

IN THE INCOME TAX APPELLATE TRIBUNAL
“J” BENCH, MUMBAI
BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)
AND
SHRI RENU JAUHRI (ACCOUNTANT MEMBER)

I.T.A. No. 4888/Mum/2024
Assessment Year: 2020-21

UPS Express Private Limited 6-A, Shyam off JVLR, Majas Village, Jogeshwari (East), Mumbai- 400060 PAN: AAACU4322N	Vs.	Deputy/Assistant Commissioner of Income Tax-3(1)(1), Mumbai DCIT, Circle-3(1)(1), Aaykar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Appellant by	Shri. Nitesh Joshi
Respondent by	Shri. Pankaj Kumar, CIT D.R.

Date of Hearing	19.02.2025
Date of Pronouncement	27.02.2025

ORDER

Per: Smt. Beena Pillai, J.M.:

The Present appeal arises out of final assessment order dated 29/07/2024 passed by Assessment Unit, Income Tax Department, for assessment year 2020-21 on following grounds of appeal:

“The grounds stated here under are independent of, and without prejudice to one another

1. Ground No. 1-General Ground

On the facts and circumstances of the case and in law, the learned Assessment Unit, Income Tax Department (AU) Transfer Pricing Officer (TPO) erred, and the Hon'ble Dispute Resolution Panel (DRP) further erred in upholding the approach of the learned TPO in making an addition of INR 202,061,842 to the Appellant's total income based on the provisions of Chapter X of the Income-tax Act, 1961 ('the Act').

2. Ground No. 2-Final Assessment Order is had in law

On the facts and circumstances of the case and in law, the learned AU erred in passing the assessment order dated 29 July 2024 passed under Section 143(3) r.w Section 144C(13) read with Section 144B of the Act beyond the time limit as specified under Section 153 of the Act. The Appellant submits that the assessment order being barred by limitation is without jurisdiction and void ab initio and hence, the same is liable to be quashed

3. Ground No. 3-Transfer Pricing adjustment in respect of technical know-how fees of INR 190,330,332 paid by Appellant to its Associated Enterprise ("AE")

3.1 On the facts and circumstances of the case and in law, the learned TPO/AU erred in holding, and the Hon'ble DRP further erred in directing, that the arm's length price in respect of technical know-how fees of INR 190,330,332 aid by the Appellant to its AE was 'NIL

3.2 On the facts and circumstances of the case and in law, the learned TPO/AU erred and the Hon'ble DRP further erred in not accepting the computation of arm's length price carried out by the Appellant which was in accordance with the Transactional Net Margin Method

("TNMM") prescribed under Section 92C(1) of the Act read with Rule 10B(1)(c) of Income-tax Rules, 1962 ("the Rules").

3.3 On the facts and circumstances of the case and in law, the learned TPO/AU erred and the Hon'ble DRP further erred by following Other Method prescribed under Section 92C(1) of the Act for benchmarking the said international transaction.

3.4 Without prejudice, on the facts and circumstances of the case and in the law, the learned TPO/AU erred and the Hon'ble DRP further erred in considering hypothetical Other Method as against TNMM adopted by the Appellant for determination of arm's length price wherein the learned TPO/AU and Hon'ble DRP held that the third party will not pay anything for these services.

3.5 On the facts and circumstances of the case and in law, the learned TPO / AU erred and the Hon'ble DRP further erred in making certain observations and findings which are based on incorrect interpretation/understanding and without appreciating the intricacies of the facts of the case

3.6 On the facts and in the circumstances of the case and in law, the learned TPO / AU and the Hon'ble DRP erred in disallowing the payment of technical know-how fees, by the Appellant, and questioning the need of availing such services from its AE, thereby further questioning the commercial expediency of the services availed

The Appellant prays that the said international transaction ought to be considered at arm's length

4. Ground No. 4-Alternate disallowance in respect of technical know-how fees under Section 37 of the Act

4.1 On the facts and circumstances of the case and in law, the Hon'ble DRP erred in alternatively disallowing the payment in respect of

technical know-how fees paid by the Appellant to its AE under Section 37 of the Act.

4.2 On the facts and circumstances of the case and in law, the Hon'ble DRP erred in exercising its powers and Fisallowing the aforesaid transaction for an issue that has not been the subject matter of the draft assessment order.

4.3 On the facts and circumstances of the case and in law, the Hon'ble DRP erred in making certain observations and findings that are based on incorrect interpretation/understanding and without appreciating the intricacies of the facts of the case.

5. Ground No. 5-Incorrect imputation of mark-up of 4.11 percent (INR 11,731,510) on recovery of expenses by the Appellant from its AE

On the facts and circumstances of the case and in law, the learned TPO/AU erred in holding, and the Hon'ble DRP further erred in directing, that the Appellant provides services to its AE throughout the year and thereby levying a mark-up on recovery of expenses.

The Appellant prays that the said international transaction ought to be considered at arm's length.

6. Ground No. 6-Short grant of Tax Deducted at Source ('TDS') credit

On the facts and in the circumstances of the case, the learned AU has erred in granting short TDS credit of INR (473,685. The TDS credit granted in the Computation Sheet dated 29 July 2024 received along with the order under Section 143(3) r.w Section 144C(13) read with Section 144B of the Act was also incorrect.

The Appellant prays that the learned AU be directed to grant correct TDS credit.

7. Ground No. 7-Levy of interest under Section 234A and 234B of the Act

The AU, based on the facts of the case and in law, has erred in levying interest under Section 234A and Section 234B of the Act

8. Ground No. 8-Initiation of penalty proceedings

The AU, based on the facts of the case and in law, has erred in initiating penalty proceedings under Section 270A of the Act

The Appellant craves leave to add, alter, amend and/or withdraw any of the above grounds of appeal and to submit such statements, documents, and papers as may be considered necessary either at or before the hearing of this appeal as per law”

Brief facts of the case are as under:

2. The assessee either company engaged in the business of transport and logistics services. It filed its return of income for year under consideration on 04/02/2021 declaring total income of Rs. 57,71,46,470/-. The case was selected for scrutiny through CASS to verify the various deduction in schedule BP, expenditure of personal nature, refund claim, ICDS compliance and adjustment, foreign outward remittance, international transactions.

3. Notice under section 143(2) along with notice under section 142 (1) of the act was issued calling upon assessee to furnish various details as per the show cause notice issued on 28/08/2023. In response to statutory notices, assessee wide letter dated 29/11/2021 and 29/08/2023 submitted its explanation and details along with supporting documentary evidence in response to the information sought.

4. The Ld.AO noted that assessee is a company engaged in the business of logistics, supply chain management and commerce

by combining flow of goods, information and funds. As there was international transactions between the assessee and its AE, the Ld.AO made reference to the Transfer Pricing Officer (hereinafter referred to as Ld.TPO) for verification of arm's length price of international transactions entered between the assessee and its AE.

5. On receipt of the reference, the Ld.TPO, called upon assessee to furnish the economic details of the transactions between the assessee and its AE in Form 3 CEB. From the details furnished by the assessee, the learning TPO observed that the primary business of assessee is to provide the two-door, time definite guaranteed delivery services. It was also that each package passes through the UPS network which is designed and engineered to provide speed, reliability and efficiency. The learning TPO noted that assessee had entered into a transportation agreement with UPS worldwide forwarding INC dated 26/03/2013. It was brought to the notice of the learning TPO that assessee commenced its operations in connection with outbound business in January 2001 and inbound business in April 2001. It was noted that UPS worldwide forwarding INC renders international transportation services outside India for international shipments. Following were the international transactions entered into by assessee with its AE for the year under consideration:

Sr. No.	Nature of International Transaction	Amount (in INR)
1	Purchase of routers, etc. from UPS Worldwide	5,277,030

	<i>Forwarding</i>	
2	<i>Payment of Technical assistance fees to UPSAI</i>	190,330,332
3	<i>Receipt of Service Revenue from UPSCO</i>	173,335
4	<i>Payment of forwarding fees to UPS WWF</i>	2,577,400,070
5	<i>Receipt of delivery compensation from UPS WWF in respect of import prepaid consignments</i>	374,711,501
6	<i>Receipt of pick up compensation from UPS WWF in respect of export collect consignments</i>	660,654,460
7	<i>Remittance of Insurance premium collected from customers on behalf of</i>	2,574,334
8	<i>Reimbursement of expenses to UPS WWF</i>	39,607,928
9	<i>Reimbursement of secondment charges and other charges to UPSCO</i>	3,412,523
10	<i>Recovery of expenses from UPS WWF</i>	285,438,222
11	<i>Recovery of expenses from UPSCO</i>	143,296
12	<i>Payment of withholding taxes on behalf of UPS WWF</i>	20,707,391

6. The Ld.TPO in the transfer pricing study report filed by the assessee noted that, assessee aggregated all the transactions except remittance of insurance premium, recovery of expenses/duties and taxes and payment of withholding taxes on behalf of its AE. It was noted that assessee used transaction net margin method (hereinafter referred to as TNMM) as the most appropriate method and operating profit to operating income (hereinafter referred to as OP/OC) as profit level indicator

(hereinafter referred to as PLI). The assessee computed its margin at 10.92%. The Ld.TPO noted that assessee considered itself to be the tested party and on based on 5 companies identified as comparable, whose margin was 4.11%, held the transaction with its AE to be at arms length.

7. The Ld.TPO noted that assessee paid ₹19,03,30,332/- to its AE on account of technical knowhow during the year under consideration. It was noted that the technical know-how fees was as per the agreement based on the services provided by the AE. The learning TPO found that assessee is required to pay a technical know-how fees at the rate equal to 2% of the gross export revenue 50% of the net profit which ever is less. The learning TPO was of the opinion that assessee must justify the need benefit test with suitable evidences and accordingly a show cause notice was issued on 19/01/2023 calling upon assessee to explain as to why the method adopted by assessee and the ale predetermined in respect of the said transaction should not be rejected and the same should not be read into mind of fresh for the purpose of making adjustments.

8. Assessee wide its reply dated 24/01/2023 submitted that the technology license agreement provided assessee with exclusive right to use the technical information in India. The assessee also submitted the computation of technical know-how fees paid during the year.

<i>Particulars</i>		<i>Amount (in INR)</i>
<i>Gross Export Revenue - INR 9,516,516,618</i>		
<i>2 percent of Gross Export Revenue</i>	<i>(A)</i>	<i>190,330,332</i>

<i>Net profit before tax and before technical know-how fees: INR 761,817,548</i>		
<i>50% of Net profit before tax</i>	<i>(B)</i>	<i>380,908,774</i>
<i>Payment of technical know-how fees - A or B whichever is less</i>		<i>190,330,332</i>

9. With respect to the need test the assessee submitted that assessee has to compete with time and hence use of technology provided by the AE is crucial to efficiently manage the affairs and also helps to maintain competitiveness. It was submitted that, all group of companies are provided with the information technology and infrastructure for internet presence to enable visibility to its customers on movement of goods and provides delivery confirmation for shipments. It was submitted that with the help of technology provided by the AE the assessee is able to track the shipment as well as various other activities that are required to be performed such as recording shipment level details and revenue in various billing and trade receivables modules and eliminates substantial manual efforts. It was submitted that the technology provided by the 80's inextricably linked and is wholly necessary for efficient management of the business of assessee.

10. In respect of the benefit test assessee submitted illustrative list of instances of the technology, information received from the ATL along with the user guides and user manuals. It was also submitted that the services provided to the assessee are intangible in nature's and are used in the day-to-day business

affairs of the assessee. The assessee submitted that the technology received from the ease relevant and are used for real-time tracking of shipment to manage scheduled delivery, account creation etc. the assessee also submitted that the technical updates helps assessee in developing and maintaining customer network, safety and security methods, operation control, customer service procedures, training of personnel, billing and accounting.

The assessee also brought to the notice of the Ld.TPO that on identical facts *Hon'ble Mumbai Tribunal* in assessee's own case for assessment years 2013-14, 2014-15 and 2016-17 deleted the adjustment in respect of technical know-how fees. However, the Ld.TPO after examining the details furnished by the assessee held as under:

- (a) There is no evidence of received of any training by the employees of the assessee during the year under consideration
- (b) There is no evidence furnished regarding specific programs, technical support, assistance or information technology and what were the main characteristics and attributes to them except stating certain aspects of the functions of software/hardware/devices used by assessee such as the hub,DIAD etc.
- (c) It was observed that technological Vintag of the software and hardware provided for in general terms and therefore it was not acceptable that the software/program used by the assessee was a current one and which has been continually developed or

evolved from earlier versions.

- (d) It was observed that there were several alternators available which were cost-effective for capturing of user data on real-time basis, minute by minute tracking and therefore large payment made by the SS was not justified;
- (e) It was observed that the assessee could not furnish evidence of the receipt as well as the benefit of the technology under the agreement and how the parties to the agreement have implemented various clauses pertaining to training of managerial, supervisory and technical personnel, research and analysis of customer needs, developing and maintaining customer outside the territory, customer service procedures, sorting equipment layout and specifications, safety and security methods etc.,
- (f) The observed that the courier service conducted by the assessee does not need special technical know-how from the EE and the technical know-how fees paid is to shift the income of assessee's abroad thereby causing these erosion to India. There are a also held that such high payment towards technical know-how fees is therefore not required to made to the AE as such payment will never be made to unrelated party in an uncontrolled circumstances.
- (g) The Ld.TPO noted that the technology used by the assessee was roughly 7-8 years old and the training program was developed in-house for which such hefty

payments is not required to be paid and also need not appear to be on ALP basis.

- (h) It was also held that the fee for technical know-how's is independent of any benefit that assessee may have received and is dependent on pure commercial profits made by the assessee. It was thus held that the technical know-how fees is actually the profit distribution to the AE.

11. The Ld.TPO has held that assessee has failed to establish the need benefit test. He thus adopted "other method" under rule 10AB and it determined the arm's-length price to be at nail and proposed adjustment of Rs. 19,03,30,332/-.

12. The Ld.TPO observed that assessee made payments to 3rd parties on behalf of its associated enterprise amounting to Rs.28,54,38,222 which were in the nature of airline payments, break bulk, export facilitation et cetera it was observed that associate had not benchmarked the imbued transaction separately as it was a recovery of expenses from the AE on cost to cost basis.

13. Assessee was thus show caused vide notice dated 19/01/2023, as to why, markup should not be charged for such services. In response to the same, the assessee filed its reply by submitting copy of invoices where the above sum was recovered. The Ld.TPO rejected the contentions of the assessee by holding that, there is a service element involved towards incurring of these expenses and by not charging any markup, assessee flouted transfer pricing rules.

14. The learner TPO thus based on earlier decisions held that as a margin of comparable companies was 4.11%, the markup on the expenditure requires an adjustment at 4.11%. He thus computed the proposed adjustment at Rs.1,17,31,510/-

15. Ld.TPO thus proposed a total adjustment of ₹20,20,61,842/- as under:

Adjustments	Amount Rs.
1. Payment of technical know-how fees	19,03,30,332
2. Recovery of Expenses	1,17,31,510
Total	20,20,61,842

16. All received of transfer pricing order, the learner and a open the draft assessment order on 22/09/2023 by proposing the said adjustment as per the order under 92CA(3).

17. On receipt of the draft assessment order, assessee preferred objections before the DRP.

18. The DRP vide its directions dated 10/06/2024 upheld the adjustments proposed, by placing reliance on its erstwhile directions for assessment year 2011-12, 2012-13 and 2013-14 on identical issues. It was also observed that the material facts being identical following a consistent view the findings of the DRP on the issues in the earlier years are followed.

19. In addition to the above the DRP, raised alternative additional issue by disallowing the sum paid to the AE in the form of technology license assistance fee as ineligible under

section 37 of the act. The DRP proposed to alternatively disallowing the claim under section 37 by observing that, no evidence were furnished in respect of details or description of actual services or its nature or benefit/valuation, and that there is no technology usage or transfer or evidence of any new infusion of technology/patented inputs these expenses are not incurred for the purposes of the business and assessee failed to establish the commercial expediency.

20. On receipt of the DRP direction, the Ld.AO passed the impugned order by making the proposed additions in the hands of the assessee. However it is submitted that no addition is been made by the Ld.AO under section 37 of the act, since the addition was confirmed under the transfer pricing provisions.

Aggrieved by the order of the Ld.AO, assessee is on appeal before the *Tribunal*.

At the outset the Ld.AR submitted that **Ground number 1** is general in nature and therefore do not require any education.

Ground number 3 raised by the assessee is on the addition of technical know-how fees paid to the AE.

21. The Ld.AR submitted that identical issue was considered and decided by coordinate bench of this *Tribunal* in assessee's own case for assessment years 2010-11, 2013-14, 2014-15's, 2016-17, 2017-18 and 2018-19. The Ld.AR has filed copies of the relevant orders of this *Tribunal* in the paper book. The Ld.AR submitted that order of this *Tribunal* for assessment year 2018-19 in ITA No.2439/MU/2023 vide order dated 16/10/2023 is a detailed order that deals with the entire evidences that was filed by the assessee to establish the need benefit test for payment of

technical know-how fees to the AE and also the reimbursement of expenses at cost to cost basis. Referring to pages 87-129 of the paper book the Ld.AR submitted that the order for assessment year 18-19 is a detailed order on the issues under consideration on identical facts.

22. On the contrary the Ld.DR supported the orders passed by the authorities below. It was also admitted that the material facts and circumstances in the instant case are identical to the facts and circumstances of the assessee for earlier assessment years referred to by the Ld.AR in the paper book.

23. We have produced the submissions advanced by both sides in the light of the records placed before us.

24. In the present facts of the case the assessee for the year under consideration submitted adequate materials/evidences to show that services were required for the business of the assessee and those services were rendered by the AE coupled the benefit received by the assist in the financial terms as well as in the operational terms. The services provided by the support and by the agreement wherein identical obligations and rights of the parties are crystallised along with the remuneration structure.

25. The Ld.AR drew our attention to various pages in order to substantiate the need benefit test stands satisfied and that all the evidences were furnished before the authorities below. The objections filed before the DRP and page 119, 1 to 2, 131, 132, 136, 139 reveals that there is evidences were furnished on relevant dates before the Ld.TPO also. The technologies are regularly updated to provide more real-time tracking information, expandable memory etc.

26. It is an admitted fact that, the assessee is a part of the MNE, that is providing services worldwide to remain in sync needs identical platform to perform its business activity. Undoubtedly this is the only activity carried on by the assessee and therefore the services availed by the associate is inextricably linked with the business of the assessee. Further for the year under consideration it was also noted that had seen not received this technical know-how from the AE, it would not have been able to efficiently carry out its business.

27. As regards the quantification of the royalty for the use of technical know-how, it is noted that had assess not toward any profit even after the receipt of services from the age, no amount was charged by the AE. The table reproduced at page 139 of the objections filed before the DRP indicates that associate has been able to retain a consistent high margin. For the year under consideration assessee had earned a net profit margin of 10.92% as compared to 4.11% of the comparable companies which is not being considered by the authorities below.

28. It is not doubted that TDS is deducted by the associate on payments made towards the technical know-how fees as royalty. It is also noted that the Ld.DRP has not agreed with the submissions of the assessee and the plethora of evidence filed in support of the need benefit test only because revenue has preferred appeal on this issue before *Hon'ble High Court* and the issue needs to be kept alive.

29. It is an admitted possession of the factual matters being identical and similar to the earlier assessment years where this *Tribunal* analysed identical issues based on the scene agreement.

One perusal of order of this Tribunal for assessment in 2018-19(supra), it is noted that, identical issues has been considered by observing as under:

12. *We have carefully considered the rival contention and perused the orders of the lower authorities.*
13. *Facts show that assessee is part of UPS group, which is the largest package delivery company in the world. It is into the business of providing door-to-door, time definite guaranteed delivery services across more than 220 countries and territories worldwide in shipping delivery more than 20 million packages a day more than 9.1 million customers are served. Each packages passes through the UPS network, which is designed and engineered to provide speed, reliability and efficiency. The assessee is rendering transportation services within India for international shipments while UPS worldwide renders international transportation service outside India for international shipments.*
14. *Under the terms of transportation agreement dated 26th of March 2013 between assessee and UPS worldwide forwarding incorporation wherein it provides services with respect to the export of the guarantee delivery by 8AM –8:30AM to major cities in the United States, Canada and major Asian cities. With respect to import, it guarantees delivery by 9 AM to selected areas in India. This is UPS worldwide express plus. With respect to UPS world express, for export cargo it guarantees delivery by 10:30 AM most parts of the US, Canada Europe and Asia and selected areas in America with respect to import it guarantees delivery by 12 noon to selected areas in India. UPS worldwide express guarantees delivery by end of the day over 220 countries and territories worldwide. For UPS worldwide expedited it delivers within three business days within a share and from a sure to major business centers in Europe or North America and South America. It handles letters, documents and non-document packages in excess of five KG. Thus, it is apparent that assessee is providing package delivery services door-to-door time definite manner. It is submitted that assessee is also engaged in providing express delivery services for the international delivery of documents/parcels and*

packages having 3 hubs and 19 collection centers across the country.

15. *It has entered into a technology license agreement on 30 October 2000 with United Parcel Service of America incorporation wherein that company has granted assessee in a) to use the technical information in India. According to that agreement it was stated that the licensor possesses valuable advanced management technique and technology and know-how relating to international integrated transportation services including the technical information and other materials such as business travel up and techniques of marketing and business development analysis systems, proactive notification systems, customer service and telephone centre systems, security and international shipment resolution group such as full visibility tracking system, automated delivery information system, total track system, package claim report system, incident report system. With respect to the industrial engineering operation it provided FDC/RS and ITS key entry systems, IAS PS and OPSYs operation system, DIAD, HHDC, with respect to the finance and accounting services such as general ledger accounts payable enterprise billing system etc. therefore such services as per the agreement were to be provided with application programs, data communication, technical support, user training and other information technology et cetera further the licensor will also ensure that the technical information will not provided to any other person or company so as to compete with the business of the assessee. As per article number 3 of the agreement in addition to the technical information licensor agrees during the term of the agreement to provide licensee technical assistance, skill seller expert eyes to enable licensee to apply licensor's advanced management techniques and technology and know-how in relation to the licensed activities in the territory. It shall also provide to the assessee such technical assistance, skill and other expert eyes within and outside the territory, which are specified therein. Which are namely:-*
- a. *outside the territory, assistance relating to work methods and procedures, terminal layout plans, sorting equipment layout and specifications, safety and security methods, medical standards and procedures, work measurement and*

operational is control, customer service procedures, personnel forms and procedures, automatic maintenance systems and procedures, financing and accounting systems

- b. outside the territory, assistance relating to developing and maintaining a customer network in the territory*
- c. within the territory, assistance relating to maintenance by license of its buildings, facilities, machinery and equipment*
- d. the outside the territory, assistance relating to forecasting and scheduling by license of sale and production and related calculation of cost*
- e. research and analysis of customer needs in order to ensure appropriate application of technology which will respond to these needs*
- f. training of managerial, supervisory and technical personnel and*
- g. Assistance with planning and implementation by licensee of cost saving projects.*

16.As per the agreement there are certain information which licensor shall not provided to the licensee. Further according to article 12 of the agreement there is a staggered fees to be payable by the assessee to the licensor. For the impugned assessment year according to Parramatta12.6 the technical assistant for shall be calculated at the rate of equal to 2 percentage of gross export revenue but shall not exceed 50% of the net profit before tax subject to the licensee meeting its business plan for the period covered. As per annexure, 2A details were provided of capital investment made by the UPS group and information technology over a period of years starting from year 2008 to 2017. With respect to each year there is an exhibit providing the details in support of the same. For year, 2017 capital investment in information technology segment was US\$ 560 million and in 2008, it was \$ 277 million. In annexure 2B the summary of I software licenses of UPS group over a period of years are provided with supporting documents. Gross carrying amount for year 2008 was US\$ 1775 million and for 2017, it is US\$ 3387 million.

17. *As it is an intra group services provided by the associated enterprises to the assessee is necessary for the assessee to establish before the transfer pricing officer as well as in its transfer pricing study report that assessee has requirement of the above technical services (need test), such services have been rendered by the associated enterprises as per the agreement (rendition test), by obtaining such services they assessee has been benefited in its business operations by utilizing those services (benefit test) and those services are not which assessee is already having available with it (duplicity test) and those are not the services which are required to be provided by the shareholder for safeguarding its one interest as a shareholder (shareholders activity test).*
18. *When questioned by the learned TPO assessee submitted a letter dated 9 July 2021 containing 918 pages with respect to the above aspect. By that letter, first assessee explained the nature of the business of the assessee and then what the technology fees agreement is along with the mode of Calculation of such fees. With respect to the need test, assessee submitted that express delivery companies actually compete with the time and hence use of information technology is crucial for companies in this industry to efficiently manage its business and maintain its competitiveness in the industry. As AE is a global leader in developing technology that helps its customers optimizing their shipping and logistic business processes to lower cost, improve service and increase efficiency, such use of latest technology and information is essential in providing reliable express services. The associated Enterprises provide the infrastructure for an Internet presence that extends to thousands of customers who have integrated UPS tools directly into their own websites. UPS has made significant investments in information technology over a period of years as well as is having unique software for handling the business which assessee carry on. Assessee is one of the affiliate company of the UPS groups it utilizes advanced management technique and technology know-how received from a in its day-to-day business activities. These techniques/and know-how enables assessee to render a comprehensive list of package delivery services to its customers in more convenient and efficient manner. For real-time tracking of*

shipments and providing delivery information systems for the statements to the customers, these capabilities are required.

19. With respect to the receipt and benefit test, assessee explained the use of technology received from its associated enterprises, assessee narrated by paragraph number one point and of that letter that how the services have been utilized by the assessee in each of the segment from pickup to delivery. Assessee submitted that:-

- a. The first step in the delivery of a package is the pickup operation. UEPL delivery drivers are assigned a specific route, making regularly scheduled stops along such route. Customers with urgent shipments can call UEPL for On-Call Air Pickup or schedule a pick-up online. Using communication technology tool, On- Call Air dispatchers locate the nearest package car and electronically dispatch it to the customer location for "just in time" pickup. The driver likely uses a hand-held computer device, called a Delivery Information Acquisition Device („DIAD“), to electronically capture information about each package picked up.*
- b. A “hub” is the central sort operation responsible for the unloading, sorting and re-loading of packages received from package centers or other sort locations. At hub, thousands of packages are sorted by postal zip code and consolidated. UPS Tundra is a web-based pick up/ delivery scanning software application used in the electronic scanning devices. This application is used by UEPL’s operation department at various pick-up and delivery Hubs. The details scanned through this application such as address, arrival/ departure date and time, exceptions, etc. automatically gets*

uploaded in the UPS systems. This also helps to create and/or edit a pick-up and delivery manifests.

- c. In respect of delivery, Technology helps ensure that the package has arrived at the correct address and provides customers with useful information. The driver uses the DIAD, to electronically capture information for each package delivered, including the time of delivery, and the signature of the person receiving the package. This information is transmitted via cellular telephone technology directly from the package car to UPS computers where it is available for customers to trace their packages or to verify proof of delivery.*
 - d. Other operational technology includes package measurement, sorting, and other accounting and controlling systems necessary to ensure source (financial, human, facilities, etc.) management at all levels. For example, UPS' Enterprise Billing System ("EBS") is the billing system employed by UPS accounting team. Further, bridging technology performs critical tasks of linking various systems, for example, the EBS to interface with accounting systems or DIADs to link to customer on-line tracking systems.*
- 20. Assessee submitted to support its contention of rendition and benefit tests amples of information technology, technical information, applications, etc. received from UPSAI along with sample user manuals, user guides, etc. evidencing the receipt of such technical know-how services.*
- 21. It was also submitted that aforesaid technical know-how rendered by the AE to UEPL are intangible in nature, it would be difficult to place on record concrete evidence which would irrefutably prove to the hilt rendering of such services.*

22. It was also submitted that UEPL utilizes these advanced management techniques and technology know-how in its day-to-day business activities. For instance, the IT systems/applications provided by UPSAI via the internet enable the external customers to perform online shipping, real time tracking of shipments, manage their schedule for deliveries, enable creation of accounts for billing shipping charges and services and many more other services (<https://www.ups.com/in/en/Home.page>). One can read at the bottom of the UPS website the following statement "Copyright©1994-2021 United Parcel Service of America, Inc. All rights reserved."

23. Assessee submits that the technologies have regularly been upgraded to provide more real-time tracking information, expandable memory, etc. it also technology during FY 2017-18:

- Global deployment of UPS Tundra update and Beta schedule with additional user-friendly functionality.
- Various other trainings were conducted during the year for up gradation of technology. For instance, training conducted in July 2017 in relation to Enhancement made in Tundra Pick- up and Delivery stem to incorporate new service and to fix defects in services provided to the customers. Training invite, presentations and manuals related to the trainings conducted for up gradation of technology by UPS was also produced.
- To improve the customer experience, UPS (including India) has introduced a contractual solution known as "Worldwide Express Freight Time of ay" that allows provides a guaranteed, end of day delivery service via UPS Small Package. The presentation shared by UPSAI giving an overview of the enterprise release and steps to navigate this new feature is attached as Annexure 7C.

- During FY 2017-18, various operational upgrades were undertaken to improve customer experience/services and increase revenue; such as introduction amid day commit time of delivery, the dimension length for acceptance of courier small packages were changed, additional category of shipments for dangerous cargoes/goods were made available to the shippers/customers, newer markets services available for various markets were introduced which allowed customers faster delivery. These operational changes were reflected in the international customer resource information system through updates and enterprises releases. Assessee also submitted various presentations discussing some of the system updates in regard thereto.

24. Therefore, assessee stated that these technical updates help assessee in developing and maintaining customer network, safety and security methods, operation control, customer services procedures and training of personal et cetera. Assessee also stated that various standard practice manuals, work methods, procedures and standard operating procedures with respect to packaging techniques, shorting equipment layout and specification etc. were also provided to the assessee because of this practice manuals it help assessee to increase its skill and provide quality services to various customers. Assessee also submitted the simple standard practice manuals. Thus in the end assessee submitted that it has received the benefit of running the business effectively using best in class information technology systems, able to attract business from various renowned companies across various industries and sectors, support in cost efficiencies through best practices and operational processes, ongoing technology enhancement has not only made the operations more connected but also more efficient with improved customer experience and an

ability to charge a premium price for certain services.

25. The benefit was also substantiated by the fact that assessee has been able to retain consistent high margin vis-à-vis this comparable companies. Assessee submitted a chart as under:-

Financial Year	NPM of UEPL	NPM of Comparable Companies as per TP study
FY2017-18	9.47%	3.34%
FY2016-17	10.6%	1.90%
FY2015-16	9.29%	2.14%
FY2014-15	9.80%	2.59%
FY2013-14	6.36%	2.48%
FY2012-13	3.57%	(-)2.29%

26. It was also the claim of the assessee that if such information technology and services were not provided by UPSAI, UEPL would have been required to use external third parties to procure similar services / IT systems, or alternatively to hire appropriately qualified personnel to undertake similar services or develop similar IT system, themselves. It was further stated that assessee has not paid any amount to its associated enterprises during the years wherein the assessee incurred the operating losses.

27. On carefully looking at the submission of the assessee, we find that assessee has submitted adequate evidences to show that the services were required for the business of the assessee and those services were rendered by the associated enterprises coupled with the benefit received by the assessee in financial terms as well as in the operational terms.

28. In the submission before the learned that lower authorities, the assessee substantiated that

29. For carrying out business of the assessee, and as assessee is part of MNE, which is providing such services worldwide, to remain in sync with that, the assessee would have needed the identical platform, structure.

30. The services provided by the associated enterprises are supported with the agreement wherein the identified obligations and rights of the parties are crystallized along with the remuneration structure.

31. *As the intra-group services availed by the assessee is intertwined in each of the activities of the assessee, apparently, the assessee has received those services.*
32. *Had these intra group services not availed by the assessee, the assessee has shown that it would not have received the financial benefit and operational benefit that it has received. Further, when the assessee was not earning profit, even after provision of these services, no amount was charged by the associated enterprises.*
33. *Now the question arises about the benchmarking of the transaction. The assessee has benchmarked using the transactional net margin method computed is not rocket margin at 9.47%, which is found to be, higher than the arithmetic mean of net profit margin of comparable companies. Against this, the learned transfer-pricing officer has adopted the other method and computed the arm's-length price of this international transaction at nil. Further, when the issue reached before the learned dispute resolution panel, the learned dispute resolution panel abdicated its duty to benchmark the international transaction and merely followed its own direction in earlier years.*
34. *As the intra-group services utilized by the assessee are supporting the core activities of the assessee, we do not find any infirmity in the assessee adopting transactional net margin method as the most appropriate method. In view of this, we do not find any reason to sustain the transfer pricing adjustment made by the lower authorities.*
35. *We have also perused the orders of the coordinate bench of earlier years wherein the transfer pricing adjustment has been deleted for the single reason that the learned transfer-pricing officer has failed to adopt any of the method as the most appropriate method. However, for this year the learned transfer- pricing officer has adopted the other method as the most appropriate method therefore all those decisions does not have any relevance for deciding the issue for this year.*
36. *Furthermore, intra group services or for that matter any international transaction is required to be benchmarked each year based on the facts and circumstances prevailing in that year considering the economic conditions. Therefore, the findings of the previous year will have only persuasive value, if any, while deciding the transfer pricing*

adjustment for any year.

37. Accordingly, ground number 1 of the appeal of the assessee is allowed.

30. Based on the above discussions and analysis of the issue and respectfully following the view taken by coordinate bench of the treble in assessee's own case for assessment in 2018-19, we do not have any reason to uphold the adjustment made by the Ld.AO.

Accordingly ground number 3 raised by the assessee stands allowed.

31. Ground No.4 relates to the alternative disallowance proposed by the DRP under section 37, regarding technical know-how fees paid by the assessee to its AE.

32. We therefore do not find any merit in the alternate disallowance directed by the DRP. However it is noted that the Ld.TPO/AO did not make any disallowance as proposed by the DRP under section 37 considering the fact that the said adjustment was made under the transfer pricing rules. Be that as it may, as the disallowance stands deleted under section 92CA(3), does not *ipso facto* mean that, the disallowance under section 37 would automatically get triggered.

33. We have already observed based on the evidences relied by the assessee in the preceding paragraphs that these expenses has to be incurred by the assessee for purposes of its business. The assessee filed sufficient evidence to establish need of the technical know-how in order to carry out its business activity smoothly. It is also recorded hereinabove that these are inextricably linked to the services rendered by the assessee and therefore are in the nature of business expenditure.

Accordingly ground number 4 raised by the assessee stands allowed.

34. Ground number 5 raised by the assessee is with regard to proposed markup of 4.11% on recovery of expenses from the AE.

35. The Ld.AR submitted that assessee made payments amounting to ₹28,54,38,222/- on behalf of its AE. It is submitted that these expenses primarily relates to airline flight and related charges paid by the SSC purely for administrative convenience. The details of the expenses paid by the assist for the year under consideration are as under:

<i>Category</i>	<i>Total Amounts (in INR)</i>
<i>Air freight, Pallet shipping charges, X-Ray and Facilation fees of custom bounded packages.</i>	<i>262,178,081</i>
<i>Certain employee related expenses (such as visa charges, air tickets, conveyance, etc.) in relation to employees seconded to overseas</i>	<i>23,260,141</i>
<i>Total</i>	<i>285,438,222</i>

36. The Ld.AR submitted that, in the instant case, recovery of expenses is neither an element of any provision of services nor any intention of providing any direct approximate benefit to the either parties of the associate. He submitted that these expenses were recovered by the associate from the AE on cost to cost basis. However the Ld.AR submitted that the transaction was benchmarked using 'other method' in transfer pricing study report.

37. The Ld.AR submitted that Ld.TPO erroneously observed that the assessee did not benchmark the transaction of recovery of expenses. He submitted that the Ld.TPO adopted 4.11% being the cost plus markup and accordingly made adjustments.

38. The Ld.AR submitted that this issue is squarely covered in favour of the assessee by the decision of coordinate bench of this *Tribunal* in *assessee's own case for assessment year 2013-14 in ITA No.6318/Mum/2017 vide order dated 27/09/2019 and for assessment year 2018-19 in ITA No.2439/Mum/2023 vide order dated 16/10/2023.*

On the contrary the Ld.DR relied on orders passed by the authorities below.

We have produced the submissions advanced by both sides in the light of the records placed before us.

39. We refer to the observations of this *Tribunal for assessment year 2018-19* as under:

38. Ground number 2 of the appeal is against the incorrect computation of the markup of 3.34% of ₹ 7,478,465 on recovery of expenses by the appellant from its associated enterprises. Assessee has made payment to 3rd parties on behalf of its associated enterprises amounting to ₹ 22,39,06,124/- which are in the nature of airline payments, export facilitation et cetera. The assessee did not benchmark the impugned transaction as it was claimed that it is on cost-to-cost basis. The learned transfer-pricing officer questioned the same and stated that no independent party would have made such payment on behalf of any person and therefore the assessee should have benchmarked this transaction with the margin. The learned transfer-pricing officer found that cost plus markup should have been charged at 3.34% wherein the margin of the comparable was also found to be at arm's-length price at 3.34%. Accordingly and adjustment of ₹ 7,478,465/- was made. The learned dispute resolution panel also found the

adjustment made by the learned transfer-pricing officer is correct and followed its own direction for earlier years. The learned authorized representative submitted that issue is squarely covered in favour of the assessee by the decision of the coordinate bench in assessee's own case for assessment year 13-14 in ITA number 6318/M/2017 dated 27 September 2019 wherein it has been held as under:-

"9. We have heard rival submissions. The primary facts are that the transaction being recovery of expenses from AE by the assessee, is not in dispute and hence, the same are not reiterated herein for the sake of brevity. It is not in dispute that the entire transaction of recovery of expenses is a pass through transaction, which had been categorically accepted by the ld. TPO in his order. Once, it is a pass through transaction, it is only a balance sheet item for the assessee. Hence, there cannot be any mark-up on the same. We find that assessee also reimburses certain expenses incurred by the AE without any mark-up. These facts are also accepted categorically by the ld.TPO. We hold that there cannot be any mark-up on income side of the transaction alone as contemplated by the ld. TPO. Hence, the entire issue herein is only academic. We find that the Co- ordinate Bench decision of Bangalore Tribunal in the case of Tesco Hindustan Service Centre Pvt. Ltd.,vs.DCIT in IT(TP)ANo.1317/Bang/2010for A.Y.2006-07 dated 26/05/2015 in the context of ALP adjustment on reimbursement had held as under:-

"29. We have already seen that the Assessee received a sum of ₹ 2,32,47,077 from its AE and the same has been shown as an international transaction with AE by the Assessee in the report u/s. 92CE of the Act.

According to the TPO, the Assessee did not give any details with regard to reimbursement of expenses (received) to the extent of ₹2,32,47,077. According to the TPO, the Assessee only took a stand that the transfer pricing provisions do not provide any detailed guidelines or framework on the method of computation of ALP in respect of reimbursement. The TPO therefore called upon the Assessee vide letter dated 22-07-2009, to give nature of reimbursement of expenses and

also clarify whether such expenses are routed through the profit and loss account, if yes, to specify the head(s) under which it is shown, If no, specify as to why such expenditure should not be included as part of the Assessee's operating cost and thus for mark-up. According to the TPO, the Assessee did not offer any comments. Therefore, the TPO presumed that the reimbursement of expenses received is not routed through profit and loss account and these expenses are incurred in connection with rendering software development services. According to the TPO, no independent party would render such services without any mark up. The TPO therefore added the reimbursement of expenses (received) of ₹ 2,32,47,077/- to the operating revenues as well as the operating costs for the purpose of aggregation of transactions and determining arm's length price under TNMM. Further, the TPO observed that the reimbursement of expenses pertaining to each segment is not available. He proceeded to apportion the expenses between the software development and ITES segments in the ratio of segment turnover (67.48%: 32.52%). Thus the reimbursement of expenses were added to the revenues and costs in the above ratio i.e. ₹ 1,56,87,128/- in the software development segment and ₹ 75,59,948 in the ITES segment for comparability analysis under TNMM.

30. Before DRP, the Assessee submitted that the reimbursement of expense received are nothing but expenses incurred on behalf of related parties for administrative convenience. The Assessee pointed out that during the previous year, it had paid expat tax for the employees deputed by Tesco Stores Limited, UK(parent company) to work as part of various projects conducted by the assessee. The assessee also paid a certain amount as interest for the delay in the payment of Tax Deducted at Source (TDS). All these expenses were cross-charged by the assessee to Tesco Stores Limited, UK who reimbursed the same at cost, without any mark up. The details of expat tax and interest paid on delay in the payment of TDS were also provided as given below:-

31. *The ledger entries pertaining to the*

<i>Expat Tax Details for the financial year 2005-2006</i>				
<i>Sl No.</i>	<i>Name of the Expat</i>	<i>Tax (Rs)</i>	<i>Interest (Rs)</i>	<i>Total Income Tax (Rs)</i>
1	<i>Tim Sea</i>	<i>2,240,802</i>	<i>145.652</i>	<i>2,386,454</i>
2	<i>Sangenu Park</i>	<i>2,101,111</i>	<i>136,572</i>	<i>2,237,683</i>
3	<i>Henry Kang</i>	<i>239^23lr</i>	<i>155,690</i>	<i>2.550.920</i>
4	<i>Philip Greenwood</i>	<i>4,806,569</i>	<i>312.247</i>	<i>5.118.996</i>
5	<i>Ushir Bhatt</i>	<i>2,572.258</i>	<i>67,197</i>	<i>2.739.45</i>
6	<i>David Briggs</i>	<i>3,911,924</i>	<i>254.275</i>	<i>4.1 66. 1 99</i>
7	<i>Peter Hanlon</i>	<i>1,654,880</i>	<i>107,567</i>	<i>1,762.447</i>
8	<i>Roger Morgan</i>	<i>1,360,427</i>	<i>88,428</i>	<i>1,448,855</i>
9	<i>Sarah Morgan</i>	<i>878,935</i>	<i>57.131</i>	<i>936.066</i>
	<i>Total</i>	<i>21,922,137</i>	<i>1,424,939</i>	<i>23,347,076</i>

abovementioned transactions were provided as Appendix 25A to the objections filed before the DRP. The challans in support of the payment of the above mentioned expat tax and the interest on delayed payment of TDS were also provided as Annexure to the objections before the DRP. Sample invoice copies of the reimbursements received were also provided as Annexure to the objections filed before the DRP.

32. The assessee also placed reliance on Circular No. 87-2R dated 27 September 1999 of the Canada Customs and Revenue Agency wherein it has been stated that often the price the recipient is willing to pay for the service does not exceed the cost of supply to the service supplier.

"163. Arm's length service suppliers would usually expect to recover their costs plus an element of profit. However, in determining an Arm's Length charge for service, one must also take into account the economic alternatives available to the recipient of the service. Often, the price the recipient is willing to pay for the service does not exceed the cost of supply to the service

supplier."

The above has been explained by means of an example:

"For example, in many cases, the services provided through intra-group arrangements are administrative or ancillary in nature, and the participants would only have been prepared to centralize the activity if they could share in the cost savings. Cost may represent an arm's length charge in such situations.

164. Determining whether a mark-up is appropriate and, where applicable, the quantum of the mark-up, requires careful consideration of factors such as:

- The nature of the activity;
- The significance of the activity to the group;
- The relative efficiency of the service supplier; and
- any advantage that the activity creates for the group.

For example, the relative efficiency of arm's length service suppliers may not be comparable to the intra-group services where the intra-group services are offered as a convenience to the group and not as an ordinary and recurrent activity."

"165. As discussed in paragraph 7.36 of the OECD Guidelines, it is important to distinguish between the situation of a taxpayer who renders services for the other members of a group; and a taxpayer who acts solely as an agent on behalf of the group to acquire services from an arm's length party. In the latter situation, the arm's length compensation would be limited to rewarding the agency role. In such a case, it would not be appropriate to determine an arm's length charge by referring to a markup on the cost of the services acquired from an arm's length party. Whether a taxpayer is providing a service or merely acting as an agent on behalf of the group is a question of fact."

33. The DRP however did not agree with the submissions of the Assessee and held as follows:

"The reason why the TPO has considered a markup is that arm's length service suppliers would usually expect to recover their costs plus element of profit. Therefore, in determining arm's length charge for service one must also take into account the economic alternatives available to the recipient of the service. We agree with the

reasoning of the TPO."

34. Aggrieved by the order of the DRP, the Assessee has raised Ground No. 36 before the Tribunal. We have heard the rival submissions. The learned counsel for the Assessee reiterated submissions made before the DRP. The learned DR relied on the order of the DRP.

35. We have considered the rival submissions. As observed in the OECD commentaries referred to in the Circular of the Canada Customs and Revenue Agency, it is important to distinguish between the situation of a taxpayer who renders services for the other members of a group; and a taxpayer who acts solely as an agent on behalf of the group to acquire services from an arm's length party. In the latter situation, the arm's length compensation would be limited to rewarding the agency role. In such a case, it would not be appropriate to determine an arm's length charge by referring to a mark-up on the cost of the services acquired from an arm's length party. Whether a taxpayer is providing a service or merely acting as an agent on behalf of the group is a question of fact.

36. In the present case, the details given before the DRP clearly shows that what the Assessee received as reimbursement from the AE is nothing but the expat tax paid and interest paid on delay in the payment of TDS. There can be no element of service in such payment. The taxpayer should be considered as having acted solely as an agent on behalf of the group to acquire services from an arm's length party. In such cases, it would not be appropriate to determine an arm's length charge by referring to a mark-up on the cost of the services acquired from an arm's length party. We therefore hold that the reimbursement of expenses be excluded from the revenues and costs in the ratio i.e. ₹1,56,87,128/- in the software development segment and ₹ 75,59,948 in the ITES segment for comparability analysis under TNMM as was done by the TPO and direct the TPO to compute the ALP after such exclusion. Ground No. 36 is accordingly allowed."

9.1. Respectfully following the said decision, we direct the ld. AO/TPO to delete the ALP adjustment made on recovery of expenses. The other arguments made by the ld. AR and DR on inclusion/exclusion of comparables are not

adjudicated herein as the relief is granted on preliminary issue. Accordingly, the Ground No. 2.1 raised by the assessee is allowed.”

39. *The learned authorized representative further submitted an affidavit from the director confirming the nature of recovery of expenses wherein it is submitted that line haul charges of ₹ 22,12,53,003 and 93 in the nature of haul freight, appellate shipping charges, accident and facilitation fees of custom mount package is paid on behalf of its associated enterprises to the third parties. Further sum of ₹ 2,652,731 is with respect to the Visa charges, conveyance etc of the employees seconded. Further sum of ₹ 55,375,000 is an income tax paid on behalf of its associated enterprises. It is claimed that the learned transfer pricing officer has not considered the amount of taxes for the purpose of computing the margin. Further it was stated that the charges primarily to freight component and does not include any element of service. It was therefore submitted that this issue is covered in favour of the assessee as well as, even on the facts and merits of the case also, the adjustment deserves to be deleted.*
40. *The learned departmental representative vehemently submitted that those decisions are rendered without considering more precisely the transfer pricing provisions. There is no answer in the decision that whether any independent party would have made a payment of ₹ 223,906,124/- on behalf of the assessee or not. Therefore, it should be bench marked by putting an appropriate margin to that. He further submitted that assessee is consistently saying that it is an administrative convenience for which these payments have been made on behalf of its associated enterprises, he submitted that administrative convenience does not have any role to play in case of transfer pricing adjustment. He further submitted that it is not a pass through costs at all and challenged argument of the assessee. It was further the claim of the learned departmental representative that merely because the transaction are cost to cost basis, it can be no reason to not to bench mark such international transaction because no independent party would have paid on cost to cost basis by imputing its own capital, own manpower and resources. He submitted that the principles of the functional analysis, assets employed and risks*

assumed have not been considered for benchmarking this transaction by the assessee. He therefore submitted that the earlier year decision should not be followed because of the above reasons, as those decisions do not have any answer on these aspects. In addition, for these reasons only the learned transfer pricing officer and the learned dispute resolution panel has not followed the decision of the coordinate bench. He submitted that the assessee itself and submitted that coordination, licensing with the airlines is an activity incidental to the assessee is export pickup services for which it is already being compensated and incidental cost if any are considered under the transactional net margin method analysis, therefore the assessee submits that these transaction needs to be benchmarked.

- 41. We have carefully considered the rival contention and also perused the order of the coordinate bench in assessee's own case for earlier year. We find that repeatedly for several assessment years, the coordinate benches have deleted the addition with respect to the markup on reimbursement of expenditure. Naturally, it needs to be tested whether independent party would have incurred these expenditure or not.*
- 42. However, because of the concurrent finding by the coordinate benches in assessee's own case for earlier years, we are constrained to take the similar view. In view of this, respectfully following the decision of the coordinate bench, we also direct the learned TPO to delete the above adjustment.*
- 43. Though, the arguments led by the learned departmental representative have some force in that, how ever even if the alternative argument is accepted of benchmarking this transaction in the transactional net margin method, even then no adjustment could have been made as the assessee has better margins compared to the comparable companies.*
- 44. Accordingly, ground number 2 of the appeal of the assessee is allowed.*

40. Admittedly, the facts are similar for the year under consideration vis-à-vis assessment year 2018-19. For the year under consideration it is noted that by adopting net margin method, assessee has earned a margin of 10.92% as compared to

4.11% in case of the compatibles. As assessee has earned better margin, no adjustment is warranted. Respectfully following the view taken by court made bench of the tribunal in assessee's own case for assessment year 2018-19, we do not find any reason to uphold the adjustment made by Ld.AO/TPO.

Accordingly Ground No.5 raised by the assessee stands allowed.

41. Ground number 6 raised by the author sees seeking directions to grant the TDS credit.

42. We direct the Ld.AO/TPO grant the TDS credit after necessary verifications of the documents filed by the assessee in support of the same.

Accordingly ground number 6 raised by the associate stands allowed.

Ground number 7 raised by the assessee is in respect of interest under section 234A and B.

43. It is submitted that the year under consideration being the code. The due date for filing the return as per statute stood extended. The Ld.AR submitted that due consideration and regard may be given to the fact and they should be considered in the interest of justice.

We have perused the submissions advanced by both sides in light of records placed before u/s.

44. Admittedly, all the due dates were extended by *Hon'ble Supreme Court* due to the COVID 19 pandemic that persisted during the relevant under consideration.

45. The Central Board of Direct Taxes (hereinafter referred to as CBDT)had earlier provided relaxation of timelines for various

compliances specified under the Act for AY 2021–22 vide Circular no 9/2021, dated 20/05/2021 2 and Circular No. 9 dated 9/09/2021. The CBDT subsequently issued Circular No.1/2022 dated 11/01/2022 further extending time limit to furnish return of income and various audit reports for assessment year 2021–22, in view of the difficulties faced by taxpayers due to the COVID-19 pandemic and in electronic filing of various audit reports on the new income-tax e-filing portal.

46. The Ld.AO is directed to verify if the return filed by the assessee falls within the extended time limit by the CBDT in the above circulars and then to compute the interest under section 234 A if there is any delay after considering the extended period from the date of filing of return.

In respect of the interest under section 234B also we direct to Ld..AO to verify and to consider the claim in accordance with law.

Accordingly ground number 6 raised by the associate stands partly allowed for statistical purposes.

47. Ground number 8 raised by the others is premature and does not require adjudication.

48. Ground No.2: As the issue contested by the assessee on merits are decided in favour of assessee herein above, we do not find any reason to adjudicate the legal issue raised by the assessee in this ground.

Accordingly ground number 2 raised by the assessee is not adjudicated and as it is left open as academic, for it to be considered in appropriate circumstance.

In the result the appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 27/02/2025**Sd/-****(RENU JAUHRI)**
Accountant Member**Sd/-****(BEENA PILLAI)**
Judicial Member

Mumbai:

Dated: 27/02/2025

Poonam Mirashi,
Stenographer

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)
ITAT, Mumbai