

आयकर अपीलीय अधिकरण “ए” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, CHENNAI

माननीय श्री एबी टी. वर्की, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI ABY T. VARKEY, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.386/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2013-14)

M/s. Amalgamations Valeo Clutch Private Limited B9, SIPCOT Industrial Park, Vaippur A Block Village, Sriperumbudur, S.O. Oragadam Kanchipuram-602 105.	बनाम/ Vs.	DCIT Large Tax Payer Unit-1 Chennai.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AAACA-9038-P		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri K.Prasanna (CA)-Ld.AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri Nilay Baran Som (CIT) -Ld. DR

सुनवाईकी तारीख/ Date of Hearing	:	20-08-2024
घोषणाकी तारीख / Date of Pronouncement	:	03-09-2024

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2013-14 arises out of the order of learned Commissioner of Income Tax (Appeals), Chennai-16 [CIT(A)] dated 20-12-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) r.w.s 92CA of the Act on 31-12-2016. The grounds taken by the assessee read as under:-

1. General Ground

1.1 The order of the learned CIT(A) is arbitrary, contrary to the law, facts and circumstances of the case.

1.2 The Ld. CIT(A) has erred in law and in facts of the case by upholding the order of the learned Assessing Officer ('Ld. AO') in disallowing expenses incurred in the nature of Shared Service Cost and Testing and Development Charges under section 37 of the Act.

Disallowance of Shared Service Centre Cost ('SSC Cost'):

2.1 The Ld. CIT(A) and the Ld. AO have failed to understand the commercial expediency of the transaction and exceeded their powers by stepping into the shoes of a businessman to decide on the reasonableness and justification of a business transaction.

2.2 The Ld. CIT(A) has not considered the fact/explanations provided by the Appellant during the proceedings with respect to the need of the expenditure incurred with respect to the services provided by Valeo India Private Limited.

2.3 The Ld. CIT(A) and the Ld. AO have erred in facts by considering that, in addition to the SSC cost, the Appellant has claimed the expenses pertaining to the services which are availed from SSC separately in the books of accounts, without any basis or justification.

2.4 The Ld. CIT(A) and the Ld. AO have failed to consider the extensive documentation submitted to substantiate the actual incurrence of SSC cost and the benefits arising from such SSC cost and had simply disregarded the same without any basis.

2.5 The Ld. CIT(A) and the Ld. AO have erred in stating that Valeo India Private Limited (SSC service provider) is not a specialized entity in providing the shared services as the Appellant had clearly mentioned in the submission and the documentary evidences that the SSC service provider has deployed experienced professionals for carrying out such services.

2.6 The Ld. CIT(A) and the Ld. AO failed to consider the fact that the Appellant is a joint venture entity managed by one group entity and another third party in which case it is practically impossible for the Appellant to incur substantial/ duplication of expenses and get a tax benefit.

2.7 The Ld. CIT(A) had failed to consider the fact that the Ld. AO had not followed the principle of consistency as the SSC cost incurred in the subsequent assessment years had been accepted by the Ld. AO in the assessment proceedings of that year.

3. Disallowance of Testing and Development Charges:

3.1 The Ld. CIT(A) has failed to consider the extensive documentation provided by the Appellant to substantiate the reason for incurring the expenditure and had simply disregarded the same without any basis.

3.2 The Ld. CIT(A) and the Ld. AO had failed to appreciate the fact that the products were developed on behalf of the customers, as a part of overall sales of the company, hence, the Appellant cannot be the owner of the product developed.

3.3 The Ld. CIT(A) had failed to consider the fact that the Ld. AO had not followed the principle of consistency as the testing and development expenditure incurred in earlier years and in succeeding years which is of similar nature had been accepted by the Ld. AO in the assessment proceedings of respective years.

3.4 The Ld. CIT(A) and the Ld. AO had failed to appreciate the fact that the expenses have undergone and satisfied the test of Arm's Length Price, thereby inherently satisfying the test of expenditure.

4. The Appellant submits that each grounds of appeal are without prejudice to one another.

As is evident, two issues fall for our consideration – (i) Disallowance of Shared Service Cost Centre (SSC); & (Disallowance of Testing & Development Expenses.

2. The Ld. AR advanced arguments supporting the case of the assessee with the help of documents as placed in the paper-book. The written submissions have also been filed which have duly been considered by us. The Ld. CIT-DR, on the other hand, controverted the same and supported the orders of lower authorities. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Proceedings before lower authorities

3.1 The assessee claimed expenditure of Rs.93.70 Lacs as shared service center cost (SSC). The same was as per the agreement entered into by the assessee with M/s Valeo India Private Limited (VIPL). As per the terms of the agreement, the assessee sought to avail services in the area of finance, purchase, quality, logistic, human resources and information systems etc. As per assessee's submissions, VIPL had assisted in various activities. However, the submissions were not acceptable for the reason that the assessee had submitted that VIPL had provided assistant in National director management, human resources management, recruitment, finance & internal control, IT / IS management, supply chain management and purchase negotiating etc. However, the assessee failed to produce specific supporting document for each assistance as rendered by VIPL. The assessee repeatedly filed a general note on its activity but failed to produce any specific project detail assisting proof for negotiation of purchases, site analysis report for IT investment, survey report etc. Further, the stated services were not specific services but generalized services. For doing such services, the assessee company itself was having its own human resource department, IT service department, finance department, purchase

department etc. for which the assessee claimed separate expenditure in its books of account. The Ld. AO cited the example of legal and professional expenses which was claimed for Rs.72.68 Lacs which was more than the expenditure incurred in earlier years. Therefore, it was held that the services were not supported by any documentary evidence. By paying shared service cost, the assessee company incurred losses. When services cost was shared, the assessee company and VIPL would have shared the capital expenditure of such shared cost by way of creating administrative office space, equipment etc. On verification, it was noticed that no such capital expenditure was incurred for shared service costs. Accordingly, the said sum was disallowed u/s 37(1).

3.2 Another disallowance was on account of testing and development charges. It was noted that the Valeo SA France was a holding company of the assessee company and it entered an agreement for manufacturing of clutches, Hydraulic systems, Flywheels, starter/alternators, Exhaust Gas Recirculation (EGRs), Sensors, Inverters, and DC Converters, etc. The holding company i.e., Valeo SA France owned the patent for the above products. The products which the assessee company manufactured and distributed to its various customers were developed and supervised under the control of its holding company. The aforesaid expenditure was incurred on development of new / modified products for different projects under the supervision of assessee's parent company. However, the assessee had no right / control or ownership on the new / modified products for different project. Therefore, it was held that the same was not related to the business activity of the assessee nor capital asset for the company. Accordingly, the sum of Rs.228.77 Lacs was also disallowed u/s 37(1).

3.3 The Ld. CIT(A) confirmed both the disallowances against which the assessee is in further appeal before us.

Our findings and Adjudication

4. The Ld. AR has submitted that the assessee is a 50:50 joint venture (JV) between Amalgamations Limited, India and Valeo France. The company was incorporated under the JV agreement dated 31st January 1997. The Appellant is stated to be engaged in manufacturing of clutch systems consisting of clutch-driven plates, clutch cover assemblies, disc assemblies, diaphragm springs, etc. It has been submitted that the assessee has produced the above products and sold them to Tata Motors, Maruti Suzuki, Mahindra & Mahindra, Hyundai, etc. The Ld. AR submitted that during the course of proceedings before lower authorities, the assessee had furnished various documents in support of rendering of services. The same include: -

#	Particulars	Page in Paper book
1.	Write up on SSC Cost including nature of services rendered	27
2	Invoice wise break up of SSC cost	23
3	Basis of Cost Allocation	86
4	Detailed allocation of cost incurred by VIPL and its allocation to various entities and segments	87-89
5	Details of benefits from services	90
6	List of employees of AVCPL to support that no common workforce is employed for shared services	91-94
7	Reasons for losses during the year	20-21
8	SSC agreement defining scope	78-84
9	Documentary evidence for services rendered	133-172
10	Subsequent year (AY 2018-19) show-cause notice for SSC charges	99-111
11	Submissions made in response to SCN	112-119
12	Subsequent year assessment order accepting SSC cost charges (AY 2018-19)	120-132
13	Subsequent year assessment order accepting SSC cost charges (AY 2020-21)	242-252

The Ld. AR submitted that Ld. AO, without even issuing show-cause notice and also not considering the aforesaid submissions, proceeded to make an addition for the reasons mentioned in the assessment order. Even Ld. CIT(A), without appreciating the documents submitted by the assessee, proceeded to uphold the addition. This has, therefore, violated the principles of natural justice. It has further been submitted that the assessee being a JV entity could not divert the profits by payment of SSC cost at their discretion as the JV partner may not approve such transactions without receipt of appropriate services. Being a commercial JV, no partner would permit the payment of SSC to another JV Partner without evidence of actual services rendered. The Ld. AO and the Ld. CIT(A) completely overlooked this aspect. Further, the documents submitted by the assessee justify the nature of SSC cost incurred. The Ld. AO and Ld. CIT(A) disregarded the submissions and disallowed the expenditure without proper reasoning. Once the expenditure is wholly and exclusively incurred for the purpose of business, the same could not be disallowed. Further, when the expenditure is incurred for commercial expediency, then the same could not be disallowed. Further, Ld. CIT(A) also failed to take cognizance of the fact that in subsequent years, the same SSC costs were accepted, thereby the Ld. CIT(A) failed to apply the rule of consistency as upheld by the Supreme Court.

We concur with the aforesaid submissions of Ld. AR. Though the assessee has furnished various documentary evidences, no findings have been rendered therein and it has been alleged that the services were generalized in nature and the assessee could not establish rendering of services. Therefore, we restore this issue back to the file of

Ld. AO for de novo adjudication in the light of aforesaid submissions. The corresponding grounds stand allowed for statistical purposes.

5. The Ld. AR made similar submissions on the issue of Testing and Development Charges. It has been submitted that during the year, the assessee has paid these charges to M/s Valeo Transmission, CEPN France. The transaction was the subject matter of transfer pricing assessment and the Transfer Pricing Officer accepted the transaction to be at arm's length. The Ld. AO disallowed the expenses by observing that the Appellant did not hold any right or control or ownership over new/modified products. Hence, the expenses are neither related to business activity nor capital asset for the Company. In this regard, the assessee had furnished the copies of sample invoices and the details of project in respect of which the testing and development charges were incurred. It has been submitted that Ld. AO failed to appreciate the fact that in case of supplies to Original Equipment Manufacturers (OEM) like Mahindra, Tata, Hyundai, Ford etc., the designs of the parts vary depending on the new variants introduced by them. Therefore, every time, there is a requirement to prepare a modified design. In these circumstances, the OEM will only own the design and the assessee would not have any right over the products supplied. The entire contract of the assessee is for preparing the design and supply the products to suit the OEM. The Ld. AO failed to appreciate that since the transaction of testing and development charges was accepted to be at arm's length, the same could not be said to be not incurred in connection with business carried on by the assessee. The TPO inherently considers whether the expenses will be incurred in a third-party scenario or not. Therefore, the conclusion that such expenses are not incurred for

business purposes is erroneous. Further, the Ld. AO failed to appreciate that without incurring the expenses for the development of tools and designs, the assessee would not be in a position to supply the products to the OEM. The Ld. AO, on one side, accepted the revenue generated from sales but did not allow the expenses incurred in connection with manufacturing of products. Once the expenditure is wholly and exclusively incurred for the purpose of business, the same cannot be disallowed. Further, when the expenditure is incurred for commercial expediency, then the same cannot be disallowed.

We find that all these arguments are vital for adjudication of the impugned addition whereas no findings have been rendered by lower authorities on all these aspects. Therefore, keeping in mind the submissions of Ld. AR and considering the principle of natural justice, this issue is also restored back to the file of Ld. AO for de novo adjudication in the light of aforesaid submissions. The assessee is directed to substantiate the same. The corresponding grounds stand allowed for statistical purposes. No other ground has been urged in the appeal.

6. The appeal stand allowed for statistical purposes.

Order pronounced on 3rd September, 2024

Sd/-

(ABY T. VARKEY)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई Chennai; दिनांक Dated :03-09-2024

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Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Chennai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF