

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

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER AND  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 9344/DEL/2019 [A.Y. 2015-16]

Axalta Coating Systems India Pvt Ltd  
5<sup>th</sup> Floor, Orchid Centre, Golf Course Road  
Sector - 53, Gurgaon

Vs. The Dy. C.I.T  
Circle -3(2)  
New Delhi

PAN - AAECD 2713 N

(Applicant)

(Respondent)

Assessee By : Shri Ajit Jain, AR  
Ms. Pooja Garg, AR

Department By : Shri Rajesh Kumar, CIT-DR

Date of Hearing : 21.08.2024

Date of Pronouncement : 14.11.2024

**ORDER**

**PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-**

This appeal by the assessee is preferred against the order of the ACIT, Circle 1(1)(1) International Tax, New Delhi dated 03.09.2019 pertaining to A.Y. 2015-16.

2. The grounds taken by the assessee relate to the following two issues:

a) **Transfer pricing adjustment made in respect of intra-group service charges amounting to Rs. 92,238,025/-; and**

b) **Transfer pricing adjustment made in respect of Interest on compulsory convertible debentures ('CCD') amounting to Rs. 193,506,291/-.**

3. The assessee company is engaged in the business of processing and sale of refinish paints and coatings. It has entered into several international transactions with its Associated Enterprises (AEs).

4. With respect to payment of intra-group service charges, the TPO held that the assessee has failed to prove rendition of the services, the arm's length nature of the said transaction and the benefits received from the rendition of such services. Accordingly, he took the ALP of intra group services at Nil and made transfer pricing adjustment of Rs. 92,238,025/. The Ld. DRP also confirmed the decision of the TPO.

5. On the issue of Interest on CCDs, the assessee benchmarked the transaction using CUP method as the most appropriate method. The assessee's coupon rate was 13 percent. The assessee obtained quotations comparable bank overdraft facility where rate was 15 percent and considered the international transaction at arm's length. The TPO referred to TP document and investment agreement and arrived at an arm's length value of NIL and proposed an upward adjustment of Rs. 193,506,291/-.

6. In the course of hearing before us, the assessee submitted that it seeks a decision on admission of additional evidence filed vide application dated 02.05.2023 under Rule 29 of the Income-Tax (Appellate Tribunal) Rules, 1963. We, therefore, without going into the merits of the case, dwell on the aspect of the admission of additional evidence only.

7. In the course of hearing for admission of additional evidence before us, the ld AR of the assessee submitted that the lower authorities did not provide sufficient opportunity to the assessee to furnish the documentary evidence in respect of rendition of services of intra group charges. The ld AR stated that only 4 days were given to

the show cause notice which was issued on 22.10.2018 for reply to be submitted on 26.10.2018. The 2<sup>nd</sup> show cause was issued on 30.10.2018 to be complied in only one day on 31.10.2018.

8. The ld AR further submitted that, the Ld. DRP during the hearing dated 22 April 2019, requested both TPO and the assessee to undertake fresh benchmarking taking assessee as the tested party. The submission was duly filed by the assessee videsubmission dated 10 May 2019 before the Ld. DRP. The assessee was thus under the bonafide belief that the ld DRP is considering the assessee as the tested party and therefore the taxpayer did not submit any additional evidence before the DRP. Finally, the Ld. AR submitted that therefore, the assessee wants to furnish certain additional evidence before the Hon'ble Tribunal in support of the rendition of services and prayed that this additional evidence, which goes to the root of the matter, may kindly be admitted.

9. To support his case, the ld. counsel for the assessee submitted that the documentation in the additional evidence to support the arm's length nature of availing intra-group services provides:

- \*Description of the nature of the services
- \*Details of various service providers
- \*Details of the regional team
- \*Functional analysis of the services i.e., functions performed by the group companies
- \*Evidence to substantiate the services received from group companies
- \*Arm's length benchmarking for mark-up charged by the group companies along with the detailed search process

10. The ld. counsel for the assessee further relied upon the decision of in the following cases:

1. Hon'ble Delhi High Court in the case of Text Hundred India Pvt. Ltd. (ITA Nos.2077, 2061 and 2065/2010),
2. ITAT in the case of Global Turbine Services India Pvt. Ltd. vs. ADIT, ITA No. 3484/Del/2011
3. VA Tech Escher Wyss Flovel Pvt. Ltd. vs. ACIT, ITA No. 6226/Del/2012
4. **UOP LLC(108 ITD 186),**
5. Global Turbine Services India Pvt. Ltd. vs. ACIT, (ITA No. 5586/Del/2011)
6. JCB India Limited vs ACIT (ITA No.5200/Del/2010)
7. Lear Automotive India Pvt. Ltd vs DCIT (I.T.A .No.- 1942/Del/2011)
8. Vodafone India Services Private Ltd. vs. ACIT (ITA No. 7514/Mum/2013)

11. Per contra, the ld. DR vehemently supported the findings of the DRP. The Ld. DR strongly contended that this additional evidence had been purposefully not filed before the TPO and Ld. DRP by the

assessee. The ld DR argued that the assessee has filed the application on its own volition and it is not the case that additional evidence were submitted on directions of the Hon'ble Bench.

12. The ld DR further argued that the nature of documents to be filed as additional evidence, have no relationship/bearing on the issue involved of IGS in the case. It is argued that the documents as additional evidence are merely the slides/minutes of meeting held and it cannot be, by any stretch of imagination held that these documents prove rendition of services. It was argued that these evidence are nothing but an exercise in futility by the assessee to somehow delay the proceedings. It is further submitted that various courts have held that the Tribunal can allow the additional evidence only and only if they are required for pronouncement of judgment, in their opinion. The DR distinguished the cases relied upon by the assessee and supported his arguments relying on the following decisions:

1. Commissioner of Income Tax Vs. Smt. Kamal C. Mahboobani in 81 taxmann 311 (Bom.)/214 ITR 15.
2. UoI V Ibrahim Uddin (2012) 8 SCC 148

13. We have heard the rival submissions and have perused the relevant material on record. For better understanding of the issue in hand, the content of Rule 29 of the Income Tax (Appellate Tribunal) Rules 1963 is extracted as below:

***"29. Production of additional evidence before the Tribunal:-***

***The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any documents to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or, if the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them, or not specified by them, the Tribunal, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced."***

14. We find that the Rule 29 provides for admission of additional evidence where the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them, or not specified by them. The assessee has shown that it was given four days and one day before the TPO. Even before the DRP, the assessee could not file evidence

due to bona fide belief that it was being considered as tested party. We are of considered opinion therefore, that there is force in the contention of the ld. counsel for the assessee that the TPO did not provide sufficient opportunity to provide additional evidence which is evident from the chronology of events.

15. We find that the ld DR has opposed the admission of the additional evidence on the ground that the same have no relationship with the issues at hand. We find that such an assertion is without any cogent reasons. The revenue could not establish that the documents sought to be filed has no bearing on the issue of intra group charges. The assessee, on the other hand has averred that the documentation would substantiate the services rendered from group companies.

16. As far as the cases relied upon by the Revenue, we find that the hon'ble Supreme Court in the case of *Ibrahim Uddin* (supra) has held that for admission of additional evidence, the matter is entirely within the discretion of the court though to be used sparingly. In contrast, we find that the decisions relied upon by the ld. counsel for the assessee support his case. The Hon'ble Delhi Court in the case of *Text Hundred India Pvt. Ltd* held as follows:

*"13...It is well settled that the procedure is handmade of justice and justice should not be allowed to be choked only because of some inadvertent error or omission on the part of one of the parties to lead evidence at the appropriate stage. Once it is found that the party intending to lead evidence before the Tribunal for the first time was prevented by sufficient cause to lead such an evidence and that this evidence would have material bearing on the issue which needs to be decided by the Tribunal and ends of justice demand admission of such an evidence, the Tribunal can pass an order to that effect..."*

*15. In this backdrop, the Tribunal looked into the entire matter and arrived at a conclusion that the additional evidence was necessary for deciding the issue at hand. It is, thus, clear that the Tribunal found the requirement of the said evidence for proper adjudication of the matter and in the interest of substantial cause. Rule 29 of the Income Tax (Appellate Tribunal) Rules categorically permits the Tribunal to allow such documents to be produced for any substantial cause. Once the Tribunal has predicated its decision on that basis, we do not find any reason to interfere with the same. As a result, the questions of law are answered in favour of the assessee and against the Revenue resulting into dismissal of these appeals. No costs."*

17. We also find that the ITAT Delhi Bench has in the case of VA Tech Escher Wyss Flovel Pvt. Ltd. vs. ACIT, ITA No. 6226/Del/2012, admitted the additional evidence of the assessee as under:

*"Ld. Counsel contends that since DRP did not give any reasons or findings in not excluding the above amounts, additional evidence is filed before us vide application dated 7-5-2013 to substantiate the nature of above transactions to be excluded from the ambit of technical services, since this evidence was never asked and additions have been made in summary manner, the admission of documents become important for adjudication of tax liability...."*

*8. ....In our considered view it will be desirable and in the interest of justice to set aside both the issues to the file of assessing officer to consider the same afresh after giving the assessee adequate opportunity of being heard."*

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8. Further, the ITAT Delhi Bench has in the case of UOP LLC(108 ITD 186), laid down inter-alia the following principles as regards admissibility of additional evidence:

9. Evidence which is not only helpful but also relevant to decide the issue shall be adduced by the Appellate Tribunal.

10. Where evidence proposed to be filed was not available with the party seeking to rely on the additional evidence at the time of relevant proceedings despite exercising due diligence, the same should be admitted.

11. Further, the additional evidence should be admitted, where it is established that notwithstanding exercise of due diligence, the evidence was not in the knowledge of the party seeking to rely on the additional evidence or could not after exercise of due diligence be produced by such party at the time of relevant proceedings.”

19. In view of the above discussion, therefore, the additional evidence submitted in support of rendition of services before us, is hereby admitted. As we have admitted the additional evidence, we deem it fit to set aside the matter of payment of intra group charges to the file of the AO for examining the additional evidence on this issue and adjudicate the issue afresh. Further, the issue of interest on CCDs is also set aside to the file of the Assessing Officer for fresh consideration.

20. In the result the grounds of appeal of the assessee in ITA 9344/DEL/2019 is allowed for statistical purposes.

The order is pronounced in the open court on 14.11.2024.

**Sd/-**

**[CHALLA NAGENDRA PRASAD]  
JUDICIAL MEMBER**

**Sd/-**

**[NAVEEN CHANDRA]  
ACCOUNTANT MEMBER**

Dated: 14<sup>th</sup> November, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

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