

आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.580/PUN/2020

निर्धारण वर्ष / Assessment Year : 2015-16

Dy. Commissioner of Income Tax,
Circle – 8, Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

Spicer India Pvt. Ltd.,
29, Milestone, Pune-Nashik Road,
Village-Kuruli, Tal.-Khed,
Pune – 410501

PAN : AA ECS1869C

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.D. Onkar
Revenue by : Shri Kalika Singh

सुनवाई की तारीख / Date of Hearing : 27-05-2021

घोषणा की तारीख / Date of Pronouncement : 03-06-2021

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the Revenue against the order dated 06-03-2020 passed by the Commissioner of Income Tax (Appeals)-6, Pune ['CIT(A)'] for assessment year 2015-16.

2. This appeal was filed with a delay of 177 days. The assessee filed an affidavit explaining the reasons for delay. After hearing both the parties, we find that the reasons stated by the assessee are bonafide which really prevented the assessee to file the present appeal in time. Therefore, the delay of 177 days are condoned.

3. The Revenue raised as many as 6 grounds amongst which the only issue emanates for our consideration is as to whether the CIT(A) is justified in deleting the adjustment of Rs.14,71,41,219/- made by the AO/TPO on account of management services fees in the facts and circumstances of the case.

4. We note that the assessee is a Joint Venture between Anand Automotive Systems and Dana Corporation, USA. The assessee is engaged in the business of manufacturing and sale of drive train components. During the year under consideration the assessee entered into domestic transaction with M/s. Asia Investment Pvt. Ltd. and incurred management fees of Rs.14,71,41,219/- by applying CUP method for computation of Arm's Length Price. The AO show caused the assessee to demonstrate with facts and figures that any benefit derived towards receipt of such services from M/s. Asia Investment Pvt. Ltd. The assessee submitted its response which was discussed by the AO/TPO in its order at Page No. 4. The AO/TPO held no evidences have been submitted by the assessee to establish that the services were rendered by its AE. No invoice nor details of specific services filed. The AO further observed that the details filed does not show rendering of any real services and accordingly, the services rendered by the AE are treated as shareholder services requiring no

payment of fees under management and held the arm's length price of such domestic transaction treated as Nil. The CIT(A) in the impugned order at Page No. 3 in Para No. 7 deleted the said adjustment by placing reliance on the order of this Tribunal in assessee's own case for A.Ys. 2009-10 to 2014-15.

5. Having aggrieved, the Revenue is before us. The ld. DR, Shri Kalika Singh submits that the AO had disallowed the management fees u/s. 37(1) of the Act for the period involving A.Ys. 2009-10 to 2012-13. From A.Y. 2013-14 onwards adjustment u/s. 92CA(3) of the Act have been proposed holding that the price paid as specified domestic transaction is not at arm's length. The CIT(A) rather than relying on earlier orders should have adjudicated the issue of ALP of management services afresh and should have considered the findings of TPO that the assessee has failed to prove the commensurate benefit from the payment and also failed to quantify the amount of each service rendered. The CIT(A) has relied upon for deleting the adjustment of management fees had analyzed the allowability of management services fees in respect of section 37(1) of the Act and not whether the payment of management fees was at ALP. The requirement for expenditure to be allowed u/s. 37(1) is different than that of specified domestic transaction related to intra-group services. The transfer pricing provisions are special provisions relating to avoidance of tax and override general provisions such as section 37 of the Act. Once there is an specified domestic transactions or international transaction, then the TP provisions shall prevail over the other regular provisions governing the deductibility or taxability of an amount from such transaction.

6. The ld. DR referred to the decision of Special Bench of ITAT in the case of M/s. LG Electronics India Pvt. Ltd. in ITA No. 5140/Del/2011 and argued that the ambit of transfer pricing provisions are wider than not only section 37 but also section 40A(2)(b) of the Act. Further, he submits that section 37(1) of the Act only requires that the expenditure should be incurred wholly exclusively for the purpose of business but the transfer pricing provisions require that the price paid to the AE should be commensurate with the services received and the price which would have been paid to the independent third party. He submits that section 40A(2) only determines as to whether the quantum of a particular expenditure is reasonable or not whereas TP provisions tests whether the claim of expenditure is at ALP or not. Section 40A(2) is only applicable to expenditure, transfer pricing provisions are applicable to both income and expenditure. He argued that the CIT(A) erred in relying the decision rendered by the ITAT on deductibility of expenses u/s. 37 of the Act in the context of section 92 of the Act.

7. Further, he referred to the decision of ITAT Bangalore and submitted that in the absence of any details in respect of the nature of services rendered by AE, the TPO is justified in holding that the assessee has not proved any commensurate benefits against the payment of service charges and he argued the TPO in the present case was justified in making the adjustment of ALP u/s. 92CA of the Act.

8. To sum up, the ld. DR argued that the CIT(A) has failed to appreciate that the transfer pricing proceedings are different and standards which are applicable to deductibility of expenditure in the context of normal

provisions such as section 37 of the Act cannot be applicable to the transactions between associated enterprises governed by the transfer pricing provisions. Further, the CIT(A) has failed to appreciate that not only the evidence regarding rendering of services by the AE has to be adduced by the assessee but the TPO is also mandated to examine whether the payment made is commensurate with the services received and is at ALP. He prayed to hold the order of CIT(A) is not justified and restore the order of TPO by allowing the ground raised by the Revenue.

9. The ld. AR, Shri R.D. Onkar referred to Agreement at Page No. 2 of the paper book and submitted that the first service as made available by the AE for participation of specified in the personnel its programs such as Management Grid, Excellence in Manufacturing, Excellence in Distribution, Six Sigma, Total Productive Maintenance, Anand Production Systems, QCDGP etc. to improve the performance of the operating personnel. Direct cost such as travel to and from and boarding and lodging expenses will be borne by Spicer India. AIPL will also assist in identifying the human resources required by assessee.

10. The second service is marketing. AIPL provides and organizes training programmes for Mechanics and has set up Mechanics Training School at Nasik. These programmes and facilities will be available to assessee for sponsoring Mechanics to promote familiarization with their products and other related aspects. AIPL will organize Dealer meets on regular intervals in every region once a year to impart technical knowledge and superiority of client companies product vis-à-vis competition. These Dealer meets would be available for participation by assessee. AIPL will

provides sales training for the field staff on regular basis to ensure improvement in their marketing skills and such programmes would be available for assessee staff also. Direct cost of participation in these programs of staff sponsored by assessee.

11. To substantiate the above said two services, the assessee filed evidences at Page Nos. 65, 66 to 74, 75, 76 to 103, 104 to 246, 247 to 287, 288 to 328 all these evidences were filed before the TPO but however the TPO held no evidences filed to substantiate the claim of payment of management fees to AIPL. The only contention raised by the ld. DR is that the CIT(A) has failed to appreciate that the transfer pricing proceedings are different and standards which are applicable to deductibility of expenditure in the context of normal provisions such as section 37 of the Act cannot be applicable to the transactions between associated enterprises governed by the transfer pricing provisions.

12. We note that this Tribunal considered the said issued in A.Y. 2014-15 and also in A.Y. 2013-14. The latest being A.Y. 2014-15 this Tribunal discussed the issue in Para No. 5 of its order which is at Page No. 329 of the paper book. For ready reference this Para No. 5 of the said order for A.Y. 2014-15 is reproduced here-in-below:

“5. The only other issue which survives in the instant appeal is against the transfer pricing addition of Rs.15,36,43,405/-, being, Management Fee to Asia Investment Pvt. Ltd., which is a specified domestic transaction. The TPO discussed the payment of Management Fee along with payment of Royalty jointly from para 15 onwards of his order. The assessee was show caused as to why NIL ALP of the Management Fee should not be determined. In response, the assessee submitted details being invoices; details of experts and facilities which were available for training to the employees; e-mail communications; and Manuals etc. The TPO did not find anything convincing and determined NIL ALP of the specified domestic transaction of payment of Management Fee. The DRP approved the action of the AO in the draft order, incorporating the transfer pricing adjustment.”

13. We note that in order to arrive at such conclusion this Tribunal placed reliance in A.Y. 2013-14 in assessee's own case vide its order dated 04-07-2019 wherein, the Tribunal upheld the order passed by the CIT(A) deciding the similar issue in favour of the assessee for A.Y. 2013-14. Therefore, the order of CIT(A) is justified. Thus, the grounds raised by the Revenue are dismissed.

14. In the result, the appeal of Revenue is dismissed.

Order pronounced in the open court on 03rd June, 2021.

Sd/-
(R.S. Syal)
VICE PRESIDENT

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 03rd June, 2021.

RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-6, Pune
4. The Pr. CIT-5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "सी" बेंच,
पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune