

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "I": NEW DELHI  
BEFORE SHRI C. N. PRASAD, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.3500/Del/2024  
(Assessment Year: 2020-21)

Eli Lilly And Company (India) Private Limited, Plot No 92, Sector 32, Institutional Area, Jharsa, Gurgaon, Haryana, Gurgaon	Vs.	ACIT, Circle-1(1), Gurgaon, Haryana
(Appellant)		(Respondent)
<b>PAN: AAACE8901F</b>		

Assessee by :	Shri K. M. Gupta, Adv Ms. Shruti Khimta, Adv Shri Harmeet Singh, CA
Revenue by:	Shri S. K. Jadav, CIT (DR)
Date of Hearing	16/07/2025
Date of pronouncement	18/07/2025

O R D E R

**PER M. BALAGANESH, A. M.:**

1. Assessee M/s. Eli Lilly and Company India Pvt. Ltd (hereinafter referred to as 'assessee) by filing the present appeal sought to set aside the impugned order dated 03.06.2024 passed by the Assessing Officer (AO) inconsonance with the order passed by the Dispute Resolution Panel (DRP) dated 08.05.2024 and order passed by Transfer Pricing Officer (TPO) under section 92CA(3) dated 30.05.2024 under section 144C(5) of the Income Tax Act, 1961 (for short 'the Act') qua the assessment year 2020-21.
2. Ground No. 1 raised by the assessee is general in nature and does not require any specific adjudication.

3. The Ground Nos. 2 and 2.2 raised by the assessee are challenging the transfer pricing adjustment of Rs. 21,44,324/- made by the Id TPO/ AO by re-characterizing the recovery of expenses from Associated Enterprises (AEs) as provision for Business Support Services.

4. We have heard the rival submissions and perused the material available on record. The assessee company was incorporated in 1993 in India. The assessee is a distributor of ethical pharmaceutical products developed, patented and manufactured by other related parties. In addition, the assessee performs clinical trial services on a contract basis for its holding company. The assessee also provides Business Support Services (BSS) to its group affiliates (AEs). Eli Lilly Netherlands B. V. , a company incorporated in Netherlands, holds 99.99% stake in assessee's company, while Eli Lilly S. A. holds 1% equity shares in assessee's company. The ultimate holding company is Eli Lilly and Company, Netherland B.V.. There are various international transaction entered into by the assessee with its AEs which are listed in pages 2 and 3 of the order of the Id TPO. The assessee had benchmarked the Business Support Services and the Trading Segment transactions with its AEs by adopting Transactional Net Margin Method (TNMM) as the Most Appropriate Method. The assessee before the Id TPO produced the invoices for reimbursement of expenses from its AEs in the form of debit note. In the said debit note, instead of stating that the recovery is being made on account of reimbursement of expenses incurred by the assessee on behalf of its AEs, inadvertently it was mentioned that the debit note is raised on account of business support services. Based on this debit note, the Id TPO sought to re-characterize the reimbursement of expenses as business support services and proceeded to benchmark it separately with the mark up. Pursuant to the directions of the Id DRP, the transfer pricing

adjustment on this count after applying mark up of 11.17% was made at Rs. 21,44,324/-.

5. Before us, the Id AR drew our attention to pages 31 and 35 of the Paper Book together with pages 39 and 41 of the order of Id TPO to drive home the point that assessee had indeed incurred certain expenses on behalf of its AEs and had sought reimbursement of the same on actual basis without having any mark up thereon in the debit note raised on the AEs which has been inadvertently mentioned as business support services. It is pertinent to note that in the said debit note, though it was mentioned as business support services inadvertently, the assessee had clearly mentioned under the column of mark up as Nil. This itself clearly goes to prove that the said recovery made from the AEs by the assessee by raising a debit note was merely reimbursement/ recovery of expenses incurred on behalf of its AEs. As per the agreement, the assessee is entitled for a mark up whenever an invoice/ debit note is raised on account of business support services. The very fact that there was no mark up included in the debit note raised on the AEs goes to prove that the same does not involve business support services and could be only reimbursement of expenses. We find force in this line of argument advanced by the Id AR.

6. Further, the Id AR also drew our attention, on without prejudice basis, that even if the alleged recovery of expenses of Rs. 1,91,97,172/- is considered in the cost base and revenue without mark up of the business support services segment, considering the benchmarking carried out by the Id TPO in the giving effect order for the business support services segment, the revised mark up under BSS segment will be 10.18% which would be within the arms length range determined by the Id TPO i.e. 4.03% to 14.23% with median of 5.33% worked out as under:-

Particulars	Amt. in INR
Revenue under BSS segment (A)	21,35,00,000
Amount of expense recovered and recharacterized (B)	1,91,97,172
<b>Revised revenue under BSS segment [C = (A+B)]</b>	<b>23,26,97,172</b>
Total expenses under BSS segment (D)	19,20,00,000
Amount of expense recovered and recharacterized (E)	1,91,97,172
<b>Total expenses (including amount of expense recovered and recharacterized) [F = (D+E)]</b>	<b>21,11,97,172</b>
<b>Revised Operating Profit [G = (C-F)]</b>	<b>21,500,000</b>
<b>Revised Operating Mark-up [H = (G/F)]</b>	<b>10.18%</b>

7. Hence, even on this count, there is no requirement to make any transfer pricing adjustment even if the re-characterization of reimbursement of expenses to business support services is to be considered as correct.

8. In view of the above observations, we hold there is absolutely no case for making any transfer pricing adjustment of Rs. 21,44,324/- in the facts and circumstances of the instant case. Accordingly, Ground Nos. 2 to 2.2 raised by the assessee are allowed.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 18/07/2025.

-Sd/-

**(C. N. PRASAD)**  
**JUDICIAL MEMBER**

-Sd/-

**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 18/07/2025

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi