IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I" DELHI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

I.T.A. No.2379/DEL/2022
Assessment Year 2018-19

Gates India Pvt. Ltd., C-434, Defence Colony South, New Delhi.	Vs.	ACIT, Circle-10(1), Delhi.
TAN/PAN: AAOCS8090D		
(Appellant)		(Respondent)

Appellant by:	Shri M.P. Rastogi, Adv. Shri Rohit Tiwari, Adv.		
Respondent by:	Shri Rajesh Kumar, CIT-(DR)		
Date of hearing:	12	06	2024
Date of pronouncement:	22	08	2024

O R D E R

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the assessee challenging the final assessment order dated 31.08.2022 passed under Section 144C(13) r.w. Section 143(3) of the Act for the Assessment Year 2018-19 in question.

2. Briefly stated, the assessee-company is engaged in the business of manufacturing, trading and marketing of rubber hoses and hose assembly of different types meant for industrial and other uses and has manufacturing facilities at Lalru (Punjab), Faridabad (Haryana), Pune (Maharashtra). The assessee filed return of income declaring total income at Rs.74,65,86,550/- under the normal provisions of the Act on 30.11.2018. The case of the assessee was selected for complete scrutiny. In the course of

the scrutiny assessment, the case of the assessee was referred to Transfer Pricing Officer (TPO) under Section 92CA(1) for determination of Arm's Length Price (ALP) of the international transactions undertaken by the assessee during Financial Year 2017-18 relevant to Assessment Year 2018-19. The TPO, New Delhi vide order dated 30.07.2021, made Transfer Pricing Adjustment of Rs.8,73,00,969/- in relation to payment of management charges to its Associate Enterprises (AEs). The TPO also made an adjustment of Rs.70,15,519/- in relation to imputed interest on outstanding receivables. Based thereon, the AO issued a draft assessment order dated 22.09.2021 under Section 144C of the Act incorporating adjustments recommended by the TPO under Section 92CA of the Act. In response to draft assessment order dated 22.09.2021, the assessee filed objections before the Dispute Resolution Panel-I, New Delhi (DRP). The DRP issued directions under Section 144C(5) of the Act to the AO for the purposes of framing the final assessment order.

3. The DRP however did not find any infirmity in the TPOs order and thus declined to interfere therewith on both the issues noted above. In pursuance of the directions of the DRP, the AO passed final assessment order dated 31.08.2022 by making the adjustments on account of management charges to its AE, i.e., Intra Group Services and outstanding receivables. The income was accordingly assessed at Rs.84,09,03,040/-.

4. Aggrieved by the final assessment order passed in pursuance of the directions of the DRP, the assessee is in appeal before the Tribunal.

5. We shall deal with each issue hereunder.

6. The first issue concerns adjustment on account of management charges amounting to Rs.8,73,00969/- paid to its AE towards intra group services. The ld. counsel for the assessee submits that;

(a) the assessee-company (Gates India Pvt. Ltd.) is a 100% subsidiary of Gates Corporation, USA and was established in the year 1995. The Gates Group operates 64 manufacturing facilities either itself or through its subsidiary at various locations of the world. As a business strategy, the group established regional headquarters and centralized various activities to be made available to its members in the field of administration, technical, financial, legal, information technology related services and human resources etc. coupled with marketing, management co-ordination and controlled function for the whole group. In pursuance of such centralized and intra-group services in a multinational group as availed by the Indian company, i.e., assessee, the assessee has incurred payments of management charges amounting to Rs.8,73,00,969/-. For the purposes of determination of ALP in terms of Section 92C(1) of the Act, the assessee adopted cost based TNMM method as most appropriate method for all aggregate intra-group services/transactions because all the transactions are closely interlinked and subsumed in the business operation of the company on continuous basis and form part of the operational cost. For the purpose of TNMM Method, the assessee adopted the profit level indicator (PLI) of operating profit/operating cost, i.e., OP/OC, and then compared it with other uncontrolled independent entities. As the PLI of the assessee was more than the comparables, no adjustment in TP study was offered by the assessee. Such TNMM method for the above transactions

was also accepted by the TPO/AO in the past and no Transfer Pricing Adjustment had ever been made.

(b) However, during the assessment year under consideration, the TPO/AO accepted the TNMM method as the most appropriate method and applied the same to all intra-group transactions except the management charges claimed in question. The TPO segregated the management services from other services/transactions which were considered by the assessee on combined basis while computing Arm's Length.

(c) Before the TPO, the assessee objected to the proposed action of the TPO and filed its submissions vide letter dated 26th July 2021 and submitted that the management services received by the assessee from its AEs represents day to day advices from parent group and its AEs in the various field such as Supply Chain Management, Manufacturing Support and Services; Sales and Operation Planning; Marketing Strategy; Day to Day Administration; Human Resources; Quality Control; Information Technology Services and its implementation; Safety and Environment; Technical and Research Development Services; Plant Efficiency and Product Development etc.

(d) the cost of services received from its AEs are cost efficient as compared to independent parties and also eliminates a risk of leakage of confidential information technology. The costs borne by the assessee are as per the terms and conditions of the group. The basis for allocation of management charges as encapsulated in the intercompany agreement is that where the services directly benefits the assessee-company, 100% of actual costs (along with 3% markup) will be allocated to the assessee-company and in case

of indirect benefit arising to the assessee, the cost will be suitably allocated as attributable to the assessee along with 3% markup thereon. The allocation rate is dependent upon the efforts put in by the Headquarter staff in respect of various different AEs/individual entities and such allocation is carried out after analysis of number of hours worked etc.

(e) In order to prove the services received by the assessee from its AEs, the assessee filed contemporaneous evidences in the form of emails exchanged between the assessee and its AEs and added that most of the conferences and discussions are made on virtual mode and thus cannot be documented. The copies of email exchanged are placed by way of paper book.

(f) The TPO/AO rejected the assessee's claim and ignored various evidences filed by the assessee on the ground that assessee has failed to point out any specific item of service and the explanation offered to prove the receipt of services. The TPO also observed that assessee has failed to provide any cost benefit analysis from the service in lieu of payments made and no independent enterprise would make such payments without making the cost benefit analysis. The TPO/AO also rejected TNMM method and applied CUP method as most appropriate method to determine ALP of such management service and assigned a 'Nil' value towards cost of such management services.

7. In this backdrop, the ld. counsel contends that;

(i) The management services are centralized and intra-group service which are purely linked with the business operations of the assessee in the case of intra-group services, it has been

consistently held by the Courts that all intra-group services should be considered in aggregate manner or compounded basis and one of the services cannot be seen in isolation. For benchmarking such aggregate services, the cost based TNMM method is the most appropriate method. A reference was made to judgment of the Hon'ble Delhi High Court in the case of *Sony Ericson Mobile Communication vs. CIT in 374 ITR 118* for the proposition that clause (d) of Rule 10A of the Income Tax Rules r.w. sub section (1) of Section 92C of the Act, does not bar or prohibit clubbing of closely connected or interwinded or continuous transactions. The ld. counsel submitted that in the light of the observations in *Sony Ericson (supra)*, the TNMM method adopted by the assessee on aggregate basis was justified and ought not to have been replaced by CUP method.

(ii) The action of TPO / AO to treat management services as separate international transaction without bifurcation/ segregation would lead to unusual and incongruous results.

(iii) Same principle has been reiterated in the case of *Magneti Marelli Power Train India vs. CIT, 389 ITR 469*. In this case, the assessee adopted TNMM method for all the services collectively. The TPO accepted the TNMM method for such services except payment made for technical assistance fees and worked out the ALP of technical assistance fee on entirely different method. In such circumstances, the Hon'ble Delhi High Court held that once the TPO accepted the TNMM method applied by the assessee as most appropriate method in respect of international transaction, the TPO ought not to dispute the application of TNMM method for payment of technical

assistance fee and replace it by CUP method on standalone basis. The ld. counsel submits that in the light of the observations made in *Magneti Marelli (supra),* the TNMM method accepted by the TPO/AO in respect of other international transactions with AEs, could not be seen with disfavour in respect of management charges incurred by the assessee. Similar view has been taken by the Co-ordinate Benches in many cases.

(iv) The ld. counsel next contends that in assessee's own case for Assessment Years 2010-11, 2011-12 and 2012-13, the assessee had similarly adopted TNMM method for such intra-group and centralized services including the payment of management fee. The Assessing Officer and TPO accepted the methodology and no TP adjustment were made. All the facts and circumstances and the quality of services remained the same. A reference was made to the judgment in the case of *Radha Soami Satsang vs. CIT, 193 ITR 321 (SC)* to invoke the principles of consistency.

(v) The TPO has exceeded his jurisdiction to determine ALP of management charges at 'Nil' under CUP method on the basis of no benefit accrued to the assessee. The jurisdiction of the TPO is to conduct Transfer Pricing Analysis to determine ALP by applying one of the five methods prescribed by law under Section 92C(1) of the Act and not to determine whether service or benefit has been actually derived by the assessee. The TPO has thus exceeded jurisdiction yet again.

(vi) The TPO failed to appreciate that the management charges were paid in respect of various advices obtained/bundle

of services received from Group Headquarters/AE in relation to various day to day functioning of the company relating to business operations and were subsumed while carrying out the business operations of the assessee and formed part of the cost. These services are low value adding services and are centralized services. As per paragraph 7.14 of the OECD guidelines, CUP or a cost based method including cost based TNMM method would be most appropriate method. The CUP method is applicable where there is a comparable service provided between independent enterprises in the recipient market or by the AE under comparable circumstance. In the absence thereof, the cost based TNMM method would gain precedence. In the instant case, for the purpose of computing ALP in respect of management charges while group in such services, the assessee rightly adopted the cost based TNMM method in the absence of comparable circumstances available.

(vii) The AO without finding any deficiency in the cost based TNMM method substituted such method by applying the CUP method in contravention of the ratio deductible from various Tribunal decisions.

(viii) The intra-group services provided to the assessee are low value adding services and thus a simplified approach should be adopted and all low value adding services cost incurred in supporting the business of MNE group members should be allocated amongst the members as done in the case of the assessee on a consistent basis. In such low value adding intra-group services, the tax administration should refrain from challenging the 'benefit test' when the simplified approach is

adopted. In such low value adding services, the tax payer need only to demonstrate that the assistance were provided to it and for that purpose an invoice describing category of services should be taken as sufficient. In such cases, evidence of individual acts performed is difficult to corroborate on many occasions. The service provider in the instant case has provided a very small profit markup to the cost at 3% as against markup upto 5% of the cost is taken as plausible as per the OECD guidelines.

(ix) The assessee in the instant case has filed various contemporaneous evidences in the form of emails and agreement in relation to such services and such an agreement gives reference to cost plus markup of 3% which is miniscule.

(x) In the TP study, the assessee evaluated the Arm's Length Price by applying the cost based TNMM method which is described as most appropriate method for intra-group services as per OECD Guidelines. In the TP study, the net margins based on cost based TNMM method were compared with other uncontrolled independent companies and because the PLI was much better than others, no TP adjustments were made. The TPO has also accepted such methodology in respect of other services.

(xi) The net profit margin demonstrated to have increased from 5.14% in F.Y. 2013-14 to 19.61% in the Financial Year 2017-18 also suggests that the assessee has incurred lower prices for such services and increased profitability. The services have been provided on continuous basis and not towards one service but bundle of services and the benefit of each service

neither can be ascertained nor visualized. Such services are received by the assessee on account of commercial expediency in the course of business.

(xii) In the instant case, the TPO did not apply any of the six methods prescribed in Rule 10D of the Income Tax Rules to arrive at the most appropriate method and could not show any uncontrolled transaction which is crucial ingredient for TP adjustment, for comparison and instead in the guise of CUP method, he questioned the necessity of management fee expense and benefit derived therefrom by the assessee. The TPO, instead of benchmarking the international transaction of management fee, disallowed the same on the grounds of no benefit received/no evidence furnished for services rendered. The benefit or no benefit is the domain of Assessing Officer under Section 37 of the Act. The Assessing Officer has not disallowed any expense under Section 37 of the Act. The TPO cannot benchmark a transaction at 'Nil' under CUP method on the premise of business of benefit derived by the assessee from a given transaction as observed in the case of *CIT vs. Cushman and Wakefield (India) Pvt. Ltd., 367 ITR 730 (Del)* under the transfer pricing provision the TPO has computed the ALP of transaction and such transaction cannot be benchmarked unless the expenditure has been incurred as held in *CIT vs. EKL Appliances, 345 ITR 241 (Del)*. The benefit test thus has no relevance.

(xiii) In the case of sister concern of the assessee, namely, M/s. Gates Unitta (India) Co. Pvt. Ltd., Kanchipuram which is

in the same line of business and also have adopted the benchmarking of the intra-group services/transactions on cost based TNMM method which includes payment of management fees similar to that of assessee. The TPO although accepted the cost based TNMM method for intra-group services on collective basis but segregated the management fee from such collective services and then benchmarked it at 'Nil' under CUP in the absence of any benefit derived by that assessee. In such identical facts situation, the Co-ordinate Bench held that the TPO while selecting the CUP method has not identified any comparable uncontrolled transaction which is the precondition for applying CUP method. The Co-ordinate Bench remitted the matter back to the file of the Assessing Officer with a direction to select the comparable company and thereafter decide the most appropriate method and then find out whether any adjustment is required or not. In the remand proceedings thereafter, the Assessing Officer accepted the TNMM method adopted by the sister concern while benchmarking intra-group services /transactions as most appropriate method and ultimately no adjustment was made.

8. The ld. counsel thus submits in conclusion that the management services should not be segregated from the rest of the intra-group services and all the services should be considered in aggregation on combined basis for which the cost based TNMM method has been adopted by the assessee and no deficiency has been pointed out therein by the TPO. Even otherwise payment of management services at cost plus 3% markup is manifestly reasonable and in sync with the guidelines issued by the OECD. The ld. counsel thus urged for reversal of the adjustment on

account of management fee.

9. The ld. CIT-DR for the Revenue, on the other hand, contends that in TP proceedings, the TPO issued questionnaires asking the assessee to file details with regard to rendition of services as noted in paragraph 19 of the order passed by the TPO. The assessee however failed to submit the evidence towards requisition / rendition of services and also allocation keys of cost incurred by the AE and corresponding benefits to the assessee. The TPO thus rightly concluded that intra group service charges paid amounting to Rs.8,73,00,969/- requires to be disallowed in the absence of evidences towards services received / availed, lack of evidences towards requisition of services, absence of evidence of cost incurred by the AEs in providing such services and absence of information about receipt of similar services by other AEs of the group and details of allocation of common cost incurred for rendering such services. Benefit received from such services etc. were thus not provided to TPO despite efforts. For disallowance of intra group services claimed, the TPO has relied upon the guidelines issued by OECD and also referred to international practices. The DRP also rightly rejected the stand of the assessee and confirmed the order of the TPO/AO.

9.1 The ld. CIT-DR pointed out that the assessee has paid intra group fee relating to management services obtained from its AEs based on agreement signed by the assessee with its AE namely, Gates Industrial Singapore Pte Ltd. The assessee has referred to various clauses of the Agreement regarding compensation, services etc. However, the assessee has not demonstrated such facts by the documents towards receipt of services as well as cost

allocation keys as how the charges are determined and how such services are treated at arm's length have not been submitted by the assessee before the TPO or DRP. The ld. CIT-DR further pointed out that most of the so called management services stated to be received from AE are performed by the assessee-company also and all risks are assumed by the Assessee-Company only.

9.2 The ld. CIT-DR relied upon the decision delivered by the ITAT in the case of *International Flavours & Fragrances India (P) Ltd. vs. DCIT, 152 taxmann.com 196 (2023) (Chny)* for the proposition that aggregation approach claimed by the assessee for all services including intra group services would be permitted only if the transactions were closely linked to each other and transactions belong to a particular class of transactions. In the absence of similar genre, the TPO would be justified to benchmark the transactions of payment of management services separately under CUP method regardless of TNMM method adopted for other services received from AEs. A reference was also made to the decisions rendered by the Pune Tribunal in the case of *A Raymond Fasteners India (P.) Ltd. vs. ACIT, 142 taxmann.com 248 (2022)* to assert segregation of transactions and to contend that it is only in the case of intra group transactions that one can process them on aggregate basis. If it is found that the international transactions of intra group services are totally different from other transactions executed with AE, the Revenue would be justified in segregating such services and processing it separately by applying Most Appropriate Method for ALP determination. Thus, application of TNMM method at entity level *per se* will not disqualify the revenue to make adjustments in respect of particular class of expenditure. References were also made to the decision in the case

of *Lite-On Mobile India (P.) Ltd. vs. DCIT, 141 taxmann.com 555 (2022)* and ITAT Bangaluru decision in *Teagu Tec India (P.) Ltd. vs. DCIT, 83 taxmann.com 81 (2017).* The ld. CIT-DR thus submitted that there is no bar in law in applying CUP method on management services / fees in departure to TNMM method applicable to host of other transactions / services in the area of purchase of raw material, sale of finished goods, payment of royalty, software expenses and so on.

9.3 The ld. CIT-DR further supported the action of the lower authorities for taking 'NIL' ALP in the case of assessee's failure to prove the receipt of services in the light of decisions rendered in the case of *International Flavours (supra)*; AB Mauri India (P.) Ltd. vs. DCIT, 147 taxmann.com 214 (2023); Taegu Tec India Pvt. Ltd. (supra); Lintas India Pvt. Ltd. vs. ACIT in ITA No.398/Mum/2019. The ld. CIT-DR also pointed out that similar position of taking 'NIL' ALP for Intra group Services has been upheld by various Tribunals including the Hon'ble ITAT Delhi in the case of *Akzo Nobel India Ltd. v/s ACIT in 137 taxmann.com 369 (2022).* This decision has been duly confirmed by Hon'ble Delhi High court in the case of *Akzo Nobel India (P.) Ltd. vs. ACIT in 145 taxmann.com 468(2022).*

9.4 Adverting further, the ld. CIT-DR submitted that the plea on behalf of the assessee towards rule of consistency and no adjustment permissible consistent with the earlier years till A.Y. 2012-13 is not applicable in view of long gap also. The management service charges have been paid to different AEs in different assessment years. Hence, the payment in the current year vis-a-vis payment of similar type in earlier year made to different

entities, by no stretch of imagination can be said to be the same transaction continuing from year to year. The ld. CIT-DR thus exhorted that principles of consistency has no applicability in the facts of the assessee and there is no *res judicata* in the tax proceedings.

9.5 The ld. CIT-DR contended that the rendering of service is a question of fact and therefore, the assessee has to establish the rendition of services for which year as held by the Co-ordinate Bench in the case of *Akzo Nobel India Pvt. Ltd., 137 taxmann.com 369* which was confirmed by the Hon'ble Delhi High Court in the case of *Akzo Nobel India Pvt. Ltd. vs. ACIT* reported in 145 taxmann.com 468 (Del.). Similar decision has been rendered in *Safran Engineering Services India Pvt. Ltd., 89 taxmann.com 77 (Bangaluru).* The ld. CIT-DR also pointed out that OECD guidelines clearly provides for applicability of benefit test for the payment of intra group services. The ld. CIT-DR submitted that no interference with the directions of the DRP is called for in the facts of the case.

10. We have weighed the extensive submissions from both sides and perused the material referred to and relied upon in the course of hearing. We have also perused the decisions cited by both sides.

11. The assessee is engaged in the business manufacturing and marketing of rubber hose and hose assembly on its own facilities. The Assessee is a part of the Gates Group having worldwide operations in different countries. The assessee during the year under review availed multiple services from its Associated Enterprise (AE) namely Gates Industrial Singapore Pte Ltd. The

nature of the services availed are broadly listed as under:

S. No.	*Nature of International Transaction*	*Amount (in INR)*	*Most Appropriate Method*
1.	*Purchase of raw material*	*12,01,71,338*	*Transactional Net Margin Method (TNMM)* *Gates India : NCP 22.58%* *Comps: NCP 5.03% to 6.68% (work cap adjusted)*
2.	*Purchase of traded goods*	*3,85,97,551*	
3	*Sale of finished goods*	*1,12,81,33,411*	
4	*Payment of royalty*	*2,18,93,591*	
5	*Provision of accounting software support services*	*2,71,80,309*	
6	*Provision of human resource shared service*	*20,20,331*	
7	*Payment of management charges*	*8,73,00,969*	
8	*Reimbursement of software expenses (paid/payable)*	*12,80,792*	
9	*Reimbursement of legal and professional expenses (paid / payable)*	*62,66,267*	
10	*Reimbursement of office expenses (paid / payable)*	*4,727*	

12. The assessee benchmarked all the transactions including impugned management charges with its AE using TNMM method on aggregate basis. The TPO rejected the aggregation methodology adopted by assessee in its TP Study Report and resorted to compute the ALP of intra group services on account of management charges at 'NIL' applying CUP method. The TPO thus accepted TNMM method for determination of ALP for all transactions except management charges. The TPO determined the ALP at 'NIL' using CUP method primarily due to insufficient evidences to corroborate. Firstly, the receipt of actual services and secondly the benefit derived by the assessee from such services. The DRP also endorsed the draft assessment framed based on such TPO order. The determination of ALP at 'NIL' has resulted in upward adjustment of Rs.8,73,00,969/- to the taxable income reported by the assessee.

12.1 In this regard, the assessee contends that; various services

availed are intricately linked with the assessee's primary business operation including the manufacturing and marketing of rubber hose at its own facilities in the automobile sector. Management services in question are integral and crucial to carry out manufacturing process. All the transactions as entered with AEs are so interwined and inextricably liked with efficient working of the business as a whole. It is incumbent for the assessee to avail these low value management services of routine nature together with other services to complete all related activities. The detailed evidences to substantiate the nature of receipt of services were placed before the lower authorities and have been placed in the paper book. These documents included Service Agreement invoices, e-mail communications as illustrated. The requisitions were raised and the benefits were received as a corollary from the services. The assessee thus contends that on the basis of the records it is manifest that services were indeed rendered and received by the assessee. As a corollary, the services availed have benefitted the assessee by way of increased efficiency of business operations.

12.2 As per the Inter-Company Agreement entered into by the assessee with its AE for impugned services, host of low key services of routine nature were seamlessly rendered by the Assessee to carry out day to day operations. The AE primarily acts as a global hub for rendering such services. Based on the terms contained in the Agreement, the AE charges a mark up at 3% on the total cost [Direct costs + allocated costs] incurred by the AEs for rendering such services. The cost allocation mechanism over the services and mark up charged for rendering services is also specified in the agreement together with methodology of cost

allocation and cost allocation sheets. The assessee also contends that costs incurred by the assessee to avail management services from its AE cannot be separated by other host of services availed and are quite commensurate with the corresponding benefit received by the company. The assessee has availed such services only on the basis of actual requirement. The assessee has benefitted immensely from additional support and guidelines regularly obtained from its AE. The efforts and support of the AE has actually improved the turnover as well as profitability of the company even after absorbing such intra group service charges as evident from the following statistics.

Particulars	*FY 2017-18*	*FY 2016-17*	*FY 2015-16*	*FY 2014-15*	*FY 2013-14*
Gross Revenue	*3894917978*	*3427121946*	*3289213844*	*2863831471*	*2398257270*
Gross Profits	*1430601617*	*1228339155*	*1133459966*	*857295779*	*695918805*
Gross Profits % age	*36.73%*	*35.84%*	*34.46%*	*29.94%*	*29.02%*
Net Profits	*763717605*	*449987532*	*476669995*	*206433520*	*123294310*
Net Profits %age	*19.61%*	*13.13%*	*14.49%*	*7.21%*	*5.14%*

12.3 As can be seen, the margin earned by the assessee by virtue of such intra group services has gone up from 5.14% in F.Y. 2013-14 to as high as 19.61% in F.Y. 2017-18. These data itself substantiate significant benefits derived by the Assessee from intra group services. The data itself speaks for vital role of such services in the growth of the company and underscores the need and benefit of services received from AEs. The correspondence by e-mail communications, sample copy of which is annexed in the paper book further shuns any doubt on actual rendition of services by the AE.

12.4 To counter the vehemence of the Revenue on the benefit test, the assessee contends that benefit test is not a method prescribed *per se* under realm of the Act as held in the case of *CIT vs. Discovery Communication India, (2015) 56 taxmann.com 134 (Del)* which observed that the expenditure should be for the purposes of business and not earning the income.

12.5 Besides, in *CIT vs. Cushman & Wakefield (India) Pvt. Ltd., 46 taxmann.com 317 (Del)* it was held that it is not the authority of the TPO to determine whether it is service or not and whether tax payer has derived relative benefits for availing such services. It is trite that the commercial wisdom of the assessee cannot be questioned by the revenue and the revenue is not entitled to replace its own assessment of commercial viability of the transaction. Likewise, the Co-ordinate Bench in the case of *Merck Ltd. vs. DCIT, 69 taxmann.com 45 (Mum)* held that benefit test does not have much relevance in the Arm's Length Price ascertainment and it is wholly irrelevant as to whether the assessee derives benefits from such expenses or not. It is thus the case of the assessee that it is not necessary for the assessee to show the necessity of incurring legitimate expenditure and the benefit flowing to the assessee there from. In the instant case, on the other hand, the assessee has demonstrable evidences in the form of consistent increase in revenue and profits by virtue of such services. The agreement, the email communication, invoices, payments, increase in profitability etc. when seen together, gives justifiable reason to endorse the plea of the assessee towards *bona fides* of the expenditure in question. The assessee, in the instant case, has applied TNMM method at entity level for all services including management charges. No reasonable justification in the

facts of the case, can be perceived to carve out one of the many services availed and substitute MAM *qua* management charges from TNMM to CUP method. Noticeably, the operating margin (OP/OC) of the assesssee at 22.58% compares far superior with the comparables operating margin which are in the region of 4.27 to 8.67.

12.6 As repeatedly contended on behalf of assessee, the assessee has received bundle of services which are routine in nature and low value added services and claims to have been utilized and subsumed while carrying on the business. The services availed include Business Intelligence and customer relationship management, quality control, Finance and Accounting, Health Safety and Environment, human resources, legal, manufacturing support and services, market strategy and services, Distribution and supply chain management etc. These services were stated to be critical for proper functioning of day to day business operations beneficial to the assessee in taking timely decision during the course of business operation and were cost effective as also reflected in the financial data showing vast improvement in the revenue generation and the profitability. The intra group management services have low value added services and generic in nature to carry out day to day business operations smoothly. It is difficult to justify the rendition of services to the hilt for such type of services in the era of webex meetings and e-mail communications. Further, every service need not result in a quantifiable benefit. Various Courts have ruled that evaluate benefit is not within the ambit of tax authorities.

12.7 The TPO determined the ALP at 'Nil' in relation to the

management charges by applying the CUP method. The steps required for the application of CUP method have been explained and mandatorily required under Rule 10B(1)(a) of the IT Rules. On perusal of the Rules, it is clear that the identification of a comparable uncontrolled transaction is the soul of the CUP method. Without bringing any comparable uncontrolled transaction, the application of CUP method is not possible and in the absence of any instances of comparable uncontrolled transactions, no adjustment can be made.

13. The CUP method compares the price charged for property or services transferred in a controlled transaction to the price charged for property or services transferred in a comparable uncontrolled transaction in comparable circumstances. If there is any difference between the two prices, this may indicate that the conditions of the commercial and financial relations of the AEs are not at arms' length and that the prices in the uncontrolled transaction may need to be substituted for the price in the controlled transaction. The TPO cannot ordinarily benchmark a transaction value at 'Nil' under the guise of CUP method on the basis of alleged absence of benefit derived by the assessee from such intra group transactions for two reasons; (i) CUP method cannot be invoked without bringing the comparable services without first identifying the price charged or paid for the similar services provided in a comparable uncontrolled transaction. In the instant case, admittedly, no such comparable has been brought on record by the revenue. (ii) The test of presence of commercial benefit or no benefit is essentially in the domain of Section 37 of the Act. The jurisdiction vested under transfer pricing provisions to the TPO is only to find out whether the prices paid by the

services are at Arm's Length Price or not, as held in *Sony Ericson Mobile Communication vs. CIT, 374 ITR 118; CIT vs. EKL Appliances, (2012) 345 ITR 241 (Del)* and many other decisions. We further note that Co-ordinate Bench in *DCIT vs. Apollo Gleneagles Hospital Ltd., (2013) 150 taxmann.com 210 (Kol),* it was held for the purposes of determination of analyzing the benefit test has no great relevance in TP analysis.

14. In the following cases, it has been held by the Coordinate Bench of the Tribunal that in the absence of any comparable uncontrolled instances, the CUP method not be applied and only TNM method is applicable.

- 143 ITD 87 (Mum), Garware Polyster Ltd. vs. ACIT
- 163 TTJ 576 (Hyd), TNS India Pvt. Ltd. vs. ACIT

15. As contended on behalf of assessee, the transfer pricing provisions and the rules do not require that before making any payment to AEs, the assessee should get cost audited the accounts of AE because the payment as per the agreement is based on cost allocation plus 3%. The quantification of costs of such low value services would thus be farfetched.

16. The Hon'ble Jurisdictional Delhi High Court in the case of *Sony Ericson Mobile Communication vs. CIT in 374 ITR 118 at page 171*, observed that the core object and purpose behind the exercise undertaken under transfer pricing analysis is to determine the fair market price of the transaction. In other words, under the transfer pricing provision, the TPO has to determine that whatever the amount has been paid to the AE for such services, is an arm length price. In the present set of fact, the TPO is thus not entitled

to completely dislodge the service charges incurred *per se* but can only substitute such charges to fair value based on comparables available with him.

16.1 The Hon'ble Jurisdictional Delhi High Court in the case of *Sony Ericson (supra),* while considering the transfer pricing provisions and the determination of most of the efficient methods at page 158 in para 55 observed:

> *Chapter X which contains the transfer pricing provisions is not concerned with disallowance of expenditure but relates to determination of ALP/cost of an international transaction between two associated enterprises. It also relates to income or receipt and also expense and interest, but in a different context. Section 37(1) of the Act and Chapter X provisions operates in different field.*

16.2 While construing the Transfer Pricing provisions, the Delhi High Court further observed that TNM method is equally effective and reliable when applied to closely linked and continuous transactions. Clubbing of closely linked and continuous transactions is permissible and not ostracize.

17. In the case of *Magneti Marelli Power Train India vs. CIT in 389 ITR 469 at page 487*, the Jurisdictional Delhi High Court reiterated the same principle in relation to various intra-group and interlinked services. In the case of Magneti Mareli, the said assessee had received various intra-group services which were interlinked with the production and sale of the product. Such services/transactions were in the nature of import of raw materials, sub-assemblies and components, payment of technical assistance, payment of royalty of software and purchase of fixed assets. All these were categorized under one head viz.

manufacturing of automotive components for arms length purpose. The assessee invoked the TNM method for all the services collectively. However, the TPO accepted the TNM method for such services except the payment made for technical assistance fee and worked out the ALP for technical assistant fee on an entirely different method. In such facts and circumstances, the Hon'ble Delhi High Court held that once the TPO accepted the TNM method applied by the assessee as the most appropriate method, then it was not open to the TPO to work out the ALP in respect of one element, i.e. payment of technical assistance fee on entirely different method, i.e. CUP method. Similar view has been taken on hosts of other judgments including ACIT vs. Yokogawa India Ltd.

18. Significantly, the Co-ordinate Bench in group case, i.e., *Gates Unitta India Pvt. Ltd. (supra)* in similar factual matrix, rendered a favourable order with reference to A.Y. 2013-14. We see no justifiable reason to take a different view in the similarity of facts. Once, it is found that the services has indeed been rendered, the plea raised on behalf of the Revenue as noted in preceding paragraphs do not hold much water.

19. More so, the TPO has not found any defect or deficiency with regard to benchmarking done by Assessee in respect of rest of the transactions. Although, the Ld. CIT-DR relied upon certain decisions of the Co-ordinate Benches before us to justify the action of TPO and DRP. However, in the light of judgments of the Hon’ble Jurisdictional High Court and variance in the factual matrix, the decisions cited cannot be applied.

20. In the light of the delineations made above, we find

considerable merit in the plea of the assessee that determining the value of management services at 'Nil' by resorting to CUP method runs contrary to the factual matrix as well as overwhelming legal position enunciated in this regard. On facts, the assessee has reasonably demonstrated the rendition of services against the management charges paid to its AE by direct and circumstantial evidences inter-company namely agreement, emails correspondence, invoices, payments and substantive improvement in the revenue and profitability.

21. At this juncture, we also advert to the findings rendered by the DRP. On perusal, it is found that the DRP has passed a non-descript and cryptic order in a summary manner which reads as under:

> *"4.2.3 The Panel has considered the rival averments as above. The Panel does not find any infirmity in the IPO's order and hence, is not inclined to intervene with it. Accordingly, the assessee's objections are rejected and the TPO's action is upheld.However, the TPO is directed to consider the assessee's contention that disregarding prior years favourable TP orders passed in Assessee's own case with respect to payment of management charges as the TPO has not recorded any observations on this issue in the order; by passing a speaking order."*

22. Ostensibly, no independent reasons whatsoever have been cited by the DRP while upholding the action of the TPO. The DRP is completely swayed with the adjustment made by the TPO without objectively examining the factual matrix and applicability of CUP method in the light of judicial precedents and treating the value of services rendered at 'Nil'. Such arbitrary exercise by the DRP without showing any application of mind cannot be countenanced in any manner. The directions made are neither clear nor implemented by the TPO and TP adjustment earlier made was mechanically reiterated.

23. In the peculiar facts of the case and legal position analysed, the DRP directions are required to be set aside and the adjustment made by the TPO on account of intra group services are liable to be cancelled and reversed. The value of transactions towards management charges under TNMM methodology adopted by assessee thus stands reinstated.

24. The adjustments made towards payment of management services in question are quashed.

25. We now advert to second issue which involves Transfer Pricing Adjustment of Rs.70,15,569/- on account of imputed interest on delayed receivables beyond the period of 60 days.

25.1 During the year under consideration, the assessee has *inter alia* made sales amounting to Rs.112.81 crore to its AE. In the Transfer Pricing Study, all the transactions made with the AEs including sales have been clubbed together and for benchmarking such combined transactions / services, the assessee adopted the cost based TNMM, i.e., OP/OC and then whatever PLI was worked out, the same was compared with comparable uncontrolled entity and because the PLI was found greater than the comparable uncontrolled entities, no TP adjustment was made.

25.2 The TPO while proceedings with the Transfer Pricing issues, noticed that there were outstanding receivables from AEs a part of which were realized beyond the period of 60 days. The TPO thus observed that the real income theory is not applicable in the context of Chapter X of IT Act. It was assumed that the assessee has provided benefits to its AE by way of advancement of interest free loans in the garb of delay in receipt of receivables. These

funds, if realised within time, could have been otherwise deployed for earning interest income. The TPO thus considered the delay in realization of the outstanding as an international transaction and worked out the interest chargeable on such outstanding recoverable @ Libor + 400 BPS. The TPO thus made the addition of Rs,70,50,719/-on account of delay in recovery of outstanding receivables beyond the period of 60 days.

25.3 The assessee contends that outstanding receivables are not independent or separate international transactions as assumed by the AO. The outstanding receivables represent the sale proceeds to be recovered from sales made to AEs. In the TP study, the assessee has benchmarked all the transactions / services made with the AEs in a combined manner by adopting TNMM method. The PLI was worked out as OP/OC. Thus, once the sales made to the AEs has already been benchmarked by applying TNMM method in a combined manner and the PLI so worked out was greater than the comparable uncontrolled independent entities, no separate adjustments on this score is called for. The profits embedded in the sales have already been factored while determining the ALP of the combined transactions under the TNMM method. Besides, the assessee has never charged interest on delay in realisation of outstanding receivables even to third parties and thus a different treatment is not expected on transactions with AE. The DRP had directed to allow working capital adjustment before working out the ALP but neither the TPO nor the AO allowed the same despite the directions of the DRP. Notwithstanding, even after allowing the working capital adjustment on the point, PLI is still better (22.58%) than the uncontrolled comparables (6.13% median) as demonstrated in preceding paras.

25.4 Identical issue cropped up before Hon'ble High Court of Delhi in the case of *Pr. CIT vs. Kusum Healthcare Pvt. Ltd. in 398 ITR 66 (Del)* and *Avenue Asia Business Advisors (P) Ltd. vs. DCIT*. The Honble Jurisdictional High Court held that every receivable appearing in the accounts would not automatically be characterized as an international transaction. There may be delay in collection of moneys even beyond the agreed period due to variety of factors. It may be on account of commercial compulsion and its impact on the working capital has to be studied. However, if the working capital adjustment is already given and the net margin is still better than the comparables, no further adjustment is required to be made because working capital adjustment already factored and subsumed in profitability.

25.5 Recently, the Delhi Bench of the Tribunal in *ITA No. 513/Del/2021 dated 28th September 2021 reported in 192 ITD 11* in the case of *ERM India (P) Ltd. vs. National e-assessment Centre*, after following the judgment of *Kusum Healthcare (supra)* held that once the working capital adjustment is given, it subsumes the interest on receivable and no separate benchmark is to be made.

25.6 This apart, the DRP in the instant case has already directed the TPO/AO to allow working capital adjustment. One of the main features of such working capital adjustment is that it takes into account both debtors and creditors. If after making working capital adjustment to the PLI of comparable enterprises, the profit margins of Tax Payers compares well with the adjusted PLIs of comparable enterprises then it can be contended that overdue receivables do not have any adverse impact on profitability of Tax

payer and imputing notional interest on overdue receivables is not warranted. The assessee has worked the PLI after working capital adjustment and even after the working capital adjustment as directed by DRP, the PLI is still better vis-a-vis comparables. The impact of imputed interest costs on account of high credit period would thus get offset by the higher profits earned.

26. Therefore, keeping into consideration the totality of facts in the instant case, no rationale exists for separate benchmarking of interest on outstanding receivable. The adjustment as made by AO/TPO deserves thus to be deleted.

27. The second issue towards imputed interest on delayed receivables is thus adjudicated in favour of the assessee and against the revenue.

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

Order pronounced in the open Court on 22/08/2024

Sd/-	**Sd/-**
[SAKTIJIT DEY]	**[PRADIP KUMAR KEDIA]**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

DATED: **/08/2024**

Prabhat