IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD "B" BENCH: HYDERABAD

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT
AND
SHRI MANJUNATHA G, ACCOUNTANT MEMBER

ITA.No.1319/Hyd./2024
Assessment Year 2021-2022

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| Excelra Knowledge Solutions Private Limited, Hyderabad – 500 039. PAN AAFCG5715Q Telangana. | vs. | The DCIT, Circle-8(1), Hyderabad – 500 084. |
| (Appellant) | | (Respondent) |

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| For Assessee : | Shri Sashi Mathews And Shri Abhishek Boob, Advocates. |
| For Revenue : | MS. M. Narmada, CIT-DR |

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| Date of Hearing : | 08.04.2025 |
| Date of Pronouncement : | 21.05.2025 |

**ORDER**

**PER MANJUNATHA G. :**

This appeal has been filed by the Assessee-Company against the Final Assessment Order dated 18.10.2024 passed by the Assessing Officer u/sec.143(3) r.w.s.144C(13) r.w.s.144B of the Income Tax Act, 1961 [in short "the Act"] in pursuance to the Directions dated 13.09.2024 of the learned Disputes Resolution Panel-1 [in

short “DRP”], Bangalore-2, Bangalore passed u/sec.144C(5) of the Income Tax Act, 1961, relating to the assessment year 2021-2022.

2. Briefly stated facts of the case are that, the appellant company M/s. Excelra Knowledge Solutions Private Limited is engaged in the business of providing data curation and analytical solution services to global pharmaceutical and biotechnology companies. The appellant company has over nine successful drug repurposing platform and computational biology capabilities. The appellant company had incorporated wholly owned subsidiary, namely, Exceira Inc., for the purposes of supporting it’s marketing initiatives and to tap business opportunities in USA. The appellant company entered into a Marketing/Sales Services Agreement with Excelra Inc., for arm's length remuneration based on cost plus mark-up for providing marketing and sales support services. The appellant had incorporated wholly owned subsidiary, namely, Excelra BV, for the purposes of supporting it’s marketing initiatives and to tap business

opportunities in Europe. The appellant company entered into a Marketing/Sales Services Agreement with Excelra BV, on cost plus mark-up for marketing/sales support services. During the financial year relevant to the impugned assessment year under consideration, the appellant company had incurred total business support services expenses amounting to Rs.10,17,19,353/-towards payment to it's AEs' and reported the said payment in Form-3CEB as "International Transaction'. The appellant company has conducted a transfer pricing study report for the impugned assessment year in respect of international transactions involving payment of business development expenses to it's AEs' and has selected Transactional Net Margin Method [in short "TNMM"] as the Most Appropriate Method [in short "MAM"] and claimed that, transactions with it's AEs' are at Arms Length Price [in short "ALP"].

2.1. The appellant company had filed it's return of income for the assessment year 2021-2022 and declared total income of Rs.32,97,51,470/-. The case was selected for scrutiny and during the course of assessment proceedings,

a Reference u/sec.92CA of the Income Tax Act, 1961 was made to the TPO to determine the Arms Length Price [in short "ALP"] in respect of international transactions reported by the appellant company. During the course of TP proceedings, the TPO called-upon the assessee to file relevant evidences including agreements with it's AEs for availing business support services and corresponding evidences for rendering services by the AEs. The Assessing Officer had also called for relevant TP study report conducted by the appellant company. In response, the appellant company submitted brief description of their business including list of major clients and major vendors along with relevant financial statements, TP study documentation and agreement with AEs for providing services. The appellant company further submitted that it has entered into agreement with it's AEs for taping the market in USA and Europe and from the said agreement it has got new clients which enhanced the business of the appellant company for the year under consideration. The appellant company had also furnished sample email

communication leading to deal closure and signing of agreements between the appellant company and the international customers.

2.2. The TPO after considering the relevant submissions of the appellant company and also taken note of agreements between appellant company and it's AEs observed that, the services to be rendered by the AE in USA and Europe are general in nature which are need based. Further, from the agreement between the appellant company and it's AEs and sample email correspondences, it is difficult to accept the arguments of the appellant company that the AEs are rendered services for marketing and sale support services. The TPO further observed that, although, various services are referred to in the agreement between the parties, but, the nature of services provided to the appellant company has not been proved with relevant evidences. The appellant company has merely described that, the services rendered from the AEs is more beneficial compared to providing services directly to off-shore clients, but, not provided necessary evidences in support of it's

claim. Further, the appellant has also failed to prove the benefit derived from the services rendered by the AEs. Therefore, observed that, the nature of alleged services as submitted by the appellant company are very vague and general in nature without specifying as to why the appellant company needs such services and how the said services benefitted to the appellant company. No evidences were furnished by the appellant company explaining the actual receipt of services. The appellant company did not furnish any of the evidences in respect of the capabilities of the AEs and how such services has been rendered. The details of number of employees employed by the AE, cost incurred by the AEs, details of market support provided to assessee, location details of contact persons in the AEs to coordinate with the appellant company in rendering services etc. has not been furnished. Since the appellant company has failed to prove the services rendered by the appellant company for payment made by the appellant company, the TPO has rejected TP documentation report submitted by the

appellant company and has adopted 'other method' and made TP adjustment of Rs.10,17,19,353/-.

3. In pursuance to the TP adjustment as suggested by the learned TPO in the order dated 27.10.2023 passed u/sec.92CA(3) of the Act, the Assessing Officer has passed Draft Assessment Order u/sec.144C(1) of the Act dated 07.12.2023 and proposed TP adjustment of Rs.10,17,19,353/- towards payment made to AEs for availing business support services.

4. The appellant company filed it's objections against the draft assessment order before the DRP-1 and challenged the TP adjustment suggested by the TPO. The assessee has challenged arbitrary rejection of TP documentation report submitted by the appellant company and method followed for benchmarking transactions with AEs. The appellant company had also challenged any other method selected by the TPO for making Rs.NIL adjustment towards business support services provided by the AEs and contended that the TPO has grossly erred in making Rs.NIL

adjustment only on the ground that the appellant company has failed to prove the necessity of availemnt of business development services, benefits accrued to the appellant company out of such services and duplication of such services. The Learned DRP after considering the relevant submissions of the appellant company and also taken note of various facts on record from the order of the TPO, has rejected the objections filed by the appellant company and sustained the TP adjustment suggested by the TPO in respect of availing business support services from two AEs on the ground that appellant company has failed to furnish sufficient evidences to prove rendering of services and tangible benefits accruing to the appellant company. Further, in a third party situation, no payment is made for these kinds of transactions. Even if the benefit test applied by the TPO is not accepted considering the judicial stands that, TPO cannot sit in judgment over the taxpayer's mode of doing business, it is observed that, the basic evidences to support the claim of cost incurred at the AEs end are not available for verification. This is the very minimum that the

TPO is required to investigate to establish whether cost allocated as per pre-determination key is reasonable/ legitimate or not. In view of above discussion, held that there is no error in the conclusion of the TPO that taxpayer's claims remain un-evidenced and hence, could not be accepted as being at ALP. Therefore, rejected the ground of objection filed by the appellant company and upheld the TP adjustment made by the TPO.

5. In pursuance to the directions issued by the DRP, the Assessing Officer has passed Final Assessment Order u/sec.143(3) r.w.s.144C(13) r.w.s.144B of the Income Tax Act, 1961 on 18.10.2024 and determined the total income of the appellant company at Rs.43,14,70,823/- by making addition of Rs.10,17,19,353/- in respect of TP adjustment of payment made to AE for availing business support services.

6. Aggrieved by the Final Assessment Order passed by the Assessing Officer, the appellant company is now in appeal before the Tribunal.

7. Shri Sashi Mathews, Advocate-Learned Counsel for the Assessee submitted that, the learned Assessing Officer/DRP was erred in confirming TP adjustments in the international transactions as made by the learned TPO without appreciating the fact that, in terms of sec.92CA(3) of the Act, for the purpose of re-determination of ALP on an international transaction, the learned Assessing Officer is required to form an opinion based on material/information/ document in his possession. Learned Counsel for the Assessee further referring to sec.92CA(3) and Rule 10D of I.T. Rules, 1962 submitted that, assessee has maintained relevant documents/information in respect of it's TP documentation report and also based business profile, selected TNMM as the most appropriate method. Learned Assessing Officer without recording any reason as to why the TP documentation submitted by the appellant company cannot be accepted, simply rejected the TP documentation submitted by the appellant company and has applied 'any other method' only on the ground that the appellant company has failed to prove the benefit accrued out of the

services availed from the AEs even though it is well settled principle of law by the decision of Hon'ble Delhi High Court in the case of CIT vs., Cushman and Wakefield (India) Pvt. Ltd., [2014] 46 taxmann.com 317 (Del.) wherein it has been held that, the TPO is only to determine the ALP of international transactions of the appellant company with AEs, but, he cannot proceed to examine whether the appellant company has availed the services and it has resulted any benefit or not. In this regard, he relied upon decision of ITAT, Mumbai Bench in the case of Dresser-Rand India Pvt. Ltd., vs., Addl. CIT [2011] 13 taxmann.com 82 (Mum.).

8. Learned Counsel for the Assessee further submitted that, the appellant has filed relevant agreements with it's AEs and proved that it has availed various services to tap the market in USA and Europe. The AEs have also rendered various services to the appellant company including marketing support services which has resulted in additional revenue of USD $1.2 million for the year under consideration. The appellant company has filed relevant

email correspondences between the AEs and it's employees for getting new clients in the US market. Although, the appellant company has filed various evidences to establish the services rendered by the AEs, but, the TPO/DRP has rejected the evidences filed by the appellant company only on the ground that no benefits has been accrued to the appellant company on account of such services. Learned Counsel for the Assessee further referring to various judicial precedents submitted that, services rendered by the AEs has really benefitted the appellant company or not, is not required to be seen, but, what is required to be seen is the benefit accrued to the taxpayer's in it's view point and it does not necessarily have to be substantial, direct and tangible. Further, the services may not yield any benefit to the appellant company during the relevant period, but, the services rendered by the AEs may yield results in subsequent financial years. Therefore, when the appellant company has furnished all evidences to prove rendering the services by AEs, the TPO/DRP erred in rejecting the evidences filed by the appellant company only on the

ground that no tangible benefit has been accrued to the appellant company for the year under consideration. Learned Counsel for the Assessee further referring to the order passed by the TPO for the assessment year 2022-2023 submitted that, the TPO has accepted similar payment of business support services to it's AEs on the basis of very same agreements between the parties without there being any change in facts when it compared to the year under consideration. The appellant company has entered into agreements with AEs since 2017 and on the basis of said agreements it has paid business support services charges to AEs on cost plus mark-up. The appellant company has filed financials of AEs along with heads of marketing staff who provide services, the cost incurred for marketing in USA and Europe. The TPO/DRP rejected the evidences filed by the appellant company including the financials of AEs only on the ground that, said financials are un-audited. He, therefore, submitted that, when the appellant company has filed relevant evidences including agreements between the parties for rendering various services, the TPO/DRP are

completely erred in rejecting the evidences filed by the appellant company and making TP adjustment only on the ground that, no benefits has been accrued to the appellant company even though the said ground is not valid ground for making TP adjustment. Therefore, he submitted that, TP adjustment made by the TPO and sustained by the DRP should be deleted.

9. MS. M. Narmada, learned CIT-DR for the Revenue, on the other hand, supporting the orders of the TPO/DRP submitted that, assessee was unable to provide any evidences to prove rendering of services by the AEs. Although, the assessee claims to have furnished certain email correspondences between the appellant company and AEs, but, the said email does not show any services rendered by the AEs. Further, the email furnished by the appellant company does not pertain to the year under consideration. The Company name in the email is not in the list of company submitted by the appellant company in page-523 of paper book to prove that it has made addition to client base from the services rendered by the AE. The

Learned DR further submitted that, when the appellant company has claimed it has made payment to AEs on cost plus mark-up basis, the basic document to prove the services rendered by the AEs is the cost incurred by the AEs and allocation of expenses. But, the fact remains that, the assessee has failed to file relevant expenditure incurred by the AEs for rendering services. Therefore, the TPO/DRP after considering the relevant facts has rightly rejected the claim of the appellant company and made TP adjustment towards business support service charges paid to AEs. Therefore, she submitted that the order of the DRP should be upheld.

10. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. We have also carefully considered the relevant evidences filed by the appellant company including marketing/sales services agreements with it's AEs in USA and Europe. The appellant company had entered into marketing/sales services agreements with AEs from 2017 onwards. The appellant company claims to have paid service

charges to it's AEs on cost plus mark-up. We have gone through relevant agreements between appellant and it's AEs and services specified therein. Upon verification of the relevant agreements between the parties we find that, the appellant has specified various services to be rendered by the AEs in the field of marketing/sale support. However, in our considered view, said services are vague in nature and need based services by any organisation, but, it cannot be ascertained from said agreement that the exact nature of services provided by the AEs to the appellant company in the field of marketing/sales support services. Therefore, to this extent, we are in full agreement with the TPO/DRP that, the appellant company was unable to provide relevant evidences to prove the nature of services rendered by the AEs.

11. Having said so, let us come back, whether the amount paid by the appellant company to it's AEs for availing business support services is commensurate with services rendered by the AEs. Admittedly, the assessee has paid sum of RS.10,17,19,353/- to two AEs for rendering

business development services. The appellant company claims that AEs have rendered marketing support services to tap USA and Europe markets. Further, from the services rendered by the AEs, it has added new clients to it's list of clients and further, it has achieved new business of USD $1.2 million for the year under consideration. In support of it's contention, the appellant company has filed certain evidences like sample email correspondence between the appellant company and it's AEs and also list of new clients added in the US and Europe markets. We have gone through the relevant evidences filed by the assessee including the sample email correspondence between the appellant company and it's AEs and upon verification of relevant evidences, we find that, from the email submitted by the appellant company it is difficult to ascertain the nature of services rendered by the AEs. Further, few of the emails pertains to different assessment years and not pertains to the year under consideration. Although, the appellant company refers one particular company name with reference to the email correspondence and claimed that

it has added new client to it's list of clients, but, on verification of list of companies submitted by the appellant company which is available in page-523 of the paper book, the name of the said company does not appear in the list of companies. Therefore, from the above it is undisputedly clear that, the appellant company is unable to furnish sufficient evidences to prove the services rendered by the AEs for the year under consideration. Since the appellant company is not able to establish the nature of services rendered by the AEs from the agreement between the parties and further the sample email communication between the appellant company and AEs are not exactly established the nature of services rendered by the AEs, in our considered view, from the evidences filed by the assessee it is difficult to accept the arguments that the AEs have rendered services in the field of business support services and payments made by the appellant company to it's AEs is commensurate with the said services. In our considered view, although, the TPO/DRP not required to examine the cost benefit ratio while benchmarking payment

made by the appellant company towards business support services, but, in our considered view, it is necessary to examine the payment made by the appellant company in light of services rendered by the AEs. In case the AEs are not rendered any services, then, it is as good as no services has been rendered by the AEs and thus, payment made by the appellant company to it's AEs cannot be considered as commensurate with services rendered by the said AEs to argue that, it is at ALP. In our considered view, in a third party situation, no payment is made to these kinds of services by any entity. Therefore, in our considered view, going by the nature of services referred by the appellant company in their agreements with AEs and further from the email correspondences between the appellant company and it's AEs, it is clearly established that the appellant company is failed to furnish sufficient evidences to prove rendering of services by the AEs.

12. Coming back to arguments of the Learned Counsel for the Assessee in light of various judicial precedents including decision of Hon'ble Delhi High Court in

the case of CIT vs., Cushman and Wakefield (India) Pvt. Ltd., (supra). There is no dispute that, the Hon'ble Delhi High Court has laid down a ratio that the TPO does not require to verify benefit accrued out of services rendered by AEs. In our considered view, time and again various Benches of the Tribunal clearly held that, Assessing Officer is not required to go into cost benefit ratio while examining the payment made by the appellant company to it's AEs for rendering any services. In otherwords, even in case where there is no benefit is accrued to the appellant company, the TPO is only required to examine the payment made by the assessee with relevant comparative case of similar nature to ascertain whether payment made by the assessee is at ALP or not. However, the fact remains that whether any services has been actually rendered by the AE or not has to be seen in light of evidences filed by the assessee. In case, where there is no evidence of rendering services by the AE, then, the TPO/DRP are at liberty to examine the claim of the assessee for payment made to AE for rendering services in light of the nature of services claimed to have been received

by the assessee in comparison with the third party situation to ascertain whether for this kind of services, a third party would pay the amount of charges paid by the assessee. Therefore, in our considered view, the argument of the appellant company that TPO/DRP erred in summarily rejecting the TP documentation report submitted by the appellant company and had selected 'other method' and making Rs.NIL adjustment towards business support services is devoid of merit and cannot be accepted. In so far as various other case Laws relied upon by the appellant company on the issue of accrual of benefit from the services rendered by the AEs, in our considered view, since we have already accepted the argument of the assessee in light of decision of Hon'ble Delhi High Court in the case of CIT vs., Cushman and Wakefield (India) Pvt. Ltd., (supra), it is only a repetition of the arguments and thus, the other case law relied by the appellant company are rejected.

13. Having said so, let us come back to the benchmarking analysis carried-out by the TPO and upheld by the DRP. No doubt, in a case where an assessee is

unable to provide relevant evidences to prove rendering of services by AEs, the TPO at liberty to examine the TP documentation report submitted by the assessee and methods selected for benchmarking the transactions with it's AEs. However, when the assessee has furnished certain evidences including agreements with the AEs and corresponding evidences like email correspondence for rendering services, in our considered view, the TPO cannot make Rs.NIL adjustment on service charges paid by the appellant company. Further, in the present case, it is not a case of availing intra-group services by an Indian entity from it's AEs in Abroad or outside India. Herein a case, the appellant company has incorporated wholly owned subsidiary in USA and Europe for marketing it's products/services in US and Europe markets. Therefore, it is necessary to examine the service charges paid by the appellant company in light of the revenue generated by the appellant company from it's business for the year under consideration. Admittedly, the appellant company has generated majority of it's revenue from international market

which is evident from the financial statements submitted by the appellant company. Further, the appellant company has also claimed that it has increased it's client base because of services rendered by AEs and due to this it's turnover for the year under consideration has increased USD $1.2 million. The appellant company had also furnished financials of AEs to prove the expenditure incurred by the AEs for rendering marketing support services. The appellant company had also filed the details of key marketing personnel employed by both the AEs. Although, the TPO has accepted in principle that, appellant company has furnished relevant evidences, but, rejected the evidences only on the ground that the financials of AEs are un-audited. Further, the TPO has accepted similar payment made by the appellant company for business support services to AEs for the assessment year 2022-2023 where the TPO has not made adjustment even though the said payment has been made on the basis of very same agreement between appellant company and it's AEs. Since the appellant company has furnished certain evidences to prove rendering

of services by the AEs which has resulted in increase in business for the year under consideration and further, in subsequent financial year, the TPO has accepted the payment made by the appellant company to it's AEs on the very same agreements, in our considered view, Rs.NIL adjustment made by the TPO towards payment made by the appellant company is incorrect. In our considered view, without marketing expenses, revenue cannot be earned. Further, it is not a case of TPO that, appellant company has incurred marketing expenses on it's own and also made payments to AEs for very same purpose. Further, since the appellant company has derived it's revenue from international market, in our considered view, there is substance in the arguments of the appellant company that, it has paid business support services to it's AEs for rendering services. Thus, we are of the considered view that, TPO/Assessing Officer is required to examine the case of the appellant company in light of evidences filed by the appellant company to prove rendering of services and also to

benchmarking the payment made by the appellant company to it's AEs.

14. In this view of the matter and considering the facts of the case, we are of the considered view that, the issue needs to go back to the file of Assessing Officer/TPO for reconsideration. Thus, we set-aside the Final Assessment Order passed by the Assessing Officer and restore the issue back to the file of Assessing Officer/TPO to re-examine the claim of the appellant company towards payment made to AEs for availing business support services The Assessing Officer/TPO is directed to re-examine the claim of the assessee in light of any evidences that may be filed by the appellant company to substantiate it's case.

15. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 21.05.2025

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| Sd/- | Sd/- |
| [VIJAY PAL RAO] | [MANJUNATHA G] |
| VICE PRESIDENT | ACCOUNTANT MEMBER |

Hyderabad, Dated 21st May, 2025
VBP

Copy to

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| 1. | Excelra Knowledge Solutions Private Limited, 6th and 7th Floor, Plot No.6, Wing-B, NSL SEZ Arena, Survey No.1, IDA, Uppal, Hyderabad – 500 039. Telangana. |
| 2. | The DCIT, Circle-8(1), Signature Towers, Hyderabad PIN – 500 084. Telangana. |
| 3. | The Pr. CIT, Central Hyderabad |
| 4. | The DR ITAT "B" Bench, Hyderabad. |
| 5. | Guard File. |

//By Order//

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