IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH “H”, NEW DELHI

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER

IT(TP)A No. 83/Del/2026, A.Y. 2022-23

Munters India Humidity Control Private Limited 3rd Floor, 573, Chirag Delhi South Delhi 110017, Delhi New Delhi	Vs.	DCIT, Circle-16
स्थायीलेखासं./जीआइआरसं./**PAN**/GIR No: AAFCM0105L		
Appellant	..	Respondent

Appellant by :	Ms. Ananya Kapoor, CA
Respondent by :	Sh. Bhopal Singh, CIT-DR

Date of Hearing	04.06.2026
Date of Pronouncement	25.08.2026

<u>O R D E R</u>

PER VIMAL KUMAR, JM:

The appeal filed by the assessee is against order dated 17.12.2025 passed by Ld. Assessing officer/Assessment Unit (hereinafter referred to as ‘the AO’) u/s 143(3) r.w.s 144C(13) r.w.s. 144(B) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) in pursuance to directions dated 26.11.2025 of Hon’ble Dispute Resolution Penal (‘DRP’) u/s 144C(5) of the Act and draft assessment order dated 04.02.2025 and TPO order dated 22.01.2025 for A.Y. 2022-23.

2. The brief facts of the case are that the appellant/assessee is engaged in the business of trading of products related to humidification, dehumidification, air treatment and designing & manufacturing of various mass transfer equipment's namely towers, trays, random packing, internals, mist eliminators etc. The assessee availed intra-group services from its AES in Form of management services and sales and support services. The case of assessee was selected for the following reasons and background facts as under:

S. No.	*Reason*	*Background facts*
1.	*Creditors are more than 50% of the purchases made during the year*	*Assessee has shown large value of creditors in the balance sheet, being more than 50% of the purchases shown in P&L a/c and as a result, shown them creditors in balance sheet in order to reduce its profit/taxable income. Therefore, the genuineness of purchases and creditors may be verified.*
2.	*Large value of international transactions in the nature of intangible property nad Intra Group Services (T.P. Risk Parameter*	*Large payment for services received and intangible property to Associated Enterprise as compared to turnover. Here whether the transactions of assessee with associated enterprises are as per arms length principle by application of one of the prescribed methods may be verified.*
3.	*Large other expenses claimed*	*Assessee has claimed huge amount of expenditure under the head Other expenses instead of classifying the same under respective expenses heads. Also there is a substantial increase in other expenses as compared to alst year and reduction in income as compared to last year. Genuineness of such expenses claimed may be verified.*
4.	*Large value of international*	*Large payment for Services to Associated Enterprises. Here whether the transactions of*

	transactions in nature of service fees (T.P. Risk parameter)	*assessee with associated enterprises are as per arms length principle by application of one of the prescribed methods may be verified scrutinized.*

2.1 Notice u/s 143(2) of the Act dated 2nd June, 2023, notices u/s 142(1) of the Act dated 09.11.2023, 13.11.2024 and 28.11.2024 were issued. Some of the notices were replied by the assessee. Reference to TPO u/s 92CA for determination of arm's length price of the international transactions under taken by the Assessee was made. Ld. TPO vide order dated 22.01.2025 proposed Transfer Pricing Adjustment on account of Inter-group services of Rs. 9.70,73,612/- and adjustment on protective basis on account of purchase and sale of goods and services amounting to Rs. 1,49,915/-. Ld. AO passed draft assessment order dated 04.02.2025.

2.2 Against draft assessment order dated 04.02.2025, assessee filed objections before Ld. DRP which were decided by the order dated 26.11.2025. As per directions of DRP dated 26.11.2025, Ld. AO passed final assessment order dated 17.12.2025.

3. Being aggrieved, appellant/assessee preferred present appeal on following grounds:

> *" 1. That, in view of the facts and circumstances of the case and in law, the final assessment order passed by the Assessing Officer ("AO") dated 17.12.2025, the directions issued by the Dispute Resolution Panel ("DRP") dated 26.11.2025, the order passed by the Transfer Pricing Officer ("TPO") dated 22.01.2025 and the draft order dated 04.02.2025 issued under the provisions of the Income Tax*

Act, 1961 ("the Act") and also the addition/adjustment made therein are illegal, bad in law, without jurisdiction and void ab-initio. The addition/adjustment made is erroneous, unjustified and illegal.
2. That the DRP directions dated 26.11.2025 and the final assessment order dated 17.12.2025 are illegal, bad in law, without jurisdiction and as such is barred by time limitation. Thus, the said orders are liable to be quashed in view of the law laid down by the Hon'ble Madras High Court in case of CIT v. Roca Bathroom Products (P) Ltd. (2022) 140 taxmann.com 304 (Madras).
<u>GROUNDS AGAINST TRANSFER PRICING ADJUSTMENT</u>
3. That, on the facts and circumstances of the case and in law, the DRP/AO/TPO has erred in making a transfer pricing adjustment of Rs. 9,70,73,612/- in respect of international transactions entered by the Appellant alleging the same to be not at arm's length in terms of the provisions of Section 92C of the Act read with Rule 10D of the Income Tax Rules, 1962 ("Rules") and has erred in taking the value to be at NIL.

4. That, on the facts and circumstances of the case and in law, the DRP/AO/TPO has erred in not accepting the economic analysis undertaken by the Appellant in accordance with the provisions of the Act read with the Rules and modifying the economic analysis and undertaking a fresh analysis thereby making an adjustment of Rs. 9,70,73,612/-. In absence of rejection of the TP documentation and without pointing on any clear and specific defects in the economic analysis undertaken by the Appellant, the adjustment is not warranted in law
5. That, in view of the facts and circumstances of the case and in law, the AO/TPO/DRP has erred in determining the ALP of the Assessee's international transaction pertaining to payment of intra group services as NIL against the sum so incurred by the Assessee. The determination of NIL amount is itself illegal and the addition is liable to be deleted and the same is beyond the scope and power of the TPO.
6. That, on the facts and circumstances of the case and in law, the DRP/AO/TPO has erred in adopting an incorrect approach of determining the ALP under Comparable Uncontrolled Price ('CUP') Method for availing of management services and availing of sales and support services from AEs and has erred in not appreciating the correct applicability of TNMM as rightly used by the Appellant while benchmarking the transaction. The AO/TPO/DRP has in applying CUP method merely based on presumptions and without furnishing any details/reasoning/basis thereof, which is in contravention of the provisions of the Act/Rules.
7. That, on the facts and circumstances of the case and in law, the DRP/AO/TPO has erred in arbitrary questioning the commercial rationale, which is beyond the purview and powers of the TPO, as powers of the TPO is restricted to determining the ALP of the transaction using one of the prescribed methods under Section 92C of the Act. The AO/TPO/DRP has erred in facts and in law in not appreciating that commercial expediency is the sole domain of the Assessee and the need test/benefit test/evidence test cannot be gone into by the Income Tax Department.

8. That, on the facts and circumstances of the case and in law, the DRP/AO/TPO has erred in not appreciating the cost allocation working provided by the Appellant.
9. That, in view of the facts and circumstances of the case and in law, the evidences filed/material placed on record have been ignored and have not been judiciously appreciated by the AO/TPO/DRP.

10. That, on the facts and circumstances of the case and in law, the DRP/AO/TPO has erred in not appreciating the correct business model, functional profile and business realities and role of the Appellant and of the AEs when computing the ALP of the said international transaction. The Appellant in its TP Study has correctly done the benchmarking analysis which is in accordance with the provisions of law and hence no adjustment/addition is warranted on the facts of the present case.
11. That, on the facts and circumstances of the case and in law, the AO has erred in levying interest under Section 234A, 234B and 234C of the Act.
12. That, on the facts and circumstances of the case and in law, the AO has crred in initiating penalty proceedings under Section 270A, 271AA & 271G of the Act."

4. Ld. Authorized Representative for appellant/assessee submitted that ground of appeal No. 1 is general in nature. So, ground of appeal No. 1 does not require separate adjudication.

5. Ld. Authorized Representative for appellant/assessee submitted that ground of appeal No. 2 regarding limitation is not pressed. As such ground of appeal No. 2 is dismissed as not pressed.

6. Ld. Authorized Representative for appellant/assessee submitted that ground of appeal No. 3 to 8 are regarding Transfer Pricing, Ld. Authorized Representative for appellant/assessee submitted synopsis as under:

Facts in brief:

- Munters India avails intragroup services from its AEs in the form of management services and sales and support services.
- The details for which the amount has been paid by the Appellant to the AEs are as follows:

Sr. No.	Name of AE	Nature of transaction	Amount (in INR)
1	Munters Air Treatment Equipment (Beijing) Co.Ltd	Management support services	1,95,85,355
2	Munters AB		3,83,88,075
3	Munters Europe AB		3,51,32,466
4	Munters Euroform GmbH	Sales and support services	39,67,716
	Total		**9,70,73,612**

Documents submitted during TP/ DRP proceedings:

- Description of services rendered by the AEs (which indicates the functions performed) as under:

Sr. No.	Name of AE	Brief nature of services	Paper book reference
1	Munters Air Treatment Equipment (Beijing) Co.Ltd	IT, regional marketing, sourcing support, HR, operational support, etc.	1963-1966 Paperbook 4
2	Munters AB	Centralised group management, finance, tax, IT services etc.	1937-1939 Paperbook 3
3	Munters Europe AB	Business development, marketing, product management etc.	1910-1913 Paperbook 3
4	Munters Euroform GmbH	Sales support services	1974-1975 Paperbook 4

- Detailed profiles of senior executives and competencies:

Sr. No.	Name of AE	Paper book reference
1	Munters Air Treatment Equipment (Beijing) Co.Ltd	1966-1973 Paperbook 4
2	Munters AB	1939-1961 Paperbook 3 & 4
3	Munters Europe AB	1913-1936 Paperbook 3
4	Munters Euroform GmbH	1975-1979 Paperbook 4

- Copy of the inter-company services agreements:
  - Munters Air Treatment Equipment (Beijing) Co. Ltd - Refer pages **1865** to **1874** of Paperbook 3
  - Munters AB - Refer pages **1848** to **1857** of Paperbook 3
  - Munters Europe AB - Refer pages **1858** to **1864** of Paperbook 3

- Munters Euroform GmbH - Refer pages **1875** to **1879** of Paperbook 3

- Copy of detailed cost allocation working outlining the allocation key (viz. net sales, white collar FTE, etc.) for each nature of services provided by all the AEs (Refer pages **2471** to **2488** of Paperbook 4)
- Documentary evidence to substantiate the receipt of services (Refer **Annexure 1** to this synopsis and pages **1994-2349** of Paperbook 4)
- Copy of invoices issued by AE on Munters India during the year (Refer pages **2452** to **2466** of Paperbook 4)
- Transfer pricing analysis along with the results thereof to substantiate the appropriateness of mark-up on the intra group cost (Refer pages **277** to **1568** of Paperbook for copy of the TP report)

Appellant's arguments:

- **Key arguments:**
  - TPO failed to appreciate that such services have helped Munters India to streamline its operations and improve efficiency, resulting in increased productivity.
  - TPO did not review the benefit test details/ documentary evidence and cost allocation workings provided.
  - TPO erred in rejecting the economic analysis undertaken by the Appellant without providing cogent reasons.
  - All voluminous details/evidences were filed and no defect/deficiency has been pointed out.
  - TPO's entire focus is on need test and benefit test which already stands examined by various judicial pronouncements.
  - The detailed nature of services have been provided alongwith all evidences as stated above, so the rendition of services stands establish beyond doubt.

- TPO did not benchmarking analysis and without any analysis applied CUP and determined the ALP at NIL, which itself calls for complete deletion of the adjustment.
- Reliance is placed on **Otis Elevator Company (India) Limited (I.T.A. No. 3337/Mum/2024)**, wherein it was held that if requisite tests of need, benefit, and evidence are met, the management fees paid by the Assessee can be considered to be a legitimate business expenditure (Refer pages **2489** to **2498** of Paperbook)
- ALP of the international transactions should not be taken as Nil and adjustment in such case has been deleted by ITAT:
  - Corteva Agriscience India (P.) Ltd v. DCIT [IT APPEAL NOS. 1574 AND 2473 OF (DELHI) OF 2018] (Refer pages **2499** to **2527** of Paperbook)
  - Bofa Securities India Ltd. v. ACIT [IT APPEAL NOS. 5416, 5425, 5864 AND 6175 (MUM.) OF 2010] (Refer pages **2528** to **2544** of Paperbook)
  - CA Computer Associates Pvt. Ltd (ITA No. 5420 AND 5421/Mum/2006) (Refer pages **2585** to **2587** of Paperbook)
  - MSS India Pvt. Ltd (123 TTJ 657) (Refer pages **2588** to **2603** of Paperbook)
- The commercial expediency/ business rationale of a particular expenditure incurred by an Assessee for smooth functioning and furtherance of its business is the prerogative of the Assessee. The reasonableness of the expenditure has to be judged from the point of view of the businessman and not of the Revenue authorities. The Revenue Authorities cannot get into the shoes of the businessman and cannot question commercial expediency/ business rationale. Courts have held that need and benefit test cannot be gone into as these are apsects of commercial expediency/ business rationale.

- Hive Communication Pvt. Ltd.[ITA No. 306/2011 (Delhi HC)] (Refer pages **2670** to **2674** of Paperbook)
- Abhishek Auto Industries Ltd. v. DCIT [TII-54-ITAT-DEL (2010)] (Refer pages **2685** to **2710** of Paperbook)
- Johnson and Johnson Limited [TS-246-ITAT-2013 (Mum)] (Refer pages **2778** to **2805** of Paperbook)
- M/s Walter Tools India Pvt Ltd Vs ACIT (ITA No.523/PUN/2016) (Refer pages **2588** to **2603** of Paperbook)

Invalid reference to TPO:

The matter has been referred to the learned TPO by the Technical Unit and the reference is invalid, hence all subsequent proceedings are void ab initio on account of the following:

- Not empowered under law
- TU is statutorily limited to providing technical assistance/advice only.
- No evidence of a valid request for technical assistance from AU to TU.
- As per amended provisions of sec 144B (post amendment of Finance Act 2022, TU has concurrent powers as that of the AO and has powers to determine ALP however power to make reference to TPO lies with AU only and not TPO.

Arm's length margin earned at entity level substantiates that underlying costs are also at arm's length:

- The Appellant is engaged in manufacturing and trading activities and had submitted certified segmental accounts during the assessment proceedings.
- The learned TPO/ DRP disregarded the segmental accounts submitted and considered the entity wide operating margin to evaluate the arm's length nature of such transactions. While computing the entity wide operating margin, the learned TPO/ DRP considered all the operating expenses including the impugned intragroup services availed by the Appellant.
- The entity wide operating margin was compared with working capital adjusted operating margins earned by companies accepted by the learned TPO/ DRP.
- The details of the margin earned by the Appellant and the arm's length margin is as under:

Entity wide margin earned by the Appellant (as computed by the learned TPO)	Working capital adjusted arm's length range of companies selected by the learned TPO
4.66% on OR (Refer pages **11** and **12** of Paperbook 1)	35th percentile: 3.17% Median: 4.35% 65th percentile: 7.54% (Refer page **50** of Paperbook 1)

- Basis the above, the transactions in manufacturing and trading segment of the Appellant was considered to be at arm's length.
- Accordingly, and without prejudice to other arguments, we wish to humbly submit that since the entity wide margin earned by the Appellant (post considering the cost for availing intragroup services) is at arm's length, the underlying payment for intragroup services, being part of operating cost, is also inherently at arm's length.

Based on the above, we would like to submit that the Assessee has submitted sufficient evidence in relation to availing of intra-group services from its AE. However, the Learned TPO has disregarded the same while passing the TP Order for the year under consideration.

7. Annexure 1 to Synopsis contained summary of documentary evidence submitted before Ld. Departmental Authorities regarding detail nature of services availed i.e.:

(i) Information Technology

(ii) Regional marketing

(iii) Sourcing Director

(iv) Human Resources

(v) Component and Operations VP APAC

(vi) Group Communication

(vii) Strategy and Business Development and M&A

(viii) Group Finance & Group tax

(ix) Group HR

(x) IT Services

(xi) Business Area President

(xii) VP Finance and Business Control

(xiii) Product Management

(xiv) Marketing & Communication

(xv) Business Development

(xvi) Demand Chain Management

(xvii) Sales Services

(xviii) Application Engineering

8. Ld. Departmental Representative relied on impugned order.

9. From appraisal of record, it is crystal clear that Ld. TPO vide order dated 22.01.2025 in para No. 15 and 16 regarding Intra-group payment among related party transaction concluded as under:

> *"**15. Concluding remarks on IGS:***
> *15.1 The issue regarding intra group payments among related party transactions has attracted attention of all the tax jurisdictions across the globe. Such payments being between related be examined merely in the light of provisions contained in 37 (1) of the Act but also have to be examined under the special provisions contained in chapter X of the Act. The following are the crucial issues to be seen in such related party transactions:*
>
> *a. The taxpayer's agreement with the associated enterprises related to intra group services is to be examined to see as to what kind of services were to be provided by the AE to the taxpayer. As normally such agreements refer to a large number of services which could be rendered by the AE, the taxpayer has to specify the service(s) which is actually received by it for which the payment is made.*
> *b. Whether the expected benefit commensurate with the payment*
> *c. Whether an independent person would have paid such amount in comparable circumstances*
> *d. Contemporaneous information on the basis of which rate or payment for the service is determined. This includes the cost benefit analysis done by the taxpayer at the time of entering into agreement. Whether any benchmarking analysis was done by the taxpayer so as to compare the amount which he would have paid to an independent person under similar circumstances.*
> *e. Whether the taxpayer really needed such services or not. If so, what direct or tangible benefit it has derived.*
> *f. Whether the taxpayer has separately incurred any expenditure on similar services and if so the necessity of making further payment to the AE for the same activity or it is a duplicate payment.*
> *g. Whether the payment is in the nature of shareholder's activity or largely for the benefit of the AE.*
> *h. Whether the AE is rendering such services to other AEs or independent parties and if so the rate / amount charged from such persons.*

1. The cost incurred by the AE for providing such services and the basis of allocation key

J. If the AE has charged any markup on such payments the arm's length margin is also examined.

15.2 In the present case for majority of the transactions the taxpayer could not show that the above mentioned criteria were fulfilled. The taxpayer has not been able to show as to when and how the various services were requisitions from the AEs, whether the services were actually needed by it, whether the same were actually received by it by producing contemporaneous documentary evidence, at the time of entering into agreement or at the time of availing the service (if actually availed) what benchmarking analysis was done, what cost benefit analysis was done particularly when a huge payment has been made by it to the AEs. In arm's length situation before availing any service an independent person wouldconsider the nature of services required by it and would make the payment which commensurate with the nature of the service and the expected benefit derived there from. Facts of the case clearly show that whether or not the taxpayer needed these services or whether or not such services were mainly for its direct benefit or whether or not such pay such services were actually availed by it, the assessee had to share the costs on the basis of some allocation keys. No independent person in similar circumstances would amount.

15.3 Judicial decisions: On the issue of intra group payments some judicial decisions in India are available. The same are discussed below:
1. M/S NHAVA SHEVA INTERNATIONAL CONTAINER TERMINAL PVT LTD.(2010-TII49-ITAT-MUM-TP): In this decision the ITAT upheld the disallowance of intra group payment where there was no nexus or where there was no evidence for availing of services. The ITAT also impliedly upheld the CIT(A)'s decision that for benchmarking intra group payments TNMM was not the most appropriate method and the proper method was CUP.
2. M/S GAMPLUS INDIA PVT LTD. (2010-TII-55-ITAT-BANG-TP): The ITAT in the aforesaid decision upheld the determination of ALP of intra group payments at NIL by observing as under: The payments did not commensurate to the volume and quality of service; the same were independent of nature or volume of service.

- *Expenses were apportioned by the AE among different country centres on the basis of their own arrangements and not on the basis of actual service rendered to the individual units.*
- *No details were available in respect of the nature of services rendered by the AE.*
- *Assessee could not prove any commensurate benefit against the payment for services. Analysis of the transaction under TNMM not accepted by the TPO was impliedly.*

- *Assessee's argument that company achieved higher turnover, profit, etc because of such payments did not find favour with the ITAT.*

The above decision is squarely applicable to the facts of the present case.

3. PATNI COMPUTER SYSTEMS LTD (2011- TII-79- ITAT-PUNE-TP): In this case according to the TPO the taxpayer's AE should have shared some of the expenses as the same (AE) had also received benefit. Rejecting the TPO's view the ITAT held as under:

"Moreover, there would not be any justification for apportioning the expenditure unless it is shown that the expenses incurred on such activities was disproportionate and the benefit which accrued to the Associated Enterprises in the form of increased business productivity was not merely incidental, but was tangible and concrete. In the present case, there is no material to show that any tangible and concrete benefit has accrued to the Associated Enterprises as a result of the expenditure incurred by the assessee in obtaining consultancy from Mckinsey & Co." (Emphasis supplied)

These decisions clearly support the view that not only there has to be concrete evidence in support of the receipt of the service but also the payment should commensurate with the benefit. It has also been held that for such payments benefits to the payer should be direct and tangible and not indirect or incidental. This view is also supported by the OECD guidelines, the report recently published by the EU joint transfer pricing forum and the guidelines followed by various developed countries including the USA, Australia, Germany, France, UK, etc.

15.4 The taxpayer relying on the ITAT Mumbai's decision in the case of M/s Dresser Rand India Pvt. Ltd., has argued that the TPO cannot examine its commercial decision and cannot go into the need and benefit received from the services. The taxpayer's arguments are not acceptable. Firstly, none of the above mentioned decisions were considered in the case of Dresser Rand. Secondly, in the aforesaid case the ITAT was satisfied with the evidence submitted by the taxpayer in support of having actually received the services from the AE. In the present case this primary and fundamental requirement has not been fulfilled and hence the aforesaid decision cannot be applied.

15.5 The taxpayer's argument that it is not for the revenue authorities to decide what is necessary for an assessee and what is not and the TPO cannot question its commercial decision, is without any force. If that is so then provisions contained in Chapter X of the Act would become redundant. In related party transactions this precisely is the issue viz. whether the transactions were commercial decision and were driven by market forces and were not influenced because of the interrelationship between the assessee and the AE. In related party transactions it is not always that the same are commercial decisions but are undertaken because of their interrelationship. In this connection reference may be made to ITAT, *Mumbai's decision in the case of VVF LTD (2010-TIOL-55-ITAT-MUM) wherein the ITAT held as under:*

"On a conceptual note, the purpose of making arm's length adjustments, in prices at which transactions have been entered into with associated enterprises, is to nullify the impact of interrelationship between the associated enterprises. Unless the method on the basis of which such hypothetical prices are computed is such that costs are to be taken into account, these hypothetical prices have nothing to do with the actual costs. CUP method seeks to ascertain arms length price by taking into account prices at which similar transactions have been entered into by the assessee with unrelated parties (Internal CUP) or at which other unrelated parties have entered into similar transactions inter se (External CUP). None of these inputs have anything to do with the costs; they only refer to prevailingprices in similar unrelated transactions instead of adopting the prices at which the transactions have been actually entered in such cases, the hypothetical arms length prices, at which these associated enterprises, but for their relationship, would have entered into the same transaction, are taken into account. Whether the funds are advanced out of interest bearing funds or out of funds on which 14% interest is being paid, or whether such interest free advances are commercially expedient for the assessee or not, is wholly irrelevant in this context."

15.6 Similarly in the case of PEROT SYSTEMS TSI (INDIA) LTD (2010-TIOL-51-ITATDEL) the ITAT, Delhi held as under:

"The Assessee's case is that it has actually not earned any interest and it was commercially expedient to extend these interest free loans. Now it is noted that this is not a case of ordinary business transaction. The question relates to scrutiny of international transaction to determine whether or not the same it as arm's length. The principle of transfer pricing aims at determining the pricing in the situations of cross border international transactions, where two enterprises which are subject to the same centre or direction or control (associated enterprise) maintain commercially or financially relations with other. In such a situation, the possibility exists that by way of intervention from the centre or otherwise, business conditions must be accepted by the acting units which differs from those which in the same circumstances would have agreed upon between un-related parties. The aim is to examine whether there is anomaly in the transaction which arises out of special relationship between the creditor and the debtor. Hence the contention of having actually not earned any income cannot come to the rescue of the assessee in this scenario. The case laws from the Apex Court cited by the Id. Counsel of the assessee are in the context of the proposition that only the real income has to be taxed and interest free advances can be given by companies (domestic) to their subsidiaries on the ground of commercial expediency. But these decisions are not in the context of ChapterX of the IT Act which relates to special provision relating to computation of income from international transactions having regard to arm's length price. Other case laws cited by the assessee are not germane to the facts of

this case. Hence in our considered opinion they do not help the case of the assessee."

15.7 In the case of MARUTI SUZUKI INDIA LTD (2010-TII-01-HC-DEL-TP) the Delhi high court observed as under:

"73....In our opinion, if the agreement between two entities which are not independent entities, carries an obligation to use a joint trademark, either some appropriate payment needs to be made or appropriate rebate in the charges payable to it needs to be given by the foreign entity to the Indian entity, for being obliged to carry the name of the foreign entity on all its products even if it does not see any advantage from carrying that name on its products. Of course, the Department cannot insist upon such a payment in case the parties entering into the contract are independent parties. The reason why we justify such a payment by the foreign entity to the Indian entity is that, in our opinion, it is quite possible for the foreign entity on account of the managerial/financial control it exercises over thelndian entity, to force an obligation of this nature on the Indian entity. On the other hand, there is no such possibility when the two contracting parties are independent entities, without one having any managerial or financial control over the other."

15.8 The OECD guidelines also echo the same view. The guidelines say "When Independent enterprises transact with each other, the conditions of their commercial and financial relations (e.g. the price of goods transferred or services provided and the conditions of the transfer or provision) ordinarily are determined by market forces. When associated enterprises transact with each other, their commercial and financial relations may not be directly affected by external market forces in the same way, although associated enterprises often seek to replicate the dynamics of market forces in their transactions with each other. "(OECD para1.2) The guideline say that the relationship among members of an MNE group may permit the group members to establish special conditions in their intra group relations that differ from those that would have been established had the group members been acting as independent enterprises operating in open market.

15.9 Thus, intra group transactions need to be examined in the light of special provisions contained in Chapter X of the Act and not merely in the context of section 37(1). To know whether the transaction was really a commercial one and in similar circumstances an independent person would have paid similar amount, whether the taxpayer really needed the services, whether the taxpayer really got some tangible or direct benefit, whether the amount paid commensurate with the benefit (or the expected benefit) from such services, etc. are highly relevant issues.
15.10 It is argued that the TPO cannot examine whether the assessee needed such service or not. This too has no merit. For knowing whether an independent person would pay for a service he would first see whether he actually needs it or not. This examination becomes all the more important in controlled transactions as

sometimes the payments are made for the shareholder activity/stewardship activity or mainly for the benefit of the parent or majority share holder. As discussed above, the parent/ majority share holder in a controlled transaction is in a position to force the AE to pay even for such services.

15.11 On the question of need para 7.9 of the OECD guidelines may be referred to which states "A more complex analysis is necessary where an associated enterprise undertakes activities that relate to more than one member of the group or to the group as a whole. In a narrow range of such cases, an intra-group activity may be performed relating to group members even though those group members do not need the activity (and would not be willing to pay for it were they independent enterprises). Such an activity would be one that a group member (usually the parent company or a regional holding company) performs solely because of its ownership interest in one or more other group members, i.e. in its capacity as shareholder. This type of activity would not justify a charge to the recipient companies."

1. Para 7.17 further states "These services may be available on call and they may vary in amount and importance from year to year. It is unlikely that anindependent enterprise would incur stand-by charges where the potential need for the service was remote, where the advantage of having services on-call was negligible, or where the on- call services could be obtained promptly and readily from other sources without the need for stand-by arrangements."
2. Further Para 7.11 of the guidelines on duplicate service says "In general, no intra-group service should be found for activities undertaken by one group member that merely duplicate a service that another group member is performing for itself, or that is being performed for such other group member by a third party."

Thus while determining the arm's length price it becomes necessary for the TPO to examine whether services were really needed by it or not.

15.12 As regards the question of benefit test, in my view, the same too is a highly relevant factor in determination of ALP as no independent person would pay for a service unless he receives (or expects to receive) direct and tangible benefit from it. Thus, while determining ALP the TPO has to examine this aspect also. In fact, in the relied case of Dresser Rand in para 10 the ITAT has also observed as under.

"Once we come to the conclusion that the assessee has indeed received the services from the AE the next question which we have to decide is as to what is the arm's length price of these services received under cost contribution agreement. It hardly needs to be emphasized that even cost contribution arrangement should be consistent with arm's length principle, which, in plain words, requires that assessee's share of overall contribution to the costs is consistent with benefits

expected to be received, as an independent enterprise would have assigned to the contribution in hypothetically similar situation."

15.13 This is also supported by the OECD guidelines. Relevant paras are reproduced below: Para 7.4 states

"Intra-group service activities may vary considerably among MNE groups, as does the extent to which those activities provide a benefit, or expected benefit, to one or more group members. Each case is dependent upon its own facts and circumstances and the arrangements within the group." Para 7.6 states "Under the arm's length principle, the question whether an intra- group service has been rendered when an activity is performed for one or more group members by another group member should depend on whether the activity provides a respective group member with economic or commercial value to enhance its commercial position. This can be determined by considering whether an independent enterprise in comparable circumstances would have been willing to pay for the activity if performed for it by an independent enterprise or would have performed the activity in-house for itself."

Similarly, para 7.12 states "There are some cases where an intra-group service performed by a group member such as a shareholder or coordinating centre relates only to some group members but incidentally provides benefits to other group members. .....The incidental benefits ordinarily would not cause these other group members to be treated as receiving an intra-group service because the activities producing the benefits would not be ones for which an independent enterprise ordinarily would be willing to pay."

Thus, examination of the benefit or expected benefit is necessary while determining the arm's length payment for such services.

15.14 It is further argued that when some well defined allocation key is there and where the allocation is made on the basis of the actual cost incurred the same is enough evidence that the transaction was at ALP. This argument is also not acceptable. For benchmarking the payment it has to be seen whether the same is at the arm's length and whether an independent person would pay the same or similar amount for such services. A well defined allocation key and incurring of actual costs by the service provider may not necessarily prove that the payment made was at the arm's length. The only purpose the allocation key serves is that it reveals as to how a particular charge has been determined but it does not ipso facto prove that the same was at the arm's length. In this context following paras of the OECD guidelines are relevant:

Para 7.18 states "The fact that a payment was made to an associated enterprise for purported services can be useful in determining whether services were in fact provided, but the mere description of a payment as, for example, "management *fees" should not be expected to be treated as prima facie evidence that such services have been rendered."*

Para 7.19 "Once it is determined that an intra-group service has been rendered, it is necessary, as for other types of intra-group transfers, to determine whether the amount of the charge, if any, is in accordance with the arm's length principle. This means that the charge for intra-group services should be that which would have been made and accepted between independent enterprises in comparable circumstances".

Para 7.23 "While every attempt should be made to charge fairly for the service provided, any charging has to be supported by an identifiable and reasonably foreseeable benefit. Any indirect-charge method should be sensitive to the commercial features of the individual case (e.g., the allocation key makes sense under the circumstances), contain safeguards against manipulation and follow sound accounting principles, and be capable of producing charges or allocations of costs that are commensurate with the actual or reasonably expected benefits to the recipient of the service."

Para 7.24 states "To satisfy the arm's length principle, the allocation method chosen must lead to a result that is consistent with what comparable independent enterpriseswould have been prepared to accept"

In the case of Logix (ITAT Bangalore), the contention that the fact there was an allocation key could not be taken as the basis of the transaction being at arm's length. In view of the above discussion various objections raised by the taxpayer are not acceptable. Similarly, decision in the case of Dresser Rand is of no help.

As per the comments above it can be seen that none of the benefits are tangible or real. A mere facade has been raised to give an impression that some vital benefit has passed to the assessee, which is actually not the case. Related parties are quite likely to give a form that will give an impression that a real service is being rendered by one to another. But the necessity to look beyond the veil is recognized across tax jurisdictions. In the above circumstances the payment of service fee is only an arrangement to change tax base without any economic substance in the transaction. This is internationally not accepted as evident from the following judgments:

In Saviano VS Commissioner 765F. 2d 643,654 (7th Cir. 1985) it was observed, "the freedom to arrange one's affairs to minimize taxes does not include the right to engage in financial fantasies with the expectation that the Internal Revenue service and the Courts will play along."

In Frank Lyon Co. Vs US 435,US 561,573 (1978) the Hon'ble US Supreme Court observed, "In applying the doctrine of substance over form, the court has looked to the objective economic realities of a transaction rather than to the particular form the parties employs."

"In the field of taxation administrators of law and the courts are concerned with substance, relations and formal written documents are not rigidly binding." (Helvery Vs Lazanus& Co. 308 US (252)).

The OECD also recognizes this reality in its guidelines of 2010. The relevant portions are reproduced below:

1.67 Associated enterprises are able to make a much greater variety of contracts and arrangements than can independent enterprises because the normal conflict of interest which would exist between independent parties is often absent. Associated enterprises may and frequently do conclude arrangements of a specific nature that are not or are very rarely encountered between independent parties. This may be done for various economic, legal, or fiscal reasons dependent on the circumstances in a particular case. Moreover, contracts within an MNE could be quite easily altered, suspended, extended, or terminated according to the overall strategies of the MNE as a whole, and such alterations may even be made retroactively. In such instances tax administrations would have to determine what the underlying reality is behind a contractual arrangement in applying the arm's length principle.

1.67 In addition, tax administrations may find it useful to refer to alternativelystructured transactions between independent enterprises to determine whether the controlled transaction as structured satisfies the arm's length principle. Whether evidence from a particular alternative can be considered will depend on the facts and circumstances of the particular case, including the number and accuracy of the adjustments necessary to account for differences between the controlled transaction and the alternative and the quality of any other evidence that may be available.

16. Determination of ALP of Intra Group Services
From the above analysis and the legal position mentioned above, the assessee has not been able to show that any service has actually passed to him. No independent party would have made a payment in uncontrolled circumstances. The submission of the assessee that Availing of management services & Availing of sales and support services from Munters Euroform GmbH have not been paid but have been received by the assessee. Therefore, by the application of CUP, the arm's length of these transaction of payment of Central Support & Central IT Services is determined at 'nil'. Thus, the adjustment of Rs.9,70,73,612/- is determined as the arm's length adjustment of the above said international transaction."

9. Inter Company Agreement from summary of agreement management services agreement are at page No. 1847 to 1879 of paper book volume 3 computation of income is at page No. 1880-1881 of paper book. Ld. TPO disallowed Intra-group services completely.

10. A co-ordinate Bench in ITA No. 1574 and 2473/Del/2018 titled as Corteva Agriscience India (P.) Ltd. vs. DCIT in order dated 12th Feb 2025, in para No. 11 to 12 observed as under:

"11. A Co-ordinate Bench of the Tribunal in assessee's case titled as "Corteva Agriscience India Pvt. Ltd. vs. DCIT' ITA Nos. 6879 & 7454/Del/2017 decided on 19.12.2024 observed as under:

> *"26. From the above, it is clearly established beyond reasonable doubt that assessee had indeed requested for rendition of services, the AEs have indeed rendered the various services to the assessee, the manner in which those services were rendered are also elaborated in the aforesaid chart, the cost benefit analysis made by the assessee for deriving the said services and benefits derived by the assessee out of rendition of services. Further we find that the payments made to AEs were duly subjected to withholding tax by the assessee in India. This also goes to prove that the AE had indeed rendered services to the assessee and this tax withheld by the assessee on the rendition of services had been duly accepted by the income tax department in the TDS assessments of the assessee company and no doubts or any adverse inference were drawn or entertained thereon. While this is so, in the income tax assessment, the income tax department cannot challenge or cannot doubt the very rendition of services by the AE to the assessee. Furthermore, we find the Learned TPO had accepted the rendition of services rendered by US AE to the assessee and accepted the same to be at arm's length price. Only the services rendered by Asia Pacific AEs were subjected to dispute in the instant -34- ITA Nos.1574 & 2473/Del/2018 M/s. Corteva Agriscience India Pvt. Ltd. (cross appeals) A.Y. 2009-10 case which had been elaborately dealt by the assessee in the aforesaid chart by proving all the essential elements such as need for services, rendition of services, manner in which services were rendered, cost benefit analysis and benefits derived by the assessee out of such rendition of services. Hence the assessee was duly justified in making payment of administrative support services charges to its AEs. Accordingly, the entire payment deserves to be allowed. Further, we find that the Learned TPO having applied CUP method for benchmarking the international transaction of administrative support service charges segment had not brought any comparables to justify the ALP of these services to be at Rs Nil. That itself goes to prove that the entire TP adjustment made by the Learned TPO deserves to be deleted on that count itself. Hence, in view of the aforesaid observations, we find that assessee is indeed entitled for making payment of administrative support service charges to its AEs and the same is hereby accepted to be at ALP in the facts and circumstances of the instant case.*
>
> *27. Further we find that the Co-ordinate Bench of Pune Tribunal in the case of ACIT vs Nalco Water India Ltd reported in 133 taxmann.com 531 (Pune Trib) dated 30-9-2021 for the Assessment Year 2009-10 had observed as under:-*

"7. The assessee elaborated the benefits derived by it from the services rendered by the Nalco Pacific Pte Ltd., Singapore. The TPO has tabulated the benefits claimed to have been derived by the assessee and his Remarks on page 126 onwards of his order. For example, the first category is 'Finance and Accounting'. The assessee gave description of the benefits derived by it from such services in a structured manner catering to Expense claim Reimbursement system; Cash Collection & Credit Control Training; Expense Reimbursement System; Budgeting process and Timetable; India Business Contract and Tax Training; Training for Asia Pacific Sales Improvement so on and so forth. The assessee substantiated the receipt of such services with the help of corresponding e-mails and other documents. The TPO negatived the assessee's contention by simply holding that no direct benefit was received or these were duplicate services. Similar is the position qua other services, namely, 'WPS and water services' for which the assessee stated the benefit in the nature of Integrated Water Management Training Workshop; Integrated Water Management Presentation; Cost aspects of various units, Technical Water Treatment Proposal after site visit; Technical Audit report etc. The TPO rejected the assessee's claim again by holding that no direct benefit was received.

Similar position prevailed for other services availed by the assessee from Nalco Pacific Pte. Ltd., Singapore for which complete details, backed by the corresponding e-mails and other documents, were submitted that have been set out by the TPO in his order in the tabular form. All such contentions did not convince the TPO, who rejected the same by simply holding that no direct benefit was received.

8. On a careful perusal of the services received by the assessee from Nalco, USA and Nalco Pacific Pte Ltd., Singapore, it becomes abundantly clear that the services facilitated the carrying on the business operations by the assessee in a more efficient and effective manner by adhering to the international standards in a globally uniform manner.

9. The moot question is whether the services under consideration are in the nature of stewardship activity as has been held by the TPO or core business intra-group services as claimed by the assessee? In order to appreciate the controversy, it is sine qua non to first comprehend the term 'stewardship', which has not been defined either in the Income-tax Act, 1961 or in the Income-tax Rules, 1962. In commercial parlance, stewardship activities are those which are undertaken by an enterprise to protect one's own interest. When Y engages X for rendition of some service, any activity of Y to ensure that the work assigned to X is performed as per its specifications, constitutes a stewardship activity. On the other hand, if an activity/service of the renderer company produces some effect on the recipient company, whether or not resulting into a tangible benefit to the recipient, the same, in our considered opinion, ceases to be a stewardship activity. One of the forms of stewardship activities is a shareholder activity, which takes place when some act or service is done by a shareholder to the company in order to ensure that his investment in the shares is safe and further such an act or service does not produce any effect to the company receiving it. For example, if company X is a shareholder in company Y and it does some activity to protect its investment *therein, and the effect of such an activity is confined to it alone, the same would be construed as shareholder activity. A stewardship activity in general or a shareholder activity in particular in the case of two related companies, is quite different from a normal intragroup service, which is rendered for the purpose of the recipient company. Effect of a non-shareholder activity is rendered to the company receiving it, which is in sharp contrast to the effect being rendered to a company rendering such service in the case of a stewardship or shareholder activity. If we expand the scope of shareholder activity to producing some direct or indirect effect to the recipient company with the consequence of higher profits to it and the resultant higher dividends to the renderer or the shareholder company, then probably most of the activities, including even operational activities, would fall within the sweep of shareholder activity, which is an absurd proposition. In our opinion, stewardship activity or shareholder activity excludes such activities which produce any effect to the recipient company.*

10. It was in 1968 that section 482 regulations of the USA Treasury Regulations on intra-group services provided the first U.S. transfer pricing rules on services. New service regulations were proposed in 2003, which took the form of Temporary regulations in 2006, and eventually Final Regulations for Treatment of Services under section 482 (USA Regulation 2009) were issued. The final regulations are effective for taxation years beginning after 31-7-2009. It has been mentioned in the 2009 Regulation that: 'Section 1.482-9T(1)(3)(iv) of the 2006 temporary regulations provides that an activity is a shareholder activity if the sole effect of that activity is either to protect the renderer's capital investment in the recipient or in other members of the controlled group or to facilitate compliance by the renderer with reporting, legal or regulatory requirements applicable specifically to the renderer, or both.' There was some debate as to whether the 'sole effect' language should be employed to brand any activity as a shareholder activity or it should be substituted with the 'primary effect'. In other words, if the primary effect of the activity or service is produced to the renderer company but some incidental effect also flows to the recipient company, then also it should be categorized as shareholder activity. After considering all the opinions, the Treasury Department and the IRS believed that : 'the "sole effect" language is appropriate.' It was noticed that : 'The "primary effect" language in the 2003 proposed regulations could inappropriately include activities that are not true shareholder activities and may even consist of substantial activities that are non-shareholder activities.' Thus, it explained: "Shareholder activities. -An activity is not considered to provide a benefit if the sole effect of that activity is either to protect the renderer's capital investment in the recipient or in other members of the controlled group, or to facilitate compliance by the renderer with its own reporting, legal, or regulatory requirements applicable specifically to the renderer, or both. Activities in the nature of day to day management generally do not relate to protection of the renderer's capital investment." Certain examples have been given for ascertaining whether or not an activity is a shareholder activity. Example 13, which is relevant in our context, is - 'Company X establishes detailed personnel policies for its subsidiaries, including Company Y. Company X also reviews and approves the performance appraisals of Company Y's executives, *monitors levels of compensation paid to all Company Y personnel, and is involved in hiring and firing decisions regarding the senior executives of Company Y. Because this personnel-related activity by Company X involves day-to-day management of Company Y, this activity does not relate solely to Company X's role as an investor of capital or a shareholder of Company Y, and therefore does not constitute a shareholder activity.' Thus it emerges even from the USA Treasury Regulations that an activity will be considered as a shareholder activity if its 'sole effect' is either to protect the renderer's capital investment in the recipient etc. or to facilitate compliance by the renderer with its own reporting, legal, or regulatory requirements. It is further manifested that activities in the nature of day to day management cannot be considered as protection of the renderer's capital investment and hence they cease to be stewardship or shareholder activity.*

11. We have noticed the description of services performed by Nalco, USA under the broader heads of Insurance & Risk Management; Treasury; Marketing; Credit and Collections; Operations Planning; Supply chain; Procurement; Safety, Health & Environmental; Information Technology; Customer service; Human resources etc. We have also noticed supra the portrayal of services performed by Nalco, Singapore under the broader heads of Commercial advice; Advice and technical assistance; Centralized financial planning services; Advice and assistance regarding budget control systems; Advice on the establishment and enhancement of computer systems; Advice and assistance with respect to the production planning; Advice on procurement of raw materials ; and Advice on Asia/Pacific risk analysis etc. It gets vivid on such a perusal that the services are in the nature of regular business services performed by the group entities with a view to enable the assessee to carry on its business operations, thereby -38- ITA Nos.1574 & 2473/Del/2018 M/s. Corteva Agriscience India Pvt. Ltd. (cross appeals) A.Y. 2009-10 causing effect on it. As such, these do not qualify as 'stewardship activities'.

12. ………………….

13. …………………

14. Adverting to the facts of the instant case, we observe that the rendition of services by Nalco, USA and Nalco Pacific Pte Ltd., Singapore has given effect only to the assessee and has, in no manner, resulted in protecting the individual interests of such companies. All the services rendered by them facilitated the carrying on of the assessee's business. In such circumstances, we are satisfied that the reliance of the AO on the decision in Morgan Stanley & Co. (supra) is misconceived. We, therefore, accord our imprimatur to the conclusion drawn by the ld. CIT(A) that the services rendered by the two companies were in the nature of intra group services and not stewardship activity.

15. Ordinarily, after answering the character of the services, the next point would have been to determine the ALP of the intra group services. We have noticed above that the TPO determined Nil ALP by holding that the services provided by Nalco, USA and Nalco Pacific Pte Ltd., Singapore were in the nature of stewardship activity. The ld. CIT(A) overturned the TPO's view on this score and further held that the transacted value of the intra group services was at ALP, *albeit without carrying out any analysis. The ground taken by the Revenue, as reproduced above, is confined only to challenging the decision of the ld. CIT(A) in construing the services as intra group services. There is no challenge to the decision of the ld. CIT(A) on the second aspect of the international transaction being at the ALP. We, therefore, refrain from going into the aspect of the ALP determination, for which no ground has been raised. In the ultimate analysis, the ground raised in the appeal is not allowed."*

28. Further we find that the Hon'ble Jurisdictional High Court in the recent decision rendered in the case of PCIT (International Taxation) vs AT Kearney Ltd (India Branch Office) reported in 161 taxmann.com 310 (Del HC) dated 21- 3-2024 wherein it was held that where assessee had incurred expenses in respect of intra group services (IGS) to its AE and had submitted detailed break-up of such costs and rendering of services was an aspect which was neither questioned nor doubted, Tribunal was right in deleting adjustment on account of payment of IGS.

29. In view of the aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, the entire TP adjustment made by the revenue on account of administrative support services segment deserves to be deleted. Accordingly, the Ground Nos. 2.1 to 2.5 of assessee's appeal are allowed and Ground Nos. 1 and 2 of revenue's appeal are dismissed."

12. In view of the above said material facts and the judgment of Coordinate Bench, the entire Transfer Pricing Adjustment made by the revenue on account of administrative support services segment deserves to be deleted. Accordingly, Ground Nos. 2 to 5 of the assessee are allowed and Ground No.1 of Revenue is dismissed."

11. In view of above material facts and judgment of co-ordinate Bench, the entire transfer pricing adjustment made by Revenue on account of Intra-group Services merits deletion. Accordingly, ground of appeal no. 3 to 8 are allowed.

12. Ground of Appeal No. 9 to 12 are left open.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 25.08.2026

Sd/-	Sd/-
(S. RIFAUR RAHMAN)	(VIMAL KUMAR)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Dated: 25.08.2026
Binita, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI