

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES “ K ”, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER

IT(TP)A No.	A.Y.	Appellant	Respondent
204/Mum/16	2011-12	Dow Chemical International Private Limited, Godrej IT Park – P2, 1 st Floor, Block-B, 02, LBS Road, Godrej Business District, Pirojeshanagar, Vikhroli (W), MUMBAI [PAN: AAACD4467B]	Dy. Commissioner of Income Tax, Circle-14(1)(1), MUMBAI
1519/Mum/17	2012-13		Income Tax Officer- 14(1)(3), MUMBAI
6472/Mum/17	2013-14		
S.A.No.	A.Y.	Applicant	Respondent
513/Mum/17 (Arising out of ITA No. 6472/M/17)	2013-14	Dow Chemical International Private Limited, Godrej IT Park – P2, 1 st Floor, Block-B, 02, LBS Road, Godrej Business District, Pirojeshanagar, Vikhroli (W), MUMBAI [PAN: AAACD4467B]	Income Tax Officer- 14(1)(3), MUMBAI

Appellant By : Shri Percy Pardiwalla,
Shri Hiten Chande,
Respondent By : Ms. Nilu Jaggi, Sr.AR

Date of Hearing : 14-12-2018	Date of Pronouncement : 11-03-2019
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ORDER

Per B.R. Baskaran, Accountant Member:

All these appeals filed by the assessee are pertaining to
AYs. 2011-12 to 2013-14 and they are directed against the

orders passed by the Assessing Officer u/s 143(3) r.w.s 144C(13) of the Income Tax Act (Act), in pursuance of directions given by Ld. Dispute Resolution Panel (DRP). Since an identical issue is urged in these appeals, they were heard together and are being disposed of by this common order, for the sake of convenience.

The assessee also filed Stay Application for the AY. 2013-14.

2. The main ground urged by the assessee in all these three years relate to the Transfer Pricing Adjustment in respect of payments made to Associated Enterprises (AE) for availing various types of services.

3. The facts relating to the above said issue are stated in brief. The assessee herein is a subsidiary company of M/s Dow Chemical Pacific (Singapore) Pte Ltd. It is engaged in the business of manufacturing and trading in chemicals. During the years under consideration, the assessee had entered into various international transactions with its AEs. The assessee benchmarked all the transactions under Transactional Net Margin Method (TNMM). The Transfer Pricing Officer (TPO)

accepted the ALP of all transactions except the payments made by the assessee to various AEs for availing various types of services like, Corporate information technology support, Engineering, Logistic Support Services etc.

4. We shall take up the AY. 2011-12 as lead case. In that year, the assessee paid a sum of Rs.5732.51 lakhs to various Associated Enterprises for availing the services

5. In respect of payments made for availing “Engineering Services”, the assessee selected its foreign AE as tested party and applied TNMM method for determining ALP of transactions. The operative margin of comparable companies in US region was found to be 6.81%. The A.E was charging the assessee @ cost plus 10% mark up on provision of engineering services. Since the margin of foreign AE fell within the tolerance range of +/- 5%, the assessee submitted that its transactions are at arms length.

6. The assessee was having different segments, viz., manufacturing, trading and other service segments. The assessee was also maintaining segmental results. The payments made for other types of services, viz., corporate

information technology, logistic support etc., were allocated between various segments, viz., manufacturing, trading and other service segments. These assessee benchmarked the results of each of the segments under TNMM method under each of the segment. The Ld DRP has extracted the details of assessee's margin and the margin of comparable companies in paragraph 1.4 of its order passed for AY 2011-12. The same is extracted below, for the sake of convenience:-

Particulars	DCIPL margins	Comparable companies margins
Manufacturing chemicals	10.52%	9.40%
Trading in chemicals	4.10%	3.07%
Provision of marketing support services	42.94%	7.68%
Provision of technical support services	18.10%	10.16%
Provision of backend support services	15.07%	7.68%
Provision of engineering support services	18.54%	14.61%

For the payments made for availing engineering services, the assessee also carried out secondary analysis under TNMM method by assigning the payment to Engineering Services segment. The margin declared by the assessee in each of the segment was more than the margins of comparable companies. Accordingly it was contended that the payments

made by it for availing various types of services are at arm's length.

7. The TPO, however, took the view that the TNMM is not appropriate method for benchmarking intra-group services. He was of the view that CUP method is the most appropriate method. The relevant observations made by TPO are extracted below:-

“In the TP Report, the assessee has justified the payment of management charges on the ground that the said transaction is benchmarked by TNMM by treating AE as the tested party and contended that the transactions may be taken at arms length, As the Management charges are a class of its own, the same is proposed to be analysed under CUP method. TNMM is not most appropriate method because in intra-group services, the first requirement is to see whether the services have actually being rendered and cost benefit analysis of the services rendered. This is not possible under TNMM. In the TNMM, where the AE is tested party, it is assumed that the services have actually been rendered and the cost base on which markup has been charged is correct. As the financials of the AE are not available with the TPO and the assessee did not provide the details of the cost base of the AE. Therefore when cost base is doubtful and the cost benefit of the services rendered is also not established, the TNMM under such circumstances is not the most appropriate method.”

Then the TPO referred to the OECD guidelines on intra-group services with the observation that the said guidelines have persuasive value. The TPO observed that the OECD guidelines are based on the principles of willingness to pay for an activity

from an independent enterprise vis-à-vis performing it in-house.

8. The TPO took the view that the assessee is required to show that “how much a comparable independent service recipient, under comparable circumstances, would be willing to pay for that service?”. Accordingly the TPO held that an independent person would not be willing to pay anything, if no benefit has been provided or expected to be provided. Accordingly, the TPO observed that the assessee, in the instant case, is required to prove that the services were actually rendered by the AEs. Further the assessee is required to quantify such services in terms of actual expenditure incurred and also demonstrate commensurate benefits derived therefrom. According to TPO, the assessee has failed to prove that such services were rendered by the AEs and any commensurate benefit was derived by the assessee. He further took the view that the documentary evidences furnished by the assessee show that no party acting at arms length would have paid for them. The TPO held so after analysing the copies of agreements and copies of invoices furnished by the assessee to support the payments of Rs.57.32 crores. Against another

show cause notice issued by the TPO, the assessee furnished detailed explanations with regard to the nature of services provided by each of its AE. The assessee also explained the basis on which the costs were allocated by the Associated enterprises, which provided the services to the assessee. However, the TPO continued to hold that these details do not show what kind of benefit was received by the assessee. The assessee had selected foreign AE as tested party for the Engineering Services availed by it. The TPO noticed that the assessee has not furnished any TP study report of the same.

9. Accordingly the TPO held that the ALP of the international transaction for availing of various services is NIL under CUP method. For the sake of convenience, we extract below the relevant observations made by the AO:-

“9. Application of the cup method by the TPO:

From the above it is observed that the assessee has miserably failed in submitting any evidence worth consideration to show the benefits availed by it from its AE. The assessee could not furnish any working of cost by the AE or the cost of employees who have provided services to AE. From the above it is very clear that assessee has failed to substantiate with evidence the services availed by him and failed to benchmark them with respect to cost claimed. When there are no services availed, there is no question of benchmarking the transaction and in such cases; determination of ALP at Rs. NIL has been upheld by the Hon'ble ITAT in the following cases:

(a) *Deloitte Consulting India Pvt. Ltd., Vs. DCIT (2012) 137 ITD 21 (Mumbai)*

(b) *Gem Plus India Pvt. Ltd., Vs. Asst. CIT- IT No. 352/Bang/2009, dt. 21/10/2010*

(c) *Knorr Bremse India (P) Ltd. Vs. ACIT (2013) 56 SOT 349 (Delhi)*

Considering above, the arms length price of this international transaction is treated as NIL and an adjustment of Rs. 573,251,884/- is made to the international transactions in respect of Availing corporate, engineering and logistics support services. This decision is in response to specific reference u/s. 92CA(1) received and will apply to the case of assessee for A.Y. 2011-12 only.”

The AO passed the draft assessment order in conformity with the T.P adjustments made by the TPO.

10. Before Ld DRP, the assessee filed its objections to the draft assessment order. The assessee also furnished certain additional evidences, which interalia, included the auditor's certificate on the allocation of cost to the assessee. Hence the Ld DRP called for a remand report from the TPO. In the remand report, the TPO reiterated his stand that the assessee has failed to prove the benefit received by it out of the services availed by it. He also reported that the assessee has failed to demonstrate that it has got any worthwhile services for which an independent party in uncontrolled situation will be willing to pay the same amount for cost allocation or if it perform

those functions on its own it will be incurring the same cost. The TPO placed his reliance on various case laws to support his point. Having observed so, the TPO, however, however, took the view that amount payable for various services may be estimated by taking the cost of employee at Rs.3000/- per hour. Then the AO estimated the manhour required for each of the services and accordingly arrived at total of 3400 manhours. Accordingly the TPO determined the ALP of the services at Rs.1,02,00,000/- and accordingly reduced the T.P adjustment to Rs.5630.51 lakhs.

11. The remand report was confronted to the assessee by Ld DRP and the assessee strongly objected to the estimate made by the TPO by contending that the legitimate business needs should be judged from the angle of the businessman.

12. The Ld DRP, however, upheld the initial view of the TPO and accordingly upheld that the ALP of the international transactions relating to availing of various types of services is NIL. The discussions made by Ld DRP on the facts of the case are extracted below:-

“3.3.1 The assessee has benchmarked the transactions applying TNMM at entity level and claimed adopting the USA AE as the tested

party and since entity level margins of the AE are the same as margins of the comparables, the transactions are said to be at arms length. However the assessee has not produced the financials of AE selected as tested party and other AEs and the TP document on the basis of which the transactions are claimed at ALP. The assessee has also not shown the reasons why the AE should be selected as tested party or that the USA AE in particular and all ther AEs are less complex than the assessee so that the USA AE could be selected as tested party. The assessee has also given no reason why only one USA AE has been selected as tested party to show that the transactions with all the 16 AEs are at ALP. The assessee has not explained why the TPSR has not been produced with the relevant financials and how the transactions with all the AEs could be said to be at ALP, if the entity level TNMM margin of one AE is at ALP and that there was no reason and the tested AE has not incurred any abnormal loss or that all the transactions of the tested AE are at ALP. Therefore, the benchmarking of the transactions done by the assessee has been rightly rejected by the TPO. We uphold the rejection and also hold that the assessee has not maintained proper documentation in respect of international transactions. The TPO is directed to take appropriate action in this regard.”

These observations would show that there appears to be lack of clarity in the minds of Ld DRP on the facts of the case. As noticed earlier, the assessee as selected is USA-AE as tested party only in respect of Engineering services availed by it and further the engineering services were availed from USA-AE only. Though the USA-AE was selected as tested party in the primary analysis, the assessee has also benchmarked the payments under TNMM method in secondary analysis. All other payments have been benchmarked under TNMM method by allocating them to various segments.

13. The Ld DRP further observed that the assessee has not proved the benefit, it received by making the impugned payments. Various evidences furnished by the assessee were not found to be sufficient by Ld DRP. It further held that the assessee has not benchmarked the services, their costs and the mark up charged. The Ld DRP noticed that the assessee has availed following services viz., (i) information Support services, (ii) Engineering Support Services, (iii) Customer invoicing support services (iv) APAY area management and (v) Financial and Statutory Support Services. The Ld DRP held that these services are not closely interlined, interrelated, interlaced, inter-wined, inter-connected and inter-dependent. Accordingly the Ld DRP held that these services cannot be aggregated and compared in a common platform. Accordingly, the Ld DRP held that they cannot be benchmarked by applying TNMM at entity level. (As noticed earlier, the TNMM analysis was done at segmental level and not at entity level, as observed by Ld DRP).

14. Then the Ld DRP has given details of the aspects that are required to be seen while examining the arms length nature of the intra group services in paragraph 3.3.15 of its

order. It also referred to the OECD guidelines. Then the Ld DRP has examined the financial results of AY 2011-12 and held that the turnover and profits are highly skewed and does not justify the payments made. Accordingly it held that the same shall not constitute an evidence of benefits accrued to the assessee. The Ld DRP concurred with the TPO that the various evidences furnished by the assessee do not demonstrate the rendering of any service by the AE to the assessee for which the payment was made. It upheld the view of the TPO that the emails/documents/evidences are in the nature of general correspondences. Hence they do not suggest that any specific service was provided by the AEs to the assessee.

15. It was further observed that the assessee has failed to prove that the AEs did incur any cost in providing these services and the benefit for which such cost was incurred. The various evidences provided by the assessee were only samples. Since the assessee has not provided complete details, the Ld DRP held that they can be considered as having adverse effect to assessee's claim as per the provisions of sec.114(g) of the Act.

16. The Ld DRP further took the view that the assessee has not benchmarked the transactions in terms of sec.92 of the Act. It also took support of the following decisions in order to hold that the assessee is required to prove the benefits received and further to show that the similar kind of payment would have been made to an independent enterprise for providing similar kind of services.

- (a) M/s Gem Plus India P Ltd
(ITA No.352/Bang/2009);
- (b) M/s Deloitte Consulting India P Ltd
(ITA 579,1272,1273/Mum/2011)
- (c) M/s Knorr-Bremse India P Ltd
(ITA No.5097/Del/2011)
- (d) M/s Fosroc Chemicals India P Ltd

Since the Ld DRP held that the assessee failed in these aspects, it held that the TPO was entitled to determine the ALP at NIL. The conclusion of Ld DRP are extracted below, for the sake of convenience:-

“3.3.33 In view of the judicial precedents as well as the facts on record, we are of the view that the TPO has rightly determined the ALP of intra-group services at Rs. Nil. The panel is also of the view that the assessee has failed to demonstrate that it has received services or that it benefitted from such services as claimed. It has further failed to demonstrate the incurrence of cost by the AE as well as its allocation among the various group entities. We are of the view that the TPO has not questioned the commercial expediency of such transaction entered into by the assessee, rather, has only worked

out the arms length price of the purported service. We are further of the view that services are neither rendered nor received by the assessee and what is received (if at all) do not take character of chargeable service. The perusal of the e-mails and other records only show that incidental and passive association benefits have been provided by the AE. In this view of the matter, there could neither be any cost contribution or payment for such service to the AE. Further, as no expenditure would have been incurred, there is no necessity to apply a particular method to arrive at such conclusion. Therefore, the adjustment done by TPO on this ground is upheld.”

It can be noticed that the Ld DRP did not consider the suggestion made by the TPO in the remand report to determine ALP as 3400 hours and the rate per hour may be taken at Rs.3000/-. Pursuant to the directions given by Ld DRP, the AO passed the final assessment order. The assessee is aggrieved.

17. We heard rival contentions and perused the record. The dispute before us relates to the payments made by the assessee for availing various types of services from different AEs. During the year relevant to AY 2011-12, the assessee has availed services from 16 of its Associated Enterprises as detailed below:-

Associated Enterprise	Total (INR)
Dow Chemical Pacific (Singapore) Pte Limited	21,27,16,462
Dow Engineering Company	15,41,77,265
Hampshire Chemical Corp.	12,79,25,750
Dow Chemical (China) Company Limited	5,60,23,654
Dow Chemical Pacific Limited, Hongkong	1,26,17,320
Dow Chemical Korea Limited	7,23,906
Dow Chemical (Australia) Ltd	37,56,681
Dow Chemical (China) Investment Company Ltd	1,03,439
The Dow Chemical Company	88,373
Dow Chemical Canada ULC	2,46,769
Dow Deutschland Anlagengesellschaft Mbh	3,85,933
Dow Benelux B.V.	18,779
Dow Chemical Japan Limited	33,09,336
Dow Chemical Taiwan Ltd	4,57,810
Dow Chemical Imea GmbH	1,67,168
ME Global International FZE	5,33,239
Total	573,251,884

The nature of services provided by these AEs have been classified as under:-

- (a) Corporate, Engineering and Logistic Support Services.
- (b) Information System Services like e-work place services and shared services pool (SSPOOL).
- (c) Customer invoicing Settlement System (CISS) like complete functional support on issues that arise while processing invoice in SAP; uploading soft copies of the invoices in the internal site and

sharing invoices on a timely basis for record keeping.

(d) Financial and treasury support services like resolving coding issues on SAP vis-à-vis the F & S matters; undertaking foreign exchange reconciliation.

(e) Treasury services like systems/technical support for wall street system.

(f) APAY area management

(g) Engineering support services.

18. The assessee has got different segments viz.,

(a) Manufacturing of Chemicals

(b) Trading in Chemicals

(c) Provision of marketing support services

(d) Provision for technical support services

(e) Provision of backend support services

(f) Provision of engineering support services.

The assessee has maintained segmental results.

19. The assessee has availed Engineering support services from M/s DOW Engineering Company, USA and has paid a sum of Rs.1541.77 lakhs for the same. The assessee has allocated the same to the segment "Provision of engineering support services". For bench marking this payment, the assessee has selected its AE, viz., M/s DOW Engineering Company, USA as tested party. The operative margin of comparable companies in the US region was 6.81%. The AE had charged the assessee @ cost plus 10% mark up. Since the mark-up of 10% would fall within the range of +/- 5%, the assessee claimed that the payment is at arms length. According to the assessee, it has carried out TP analysis (secondary analysis) under TNMM for this payment by allocating it fully to the segment "Provision of engineering support services" and compared the same with other comparables. It was shown that the assessee's marging under this segment was 18.54%, while the marging of comparable companies was 14.61%. Accordingly it was contended that the payments made for availing engineering support services are at arms length.

20. In respect of payment made towards other services, the assessee allocated the various payments made to the AEs to various segments (excluding “provision of engineering support services” segment). The bench marking was done under TNMM method and it was demonstrated that the margin of the assessee is more than the margin of comparable companies. The details of the same were extracted earlier by us. Accordingly it was contended that other payments made also are at arms length.

21. The TPO/DRP has rejected the selection of USA-AE as tested party mainly for the reason that the assessee did not furnish the TP documents relating to the same. The Ld D.R submitted that the assessee has made the payments to its AE. It has shown that the margin of comparable companies was less than 10% mark up charged by the AE. Accordingly the Ld D.R submitted that the methodology adopted by the assessee may be acceptable, if the assessee had received the payments. Accordingly the tax authorities rejected the methodology of the assessee. We heard the parties on this issue. Since the assessee did not furnish the T.P, study of its USA AE, it is not be possible for the tax authorities and also

for us to examine the correctness or otherwise of the TP Study. Accordingly we are of the view that the tax authorities are justified in rejecting the same.

22. However, the foreign AE was selected as tested party only in respect of payments made for availing engineering services. It is the case of the that it has also done T.P Study for the payments made for availing engineering services under TNMM method. Similary other payments have been allocated to various segments and the TP study has been done under TNMM method. We notice that the tax authorites have rejected the same mainly for he reason that

- (a) the assessee has not shown that the said services were actually provided for.
- (b) the assessee has not shown that it has received any benefits by making the impugned payments.
- (c) the assessee has not shown it would have made similar payments, if similar kinds of services were provided by an independent enterprise.

Though the assessee has furnished agreements and other documents, on a sample basis, to show that the AEs have

provided services, yet the tax authorities have taken the view that the assessee has failed to prove that the AEs have provided services and further the assessee has also failed to show the benefits received by it by availing those services. It was further held that the various types of services claimed to have been availed are independent services and they are not inter connected to each other. Accordingly it has been held that aggregation of services is not appropriate and further that the TNMM method adopted by the assessee is not the appropriate method.

23. The TPO has initially determined the ALP of various services at NIL, since the assessee has failed to prove that the services were provided and further it was benefitted there from. However, during the proceedings before Ld DRP, the assessee furnished additional evidences to prove that the services were provided by its AEs. Though the TPO, in the remand proceedings, was critical of various documents, yet he finally suggested to Ld DRP that the value of services may be determined by estimating man hours. Accordingly the Ld TPO estimated the probable man hours at 3400 hours. He also suggested that a sum of Rs.3000/- per man hour may be

taken as cost of providing services. Thus, in the remand proceedings, the TPO has accepted that the AEs have provided services to the assessee. The method adopted by the TPO for determining the ALP at NIL is stated to be CUP method.

24. There is no dispute with regard to the fact that the ALP of the international transactions shall be determined by adopting any of the prescribed five methods, being Most Appropriate Method having regard to the nature of transaction or class of transactions or class of associated persons or functions performed by such persons or such other relevant factors as may be prescribed.

25. Though it is stated that the TPO has adopted CUP method, he has not brought on record any comparable company to show that the said comparable company would not have paid any money for the similar kind of services availed by it. On the contrary, the TPO and DRP have proceeded to hold that the assessee has failed to prove that the services were rendered by AEs and also the benefits that were received by the assessee. Accordingly the ALP was determined at NIL. However, as noticed earlier, the TPO has accepted in the remand proceedings that the AEs have

provided services, but determined the same by estimating the same as 3400 manhours. However, the DRP has not considered the same and accordingly upheld the original view of the TPO to determine the ALP at NIL. The question that boils down is whether the AEs have really provided the services and further the assessee was benefitted therefrom.

26. We notice that the assessee has provided a detailed submissions with regard to the nature of services provided by its AEs. It was also submitted by Ld A R that the TPO has not made such adjustments on similar type of international transactions in AY 2003-04 to 2010-11. The Ld D.R, on the contrary, submitted that the quantum of payments in the above said years was less. The Ld D.R further submitted that the TPO has made adjustments in AY 2006-07 and AY 2007-08 to the tune of Rs.5.96 lakhs and Rs.4.65 lakhs respectively. The Ld D.R also submitted that the Ld DRP has taken identical view in AY 2010-11 also. The Ld D.R submitted that there has been substantial increase in the payments made during the financial year relevant to AY 2011-12.

27. The Ld A.R, in the rejoinder, submitted that the TPO has not made any adjustments in AY 2014-15 and 2015-16, wherein also similar types of payments have been made. He further submitted that the assessee did not challenge the T.P adjustment made in AY 2006-07, 2007-08 and 2010-11 due to smallness of the amount. The Ld A.R also submitted that the recipient companies have filed returns of income in India by duly offering the income received by them and the same has been accepted. The Ld A.R accordingly submitted that the revenue, having accepted the income offered by the AEs, cannot take a different stand in the case of the assessee.

28. We notice that the payments made for similar types of services in AY 2014-15 and 2015-16 have been accepted by the TPO without making any adjustments, meaning thereby, the TPO has accepted the fact that the AEs have provided services to the assessee during the years relevant to AY 2014-15 and 2015-16. The case of the assessee is that various services were availed by it under the same agreements during AY 2014-15 and 2015-16 were also availed during the years under consideration also. There may be difference between the quantum of services availed in AY 2003-04 to 2010-11 and

during the years under consideration, but the question is whether the services were actually provided by the AEs and the assessee did receive benefits therefrom or not? According to Ld A.R, there is parity of facts between the three years under consideration and AY 2014-15 & 2015-16. The TPO has accepted the payments made in the succeeding two years, meaning thereby, the TPO has accepted the fact that the AEs have provided services and the assessee has got benefits from those services.

29. Since the question of providing services and benefits received therefrom is question of fact and since the TPO has accepted that the payments in AY 2014-15 and 2015-16 and further since the TPO, in his remand report, has accepted that the services were provided during the years under consideration also, we are of the view that the reasoning given by the TPO/DRP for determining the ALP at NIL, presumably by adopting CUP method, in our view, is liable to be rejected. There is no dispute that the ALP of international transactions has to be determined by following any of the prescribed methods. The assessee has determined the ALP by adopting TNMM method and the same has been accepted in the past

and future years. It also well settled proposition that the TPO cannot estimate the ALP. However, in the instant years, the TPO/DRP has rejected the same only for the reason that the assessee has failed to prove that the services were actually provided by AEs and further the assessee has actually been benefitted there from. We have already held that these two reasoning would fail, for the reasons stated above.

30. We notice that the TNMM method adopted by the assessee has not been examined by the TPO at all. Before us, the Ld A.R contended that other methods prescribed under the Rules cannot be applied to the payments made by the assessee. We notice that these aspects have not been examined by the TPO at all. If no other method is held to be applicable, then the AO/TPO is required to accept the TNMM method adopted by the assessee and examine the T.P study of the assessee. We have earlier noticed that the TP study undertaken by the assessee under TNMM method has not been examined at all. Also the tax authorities have examined the question of determining most appropriate method. Accordingly we are of the view that the entire issue requires fresh examination at the end of the AO. Accordingly we set

aside the order passed by the AO on this issue and restore the same to his file for examining the same afresh.

31. Following the decision taken in AY 2011-12 above, we set aside the order passed by AO on an identical issue in AY 2012-13 and 2013-14 also and restore the same to his file for examining the same afresh.

32. In AY 2011-12, the assessee has also raised a ground relating to non-granting of TDS credit of Rs.196.68 lakhs claimed by the assessee. As this issue requires examination, we restore this issue also to the file of the AO.

33. Other grounds urged in all the three years are either general in nature or premature in nature. Hence they do not require adjudication.

S.A. No. 513/Mum/2017:

34. Since the main appeal of the assessee has been disposed-of herein above, the Stay Application filed by the assessee will become infructuous, hence the same is dismissed as infructuous.

: 27 :

IT(TP)A Nos. 204/Mum/2016
1519 & 6472/Mum/2017
SA No. 513/Mum/2017

35. To sum up, all the three appeals of the assessee are treated as allowed for statistical purposes and Stay Application is dismissed.

Order pronounced in the open court on 11th day of March, 2019

Sd/- Sd/-
(AMARJIT SINGH) (B.R. BASKARAN)
न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER
मुंबई/Mumbai; दिनांक/Dated : 11th March, 2019

TNMM

Copy of the order forwarded to :

1. Appellant
2. Respondent
3. Dispute Resolution Panel (DRP), Mumbai
4. Director of Income Tax (IT & TP)
5. Addl. Commissioner of Income Tax (Transfer Pricing)
6. D.R. ITAT, Mumbai
7. Guard File.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asst. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai