

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA-58-2016 (O&M)

Date of decision:- 14.02.2023

Pr. Commissioner of Income Tax, Rohtak

....Appellant

vs.

Nippon Leakless Talbros Pvt. Ltd, Rewari

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Ms.Gauri Neo Rampal, Sr. Standing counsel
For the appellant

Mr. Sanjay Bansal, Sr. Advocate with
Mr. Gurdeep Singh, Advocate, for the respondent.

Ritu Bahri, J.

The present appeal has been filed under Section 260-A of the Income Tax Act, 1961 (for short 'Act 1961') seeking setting aside of order dated 28.08.2015 (A-IV) passed by Income Tax Appellate Tribunal, Delhi Bench 'I-2' New Delhi passed in ITA-475/Del/2015 for the assessment year 2010-2011.

The case in brief is that the assessee filed the return of income on 29.09.2010 at an amount of Rs.10,02,94,349/-. The assessment was completed under Section 143 (3) of Act 1961 on 31.12.2014 at an income of Rs.14,52,23,420/- by making addition of Rs.4,49,29,075/- on the following accounts:-

“i) Rs. 2,99,52,717/- made by the TPO by holding that the Arm's Length Price of International transaction related to the payment of management consultancy fee to its Associate Enterprises M/s Nippon Leakless Corporation Japan as Nil against Rs. 2,99,52,717/- claimed by the assessee.

ii) Rs. 1,49,76,358/- made on account of disallowance of management fee paid to M/s TalBros Automative component u/s 40A(2) of the Act.

The TPO vide order dated 24.01.2014 held that the ALP of international transactions related to payment of management consultation fees to its AE M/s Nippon Leakless Corporation, Japan as nil against Rs.2,99,52,717/- claimed by the appellant. The Assessing Officer based on the order of TPO passed a draft assessment order under Section 143 read with Section 144 C of the Act.

Against this order, the objections were filed before the DRP, who vide order dated 14.11.2014 upheld the order of TPO. The Assessing Officer passed an order under Section 143 read with Section 144 C of the Act on 31.12.2004 in conformity with the direction of DRPO making addition of Rs.2,99,52,717/- on account of management fees paid to these AEs of Nippon Leakless Corporation Jind and made further addition of Rs.1,49,76,358/- on account of management fees paid to Talbros Automative Components Ltd under the provisions of Section 40A (2) (b) of the Act. Feeling aggrieved, the appellant filed an appeal before the Income Tax Appellate Tribunal, which was allowed on 28.08.2015. Now the revenue has come up in appeal against the order of the Tribunal and has raised the following questions of law:-

“(i) Whether on the facts and circumstances of the case the Hon'ble ITAT was correct to delete the addition of management fee paid to foreign Associate Enterprises M/s Nippon Leakless, Japan amounting to Rs. 2,99,52,717/-. The TPO determined Arm's Length Price of International transaction related to the

payment of management consultancy fee paid to its associate Nippon Leakless Corporation Japan as Nil against Rs. 2,99,52,717/- claimed by the assessee which was also confirmed by Dispute Resolution Panel. But in the present case, the assessee failed to prove that associate enterprise performed any such work for the assessee company. The assessee is also paying royalty charges to its associate enterprises and thus was not required to pay any amount for the same activity."

ii) Whether on the facts and circumstances of the case the Hon'ble ITAT has erred in law and facts in applying the provisions of section 40(A)(2)(b) of the Income Tax Act, to the case of the assessee and in disallowing the management fees worth Rs. 1,49,76,358/- paid to related party despite the fact that no reasonableness has been proved by the assessee with regard to the fair market value of the services/facilities, legitimate needs of the business and benefits accrued for the services/facilities for which the payment is made. The Tribunal failed to appreciate that the assessee company is not paying any management fees in its exempt unit situated at Haridwar, claiming deduction u/s SOIC, during the A.Y. concerned & in subsequent year (A.Y.2011-12) but had claimed entire management fees in its taxable unit situated at Bawal, thereby not substantiating the commercial expediency on the part of the assessee."

iii) The Tribunal failed to appreciate that assessee company is diverting its profits for reducing its tax liability on one hand and on other hand, the specified party situated in India, M/s Talbros Automotive Components Limited, to whom the assessee is paying management fees worth Rs. 1,49,76,358/-, is filing return at Nil thereby coloring the entire transaction so as to evade the taxes."

On notice of the appeal, the respondent appeared and by way of C.M. No. 2173-CII-2023, placed on record written submissions/arguments, which are taken on record as Annexure R-11. Further an affidavit of Pankaj Vashistha, Manager (Finance), M/s Nippon Leakless Talbros Pvt. Ltd, has been filed placing on record copy of the orders passed by the Tribunal for the assessment year 2008-09 and that of Transfer Pricing Officer including that of the Commissioner of Income Tax (A) passed in favour of the assessee (R-1 to R-5).

A bare perusal of Annexure R-1 shows that the respondent/assessee filed its return of Income and reference was received from the Assessing Officer for determining the arm’s length price under Section 92 A (3) in respect of international transaction entered into by the assessee during the financial year 2011-12. The major international transactions undertaken by assessee with its AE and during the financial year 2011-12 are as under:-

Sr. No.	International Transaction	Amount	Method
1.	Purchase of raw material, tools dies etc	26,13,34,425/-	TNMM
2	Management consultancy fees	3,27,00,000/-	TNMM
3	Royalty paid	1,08,60,348/-	TNMM
4	Purchase of machinery	6,67,388/-	TNMM
5	Sale of finished goods	11,52,056/-	TNMM
6	Dividend paid	3,60,00,000/-	Cup

The management consultancy fee was accepted and it was observed that no adverse inference is drawn in respect of the international transactions undertaken by the assessee during the F.Y. 2011-12.

In order dated 21.05.2013 (R-2), the appeal filed by the assessee was allowed and the Assessing Officer was directed to consider the issue afresh, taking into account the additional evidences by granting adequate opportunity to the assessee. The assessee went in appeal against the order of the assessing Officer who computed the income of the assessee at Rs.10,31,01,023/- against the income of Rs.6,85,19,237/-. The Assessing Officer made addition to the income of the assessee to the extent of Rs.2,22,54,524/- on account of the alleged difference in the arm’s length price of international transactions.

Similarly, in order dated 12.01.2015 (R-3), it has been observed that payment of management fee is at arm's length. Thus, no adverse inference was drawn in respect of the international transactions undertaken by the assessee during the F.Y. 2008-09.

A bare perusal of orders (Annexure R-1 to R-5) shows that the appeal of the assessee was accepted by the Tribunal by setting aside the order of Assessing Officer passed under Section 143 (3) read with Section 144 C of the Income Tax Act by holding that the Transfer Pricing Officer for the Assessment year 2008-2009, 2009-2010 & 2011-2012 has accepted the transaction of payment of management fees paid to NLC by NLT and therefore the same having been made entirely for business consideration incurred wholly and exclusively for the purposes of business. Hence no addition was held to be sustainable for the assessment year 2010-2011. Similarly in respect of disallowance made under Section 40A (2) (b) on account of payment of administrative charges paid to TACL, the Tribunal recorded that the Assessing Officer had failed to discharge the onus as per the mandate of the provisions of Section 40A (2) of the Act. The assessee i.e NLT had received services from TACL in respect of which payment had been made as per documentary evidence on record and thus, there was no warrant for disallowance paid to TACL by the assessee when the payment was adjudged on the principle of commercial expediency when viewed from the point of view of a prudent businessman.

The present appeal filed by the department/revenue thus deserves to be dismissed in view of principle of consistency and rule of finality, in view of judgments i.e *CIT vs. Dalmia Dadri Cement Ltd, 1970 (77) ITR 410, 420 (Punj)*, *Radhasoami Satsang vs. CIT (1992) 193 ITR 321, 329 (SC)*, *CIT vs. Girish Mohan Ganeriwala (2003) 260 ITR 417, 418 (Punj)*

Learned counsel for the appellant has not been able to dispute passing of orders (R-1 to R-5).

In view of the above factual position, no substantial question of law arises for consideration in the present appeal.

The appeal is thus dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

14.02.2023
G Arora

<i>Whether speaking/reasoned</i>	: Yes/No
<i>Whether reportable</i>	: Yes/No