

आयकर अपीलीय अधिकरण “बी” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, PUNE

श्री आर. के. पांडा, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI R.K. PANDA, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos. 254 to 258/PN/2015
निर्धारण वर्ष / Assessment Years : 2007-08 to 2011-12

Tata Ficosa Automotive Systems Limited,
S. No. 235 & 245, Village – Hinjewadi,
Tal.-Mulshi, Distt.-Pune – 411057

PAN : AAAC5755F

.....अपीलार्थी / Appellant

बनाम/Vs.

The Deputy Commissioner of Income Tax,
Circle -7, Pune

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos. 269 to 273/PN/2015
निर्धारण वर्ष / Assessment Years : 2007-08 to 2011-12

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.....प्रत्यर्थी / Respondent

Assessee by : Shri Percy Pardiwala
Revenue by : Shri P.L. Kureel

सुनवाई की तारीख / Date of Hearing : 14-12-2016

घोषणा की तारीख / Date of Pronouncement : 23-12-2016

आदेश / ORDER**PER VIKAS AWASTHY, JM :**

These appeals by the assessee and the Revenue are directed against the order of Commissioner of Income Tax (Appeals)-5, Pune dated 23-12-2014 common for the assessment years 2007-08 to 2011-12.

2. The brief facts of the case as emanating from records are: The assessee company is engaged in the business of manufacture and sale of auto components viz. mirrors, parking brake, washer systems, gear shifters, cables, etc. The assessee entered into Administrative Support Agreement with Tata Autocomp Systems Ltd. (TACO) on 01-04-2006 for providing administrative support services which inter alia includes :

- i. Initial Start-up and Operating phase support;
- ii. Designing and implementing the Performance Management system;
- iii. Training and Human Resource development (including Employee Benefit administration);
- iv. Employee relationship administration;
- v. Supporting marketing and sales related activities;
- vi. Support for various finance related activities;
- vii. Support for legal and taxation compliance issues;
- viii. Helping development of strategy plan and initiatives;
- ix. Setting up of IT infra-structure-designing, identification, negotiation and implementation;
- x. Setting up of communication infrastructure.

2.1 To accomplish the aforesaid services, TACO appointed its staff at various levels and Chief Internal Auditor and Treasury Officer for its group companies to review the internal processes. As per the agreement the assessee agreed to pay fee to TACO for providing administrative services @ 2% of net sales. The assessee claimed the payment of said administrative fee charges to TACO as revenue expenditure. The Assessing Officer disallowed the same on the ground that the assessee has failed to produce any documentary evidence and to substantiate its claim. The Assessing Officer further rejected the claim of assessee under the provisions of section 40(A)(2)(a) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

Apart from the above, the Assessing Officer made certain other disallowances on account of international/domestic travelling, transport and welfare expenses etc. in the assessment years under appeal.

2.2 Aggrieved by the assessment orders for the respective assessment years i.e. assessment years 2007-08 to 2011-12, the assessee preferred appeals before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) vide impugned order common for all the five assessment years restricted the disallowance of administrative expenses to 75%. In other words the Commissioner of Income Tax (Appeals) allowed 25% of the total administrative expenditure claimed by the assessee. In respect of travelling and welfare expenses the Commissioner of Income Tax (Appeals) reduced the ad hoc disallowances made by the Assessing Officer from 20% to 10% in assessment year 2007-08 and confirmed the disallowance of

transportation and welfare expenditure in assessment years 2008-09 and 2009-10 at 10%.

Against the findings of Commissioner of Income Tax (Appeals), both, the assessee and the Revenue are in appeal before the Tribunal. The assessee has assailed the order of Commissioner of Income Tax (Appeals) in disallowing remaining 75% of the administrative expenditure and confirming 10% disallowances on account of transportation and welfare expenses. The Revenue on the other hand has assailed the order of Commissioner of Income Tax (Appeals) in allowing 25% of the administrative expenses to the assessee.

3. The grounds raised by the assessee in its appeal for assessment year 2007-08 are as under :

“The appellant objects to the order dated 23 December 2014 passed by the Commissioner of Income-tax (Appeals) - 5, Pune [“CIT(A)”] for the aforesaid assessment year on the following among other grounds:

1. *The learned CIT(A) erred in confirming the disallowance of administrative service charges paid to Tata Autocomp Systems Ltd. (“TACO”) to the extent of Rs.36,02,323 under section 40(A)(2)(a) of the Income-tax Act, 1961 (“the Act”) on the grounds that the same is excessive and unreasonable having regard to services rendered by TACO and the legitimate business needs of the appellant.*
2. *The learned CIT(A) erred in making the following observations, which are contrary to the facts of the case and in law:*
 - a) *.....The appellant company was incorporated in the year 1998 and the initial start-up phase of the company including land acquisition, construction of factory premises etc. is already over and therefore, question of availing any services by the appellant from TA CO, during the year on account of start-up phase of the company does not arise ...*

- b)except furnishing the above e-mail correspondence between the two group concerns, no other documentary evidence was filed by the appellant to show that services were actually rendered by TA CO to the appellant during the year ...
- c)It was also observed that some of the e-mails are too vague and general ...
- d)even the services supposedly received for marketing, business and analyses and customer liaison as evidenced by the emails are in the nature of general correspondence ...
- e)It is not known from the details placed on record whether all these emails culminated into rendering of any specific services to the appellant. Thus, the e-mail correspondence does not establish conclusively that services and support to the extent claimed by the appellant were received from TA CO during the year ...
- f)by no stretch of imagination, it can be said that the expenditure was incurred due to business expediency. Therefore, the payments to TA CO at a fixed percentage of the turnover irrespective of actual services rendered in a particular year are not at all justified .
- g)rendering of services by TA CO during start-up phase does not even arise as the said phase is already over. Further, as per email correspondence, only in a few activities during the operating phase, the appellant apparently received some support from TACO ...
- h)There could be business expediency to avail the services 0.(TA CO in the initial formative years of the company i.e. during start-up phase but once the company is well established, it cannot be said that the expenditure to the extent claimed by the appellant at a fixed percentage of turnover was incurred on account of business expediency ...

The appellant objects to the above observations.

3. *The learned CIT(A) erred in confirming the disallowance of transportation and staff welfare expenses to the extent of Rs.359,883 on adhoc basis.*
4. *The learned CIT(A) erred in making the following observations, which are contrary to the facts of the case and in law:*
 - a) *.....the appellant has not satisfied the assessing authority regarding the business expediency of incurring the impugned staff welfare expenditure ...*
 - b) *.....many of these expenses were either not explained or amounted to personal expenditure ...*
 - c) *.....the appellant could not have been said to have discharged the onus cast upon him to prove that the expenditure was wholly and exclusively incurred for business purposes ...*
 - d) *.....from the details produced such expenditure is clearly in the nature of personal or non-business expenditure ...*

The appellant objects to the above observations.

5. *Each one of the above grounds of appeal is without prejudice to the other.*
6. *The appellant reserves the right to amend, alter or add to the grounds of appeal.”*

The assessee has raised similar grounds in other assessment years i.e. assessment years 2008-09 to 2011-12 except that the second issue comprising in ground Nos. 3 and 4 relating to disallowance on transportation and staff welfare expenditure is only confined to assessment years 2007-08 to 2009-10. There are no such disallowance of transportation and welfare expenditure in assessment years 2010-11 and 2011-12.

4. The Revenue in its cross appeals has raised solitary ground. The ground raised by the Revenue in its cross appeal for assessment year 2007-08 reads as under :

1. *“On the facts and in the circumstances of the case, the learned CIT(A) has erred in allowing the expenses on account of administrative service charges to the extent of 25% of the total expenditure claimed by the assessee.”*

In appeals for assessment years 2008-09 to 2011-12, identical ground has been raised by the Department.

5. Shri Percy Pardiwala appearing on behalf of the assessee submitted that the assessee had entered into Administrative Support Agreement on 01-04-2006 with TACO. The assessee had provided detailed description of services rendered by TACO along with supporting evidence to the authorities below. TACO had provided services to the assessee in various areas such as :

- i. Cash Management of group companies;
- ii. Investment decisions;
- iii. Human Resource and Development for all the group companies, recruitment, imparting training to personnel, managing service matters etc.;
- iv. Keeping track over Capital Expenditure/Investment Approvals;
- v. Framing of Policies and Procedures in the areas of product costing of price determination, expenditure authorization, committing financial resources, product pricing, outsourcing manufacturing activities on job work, provisions for slow moving or obsolete stock, policy for bank reconciliations, obtaining bank guarantee and letter of credit etc.;

- vi. Overlooking the Legal and Taxation matters of the group companies, liaising with the various Government offices, holding training sessions on new and significant amendment in the law, circulation of tax updates/case laws etc.;
- vii. Providing Secretarial Assistance for drafting legal agreements, guidance for conducting board meetings, procedures under the Companies Act etc.;
- viii. Chalking out Business Development Initiatives and strategic planning;
- ix. Conducting Internal Audit, review of existing processes;
- x. Setting up of Information Technology Infrastructure, review etc.;
- xi. Overall Monitoring of Operations of group companies.

5.1 The services were provided by TACO to the assessee out of business expediency. The ld. AR pointed that the examination of documentary evidence would clearly prove beyond doubt that the services rendered by TACO are directly linked to the activities carried out by the assessee. The authorities below have erred in disallowing the legitimate business expenditure of the assessee by invoking the provisions of section 40(A)(2)(a) of the Act. The ld. AR further pointed that TACO had entered into such Administrative Support Agreement with various other Tata Group companies for providing administrative services on similar lines. TACO is charging fee @ 2% of the total turnover and in some cases 1% of total turnover depending upon the services rendered by it. The ld. AR pointed that the Co-ordinate Bench of the Tribunal in the case of Tata Johnson Controls Automotive Limited Vs. The Dy. Commissioner of Income Tax in ITA No. 1450/PN/2011 for assessment year 2006-07 decided on 09-12-2015

had accepted the claim of assessee. Thereafter, Pune Bench of the Tribunal in the case of Tata Toyo Radiator Pvt. Ltd. Vs. The Dy. Commissioner of Income Tax in ITA No. 1034/PN/2013 for assessment year 2006-07 decided on 18-03-2016 allowed the claim of assessee towards the payment of administration charges. In both the above mentioned cases the assessees had entered into Administrative Support Agreement with TACO on similar lines. In the case of Tata Johnson Controls Automotive Limited Vs. The Dy. Commissioner of Income Tax (supra) administrative charges paid to TACO were @ 1% of total turnover whereas in the case of Tata Toyo Radiator Pvt. Ltd. Vs. The Dy. Commissioner of Income Tax (supra) the administrative charges paid to TACO were @ 2%, as is in the case of assessee. The ld. AR submitted that the documentary evidence furnished by assessee in respect of administrative services rendered by TACO before the authorities below is complied in pages 94 to 221 of the paper book.

5.2 In respect of ground Nos. 3 and 4 relating to disallowance of transportation and staff welfare expenses the ld. AR submitted that the Assessing Officer has erred in disallowing 20% of total expenditure claimed by the assessee in assessment year 2007-08. During the assessment proceedings the assessee had furnished the details of all the expenditure along with the vouchers except two vouchers which could not be traced at that time. The books of account of the assessee are subject to audit. The Assessing Officer has not pointed any defect in books maintained by the assessee. The Assessing Officer made ad hoc disallowance of 20% of the total expenditure in an arbitrary and unjustified manner. In assessment years 2008-09 and 2009-10 the Assessing Officer made disallowance on 10% of the total expenditure

without assigning any reason, although no defect was pointed by the Assessing Officer during the assessment proceedings for assessment years 2008-09 and 2009-10. Thereafter, in subsequent assessment years no disallowance was made by the Assessing Officer. In first appeal, the Commissioner of Income Tax (Appeals) has erred in observing that the assessee has failed to produce documentary evidence in respect of staff welfare expenditure and that the details produced by the assessee show that the nature of expenditure is personal or non-business. Even after holding expenditure for non-business purpose, the Commissioner of Income Tax (Appeals) reduced the disallowance from 20% to 10% in assessment year 2007-08 and upheld the disallowance of 10% in assessment years 2008-09 and 2009-10. The observations of the Commissioner of Income Tax (Appeals) on this issue are against the facts of the case and documents on record.

6. On the other hand Shri P.L. Kureel representing the Department vehemently supported the findings of Assessing Officer in disallowing the entire administrative fee paid to TACO and claimed as expenditure by the assessee. The ld. DR submitted that there was no justification of claiming such huge expenditure on account of administrative expenses. Business expediency for payment of such expenditure would be justifiable if it would have been initial years of set up, but once, the company is well established it cannot be said that the expenditure to the extent claimed by the assessee at a fixed percentage of turnover was incurred on account of business expediency. Especially, when the assessee had developed its own establishment, basic infrastructure, logistic and other resources to take care of its various business needs.

The ld. DR vehemently defended the order of Assessing Officer in making disallowance of administrative expenses u/s. 40(A)(2)(a) of the Act. The ld. DR contended that the Commissioner of Income Tax (Appeals) even after coming to the conclusion that there was no business expediency for making such payment to TACO still allowed 25% of the total administrative expenses. The ld. DR submitted that the payments made by the assessee to TACO are nothing but a mode to reduce tax liability. The ld. DR prayed for restoring the findings of Assessing Officer in disallowing administrative fee expenses.

7. Controverting the submissions made by the ld. DR, the ld. AR submitted that both the companies i.e. assessee and TACO are paying tax at the same tax rate. In assessment year 2009-10 both, the assessee as well as TACO had suffered losses. Therefore, it cannot be said that payment of administrative expenses by assessee to TACO is in any manner a device to circumvent the provisions of tax laws. TACO in its return of income for the respective assessment years had disclosed the amount and has paid tax thereon. The ld. AR further to fortify his submissions placed reliance on the decision of Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. V.S. Dempo & Co. (P) Ltd. reported as 196 Taxman 193.

8. We have heard the submissions made by the representatives of rival sides and have perused the orders of the authorities below. We have also examined the various decisions on which the ld. AR has placed reliance and the documents furnished by the assessee in the form of paper book. In appeals, the assessee has assailed the order of Commissioner of Income Tax (Appeals) in disallowing administrative

services charges paid by the assessee to TACO. The disallowance has been made under the provisions of section 40(A)(2)(a) of the Act. The disallowance sustained by the Commissioner of Income Tax (Appeals) in assessment years under appeal are as under :

Assessment Year	Additions Sustained by CIT(A)
2007-08	₹36,02,323/-
2008-09	₹31,63,773/-
2009-10	₹31,19,814/-
2010-11	₹43,39,371/-
2011-12	₹51,71,250/-

9. The case of the assessee is that the administrative services charges have been paid by the assessee to TACO @ 2% of total turnover are in accordance with the Administrative Support Agreement dated 01-04-2006 between assessee and TACO (placed on record at pages 89 to 93 of the paper book). The assessee has further placed on record various documents at pages 94 to 221 of the paper book to substantiate the services rendered by TACO to the assessee over the period of time for smooth running of business. A perusal of agreement shows that services provided by TACO include :

- i. Support for Land Acquisition and Development;
- ii. Support for payroll and benefit Administration (Provident Fund superannuation, Gratuity);
- iii. Support for Liaison with Bank and Financial Institutions;
- iv. Support for Decisions regarding Capital Budgeting;
- v. Support for Legal and Taxation services;
- vi. Support for Human Resources Development & Training facilities;

- vii. Communication infrastructure advisor services;
- viii. Support for manpower recruitment;
- ix. Support for maintaining Industrial Relations;
- x. Support for Provide Marketing and Distribution Network;
- xi. Support for liaison with Government Authorities;
- xii. Support for Vendor development efforts.

10. For providing aforesaid services TACO charged amount equal to 2% of the net sales as defined in para 1.3 of Article 1 of the Agreement. The Id. AR has pointed that the issue relating to allowability of administrative service charges has been adjudicated by the Co-ordinate Bench of the Tribunal in the case of Tata Johnson Controls Automotive Limited Vs. The Dy. Commissioner of Income Tax (supra) and in the case of Tata Toyo Radiator Pvt. Ltd. Vs. The Dy. Commissioner of Income Tax (supra). A perusal of the order of Co-ordinate Bench of the Tribunal in the case of Tata Johnson Controls Automotive Limited Vs. The Dy. Commissioner of Income Tax (supra) for the assessment year 2006-07 reveals that the grounds raised by the assessee in present set of appeals are identical to the grounds raised in the aforesaid appeal assailing the disallowance of administrative service charges paid by assessee to TACO. In the aforementioned case, the disallowance was made by the Assessing Officer on similar grounds invoking the provisions of section 40(A)(2)(b) of the Act. The assessee in the said case had entered into Administrative Support Agreement with TACO which was on similar lines as is in the case of present assessee. The commercial exigency of agreement and the reasonableness of administrative service charges paid to TACO were under question. The

Tribunal decided both these issues in favour of assessee by observing as under :

“23. We have heard the rival contentions and perused the record. In the facts of the present case as referred to by us in the paras hereinabove, the assessee was a joint venture company with 50:50 share between TACO and Johnson Control Inc. After formation of joint venture company, it was engaged in the business of providing services on account of automobile sector i.e. seating systems for motor cars. Equal control was between two i.e. TACO and Johnson Control Inc. An agreement was entered into between the assessee and TACO for providing administrative services both on account of start-up phase and operating phase. The said agreement was in place for the past several years and as per the terms and conditions of the agreement, the assessee was to pay remuneration to TACO @ 1% of turnover in addition to reimbursing all the external costs incurred by TACO, if any. The assessee during the year under consideration had paid sum of Rs.2,00,84,162/- to TACO and the question of its deductibility has arisen by way of present grounds of appeal raised. The Assessing Officer was of the view that since TACO was a related party, in view of the provisions of section 40A(2)(b) of the Act, the said expenditure has to be looked into accordingly. The assessee furnished certain information before the Assessing Officer. However, the Assessing Officer was of the view that there was no justification in the claim of assessee since the assessee had established its administrative set up and was also incurring expenditure on professional services and other expenses and there was no merit in the claim of assessee vis-à-vis said expenditure being paid to TACO. The CIT(A) also referred to the provisions of section 40A(2)(a) of the Act and after considering the various evidences filed by the assessee, was of the view that certain services have been rendered by TACO and he was of the view that only 25% of the expenditure has to be allowed in the hands of assessee. Both the assessee and the Revenue are in appeal against the said order of CIT(A).

24. The first issue to be addressed in this regard is whether in order to judge commercial exigency of the agreement and the quantum of remuneration paid in view of the terms of agreement entered into between two parties, can the reasonableness of expenditure be viewed by the authorities or reasonableness has to be established from the view point of businessman. The first aspect in this regard is that where there is a joint venture between two concerns to the extent of 50:50 and additional remuneration is being paid by joint venture company

formulated by them to one of the concerns, then the issue has to be seen from the view point of other concern who is part of joint venture and is incurring 50% cost of the said remuneration paid. There is a commercial agreement between the assessee and TACO, under which certain services had to be provided by TACO, for which remuneration was due to them. The list of services are enlisted in the agreement and undoubtedly, the said agreement has been in force for more than 7 years and the amounts have been paid and allowed as expenditure in the hands of assessee from year to year. In the entirety of the above said facts and circumstances, we find no merit in the order of Assessing Officer in holding that the entire expenditure merits to be disallowed in the hands of the assessee, since the quantum of remuneration has been fixed at percentage of turnover. The explanation of the assessee before us was that TACO was the holding company of all joint venture companies and it was providing the said services to all the joint ventures and the assessee was one such joint venture, to which the said services were provided. The remuneration paid in this regard is allowable in the hands of assessee as the same is paid on account of business exigency.

25. Now, coming to the quantum of remuneration which is to be allowed in the hands of assessee. Both the authorities below have considered the related party transaction as referred to in section 40A(2) of the Act. The said provisions of the Act lay down that the services to a related party, as envisaged in section 40A(2)(b) of the Act, shall not be allowed as deduction under section 40A(2)(a) of the Act, where the Assessing Officer is of the opinion that such expenditure is excessive or unreasonable having regard to the market value of the goods, services or facilities for which payment is made. However, where the expenditure is incurred for the legitimate needs of the business, the same is to be allowed as an expenditure in the hands of assessee. Though, under the Act, part of expenditure which is excessive or unreasonable having regard to the market value of the services, can be disallowed in the hands of assessee, but in order to invoke the said provisions of the Act, first step is to find out fair market value of the services, for such invoking of the powers, the Assessing Officer is not empowered to sit in the seat of businessman to decide the merits of quantum of claim to be allowed in the hands of assessee. The authorities below in the present case have not disputed the terms of agreement, but were of the view that remuneration paid at a percentage of turnover, in view of the assessee having established its business, was excessive. The contention of the

assessee on the other hand was that for smooth running of its business, services were provided by TACO, which were as terms of the agreement.

26. *We find similar issue of allowability of expenditure pursuant to agreement between the assessee and the third party, arose before Cochin Bench of Tribunal in Harrisons Malayalam Ltd. Vs. ACIT (supra) and the factual aspects of the case were as under:-*

“16. The next issue is in respect of the disallowance of fees paid to M/s. R.P.G. Enterprises Ltd. ('RPGEL' for short) and this issue arises in all the appeals before us. The Id. CA submitted that the assessee is engaged in multiple business activities like tea and rubber cultivation by technology, structural, civil, mechanical and electrical engineering, trading in tea, coffee, spices and export of the same estate supplies and trading, clearing and shipping, air travel and air cargo. The assessee-company has entered into an agreement dated 8-8-1994 with M/s. RPGEL to acquire the non-exclusive licence to use "RPG" Logo owned by RPGEL for the purpose of assessee's business including in relation to or upon its products, label, letter-head, brochure, pamphlets and advertisement materials, etc., the Id. CA referred to the copy of agreement which is placed at pages 162 to 167 of the paper book. It is further argued that the said RPGEL has its objectives, development of code of conduct and creation of goodwill which could be suitably identified to the public mind and the logo "RPG" is having a high goodwill in the market. It is further submitted, that due to the use of the logo RPGEL provides the infrastructure for developing certain code of conduct and to operate and run the organization for promoting and monitoring standard industrial, commercial and trade practices in the pursuit of attainment of excellence in quality of their products and services. The costs of rendering the group resources were shared by the licensee companies and that enables the licensee company like the present assessee to avail the benefits of the group resources without incurring the full cost of such facilities. The total actual expenses of the corporate centre are shared by licensee company in relation to their size and profitability and the same are paid by the companies like the assessee's who are the licensees to RPGEL as a license fee. As per the agreement the licensees utilised the benefits of the expertise developed as a group resources by RPGEL in the important field like HRD, strategic planning, corporate finance, management information, taxation, quality management, project development, information technology and corporate governance, etc. The said RPGEL with group resources are having talented and highly qualified experts in diversified fields and assessee and other companies who are licensees availed, the expertise in the required field for the excellence in the corporate management as well as promoting business standards. He further submitted that if the assessee has to acquire this expertise, the

cost of infrastructure will be 10 times more than the license fee paid and certainly it is in the nature of business expediency and the same is allowable. He further argued that the CIT(A) has not disputed the nature of the expenses as capital or revenue. The only reservation of the CIT(A) is that it is not an allowable expenditure. The Id. CA relied on the following precedents :-

- (i) CIT Vs. Delhi Safe Deposit Co. Ltd. (1982) 133 ITR 750 (SC)
- (ii) Sasoon J. David & Co. Ltd. Vs. CIT (1979) 118 ITR 261 (SC)
- (iii) Bombay Steam Navigation Co. (1953) (P.) Ltdd. Vs. CIT (1965) 56 ITR 52 (SC)
- (iv) CIT Vs. Malayalam Plantations Ltd. (1964) 53 ITR 140 (SC)

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20. The authorities below have not disputed the terms of the agreement but it appears from the reasons given by the CIT(A) that the said payment was not required at all. The concept of business is changing due to globalization. The market strategies of the corporate organizations are also changing fast. If any business house is required to stand in the market, then it has to improve the quality of the products and improvement of the quality of the products as well as the market strategies will depend on lot of supporting infrastructure. The contention of the assessee is that RPGEL is one of the logo having goodwill in the market and use of goodwill gives an indication to the buyers and consumers that the assessee company is having the back up of excellence with code of conduct and quality. In the changing scenario of globalization, one cannot go with the conservative concept of the early fifties. As far as HRD is concerned, it has gained importance in the industrial and business world. We find force in the argument of the Id. CA that RPGEL is having the infrastructure which is used by the assessee-company for the development of its business. Whether any particular payment is on account of business expediency or not is to be considered for allowing the same under section 37 of the Act.

21. Another aspect to be considered here is that section 37 provides that any expenditure wholly and exclusively incurred for the purpose of business but it does not mean that the said expression contemplates that the said expenditure must be incurred necessarily for the purpose of business.

22. In the case of Sasoon J. David & Co. (P.) Ltd. (supra), the Hon'ble Supreme Court has held that the expression "wholly and exclusively" used in section 10(2)(xv) of Indian Income-tax Act, 1922 does not mean

"necessarily". Ordinarily it is for the assessee to decide, whether any expenditure should be incurred in the course of his or its business. Such expenditure may be incurred voluntarily and without any necessity and if it is incurred for promoting the business and to earn profit then he can claim the deduction even though there was no compelling necessity to incur such expenditure (head notes). The principles laid down by the Hon'ble Supreme Court while interpreting section 10(2)(xv) of the 1922 Act are squarely applicable to section 37(1) of 1961 Act. In our opinion, the payments made by the assessee to RPGEL is an allowable expenditure under section 37(1) of the Act. We, therefore, set aside the order of the CIT(A) on this issue in all the assessment years before us and direct the Assessing Officer to delete the additions."

27. In the facts of the case before Cochin Bench of Tribunal, the remuneration was also fixed at prescribed rate on turnover as referred to in para 16 of the decision.

28. Next aspect of the issue, where the payments have been made to TACO, on which taxes have been paid by TACO, disallowance made in the hands of assessee would result in double taxation. Admittedly, the concern TACO has furnished Nil return of income under normal provisions, but has paid taxes under section 115JB of the Act. The Hon'ble Bombay High Court in CIT Vs. Indo Saudi Services (Travel) (P.) Ltd. (2008) 219 CTR 562 (Bom) have considered facts of that case, which read as under:-

"3. The relevant facts giving rise to the present appeals are briefly set out hereunder:-

- (i) The assessee's business is that of being general sales agents of Saudi Arabian Airlines. The assessee earned commission @ 12 per cent from Saudi Arabian Airlines on the tickets booked/sold by them. The assessee appointed several agents including their sister concern, viz., M/s Middle East International and paid incentive commission to such agents, by way of handling charges.
- (ii) For the asst. yrs. 1991-92 and 1992-93 the AO by his orders dated 25th March, 1994 and 31st Jan., 1995 respectively held that the incentive commission paid to M/s Middle East International (sister concern of the assessee) was half per cent more than other sub-agents. The AO invoked section 40A(2) of the IT Act and disallowed the excess commission paid to the assessee's sister concern @ 1/2 per cent. The CIT(A) by orders

dated 5th Jan., 1995 and 14th Nov., 1995 confirmed the disallowance for asst. Yrs 1991-92 and 1992-93 respectively.

- (iii) *The assessee carried the matter further by filing an appeal before the Tribunal. Initially the Tribunal by its common order dated 3rd April, 1997 dismissed the assessee's appeals for the asst. yrs. 1991-92 and 1992-93. Thereafter the assessee filed an application under section 254 of the IT Act, 1961 before the Tribunal and Tribunal by its order dated 3rd March, 1999 allowed the said application of the assessee arising out of the Tribunal's order dated 3rd April, 1997. Thereafter the Tribunal by its order dated 21st Oct., 1999 allowed the appeal of the assessee partly and deleted the additions which were earlier confirmed.*
- (iv) *The appellant (Revenue) being aggrieved by the Tribunal's order dated 21st Oct., 1999 filed the above appeals, inter alia contending that the Tribunal was not right in law in allowing the assessee's claim of incentive commission paid to its sister concern which was half per cent more than the other sub-agents and which has been correctly disallowed in terms of section 40A(2)(b) of the Act.*

29. *The Hon'ble Bombay High Court held as under:-*

- “4. *We have heard the learned advocates appearing for both sides. We have also perused the order passed by the Tribunal dated 21st Oct., 1999 which is impugned by the Revenue in the present appeals. We find that the following facts were established before the Tribunal and the same have been accepted by the Revenue even before us.*
- (i) *That the assessee apart from paying handling charges @ 9 1/2 per cent to its sister concern, have paid handling charges at the same rate to other agents viz., M/s A.K.Travels, M/s Om Travels and M/s Jet Age Travels.*
- (ii) *For asst. yrs. 1986-87 and 1987-88 the assessee had paid the handling charges @ 10 per cent to the sister concern of the assessee and such charges paid were considered to be reasonable by the appellant.*
- (iii) *For asst.yrs. 1989-90 and 1990-91 the assessee had reduced the payment of handling charges to 9 1/2 per cent to its sister concern. The AO has considered the payment of commission to the sister concern in the asst. yr. 1989-90 and allowed the claim after due scrutiny. For asst. yr. 1990-91 also the claim of the*

assessee @ 9 1/2 per cent has been allowed though the same has not been dealt with by the AO specifically in the order.

- (iv) For asst.yrs. 1993-94 and 1994-95 the assessment has been made by the AO under section 143(3) and handling charges paid to the sister concern @ 9.5 per cent have been considered to be reasonable and allowed.
 - (iv) The sister concern of the assessee M/s Middle East International is also assessed to tax and income assessed for the asst. yr. 1991-92 is Rs.9,38,510 and for asst.yr. 1992-93 is Rs.14,65,880 and the said assessment orders have been placed on record.
 - (v) Under the CBDT Circular No. 6-P, dated 6th July, 1968 it is stated that no disallowance is to be made under section 40A(2) in respect of the payments made to the relatives and sister concerns where there is no attempt to evade tax.
5. In view of the aforesaid admitted facts we are of the view that the Tribunal was correct in coming to the conclusion that the CIT(A) was wrong in disallowing half per cent commission paid to the sister concern of the assessee during the asst. yrs.1991-92 and 1992-93. The learned advocate appearing for the appellant was also not in a position to point out how the assessee evaded payment of tax by alleged payment of higher commission to its sister concern since the sister concern was also paying tax at higher rate and copies of the assessment orders of the sister concern were taken on record by the Tribunal.
6. We, therefore, answer the above question of law raised in these appeals in affirmative and dismiss the above appeals filed by the appellant. There will, however, be no order as to costs.”

30. Applying the above ratio laid down by the Hon’ble Bombay High Court in CIT Vs. Indo Saudi Services (Travel) (P.) Ltd. (supra) to the facts of the present case, where admittedly TACO had paid taxes under section 115JB of the Act, we reverse the findings of CIT(A) that there was evasion of taxes by the assessee in making such payment.

31. Another aspect of the issue raised is the observations of Revenue authorities that no services have been rendered by associate enterprises and if any services have been rendered, they are not sufficient to justify the payment. The assessee before us has filed compilation of papers including the copies of reports, e-mails and other documents evidencing the rendering of services from day to day. All these documents were not considered by the authorities below and we find no merit in the orders of revenue authorities in brushing aside those documents in a summary

manner without properly analyzing the same. We find in similar circumstances, the Mumbai Bench of Tribunal in Dresser-Rand India (P.) Ltd. Vs. Addl.CIT (supra) had observed as under:-

“8. We find that the basic reason of the Transfer Pricing Officer's determination of ALP of the services received under cost contribution arrangement as 'NIL' is his perception that the assessee did not need these services at all, as the assessee had sufficient experts of his own who were competent enough to do this work. For example, the Transfer Pricing Officer had pointed out that the assessee has qualified accounting staff which could have handled the audit work and in any case the assessee has paid audit fees to external firm. Similarly, the Transfer Pricing Officer was of the view that the assessee had management experts on its rolls, and, therefore, global business oversight services were not needed. It is difficult to understand, much less approve, this line of reasoning. It is only elementary that how an assessee conducts his business is entirely his prerogative and it is not for the revenue authorities to decide what is necessary for an assessee and what is not. An assessee may have any number of qualified accountants and management , experts on his rolls, and yet he may decide to engage services of outside experts for auditing and management consultancy; it is not for the revenue officers to question assessee's wisdom in doing so. The Transfer Pricing Officer was not only going much beyond his powers in questioning commercial wisdom of assessee's decision to take benefit of expertise of Dresser Rand US, but also beyond the powers of the Assessing Officer. We do not approve this approach of the revenue authorities. We have further noticed that the Transfer Pricing Officer has made several observations to the effect that, as evident from the analysis of financial performance, the assessee did not benefit, in terms of financial results, from these services. This analysis is also completely irrelevant, because whether a particular expense on services received actually benefits an assessee in monetary terms or not even a consideration for its being allowed as a deduction in computation of income, and, by no stretch of logic, it can have determining arm's length price of that service. When evaluating the arm's length price of a service, it is wholly irrelevant as to whether the assessee benefits from it or not; the real question which is to be determined in such cases is whether the price of this service is what an independent enterprise would have paid for the same. Similarly, whether the AE gave the same services to the assessee in the preceding years without any consideration or not is also irrelevant. The AE may have given the same service on gratuitous basis in the earlier period, but that does not mean that arm's length price of these services is 'nil'. The authorities below have been swayed by the considerations which are not at all relevant in the context of determining the arm's length price of the

costs incurred by the assessee in cost contribution arrangement. We have also noted that the stand of the revenue authorities in this case is that no services were rendered by the AE at all, and that since there is no evidence of services having been rendered at all, the arm's length price of these services is 'nil'. The Dispute Resolution Panel has also confirmed these findings of the Transfer Pricing Officer and the Assessing Officer. However, we have noted that vide letter dated 25th January 2010 (acknowledged to have been received in DRP office on 28th January 2010), the assessee has filed a huge compilation of papers, running into almost three hundred pages, including copies of reports, emails and other documents evidencing the rendering of services. Yet, the DRP simply brushed aside these documents by simply observing that "The DRP has perused the submissions of the assessee and the documents. In view of the DRP, such documents do not prove the receipt of services by the assessee ascertained (asserted ?) to be provided by its AE, and, accordingly, the action of the AO in treating the cost of such services at zero is confirmed". All these evidences were before the DRP, but there is not even a whisper about what was the nature of these documents, why does the DRP find these documents to be not satisfactory, what is the kind of evidence that was necessary to prove the factum of services having been availed, and what precisely is the reason that these documents cannot be relied upon. The soul of an order is in its reasoning, and unless the reasons for coming to a conclusion in the order are not set out, it is not possible to do a meaningful scrutiny of the order, but we find no reasoning at all in the order passed by the DRP. We may in this regard refer to the observations made by Hon'ble Supreme Court in the case of *Union of India v. MohanLal Capoor* AIR 1974 SC 87, wherein Their Lordships have, inter alia, observed as follows:

"If the statute requires recording of reasons, then it is the statutory requirement and, therefore, there is no scope for further inquiry. But even when the statute does not impose such an obligation it is necessary for the quasi-judicial authorities to record reason as it is only visible safeguard against possible injustice and arbitrariness and affords protection to the person adversely affected. Reasons are the links between the material on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision, whether it is purely administrative or quasi-judicial. They should reveal rational nexus between the facts considered and the conclusion reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable. "

9. In our considered view, it is not open to Dispute Resolution Panel to reject the objections of the assessee in a summary manner without properly analyzing the objections of the assessee and dealing with evidences filed by the assessee. Under section 144 C (6), the Dispute Resolution Panel can issue directions after, inter alia, considering objections of the assessee and evidences filed by the assessee. That exercise is clearly not done. In the case of *Vodafone Essar Ltd. v. Dispute Resolution Panel II* [2011] 196 Taxman 423 / [2010] 8 taxmann.com 297, Hon'ble Delhi High Court has observed that, "When a quasi judicial authority (like the DRP) deals with a lis, it is obligatory on its part to ascribe cogent and germane reasons as the same is the heart and soul of the matter. And further, the same also facilitates appreciation when the order is called in question by the superior forum". Yet, more often than not, the orders passed by the Dispute Resolution Panels, like one before us, are not only wanting in terms of their analysis of facts and law and lacking in reasons for arriving at conclusions, these orders also offer us no assistance in any manner at all. In this view of the matter, we deem it fit and proper to remit the matter to the file of the Assessing Officer for fresh adjudication on the question, of services having been actually rendered, in the light of evidences filed by the assessee.

32. Now, coming to the case of quantum of remuneration to be allowed in the hands of assessee, where the CIT(A) has allowed expenditure @ 25% of total expenses and no basis has been given by the CIT(A) to allow the said expenditure @ 25% of the total. There is no basis for measuring such services and in the absence of any evidence brought on record to establish that the expenditure incurred by the assessee was excessive i.e. more than market value of the said services, we find no merit in the orders of authorities below in invoking provisions of section 40A(2)(a) of the Act. Accordingly, we modify the order of CIT(A) and direct the Assessing Officer to allow the expenditure in totality in the hands of the assessee as the said expenditure has been laid down in terms of the agreement agreed upon between the parties and is for carrying on of the business of the assessee more efficiently and is allowable as business expenditure. The grounds of appeal No.2 and 3 raised by the assessee are allowed and ground of appeal No.2 raised by the Revenue is dismissed."

The Co-ordinate Bench of the Tribunal upheld the commercial exigency as well as reasonableness of the administrative service

charges paid by the assessee therein to TACO. The Tribunal allowed the expenditure in totality in the hands of the assessee.

11. Subsequently, in the case of Tata Toyo Radiator Pvt. Ltd. Vs. The Dy. Commissioner of Income Tax (supra), identical issue was raised and the grounds assailing the findings of Commissioner of Income Tax (Appeals) on the issue were also similar. The Co-ordinate Bench by following the order rendered in the case of Tata Johnson Controls Automotive Limited Vs. The Dy. Commissioner of Income Tax (supra) accepted the grounds raised by the assessee in said appeal.

In the present set of appeals as well the issue is identical. The ld. DR has not been able to controvert the findings of Co-ordinate Bench of the Tribunal and has not placed on record any judgment to the contrary. The ld. DR has not been able to point any difference in the facts and circumstances in the present case. No distinction has been brought to our notice with respect to the terms and conditions of the Administrative Support Agreement. The fact that both the companies have same incidence of tax has also not been rebutted. Following the decision of Co-ordinate Bench of the Tribunal in the case of Tata Johnson Controls Automotive Limited Vs. The Dy. Commissioner of Income Tax (supra), we allow ground Nos. 1 and 2 in the appeal of the assessee for assessment year 2007-08.

12. Since, identical grounds have been raised by the assessee assailing disallowance of administrative services charges paid to TACO in the appeals for assessment years 2008-09 to 2011-12, the findings given by us in appeal for assessment year 2007-08 would *mutatis mutandis* apply to the grounds raised by the assessee in the

subsequent assessment years under appeal. Accordingly, the grounds raised by the assessee on this issue in the respective appeals are allowed. The Assessing Officer is directed to allow the claim of assessee with respect to payment of administrative service charges in full.

13. Grounds No. 3 and 4 in appeal for assessment year 2007-08 relate to disallowance of transportation and staff welfare expenses. Similar disallowance has been made by the Department in assessment years 2008-09 and 2009-10. The extent of disallowance of transportation and staff welfare expenses in the impugned assessment years is as under :

Assessment Year	Amount
2007-08	₹3,59,883/-
2008-09	₹15,47,864/-
2009-10	₹8,75,000/-

14. The assessee in its return of income has claimed expenditure under the head 'Transport and other welfare expenses'. The Assessing Officer in his order for assessment year 2007-08 has observed that the assessee was asked to produce vouchers in respect of the expenditure claimed to prove the genuineness of the expenditure. However, the assessee was unable to produce the supporting documents. The Assessing Officer disallowed 20% of the total expenditure claimed in the assessment year 2007-08 and on the same premise the Assessing Officer disallowed 10% of the total expenditure claimed under the head 'Transport and other Welfare expenses' in assessment years 2008-09 and 2009-10. The contention of the ld. AR is that the assessee could not produce only two vouchers in the assessment year 2007-08. The Assessing Officer in an arbitrary manner made disallowance of 20%. In assessment years 2008-09 and 2009-10 the Assessing Officer has not

pointed any defect, yet ad hoc disallowance of 10% of the expenditure was made by the Assessing Officer. In the subsequent assessment years no disallowance has been made in respect of such expenditure. In first appeal, the Commissioner of Income Tax (Appeals) has reduced the disallowance from 20% to 10% in assessment year 2007-08 and has upheld the disallowance of 10% in assessment years 2008-09 and 2009-10.

We are of the considered view that this issue needs a revisit to the file of Assessing Officer. The Assessing Officer shall re-examine the documents furnished by the assessee and shall make disallowance only to the extent of vouchers not produced by the assessee in respect of expenditure claimed. If the assessee is able to produce the relevant documentary evidence, no disallowance is to be made under this head. Accordingly, ground Nos. 3 and 4 raised in the appeal for assessment year 2007-08 is allowed for statistical purpose.

15. Similar grounds have been raised in assessment years 2008-09 and 2009-10 with respect to disallowance Transportation and staff welfare expenses. Our above findings in respect of ground Nos. 3 and 4 on the issue would *mutatis mutandis* apply to the grounds raised on identical issue in assessment years 2008-09 and 2009-10. Accordingly, the said grounds in the appeals for assessment years 2008-09 and 2009-10 are allowed for statistical purpose.

ITA Nos. 269 to 273/PN/2015 (Revenue's Appeals)

16. The Revenue has assailed the findings of Commissioner of Income Tax (Appeals) in allowing 25% of the administrative service charges to the assessee. Since, in the appeal of the assessee we have

accepted the contentions of the assessee and allowed the entire amount claimed in respect of administrative service charges, the solitary ground raised by the Department in its appeals for all the five assessment years i.e. assessment years 2007-08 to 2011-12 are liable to be dismissed.

17. In the result, the appeals of the assessee for assessment years 2007-08 to 2009-10 are partly allowed, the appeals of the assessee for assessment years 2010-11 and 2011-12 are allowed and the appeals of the Revenue for assessment years 2007-08 to 2011-12 are dismissed.

Order pronounced on Friday, the 23rd day of December, 2016.

Sd/- (आर. के. पांडा / R.K. Panda) लेखा सदस्य / ACCOUNTANT MEMBER	Sd/- (विकास अवस्थी / Vikas Awasthy) न्यायिक सदस्य / JUDICIAL MEMBER
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पुणे / Pune; दिनांक / Dated : 23rd December, 2016

RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-5, Pune
4. Pr. CIT-4, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “बी” बेंच,
पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune