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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 463/2022

PR. COMMISSIONER OF INCOME TAX -1 (INTERNATIONAL TAXATION) ..... Appellant

Through: Mr. Aseem Chawla, SSC with Ms. Pratishtha Chaudhary, Adv.

versus

M/S A T KEARNEY LIMITED (INDIA BRANCH OFFICE) ..... Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Samarth Chaudhari, Adv.

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PR. COMMISSIONER OF INCOME TAX -1 (INTERNATIONAL TAXATION) ..... Appellant

Through: Mr. Aseem Chawla, SSC with Ms. Pratishtha Chaudhary, Adv.

versus

AT KEARNEY LIMITED (INDIA BRANCH OFFICE) ..... Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Samarth Chaudhari, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **21.03.2024**

1. The instant appeals impugn the judgment rendered by the Income Tax Appellate Tribunal [“**ITAT**”] dated 14 September 2021. Mr. Chawla, learned counsel appearing for the appellant, has placed for our consideration the following two questions of law, which

according to him would arise:

> "1. Whether on the facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal ('ITAT') was right in deleting the adjustment on account of payment of Intra Group Services ('IGS') despite the fact that the assessee has not been able to discharge the onus of having actually been in receipt of such services.
>
> 2. Whether on the facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal ('ITAT') was right in conferring the order of the learned CIT(Appeals) in deleting the adjustment on account of payment of IGS without having ensured that the service under consideration satisfy the 'Benefits Test'."

2. The solitary issue which appears to form the subject matter of the instant appeals is in respect of the expenses incurred in respect of Intra Group Services ["**IGS**"].

3. While dealing with the aforesaid, the ITAT has in a sense followed its order dated 21 May 2018 and which has been profusely reproduced. We deem it apposite to extract the following from the impugned order:

> "**8.** We have heard the rival arguments of both the sides, perused the Order of the A.O, Ld. CIT(A), paper book filed on behalf of the assessee and gone through the Order of the Tribunal. We find the A.O. in the instant case has made an adjustment of Rs.5,32,51,014/- on account of payment of intra group services to AE. We find the Ld. CIT(A) vide Order Dated 22.09.2017 directed the TPO to grant 50% of the adjustment on account of intra group services and accordingly an amount of Rs.2,66,25,507/- was sustained and balance amount of Rs.2,66,25,507/- was deleted. We find against the Order of the Ld. CIT(A), the assessee filed an appeal before the Tribunal and the Tribunal vide ITA.Nos.7722 & 7723/Del./2017, Order Dated 25.02.2020, for the A.Ys. 2009-2010 and 2010-2011, deleted the addition sustained by the Ld. CIT(A) by observing as under :
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> > "*7. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We find identical issue had come up before the Tribunal in assessee's own case vide ITA No.6249/Del/2012 for A.Y.*

2008-09. The Tribunal, vide order dated 21st May, 2018 at para 16 to 18 of the order has observed as under:-

> *"11. After considering the written submissions of the ld. DR and the orders of the authorities below, in our considered opinion, in order to examine the ALP of intra group services received by one of the associated enterprises, following essential information should be available:*
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> > *1. Whether the AE has received intra group services?*
> >
> > *2. What are the economic and commercial benefits derived by the recipient of intra group services.*
> >
> > *3. In order to indentify the charges relating to services, there should be a mechanism in place which can identity (i) the cost incurred by the AE in providing the intra group services and (ii) the basis of allocation of cost to various AEs.*
> >
> > *4. Whether a comparable independent enterprise would have paid for the services in comparable circumstances?*
>
> *12. Examination of controlled transaction ordinarily should be based on the transaction actually undertaken by the AE as it has been structured by them using the method applied by tax payer in so far these are consistent with the methods described under Chapter II and III. Only in exceptional cases tax Admn. should disregard the actual transactions or substitute other transactions for them. Restructuring of legitimate business transactions would be a wholly arbitrary exercise the inequity of which could be compounded by double transaction created where the other tax administration does not share the same views as to how the transaction should be structured. For this proposition, we draw support from the judgment of the Hon'ble jurisdictional High Court of Delhi in the case of EKL appliances 344 ITR 241.*
>
> *13. In the same judgment, the Hon'ble High Court observed that:*
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> > *"The character of transaction may derive from relationship between the parties rather than be determined by normal commercial conditions as may have been structured by the tax payer to avoid or minimize tax.*
> >
> > *The significance of the aforesaid guidelines lies in the fact that they recognise that barring exceptional cases, the tax administration should not disregard the*

actual transaction or substitute other transactions for them and the examination of a controlled transaction should ordinarily be based on the transaction as it has been actually undertaken and structured by the associated enterprises. It is of further significance that the guidelines discourage re-structuring of legitimate business transactions."

14. It has been held by various courts that it is not for the revenue authorities to dictate to the assessee as to how he should conduct his business and it is not for them to tell the assessee as to what expenditure the assessee can incur. The question whether decision was commercially sound or not is not relevant. The Hon'ble High Court in the judgment cited as EKL Appliances [Supra] has held that the assessee was not required to show that any expenditure incurred by him for the purpose of business carried on by him has actually resulted in profit or income either in the same year or in the subsequent years.

15. The Hon'ble High Court of Delhi in the case of Cotton Naturals India [P] Ltd 276 CTR 445 at para 17 of its order has held that "Chapter X and Transfer Pricing rules do not permit the Revenue authorities to step into the shoes of the assessee and decide whether or not a transaction should have been entered. It is for the assessee to take commercial decisions and decide how to conduct and carry on its business."

16. It is incorrect to say that the assessee has not provided appropriate/logical allocation of cost to ATK affiliates for management support and cost allocated to ATK India. Following chart summarizes the total group costs:

17. Break up of cost under each head is exhibited separately in the paper book. Each cost is supported by evidences which are placed at pages 701 to 1421 of the paper book.

18. In so far as the allegation relating to the payment for duplicate services is concerned, it appears that lower authorities have confused ATKBO with another group entity ATK India Pvt. Ltd which is a separate entity whose financial/TP study are placed on our record for the year under consideration. Detailed cost allocation sheets showing different personnel involved for each service has been placed on record separately. We find that the revenue authorities have simply rubbished the email evidences brought on record without examining *and pointing out defects in the evidences. It is not proper for the lower authorities to disregard such direct evidences.*

19. In so far as the payment relating to management services provided by ATK Australia is concerned, we find that the same has been dismissed by lower authorities on flimsy grounds. We find that the allocation in respect of services provided by Shri John Yoshimura Regional head of offices is on the basis of time spent by him in relation to ATKBO. In our considered opinion, this allocation is logical and sound on the facts of the case. There are email evidences wherein it has been mentioned that Shri John Yoshimura was responsible for advising on various performances/review of Indian partners. Moreover, specific dates of physical presence of Shri John Yoshimura in India are exhibited at pages 1417, 1419 and 1420 of the paper book.

20. Considering the cost allocation chart exhibited elsewhere supported by evidences placed as exhibits in the paper book, we do not find any merit in the transfer pricing adjustments made by DRP/TP/Assessing Officer on this count and the same is directed to be deleted.

8. Since the facts of the impugned assessment year are identical to the facts of the case decided by the Tribunal in assessee's own case, therefore, respectfully following the order of the Tribunal, we direct the A.O./TPO to delete the addition. The grounds raised by the assessee are accordingly allowed."

8.1. Since the issue has already been decided by the Tribunal in favour of the assessee by deleting 50% of disallowance sustained by the Ld. CIT(A), therefore, in view of the Order of the Tribunal, we do not find any infirmity in the Order of the Ld. CIT(A) in deleting the adjustment on account of payment of intra group service to A.E. Ground Nos. 1 to 3 of the appeal of the Revenue are accordingly dismissed."

4. As would be manifest from the above, the ITAT has taken into consideration the detailed break-up of costs which had been incurred in respect of IGS to ultimately come to conclude that the deletions as made by the Transfer Pricing Officer ["**TPO**"] would not sustain.

5. We note that the rendering of services was an aspect which was neither questioned nor doubted. In that view of the matter we find no

ground to interfere with the view as taken by the ITAT.

6. The appeals fail to raise any substantial question of law. They shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 21, 2024/kk