

## **TPO couldn't determine ALP of services as Nil without examining docs showing rendition of services by AE**

**Summary – The Bangalore ITAT in a recent case of Safran Aerospace India (P.) Ltd., (the Assessee) held that where TPO determined value of management fee paid by assessee to its AE at nil without considering material on record showing that AE had in fact rendered services to assessee, order so passed was to be set aside and, matter was to be remanded back for disposal afresh.**

### **Facts**

- In transfer pricing proceedings, the assessee showed payment of Rs. 1.55 crore as management fee to its AE.
- The TPO finding that the assessee failed to produce any evidence regarding expenditure incurred by the AE on behalf of the taxpayer and the commensurate tangible benefits thereof and also that the assessee had not shown whether such services were rendered except producing invoice copy and describing the nature of services, held that payment of management fee was nothing but siphoning off of profits from India with minimum incidence of tax.
- He, accordingly, treated the entire sum of Rs. 1.55 crore as unjustified payment and made arm's length adjustment accordingly.
- The DRP set aside assessee's objections.
- On appeal:

### **Held**

- It is undisputed that the Assessing Officer cannot disallow the entire expenditure claimed by the assessee to be management fee on the ground that the assessee has not proved the commercial benefit from such payment. As held by the High Court in the case of *EKL Appliances v. Dy. CIT* [IT Appeal Nos. 1068 & 1070 of 2011] it is not necessary for the assessee to show that any legitimate expenditure incurred by him was incurred out of necessity or that it has resulted in any profit or income either in the same year or in any of the subsequent years but the only condition to be satisfied is that the expenditure should have been incurred wholly and exclusively for the purpose of business and nothing more.
- In the instant case though the assessee has drawn attention to various invoices raised by the AE on the assessee, it was found that the documents filed by the assessee in support of his contention that the AE had rendered services to it for which management fee was paid had not been verified or considered by them. When the assessee claims that the assessee has paid the management fee to the AE, no doubt the burden is on the assessee to prove that it has received services from its AE. But when the assessee has produced such material before any of the authorities below it is also the duty of the authorities to consider the same before coming to any conclusion on merits.

- In view of the same, without verification of proper evidence, it is not justified to come to the conclusion that payment of management fee of Rs.1.55 crore is unwarranted. In view of the same, the order of the Assessing Officer is set aside and the issue is remitted to the file of the Assessing Officer/TPO for readjudication of the issue and re-determination of the arm's length price in accordance with law.
- In the result, the appeal is allowed for statistical purposes.