP have confirmed the proposed addition on the ground of disallowance of brand equity subscription.*

*For the reasons given above, the A.O. proposed disallowance of ₹ 32,42,666/- on account of subscription paid by the assessee to Tata Sons Ltd. in the draft assessment order against which objection was filed by the assessee before the DRP. The DRP found the objection of the assessee to be unsustainable keeping in view that a similar issue was being agitated by the Department at various appellate forums. Consequently, final disallowance of ₹ 32,42,666/- was made by the A.O. on this issue.*

*5. We have heard the arguments of both the sides and also perused the relevant material available on record. The ld. counsel for the assessee, at the outset, has invited our attention to the copy of relevant agreement entered into by the assessee company with Tata Sons Ltd. on 4th June, 2001 placed at assessee's paper book page No. 207 to 225 in order to point out the obligation of Tata Sons to look after the entire brand of TATA group. The said obligation being relevant in the present context are extracted below from page No. 210 and 212 of the assessee's paper book:-*

*"a) To protect and promote the interests generally of the Subscriber both in India and abroad. To this end, the Subscriber hereby authorizes the Proprietor to act on its behalf in protecting and enforcing the collective image and goodwill of the Group and preventing any newly developed mark or symbol from being usurped and/or diluted in any way.*

*b) To organize periodically as may be deemed necessary corporate identity and brand promotional activities and campaigns through various media including electronic /telecommunication/satellite communication media (e.g. TATA Website) etc. printing and publishing of promotional material and such other activities as in the opinion of the Board of Directors of the Proprietor Company, will enhance the TATA Brand Equity and correspondingly benefit the business of the Subscriber.*

*c) To co-ordinate major campaigns involving the promotion and development of the Business Name Marks and Marketing Indica.*

*d) to engage the services of specialist agencies both National and International as the need may be to energise and enhance the Overall TATA Brand Equity which eventually could result in a greater market share for the products and services of the Subscriber and help in the preservation and vindication of the trust and confidence reposed by customers, business associates, stockholders and the society in general.*

*e) To engage profession consultants for conducting industry/organizational studies/research for the formulation of Group business strategies and policies that would assist the subscribing companies to emerge as business leaders in the evolving markets.*

*f) For the attainment of the overall objectives of the TATA Brand Equity & Business Promotion Scheme and interacting closely with the participating TATA Companies in a certainly coordinated manner, engage and set up a team of senior personnel and/or advisors/consultants and/or specialists firms as well as provide them with the necessary supporting staff and facilities to perform their functions.*

*g) To take steps to make available a pool of sharable resources of the TATA Group including managerial talent trained in TATA values to the Subscriber.*

*h) To provide necessary guidance to the Subscriber in order to ensure appraise the performance of the Subscriber in various areas of its activity and to guide and assist the Subscriber in the attainment of higher standards of quality of its products, services and management.*

*i) To adopt the JRD Quality Value and/or other such process as a means of appraise the performance of the Subscriber in various areas of its activity and to*

*guide and assist the Subscriber in the attainment of higher standards of quality of its products. Services and management.*

*j) To provide such support and assistance to the Subscriber as the Board of Directors of the Proprietor Company may consider necessary in certain circumstances including securing the support of Group companies to the extent and in a manner permissible under the prevalent laws.*

*k) to encourage support to the Subscriber's business from Group companies subject to the availability of products and services of a desirable quality at competitive rates.*

*l) to undertake activities which in the opinion of the Board of Directors of the Proprietor Company are essential for the purpose of promoting, developing, maintaining, managing and legally protecting the Business Name, the Marks and Marketing Indica in India and abroad and thereby endeavor to promote the business of the Subscriber to achieve greater profitability and enhancement of stakeholder value.*

*m) To undertake measures to preserve the stability of the management of the Subscriber in order to protect the larger interests of its stakeholders.*

*n) To provide resources for availing services in the areas of*
*1. Financial and Strategic Management.*
*2. Legal and Economic matters.*
*3. Management Development and Human Resources.*
*4. Corporate Communications.*
*5. Community Services.*

*o) For the purposes of promoting the business of the Subscriber to provide assistance in accessing the network of domestic and international business contacts and availing the services of the domestic and overseas offices of the Proprietor and the Group Companies.*

*p) To institutionalise mechanisms to share and propagate best management practices amongst the Subscribing companies.*

*q) To manage and supervise the implementation of the Scheme and ensure compliance with the terms of this Agreement and the Code". The ld. counsel for the assessee has also invited our attention to the relevant portion of the agreement dtd 4th June, 2001 at page 218 containing subscription clause whereby the assessee was obliged to pay the subscription at the stipulated rate to Tata Sons Ltd. for the services rendered in connection with maintaining and promoting the entire brand and image of TATA group.*

*6. As further submitted by the ld. counsel for the assessee, M/s Rallis India Ltd., another company belonging to TATA group had also entered into a similar agreement with M/s Tata Sons and the subscription paid as per the said agreement towards TATA brand equity and business promotion scheme was disallowed by the A.O. The ld. CIT(A), however, allowed the same and the Tribunal vide its order dtd. 30-8-2011 passed in ITA No. 5701/Mum/2008 for ITA No.1769/Mum/2018 and other appeals M/s. Tata Consultancy Services Ltd., 28 A.Y. 2004-05 upheld the order of the ld. CIT(A) on this issue. The copy of the said order is placed on record at page 1 to 21 of the compilation of the judgments filed by the ld. counsel for the assessee and a perusal of the same shows that a similar issue was decided by the Tribunal in favour of the assessee by agreeing with the view of the ld. CIT(A) that the payment in question not only permitted the use of TATA name but also gave an opportunity to the assessee to inform the business world that it was having the back up of excellence, with a code of conduct and a promise of quality. It was held that the fact that the TATA group was already having an infrastructure and brand equity was well established and by making such a contribution, the assessee company was benefited in its day-to-day business. The Tribunal also found that a similar issue was decided in favour of the assessee in case of Harrisons Malayalam reported in 19 SOT 363 wherein the payment made for acquiring non-exclusive licence to use the logo for the purpose of business was held to be allowable u/s 37(1) of the Act being the expenditure wholly and exclusively incurred for the purpose of business. It is pertinent to note that in the case of Tata Steel, another company belonging to TATA group, a similar subscription paid by the assessee company to Tata Sons Ltd. was proposed to be disallowed by the A.O. in the draft assessment order for A.Y. 2008-09 and when the assessee objected to the said disallowance before the DRP by relying on the decision of the Tribunal in the case of Rallis India Ltd. (supra), the DRP directed the A.O. to allow the said expenditure after verifying as to whether the department has accepted the said decision of the Tribunal. On verification, the A.O. found that no appeal was filed by the department against the order of the Tribunal passed in the case of Rallis India Ltd. giving relief to the assessee on the issue of brand equity subscription and accordingly he allowed similar subscription paid by Tata Steel Ltd. in the final assessment completed u/s 143(3) r.w.s. 144-C of the Act vide order dtd. 27-11-2010. It is thus clear that this issue is squarely covered in favour of the assessee by the decision of the co-ordinate Bench of this Tribunal in the case of Rallis India Ltd. which has also been accepted by the department. Respectfully following the said decision of the Tribunal, we delete the disallowance made by the A.O. on account of subscription paid by the assessee to Tata Sons Ltd. towards brand equity and promotion scheme and allow ground No. 1 of assessee's appeal.*

*9.3. Respectfully following the same, we find no infirmity in the order of the ld. CIT(A) allowing the said expenditure as a Revenue expenditure. Accordingly, the ground No.5 raised by the Revenue for the A.Y.2012-13 is dismissed.*

25. Respectfully following the decision of the co-ordinate Bench (supra), this issue is dismissed.

26. Since we have accepted the primary arguments, the quarrel in respect of transfer pricing adjustment becomes infructuous and academic in nature.

27. Accordingly, the appeal by the Revenue is dismissed with the above directions.

28. The legal issues raised by the assessee become academic in nature and need no separate adjudication.

29. In the result, the appeal filed by the Revenue and the assessee are dismissed.

Order pronounced on this 21st day of June, 2024.

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **(Anikesh Banerjee)** | **(Narendra Kumar Billaiya)** |
| **Judicial Member** | **Accountant Member** |

Mumbai; Dated: 21st June, 2024
Devadas G*

Copy to:
1. The Appellant.
2. The Respondent.
3. The CIT(Appeals).
4. The CIT concerned.
5. The Sr. DR, ITAT, Mumbai.
6. Guard File.

Asst.Registrar
ITAT, Mumbai