

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri Manjunatha G., Accountant Member
and
Shri K. Narasimha Chary, Judicial Member

आ.अपी.सं / **ITA-TP No.464/Hyd/2022**
(निर्धारण वर्ष / Assessment Year: 2018-19)

Limagrain India Private Limited Hyderabad [PAN : AACCB6862A]	Vs.	Deputy Commissioner of Income Tax Circle-5(1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri R.Srinivasulu, AR	
राजस्व द्वारा / Revenue by::	Shri B.Bala Krishna, CIT-DR	
सुनवाई की तारीख / Date of hearing:	30/09/2024	
घोषणा की तारीख / Date of Pronouncement:	19/12/2024	

आदेश / ORDER

PER. MANJUNATHA G., A.M:

This appeal filed by the assessee is directed against the final assessment order passed by the Assessing Officer u/s 143(3) r.w.s.144C(13) of the Income tax Act, 1961 ("the Act"), dated 29.07.2022, in pursuant to directions u/s 144C(5) of the Act, dated 21.06.2022, issued by the Dispute Resolution Panel-1 ("the Ld.DRP"), Bengaluru and relevant to the A.Y.2018-19.

2. The assessee has raised the following grounds of appeal :
1. *The captioned order of the Ld. Assessing Officer (“Ld.AO”) for the captioned AY passed in the case of Limagrain India Private Limited (“Assessee”), pursuant to the directions of the Dispute Resolution Panel (“Hon’ble DRP), is bad in law and liable to be set aside.*

Grounds relating to Transfer Pricing adjustments :

Seed testing charges paid by the Associate Entities (“AEs”)

2. *The Ld.AO/Hon’ble DRP erred in law and on facts in making a transfer pricing adjustment of INR 34,43,31,665 by determining the Arm’s length mark-up at 9.41% on cost to cost reimbursement of seed testing charges by the AEs to the Assessee.*
3. *Without prejudice to ground no.2, the Ld.AO/Hon’ble DRP erred in law and on facts in considering the entire operating revenue and operating cost of the Appellant at entity level to compute the Transfer Pricing adjustment, instead of restricting it to the value of international transaction.*
4. *Without prejudice to ground no.2, the Ld.AO/Hon’ble DRP erred in law and on facts in selecting functionally different companies while determining the Arm’s Length Price for seed testing charges paid by the AEs to the Appellant.*

Receipt of intra-group services

5. *The Ld.AO/Hon’ble DRP erred in law and on facts in making a transfer pricing adjustment of INR 6,56,70,952/-- by treating the ALP as Nil, in relation to the international transaction involving receipt of intra-group services by the Assessee from its Associated Entities (“AEs”)*
6. *The Ld.AO/Hon’ble DRP erred in law and on facts in going beyond the scope under section 92CA in*

questioning the commercial rationale of the legitimate business expenses incurred by the Appellant and further erred in determining the ALP of receipt of intra group services to be '**Nil**'.

The Ld.AO / Hon'ble DRP further erred in not appreciating the nature of business of the Appellant and the need for management support services from its AEs, which was critical for the Appellant's business in India.

7. The Ld.AO/Hon'ble DRP erred in law and on facts in not considering the evidences submitted by the Appellant demonstrating receipt of intra-group services in India.

Seed testing and trial charges paid by the Appellant

8. The Ld.AO/ Hon'ble DRP erred in law and on facts in making a transfer pricing adjustment of INR 63,22,848 by treating the ALP as Nil in relation to the international transaction involving payment of seed testing and trial charges to its AEs.
9. The Ld.ao/Hon'ble DRP erred in law and on facts in going beyond the scope under section 92CA in questioning the commercial rationale of the legitimate business expenses incurred by the Appellant and further erred in determining the ALP of the seed testing and trial charges to be '**Nil**'.

The Ld.AO/Hon'ble DRP further erred in not appreciating the nature of business of the Appellant and the need for seed testing and trial services from its AEs, which was critical for the Appellant's business in India.

Notional Interest on outstanding receivables

- 10.The Ld.AO/Hon'ble DRP erred in law and on facts by treating the outstanding receivables from its Associated Enterprises as separate international transactions.
- 11.The Ld.AO/Hon'ble DRP erred in not considering the fact that neither the Assessee nor the AE charges any interest for delay in realization of invoices and therefore computation of

notional interest on outstanding receivables from Associated Entities is not warranted.

12. Without prejudice to the grounds of appeal no.10 and 11, the Ld.AO /Hon'ble DRP erred in adopting SBI's term deposit interest rates for computation of notional interest on outstanding receivables denominated in foreign currencies. The Ld.AO/Hon'ble DRP further erred in not appreciating that the receivables due from overseas AEs are in foreign currency and hence, interest, if any is to be benchmarked with rates prevalent in the international market for foreign currency loans i.e. at USD LIBOR plus.

Grounds relating to Corporate Tax adjustments:

13. The Ld.AO erred in law and on facts by not setting off brought forward business losses against income from business as allowed u/s 72(1) of the Act while determining gross total income in computation sheet annexed to the order.

3. The brief facts of the case are that the appellant is engaged in the business of research, production, sale of hybrid seeds of various field crops and provides service in the field of agro bio-technology, filed its return of income for the A.Y.2018-19 on 30.11.2018, declaring total income at Rs.Nil, with the current year loss of Rs.28,79,34,890/-. The case was selected for scrutiny and during the course of assessment proceedings, as per Form 3CEB, the Assessing Officer noticed that the assessee had entered into international transactions, including sale of services, receipt of intra group services, payment of royalty and providing corporate guarantee etc. Therefore, to determine the Arm's Length Price ("ALP") of international transactions with its Associated Enterprises ("AEs"), a reference u/s 92CA(1) of the Act has been made to the Transfer Pricing Officer ("the Ld.TPO"). During the course of transfer pricing proceedings, the Ld.TPO noticed that the assessee had entered

into various international transactions, therefore, called upon the assessee to file necessary evidences, including the method followed for benchmarking various international transactions and issued a show cause notice on 28.07.2021 and called upon the assessee to submit its response by 31.07.2021. In response, the assessee has filed its reply on 30.07.2021, explained various international transactions, also filed relevant evidences and argued that the transactions with its AEs are at ALP. The Ld.TPO vide order u/s 92CA(3) of the Act dated 31.07.2021 has proposed transfer pricing adjustment for Rs.41,66,52,539/-, which includes TP adjustment on sale of goods for Rs.34,43,31,665/-, TP adjustment on account of receipt of intra group services for Rs.6,56,70,952/-, adjustment towards royalty payment for Rs.2,96,526/-, adjustment of Rs.63,22,848/- in respect of seed testing and trial charges paid by the appellant to its AEs and interest on delayed receivables from AEs for Rs.30,548/-. In pursuant to TP adjustment as suggested by the Ld.TPO, the Assessing Officer has passed draft assessment order u/s 144C of the Act on 15.09.2021 and determined the total income of the appellant at Rs.12,87,17,650/- by making TP adjustment of Rs.41,66,52,539/-.

4. The assessee has filed objection against the draft assessment order passed by the Assessing Officer before the Ld.DRP and challenged various TP adjustments proposed by the Assessing Officer. The appellant has filed detailed written submissions on each ground of objection and argued that the Ld.TPO by giving show cause notice, called upon the assessee to submit its response within three days, in contravention of

principles of natural justice. Further, although the appellant has filed various evidences to the Ld.TPO, in response to show cause notice on various issues, but the Ld.TPO ignored the submission of the assessee, passed ex-parte order and proposed adjustment in respect of sale of goods at entity level, even though in the show cause notice, he proposed to make adjustment in respect of transactions with AEs on sale of services. The assessee had also filed various evidences in respect of intra group services from its AEs and justified the payment of service charges too, however, the Ld.TPO ignored the evidences filed by the assessee and made additions. The Ld.DRP after considering the relevant submissions of the assessee and also taking note of various facts, rejected the objections filed by the assessee and upheld the TP adjustment in respect of sale of services, intra group services, amount paid towards seed testing and trial charges and interest on delayed receivables from its AEs.

5. The Assessing Officer in pursuant to the directions of the Ld.DRP, passed final assessment order u/s 143(3) r.w.s.144C(13) of the Act on 29.07.2022 and determined total income at Rs.12,84,27,230/-.

6. Aggrieved by the final assessment order passed by the Assessing Officer, the assessee filed appeal before the Tribunal.

7. The first issue that came up for consideration from ground No.2 to 4 of assessee's appeal is transfer pricing adjustment relating to seed testing charges paid by the AEs to the appellant.

During the financial year, relevant to the assessment year under consideration, the appellant has received seed testing charges from Seed Asia Company, Thailand and Genective SA, aggregating to Rs.28,88,750/-. The appellant has charged to AEs, for rendering seed testing services on cost-to-cost basis and applied any other method for determination of ALP and claimed that transactions with its AEs are at ALP. The Ld.TPO rejected the TP study and applied TNMM as the Most Appropriate Method ("MAM"). The Ld.TPO selected 15 comparables from the inter business support services and computed the median of PLI (OP/OC) at 9.41% and issued show cause notice with TP adjustment of Rs.2,71,831/- on operating revenue of Rs.28,86,750/-. The assessee has filed detailed submission on the issue, vide letter dated 30.07.2021. The Ld.TPO did not consider the reply of the appellant, passed the order and proposed transfer pricing adjustment at Rs.34,43,31,665/- on the total operating cost of the appellant. Thus, the Ld.TPO made adjustment at entity level, instead of restricting adjustment to the cost of services rendered by the appellant to its AEs.

8. The learned Counsel for the assessee, Shri H.Srinivasulu, submitted that the Ld.TPO and Ld.DRP is erred in making adjustment of Rs.34,43,31,665/- on the total operating cost at entity level, even though the appellant has filed relevant evidences to prove that the transactions with its AEs were at Rs.28,48,750/-. The learned Counsel for the assessee, further referring to various documents submitted that the appellant rendered seed testing services to its AEs and the comparables

selected by the Ld.TPO in the order are not comparable. The appellant submitted its objection before the Ld.DRP, stating that none of the comparables selected by the Ld.TPO is comparable to the appellant in terms of the FAR. The Ld.TPO and Ld.DRP without considering the objections filed by the assessee, made TP adjustments at entity level, even though it is well settled principle of law by the decision of the Hon'ble High Court of Bombay in the case of CIT Vs. Thyssen Krupp Industries India (P) Ltd. 381 ITR 413 (Bom) that, TP adjustment should be restricted to the transactions with AE, but not at entity level. Therefore, he submitted that the additions made by the Ld.TPO and confirmed by the Ld.DRP should be deleted. He further submitted that, without prejudice to the above, the matter may be set aside to the file of the Ld.TPO to consider the evidences filed by the assessee to justify the transactions.

9. The Ld.DR for the Revenue, on the other hand, supporting the order of the Ld.CIT(A) submitted that the assessee could not file any evidences to prove transactions with its AEs are at ALP. Although the appellant claims to have submitted the details with response to the show cause notice, the findings of the Ld.TPO and the Ld.DRP clearly show that the assessee has not filed any evidences. Therefore, he submitted that the adjustments made by the Ld.TPO and the Ld.DRP should be upheld.

10. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the appellant

rendered services in the field of seed testing services to Seed Asia Company, Thailand and Genective SA and received total amount of Rs.28,48,750/-. It is also an admitted fact that the Ld.TPO issued show cause notice on 28.07.2021 and proposed to make TP adjustment of Rs.2,71,831/- on operating revenue of Rs.28,48,750/-, in respect of amount received from the two AEs. However, in the order passed u/s 92CA(3) of the Act, the Ld.TPO has made TP adjustment of Rs.34,43,31,666/- on total operating cost of the appellant, which includes transactions with non AEs. It is well settled principles of law by the decisions of various courts and by the decision of Hon'ble Bombay High Court in the case of Thyssen Krupp Industries India (P) Ltd (supra), where, the Hon'ble High Court held that the TP adjustment should be restricted to the transactions with AE. In the present case, the TPO has made adjustment at entity level by considering the total operating cost of the assessee, which includes transactions with non AEs. Further, the Ld.TPO has passed order making TP adjustment, without giving sufficient opportunity to the assessee and also not considering the detailed submissions made by the assessee vide letter dated 30.07.2021, in contravention of principles of natural justice. The Ld.DRP without appreciating relevant facts, simply sustained the additions proposed by the Ld.TPO. Therefore, we are of the considered view that the issue needs to go back to the file of the Assessing Officer/TPO for determination of ALP of transactions with AEs in respect of sale of services. Thus, we set aside the final assessment order passed by the Assessing Officer on this issue and restore the issue of determination of ALP on sale of services to AEs to the file of the Ld.AO/TPO and direct

the Ld.AO/TPO to reconsider the issue of TP adjustment in respect of sale of services, in light of various evidences filed by the assessee, including the reply filed, vide letter dated 30.07.2021. We, further direct the Ld.AO/TPO to restrict the TP adjustment to the amount of transactions with AEs alone.

11. The next issue that came up for consideration from ground No.5 to 7 of assessee's appeal is transactions with AEs for receipt of intra group services. The appellant had availed intra group services from Vilmorin and Cle, France for Rs.5,98,79,136/- and from Groupelimagrain Holdings for Rs.57,91,816/, aggregating to Rs.6,56,70,952/-. The appellant claimed that it has benchmarked the intra group services, by considering 'other method' and considered the AEs as tested parties. The Ld.TPO adopted CUP as MAM and benchmarked the transactions at Nil ALP, on the ground that the appellant could not file relevant evidences on receipt of services from AEs and also benefit derived from cost incurred for intra group services from AEs.

12. The learned Counsel for the assessee submitted that the Ld.TPO and the Ld.DRP are erred in benchmarking intra group services from AEs at Nil by not considering the detailed submission of the assessee dated 30.07.2021, in response to the show cause notice issued by the Ld.TPO dated 28.07.2021. The learned Counsel for the assessee, referring to various documents, submitted that the appellant had entered into agreement with Groupelimagrain Holdings and Vilmorin and Cle, France for rendering various services including strategic

direction and support for research and development, IP related support and guidance, general administration, information technology services, finance and treasury services and bio information. The appellant has filed various evidences including evidences for the services rendered by AEs, which are placed at pages 610 to 1467 of paper book, filed by the assessee. The learned Counsel for the assessee invited our attention to the Exhibit, which is summary of evidences placed before the DRP and argued that the Ld.DRP, without considering the evidences relating to intra group services, upheld the reasons given by the Ld.TPO towards intra group services. Further, very similar issue has been considered by ITAT, Indore in appellant's own case in ITA 65/Ind/2022 dated 19.01.2024 for the A.Y.2017-18, where, the issue of intra group services has been set aside to the file of the Ld.AO/TPO to determine the ALP, with reference to various evidences filed by the assessee. Therefore, he submitted that for this year also, the matter may be remanded back to the file of the Ld.AO/TPO to decide the issue afresh on the basis of evidences filed by the assessee.

13. The Ld.DR on the other hand, supporting the order of the Ld.TPO, submitted that the appellant could not file any evidences to prove the services rendered by the AEs and also failed to prove the benefit derived by the appellant firm for rendering services under intra group services. Although the appellant claimed that it has filed various evidences, but the Ld.TPO/Ld.DRP made an observation that except agreement with AE and few e-mail correspondence, no other evidences have been placed to prove the claim of the assessee. Therefore,

the adjustment made by the Ld.TPO and confirmed by the Ld.DRP should be upheld.

14. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the appellant entered into agreement with Groupelimagrain Holdings and Vilmorin and Cle, France for rendering various services to the appellant. Although the appellant refers to number of services in the agreement with its AEs, but if we go by the nature of services specified in the agreement, in our considered view, the services claimed to have rendered by the AEs to the appellant are general in nature without any specific services which pertains to the assessee. Further, the appellant claims that it has filed various evidences, which runs into hundred pages, including summary of evidences placed before the Ld.DRP. The appellant further claimed that it has placed more than 850 pages of evidences in support of intra group services. We find that the Ld.TPO has passed the order, without considering the reply filed by the assessee on 30.07.2021, in response to the show cause notice issued by the Ld.TPO on 28.07.2021. Although, we are not going to test the veracity of various evidences claimed to have been filed by the assessee before the Ld.TPO / Ld.DRP, but, in our considered view, it is an admitted fact that both the parties have not considered the reply filed by the assessee, in support of their contentions, by making Nil adjustment towards intra group services. Therefore, we are of the considered view that the issue needs to go back to the file of the Ld.AO/TPO for fresh consideration. We further note that

ITAT in appellant's own case for the A.Y.2017-18 has considered similar issue and after considering the additional evidences filed by the assessee, restored the matter back to the file of the Ld.AO/TPO for reconsideration. Therefore, we are of the considered view, that for this year also, the issue needs to go back to the file of the Ld.AO/TPO. Thus, we set aside the final assessment order passed by the Assessing Officer on this issue and restore the issue of TP adjustment in respect of intra group services for reconsideration. The Ld.AO/TPO is directed to reconsider the issue, in light of various evidences that may be filed by the assessee, in support of their to justify payment of intra group services to AEs.

15. The next issue that came up for consideration from Ground No.8 and 9 of assessee's appeal is TP adjustment in respect of seed testing and trial charges paid by the appellant to its AEs. During the financial year, relevant to the assessment year under consideration, the appellant paid a sum of Rs.63,22,848/- to Limagrain Europe and Limagrain Netherlands for seed testing charges. The cost of above services were recovered from the appellant based on actual cost incurred by them. The Ld.TPO during the proceedings issued a show cause notice on 28.07.2021 and called upon the assessee to file documentary evidences on charges paid to AEs, proof of payment and also benefit received from the said payment. The appellant filed reply on 30.07.2021 and claimed that it has filed various evidences, including basis of cost allocation and documents in support of charges paid to AEs. The Ld.TPO made adjustment of Rs.63,22,848/- on the ground that the appellant

could not file any evidence to prove rendering of services by the AEs and also benefit derived from the said services.

16. The learned Counsel for the assessee submitted that the Ld.TPO/DRP erred in making the TP adjustment towards seed testing and trial charges paid by the appellant to Limagrain Europe and Limagrain, Netherlands, without considering the reply submitted by the appellant on 30.07.2021. The learned Counsel for the assessee, further referring to various documents in paper book filed by the assessee, submitted that the appellant has filed various documents in support of seed testing and trial charges paid to its AEs. The appellant has also filed basis of allocation of cost and claimed that the services were rendered by AEs and further claimed that whether appellant has received benefit from the said services is not relevant for the purpose of TP adjustment. Although the appellant has filed all details, but the Ld.TPO has made adjustment, without considering the evidences filed by the assessee. Therefore, he submitted that the additions made by the Ld.TPO and confirmed by the Ld.DRP should be deleted.

17. The Ld.DR on the other hand, supporting the order of the Ld.DRP submitted that it is a fact on record that no evidences have been filed in support of payments made to AEs for seed testing and trial charges. Although the appellant claimed to have filed various evidences, but the fact remains that those are general in nature and do not prove rendering of services by AEs. Further, the appellant had also failed to prove the benefit derived from the said services. Therefore, the TPO has rightly

made adjustment and the Ld.DRP has rightly confirmed the additions made by the Ld.TPO. Therefore, the grounds raised by the assessee should be deleted.

18. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. The appellant has paid a sum of Rs.63,22,848/- to AEs for rendering services in the field of seed testing and trial charges. The appellant claimed that it has filed all details including, evidences for services rendered by the AE, working of cost of services and mark up and certified accounts by the accountant / management. We find that the Assessing Officer issued show cause notice on 28.07.2021 and called upon the assessee to file objections, if any, for proposed adjustment on or before 31.07.2021. The appellant filed objections for proposed adjustment along with evidences on 30.07.2021. The Ld.TPO without considering the submissions of the assessee has made TP adjustment towards seed testing and trial charges. Although, we are not going into the veracity of evidences claimed to have been filed by the appellant before the Ld.DRP/TPO, the fact remains that the Ld.TPO has passed the order u/s 92CA(3) by giving shorter notice to the appellant and also not considering the submissions of the assessee dated 30.07.2021, contrary to the principles of natural justice. The Ld.DRP without appreciating relevant facts, simply sustained the TP adjustments proposed by the Ld.TPO. Therefore, we are of the considered view that the issue needs to go back to the file of the Ld.AO/TPO for fresh consideration. Therefore, we set aside the final assessment order passed by the Assessing Officer on this

issue and restore the issue back to the file of the Ld.AO/TPO for fresh consideration. The Ld.AO/TPO is directed to reconsider the issue in light of any evidences, that may be filed by the assessee to justify the payment made to its AEs for the services rendered in respect of seed testing and trial charges.

19. The next that came up for consideration from Ground No.10 to 12 of assessee's appeal is TP adjustment of Rs.36,656/- in respect of outstanding receivables of Rs.4,88,750/- from the AEs. The Ld.TPO made TP adjustment for delay in outstanding receivables from AEs by considering the delay of 211 days and applied interest rate at 7.5% p.a..

20. It is the argument of the learned Counsel for the assessee that benchmarking of outstanding receivables from the AEs should be on the basis of LIBOR plus 200 points.

21. We have heard both the parties and considered relevant arguments of both the sides and we find that, it is a well settled principles of law by various Benches of the Tribunal and High Courts that for benchmarking interest on outstanding receivables from AE. LIBOR plus appropriate basis point is correct method to determine interest receivables from AE. In the present case, the Ld.TPO adopted interest rate of 7.5%, even though as per the judicial precedents, LIBOR plus 200 basis point is appropriate rate of interest for benchmarking interest on outstanding receivables. Therefore, we are of the considered view that the Ld.TPO/DRP erred in benchmarking interest on outstanding receivables from AE by adopting 7.5% interest p.a.

Thus, we set aside the order of the Assessing Officer and direct the Ld.AO/TPO to adopt LIBOR plus 200 points for benchmarking interest on outstanding receivables.

22. The next issue that came up for consideration from ground No.13 of assessee's appeal is denial of set off of brought forward business losses against income from business. The learned Counsel for the assessee submitted that although the appellant has satisfied the conditions as per section 72(1) of the Act, but the Assessing Officer has not allowed set off of brought forward business losses against the income from business.

23. We find that the set off of business losses against the current year income is a matter of fact which needs to be verified, with reference to the conditions prescribed for setting off losses as per section 72(1) of the Act. The fact with regard to the relevant dates and events is not available before us and it needs to be verified by the Assessing Officer. Therefore, we set aside the issue to the file of the Assessing Officer and direct the Assessing Officer to verify the claim of the assessee in light of provisions of section 72(1) of the Act and decide the issue in accordance with law.

24. In the result, appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court on 19th December, 2024.

Sd/-

Sd/-

(K. NARASIMHA CHARY) JUDICIAL MEMBER	(MANJUNATHA G.) ACCOUNTANT MEMBER
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Hyderabad, dated 19th December, 2024

L.Rama, SPS

Copy to:

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1	M/s Limagrain India Private Limited, H.No.1-8-201 to 203, Ashoka My Home Chambers, Flat No.208, 209, 2 nd Floor, SP Road, Secunderabad, Hyderabad
2	The Deputy Commissioner of Income Tax, Circle-5(1), Income Tax Towers, Professor Elyas Burney Road, AC Guards, Masab Tank, Hyderabad
3	The Pr.CIT, Hyderabad
4	The DR, ITAT Hyderabad Benches
5	Guard File

By Order