IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'I-1' BENCH, NEW DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 3431/DEL/2016
[Assessment Year: 2010-11]

The A.C.I.T Circle – 4 Gurgaon	Vs.	M/s Volvo Auto (India) Private Limited Tower A, Ground Floor, United Cyber Park Green Wood City, Sector 39, Gurgaon PAN: AADCV 0346 E
[Appellant]		[Respondent]

Date of Hearing : 06.08.2020

Date of Pronouncement : 11.08.2020

Assessee by : Shri Ravi Sharma, Adv
Shri Rishab Malhotra, AR

Revenue by : Shri M. Barnwal, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the Revenue is preferred against the order of the CIT(A) - 2, Gurgaon dated 31.03.2016 pertaining to assessment year 2010-11.

2. The solitary grievance of the Revenue is that the ld. CIT(A) erred on facts and in law in deleting the addition of Rs. 3,24,90,810/- made on application of CUP method for determination of ALP of international transactions by the Assessing Officer.

3. Representatives of both the sides were heard at length. Case record carefully perused.

4. Briefly stated, the facts of the case are that the assessee is a wholly owned subsidiary of Volvo Car Corporation and is engaged in the business of importing of cars as completely built units for the purpose of distribution in the Indian market. This is the first financial year of the assessee's business operations.

5. During the year under consideration, the assessee has made a payment of Rs. 2,94,56,764/- to its parent company on account of management service fees on which taxes were deducted at source. The assessee earned margin of 1.59% from its operations and as per TP study carried out by the assessee, average margins of comparable companies was shown at 1.86% and since the margin of the assessee

with comparable companies was within +/- 5% range, international transactions were concluded to be at arms length.

6. During the course of scrutiny assessment proceedings, the Assessing Officer determined ALP of management service fees at NIL and made upward adjustment of Rs. 3,24,90,810/-, which, incidentally also included service tax of Rs. 30,34,046/- paid by the assessee under reverse charge mechanism.

7. According to the Assessing Officer, the assessee has not submitted any evidence to substantiate that the services were actually received. The Assessing Officer further observed that the assessee has failed to furnish a cost benefit analysis demonstrating the benefits derived from services received from the AE. The Assessing Officer further observed that documentation produced by the assessee to support its claim for receipt of services is too generic. Addition of Rs. 3,24,90,810/- was accordingly made.

8. The assessee carried the matter before the ld. CIT(A) and furnished all the documents in support of its contention and also furnished a detailed cost benefit analysis.

9. Considering the nature of additional evidence, the ld. CIT(A) called for remand report from the Assessing Officer on the following points:

"1. Whether amount of management fee paid to AEs was only INR 2,94,56,764 as against amount of 3,24,90,810 disallowed by Assessing Officer ("AO")?

2. Whether similar management charges have been allowed by TPO as well as AO in subsequent year?

3. Whether appellant has received true-up adjustment amounting to 6,15,78,632from AE during the relevant financial year?

4. Whether non-payment of management charges would result in receipt of lesser amount of true-up adjustment consequently reduction of profit of appellant?

5. Whether appellant has deducted withholding tax and service tax on management charges paid to AE during relevant assessment year?

6. Whether details of services rendered by the AE and service agreement were submitted by appellant during the time of assessment proceedings?

> 7. Whether in circumstance mentioned above, "disallowance of management charges paid by appellant to its AEs is justified?

10. Vide his report dated 06.01.2016, the Assessing Officer submitted his report on the points raised by the ld. CIT(A).

11. After considering the facts and submissions and the remand report of the Assessing Officer, the ld. CIT(A) concluded as under:

> "3.12 I have also perused the assessment records of current year and subsequent year. From the facts on record, the submissions of the appellant, the report of the AO and the facts recorded in the assessment records for the subsequent years, following facts emerge:-
>
> (i) Out of gross amount of Rs. 3,24,90,810/- shown as management charges, an amount of Rs. 30,34,046/- was on account of service tax paid by the appellant pertaining to these management charges and the net management charges paid were Rs. 2,94,56,764/- only. Therefore the adjustment, if any, could be of Rs. 2,94,56,764 only. The adjustment of Rs. 3,24,90,810/- is based on incorrect appreciation of facts.

(ii) The appellant had paid service tax as applicable on the management charges.

(iii) The appellant had deducted TDS @ 10% on the management services charges paid amounting to Rs. 29,54,676/-.

(iv) During the year the appellant had received true up adjustment amounting to Rs. 61578632. These true up adjustments were computed on the basis of 12% mark up on the value added expenses that also included management fees. As per the remand report of the AO, in case the management fees had not been paid by the appellant the true up adjustment received would have been Rs. 2,51,90,000/- only and the profits of the appellant would have been less than the profits returned by the appellant.

(v) he cost benefit analysis has been furnished by the appellant during the remand proceedings.

(vi) The details of services rendered by the AE have been shown in the service agreement which was duly provided by the appellant to the AO as is evident from the remand report.

(vii) No adjustment on account of management services fee has been made by the TPO/AO in the assessment orders for A.Y. 2011-12 and A.Y. 2012- 13.

3.13 From the facts discussed above it is evident that the AO's observation that this expenditure has been debited to the profit and loss account to inflate the expenses and thereby reduce the taxable profits in India is not borne out from the facts on record. Further as mentioned above, the claim of management service fee paid by the appellant to its AE has also been examined in the 2 subsequent years and the TPO and AO have not made any adjustment on this account implying thereby that it has been accepted that the appellant had received services from the AE and payment for these services was made at arms length.

3.14. Keeping in view the aforesaid facts of the case, the AO was not justified in adopting CUP method and determining the ALP of the transaction as NIL and consequently making an adjustment to the income of Rs. 3,24,90,810/-. The adjustment done by the AO on this account is deleted. These grounds of appeal are allowed."

12. Before us, the ld. DR vehemently stated that the issue may be restored to the file of the Assessing Officer, as in his remand report, the Assessing Officer has not made any comment on the cost benefit analysis.

13. We have given thoughtful consideration to the orders of the authorities below. We do not find any force in this contention of the ld. DR. In our considered opinion, no second innings should be given to appreciate the same set of facts which were already before the Assessing Officer. Moreover, in the remand report, the Assessing Officer himself has accepted that if the management fees had not been paid by the appellant, the true up adjustment received would have been Rs. 2.51 crores only and profits of the appellant would have been less than the profits returned but it.

14. The cost benefit analysis was furnished by the assessee during the remand proceedings but the Assessing Officer did not care to examine the same and now the ld. DR is asking for remand. But the ld. DR could not point out any factual defect in the findings of the first appellate authority. Considering the facts of the case in totality, in light of remand report and factual findings of the ld. CIT(A), and

considering the treatment given in subsequent A.Y by the Transfer Pricing Officers, we do not find any reason to interfere with the findings of the ld. CIT(A).

15. In the result, the appeal of the Revenue in ITA No. 3431/DEL/2016 is dismissed.

The order is pronounced in the open court on 11.08.2020.

Sd/-	**Sd/-**
[SUCHITRA KAMBLE**]** **JUDICIAL MEMBER**	**[N.K. BILLAIYA]** **ACCOUNTANT MEMBER**

Dated: 11th August, 2020.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	