

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "K", MUMBAI

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA No.6627/Mum/2025
(Assessment year: 2022-23)**

LANXESS India Pvt. Ltd. LANXESS House, Plot No.A 162-164, Road No.27, MIDC, Wagle Estate, Thane-400604 PAN:AACCB3880A	vs	ACIT, Circle-1, Thane Room No.2, B Wing, Ashar IT Park, 6 th floor, Road No.16Z, Wagle Industrial Estate, Thane-400604
APPELLANT		RESPONDENT

Assessee by : Shri Darpan Kirpalani (virtually appeared)

Revenue by : Shri Ashish Kumar (CIT DR)

Date of hearing : 16/06/2026
Date of pronouncement : 19/06/2026

ORDER

Per: Anikesh Banerjee (JM):

The instant appeal of the assessee filed against the final order of the Assessment Unit Income Tax Department [for brevity the "Ld. AO"], order passed under section 143(3) r.w.s. 144C(13) r.w.s. 144B of the Tax Act 1961 (for brevity 'the Act') for Assessment Year 2022-23, date of order 26.08.2025. The impugned order was originated by the recommendation of the Ld. Commissioner of Income

Tax (DRP-1), Mumbai (for brevity the 'Ld. DRP') order passed under section 144C(5) of the Act date of order 12.08.2025.

2. The assessee has taken the following grounds:

"1. Based on the facts and circumstances of the case, LANXESS India Private Limited (hereinafter referred to as the Appellant) respectfully craves leave to prefer an appeal against the Final Assessment Order (the order) passed by the Assessment Unit, Income Tax Department (Ld. AO) dated 26 August 2025 under section 143(3) read with section 144C(13) of the Income-tax Act, 1961 (the Act) in pursuance of the directions issued by Hon'ble Dispute Resolution Panel (DRP), Mumbai, dated 12 August 2025 under section 144C(5) r.w.s 254/260A of the Act on the following grounds, which are independent of and without prejudice to each other.

2. On the facts and circumstances of the case and in contrary to law, Ld. AO/Learned Transfer Pricing Officer (Ld. TPO) erred in:

2A.-making a reference u/s 92CA (1) of the Act without having any powers for making such a reference. Accordingly, the Transfer Pricing reference is bad in law, consequently the Transfer Pricing order issued u/s. 92CA, is bad in law and ought to be quashed.

2B.-issuing the Transfer Pricing (TP) order under section 92CA of the Act, dated 22 January 2025 which is bad in law and ought to be quashed.

2C-issuing the final assessment order under section 143(3) of the Act, dated 26 August 2025 beyond the time limit as prescribed under section 153 of the Act. Consequently, the final assessment order is time barred and deserves to be quashed.

2D-not stating any reasons to show that either of the conditions mentioned in clause (a) to (d) of section 92C(3) of the Act were satisfied before proposing an adjustment of INR 61,22,54,833/- to the total income

3. On the facts and circumstances of the case and in contrary to law, Ld. AO / Learned Transfer Pricing Officer (Ld. TPO) erred in:

3A - making an addition of INR 61,22,54,833 to the Appellants income in connection with payments made by the Appellant to its Associated Enterprises (AEs), towards availing of general support services and PTSE services and thereby determining a total income of INR

3,06,91,49,623 as per the final assessment order passed by Ld. AO under section 143(3) of the Act dated 26 August 2025.

3B - determining the arm's length price (ALP) of the international transaction of payment of support services as NIL without applying any of the prescribed methods as per section 92C of the Act thereby, making the adjustment in ad-hoc and arbitrary manner and without appreciating detailed benchmarking approach and the methodology adopted by the Appellant in its TP documentation maintained under section 92D of the Act read with Rule 10D of the Income-tax Rules, 1962 (Rules).

4. On the facts and circumstances of the case and in contrary to law, Ld. AO/Learned Transfer Pricing Officer (Ld. TPO) erred in not following the decision of the Hon'ble Income-tax Appellate Tribunal (ITAT) in favor of the Appellant for Assessment Year 2020-21 on the same issue.

5. On the facts and circumstances of the case and in contrary to law, Ld. AO/ Learned Transfer Pricing Officer (Ld. TPO) erred in determining the ALP of the international transaction of availing of support services as NIL, without appreciating the fact that as per provisions of the Act, the Ld. TPOs role is merely to determine the arm's length nature of the transaction referred to him by the Ld. AO and not to question the commercial rationale of legitimate business expenses incurred by the Appellant.
5. On the facts and circumstances of the case and in contrary to law, Ld. AO/Learned Transfer Pricing Officer (Ld. TPO) erred in determining the ALP of the international transaction of availing of support services as NIL, without appreciating the fact that as per provisions of the Act, the Ld. TPOs role is merely to determine the arm's length nature of the transaction referred to him by the Ld. AO and not to question the commercial rationale of legitimate business expenses incurred by the Appellant.

6. On the facts and circumstances of the case and in contrary to law, Ld. AO / Learned Transfer Pricing Officer (Ld. TPO) erred in:

6A - rejecting the detailed documentary evidence submitted by the Appellant to substantiate the need-benefit-evidence test of the services availed, without providing cogent reasons and erred in concluding that the Appellant is not able to discharge the onus of proving that the services have been availed by the AEs.

6B - summarily rejecting the contentions of the Appellant against the remand report provided by the Ld. TPO.

7. *On the facts and circumstances of the case and in contrary to law, Ld. AO / Learned Transfer Pricing Officer (Ld. TPO) erred in not appreciating that the said payment for the services are technical in nature and have direct nexus with the business of the Appellant.*

8. *On the facts and circumstances of the case and in contrary to law, Ld. AO / Learned Transfer Pricing Officer (Ld. TPO) erred in not appreciating that the services availed by the Appellant are not in the nature of shareholder nor stewardship, duplicative or incidental services for which no independent entity could agree to make any payment.*

9. *On the facts and circumstances of the case and in contrary to law, Ld. AO / Learned Transfer Pricing Officer (Ld. TPO) erred in:*

9A - *not appreciating that the Appellant duly withheld the taxes on payment made to the AE and that the AE has also duly filed a return of income in India offering such services to taxes, and that disallowing payments made by the Appellant would lead to double taxation.*

9B - *ignoring the fact that there was no intention by the Appellant to shift profits outside India.*

10. *On the facts and circumstances of the case and in contrary to law, Ld. AO / Learned Transfer Pricing Officer (Ld. TPO) erred in Levying the consequential interest under Section 234B of the Act.”*

3. The brief facts of the case are that the assessee filed the return by declaring the total income Rs.2,45,68,94,790/- under normal provision of the Act. The assessee's case was selected in complete scrutiny under CASS. The assessee is mainly in manufacturing and trading of various chemical and chemicals intermediates, providing marketing support services and technical support services. The Ld. Transfer Pricing Officer (in short, 'TPO') has passed an order u/sec 92CA(3) of the Act wherein the arm's length price (ALP) of various eligible transactions have been determined with a proposed adjustment amount of Rs.61,22,54,833/-. The Ld. AO had undertaken certain variations to income of the

assessee and the draft assessment order was passed by proposing total assessed income of Rs.3,06,91,49,623/-. The aggrieved assessee filed an objection before the Ld. DRP. During the impugned assessment year the assessee had entered into following international transactions with AEs whose ALP was determined as nil by the Ld. TPO and which was also confirmed by the Ld. DRP. The details of international transactions are as follows:

Sr. No.	International transaction	Total Value of Transaction (Rs)
1	Availing of Production Technology, Safety and Environment ('PTSE') services	7,21,77,671/-
2	Availing of information Technology ('IT') support services and SAP charges	41,46,67,699/-
3	Availing of centralized support services	12,54,09,463/-
	Total	61,22,54,833/-

4. The Ld. TPO determined the ALP of transaction related to this services collectively referred to as intra group services (IGS) at nil and proposed the adjustment Rs.61,22,54,833/-. The Ld. DRP uphold the proposal made by the Ld. TPO. Finally, the Ld. AO passed the final assessment order after considering the proposal made by the Ld. DRP and confirmed the addition. Being aggrieved the assessee filed an appeal before us.

5. The Ld. AR argued and filed a paper books which have been placed on record. The Ld. AR contended that only issue contested on merits in the present appeal by challenging the addition made by the Ld. AO contended in Ground No.3 in respect of payments made to the AEs towards availing IT services, PTSE services and centralized services of determining ALP of the transaction to nil by disregarding the benchmarking approach and methodology adopted by the

assessee in TP study report. The Ld. AR argued and contended that the voluminous evidence established the need of benefit test was duly submitted before the revenue authorities and the evidence were furnished to establish the rendition of service by the AEs. The Ld. AR further argued that the assessee has submitted invoices, agreement, emails, cost allocation keys and its basis for each services rendered by the AE's before the ITAT. The detailed evidence filed by the assessee during the proceeding before the revenue authorities. In continuation his arguments, the Ld. AR submitted a written note which is reproduced as below:

"Services Availed and Documents submitted"

A) Production, Technology, Safety and Environment ('PTSE')

Descriptions of services (Page No. 155 of the Paper-book)

LANXESS India has entered into an agreement with LANXESS GmbH for availing certain project-based services to the Company in the field of production, technology, safety and environment. This includes services in the nature of conceptual process design and benchmarking, process modelling and process control, fluid and solid processing, operation support and safety, reaction technology including experimental investigations, catalysis, global information services, etc.

Summary of documents submitted

Sr. NO.	Document Type	Paper Reference	book Page No.
1	Time cost allocation working	Volume I- Part 4	1719-1720
2	Inter-company agreement	Volume II- Part 1	1780-1859
3	AE Invoices	Volume II- Part 3	2896-2956
4	Third-party invoices	Volume II- Part 3	2883-2895
5	Case Study and benefits from PTSE service		
a)	Benzyl Chloride (email communication / presentation /minutes of meetings between the AE and LANXESS India) wherein LANXESS	Volume I- Part 3	794-849

	<p>India availed the following technical support for :</p> <ul style="list-style-type: none"> - Automation to be undertaken in 4 of the distillation columns out of the total 8 columns used in manufacturing of Benzyl Chloride - Revamping of BA column - Implementation of OSI-PI & trend miner - Well-designed (in terms of safety) AZDN preparation concept. - Well-designed seal less magnetic driven pump selected for the A column bottom pump. 		
b)	<p>Benzyl Acetate (email communication / presentation /minutes of meetings between the AE and LANXESS India) wherein LANXESS India availed the following technical support:</p> <ul style="list-style-type: none"> - Mass balance and process monitoring for the BACE process - Washing concept preparation for removal of acetic acid from crude Benzyl Acetate with proper lab trails - Preparation of cooling concept for reaction mass, as earlier there was stainless steel DBE route reactor in which directly cooling is possible via reactor jacket but with new MS glass lined reactor there is limitation due to thermal shock due to high temp difference of cooling media & the process media 	Volume I- Part 3	850-904
c)	<p>HCl Absorption (email communication / presentation /minutes of meetings between the AE and LANXESS India) wherein LANXESS India availed the following technical support:</p> <ul style="list-style-type: none"> - Selection of feasible MOC for the common absorption process in Nagda - Installation of pipe sections of different MOCS - Performing tests after at least 6 months of exposure 	Volume I- Part 3	905-936

	<ul style="list-style-type: none"> - Optimizing the HCl gas chillers to minimize organics in the off-gas (reduction in TOC) - Replacement of the glass absorber to ensure safety 		
d)	<p>Benzyl Alcohol (email communication / presentation /minutes of meetings between the AE and LANXESS India) wherein LANXESS India availed the following technical support:</p> <ul style="list-style-type: none"> - BOH Extractor Reliability improvement and Optimization - Distillation sequence change 	Volume I- Part 3	937-971
e)	<p>Trendminer Analysis (email communication /presentation / minutes of meetings between the AE and LANXESS India) wherein LANXESS India availed the following technical support:</p> <ul style="list-style-type: none"> - Increase in production and reduction in high ammonia content and water level consumption Highlighting the need for replacement of - mechanical seal of agitator - Yield optimization of product CNP 80 IM - Optimizing the distillation process for two of the products, namely, Amine Z and DETA - Effective monitoring of cold storage room temperature 	Volume I- Part 3	972-980
6.	Email communication/Minutes of Meeting	Volume I- Part 3	
a)	Ae provided inputs and suggestions for simulation of BC1/BC12(Benzyl Chloride) Plant	Volume I- Part 3	798-809
b)	Email from AE providing GTI support for selection of sealess pump in BCI (Benzyl Chloride) plant	Volume I- Part 3	810-821
c)	Email containing concept discussion for AZDN solution preparation vessel	Volume I- Part 3	822-826
d)	Technical updates on the success of the project Benzyl Chloride pertaining to its automation and modelling	Volume I- Part 3	827-838

e)	Email containing preliminary results shared by the AE highlighting current status of BACE DBE route reactor cooling concept through selection of samples from Nagda (DBE route crude before washing and after washing)	Volume I- Part 3	854-869 901-903
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Sr. No.	Document Type	Paperbook Reference	Page No.
f)	Email containing agenda for discussion of next steps for success of Benzyl Acetate project	Volume I- Part 3	870-875
g)	Email shared by the AE with preliminary documents for common absorber test for HCL absorption project	Volume I- Part 3	909-910
h)	Email containing agenda for session conducted in Lanxess Value Process workshops for the Nagda HCl Absorption project	Volume I- Part 3	911
i)	Email containing summary of steam savings, line sizing documents, shared by AE	Volume I- Part 3	912-914
j)	Email containing meeting invite for review by AE team of to-do from Lanxess Value process workshops at Nagda	Volume I- Part 3	919
k)	Meeting invite for discussion of regular updates on the HCL absorption project	Volume I- Part 3	922-925
l)	Email containing the discussion for the issues faced in BOH project	Volume I- Part 3	940--942
m)	Minutes of meeting for discussion conducted for regular updates on the BOH project	Volume I- Part 3	956-960 963-971
n)	Back to Back invoice for purchase of Trendminer software in 2021 and 2022	Volume I- Part 3	976-977
7	Technical studies/inputs	Volume I- Part 3	
a)	Presentation prepared for Process optimization in Benzyl Chloride & Benzal Chloride	Volume I- Part 3	839-849
	Process Flow Blueprint for BACE Cycle	Volume I- Part 3	876
b)	Presentation highlighting major findings from mass balance analysis and overall process monitoring of benzal acetate project	Volume I- Part 3	877-900

c)	Summary file for current status on Nagda HCL along with next steps for success of the project	Volume I- Part 3	927-936
d)	Summary for the testing and sampling	Volume I- Part 3	943-956
e)	Document containing memo for Experimental support for analysis of BOH-plant extraction and phase separation process	Volume I- Part 3	961-962
f)	Presentation highlighting potential savings, distillation optimization, yield optimization, water consumption reduction through Trendminer software	Volume I- Part 3	973-974 978-980

B) IT services

Descriptions of services (Page No. 155 of the Paper-book)

LANXESS India has entered into an agreement with LANXESS GmbH, wherein LANXESS GmbH has agreed to provide certain support services to LANXESS India (based on LANXESS India's requirements) in the nature of Accounting, Communications, Controlling, Development; Procurement & Logistics, etc. Out of the varied nature of services as mentioned in the agreement, during the FY 2021-22, LANXESS India has availed the Information technology (IT) services from LANXESS GmbH.

Summary of documents submitted

Sr. NO.	Document type	Paper-book reference	Page no.														
1	Cost allocation working	Volume I- Part 4	1713-1717														
2	Financials of AE for December 2021 and 2022	Volume II- Part 3	2957-2972														
3	Third party invoices	Volume II- Part 1	1918-1967														
	<table border="1"> <thead> <tr> <th>Third party name</th> <th>Amount (Euro)</th> </tr> </thead> <tbody> <tr> <td>Open Text Software GmbH</td> <td>1,20,300 €</td> </tr> <tr> <td>Open Text Software GmbH</td> <td>95,812€</td> </tr> <tr> <td>Open Text Software GmbH</td> <td>5,53,580€</td> </tr> <tr> <td>SAP Deutschland GmbH</td> <td>52,884€</td> </tr> <tr> <td>Microsoft Deutschlad GmbH</td> <td>34,67,682€</td> </tr> <tr> <td>Telephonica Germany GmbH & Co</td> <td>8,36,630€</td> </tr> </tbody> </table>	Third party name	Amount (Euro)	Open Text Software GmbH	1,20,300 €	Open Text Software GmbH	95,812€	Open Text Software GmbH	5,53,580€	SAP Deutschland GmbH	52,884€	Microsoft Deutschlad GmbH	34,67,682€	Telephonica Germany GmbH & Co	8,36,630€		
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	Microsoft Deutschlad GmbH	18,21,050€		
	Longview Euroope GmbH	1,01,092€		
	Fujitsu Technology solutions GmbH	36,890€		
	SAP Deutschland SE & Co. KG	17,65,778€		
	BORSU Computer GmbH	60,763€		
	Microsoft Deutschlad GmbH	34,76,682€		
	Microsoft Deutschlad GmbH	18,21,050€		
	Microsoft Ireland Operations Ltd.	2,61,850€		
	Software ONE Pte. Ltd.	10,62,138€		
	Telephonica Germany GmbH & Co	8,18,244€		
	Microsoft Deutschlad GmbH	53,80,725€		
	Sitecore Deutschland GmbH	1,60,472€		
	Insightsoftware Deutschland GmbH	1,01,092€		
	SAP Deutschland SE & Co. KG	6,27,051€		
	SAP Deutschland SE & Co. KG	6,27,051€		
	Microsoft Deutschlad GmbH	12,21,773€		
	TIMETOACT Software & Consluting	4,75,238€		
4	List of IDM users		Volume II- Part 1	1889-1917
5	AE invoices		Volume II- Part 1	1860-1865
6	Inter-company agreement		Volume II- Part 1	1780-1859
7	Case studies			
	Global Infrastructure Management services (email communications / presentation between the AE and LANXESS India) wherein the AE: <ul style="list-style-type: none"> - Provision and maintenance of server and data storage system, as well as active support of the virtualization software, operating system and other system software - Operation, maintenance and management of data backups. - Management of mobile device management solutions. 		Volume I - Part 3	981-1045
	Management of Active Directory Infrastructure/List			

	<p>b) MDM Platform (email communications / presentation between the AE and LANXESS India) wherein the AE assisted in:</p> <p>Maintaining master for customer data, vendor data, material data, bank data etc.</p> <p>Centralized managing the administration of SAP modules / platform</p>	Volume 1-Part 3	1046-1161
	<p>c) SAP LXP Platforms / Operations (email communications /presentation between the AE and LANXESS India) wherein the AE:</p> <ul style="list-style-type: none"> - SAP installation 24x7 availability - SAP Helpdesk -Incident Management, Software Deployment Management Support, monitoring/alerts/reporting and periodical tasks. - Authorization support in LXP system - Assistance in data archiving - SAP Application Maintenance to ensure error-free performance of the business processes in SAP system LXP. 	Volume 1-Part 3	1162-1217
	<p>d) Network (email communications / presentation between the AE and LANXESS India) wherein the AE assisted in:</p> <ul style="list-style-type: none"> - Timely scheduled maintenance and upgrades in firewalls - Maintaining network security when data are exchanged through such connections. - Prevents attacks on vulnerable devices 	Volume 1-Part 3	1218-1242
8	Email communication/Presentation		
a)	AD Domain and User Trusts-prepared by the group provides an architecture for reference to LANXESS India	Volume 1-Part 3	1034-1037
b)	IT Announcement Server maintenance activity whereby a details of scheduled maintenance activity for the servers	Volume 1-Part 3	1039-1040
c)	SLA (Service Level Agreement)Product: ServerInfrastructure wherein details of server operations, server and back-up service, customer obligations, licenses, service availability etc. are provided.	Volume 1-Part 3	1041-1045

d)	<i>Incidence tickets raised for mobile device management, Secure Hub, DNS/DHCP, Azure - Security, SSL certificates, Server Central, Active Directory - Administration</i>	<i>Volume 1-Part 3</i>	<i>983-1032</i>
e)	<i>Presentation on MDG Project V1.0</i>	<i>Volume 1-Part 3</i>	<i>1048-1065</i>
f)	<i>Incidence tickets raised for maintenance of MDM software</i>	<i>Volume 1-Part 3</i>	<i>1102-1161</i>
g)	<i>Main communication for fixing LXP outage and LXP performance issues</i>	<i>Volume 1-Part 3</i>	<i>1164-1171</i>
h)	<i>Incidence tickets raise for providing secured access to company's software</i>	<i>Volume 1-Part 3</i>	<i>1219-1242</i>

C) Centralized services

Descriptions of services (Page No. 155 of the Paper-book)

LANXESS India has entered into an agreement with LANXESS GmbH, wherein LANXESS GmbH has agreed to provide certain support services to LANXESS India (based on LANXESS India's requirements) in the nature of Accounting, Communications, Controlling, Development; Procurement & Logistics, etc. Out of the varied nature of services as mentioned in the agreement, during the FY 2021-22, LANXESS India has availed the following services from LANXESS GmbH:

- Human Resources;
- Tax and Trade Compliance;
- Treasury and Investor Relations;
- GBS;
- GPL;
- LEX; etc.

Summary of documents submitted

Sr No.	Document Type	Paper book reference	Page No.
1	<i>Cost allocation working</i>	<i>Volume I- Part 4</i>	<i>1713-1717</i>
2	<i>AE invoices</i>	<i>Volume II- Part 1</i>	<i>1860-1865</i>
3	<i>Inter-company agreement</i>	<i>Volume II- Part 1</i>	<i>1780-1859</i>
4	<i>Case studies</i>		
	<i>a) Accounting services (email communications</i>	<i>Volume I- Part 4</i>	<i>1243-1440</i>

	<p><i>/presentation between the AE and LANXESS India) wherein the AE assisted in:</i></p> <ul style="list-style-type: none"> - <i>Settlement of process orders</i> - <i>Extending of customer code and updating bank details in the MDM Platform</i> - <i>Creation of material code for sideline invoice</i> - <i>Updating / changes in material, cost centre and cost element in SAP system</i> - <i>Creation of sideline invoice in SAP system</i> - <i>Settlement of process orders</i> 		
	<p><i>b) Treasury & Investor Relations (email communications / presentation between the AE and LANXESS India) wherein the AE:</i></p> <ul style="list-style-type: none"> - <i>Provided guidance to LANXESS India staff for recording accounting entries in entity's as well as in the group's accounting system</i> - <i>Regularly monitoring and analyzing transactions undertaken by LANXESS India</i> - <i>Continuously monitoring and ensuring at the coverage from insurance policies</i> - <i>Assessing, monitoring, planning and managing the efficient utilization of cash flows</i> - <i>Monitoring and providing insights to LANXESS India about the financial performance and cash flow position</i> 		
	<p><i>c) Human Resource services (email communications /presentation between the AE and LANXESS India) wherein the AE assisted in:</i></p> <ul style="list-style-type: none"> - <i>Developing global mobility guidelines</i> - <i>Determining the global guidelines for salary adjustments</i> - <i>Collating data from all group entities to consolidate and centralize all the data obtained</i> - <i>Co-ordinating with Country heads of various LANXESS Group entities for consolidating the financial information to be reported in Group Annual Report</i> - <i>Calculating the final Individual Pension Plan ('IPP') budget calculation</i> 	Volume I - Part 4	1536-1712

5	Email communication/Presentation		
a)	AE provided update for Asset Closing of all months for 1593	Volume I - Part 4	1245-1256
b)	Ae provided extract of preliminary Balance sheet after determination Lowest Value/Net Realizable Value for seeking approvals on value adjustments	Volume I - Part 4	1257-1262
c)	AE provided support in settling unsettled process orders	Volume I - Part 4	1263-1277
d)	Mail communication where AE shares results for AP/AR closing report (AKM)	Volume I - Part 4	1278-1298
e)	Mail communication from AE confirming payment adjustments from customers, accrual of unfinished services/sideline operations, highlighting pending, collections from customers etc.	Volume I - Part 4	1299-1440
f)	Mails containing weekly cash flow forecast	Volume I - Part 4	1443-1466
g)	Mails containing forex exposure report template	Volume I - Part 4	1467-1509
	Presentation for APP/APP II 2020 Kick-off payout along with approved budgets etc Presentation for IPP 2021, Merit 2021 Kick-off	Volume I - Part 4	1542-1577 1587-1671
	Mail communication explaining Compensation process for expatriates	Volume I - Part 4	1578-1581
	Presentation for health Management in LANXEES-Change Story and global principles along with global framework.	Volume I - Part 4	1675-1712

6. The Ld. AR contended that the Coordinate Bench of ITAT Mumbai has considered this identical issue in assessee's own case bearing **ITA No.4632/Mum/2024** the date of pronouncement **20.01.2025** for AY 2020-21 the relevant part of observations of the Bench is reproduced as below:

"7. The assessee entered into agreement with Lanxess GmbH for availing these services, placed at pages 2090, 3886, 4902, 4935 and 4952 of the paper book. The assessee also explained that how the charges are raised on the assessee by providing the time cost allocation working placed at pages 2102, 3930, 4907 of the paperbook. The payments towards services rendered by the

AE's, grouped under three category of PTSE services, IT Services and Centralised Services was as per the terms of the agreement with AE's.

7.1. With respect to the rendition of the services, assessee submitted the details of emails/ correspondences between the AE's and the assessee received. Thus, the claim of the assessee is that based on agreement, emails and invoices of the associated enterprises proves that assessee has received those services were also submitted as per the summarized chart reproduces herein above. Before the DRP, the assessee filed these voluminous evidences for all services rendered by the AE to demonstrate the services which was subjected to remand to the Ld. TPO. However the Ld. TPO in the remand held that these evidences are not sufficient to show that assessee received any services and the benefits are not derived out of it. It is noted that in the remand order the Ld. TPO reiterated his observations same as in the original TP order.

7.2. It is noted that, in rejoinder submitted by the assessee reproduced in the DRP direction, the assessee rebutted each and every observations of the Ld. TPO. Clearly this leads us not note that, the authorities have not considered the evidences and has denied the claim on pure surmises and conjunctures. It noted that, the assessee also obtained certificate from the AE's for the cost allocations and the financials of the AE's in the additional evidences filed during the DPR proceedings. However that Ld. TPO in the remand took a contrary view. There is nothing on record brought by the Ld. TPO/DRP or the Ld. DR to establish that any of the services rendered by the AE's are duplicative services and can be catagorised as a shareholders activity.

7.3. On one hand, the stand of the authorities below is that no services are rendered, and, on the other hand, there are categorical findings that the services rendered are general in nature that even an employee of the assessee could have rendered the same (Observation of the Ld. TPO in the remand report). On the one hand, it is held that arm's length price of these services is zero value, and, in the same breath, it is held that there would hardly be any substantial payment" for these services. There is sufficient material on record to show that the assessee was, under the agreement, entitled to receive a package of services on as and when required basis. The emails and other documentary evidences show that the assessee was in receipt of these services. Further in our view, legitimate business needs of the company must be judged from the view point of the company itself and must be viewed from the point of view of a prudent businessman and that the Ld.AO/TPO cannot dictate what these needs are.

7.4. Just because these services were too general, or just because the assessee did not need these services from the outside agencies in the perception of the authorities below, cannot be the reason enough to hold that the services were not rendered at all. We have perused the material before us, and, in our considered view, the assessee reasonably established rendition of

services. The assessee may not have received all the services under the agreement but essentially the assessee had right to receive all these services, as and when required, under the agreement. The payments are made by the assessee for all the services agreed to be provided by the AE under the agreements. We also note that the assessee had filed the financials of the AE's to establish that the payment received from assessee were subjected to taxation in their respective jurisdiction which has not been looked into by the authorities. The observations of the Ld. TPO/DRP are therefore without any basis and de hors any analysis of the activities or evidences

7.5. Further, there are various decisions that observed that, benefit test do have much relevance in determining the ALP of such transactions. While determining the ALP of a service, it is wholly irrelevant, as to whether, the assessee benefits from such services or not. The real question to be determined is whether the price of this service is what an independent enterprise would have paid for the same.

7.6. Coming to application of CUP, depends on the market value of the arrangement under which the payments are made. Unless the Ld. TPO can identify a comparable uncontrolled case in which such similar services, are rendered and also find out consideration for the same, the CUP method cannot have any application. In the present facts, the assessee has furnished third party invoices as is evident from the chart reproduced herein above, which has not been refuted by the authorities in the remand report or in the DRP directions. There is nothing on record by the authorities to establish that the price charged by the AE's for services rendered are over prices vis-à-vis any other third party invoices.

7.7. We thus note that the assessee has satisfied elaborately to demonstrate the cost allocations well as detailed analysis of benchmarking of the transactions for the bundled group of serviced. The assessee has sufficiently demonstrated the services are rendered by the AE's under agreements and substantiated the need of such services. Without there being anything contrary to the evidenced filed by the assessee, we do not find any reason to justify the TP adjustment made based on wrong premises and adhoc estimation.

7. The Ld. AR vehemently contended that the approach adopted by the Hon'ble DRP is contrary to the settled principles of judicial discipline and the binding nature of precedents. It was submitted that the issue under consideration stood squarely covered in favour of the assessee by the order of the Coordinate

Bench of the ITAT in the assessee's own case for the earlier assessment year. Despite being apprised of the said decision, the DRP declined to follow the binding precedent merely on the ground that the Revenue had preferred an appeal before the Hon'ble Jurisdictional High Court and that the issue had not attained finality. The Ld. AR submitted that the pendency of an appeal before the Hon'ble High Court does not dilute, suspend, or obliterate the binding effect of an order passed by the Coordinate Bench of the Tribunal. Unless the operation of the Tribunal's order is stayed, reversed, or modified by a superior judicial forum, the same continues to hold the field and remains binding upon all subordinate authorities, including the DRP. It was argued that the Ld. DRP committed a grave error in refusing to follow the decision of the Coordinate Bench solely to "keep the issue alive" for protecting the interests of the revenue. The Ld. AR further contended that the observations of the Ld. DRP regarding the inability of the Department to file an appeal against directions issued under section 144C and the possibility of loss of revenue are wholly extraneous considerations. The Ld. DRP is a quasi-judicial authority and is required to decide the objections before it strictly in accordance with law and binding judicial precedents. It cannot decline relief to an assessee merely because the revenue may face procedural difficulties in pursuing further remedies. Such an approach, according to the Ld. AR, amounts to substituting legal adjudication with administrative expediency.

The Ld. AR submitted that the reliance placed by the Ld. DRP on the judgment of the Hon'ble Bombay High Court in the case of **Vodafone India Services Pvt. Ltd.** (supra) is misconceived. The said judgment merely explains the nature of DRP proceedings as a continuation of assessment proceedings and does not authorize the DRP to disregard binding decisions of the Tribunal. On the contrary, being a

quasi-judicial authority functioning within the hierarchy of tax administration, the DRP is duty-bound to follow the decisions of higher appellate forums. The Ld. AR invited us to the observation of the Ld. DRP contended in paragraph 10.4 which is reproduced as below:-

“10.4 Direction by the DRP:

In view of the aforesaid, ground no. 4 is rejected.

10.3.2 *We find that the facts of the present year are similar to the facts of the earlier assessment year 2020-21. Relying on the above findings of DRP in A.Y. 2020-21 on the same issue, we reject the above Ground of Objection along with all its sub grounds raised by the assessee.*

10.3.3 Respectful Submission in re Decisions of Hon'ble Higher Authorities:

Notwithstanding the distinctions as above, the Panel finds that the issue involved is recurring in nature and is pending for adjudication before higher judicial forums for certain years. It is necessary to point out that for the year under consideration, only the Applicant assessee has a right to appeal against the final assessment order framed by the AO after incorporating the directions of the DRP and the Department does not have any such right of appeal, apart from limited rights of cross-objections. It is pertinent to point out that if the DRP for the year under consideration arrives at a conclusion, which is against the Department and in favour of the assessee, especially on a legal issue which has not yet attained finality in the Hon'ble High Court and Supreme Court, and if the said issue is eventually decided by the Hon'ble Supreme Court in favour of the Department, there will be no recourse available for collecting the revenue attributable to the said issue, since the Department's appeal would not have been pending, as for the year under consideration, DRP orders cannot be appealed against by the Department

The decision of the DRP is no longer appealable by the Department, apart from limited scenarios of cross-objection. Thus, if the contention of the applicant is to be accepted, the same would tantamount to pre-judging the issue and bringing finality to the issue pending before the Hon'ble High Court.

Further, for the Department it would also amount to giving up the issue, which is under litigation before the Hon'ble High Court.

This Panel hastens to observe here that the Hon'ble High Court of Bombay in the Writ Petition No. 1877 of 2013 in the case of **Vodafone India Services Pvt. Ltd. v. Additional Commissioner of Income Tax (2014) 221 Taxman 166 (Bom.)**; wherein with regard to functioning of the DRP, the Hon'ble jurisdictional High Court of Bombay held that:

**47... The process before the DRP is a continuation of the assessment proceedings as only thereafter would a final appealable assessment order be passed. Till date there is no appealable assessment order. The proceeding before the DRP is not an appeal proceeding but a correcting mechanism in the nature of a second look at the proposed assessment order by high functionaries of the revenue keeping in mind the interest of the assessee. It is a continuation of the Assessment proceedings till such time a final order of assessment which is appealable is passed by the Assessing Officer. This also finds support from Section 144C(6) which enables the DRP to collect evidence or cause any enquiry to be made before giving directions to the Assessing Officer under Section 144C(5)..."*

Thus, the process before the DRP is a continuation of assessment proceeding as it is only the draft assessment order which is being challenged before it. The final assessment order is yet to be passed by the assessing officer. Hence, the DRP is not an appellate authority and the proceeding before the DRP is continuation of assessment proceedings. This view is fortified by the decision of the division bench of Hon'ble High Court.

*As discussed earlier, the Department is contesting the above issue before a higher forum. The issue has not yet attained the finality and the possibility of the issue being decided in favour of revenue cannot be ruled out at this stage. However, at the stage when the issue attains the finality, it is likely that the remedial measures available to levy and collect tax on account of this issue, may not be available to the Revenue on account of limitation placed by the statute. In this regard, we may refer to the decision of the Hon'ble Supreme Court of India in the case of **Malabar Industrial Co. Ltd. v. Commissioner of Income Tax [2000] 109 Taxman 66 (SC)** wherein it is observed that "The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue."*

Therefore, with due respect to the decision of the Hon'ble Jurisdictional Tribunal, this DRP is of the considered opinion that the issue has to be kept alive in order to protect the interest of the revenue. Hence, This Panel affirms the approach of the Assessing Officer.

As the issues raised in above grounds of objection is pending for decision by higher judicial forums, based on elaborate discussion made by this Panel and also relying on the findings of Panel for preceding A.Y.s; this Panel rejects the grounds of objections raised by the Applicant.

Therefore, with due respect to the decision of the Hon'ble Tribunal and bowing before it with reverence, the DRP is of the considered opinion that the issue has to be kept alive in order to protect the interest of the revenue. Hence, the Panel affirms the approach of the Ld. TPO/AO."

8. The Ld. DR strongly relied upon the orders of the Ld. TPO, the Ld. AO, and the directions issued by the Ld. DRP. It was submitted that the assessee failed to conclusively establish the actual rendition of services by its AEs and the tangible economic benefits derived there from. The Ld. DR contended that mere production of agreements, invoices, email correspondences, and cost allocation workings cannot automatically establish that independent and value-adding services were in fact rendered to the assessee. According to the revenue, the documentary evidence furnished by the assessee was largely general in nature and did not adequately demonstrate the necessity, quantum, or commercial value of the services allegedly received. The Ld. DR further submitted that the DRP had elaborately examined the issue and consciously followed its earlier directions for AY 2020-21. It was argued that the issue is recurring in nature and is presently pending adjudication before the Hon'ble Jurisdictional High Court. Therefore, the DRP was justified in maintaining the adjustment in order to protect the interests of the revenue until the controversy attains finality before the higher judicial forums. The Ld. DR placed reliance upon the observations of the DRP that the proceedings before the DRP are merely a continuation of the assessment proceedings and not appellate proceedings, as recognized by the Hon'ble Bombay High Court in the case of Vodafone India Services Pvt. Ltd. (supra).

Without prejudice to the above submissions, the Ld. DR fairly admitted that the identical issue relating to intra-group services comprising PTSE services, IT support

services, and centralized support services had already been adjudicated by the Coordinate Bench of the Tribunal in the assessee's own case for AY 2020-21 in **ITA No. 4632/Mum/2024** (supra). The Coordinate Bench, after examining the agreements, invoices, emails, cost allocation mechanisms, third-party invoices, and detailed evidences regarding rendition of services, had categorically held that the assessee had sufficiently demonstrated the receipt of services and that the determination of ALP at Nil was unsustainable. The Tribunal had accordingly deleted the transfer pricing adjustment in its entirety. The Ld. DR, however, submitted that the revenue has not accepted the aforesaid decision and has challenged the same before the Hon'ble Jurisdictional High Court. Nevertheless, the factual matrix of the present assessment year appears substantially similar to the facts considered by the Coordinate Bench in the earlier year.

9. We have heard the rival submissions and perused the material available on record. We find that the impugned transfer pricing adjustment arises from the determination of the ALP of PTSE services, IT support services, and centralized support services at Nil. We further find that an identical issue, arising from substantially similar facts and involving the same categories of intra-group services, was considered by the Coordinate Bench of the Tribunal in the assessee's own case for **AY 2020-21** in **ITA No. 4632/Mum/2024** dated **20.01.2025**. After an exhaustive examination of the agreements, invoices, emails, cost allocation workings, third-party evidences, and the benefit derived by the assessee, the Coordinate Bench held that the assessee had satisfactorily established the rendition of services and that the determination of ALP at Nil was without any sustainable basis. Accordingly, the entire adjustment was deleted.

The facts brought before us for the year under consideration are materially identical. The revenue has not placed any distinguishing feature on record to demonstrate that the decision rendered by the Coordinate Bench in the earlier year is not applicable to the present assessment year. Merely because the revenue has preferred an appeal before the Hon'ble High Court does not dilute the binding nature of the order of the Coordinate Bench, in the absence of any stay or reversal by a superior judicial forum.

Respectfully following the binding decision of the Coordinate Bench in the **assessee's own case** for AY 2020-21, we set aside the directions of the Ld. DRP and direct the Assessing Officer/TPO to delete the transfer pricing adjustment of Rs.61,22,54,833/- made in respect of PTSE services, IT support services, and centralized support services.

Accordingly, **Ground Nos. 3 to 9** raised by the assessee are allowed.

10. In the result, the appeal of the assessee bearing **ITA No.6627/Mum/2025** is allowed.

Order pronounced in the open court on 19th day of June 2026.

Sd/-

(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 19/06/2026
SAUMYASr.PS

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai

5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), **ITAT, MUMBAI**