

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAHUL CHAUDHARY, JM

ITA No. 398/MUM/2019
(Assessment Year 2014-15)

Lintas India Private Limited
15th Floor, Express Towers,
Nariman Point,
Mumbai-400021

Vs.

ACIT CIR 3(2)(1)
IT Office, R.No. 608, 6th
Floor, Aayakar Bhavan,
M.K. Road,
Mumbai-400020

(Appellant)

(Respondent)

PAN No. AAACL0124F

ITA No. 595/MUM/2022
(Assessment Year 2017-18)

Lintas India Private
Limited
15th Floor, Express
Towers, Nariman Point,
Mumbai-400 021

Vs.

Addl/Joint/Deputy/ACIT/Income-
tax Officer, National Faceless
Appeal Centre, Delhi

(Appellant)

(Respondent)

PAN No. AAACL0124F

Assessee by : Shri Ajit Jain and Siddhesh
Chaugule

Revenue by : Dr. Yogesh Kamat, CIT DR

Date of hearing: 13.09.2022

Date of pronouncement: 09/12/2022

ORDER

PER PRASHANT MAHARISHI, AM:

ITA No 398/Mum/2019 AY 2014-15

01. This appeal is filed by Lintas India Private Limited (Assessee/ Appellant) for A.Y. 2014-15 against the

assessment order passed under Section 143(3) read with section 92CA(3) read with section 144C(5) read with section 144C (13) of the Income-tax Act, 1961 (the Act) dated 29th November, 2018 passed by the Asst. Commissioner of Income Tax 3(2)(1), Mumbai (the learned Assessing Officer), wherein the return filed by the assessee on 28th November, 2014 at ₹46,03,34,743/- is assessed at ₹ 68,08,24,460/-.

02. Assessee has raised the following grounds of appeal:

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"General

1. On the facts and circumstances of the case and in law, the learned Transfer Pricing Officer('TOP') and the learned Assessing Officer(AO) under the directions of the Hon'ble Dispute Resolution Panel ('DRP') erred in making an adjustment of ₹ 18,36,63,743/- under Chapter X of the Income-tax Act, 1961 ('the Act') and other direct tax addition of ₹ 3,68,25,974/- under other provisions of the Act;

Legal Grounds

2. On the facts and circumstances of the case and in law, the learned AO erred in not following the mandatory provisions of section 144C (13) thereby rendering the Final Assessment order as time barred.

3. On the facts and in the circumstances of the case and in law, the learned AO erred in not passing the Final Assessment Order in conformity with the

Directions of the Hon'ble DRP under section 144C (5) of the Act, thereby violating the mandatory provisions of section 144C(10) and 144C(13) of the Act.

Transfer Pricing Grounds

Receipt of Global Information Services ('GIS')- INR 3,25,61,704

4. On the facts and circumstances of the case and in law, the learned TPO and the AO, under the directions of the Hon'ble DRP have erred in not appreciating the factual details, submissions and various documentary evidence which demonstrate receipt of services by the appellant.

5. On the facts and circumstances of the case and in law, the learned TPO, and AO and the Hon'ble DRP have erred in rejecting the Comparable Uncontrolled Price('CUP') method, as the most appropriate method for benchmarking this transaction and computing the transfer pricing addition without applying any of the prescribed methods as provided under section 92C (1) of the Act.

6. On facts and circumstances of the case and in law, the learned TPO, the AO and the Hon'ble DRP have erred in computing the Arm's Length Price ('ALP') of the transaction at nil and consequently making a transfer pricing adjustment.

Receipt of Multinational Client Co-ordination ('MNC') Services- INR 2,17,03,792 &

**management Service Fee ('MSF') Services – INR
12,93,98,247**

7. On facts and circumstances of the case and in law, the learned TPO and the AO, under the directions of the Hon'ble DRP erred in not following Hon'ble DRP directions for previous years in relation to above international transactions, in spite of there being no change in facts.

8. On fact and circumstances of the case and in law, the learned TPO and the AO, under the directions of the How Me DRP have erred in not appreciating the factual details, submissions and various documentary evidences which demonstrate receipt of services by the appellant;

9. On fact and circumstances of the case and in law, the learned TPO and the Assessing Officer, under the directions of the Hon'ble DRP have erred in rejecting the Transaction Net Margin Method (TNMM) method, as the most appropriate method for benchmarking these transactions and computing the transfer pricing addition without applying any of the prescribed methods as provided under section 92C (1) of the Act.

10. On facts and circumstances of the case and in law, the learned TPO the AO and the Hon'ble DRP have exceeded their jurisdiction by computing the ALP of these transaction at nil and consequently making a transfer pricing adjustment.

Corporate Tax Grounds

Disallowance made on account of details reflected in Annual Information Report ('AIR') amounting to INR 10,25,479

11. On the facts and circumstances of the case and in law, the learned AO under the directions of the Hon'ble DRP erred in making an addition of INR 10,25,479 to the total income on the basis of amounts reflected in AIR.

Disallowance of expenses of INR 3,58,00,495 made on account of a responses having been received from parties to whom notices under Section 133(6) of the Act were issued

12. On the facts, and in the circumstances of the case and in law, the learned AO under the directions of the Hon'ble DRP erred in disallowing the expenses amounting to INR 3,58,00,495 merely on the ground that no responses were received from parties to whom notices under Section 133(6) of the Act were Act were issued.

13. On the facts and in the circumstances of the case, the learned AO based on the directions of the Hon'ble DRP erred in not considering the relief granted by the Hon'ble DRP in case of certain parties while passing the final assessment order."

03. The brief fact of the case shows that the assessee is engaged in the business of advertising business and offer services related to advertising media planning services, marketing services, public relations etc. to

its clients. As the assessee has entered into international transactions being part of Lowe worldwide group with its Associated Enterprises as assessee is engaged in providing advertisement services, assessee reported that it has paid GIS services charges to M/s Lowe and partners worldwide incorporation limited, London amounting to ₹3,25,61,704/-. It is also made payment of MSF services to the same entity of ₹12,93,98,247/- and payment of MNC services amounting to ₹2,17,03,792/-. The assessee has submitted that Global information services are benchmarked adopting CUP method stating that its fully loaded cost of salaries and related expenses incurred by the Associated Enterprises in providing GIS services to the assessee on actual basis. It is the claim of the assessee that the Associated Enterprises has charged only third-party cost incurred. Hence, the transactions of payment of GIS services are at arm's length. With respect to the payment of MSF and MNC services, the assessee adopted the Transactional Net Margin Method [TNMM] as the most appropriate method. Assessee selected the Associated Enterprises as tested party. As per the transfer pricing study report, the average operating profit/ total cost margin of the comparable for three different services was derived at ₹12.38%, 5.41% and 9%. The assessee stated that as the markup of 5% charged by the Associated Enterprises is lower

than the comparable margins, the transaction is at arm's length.

04. The learned Transfer Pricing Officer refused to accept benchmarking of the assessee of GIS services because the cost incurred by the Associated Enterprises has not been proved and further according to him, assessee failed to produce need test of the above services. The learned Transfer Pricing Officer also objected as associated enterprise is taken as tested party because assessee did not furnish the financials of associated enterprises with supporting documents. Accordingly, the CUP method was also rejected. The learned Transfer Pricing Officer also analyzed various information submitted by the assessee. He also made comments with respect to the email's correspondence produced before him stating that these email does not provide any information about the services and its need. He also referred to the OECD guidelines. He also questioned whether the services have been rendered or not. He further stated that the learned Dispute Resolution Panel in assessee's own case from A.Y. 2010-11 onwards has rejected CUP method and failure of the assessee to prove the Need-Evidence-Benefit test upheld the Arm's Length Price as transaction at Rs Nil. Accordingly, on GIS Services international transaction of ₹3,25,61,704/- was having the arm's length value of ₹ nil.

05. With respect to MSF and MNC services of ₹12,93,98,247/- and ₹2,17,03,792/-, the learned Transfer Pricing Officer was of the view that foreign Associated Enterprises is taken as a 'tested party' however, supporting documents for the cost are not available. Further, assessee has failed to prove need test and benefit test in case of these services. Hence, he rejected the Transactional Net Margin Method as the most appropriate method. He also examined the documents furnished as Annexure-02 to Annexure-021 which are the email correspondence and held that same does not prove the need of the services, rendition of the services, benefit of the services etc., accordingly, Arm's Length Price of these services were considered as nil.
06. Accordingly, vide order under Section 92CA (3) of the Act the adjustment of ₹18,36,63,743/- was proposed.
07. Based on this, the draft assessment order was passed on 26thDecember 2017 where the above adjustment of transfer pricing was made. Over and above, the learned Assessing Officer noted that
- i. there are many receipt entries as per 26AS which are not shown by the assessee in the books of account and the difference is ₹10,25,479/- which has not been reconciled by the assessee and therefore, same is added.

ii. The assessee has debited various expenditure to verify the same, the notice under Section 133(6) of the Act were issued whether the parties to whom the payment of ₹300,58,495/- were made were not traceable. The assessee also did not file any detail. Therefore, the show cause notice was issued that why the above amount should not be added to the income of the assessee. The assessee submitted part details; however, the learned Assessing Officer was not satisfied and therefore, ₹3,58,495/- were disallowed.

The total income of the assessee was determined at ₹68,08,24,460/-.

08. Assessee preferred the objection before the learned Dispute Resolution Panel, who passed the direction under Section 144C (5) of the Act on 11th September 2018. The ground no.1 with respect to the adjustment on account of payment of intra group services, the learned Dispute Resolution Panel followed its own direction in assessee's case for A.Y. 2012-13 and 2013-14 and upheld the adjustment proposed by the learned Transfer Pricing Officer. With respect to the AIR adjustment following the direction of the learned Dispute Resolution Panel for A.Y. 2011-12, same was also upheld. With respect to the disallowance of ₹3,58,495/-, the assessee submitted additional evidence, the learned Dispute Resolution Panel

sought comment of the learned Assessing Officer and based on it, partly upheld the addition.

09. Accordingly, assessment order was passed on 29th November 2018 determining the total income at ₹68,08,24,460/- which was determined in draft assessment order as the learned Dispute Resolution Panel did not give any relief to the assessee. Against this, assessee is in appeal before us.

010. The learned Authorized Representative submitted that only effective ground of appeal in this appeal is with respect to the transfer pricing adjustment covered by ground no.4 to ground no.10 with respect to Intra group services where the learned Transfer Pricing Officer has determined the Arm's Length Price of the international transaction at ₹ nil holding that assessee has failed to prove the need test, rendition rest and benefit test. He also submitted that learned Dispute Resolution Panel has also considered the order of the learned Transfer Pricing Officer as correct based on reasons given in the direction of the learned Dispute Resolution Panel for earlier years. He submitted that the matter reached the co-ordinate Bench in case of the assessee for A.Y. 2010-11, 2011-12 and 2013-14. The first order of the co-ordinate Bench where all these services are covered and firstly for A.Y. 2010-11 in ITA No.1156/Mum/2015 dated 12th June 2019, the co-ordinate Bench in paragraph no.8 following the decision of the Hon'ble Bombay High Court in case of CIT vs. Johnson and Johnson in ITA No.1030 of 2014 dated 7th March 2017

deleted the addition. He further submitted that for A.Y. 2011-12 to 2013-14 in ITA No. 2075, 1762 and 890 dated 7th August 2019, the identical issue was there, followed its earlier order and deleted the addition. Therefore, according to him, the issue is squarely covered in assessee's own case for earlier years.

011. For the current year independently, he first referred to the transfer pricing study report prepared by the assessee and submitted that GIS Intra Group services are payment for global information services which represents an allocation of cost by the Associated Enterprises for services provided to assessee. With respect to payment for multinational client co-ordination services (MNC) services and management service fees (MSF) services are cost plus 5% whereas in European Region same is charged at 2.38% in North America Region 5.41% and in Asia Pacific region it is 9%. He submitted that assessee benchmarked these two services adopting Transactional net margin method. He further referred to page no. 110 & 115 of the paper book which gave a complete explanation of the benefit of receipt of the above services. He also referred to page no.117 to 124 to show the numerous benefits arising out of the total GIS MNC and MSF services. He further referred to page no.393, wherein the assessee has submitted the documentary evidence for all these services whether they are received or not. He referred to the evidence placed from page no.393 to page no.500 for this reason. On cost allocation he referred to page no.774 of the paper book where the cost is allocated. He further

referred page no.778 of the paper book which is an independent clients report for the allocable cost charged to the assessee. He further referred to report dated 24th April, 2014 of BDO on the calculation of Intra group services. He further referred to page no.335 onwards with respect to the agreement between the assessee and other parties for the payment of intra group services. He submitted that the overwhelming, voluminous and robust documentation have been shown to the learned Transfer Pricing Officer and the learned Dispute Resolution Panel to substantiate that the services were required by the assessee, those have been rendered by the Associated Enterprises, which have benefited assessee mainly and therefore accordingly remunerated as per agreed terms> he submitted that same cannot be rejected without showing any infirmity in them.

012. The learned Authorized Representative also submitted that the learned Dispute Resolution Panel has rejected the objections of the assessee in just two lines stating that the direction of the Dispute Resolution Panel in the earlier years is against the assessee, same was followed. He also referred to the order of the learned Transfer Pricing Officer to submit that all email exchanges between the Associated Enterprises and the assessee are rejected by the learned Transfer Pricing Officer holding that it neither proves rendition of services nor proves any benefit accruing to the assessee. He submitted that the approach of the learned Transfer Pricing Officer is unwarranted. If he is not satisfied with the email exchanges are proves exhaustively

the services, he is duty bound to inform the assessee what else proof/ evidence are required.

013. In the end, he submitted that the issue is squarely covered in favour of the assessee by the orders of the coordinate Bench in assessee's own case for earlier years and there is no change in the facts and circumstances of the case, the addition deserves to be deleted.

014. He further submitted that nevertheless independently for this year the document showing rendition of services, benefit of such services is proved. Therefore, the addition deserves to be deleted.

015. The learned Departmental Representative vehemently supported the order of the learned Transfer Pricing Officer. He submitted that assessee has failed to show rendition test and benefit test therefore, the arm's length price of the international transaction is held to be nil. He submitted that no independent party would pay to the Associated Enterprises in absence of need test, rendition test, benefit test, is proved. He further submitted that if such services are duplicative in nature and are merely shareholder activities same are not at all required to be paid by the assessee. He further stated that it is not the case that the learned Transfer Pricing Officer has not applied any method. In fact, he applied CUP method to show that no independent party would have paid for such services. He submitted that the documents produced by the assessee before the learned Transfer Pricing Officer have been countered by him appropriately showing that they do not

prove anything so that determination of Arm's Length Price by the assessee can be accepted. According to him, the orders of the Transfer Pricing Officer and Dispute Resolution Panel are correct.

016. We have carefully considered the rival contentions and perused the orders of the lower authorities. The issue involved in this case is primarily of payment for intra group services. The assessee has claimed to have received 3 different services for which payment have been made to its associated enterprises as per agreement. The learned Transfer Pricing Officer held that assessee has failed to prove the requirement of such services, rendition of such services, benefit arising out of receipt of such services and therefore, he determined the Arm's Length Price of all these three transactions of intra group services at ₹ nil.

017. Firstly, we do not agree with the assessee that the learned Transfer Pricing Officer has not adopted any method. We hold that the learned Transfer Pricing Officer has determined the nil value of this services adopting comparable uncontrolled price method. This is so because unless above four basic specific tests are fulfilled, no independent party would have paid such as sum to the Associated Enterprises. Accordingly, as nobody has paid for these services, the comparable uncontrolled price as per the learned Transfer Pricing Officer of these services is ₹ nil. Therefore, there is a definite method adopted by the learned Transfer Pricing Officer which is one of the

prescribed methods under Indian transfer pricing legislation.

018. However, any payment for intra group services, the payer of such services definitely maintained a robust documentation to show that those services are required for the business of the assessee, therefore, they were requisitioned by the assessee from its Associated Enterprises. The Associated Enterprises has rendered those services as agreed upon as per agreement between the parties. On rendition of such services, assessee has been benefited. There is no standard requirement of providing manner of maintenance of documentation. The basic document would be the services agreement between the parties which will demonstrate the right and obligation of the parties, nature of services, nature of reporting, the manner of billing along with documentary evidences. Further, when the assessee would be requiring such services, according to agreement he would be asking the provider of services to provide such services, on provision of such services there would be time sheets, log sheets, the job cards, etc. This would have been signed off by the recipient of the services and the provider of the services. Naturally, if the respondent of the services is not benefited by receipt of such services, in the ordinary course of business, nobody would have paid any sum to the associated enterprises. Therefore, the benefit test is a necessary ingredient of determination of Arm's Length Price of intra group services. Nobody will pay to anybody for any services which does not benefit the recipient of

services. In view of this, it is required to be examined whether the assessee has fulfilled the above criteria or not. It is always necessary to maintain a full proof document of every business activity, however, if the document is not available of particular business activity, there is nothing wrong as whole world will presume that it is not done. If that be the case, the determination of arm's-length price at Rs. nil is proper.

019. However, in the case of the assessee We find that the documentation of the assessee clearly shows the description of the categories of services provided, the resultant benefit arising therefrom, the rational for provision of such services, the reasonable description of the benefits or expected benefits of the services, the reasonableness of adoption of the allocation keys and reasons justifying that such allocation keys produce outcomes that reasonably reflect the benefit received. There are written contracts for the provision of services with respective obligations and rights of both the parties, describing the nature of services therein, manner of computing the remuneration was also documented. The description of the documentation provided by the assessee which has been described by the learned authorized representative clearly shows that assessee has maintained a reasonably sound documentation of intra group services. The learned transfer pricing officer and learned dispute resolution panel has heavily relied on their findings in the earlier years which have already been negated by the ITAT. We are not in agreement with the lower authorities

by following the decisions taken by them in earlier years in determination of arm's-length price of intra group services at Rs. nil. This is so because for each year test of rendition of services, need of such services, benefits derived from the services and those services are not duplicative or shareholder services is required to be established by assessee based on proper documentation. Therefore, decisions rendered in earlier years by the authorities either in favour of the assessee or against the assessee does not help the case of the either party because these tests are required to be satisfied every year and also needs to be examined every year.

020. With respect to the orders of the co-ordinate Bench of earlier years, they are not determinative of the issue before us in the present assessment year for the purpose of requirement of services i.e. need test, whether the services are rendered or not, i.e. rendition test, benefit test etc. in the case of the assessee for assessment year 2000 - 11 in ITA number 1156 - 1187/M/2015 the coordinate bench has decided the identical issue as per order dated 12/6/2019 wherein the learned transfer pricing officer made ad hoc percentage as arm's-length price of these services, coordinate bench following the decision of Honourable Bombay High Court in case of CIT vs Johnson & Johnson Ltd in ITA number 1030 of 2014 dated 7/3/2017 allowed the appeal of the assessee on this technical aspect and dismissed the grounds raised by the revenue also on the technical aspect. Similarly for assessment year 2011 - 12, 2012 - 13 and 2013 - 14. As

per order dated 7/8/2019. The ITA T followed the order in the case of the assessee for assessment year 2010 – 11. In the present case before us, there is no disallowance made by the learned transfer pricing officer, we have categorically held that the learned transfer pricing officer in determining the arm's-length price at Rs. nil of the services has adopted cup method, therefore, all those decisions are not of relevance for deciding the issue before us.

021. When the issue was raised by way of objection before the learned dispute resolution panel about determination of the arm's-length price of international transaction pertaining to payment for intragroup services. The learned that DRP in paragraph number 2.2.5 held as Under: –

“2.2.5 Further as regards adjustment made towards value of the international transactions pertaining to payment for intragroup services. It is noted that the issue is decided against the assessee in assessment year 2012 – 13 and assessment year 2013 – 14 against the assessee. Wherein the assessee had raised all the issues now raised before us. We agree with the order of the DRP for a by 2012 – 13 and a by 2013 – 14 and respectfully following these, the ground of objection of the assessee is rejected.”

022. As we have already held that, the transaction is required to be benchmarked and arm's-length price of the same is required to be determined for every year based on need to test, benefit test, rendition test, duplication test and

shareholder's activity test. Therefore, the simplistic order passed by the learned dispute resolution panel by following its earlier order without giving an independent finding for the year on all these activity tests is not sustainable.

023. As the services of the assessee has not been benchmarked by examining the documents produced by the assessee for this year, we are not inclined and impressed with the argument of the learned authorized representative that the addition deserves to be deleted. According to us, the transactions deserves to be tested for its arm's-length price for this year. Therefore, we set-aside the issue of determination of the arm's-length price of the international transaction of intragroup services back to the file of the learned transfer pricing officer who has to examine the same from the perspective stated by us earlier. Hence , we set aside ground number 4 – 10 of the appeal of the assessee back to the file of the learned transfer pricing officer to determine the arm's length price of the intragroup services based on the documents already produced by the assessee. The learned TPO/AO is directed to examine the same for determination of the arm's-length price. Accordingly, ground number 4 – 10 of the appeal of the assessee is allowed with above direction.

024. . Ground number 1 – 3 are general in nature, therefore, same are dismissed.

025. Ground number 11 is with respect to the addition of Rs. , 10,25,479 made to the total income of the assessee based

on amounts reflected in annual information return. The learned assessing officer has noted that as per annual information return there are several entries of receipts, which has not reported by the assessee in its books of accounts. These entries were found. With respect to the commission income of the assessee. Before the lower authorities, assessee could not explain the same satisfactory and therefore the learned assessing officer made the addition of Rs. , 10,25,479 to the total income of the assessee. Before the learned dispute resolution panel. The assessee submitted that assessee is carrying on the business of an advertising agency which works on principal to agent basis with its clients. The assessee is engaged in the activities of release of advertisements on behalf of its clients and production of advertisement for clients. The revenue earned by the assessee is in the form of commission for services, which is a specified percentage of the gross billing. However, the clients of the assessee reflect the gross amounts paid to the assessee, which included the media cost and income component thereon. It was further stated that on overall basis, the total of gross billing as per the assessee's records are more than the gross amounts reflected in the annual information return and the reasons for such discrepancy was primarily on account of difference in the year of booking/billing and provision of expenses being created. Assessee has already submitted the reconciliation with respect to more than 300 clients. Assessee also asked the learned assessing officer to issue notices u/s 133 (6) to the payers, so that the

assessee gets an opportunity to verify the details of the transaction as reported by the payers in the annual information return and same can be reconciled. Several judicial precedents were also relied upon. The learned dispute resolution panel once again relied upon its own direction in case of the assessee for assessment year 2011 – 12 and rejected the grounds.

026. On careful consideration of the rival contentions and orders of the lower authorities. We find that if there is a difference in the annual information return about the gross income included by the assessee in its financial statements, this is the first trigger point for investigation. Merely because there is a difference, the addition cannot be made. Further, the argument of the assessee also cannot be accepted that merely because assessee has disclosed more income, the difference between the annual information return and the books of account of the assessee can be ignored. Therefore, we set-aside this ground of appeal back to the file of the learned assessing officer with a direction to the assessee to show conclusively that what are those income which have been included in the computation of total income of the assessee in the earlier year and what are those receipts included in annual information return which are pertaining to the cost of the material and not the commission income of the assessee. Unless, this information is available, it cannot be ascertained that whether assessee has offered commission income correctly or not. Accordingly ground number 11 of the appeal is set aside to the file of the

learned assessing officer for proper examination. Necessary enquiries, if possible, may also be carried out.

027. Ground number 12 – 13 of the appeal of the assessee is with respect to the addition of ₹ 35,800,495 merely on the ground that no response was received from the parties to whom notices u/s 133 (6) of the act were issued. The fact shows that the learned AO verified the claim of the expenses of the assessee as per paragraph number 6 of the assessment order. Based on such explanation for expenses. The learned AO issued notices u/s 133 (6) of the act. Accordingly, in case of 21 parties. The notices u/s 133 (6) were served or not responded to, or not served. The amount of expenditure involved therein was disallowed by the learned assessing officer. Assessee submitted before the learned assessing officer that all the expenses are genuine and further the assessee has deducted tax at source, wherever applicable, the payments have been made to the parties either by electronic bank transfer or by account payee cheques. The company submitted copies of form number 16 A & invoices received from the specified parties. It was also the claim of the assessee that the expenditure has been incurred wholly and exclusively for the purposes of the business. The AO rejected the explanation of the assessee and made the disallowance. Before the learned dispute resolution panel. Assessee submitted additional evidence which were considered. The learned that DRP considered the additional evidence with respect to 6 different parties and give direction to the learned AO wherever the learned

dispute resolution panel was not satisfied. They have upheld the order of the learned assessing officer. Accordingly, in the final assessment order. The above addition was retained.

028. The learned it authorized representative has relied upon the decision of the Honourable Bombay High Court in case of Nikunj exempt enterprises private limited 372 ITR 619 wherein it has been held that where sale supported purchase and payments were made through banks. Merely because suppliers had not appeared before the assessing officer purchases could not be rejected as bogus. He further reiterated the submissions made before the lower authorities.

029. The learned departmental representative vehemently supported the orders of the lower authorities.

030. We have carefully considered the rival contention and perused the orders of the lower authorities. The fact shows that the assessee has incurred certain expenditure which are supported by the proper bills and vouchers. The addresses given on those bills and vouchers have been provided to the assessing officer based on which the inquiries, letters u/s 133 (6) were issued by the learned assessing officer. Some of the notices were not served, some of the notices were returned as the parties have left the premises and some of the notices were served but no replies were received. We find that the expenses incurred by the assessee were not found to be bogus as books of accounts were accepted by the learned AO. It is also fact

that assessee has discharged the liability toward those parties by account payee cheque or bank transfer. Because subsequently those parties could not confirm the transaction, it cannot be inferred that expenses incurred by the assessee were not genuine. It is also an accepted fact that none of the parties were found to be bogus or the purchases were found to be nongenuine. There may be many reasons that notices u/s 133 (6) remained unserved or not responded to. But, merely that fact, cannot result into disallowance. Further, it is not the case of the assessee that they have not deducted tax at source on payment made to most of the parties. To support it, assessee has produced form number 16 A. Before the learned AO. That form also contains the permanent account number of the parties to whom the payments have been made. In view of this, we do not find any reason to sustain the disallowance. Accordingly, same is deleted. Thus, ground number 12 and 13 of the appeal are allowed.

031. Accordingly appeal of the assessee in ITA number 398/M/2019 for assessment year 2014 – 15 is partly allowed with above direction.

ITA No. 595/MUM/2022 for Assessment Year 2017-18

032. This appeal is filed by the assessee against the assessment order passed u/s 143 (3) read with Section 144C (13) read with Section 144B of the income tax act for assessment year 2017 – 18. On 3/2/2022.

033. Assessee has raised following grounds of appeal: –

"General

1. *On the facts and in the circumstances of the case aid in law, the learned Transfer Pricing Officer ('TPO') and the learned Assessing Officer ('AO') under the directions of the Hon'ble Dispute Resolution Panel ('DRP') erred in making an adjustment of INR 19,48,26,100 under Chapter X of the Income tax Act, 1961 ('the Act') and her direct tax addition of INR 10,79,303 under other provisions of the Act*

Transfer Pricing Grounds

**Receipt of Global Information Services ('GIS') -
INR 5,70,46,722**

2. *On facts and circumstances of the case and in law, the learned TPO and the learned AO, under the directions of the Hon'ble DRP have erred in not following Hon'ble Tribunal's ruling in Appellant's own case for AY 2010-11 to AY 2013-14 in relation to above international transactions, more so considering that there is no change in facts as compared to the said years.*

3. *On facts and circumstances of the case and in law, the learned TPO and the learned AO, under the directions of the Hon'ble DRP have erred in not appreciating the factual details, submissions and various documentary evidence which demonstrate receipt of services by the Appellant.*

4. On facts and circumstances of the case and in law, the learned TPO and the learned AO under the directions of Hon'ble DRP have erred in rejecting the benchmarking analysis undertaken by the Appellant using Other method, as the most appropriate method and computing the transfer pricing addition without undertaking any comparable analysis and applying Other Method (Need Evidence Benefit Test method) which is not a prescribed methods as provided under section 92C(1) of the Act.

5. On facts and circumstances of the case and in law, the learned TPO and the learned AO under the directions of Hon'ble DRP have erred in computing the Ann's Length Price (ALP) of the transaction at NIL, and not following one of the prescribed methods under section 92C(1) of the Act, thereby making an ad-hoc disallowance.

6. On the facts and circumstances of the case and in law, the learned TPO and the learned AO under the directions of Hon'ble DRP have erred in questioning the commercial wisdom and expediency of the Appellant for receiving GIS services.

7. On the facts and circumstances of the case in law, the learned TPO and the learned AO erred in considering the aforesaid services to be in the nature of shareholder/ stewardship/duplicative/incidental/passive/on-call services without appreciating the underlying nature of the services.

Management Service Fee ('MSF') Services - INR 13,33,27,604 & Multinational Client Co-ordination ('MNC') Services INR 44,51,774

8. *On fact and circumstances of the case and in law the learned TPO and the lamed AO, under the directions of the Hon'ble DRP have erred in not following Hon'ble Tribunal's ruling in Appellant own case for AV 2010-11 AY 2013-14 in relation to above international transactions, more so considering that there is no change in fact as compared to the said years.*

9. *On facts and circumstances of the case and in law, the learned TPO and the AO, under the directions of the Hon'ble DRP and is not following Hon'ble DRP's directions for previous years in relation to above international transactions, in spite of there being change in facts.*

10. *On facts and canon of the case and in law, the learned TPO and the AO, under the directions of the Hon'ble DRP have erred in not appreciating the factual details, submissions and various documentary evidence's which demonstrate receipt of services by the Appellant.*

11. *On facts and circumstances of the case and in law, the learned TPO and the AO, under the directions of the Hon'ble DRP have erred in rejecting the Transaction Net Margin Method (TNMM) method, as the most appropriate method is benchmarking this transaction and computing the transfer pricing*

addition without undertaking any comparable analysis and applying Other Method (Need Evidence Benefit Test method) which is not a prescribed method as provided under section 92C (1) of the Act.

12. On fact and law of the case and in law, the learned TPO, the AO and the Hon'ble DRP have erred

in computing the ALP of these traction at NIL, and not following one of the prescribed methods under section 92C(1) of the Act, thereby making an ad hoc disallowance

13. On the facts and circumstances of the case and in law, the learned TPO and the learned AO under the directions of Hon'ble DRP have erred in questioning the commercial wisdom and expediency of the Appellant for wing MSF and MNC services.

14. On facts and law of the case and in law, the learned TPO and the learned AO under the directions of Hon'ble DRP erred in rejecting the benchmarking analysis undertaken by the Appellant considering overseas AEs as the tested party, even though the said approach is within the provisions enshrined under Chapter X of the Act.

15. On the facts and circumstances of the case and in law, the learned TPO and the learned AO erred in considering the aforesaid services to be in the nature of shareholder/ stewardship/duplicative/incidental/

passive/on- all services without appreciating the underlying nature of the services.

Corporate Tax Grounds

Disallowance made on account of details reflected in reconciliation of income as per books vis-à-vis Form 26AS amounting to INR 17,79,303

16. On the facts and circumstances of the case, in law, the learned AO has erred in making an addition of INR 10,79,303 to the total income on the basis of details reflected in reconciliation of income as per books vis-à-vis Form 26AS.

Disallowance under section 14A of INR 1,00,56,473

17. On the facts and circumstances of the case, and in law, the learned AO has erred in not accepting the claim of the Appellant (made during the course of the assessment proceedings), that no disallowance is warranted under Section 14A of the Act inter-alia, on account of the following.

- a. the Appellant did not earn any exempt income during the year under consideration; and*
- b. the investment made by the Appellant were mainly in growth oriented mutual funds which do not yield any dividend i.e. exempt income.*

Other Grounds

18. On the facts and circumstances of the case and in law, the learned Assessing Officer has erred in initiating penalty proceedings u/s. 270A of the Act."

034. The brief facts of the case that assessee has filed the return of income for assessment year 2017 – 18. On 30/11/2017 declaring income of Rs. 723,788,650. As assessee has entered international transaction of ? 194,826,100/- which was referred to the learned transfer pricing officer of several services, arm's-length price of the same has been determined by the learned assessing officer at Rs. nil and therefore addition to that extent was made to the total income of the assessee. There was a difference in income reported as per form number 26AS and the books of accounts amounting to Rs. 10,79,303/- which remained unreconciled and therefore addition to that extent was also made. Accordingly, the total income of the assessee was computed at Rs. 935,694,283.
035. Ground number one of the appeal is general in nature, no arguments were advanced, covers the additions, which are also covered by the other grounds of appeal. Therefore, same is dismissed.
036. As per ground number 2 – 15 are in relation to the arm's-length price of intragroup services of receipt of global information service of Rs 57,046,722, management service fees amounting to Rs. 133,327,604/- and multinational client coordination services of Rs. 4,451,774

determined by the learned transfer pricing officer by the order u/s 90 2C. A. (3) dated 27/1/2021 at Rs. nil and thereby making an adjustment of ? 194,829,100/- is involving the identical facts and circumstances arising in the case of the assessee for assessment year 2014 - 15. Both the parties also confirmed that their arguments also remains the same.

037. On careful consideration of the rival contentions and the orders of the lower authorities, we also set-aside this ground is to the file of the learned assessing officer/transfer pricing officer with similar direction as given in appeal of the assessee for assessment year 2014 - 15. Accordingly, these grounds are allowed with the same directions.
038. Ground number 16 of the appeal is with respect to the difference between form number 26AS amounting to Rs. 10,79,303 which is identical to ground number 11 of the appeal of the assessee for assessment year 2014 - 15, which we have set-aside to the file of the learned assessing officer for fresh verification, therefore, we also set-aside this ground of appeal back to the file of the learned assessing officer with the same directions. Accordingly ground number 16 of the appeal is allowed with the same directions.
039. Ground number 17 is with respect to the disallowance u/s 14 A of the act amounting to Rs. 10,056,473/-. No such addition was made by the learned assessing officer in the draft assessment order passed on 15/4/2021 and

similarly, no addition was found in the final assessment order dated 3/2/2022. Ground of appeal suggest that the assessee has made the fresh claim during the assessment proceedings, that it has not earned any income during the year Under consideration on which the exemption is claimed. If that be the fact, there cannot be any disallowance in the hence of the assessee u/s 14 A of the act. Accordingly, we direct the learned assessing officer to consider the claim of the assessee and if there is any disallowance offered by the assessee, it needs to be tested that if assessee has not earned any exempt income. There should not have been any disallowances u/s 14 A of the act. Therefore, direction is given to the assessee to show the facts of not having any exempt income but having made the disallowance u/s 14 A of the act in the return of income, the learned AO may examine the same and decide the issue in accordance with the law. Accordingly ground number 17 of the appeal is allowed.

040. Ground number 18 is with respect to the initiation of penalty proceedings which is premature and therefore dismissed.

041. Accordingly, ITA number 595/M/2022 of the assessee for 2017 – 18 is partly allowed.

Order pronounced in the open court on 09/12/2022.

Sd/-
(RAHUL CHAUDHARY)

Sd/-
(PRASHANT MAHARISHI)

(JUDICIAL MEMBER)

(ACCOUNTANT MEMBER)

Mumbai, Dated: 09.12.2022

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

True Copy//

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai