IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH: BENGALURU

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

SA No.60/Bang/2024 & IT(TP)A No. 1874/Bang/2024
Assessment year: 2020-21

Decathlon Sports India Private Limited, Survey No.78/10, A2, Chikkajala Village, Bellary Road, Bangalore – 562 157. **PAN: AAACL 9861H**	Vs.	The Deputy Commissioner of Income Tax, Circle 2(2)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Chavali Narayan, CA
Respondent by	:	Ms. Neera Malhotra, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	04.12.2024
Date of Pronouncement	:	26.12.2024

O R D E R

Per Prashant Maharishi, Vice President

1. This appeal is filed by Decathlon Sports India Private Limited (the Assessee or Appellant) for the Assessment year 2020-21 against the assessment order passed u/s. 143(3) r.w.s. 144(13) r.w.s. 144B of the Income-tax Act, 1961 (The Act) dated 29.07.2024 by the Assessment Unit [The Ld. AO] wherein the total income of

assessee was assessed at Rs. 155,34,29,950/- against the returned income of assessee at Rs. NIL. The assessment order is passed in pursuance of the order passed u/s. 92CA (3) by the DCIT (TP), 1(2)(1), [The ld. TPO] dated 27.7.2023, consequent to directions of the ld. Dispute Resolution Panel, Bengaluru [ld. DRP] dated 20.6.2024 and consequent order giving effect passed by the ld. AO/TPO.

2. Assessee is aggrieved and has raised the following grounds of appeal: -

"General Ground:

1. The Ld. AO /TPO /DRP erred in determining and assessing the total income of the Appellant at INR 1,74,77,76,980 as against returned income of NIL computed by the Appellant.
2. The Ld. AO /TPO /DRP erred in assessing total income of the Appellant thereby making an upward adjustment of INR 1,74,77,76,980 comprising of:

2.1 INR 1,14,18,85,697 in respect of trading segment

2.2 INR 33,24,39,508 in respect of intra-group charges

2.3 INR 16,04,745 in respect of interest on delayed receivables and

2.4 INR 7,75,00,000 in respect of store closure expenses.

2.5 INR 19,43,47,030 in respect of non-utilization of brought forward losses.

Transfer Pricing ("TP") Grounds:

Rejection of transfer pricing documentation maintained with respect to trading segment, payment of intra group services and trade receivables

3. The Ld. AO /TPO /DRP erred in not accepting the transfer pricing analysis undertaken by the Appellant in accordance with the provision of the Act read with Income-tax Rules, 1962 ("the Rules") and holding that the Appellant's impugned international transactions pertaining to trading segment, payment of intra group services and trade receivables are not at arm's length.

Adjustment on account of trading segment

4. The Ld. AO /TPO /DRP erred by not accepting a foreign Associated Enterprise ("AE") as the tested party, being the least complex of the transacting entities. Further, the learned AO/TPO erred in categorizing the Appellant as the tested party without appreciating the functional and risk profile, and the complexity of operations of the Appellant, who is a risk bearing distributor.

5. The Ld. AO /TPO /DRP erred, in law and facts, by not appreciating the business operations of the Appellant and its AEs, and disregarding the allocation of functions, risks and assets as adopted by the Appellant and the AE.

6. The Ld. AO /TPO /DRP erred, by concluding that the Appellant has not furnished relevant information about AE and comparable companies without requesting for the same during the course of the assessment.

7. Without prejudice to our grounds of objection above, the Ld. AO /TPO /DRP, erred by wrongly computing the operating profit margin of the Appellant by:

(i) Incorrectly considering below mentioned items as non-operating income:

- Provision no longer required written back
- Insurance claims on account of floods
- Income on training provided by DSIPL employee to overseas AE
- Sale of scrap (including carton)/ damaged goods
- Creditor written off

(ii) Incorrectly considering below mentioned items as operating expenses:

- Foreign exchange loss

8. Without prejudice to our grounds of objection above, the Ld. AO /TPO /DRP, erred by selecting certain functionally non-comparable companies based on unreasonable comparability criteria:

(i) Mattel toys India Private Limited

(ii) Stone Sapphire India Private Limited

9. Without prejudice to our grounds of objection above, the Ld. AO /TPO /DRP, erred by wrongly computing the operating margins of Stone Sapphire India Private Limited by considering infrastructure charges (i.e., rental income) as operating income.

10. The Ld. AO /TPO /DRP, erred by not restricting the quantum of TP adjustment proportionately to the value of the international transactions being disputed by the AO/TPO.

11. The Ld. AO /TPO /DRP, erred in not acknowledging that the gross margins earned by the Appellant for the year under consideration is not substantially lower than the gross margins earned by it for the previous years and the average of the gross margins earned by the comparable companies.

Adjustment on account of payment of intra-group services

12. The Ld. AO /TPO /DRP, once having considered the payment for intra-group services i.e., information technology ("IT") support charges of INR 33,24,39,508 as part of operating cost base for arriving at the margins of the trading segment, cannot benchmark the same transaction separately and determine the value of such expense to be NIL. Thus, the adjustment in relation to intra group services deserve to be quashed.

13. Without prejudice to above ground, the Ld. AO /TPO /DRP, erred in disallowing intra-group services i.e., payment of information technology ("IT") support charges of INR 33,24,39,508 and determining the ALP as NIL.

14. The Ld. AO /TPO /DRP, erred in exercising power beyond his jurisdiction to determine the necessity and prudency of availing intra-group services from its AEs and concluding that the Appellant has not derived any benefit which provides economic and commercial value from the services received from its AE.

15. The Ld. AO /TPO /DRP, erred in disregarding the submission / information / documents made by the Appellant wherein a clear distinction in respect of services received as a part of IT support service from the AEs, tangible and direct benefit received by the Appellant from such services was explained.

16. The Ld. AO /TPO /DRP, erred in disregarding the genuineness of the arrangement of the Appellant with its AE's, despite furnishing the legal and contractually binding agreements with respect to the transaction in appeal to establish that the services have been rendered and the benefit has been received by the Appellant.

17. The Ld. AO /TPO /DRP, erred in holding that the impugned transaction is a shareholder/duplicative/incidental service only; thereby leading to erroneous conclusions based on inappropriate interpretations of the information/document filed during the course of the assessment proceedings and thereafter categorizing these services to be functions undertaken by the AEs to exercise control over the Appellant

18. Without prejudice to the above arguments, the Ld. AO /TPO /DRP, erred in rejecting the aggregate transaction approach adopted by the Appellant to benchmark the receipt of intra-group services transaction considering transactional net margin method ("TNMM") as the most appropriate method ("MAM")

19. The Ld. AO /TPO /DRP, erred by determining the arm's length price ("ALP") of the impugned transaction without reasonably applying any prescribed methods, thereby, violating the basic principles of TP Regulations.

20. The Ld. AO /TPO /DRP, erred by determining the ALP for the impugned to be NIL while applying the comparable uncontrolled price ("CUP") method without identifying any comparable uncontrolled transaction, in the absence of which, the application of CUP method is invalid and void.

Adjustment on account of interest on delayed receivables

21. The Ld. AO /TPO /DRP, erred in determining a TP adjustment on account of the interest on outstanding receivables amounting to INR 16,04,745.

22. The Ld. AO /TPO /DRP, erred by not appreciating that the outstanding trade receivables from AEs are arising from provision of IT services and sale of goods under trading segment, should be considered as closely linked to the said transaction and not be tested separately from arm's length perspective.

23. Without prejudice to our above arguments, if outstanding receivables are considered as unsecured loans, benefit must be given of Circular dated 01.04.2020 through which Reserve Bank of India provides for a collection period of 9 months for export receivables which had been extended up to 15 months due to the COVID-19 pandemic.

24. The Ld. AO /TPO /DRP, erred in application of LIBOR @ 2.317% plus 450 basis points on ad doc basis without providing any rationale/reason.

Corporate tax Grounds:

Adjustment on account of store closure expenses

On the facts and circumstances of the case and in law:

25. The Ld. AO /DRP, erred in not accepting the contention and the arguments presented by the Appellant and has made disallowance in respect of the store closure expenses incurred during the relevant year.

26. The Ld. AO /DRP, erred in making additions to the total income of INR 7,75,00,000 in respect of store closure expenses (which includes

expenses such as professional/ legal fees for closure of store or settlement of dispute, painting/ restoration charges, dismantling charges, rental charges, etc) incurred by the Appellant in relation to its non-performing stores without appreciating that such expenses are incidental to the business of the Appellant and revenue in nature, thus allowable under section 37(1) of the Act

27. The Ld. AO /DRP, failed to consider and verify the relevant factual details and documentary evidence produced by the Appellant in relation to the store closure expenses incurred by the Appellant during the assessment proceedings

28. The Ld. AO /DRP, passed the final assessment order which is bad and erroneous in as much as the same is without considering the decision of various Courts and Tribunals which have allowed the deduction of premature termination expenses (which can be considered as similar to store closure expenses)

Non-utilization of brought forward losses

29. The Ld. AO has erred, in law and on facts, in not allowing the set off of available brought forward business losses and unabsorbed depreciation of INR 19,43,47,027, declared by the Appellant in the income tax return and as certified by the tax auditor in the tax audit report.

Levy of Interest

30. The Ld. AO has erred, in law and on facts, by levying interest under section 234B of the Act amounting to INR 22,56,48,351. Levy of interest under section 234B of the Act is consequential in nature.

Invoking penalty proceedings under Section 270A of the Act:

31. The Ld. AO /TPO /DRP, erred in law and on facts by initiating penalty proceedings under section 270A of the Act, pursuant to the erroneous adjustments made to the total income of the Appellant, which is consequential to the aforementioned addition.

32. As the facts, evidence and judicial decisions indicate erroneous additions/ adjustment made by the Assessment Unit, no penalty proceedings should be initiated under section 270A of the Act.

The Appellant submits that each of the above grounds is independent and without prejudice to one another. The Appellant craves leave to add, alter, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal, so as to enable the Hon'ble Tribunal to decide on the appeal in accordance with the law."

3. The brief facts of the case show that assessee is a company engaged in the business of trading in exports, accessories, sports apparel, goods & equipment. The assessee is a subsidiary of Decathlon, France. It imports branded goods of Decathlon from its Associated Enterprises (AEs) and locally procured sports goods from third party vendors. These goods are resold in India.

4. The return of income was filed on 13.2.2021 at Rs. NIL which was picked up for scrutiny on TP risk parameters, compliance for ICDS and other factors. Consequent notice u/s. 143(2) of the Act was issued on 29.6.2021.

5. As assessee has entered several international transactions and therefore the ld. AO made a reference to the ld. TPO after obtaining approval of the PCIT on 03.12.2021.

6. Assessee has a trading segment of purchase and sale of sports goods, of Rs 7353162873/- where in assessee has made purchases from 'Desipro Pte Ltd. Singapore' [Desipro] [Purchase of Rs 7347291830/-] Decathlon Italy [Purchase of Rs 3752255/-] and Decathlon Portugal [Purchase of Rs 2118788/-]. Assessee selected the Transactional Net Margin Method [TNMM] as the Most Appropriate Method selecting Desipro (foreign entity) as a tested party, from whom 99 % of Purchases are made, stating that operations performed by it are less complex. For this, in the TP Study Report (TPSR) page 32, assessee has given the details of functions performed by the assessee as well as foreign AEs at page 34. It has also given a risk matrix. Further on page 5.2.1 of the

TPSR wherein Desipro has been the least complex entity and was selected as a tested party. The transaction with Desipro was tested and comparability analysis was performed by using Oriana database and search for companies that performed similar activities as performed by Desipro was carried out. In the search process, the geographic criteria were adopted for identifying companies located in the same country with similar market conditions as tested parties and applied to the middle East and Central Asia. The search was also carried out by adopting the activities as 'agents involved in the sale of textile, clothing, footwear, leather goods, etc.'. The ownership criteria were also applied and ownership above 50% was excluded. The search was conducted by taking multiple year data, fiscal year alignment adopting Profit Level Indicator (PLI) of Operating Income/Total Cost of the assessee and compared it with the weighted average PLI of comparable. Assessee selected 7 comparable, computed tested party margin at 3.06%. The margin of the comparable companies was also in the range of 1.66% to 4.49% and therefore, it was stated that transaction of the assessee is at arm's length price (ALP).

7. The ld. TPO as per notice dated 16.2.2022 asked the assessee the information about the international transaction which was replied to by assessee on 18.2.2022. The TPO also asked the financials of the AE with whom the assessee has major transactions as per question no. 11, which was replied by the assessee that assessee is required to reach out the group to obtain this and it is not available

at present. The ld. TPO further issued show cause notice on 27.6.2023. The ld. TPO analysed the TP document in para 4 considering the assesses tested party claim, referred to OECD TP Manual and thereafter held that assessee has adopted Transactional Net Margin Methods (TNMM) as the most appropriate method selecting the foreign entity as the tested party, but no reliable information regarding the AE company is available in the public domain. But it is easier to gather information regarding the taxpayer company i.e., Indian assessee. He further referred to the UN Practice Manual of Transfer Pricing and held that if no such data was furnished for the comparability analysis, the foreign AE cannot be selected as a tested party. Thus, he show caused that why the assessee should not be selected as a tested party. He also carried out a fresh search on Prowess Database applying fresh filters and using keyword 'Wholesale in games and sports goods', reached at 3 comparable, whose weighted average margin was found to be 5.04%.

8. Assessee replied on 13.7.2023 at para 2.1 & 3.1.1, defended the selection of foreign AE as tested party stating that it is least complex, least function performed, least risk and least assets employed by Desipro. The analysis was given in para 3.1.1.4 of that letter. It was also submitted that reliable information about Desipro is readily and easily available in public domain and with respect to the comparable companies, same are captured in the TPSR, therefore information is sufficiently available for

comparability analysis. Assessee also objected that AE is not a manufacturer at all, therefore the tested party is correctly taken as foreign AE.

9. The ld. TPO rejected the explanation of the assessee and rejected foreign AE as tested party in absence of reliable information and availability of more information about the assessee, proceeded with taking assessee as tested party, made an adjustment in trading segment amounting to Rs. 126,77,22,887 by taking the taxpayer's PLI of Operating Profit/Revenue at 0.66%, whereas the margin of the comparable of 3 entities was computed at 3.83% and accordingly above adjustment was made.

10. Assessee has also availed shared services being intra-group services amounting to Rs. 33,24,39,508. Assessee has entered into an IT service agreement and licensing agreement with Decathlon France with respect to Amazon and Google servers, accounting and other internal tools provided by Oracle, tools enabled by salesforce, as AP tools. It also provided IT support services to the assessee such as often as capital of software and software packages according to the needs of the assessee, Grant and non-exclusive license of software to the assessee, perform specific developments accepted under conditions approved by the, upgrading, recommending updates and major versions in providing training in the use of software and undertaking corrective maintenance and security of the software, assistance in management of existing equipment and provision of computer hardware, contract

management and negotiation with network service providers for the assessee. Decathlon France periodically issues invoices at the prices set by the internal price setting tool, payable within 45 days of receipt of such invoices. Assessee paid Rs. 329,893,858/– to France entity and paid 25,45,652 Chinese entity. Assessee stated that this transaction is closely linked to the main international transaction of payment of IT support charges to its associated enterprises. Though assessee stated that it has adopted Other Method as the Most Appropriate method and submitted that the same is at arm's length price. The assessee in para 4.5.3 of the TPSR has stated that the assessee has paid the IT Support Charges with respect to certain IT tools. The transactions were closely linked to the main international transaction. The transactions were inter-linked with the IT services taking the assessee as tested party using the TNMM, selecting PLI as OP/OC and 15 comparable. The operating margin of the assessee was 16% whereas the operating margin of comparable was considered at 14.95-23.87% and the transaction was at arm's length. Therefore, apparent that assessee has not carried out any specific benchmarking analysis with respect to the above payment of Rs. 332,439,508/–.

11. The ld. TPO questioned that assessee has entered intra-group services payment which is not an inter-linked transaction and therefore it should be benchmarked adopting the CUP method as the most appropriate method. He also asked the assessee to explain the evidence to prove rendition test, need test, benefit test and

justification for the payment. Assessee could not give any further information regarding the same and therefore the learned TPO held that such payment could be at arm's length, only after satisfying the above tests by producing the evidence of receipt of such services and the benefit of such services to the assessee. He also rejected the aggregation approach of intra-group services with other IT services, as the detailed questionnaire at para 20.4 of the TPO's order mentioned only a few evidence on the services provided by the assessee. The assessee in response to the show cause notice where the learned assessing officer asked for the various information, the taxpayer only provided a very brief note on the services received by it from associated enterprises. Assessee submitted that services are related to helpdesk assistance, local centres, hardware leasing and network leasing for which it charged a markup of 5%. No other details have been provided by the taxpayer and no breakup of cost or workings regarding the amount booked under each of the above-mentioned heads were provided. The taxpayer only provided a total figure of the amount paid that has been booked as a professional support services. The assessee also, according to the learned TPO, could not provide any evidence about the rendition of the services. Therefore, in absence of that there was no way to qualitatively and quantitatively explain how the total cost of professional support services incurred by the associated enterprises was allocated to the taxpayer amongst the other group entities. The assessee also could not provide the total

cost incurred by the associated enterprises. The learned TPO further held that the services are to promote group interest in group standards and therefore it is a shareholder's activity for which no separate payment could be made. As there is no evidence of rendition of the services, naturally the assessee could not prove benefit of the services and therefore TPO concluded at paragraph number 21 and computed the arm's-length price of intragroup charges of Rs. 332,439,508 as Rs. Nil .

12. The ld. TPO further found that there is a delay in receipt of receivables from the AE and therefore it should be benchmarked separately. The assessee objected that it is not a separate independent international transaction, and no adjustment can be made. The TPO rejected the same and held that it is a separate international transaction, and he considered the 30 days period as the appropriate credit period as per prevailing industry standards. Accordingly, adjustment of Rs.16,04,745 was made.

13. Thus, the Order u/s 92CA (3) was passed on 27/07/203 where the following adjustments with respect to ALP were made: -

    i. Adjustment with respect to trading segment of Rs 1267722887/-
    ii. Adjustments with respect to Intra Group Services Rs 332439508/-
    iii. Adjustments on account of outstanding receivable of AE beyond due dates Rs 1604745/-
    iv. Software segment adjustments of Rs 3894345/-

14. The assessee has also incurred an expenditure of Rs. 7,75,00,000 as store closure expenditure. Assessee was questioned that how the

above expenditure is deductible in the normal computation of total income u/s. 37(1) of the Act. Assessee submitted that assessee is engaged in the business of trading export activities and during the year it closed some of its stores at few locations because of non-performance. The expenses related to these stores such as salary, compensation, professional fees, etc. were included in the store closure expenses. The above expenditure is solely and exclusively incurred for the purposes of business and is deductible.

15. The ld. AO asked for the supporting documents wherein the assessee submitted that details voluminous and are getting collated. The ld. AO noted that assessee has not provided the complete details and in absence of such concrete documentary evidence, he disallowed Rs. 7.75 crores.

16. Accordingly, a draft assessment order u/s. 144C (1) was passed on 01.9.2023 wherein the TP adjustment of Rs. 160,21,51,485 and disallowance of Rs. 7.75 crores were made, and total income of assessee was proposed to be assessed at Rs. 167,96,51,485.

17. The assessee aggrieved with the same, preferred objections before the ld. DRP, who gave its directions on 20.6.2024.

18. On transfer pricing issue, with respect to trading segment adjustments, the ld. DRP confirmed the rejection of the tested party as foreign entity in absence of sufficient information regarding that entity, least complex, etc. Accordingly, it upheld the order of the ld. AO. In this trading segment, the assessee objected to selection

of comparable as Metal Toy India Pvt. Ltd. On functional comparability, the same was rejected. With respect to the 2nd comparable of Stone Sapphire India Pvt. Ltd. and its PLI computation was also rejected.

19. With respect to the intra-group charges of Rs. 33.94 crores, the ld. DRP upheld the contention of the TPO that the same cannot be aggregated and inter-linked with other IT services transaction in absence of details filed by the assessee, the ALP of such transaction is rightly held to be at Rs. NIL.

20. With respect to ALP of advance receivable, the ld. DRP upheld that interest on overdue receivable is an international transaction to be separately benchmarked and the ld. TPO has correctly taken the interest rate of 6 months LIBOR _ 400 basis points as the appropriate interest rate.

21. On corporate tax issues, with respect to allowability of store closure expenses, they are confirmed as the assessee did not provide the details to the ld. AO to check the nature and genuineness of these expenses. Accordingly, disallowance was upheld.

22. The learned dispute resolution panel issued the direction to the learned assessing officer on 20/6/2024 under section 144C (5) of the income tax act.

23. The necessary OGE was passed by the TPO wherein -

i. in the trading segment, excess adjustment of Rs. 114,18,85,697 out of the addition proposed by the TPO of Rs. 126,77,22,887 were confirmed.

ii. with respect to intra-group services, determination of ALP at Rs. NIL for payment of Rs. 33,24,39,508 were confirmed.

iii. Interest on delayed receivable of Rs. 16,04,745 was confirmed.

24. Accordingly, the final assessment order was passed on 29.7.2024 wherein the above transfer pricing adjustment as well as the corporate tax adjustment of disallowance of stored close expenses was confirmed. Therefore, assessee is in appeal before us.

Appellate Proceedings

25. Before us, Assessee has submitted a paper book containing two volumes of paper book containing 2385 pages, one case law compilation containing 16 judicial precedents, an application for admission of additional evidence.

26. The Ld DR also submitted a written note and judicial precedents.

27. On Ground no 4 to 11, contesting the issue of the arm's-length price adjustment with respect to the trading segment where the assessee has selected foreign AE i.e. AR took us to the trading segment adjustment with respect to TPSR and the approach of the ld. TPO. His only submission is that the foreign AE is least complex and performs least functions carrying least risk and therefore the comparability analysis should be made taking the

foreign entity as the tested party, Singapore entity as the party, which is rejected by the learned TPO and confirmed by the learned dispute resolution panel and then taking assessee as a tested party and on fresh search resulting into an adjustment. He referred to various representations made before the lower authorities. He also referred to the function matrix, risk matrix mentioned in the TPSR. Therefore, according to him, it was submitted that foreign AE should be considered as tested party. TPO and the ld. DRP could not be proper.

28. However, he referred to application for admission of additional evidence dated 28.10.2024 wherein the assessee submits the audited financial statements of AE, Desipro with respect to ground nos. 4 to 6 for the year ending 31.12.2019. Further a TP documentation of Desipro was also submitted with respect to Singapore TP Documentation requirement. He further stated that the database used by the assessee selecting the foreign AE as the tested party has also given enough comparables and therefore the approach of the ld. TPO is not correct. This evidence is also in relation to ground nos. 4 to 6 of the appeal. It was submitted by the ld. AR that Desipro was taken as a tested party in benchmarking the trading segment of assessee. It was submitted that the conclusion reached by the ld. TPO for AE as the most complex entity is not correct. Therefore, to show that foreign AE is the least complex entity, these annual accounts are placed as additional evidence.

29. The ld. CIT(DR) vehemently submitted that when assessee has not obtained even the annual accounts of the entity who is taken as tested party, how the functions & risks are evaluated in the TPSR of the assessee is questionable. It was further stated that when the assessee fails to show the basic data of comparability analysis for each step, the TPSR is correctly rejected by the TPO. It was further stated that the ld. TPO has carried out the benchmarking analysis following proper procedures and therefore no fault can be found with the order of the ld. TPO.

30. We have carefully considered the rival contention and perused the orders of the learned that lower authorities. Ground number 4 – 11 is with respect to adjustment on account of trading segment. The first dispute between the parties is whether a foreign associated Enterprises can be taken as a tested party or not. In the transfer pricing study report at paragraph number 4.1.3 it is specifically stated that the strategic management functions, corporate service, marketing strategy, training, research, and development functions are performed with the help of France entity. Part of such functions related to the business of the assessee also performed by assessee. Assessee performs operational functions along with sale functions. The functional metric is at page number 32 of the paper book wherein it is categorically mentioned that strategy management, corporate services, marketing strategy, training, and establishment of stores along with the operational functions and skill function is the joint functions of assessee as well as France entity. The

Singapore entity from whom major purchases have been made is only functioning with respect to the vendor identification, resource listing for sports goods, quality, placement of orders, purchase price, quality control and logistics jointly with the assessee. With respect to risk metrics, it is further stated that Singapore entity does not have any market risk, limited product liability risk and credit collection risk from the assessee. Such risk metrics is placed at page number 34 of the transfer pricing study report. With respect to the assets employed, assessee submitted that it has an asset base of Rs. 380 crores of tangible assets however, there is reference of asset base of tested party. Based on this information at paragraph number 4.6.3 the assessee stated that based on the results of the functions performed, risks assumed, assets employed assessee concluded that assessee can be characterised as a risk bearing distributor of the capital on sports goods, etc.

31. The OECD guidelines provides that when applying transactional net margin method, it is necessary to choose the party to the transaction for which a financial indicator (mark-up on costs, gross margin, or net profit indicator) is tested. The choice of the tested party should be consistent with the functional analysis of the transaction. Generally, the tested party is the one to which a transfer pricing method can be applied in the most reliable manner and for which the most reliable comparable can be found, i.e. it will most often be the one that has the least complex functional analysis.

32. Assessee has chosen a Singapore entity as the least complex so far as the functions and risks involved in the transaction of purchase of goods by the assessee from Singapore entity. The functional analysis prepared at page number 32 of the transfer pricing study report relates to the managerial function, establishment of stores, research and development functions, operational functions, sales functions etc. and it concluded that the Singapore entity does not perform higher functions than the Indian entity along with the France AE. The transaction is of purchase of goods from Singapore entity by an Indian entity. Therefore, all other functions other than the functions of purchase of goods are irrelevant. The object of choice of the party is to apply transfer pricing mechanism in the most reliable manner.

33. On reading of the transfer pricing study report prepared by the assessee we do not find any material available with the assessee about the Singapore entity which was relied upon by the assessee whatsoever, when the learned transfer pricing officer asked for the annual accounts of the associated enterprises including tested party (Singapore entity) the assessee submitted that it would seek same from the group entities.

34. The assessee has made an application for admission of additional evidence wherein assessee has submitted the audited financial of the Singapore entity placed at page number 5 – 49 of the paper books. Therefore, is evident that the time of preparation of the transfer pricing study report as well as before the learned transfer

pricing officer and learned dispute resolution panel the assessee did not have this information at all. We are really surprised that without looking at the annual accounts/financial statements of an entity how it can be concluded that it is a least complex entity performing lesser functions, assuming a lesser risk and employing lower assets base. Therefore, it is apparent that the selection of the tested party by the assessee choosing the foreign associated enterprise is without complete information about the AE.

35. However, while examining the facts about the tested party the learned transfer pricing officer in paragraph number 4 of the transfer pricing order has categorically held that the AE of the taxpayer company is responsible for manufacturing and providing the goods to other associated enterprises therefore it is undertaking operations such as procuring the raw material, engaging the labour, get the items manufactured and sale the same to the associated enterprises for onward distribution etc. We also failed to understand that how the learned TPO got this information without having any material in hand. In fact, the tested party is also a reseller. Thus, the learned TPO has concluded that the associated enterprises are more complex and is also having higher risk.

36. Therefore, there is no dispute on the most appropriate method where assessee and the learned TPO agreed on transactional net margin method. The only dispute is whose margin is to be compared with the comparable companies. Both the parties have determined the complexity of assessee as well as the associated

enterprises without looking at the functional, risk and asset profile of the associated enterprises. Naturally, unless FAR with respect to the assessee and associated enterprises are determined properly, transfer pricing methods cannot be applied in most reliable manner by selecting the most reliable comparable. As the annual accounts of the associated enterprises are placed before us for the first time as additional evidence, which is the most important document along with the agreement between the parties to determine the FAR, it needs a deeper examination.

37. The learned dispute resolution panel in paragraph number 2.1 has rejected the foreign AE as a tested party because when the entity being evaluated for transfer pricing purposes is a foreign entity, sufficient information regarding that entity is necessary to ensure the chosen method can be reliably applied and subsequently reviewed by the tax authorities. As in the present case, the Indian public domain lacks reliable information concerning the associated Enterprises company and further the taxpayer is obligated to furnish the tax administration with all the relevant information regarding the associated enterprises, including sufficient data on comparable transactions. This information exchange is crucial to enable reciprocal verification of the selection of transfer pricing method and its application to the tested party by the tax authorities. In the present case the assessee did not provide any such data to the Indian tax administration and therefore the contention of the assessee regarding the foreign AE as a tested party was rejected.

38. The learned TPO has rejected the selection of the tested party because assessee selected the same without giving any substantial reasoning and further reaching at a conclusion that the associated enterprises is engaged in manufacturing and providing the goods to the other associated Enterprises and therefore it is more complex than the assessee. The further reason is that it is easier to gather the information regarding the assessee taxpayer company then the foreign associated Enterprises. It proceeded to hold that the assessee must ensure that the necessary relevant information about the AE and sufficient data on comparable is furnished to the tax administration to verify the selection and application of the transfer pricing method. In this case no doubt the annual accounts of the associated enterprise were not available with the assessee but all other information with respect to the comparables were available with the assessing officer in the form of transfer pricing study report. Further for selection of the method as transactional net margin method was not in dispute between the parties. Therefore, so far as the comparability analysis is concerned the assessee has selected seven comparables from different database and TPO are selected three comparables from Prowess database.

39. Therefore, as the basic object of selecting a tested party is reliability of application of the method and comparability analysis for determining the arm's-length price of the international transaction, and as assessee as well as TPO both have reached at a conclusion of a different tested party without looking into the

balance sheet of the associated enterprise and holding whether the assessee or the foreign AE is least complex. Obviously, there is no bar in selecting a foreign entity as a tested party if the arm's-length price of international transaction by selecting reliable method and reliable comparability analysis can be made.

40. Both the parties have placed before us judicial precedent that foreign AE can be taken as a tested party, but all the decisions have held the tested party only could be the party on which the transfer pricing methods can be applied in the most reliable manner and for which most reliable comparables can be found.

41. Therefore, in view of above discussion, we restore ground numbers 4 – 11 back to the file of the learned transfer pricing officer with a direction to the assessee to substantiate the arm's-length price of the transaction of trading segment by showing with sufficient data about the foreign AE as a tested party. The learned TPO may examine that the tested party selected by the assessee gives a reliable method and computation of arm's-length price or not. Thereafter, after giving assessee an opportunity of hearing, determine the arm's-length price of the international transaction of trading segment.

42. On Ground nos. 12 -20, with respect to the transaction of intragroup services of Rs. 332,439,508/– arm's-length price of which is determined by the learned TPO at rupees Nil, because assessee has failed to substantiate that services were rendered by AE which resulted into benefit to the assessee and are not

shareholder services. The grounds of appeal raise before us a specific challenge that the learned transfer pricing officer must exercise the powers beyond his jurisdiction to determine the necessity and pendency of availing intragroup services and further held that the assessee has not derived any benefit from the services received. The assessee has also stated that the learned transfer pricing Officer has ignored the documents made available by the assessee where there is a benefit available to the assessee on the above services received. It is also the grievance of the assessee that the contractual binding agreements were produced before the learned assessing officer/transfer pricing Officer but same are ignored and held that the assessee did not receive the services and further the services are duplicating and shareholder activity. It also challenges that the aggregation approach of transaction adopted by the assessee benchmarking the receipt of intragroup services with other services applying the transactional net margin method could not have been rejected and the learned TPO could not have accepted that the CUP method is the most appropriate method.

43. The learned authorised representative submitted that that the learned transfer pricing officer has followed the dual approach of benchmarking the subject intragroup services transaction by considering the same is operating under the trading segment and benchmark using transaction by transaction approach resulting in double adjustment which is grossly prejudicial to the interest of the assessee. The learned authorised representative relied upon the

decision of the coordinate bench in case of ACIT versus Yokogawa India Ltd (ITA (TP) A number 2088/Bangalore/2017) wherein it was held that when the international transactions are analysed under the transactional net margin method then the same should not be further tested separately. The learned authorised representative further submitted that with respect to the details of services received by the assessee the assessee has submitted the intercompany agreement for receipt of IT services where the complete description of the services is mentioned. He further referred that the price allocation and method of assessee is also provided along with an appropriate allocation key and further the invoices are issued monthly and payable at 45 days from the receipt of the invoice. He further referred to the fact that that the requirement of intragroup services cannot be determined by the revenue authorities and therefore even the benefit test cannot be applied. The learned authorised representative further stated that the adoption of the comparable uncontrolled price method by the learned transfer pricing officer is also devoid of any merit.

44. However, the learned authorised representative stated that assessee has produced evidence before the learned transfer pricing Officer, but they have not been appreciated in the proper manner. He therefore also stated that if the issues are restored back to the file of the learned transfer pricing officer, the assessee would be able to substantiate the various parameters for benchmarking of the above international transaction.

45. The learned CIT DR vehemently supported the order of the learned lower authorities and submitted that without need no services are accepted, without rendition of the services, services could have been made, when there is no benefit why an assessee should pay and when the services are duplicative or shareholder services, though cost of the services must be borne by the AE and not the assessee. She submits that unless this test is satisfied, the arm's-length price of an international transaction of intragroup services could not have been determined at any value other than rupees nil. It was further submitted that if the assessee does not submit the allocation key, the allocation statement, and the share of the assessee with respect to the various licenses etc., the arm's-length price of the transaction could not be determined.

46. We have carefully considered the rival contention and perused the orders of the learned lower authorities. In the transfer pricing study report, assessee has stated that it is interlinked transaction with IT services and therefore it was not separately benchmarked. On looking at the transfer pricing report we do not find any reasoning given by the assessee that these transactions are not a separate and independent transaction but interlinked and closely linked to transaction. In fact, the services specified in the TPSR clearly shows that these services are not interlinked or linked and therefore can be benchmarked together with the other services. The nature of services has already been extracted earlier. Therefore, same should be required to be benchmarked separately.

47. With respect to the explanation given by the assessee placed at page number 1487 about the pricing allocation methodology of cost incurred by the associated enterprises, on looking at the same page it is merely an IT service and licensing agreement. In the agreement also there is no reference of any other services and therefore also it is clear-cut that the services cannot be closely related or closely linked with any other services. It is an independent agreement between Decathlon SA and assessee. Thus, merely producing an agreement does not give the pricing and allocation methodology of cost incurred by the associated enterprises. No evidence is placed with respect to the benefit derived by the assessee from the above intragroup services. With respect to the rendition of the services the assessee has referred to page number 1484 of the paper book which is also the agreement only. Against this the transfer pricing officer has given a categorical finding that a show cause notice dated 27/6/2023 was issued to the assessee but taxpayer did not provide any submission regarding payment of the above services mentioned in paragraph number 19.4 of the order of the learned TPO. The assessee merely described what are the services. It also did not give any evidence with respect to the actual cost incurred by the associated enterprise and cost allocation to the assessee along with the allocation key. The learned DRP has also dealt with the whole issue in paragraph number 2 point 4 while discussing the ground of objection number 4 with relation to intragroup charges and held that in absence of

any specific information provided by the assessee, the learned transfer pricing officer is correct in determining the arm's-length price of the services at rupees Nil.

48. Naturally in case of an intragroup services nobody would pay to a third-party if those services are not required, if required were not rendered, even if required and rendered but did not give any commercial or economic benefit and only if those services are performed for the assessee.

49. Arm's-length price of an intragroup services could be determined considering whether an independent enterprise in comparable circumstances would have been willing to pay for the activity if performed for it by an independent enterprise or would have performed the activity in-house for itself. If the activity is not one for which the independent enterprise would have been willing to pay or perform for itself, the activity ordinarily cannot be considered as an intra-group service under the arm's length principle. Therefore, the process to be adopted by the assessee or by the learned transfer pricing officer is on the principle of need, rendition, benefit economic or commercial. Further, if the services are performed by somebody else for their own benefit, naturally the assessee would not have paid it to an independent party.

50. As it is a case of non-furnishing of the information by the assessee before the learned that lower authorities, we restore the issue of determination of arm's-length price of intragroup services before the learned transfer pricing officer with a direction to the assessee

to substantiate that the services were required, they were rendered, it resulted into some commercial or economic benefit to the assessee and those services are not to be performed as a shareholder services or duplicative services by the service provider. The assessee is also directed to produce the cost allocation statement along with the appropriate allocation key and the share of the assessee. The learned transfer pricing officer may examine the same and if it is found to be a license fees paid for various software or platforms, and if the allocation key with respect to the number of users is found to be appropriate, determine the arm's-length price of the international transaction of intragroup services in accordance with the law after granting assessee an opportunity of hearing. We once again make it clear that provision of the data and information is the sole responsibility of the assessee. Accordingly ground number 12 – 20 are restored back to the file of the learned TPO with above direction.

51. Ground numbers 21 – 24 is with respect to the adjustment on account of interest on delayed receivable of Rs. 1,604,745. The claim of the assessee that these are interlinked transaction and therefore could not be benchmarked separately and further the benefit of circular dated 1/4/2020 issued by the reserve bank of India providing a collection of nine months which is extended to 15 months due to Covid 19 pandemic should be granted to the assessee and further the rate adopted by the learned transfer pricing officer of LIBOR at the rate of 2.317% +450 basis points is without

providing any rational. It was further contended before us that the normal credit considered by the learned TPO is merely 30 days and in fact there is no evidence with respect to the same.

52. The learned departmental representative vehemently stated that intragroup services agreement provides of 45 days of credit and therefore 30 days of credit adopted by the learned TPO is correct.

53. We have carefully considered the rival contention and perused the orders of the learned lower authorities. The transaction of the overdue receivable from associated enterprises is neither an interlinked transaction nor closely linked with the transaction of the provision of services etc. Even the transfer pricing document also does not give any reason for the same. In view of this this is a separate international transaction which needs to be benchmarked separately. With respect to the argument of the learned authorised representative that the circular of the reserve bank of India dated 1/4/2020 should be made applicable wherein due to Covid 19 the time limit for recovery of the dues have been extended, we find that the impugned assessment year before us is 2020 – 21 and therefore the above circular does not apply even otherwise for the impugned assessment year. With respect to the claim of the assessee that the learned transfer pricing officer has taken an allowance of 30 days as per prevalent industry standard, considering it is to be the credit period allowed based on the prevalent industry standard. However, the learned TPO has not given any evidence or source where from the same has been adopted. However, we find that when the

assessee objected before the learned transfer pricing officer as per paragraph number 5 at page number 1431 the assessee did not object to the period of 30 days given by the learned transfer pricing officer as appropriate rate credit period. The assessee's only objection was that it cannot be a separate international transaction and further even if it is to be considered as an international transaction the use of LIBOR to be made as the invoices are made in foreign currency. In view of this ground number 21 – 24 of the appeal are dismissed.

54. Ground numbers 25 – 28 of the appeal is with respect to disallowance of Rs. 77,500,000 of store closure expenses. The fact shows that the assessee has debited the above sum to the profit and loss account. The assessee submitted that it is engaged in the business of trading of sports accessories, sports apparel, sports goods, and sports equipment and has many stores across the country. Due to certain commercial consideration the assessee closed non-performing stores in a few locations. Pertaining to the closure of stores are salary, compensation, forfeiture of rental deposits, professional fees etc. and all these expenses are clubbed together and debited to the store closure expenses. While assessment proceedings, the assessee submitted sample evidence in relation to such expenses incurred during the year as the details was voluminous. It was the contention of the assessee that these expenses are normal, routine expenditure in the kind of business of

the assessee. Those expenses are revenue in nature and allowable under section 37 (1) of the act.

55. The learned assessing officer noted that assessee has provided a comprehensive explanation regarding the classification and deductibility of these expenditure allowable under section 37 (1) of the act however those have not been substantiated the claim with supporting documentary evidence. The learned assessing officer noted at page number 9 of the draft order that as the assessee has taken a lot of time in providing this information, though the claim on the principle and explanation is allowable, in absence of documentary evidence the disallowance was made.

56. The learned dispute resolution panel noted in paragraph number 2.5 point 2 that assessee has submitted the invoices of professional fees on the simple basis in relation to the store foreclosure expenses. The panel was of the view that assessee has claimed multiple items under the head closure expenses like professional fees paid towards settlement of disputes, project management charges, and other provisions. However, details of all these expenses were not provided before the AO in completeness. Before the learned dispute resolution panel also the assessee has produced sample invoices. The panel stated that in case of professional services expenses it is not clear that what kind of dispute was there. According to it the onus lies on the taxpayer to provide complete details along with break up to support that the expenses claimed by the taxpayer under the head closure expenses are revenue

expenditure and pertains to the business of the taxpayer. Thus, the action of the AO was upheld.

57. The learned authorised representative submitted that the nature of the business of the assessee is across the country and there are several stores. Due to business consideration such stores are closed if those are not efficient enough. The expenses incurred by the assessee are small expenditure which are clubbed together for the purpose of control under the head closure expenditure. Before the assessing officer and the learned dispute resolution panel assessee has provided the details of all such major expenditure. This fact is reported in paragraph number 2.5.2 of the direction of the learned dispute resolution panel also. There is no doubt expressed by any of the lower authorities that the expenditure is not allowable under section 37 (1) of the act. He further submitted that the details are voluminous if each voucher of such total of the expenditure is required and therefore for the convenience of the AO complete details along with the vouchers were not produced. But that does not result into any disallowance.

58. The learned CIT DR vehemently supported the orders of the learned that lower authorities. It was submitted that assessee has failed to produce the complete details before the learned that lower authorities and therefore it resulted into disallowance.

59. We have carefully considered the rival contention and perused the orders of the learned lower authorities. Assessee, trading in sports accessories and has many stores across the country. During the year

the assessee has closed some of its stores at some of the location. And therefore, it has incurred the expenditure of Rs. 7.75 crores. These expenditures are dismantling, loading, and unloading charges, packaging charges, transportation charges, signage removing charges, legal charges etc. The assessee has provided sample invoices of these expenditure placed at page number 1816 – 1846. The invoices those submitted on sample basis but are giving picture that at what location the stores are closed what kind of expenses the assessee has incurred. The letter dated 28 August 2023 submitted by the assessee clearly gives nature of expenditure, and the purpose of such expenditure. In the draft assessment order passed by the learned assessing officer on 1 September 2023 stated that assessee has not submitted the complete details but completely agree that such expenditure is not disallowable. The only reason of the disallowance is non-submission of the complete details before the learned AO. Before the learned dispute resolution panel assessee further submitted the evidence of such expenditure but the learned DRP stated that unless complete details of these expenses are furnished, submission of the sample invoices etc. will not serve the purpose and the disallowance was confirmed. We find that when the nature of the expenditure based on the examination of the simple details and the Ledger accounts clearly shows that the expenses are incurred wholly and exclusively for the purposes of the business during the business, no disallowance should have been made. The assessee himself states that it is a voluminous detail and

looking at the operation and the nature of the expenditure, assessee submitted sample details before the learned AO and further additional details before the learned dispute resolution panel. None of the authorities asked the assessee to produce the complete details. None of the authorities have held that any of the expenditure which is incurred by the assessee for which details are produced before them are not wholly and exclusively incurred by the assessee for the purposes of the business. Therefore, we are of the view that when the assessee has demonstrated that nature of the expenditure incurred by the assessee supported by the evidence clearly shows that those are incurred wholly and exclusively for the purposes of the business, no disallowance could have been made. Accordingly, we direct the learned assessing officer to delete the disallowance of expenditure of Rs. 77,500,000 on account of store closure incurred by the assessee. Accordingly ground number 25 – 28 of the appeal are allowed.

60. As per ground number 29 the assessee states that assessee has not been allowed the set off the available brought forward business losses and unabsorbed depreciation to the extent of Rs. 194,347,027 shown by the assessee in income tax return and the tax audit report. On hearing the parties, we direct the learned assessing officer to allow the set off brought forward business losses and unabsorbed depreciation of the above sum is found in accordance

with the law. Accordingly ground number 29 of the appeal is allowed.

61. Ground numbers 1 – 3 are general in nature for which no arguments were advanced, ground number 30 is with respect to the levy of interest under section 234B which is consequential in nature and ground numbers 31 – 32 is with respect to initiation of penalty proceedings under section 270A of the act are premature, therefore, dismissed.

62. In the result appeal of the assessee is partly allowed as indicated above. Consequently, the stay petition of the assessee is also dismissed as infructuous.

Pronounced in the open court on this 26th day of December 2024.

Sd/-	Sd/-
(SOUNDARARAJAN K.) JUDICIAL MEMBER	(PRASHANT MAHARISHI) VICE PRESIDENT

Bengaluru,
Dated, the 26th December 2024.

/*Desai S Murthy /*

Copy to:
1. Appellant 2. Respondent 3. Pr. CIT 4. CIT(A)
5. DR, ITAT, Bengaluru.

By order

Assistant Registrar
ITAT, Bengaluru.