

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH ' B '**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

I.T. (T.P) A. No.311/Bang/2016  
(Assessment Year : 2011-12)

Dy. Commissioner of Income Tax,  
Circle 2(1)(2), Bangalore.

.... Appellant.

Vs.

M/s. Essentra India Pvt. Ltd.,  
( formerly M/s. Payne (India) Pvt. Ltd.)  
No.3, 3<sup>rd</sup> Main Road,  
Peenya Industrial Area, Phase I,  
Yeshwantpur Hobli, Bangalore-560 058.  
PAN AABCB 1955H

..... Respondent.

Appellant By : Ms. Neera Malhotra, CIT (DR) (ITAT)-2, Bengaluru.

Respondent By : Shri T.Suryanarayana, Advocate.

Date of Hearing : 13.02.2017.

Date of Pronouncement : 31.03.2017.

**O R D E R**

**Per Shri Vijay Pal Rao, J.M. :**

This appeal by the revenue is directed against the assessment order passed under Section 143(3) r.w.s. 144C in pursuant to the directions of

the Dispute Resolution Panel (in short 'DRP') dt.23.11.2015 for the Assessment Year 2011-12.

2. The revenue has raised the following grounds :

*"1. The Hon'ble DRP has erred in holding that intra group services were at arm's length even though the assessee had failed to establish that services were rendered by AE for the direct benefit of the assessee.*

*2. The Hon'ble DRP ought not to have held that intra group services were at arm's length in the absence of any evidence to prove that the services were requested by the taxpayer from the AE."*

3. The grievance of the revenue is against the directions of the DRP in respect of Arm's Length Price ('ALP') determined by the TPO regarding the payment made to the Associated Enterprises for providing inter group managerial services.

4. We have heard the learned Authorised Representative as well as learned Departmental Representative and considered the relevant material on record. The Id. DR has contended that the DRP has followed the decision of this Tribunal in assessee's own case for the earlier assessment year without considering the fact that the assessee has failed to establish that the services actually rendered by the Associated Enterprise ('AE') and received by the assessee. He has further contended

that when the assessee has failed to produce the relevant record to establish the fact that the service was rendered by the AE against which the assessee has made the alleged payment. The DRP is not justified in issuing the directions on this issue. The TPO has also initiated the penalty proceedings under Section 271G of the Income Tax Act, 1961 (in short 'the Act') for not maintaining proper document. He has relied upon the order of the TPO.

5. On the other hand, the learned Authorised Representative has submitted that an identical issue has been repeatedly considered and decided by this Tribunal for the Assessment Years 2005-06 to 2007-08 and 2010-11. He has filed the decisions of this Tribunal for all these assessment years and submitted that the Tribunal has taken a consistent view on this issue and therefore this issue is covered by the decision of this Tribunal in assessee's own case.

6. Having considered the rival submissions as well as the relevant material on record, at the outset, we note that an identical issue has been considered by this Tribunal in assessee's own case for the Assessment Years 2005-06 to 2007-08 and further A.Y. 2010-11. Thus the

Tribunal in assessee's own case has decided this issue for the Assessment Year 2007-08, vide order dt.20.10.2015 in IT(TP)A No.1308/Bang/2011 in paras 4 & 5 as under :

" 4. *The only dispute arises in the appeal of the assessee is regarding the transfer pricing adjustment made by the TPO in respect of intra-group services rendered by the AE to assessee. During the previous year, the assessee has paid an amount of Rs.54,40,867/- as intra-group service fee (management fee) to Filtrona UK Ltd., who is an AE of the assessee. The assessee claimed that the payment of management fee is closely connected with the manufacturing and the same is aggregated under TNMM. The TPO has accepted TNMM as most appropriate method for determining the ALP in respect of all the other international transactions except payment for intra-group services. The assessee is making payment for intra group services with mark up of 5.8% whereas the TPO has determined ALP in respect of intra group services at nil by holding that intra-group service did not result any increase in profit margin. The assessee challenged the action of the TPO before the DRP but could not succeed.*

5. *We have heard the learned AR of the assessee as well as the learned departmental representative and considered relevant material on record. At the outset, we note that an identical issue has been considered by this Tribunal in the assessee's own case for assessment years 2005-06, 2006-07 and 2010-11 in IT(TP)A No.446/Bang/2012 dated 24/7/2015, IT(TP)A No.68/Bang/2011 dated 24/9/2015 and IT(TP)A No.143/Bang/2015 dated 24/9/2015. The learned departmental representative has not disputed that the facts and the issues involved are identical to that of the earlier years. For the assessment year 2010-11, the Tribunal has decided the issue in para.4 as under:*

"4. *We have heard the learned Departmental Representative as well as the learned AR of the assessee and considered the relevant material on record. An identical issue has been considered by this Tribunal in assessee's own case for the assessment year 2005-06 as well as for assessment year 2006-07. For the assessment year 2006-07 this bench has dealt with this issue vide even dated order in paras.4 to 6 as under:*

"4. *At the outset, we note that an identical issue has been considered and decided by this Tribunal in assessee's own case for*

assessment year 2005-06 in ITANo.446/Bang/2012 vide order dated 24/7/2015 in para.5 as under:

"5. We have heard the learned DR as well as the learned AR and considered the relevant material on record. The assessee has made the payment towards the cost contribution on account of intra group services. The AO as well as the TPO has not disputed the actual cost of services which is contributed by the assessee, though the AE of the assessee has allocated the cost with the mark-up of 5.8%. The TPO has determined the ALP of group services at nil on the ground that the services has not resulted in any increase in the profit margin of the assessee. It is pertinent to note that the computation of ALP by the TPO at nil is contrary to the provisions of transfer pricing as well as rules provided under the Act. The only issue before the TPO was to consider the arm's length price of the services received by the assessee. Once the services received by the assessee is not in dispute than, the dispute is only the ALP of such services. In the case in hand the dispute was further narrowed only in relation to the mark-up charged by the AE on the cost. The CIT(A) has already disallowed the mark-up and determined the ALP at cost of the group services which has been contributed by the assessee. We further note the CIT(A) has noted that the fact for assessment year 2008-09, the payment of intra group services was accepted by the TPO at arm's length under the TNMM where the percentage of profit on cost of assessee at entity level was only 16.31% in comparison to the current years margin at 33.31%. We find that for the assessment year 2008-09, the TPO has accepted the payment made for intra group services as under;

" However, from the submissions made by the taxpayer and facts of case, it is seen that the payment is made towards 'cost contribution' and the taxpayer has also submitted the payment is in nature of 'reimbursement of allocated costs' which amounts to 6.99% of the local allocation made the Filtrona UK Limited to all the AEs at a mark-up of 5.8%. As it is evident from the facts and submissions, the payment is clearly for the 'cost contribution' and therefore, there should not be any mark-up on such allocations made by the Parent Company. Hence, for the same reason, the mark-up of 5.8% paid towards 'cost contribution' is not at arm's length and the ALP for the markup is treated as nil which amounts to Rs.2,15,140/-. Thus, the above excess amount being

*adjustment u/s 92CA of Rs.2,15,140/- is treated as transfer pricing adjustment u/s 92CA for assessment year 2007-08”.*

5. *The learned departmental representative has submitted that for the year under consideration, the TPO has noted that the assessee has not furnished any details to establish that any service has been rendered by the AE for which the assessee has made the payment. To counter this objection of the learned departmental representative, learned AR of the assessee has submitted that vide letter dated 20/8/2009, the assessee furnished all the relevant details, agreements, vouchers and invoices as well as nature of the services rendered by the AE of the assessee along with proof of the services rendered by the AE of the assessee. He has filed copy of the letter dated 20/8/2009.*

6. *Having considered the rival submissions and the relevant material on record, we note that the assessee produced all the relevant details as well as the evidence in support of the claim that the AE of the assessee has rendered the services as per the agreement between parties. We find that the assessee has produced the documents before the TPO to show that receipt of the services in respect of the list of the products developed by the AE, details of sales strategies, budget planner, accounts support and management reports etc. Thus, it is manifest from the record that the assessee produced all the details in support of the claim. However, the TPO without considering the relevant record has mentioned in the impugned order that the assessee has not filed the details which is contrary to the record. Accordingly, following the earlier order of this Tribunal dated 24/07/2015, we decide this issue in favour of the assessee to the extent that the cost of services produced by the assessee has to be allowed.*

*Hence, in view of the findings for assessment year 2006-07 we do not find any error in the direction of the DRP. ”*

*Thus, it is clear from the above findings for assessment year 2010-11 that the issue has been consistently decided by this Tribunal in favour of the assessee. In view of the facts and circumstances of the case and by following the earlier orders of this Tribunal, we decide this issue in favour of the assessee. As far as other grounds raised by the assessee, nothing has been argued by the learned AR of the assessee in support of the grounds and further we note the other grounds become infructuous in view of the findings on the main issue of transfer pricing adjustment in respect*

*of payment for intra-group services rendered by the AE. Accordingly, the other grounds raised by the assessee are dismissed."*

In view of the consistent finding of this Tribunal, we do not find any error or illegality in the directions of the DRP qua this issue. Accordingly, the appeal of the revenue is dismissed.

7. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on the 31<sup>st</sup> day of Mar., 2017.

Sd/-

**(S. JAYARAMAN)**

Accountant Member

Sd/-

**(VIJAY PAL RAO)**

Judicial Member

Bangalore,

Dt. 31.03.2017.

\*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard File.

By Order

Asst. Registrar, ITAT, Bangalore