

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J", MUMBAI

**BEFORE SHRIVIKRAM SINGH YADAV, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA No.6816/Mum/2024
(Assessment year: 2021-22)**

Royal Canin India Pvt Ltd 1401 & 1402, F Wing, 14 th Floor, Lotus Corporate Park, CTS No.185/A, Graham Firth Compound, Western Express Highway, Goregaon (East), Mumbai-400 063 PAN: AADCR4417J	vs	Assistant Commissioner of Income- tax, Circle 3(1)(1), Aayakar Bhavan, M.K. Road, Mumbai-400 020
APPELLANT		RESPONDENT

Assessee by : ShriK.M. Gupta a/w Shri Anmol
Chhabra
Respondent by : Shri Pankaj Kumar (CIT DR)
Date of hearing : 24/04/2025
Date of pronouncement : 28/04/2025

ORDER

Per Anikesh Banerjee (JM):

This appeal of the assessee is directed against the final assessment order of the Learned Assessment Unit, Income-tax Department (henceforth the Ld.AO) passed under section 143(3) read with section 144C(13) read with section 144B of

the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2021-22, date of order 22/10/2024. The said order was originated by the recommendation of the CIT-Dispute Resolution Panel-2, Mumbai-3 (in short, 'Ld.DRP') passed under section 144C (5) of the Act, date of order 16/09/2024.

2. The following are the grounds raised by the assessee:-

Grounds of Appeal

"1. That on the facts and circumstances of the case, and in law, the impugned Assessment Order dated 22 October 2024 passed by the Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer, National Faceless Assessment centre. Mumbai or the Learned Assessing Officer ('Ld. AO"), under section 143(3) r.w.s. 1440(13) of the Income Tax Act, 1961 (the Act) is erroneous and bad in law.

- 1. That the final assessment order dated 22 October 2024 passed under section 143(3) read with section 144C(13) of the Act by the Ld. AD is not in conformity with the directions of the Hon'ble Dispute Resolution Panel-2. Mumbai (Hon'ble DRP) and is liable to be quashed being in gross violation of the strict mandate of section 144C(13) of the Act.*
- 2. On the facts and circumstances of the case, and in law, the Deputy Assistant Commissioner of Income Tax, Transfer Pricing-Circle 3(3)(1), Mumbai (Ld TPO)/Ld AO and the Hon'ble DRP have erred in not appreciating the contentions raised by the Appellant.*
- 3. On the facts and circumstances of the case, and in law, the Ld AD/La. TPO/Honible DRP erred an enhancing the income of the Appellant by INR 28.88.06.121 by holding that the international related party transaction pertaining to payment of Franchisee Fee by the Appellant to its Associated Enterprise (AE) namely Royal Canin SAS, France (RC SAS) does not satisfy the arm's length principles envisaged under the Act and in doing so, have grossly erred in:
 - 5.1. not following the mandatory statutory procedure as laid down under Rule 108(1)(a) and Rule 100 of the Income Tax Rules, 1962 (the Rules) to identify the appropriate method (MAM) and application of the same, merely based on presumptions that the arm's length price value of the transactions is Ni without furnishing details of the price charged in any comparable uncontrolled transaction:**

5.2 disregarding the judicial pronouncement of the Income-tax Appellate Tribunal Hole (TAT) Appellant's own case for AY 2016-17 wherein the contentions of the Appellant have been accepted with respect to the same facts on the issue of disallowance of payment of Franchise fees.

5.3 not acknowledging the Appellant's inability to legally operate as a franchisee in india, de hors the franchise agreement and not appreciating the benefits received by the Appellant from such rights which also includes marketing rights, trademarks and services as well;

5.4 falling to appreciate that the bundle of rights provided to the Appellant include mandating rights, marketing rights, trademarks and services.

5.5 failing to recognise Appellant's separate benchmarking analysis carried out in the TP Documentation with respect to payment of franchisee fee, as well as not appreciating that the arm's length nature of the franchise fee paid has also been corroborated by the benchmarking analysis for purchase of finished goods wherein all the transactions (including payment of franchisee fee) have been aggregated and tested at net level,

5. On the facts and circumstances of the case and in law, the Ld. AO/Ld. TPO/Hon'ble DRP have erred in enhancing the income of the Appellant by INR 16.03.06,842 by arbitrarily disallowing the payment for Intra Group Services ("IGS"). In doing so, the Ld. AO/ TPO have grossly erred in:

5.1. not following the mandatory statutory procedure as laid down under Rule 10B(1)(a) and Rule 10C of the Rules to identify the MAM and application of the same, merely based on presumptions that the arm's length price value of the transactions is 'Nil' without furnishing details of the price charged in any comparable uncontrolled transaction:

5.2. disregarding the documentary evidences furnished and the service agreements entered into by the Appellant for availing the services from overseas AEs;

5.3. not appreciating the fact that the need for services is a commercial/business decision made by the Appellant as part of its business operations, thereby disregarding sound transfer pricing principles and relevant judicial pronouncements in India when undertaking the said adjustment

5.4. holding that the Appellant could have availed the intra group service from third-party service providers at a lower cost which were availed from the AEs without providing any cogent basis. and

5.5. not appreciating the fact that the arm's length nature of the payment of intra group charges has also been corroborated by the benchmarking analysis for purchase of finished goods wherein all the transactions (including payment of IGS) have been aggregated at net level

6. The Hon'ble DRP has erred in enhancing the adjustment of intra-group charges from 50% to 100% by misinterpreting the Ld. TPO's order and incorrectly concluding that the Need Benefit Test was entirely failed, disregarding the fact that the Ld. TPO had accepted some of the evidence submitted by the Appellant during the course of TP assessment proceedings and allowed 50% of the payment of IGS.

7. Without prejudice to the above grounds, the Hon'ble DRP has erred in proposing an alternate disallowance of the sums paid in respect of Franchise Fees by the Appellant to its AE(s), as being ineligible for deduction under Section 37(1) of the Act.

8. That on the facts and circumstances of the case and in law, the Ld. AO/Hon'ble DRP has erred in proposing an alternate disallowance of the sums paid in respect of intra-group service charges by the Appellant to its AE(s), as being ineligible for deduction under Section 37(1) of the Act.

9. That on the facts and circumstances of the case and in law, the Ld. AO/DRP has grossly erred in initiating the penalty under section 271DA of the Act for non-compliance of section 269ST of the Act.

10. That on the facts and circumstances of the case and in law, the Ld. AO/DRP has erred in initiating the penalty under section 270A of the Act for under-reporting of income without appreciating the fact that there is no under-reporting of income by the Appellant.

The above grounds and sub-grounds are without prejudice to each other.

The Appellant craves leave to add, alter, amend, modify or withdraw all or any of the aforesaid grounds of appeal as may be considered necessary at any time before or at the time of hearing of the appeal.

The Appellant prays that appropriate relief be granted based on the said grounds of appeal and the facts and circumstances of the case."

3. The brief facts of the case are that the assessee, M/s Royal Canin India Private Limited (RC India), is a wholly owned subsidiary of Royal Canin S.A.S. (RC SAS' or Overseas Affiliate', or 'Franchisor"). Royal Canin group manufactures, processes, and sells food products worldwide. During the relevant assessment year the assessee undertook the following international transactions with its Associated Enterprise (AEs):-

Particulars	Most Appropriate Method ('MAM')	Value of international transaction (INR)	Tested party margin	Arm's length range
Payment of franchisee fees	Comparable uncontrolled price ("CUP")	288,806,121/-	9%	8% to 10% with median of 9.5%
Purchase of finished goods	Transactional net margin method ('TNMM')	1,251,989,115/-	Operating profit / operating revenue ('OP/OR') – 5.15%	1.77% TO 2.45% with median of 2.42%
Global Services (Information services and sales support)	Other Method	112,113,874/-	Not Applicable	
Payment for professional services	Other Method	46,029,866/-	Not Applicable	
Payment for advertisement and sales promotion	Other Method	702,092/-	Not Applicable	
Payment for employee training and recruitment expenses	Other Method	1,461,010/-	Not Applicable	
Reimbursement of expenses	Other Method	33,234,986/-	Not Applicable	
Recovery of expenses	Other Method	31,913,229/-	Not Applicable	
Liabilities written off	Other Method	31,421,134/-	Not Applicable	

For the impugned assessment year, the assessee filed its return of income on 14/03/2022 declaring a total income of Rs. 98,865,580/-. During the course of Transfer Pricing ("TP") assessment proceedings, a show-cause notice dated 19/09/2023 was issued, duly replied by the assessee. The Ld. TPO vide its order dated 19/10/2023, proposed an adjustment, amounting to Rs.368,959,542/- on account of the following issues:

S.No.	Nature of International transaction	Amount (in Rs.)
1.	Franchise fee – The Ld.TPO determined the arm's length price as Nil	288,806,121/-
2.	Intra Group Services Payment – 50% adhoc disallowance by the Ld.TPO	80,153,421/-

Thereafter, the Ld. AO passed the draft assessment order dated 20/12/2023 under section 144C(1) of the Act proposing the following additions/disallowances to the returned income of the assessee, against which the assessee filed objections before the DRP dated 19/01/2024

Description	Amount(in Rs)
Variation in respect of addition made under section 92CA of the Act	368,959,542/-
Variation in respect of disallowance u/s 40(a)(ia) r.w.s. 194C,194J and 194C (The assessee has not pressed these grounds before dispute resolution panel and in the appeal)	20,63,691/-
Total	371,023,233/-

During the Ld. DRP proceedings, the assessee submitted its detailed contentions on the additions made by the Ld. AO in draft assessment order. Additionally, the Ld. DRP issued a notice under Section 144C (8) dated 26/07/2024, wherein the Ld. DRP proposed to enhance the assessee's income and disallow the entire amount of Franchisee fee and the intra-group services under section 37(1) of the Act. In

response to the same, the assessee filed a detailed submission, wherein the assessee contented against the enhancement of income proposed by the Hon'ble Panel. The Ld. DRP passed the directions dated 16/09/2024 disallowed the payment of Franchise Fee and Intra-group services. Additionally, the Ld. DRP proposed an alternate disallowance of the sums paid in respect of Franchisee Fee and intra-group service charges by the assessee to its AE, as being ineligible for deduction under Section 37(1) of the Act. The Ld. AO in the final assessment order dated 22/10/2024 incorporated the directions issued by Ld. DRP and thus made the following disallowances.

Particular	Amount (in Rs.)
Income as per Return of Income ('ROI') filed	98,865,580
Add: Variation in respect of disallowance u/s 40(a)(ia) R.W.S. 194C, 194J and 194C	20,63,691/-
Add: Variation in respect of additions made under section 92CA of the Act (on account of Franchise Fee of Rs. 28,88,06,121 and Intra Group Services (in short IGS) of Rs. 16,03,06,842)	449,112,963/-
Total Income assessed as per the final assessment order	550,042,230/-

The assessee has challenged the franchise fee and IGS before us but not pressed the ground related section 40(a)(ia) of the Act before Ld. DRP and before us.

4. The Ld.AR submitted the ground-wise summary of the case, with respect to the following issues:

Ground no. 1&3

These are general grounds. No specific averments have been made in respect of these grounds.

So, the appeal of the assessee **Ground nos. 1&3** are dismissed.

Ground no. 2

5. It is argued that the final assessment is void ab initio as the Ld. AO has not followed the specific direction issued by the Ld. DRP by contravening the provision of Section 144C(13) of the Act. The relevant part of Ld. DRP's order is extracted hereinbelow: -

Specific Directions issued for Franchise Fees

The relevant extract from the Ld. DRP's order page 94.

".....

However, apart from the ALP of so-called Franchise Fees being determined as "Nil" by the Ld. TPO, the Panel holds that the Assessing Officer is also liable to undertake the alternate disallowance of the payments as failing to fulfil ingredients of section 37.

The Assessing Officer is directed to go through the Paragraphs above and succinctly assess the income accordingly. Needless to mention, there would not be double addition/disallowance of Rs. 28,88,06,121/-, but the Assessing Officer will provide the additional supporting argument that the sums have not only "Nil" ALP as determined; but also are not eligible for deduction under ss. 37(1) of the I.T. Act.

This is and additional ground addressed by the Panel. The Assessing Officer is directed to comply with the additional ground and incorporate the same."

6. It is argued that the contravening of section 144C(13) of the Act the impugned final assessment order is bad in law and void as same has not been passed in confirmatory with the direction of the Ld. DRP. The issue is covered by the order of the coordinate bench of ITAT-Mumbai, Bench-J in assessee's own case bearing **ITA No. 4546/Mum/2024** date of pronouncement **01/04/2025** for **AY 2020-21**.

The relevant part of the order is reproduced as below:-

"6. The Ld. AR argued that the Ld. AO has not followed the directions issued as no alternate disallowance has been proposed or discussed, thereby violating the mandatory provisions of the section 144C(13) of the Act. Thus, the final assessment order dated 12/07/2024 passed by the Ld. AO pursuant to the DRP directions dated 12/06/2024 is bad in law and void as the same has not been passed in conformity with the DRP directions. It is stated that basis the above stated

facts and observations of the Ld. AO, it leads to an unmistakable conclusion that the final assessment order has not been passed in compliance to the statutory provisions that mandate in terms of Section 144C(13) of the Act that upon receipt of the directions of the DRP, the Ld. AO shall in conformity with the directions complete the assessment without providing any further opportunity of being heard to the assessee within one month from the end of the month in which such direction is received.

7. Reliance is placed on the recent decision of the Coordinate bench of ITAT-Delhi in **Olympus Medical Systems Pvt. Ltd. Vs ACIT, ITA No. 873/DEL/2021** date of pronouncement **13/01/2022** quashed the final assessment order which was passed without following the directions issued by the Hon'ble DRP. The relevant findings are extracted below:

"11. Income of Rs.10,41,53,180/- is the same as computed in the draft assessment order dated 21.12.2019. Considering the aforementioned factual matrix, we are of the opinion that as per the provisions of section 144C(5) of the Act, directions given by the DRP are binding on the Assessing Officer and in terms of section 144C(13) of the Act, the Assessing Officer was obliged to pass final order of assessment in accordance with the directions of the DRP. In the present case, final order of assessment does not incorporate the directions of the DRP and is verbatim repetition of the draft order of assessment. We are of the view that final order of assessment, in conformity with the directions of the DRP, has to be passed within one month from the end of the month in which the directions are issued by the DRP. Since the impugned order is not in conformity with the provisions of section 144C of the Act, the same is to be held as bad in laws."

7.1. Reliance is also placed on the following decisions:

Global One India (P.) Ltd. vs DCIT (2019) 112 taxmann.com 185 (Delhi-Trib.)

held that Final assessment order passed by Assessing Officer without following directions issued by Dispute Resolution Panel under section 144C is null and void and hence was to be quashed.

Software Paradigms Infotech (P.) Ltd. v. ACIT (2018) 89 taxmann.com 339 (ITAT Bangalore)

held that Where Assessing Officer/TPO passed impugned final order of assessment under section 143(3) read with section 92CA without giving effect to or carrying out binding directions of DRP as required under section 144C(10) within time specified under section 144C(13), said impugned final order was to be set aside

7.2. Respectfully reliance is placed on the order of the Hon'ble Delhi High Court wherein the any exercise of powers by the AO in contravention of the specific directions of the DRP was held to be excessive and hence illegal:

ESPN Star Sports Mauritius S.N.C. ET Compagnie us UOI, [2016] 68 taxmann.com 377 (Delhi).

8. The Ld. DR argued filed a written submission which is kept in record. The Ld. DR prayed to setaside the issue before the Ld. AO for reconsideration the issue.

9. We have heard the rival contention of both parties in the matter and perused the material on record. The undisputed facts on record, as brought out by the discussions above, is that the Ld. AO, as per law, was required to pass the final order of assessment dated 12/7/2024 for asst. year 2020-21 u/s 143(3) r.w.s 144C (13) r.w.s. 144B of the Act in conformity with the directions issued by the DRP u/s 144C(5) of the Act, which are binding on him as per section 144C(10) thereof and within the time prescribed u/s 144C(13) of the Act. We find that instead of passing the final order of assessment as required by law, the Ld. AO passed the impugned final order of assessment which, as contended by the Ld AR against the direction of the DRP related the issues IGS fees and franchise fees. In view of the provisions of the Act and respectfully relied on the ruling of the Hon'ble Delhi High Court in **ESPN Star Sports Mauritius S.N.C. ET Compagnie**(supra) and the ruling of coordinate benches of ITAT in **Olympus Medical Systems Pvt Ltd.** (supra),**Global One India (P.) Ltd**(supra) and **Software Paradigms Infotech (P.) Ltd**(supra) we find that the Ld. AO is required to pass the final assessment order in conformity with the DRP directions. In the present case, since the final assessment order passed by the Ld. AO is not in conformity with the DRP directions, In the present appeal, since the impugned assessment order passed by the Ld. AO is not in conformity with the DRP directions, the same is bad in law and therefore should be quashed.

So, the **ground no. 2** of the assessee's appeal is allowed."

The Ld. DR argued and relied on the orders of the revenue authorities.

Accordingly, we follow the order of the coordinate bench of ITAT Mumbai, J-Bench and the **Ground no-2** of the assessee's appeal is allowed.

Ground No 5 & 6 (adjustment on account of disallowance of payment of IGS)

7. The brief facts are that the assessee is one of the largest players in the premium pet food market in India and heavily relies on its AEs for a range of services essential to its business operations. The operational, strategic, and advisory support extended by the AEs is critical to ensure that RC India benefits from the best-in-class processes employed across the group's global affiliates.

The intra-group services (namely, professional services, communication charges, advertisement and sales promotion, employee training and recruitment expenses) are necessary to enable assessee to smoothly conduct its operations, control costs, build robust procurement relationships, and implement stringent financial and operating controls to maintain its competitiveness in the marketplace. The nature and quantum of intra-group services availed are as follows:

Sr.No.	Nature of cost of allocation	Name of the entity	Amount (INR)
1	Payment of professional services	Mars information Services Inc. RC SAS	46,029,866/-
2	Global Services (Information services and sales support)	Mars Information Services Inc. RCSAS	112,113,874/-
3	Payment for advertisement and sales promotion expenses	Mars Information Services Inc.	702,092/-

			9,683,823
4	Payment for employee training and recruitment expenses	Mars Information Services Inc. <hr/> Mars, Incorporated	<hr/> 1,461,010/- <hr/>
	Total		160,306,842/-

The services are charged without any markup or profit margin, and cost allocations are determined based on a relative benefit measure—most commonly based on sales revenue.

This is need for IGS, core support services like IT infrastructure and employee training are fundamental business needs. Given the industry's susceptibility to various operational risks, these services help mitigate such risks, ensuring smooth business functioning. The assessee lacks the expertise to independently manage these challenges and hence relies on the AEs' deep industry knowledge. The services availed have been crucial for RC India's effective operations and have demonstrably benefited the business.

8. The benefits derived by assessee has realized tangible and intangible benefits from such services, including:

- Improved product quality
- Enhanced business process efficiency
- Strengthened marketing capabilities.
- Superior IT systems management.

Centralized services eliminate duplication of efforts, save costs, and provide access to high-quality services otherwise unattainable independently.

It is noted that the key benefits include:

- Access to specialized services as needed.
- Impracticality of engaging equally experienced personnel locally
- Cost savings due to the reduced need for in-house staff
- Enhanced operational efficiencies.
- No Legal Requirement to Demonstrate Necessity or Commercial Benefit

9. The law mandates only that the payment for services must be at arm's length. There is no statutory requirement to prove the necessity of such services respectfully reliance was placed in **CIT v. Dhanrajgirji Raja Narasingirji, [1973] 91 ITR 544 (SC)** held that Section 37(1) of the Act [Corresponding to section 10(2)(xv) of the Indian Income-tax Act, 1922] - Business expenditure - Allowability of - Assessment years 1950-51 and 1951-52 - Whether expenditure incurred by assessee in connection with criminal litigation for purposes of his business was deductible under section 10(2)(xv) of 1922 Act as section 10(2)(xv) did not make distinction between civil and criminal litigation - Held, yes - Whether it is not open to department to prescribe what expenditure assessee should incur and in what circumstances he should incur that expenditure.

EKL Appliances Ltd v. CIT [2012] 24 taxmann.com 199 (Delhi) held that any legitimate expenditure for purpose of business carried cannot be disallowed while computing ALP merely because assessee was continuously incurring losses. It is

not open for tax authorities to question the manner in which a taxpayer conducts its business when transactions are genuine and commercially tenable.

It is also not necessary for the assessee to prove that such expenditure resulted in immediate profits; the only requirement is that the expenses were incurred wholly and exclusively for business purposes. Even if commercial expediency is to be judged, it must be from the assessee's perspective, not the Revenue's respectfully relied on **EKL Appliances Ltd** (supra). The Ld. AR respectfully relied on the order **CIT, Delhi-II v. Lumax Industries Ltd [2008] 173 Taxman 390 (Delhi)** held that.

“13. The CIT(A) also noted that from the financial years 1985-86 till 1993-94, the assessee had been paying the licence fee every year and for each of these years it had been incurring expenses claimed as revenue expenditure and this was being allowed by the Assessing Officer. Therefore, there was no reason why after a gap of almost 10 years, the Assessing Officer should suddenly change his mind and decide to treat the expenditure incurred by the assessee as a capital expenditure.”

10. Following the aggregation approach the intra-group service payments were aggregated along with other international transactions in benchmarking, and the aggregate transaction was found to be at arm's length, with assessee's earning significantly higher margins than comparable. Sufficient documentary evidence such as invoices, intercompany agreements, service request details, cost allocation workings were filed. We noted that the detailed bifurcation of IT costs and their allocation was submitted.

11. The Ld. DR argued and relied on the orders of the revenue authorities.

12. Upon considering the submissions made by the assessee and analyzing the factual matrix and legal precedents cited, we find that the assessee has sufficiently demonstrated the availing and actual receipt of intra-group services through supporting documentation including invoices, agreements, and cost allocation statements. The payments made towards intra-group services were made without any markup and have been benchmarked alongside other international transactions, which collectively meet the arm's length principle. It is settled law that the necessity or commercial benefit of an expense cannot be questioned by the tax authorities when the transactions are genuine and undertaken for business purposes. The requirement of establishing a tangible commercial benefit (Benefit Test) does not emanate from the statutory provisions under the Act or under Transfer Pricing Regulations. We respectfully relied on **EKL Appliances Ltd** (supra) and **Lumax Industries Ltd** (supra) that the expenditures are genuine and fully related on the business purpose. The adjustment made on account of disallowance of payment of intra-group charges by the Ld. AO is unsustainable in law and on facts. In view of the above discussion, the adjustment made on account of disallowance of payment of intra-group charges amounting to Rs. 160,306,842/- is hereby directed to be deleted.

The **grounds of appeal No. 5 and 6** are accordingly allowed.

13. Ground No. 9 pertains to the penalty imposed under Section 271DA of the Act for the alleged contravention of the provisions of Section 269ST of the Act. Since the issue is premature at this stage and pertains to a separate proceeding, **Ground No. 9** of the assessee's appeal is hereby dismissed.

14. Ground No. 10 is consequential in nature, and no specific adjudication is warranted at this stage. Accordingly, **Ground No. 10** of the assessee's appeal is also dismissed.

15. In result, appeal of the assessee bearing **ITA No. 6816/Mum/2024** is allowed.

Order pronounced in the open court on 28th day of April 2025.

Sd/-

(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 28/04/2025
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai