IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA

Before

SRI MANISH BORAD, ACCOUNTANT MEMBER
&
SRI SONJOY SARMA, JUDICIAL MEMBER

I.T.A. No.: 658/Kol/2017
Assessment Year: 2012-13

Cargo Partner Logistics India Private Limited.............Appellant
[PAN: AACCC 9129 K]

Vs.

ITO, Ward-12(2), Kolkata ....Respondent

Appearances by:

Sh. Rahul Shah &
Sh. Mukesh Agarwal, A/R, appeared on behalf of the Assessee.

Sh. Tushar Dhawal Singh, CIT, D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : May 19th, 2022
Date of pronouncing the order : July 27th, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2012-13 is directed against the order passed u/s 143(3)/144C read with Section 154 of the Income Tax Act, 1961 (in short the "Act") by ld. Income Tax Officer, Ward-12(2), Kolkata [in short ld. "AO"] dated 19.12.2016.

2. Brief facts of the case as culled out from the records that assessee is a private limited company and a subsidiary company of Multi Transport Und Logistik Holding AG which is engaged in

the business of providing freight and other cargo forwarding services managed organizationally as a single unit headquartered in Vienna, Austria. The company has expertise in supply chain management. The assessee avails management services from various enterprises including its Associated Enterprise (in short the "AE") Cargo Partner GmBH Austria (in short "CPA"). For the assessment year 2012-13, the assessee e-filed its return of income on 29.11.2012 disclosing loss at Rs. 6,45,739/-. Case selected for scrutiny through CASS. Notice under Section 143(2) of the Act issued on 28.07.2015. The assessee having entered into the international transaction with its AE, for determination of Arm's Length Price (in short the "ALP"), assessment proceedings were carried out and Transfer Pricing Adjustment of Rs. 5,92,76,125/- was made on account of sale and purchase of services at Rs. 2,69,70,409/- and payment of management/technical services fee at Rs. 3,23,05,716/-. The proposed adjustments by AO-TPO were objected by the assessee before the Dispute Resolution Panel (in short the "DRP") raising various grounds. After considering the submissions of the assessee, for the type of services received by the assessee from its AE-CPA, learned DRP came to the conclusion that the services received by the assessee company are not of the nature of stewardship in nature, but failed to meet the benefit test. The learned DRP partly upheld the ALP determined by the TPO though not a stewardship service. Learned DRP allowed the service charges booked on account of IT related functions at ALP in view of the specialised nature of such expenses and a local need for a standardized operating system requirement.

3. Learned AO acted upon the order of learned DRP dated 02.12.2016 and framed the assessment under Section 143(3) read with Section 144C of the Act on 19.12.2016 confirming the transfer pricing adjustment of Rs. 5,92,76,125/- and assessed income at Rs. 5,86,30,286/-.

4. The assessee moved an application under Section 154 of the Act stating that learned AO had made an apparent mistake and has not given the correct effect of the directions of learned DRP. Learned AO observed that there was an apparent mistake and the transfer pricing adjustment was only required to be made towards managerial and technical services at Rs. 2,47,69,939/- and accordingly corrected the assessed income at Rs. 2,41,24,200/- after adjusting the loss of Rs. 6,45,739/- declared by the assessee.

5. Now, aggrieved with this transfer pricing adjustment, in other words disallowance of management charges paid at Rs. 2,47,69,939/- the assessee has raised the following grounds of appeal:

> *"1. On the facts of the case and in law, the order of the Transfer Pricing Officer (hereinafter referred to as "TPO") passed u/s 92 CA(3) of the Income-tax Act, 1961, (hereinafter referred to as the 'Act'), subsequently confirmed in part by the Dispute Resolution Panel (hereinafter referred to as "Panel") and consequently incorporated by the Income Tax Officer (hereinafter referred to as "AO") in the assessment order u/s 143(3) r/w S. i44C(i3)/i54 of the Act, is erroneous on facts and bad in law.*
>
> *2. On the facts of the case and in law, the Panel erred in confirming the adjustment of Rs. 24,769,939/- to the international transactions of the Appellant with its Associated Enterprises (hereinafter referred to as 'AEs').*

3. On the facts and circumstances of the case, the Ld. TPO/AO and subsequently the Ld. Panel failed to appreciate that the transactions pertaining to 'rendering of freight /forwarding services' to AEs and 'receipt of freight/ forwarding services' from AEs are internally comparable with the transactions pertaining to 'rendering of freight /forwarding services' to third party agents and 'receipt of freight/ forwarding services' from third party agents for determination of arm's length price.

4. On the facts and in the circumstances of the case, the Ld. TPO/AO and subsequently the Ld. Panel have erred in rejecting the certified copy of segmental financial statement for comparing appellant's profitability' from 'rendering freight/forwarding services' to AEs vis- a-vis third party agents and 'receipt of freight/forwarding services' from AEs vis-a-vis third party agents.

5. On the facts and circumstances of the case, the appellant having established the nature of services, evidences of services, ensuing benefits and pricing of services received from its AE, the Ld. TPO/Ld. AO have erred in determining the arm's length price of management service fees (other than information technology services) to be Rs. Nil.

6. On the facts and circumstances of the case, the Ld. TPO/AO and subsequently the Ld. Panel erred by stepping into the shoes of the businessman (taxpayer) and concluding that service charge does not commensurate with the benefits received and not restricting the scope of assessment under section 92CA of the Act to determine the arm's length price of the international transaction by adopting one of the methods prescribed under the Act.

7. That on the facts and in the circumstances of the case, the Learned AO has erred in not granting credit for Tax Deducted at Source to the extent of INR 2,51,577 out of the credit for INR 3,87,07,122 claimed by the appellant in the return of income against which necessary directions may please be given to allow full credit thereof and also grant consequential relief towards interest.

8. That on the facts and circumstances of the case, the Ld. AO have erred in initiating penalty proceedings u/s 271(1)(c) of the Act.

9. The Appellant craves leave to add to and/ or amend, alter, modify or rescind the grounds hereinabove before or at the time of hearing of the appeal."

6. From perusal of the above grounds, we find that ground nos. 1 & 2 are general in nature which need no adjudication. Further, during the course of hearing, learned Counsel for the assessee requested for not pressing ground nos. 3 & 4 as the adjustment towards the transaction of freight/forwarding services was deleted by the rectification order issued under Section 154 of the Act dated 10.12.2017. We, therefore, dismiss ground nos. 3 & 4 as not pressed.

7. Now, we take up ground nos. 5 & 6 of his appeal through which the assessee has challenged the transfer pricing adjustment confirmed by learned DRP at Rs. 2,47,69,939/-. Learned AO on the basis of DRP directions held that the management service charges paid by the assessee to its AE-CPA fails on the benefit test and since not incurred for business purposes, deserves to be disallowed.

8. Learned Counsel for the assessee referring to the written submissions and paper books, submitted that the appellant operates as a freight-forwarder and its business is not limited to local boundaries of the country. The entire group has a global presence and is operating through a house of group companies located in various countries.

9.1. Further, learned Counsel for the assessee submitted that "CPA" is a dynamically growing, mid-sized specialist for transportation and integrated logistics, with particular strength in overseas solutions. The business model is based on personal and global partnerships, with and for the clients. The strategy relies on two major goals: a strong and reliable network with the clients, and international cooperation with other independent partners who are market leaders in their respective countries. Local operational excellence, delivered by the best logistics professionals, and innovative systems and solutions, create competitive advantages for the customers, through optimised cargo and information flow. Thus, in order to have a competitive edge, it is highly imperative that there exists an organisational framework, innovative IT software, transport, and industry-market know-how, network development, and high business productivity service standards, coordinated and centrally driven. Being a flexible medium-sized business, the appellant needs to have a competitive advantage in the potential of regional management to provide ample room for customer-oriented solutions. The appellant is passionate about solving problems, finding efficient solutions, and achieving success in cooperation with customers; and in order to have an effective network development and high productivity service standards, it has availed management support services from its AE, CPA.

9.2. Further, the appellant, being in a freight forwarding business, has to comply with multiple rules and regulations pertaining to multiple countries and international organisations for which a specialized team of highly qualified personnel is required. Being, a new entrant in the industry, it has access to the centralized information collated by the AE. In addition to the above, a business of freight forwarding in nature also requires analysing the international market dynamics in addition to the local market, hence it becomes imperative for the appellant to obtain the service from its AE for developing the new products. The appellant belongs to a highly regulated industry, which requires adequate training to employees on a regular basis in relation to latest regulatory updates in the international market to avoid any punitive action. Keeping the above in mind, the appellant has availed varied category of services, also submitted, and evidenced, (being IT, commercial management, corporate sales, marketing, finance, personnel, controlling and consulting), as and when requested vide different agreements entered into between the parties (Refer to page 128 r/w pages 131 to 296 of Part 1 of the Paperbook).

9.3. The appellant would like to submit that the details of the above stated services along with benefits received from the same had been submitted before the lower authorities (description of services-refer page 131-296 in part 1 of Paperbook; benefits from services - pages 1605-1629 r/w page 1942-2102 of part 3 and page 297-335 of part 1 of Paperbook). For your Honours ease of reference, a brief description of services along with benefits have been summarized.

i. IT services
ii. Commercial management
iii. Corporate sales
iv. Marketing
v. Finance
vi. Personnel
vii. Controlling

viii. Consulting

9.4. Pursuant to the agreements entered, the details of the cost charged on the appellant by the AE for each of the services received, had been made available to the Ld. TPO/Ld. DRP. Further, a management certified copy of a statement showing the details (details of hours booked, description of work performed, details of cost charged per man-hour etc.), had also been submitted; (refer page 1653-1724 of part 2 of Paperbook) along with sample invoices evidencing the charge against the said services (Refer to pages 1725-1734 of Part 2 of the Paperbook).

It has also been submitted by the appellant that the AE has entered into similar agreements with other group companies, where the similar services provided are charged on the same principle as that for the appellant (Refer pages 1739-1920,1921-1941 of part 3 of Paperbook). Thus, it can be concluded that management service arrangement between the appellant and the AE is not exclusive in nature, and that the AE acts as a centralised service provider to other group entities, recovering costs from them on a similar basis. Therefore, the appellant humbly submits that there are various decisions which hold that how an appellant conducts its business is entirely its prerogative and it is not for the revenue authorities to decide what is needed by the appellant and what is not. Further whether a particular expense on services received actually benefits an appellant in monetary term or not is not even a consideration for its being allowable as a deduction from the computation of income and thus it cannot even have any role in determining the arm's length price of that service. The appellant humbly submits that the Ld. TPO had rejected the benchmarking analysis adopted by the appellant. However, it failed to provide its own benchmarking analysis to determine the transaction price to be Rs. NIL.

9.5. In this regard, the appellant would like to refer to the ruling of Hyderabad Tribunal in the case of *Social Media India Ltd. v ACIT (TS-274-2013)* wherein it was stated that: (refer page 481, page 487 of compendium to judicial precedents at paragraph 9)

> "*Nothing has been brought on record by the TPO or by the DRP to determine the ALP against the value shown by the assessee. In the absence of any counter report by the TPO/DRP or separate valuation done by the TPO, the assessee's valuation has to be accepted as it was supported by an independent valuer, who determined the cost price on the actual expenditure incurred by the AE. Considering the totality of the facts of the case, we are of the opinion that the website purchased by the assessee has to be considered at Arm's length. To this extent, the observation of the DRP stands confirmed by us.*
>
> *(emphasis added)"*

9.6. Reference could also be drawn to the *NLC Nalco* ruling (supra) by the Hon'ble Kolkata Tribunal, wherein it has been upheld that the Ld. TPO cannot determine the value of management services to be NIL without applying any transfer pricing methodology similar to the facts in the appellant's case: (refer page 451, page 466 of compendium to judicial precedents at paragraph 23)

> *"23...Accordingly, the action of the TPO in arriving at the arm's length price of the relevant international transactions at 'nil' value without application of any transfer pricing methodology, was without any basis and hence, was not sustainable..."*

9.7. The above ruling clearly provides that in the absence of any analysis done by the Ld. TPO or any rejection of the appellant's analysis after providing any cogent reasoning, the appellant's approach needs to be accepted. Keeping in mind the above, since no objection had been raised by the Ld. TPO/DRP; about the economic analysis adopted by the appellant, nor was any alternate approach adopted, the analysis submitted by the appellant should be accepted.

10. Reliance further placed on the decisions of (i) Coordinate Bench of Hon'ble Kolkata ITAT in the case of *Landis+Gyr Limited vs. DCIT* for AY 2007-08/2008-09 *[TS-518-ITAT-2016(Kol)-TP]*, (ii) Hon'ble Delhi High Court in the case of *CIT vs. EKL Appliances [2012] 24 taxmann.com 199 (Delhi)* and (iii) *NLC Nalco India Private Limited, TS-36-ITAT-2016(Kol)*.

11. To conclude, it is submitted that the management services are necessary for the smooth running and the survival of the business in the competitive market. A direct linkage between the services and the revenue of the company cannot be drawn relating to services dependent on the hours spent by the personnel of CPA in running since the services are dependent on the business requirement of the company. It was further stated by the learned Counsel for the assessee that the entire amount towards management charges paid by the appellant to its AE-CPA for the said assessment year has also been offered to tax in India and the alleged management charges are even less than 2% of the total revenue of the appellant.

12. Per contra, learned D/R vehemently argued supporting the orders of both the lower authorities as well as the learned DRP

stating that the assessee has failed to prove the nexus of the revenue earned during the year with the alleged management charges and since the live linkage is missing, such charges cannot be allowed as a business expenditure.

13. We have heard rival contentions and perused the records placed before us. The assessee received management support services from its AE-CPA and the sum of Rs. 3,23,05,716/- was paid out of which Rs. 2,47,69,939/- have been disallowed and for the purpose of transfer pricing the said disallowance is framed as transfer pricing adjustment but without applying any method of calculating the ALP . Learned DRP has held that the assessee failed on the benefit test in respect of such management services paid to its AE-CPA. Before us the dispute is not with regard to the method to be adopted for valuing the management services nor that such services are stewardship services but the issue is that the assessee failed to prove the benefit received by it by making payment to its AE-CPA for management support services.

14. Now, first we need to examine that what type of services have been provided by the AE to the assessee. Learned Counsel for the assessee has claimed that the assessee company in order to avail an effective network development and high productivity service standards the assessee is in continuous need of management services in the nature of marketing as well as information technology, personnel etc. The AE-CPA is a dynamically growing, mid-sized specialist for transportation and integrated logistics, with special expertise in overseas solutions. The assessee company avails various types of services from AE-CPA vide different

agreements which stands submitted before the lower authorities and also filed in the paper book placed before us and according to the same, the description of the alleged management services can be enumerated in the following categories:

"(i) <u>Marketing</u>

The following description only refers to the marketing services performed by the CPA for the group entities. The performed services of the marketing department of the CPA comprise the following:

• Corporate Design: final check of compliance with design guideline and relaunches

• Corporate Public Relations: press information, contacts with journalists,

maintenance of the photo database for the journalists, partly press journeys

• Direct Marketing: print campaigns in Europe twice a year, creation of all mailings for all countries, creation of invoice enclosures

• Emailing: creation and wording of agent newsletters, request of databases, allocation of electronic newsletters with own Mail-client

• Website: maintenance and improvements of the websites, 3 updates a week, main content is developed by the CPA marketing department.

• Development of sales supporting booklets: country specific image booklets, product booklets, partly internal hand-out booklets. In average, 100 new product booklets per year

• Intranet Newsletter: 70% of the articles are created and layout modified by the CPA

Without the services of the central marketing department, the assessee would have been less popular in India. The central purchase of advertising materials also benefits the assessee in marketing of its services. Moreover, the assessee does not have its own marketing department. If CP did not perform the activities, the assessee would have to perform the activities by itself or buy them in addition.

The services performed by CPA aims at gaining hew customers as well as to keep the relationship with the existing ones. The benefits of the service "corporate design'' e.g. are that the assessee does not have to develop any kind of new design. They receive any kind of templates they need to improve their customer relationship from CPA. Additionally, the assessee benefits from the pooling of know-how due to the centralization of the department in Austria. Thus, resulting in quality improvement and synergies.

(ii) *<u>Corporate Sales</u>*

The services performed under the given category are of the following types:

- *Development and implementation of corporate sales strategy*
- *Standardization and optimization of the sales process*
- *Sales analysis and performance measurement based on sales targets, sales reports and KPIs*
- *Implementation of sales tools (MyCRM, SQL) to support the sales team*
- *Coordinate global and corporate tender management*
- *Initiate sales trainings*

The services performed by the corporate sales department are aimed at gaining new customers as well as to keep the relationship with the existing ones. The assessee benefits from increased revenue coming from cross-selling opportunities specified by the corporate sales department. The cross-selling activities include selling among or between established clients, markets etc. or selling an additional service to an existing customer. Through the global and corporate tender management the assessee can address large accounts in several countries. Considering the size of the assessee it would not have been able to attract some of its existing clients. Moreover, the assessee also benefits from the centralized implementation and maintenance of the sales tools. If CPA did not perform this service, the assessee would have to perform it by themselves or buy them in addition.

(iii) *<u>Commercial management</u>*

The function Commercial Management can be divided into the 3 major services being Product Management, Global Network Development and Business Process Management. However, the following sub-items in this chapter after the description of the performed services refer to Commercial Management as a whole due to the fact that the cost allocation system of all Commercial services is the same.

Product management

• *Create and implement global product strategy plan and targets*

• *Define, maintain and expand group-wide trade lanes and special vertical markets*

• *Provide trainings and up-to-date product knowledge to the National Product Managers and sales in the countries*

• *Centralized pricing and credit limit administration of partners/carriers Global Network Development:*

• *Select and expand the networks with external partners in the countries where cargo-partner has no own subsidiaries*

• *Develop and expand the business with the ABC agent network*

• *Define and implement sales campaigns in cooperation with the, local route management*

Business Process Management:

• *Harmonize and optimize the operational processes*

• *Develop and optimize the IT systems in cooperation with the IT department*

• *Training of standard procedures and group directives*

The assessee benefits from the implementation and optimization of business processes and IT-tools which makes the processing of transport orders easier and faster. It also benefits from the larger access to vendors in different countries through CPA vendor management relationships.

(iv) Consulting

The Consulting department provides the following services:

• *General legal consulting for the Group companies*

• Drawing and checking of contracts and agreements

• Legal actions for the foundation and change in affiliated/related companies (entry in commercial register, appointment/dismissal of Managing Directors and authorized signatories ("Prokuristen"), registration of capital increase etc.)

• Consulting in court claims concerning civil and criminal law e.g. Iran-Embargo, aviation cartel reclaiming

• Protect intellectual property for cargo-partner Group

• Insurance for cargo-partner Group (property, liability and damage insurance)

• Centralized purchasing of office material for cargo-partner Group (e.g. standardized forms like airway bill, bill of lading)

The assessee benefits from the consulting services that include legal, insurance, purchasing and quality management as it needs them for its day to day business.

(v) <u>ASP</u>

The function ASP can be divided into the services SAP and IT. In the following, the description of the performed services of the ASP department distinguishes between SAP services and TT services.

SAP services:

• SAP Roll Out projects (FI/CO Tool) by countries

• Help Desk Support activities in any kind of SAP related questions

• SAP project activities for local finance and controlling departments

• Customizing and Application activities for finance and controlling department regarding the following SAP Tools: FI, CO, MM, SD, BW and SEM/BCS. These activities are performed in case of necessary adaptations of the SAP system.

IT services:

• Service Desk

(1st & 2nd level end-user support, end-user desktop management, end-user ICT environment setup, telephone & mobile phone management)

• Technical Management

(network management, operate and optimize data centers & system infrastructure, hardware maintenance)

• Application management

(2nd & 3rd level application support, supplier relations, application design and changes, application manuals, data maintenance)

• Application Development

(develop, maintain and enhance applications, BI solutions/reports, SW-/system architecture, IT project management, customer & partner integration projects)

The assessee benefits from the provided ASP services as it needs them for its daily work business. Without these services the assessee could not exist as the services directly have an impact on the operational activities. The assessee is still moderate in size to have qualified personnel that implement and ensure an efficient IT SAP system. Each of the ASP services cannot be seen separately as all ASP services as a whole are necessary for CP's business model.

(vi) <u>Controlling</u>

The function Controlling can be divided into the services Controlling and Revision. In the following, the description of the performed services of the Controlling department distinguishes between Controlling services and Revision services.

Controlling services:

• Review of finance/controlling processes and monthly results

• Provide know-how and support in the area of accounting, controlling and cash management to the local finance departments

• Provide proposals and trainings to the local finance and controlling departments to improve efficiency and quality

• Support in the daily use of SAP (FI, CO, BW, SEMZBCS) and AS400 for accounting and controlling purposes in cooperation with the ASP team

• Support in SAP implementation projects in cooperation with the ASP team

• Assist in administration and charging of intercompany transactions

Revision services:

• Review of operational, sales and personnel processes

• Provide proposals to improve efficiency and profitability

• Detect illegal and criminal acts

The assessee benefits from the Controlling services as they support the local, finance departments in the efficient and effective accounting operation and to provide reliable financial information.

(vii) *Finance*

The Finance department is responsible for the overall financial management of the CP Group. This responsibility includes:

• Advisory on liquidity management

• Advisory on tax compliances and management

• Advisory on forex management

• Define and implement the Group-wide risk management strategy.

The assessee benefits from the assistance of the CPA finance departments in the efficient and effective accounting operation and to provide reliable financial information. The provision of liquidity planning tools shall help the. subsidiaries to monitor their local liquidity situation. The risk management processes and tools support the assessee in evaluating and monitoring the creditworthiness and payment behaviour of the customers thereby helping to reduce the losses from bad debts.

(viii) *Personnel*

The operational fields of the personnel department have to support the planned growth of the company and have to ensure that the quality of the management bears up to the increasing demands. The performed services are:

Recruiting: Qualitatively fitting and fast filling of open positions

• Exact definition of job specifications,

• qualification of the peripheral units (branch manager, HR-responsible in operative units) in performing recruiting interviews and recruiting activities

• Hiring of young talents (specialists and junior executives)

• Utilization of the internally existing development potential before external search

• On-boarding: professional integration of new employees

• Definition of standardized adjustment plans and responsibilities

• Definition of mentors / buddies at least for key positions

Potential- and performance analysis: identification of the potentials and performers (non-performers) in the company

• Establishing of yearly appraisal interviews as an important management tool

• Review of the existing management qualities and definition of the need for action

• Realization of a personnel-portfolio of the employees

Development- and succession planning: development and retention of the high performers and potentials to the company

• Preparation of development plans for potentials, based on the analysis mentioned above

• Development of potentials by specific job-rotations and job enrichment (possibly matrix function)

The assessee benefits from the services resulting in new responsible qualified personnel without having to develop new processes on their own in this regard. Furthermore, the assessee benefits from the personnel department's activities because those are meant to enable the local entities to work more qualified and efficiently on a high level The local entities themselves are too small to have the capacity to work on personnel policy. The personnel policy is a key factor to make growth possible and therefore necessary for the assessee.

Further, the agreement states that the services costs for the aforesaid services shall be allocated towards the group companies based on the number of weighted total costs per country."

15. We observe that the above described type of management services which the assessee is availing is not only from the AE-CPA but from other companies also and the payment to such other companies are not disputed by the Revenue. On one hand, Revenue has accepted the claim of management services paid to other companies but has doubted only with regard to payment made to AEs. We find that the alleged management services are merely 2% of the total revenue of the company which is even less than 2% of the revenue of the company and the said sum paid by the assessee has also been offered to tax by AE-CPA. Also the nature of services rendered by AE-CPA to the assessee are not specific but provided on day to day basis whenever needed. The AE-CPA has expertise in the overseas freight and forwarding business and there are various types of issues and problems attached in such services and the AE being an expertise in the international business – the assessee company is taking regular service through the personnel of AE-CPA to get guidelines on various fronts including the marketing, commercial management, corporate sales, invoicing, finance, other connected issues on various courses. In other words, for day to day smooth and effective working of business and for trying to keep an error free working environment, such management support services have been taken. In the past also, during the assessment year 2010-11 and 2011-12 such services have been taken and have been consistently charged in the books of account.

16. The observation of the Revenue authorities is not specific but general in nature that the assessee has failed on the benefit test

but nowhere any specific instances have been given to show that the so-called services taken by the assessee company from its AE under various agreements are not related to the nature of business carried on by the assessee. It is not the case that the assessee which is carrying on forwarding chain business has paid the management services for some other unrelated business activity. The nature of business of the assessee company is directly linked to the nature of services and business carried on by its AE-CPA. In simple way, we find that the AE-CPA is an associated enterprise and the headquarter of the group company is based in Austria and they have to maintain their brand and uniformity in services to be provided to its clients which are attached to its various subsidiaries and other enterprises located in various part of the world.

17. Hon'ble Delhi High Court in the case of *EKL Appliances* (*supra*) has held as under:

> *"Even Rule 10B(1)(a) does not authorise disallowance of any expenditure on the ground that it was not necessary or prudent for the assessee to have incurred the same or that in the view of the Revenue the expenditure was unremunerative or that in view of the continued losses suffered by the assessee in his business, he could have fared better had he not incurred such expenditure. These are irrelevant considerations for the purpose of Rule 10B. Whether or not to enter into the transaction is for the assessee to decide. The quantum of expenditure can no doubt be examined by the TPO as per law but in judging the allowability thereof as business expenditure, he has no authority to disallow the entire expenditure or a part thereof on the ground that the assessee has suffered continuous losses. The financial health of assessee can never be a criterion to judge allowability of an expense; there is certainly no authority for that. What the TPO has done in the present case is to hold that the assessee ought not to have entered into the agreement to pay*

> *royalty/brand fee, because it has been suffering losses continuously."*

18. Recently, the coordinate Bench of Kolkata Tribunal has also adjudicated the issue in question in the case of *NLC Nalco India Private Limited, TS-36-ITAT-20I6(Kol)* and *M/s. Bata India Ltd. [TS-I49-ITAT-2016(kol)]*. In the judgement rulings, the coordinate Bench of the Tribunal has held as under:

> *"Revenue cannot judge the reasonableness of the expenditure from its own view point and compute the ALP of the transaction as NIL based on the allegation that the assessee has not received any benefits out of the services received from the AE. It is that the quantum of expenditure can be examined by the TPO as per law and so long as the expenditure or payment has been demonstrated to have been incurred or laid out for the purposes of business, it is no concern of the Ld. TPO to disallow the same on any extraneous reasoning. In light of the same, the undersigned is of the view that the services received by the appellant from Its AE were required for the purpose of its operations and cannot be regarded as duplicative in nature. The services provided direct and proximate benefit to the appellant and could not be regarded as shareholder services/stewardship in nature."*

19. We, therefore, under the given facts and circumstances of the case and respectfully following the ratio laid down by the decisions and in view of the discussions made hereinabove, are of the considered view that the alleged management charges at Rs. 2,47,69,939/- paid towards management support services to the AE-CPA are allowable as business expenditure incurred for the purpose of business of carrying out freight and other cargo forwarding services and by paying the alleged charges the assessee has been able to run the business smoothly and effectively

. We, therefore, delete the transfer pricing adjustment made at Rs. 2,47,69,939/-and allow ground nos. 5 & 6 raised by the assessee.

20. As regards ground nos. 7 is concerned where the assessee has stated that the learned assessing officer has not granted credit for tax deducted at source, we find that during the course of hearing, no submissions were made by learned Counsel for the assessee on this issue. It seems that the assessee is not interested to press this ground. Even otherwise, this issue is of mere reconciliation of tax deducted at source and such exercise can be carried out at the level of Assessing Officer if not made earlier. Hence, ground no. 7 is allowed for statistical purposes.

21. Ground no. 8 is consequential in nature.

22. Ground no. 9 is general in nature which needs no adjudication.

23. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Kolkata, the 27th July, 2022.

Sd/-	*Sd/-*
[Sonjoy Sarma]	[Manish Borad]
Judicial Member	Accountant Member

Dated: 27.07.2022

Bidhan (P.S.)

Copy of the order forwarded to:

1. ***Cargo Partner Logistics India Private Limited, Unit-513-516, 5th Floor, JMD Megapolis Sohna Road, Gurgaon-122 018.***
2. ***ITO, Ward-12(2), Kolkata.***
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata