

**INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "I-2": NEW DELHI]**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
A N D
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA No. 1398/Del/2018
(Assessment Year : 2010-11)

Verint Systems (India) Pvt. Ltd., Building No. 8, Tower-A, 2 nd Floor, DLF Cyber City, Phase-II, Gurgaon, Haryana - 122 002. PAN: AABCV9348Q	Vs.	DCIT, Circle : 17 (1) New Delhi
--	-----	---

ITA No. 3961/Del/2018
(Assessment Year : 2010-11)

DCIT, Circle : 26 (1) New Delhi.	Vs.	Verint Systems (India) Pvt. Ltd., Building No. 8, Tower-A, 2 nd Floor, DLF Cyber City, Phase-II, Gurgaon, Haryana - 122 002. PAN: AABCV9348Q
(Appellants)		(Respondents)

Assessee by :	Shri Darpan Karaplani, Adv.;
Department by :	Shri Ashish Kumar [CIT]-DR;
Date of Hearing :	18/02/2021
Date of pronouncement :	05/04/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. These are the cross appeals filed by the assessee and the ACIT, Circle 26 (1), New Delhi (the ld. AO) for assessment year 2010-11 against the order of the ld. CIT(A)-38, New Delhi dated 6.11.2017.
2. The brief facts of the case shows that assessee company is a subsidiary of Verint Systems Inc., USA and is primarily engaged in providing pre-sales and post-sales support services to its Associated Enterprises (AEs) situated at Israel, US and UK. It provides the services of marketing assistance and territory support to the sales team of the associated enterprises by way of

business consultancies, solutions specialists and pre-sales engineers who during the sales process, determine the customer requirement and develop technical response to those requirements. Post-sales support services comprises of implementation assistance, training, consulting and maintenance of sales to the customers of US and UK AEs.

3. Assessee filed its return of income on 13.10.2010 at Rs. 1,58,35,913/-.
4. During the year as the assessee has entered into international transactions, the matter was referred to the Id. TPO for determining the Arm's length price of the international transactions. The assessee has international transaction in the form of provision of pre-sales and post-sales support services amounting to Rs. 15,03,17,362/-, receipt of support service of Rs. 1,05,65,838/- and also purchase of computer equipment of Rs. 4,60,00,887/-. The assessee adopted Transactional Net Margin Method (TNMM) as the most appropriate method, selected operating profit by total cost as the PLI, selected 6 comparables, used multiple -year data and arrived at a average margin of comparables at 8.29% against its own margin of 9.49% and thus stated in its TP study report that these international transactions are at arm's length.
5. The Id. Transfer Pricing Officer after examining the accep/ reject matrices, and search filters rejected all 6 comparable, applied his own filters after issuing the show cause notice to the assessee considering all the arguments of the assessee reached at a set of 13 comparables, whose average margin was 29.70%. The total cost incurred by the assessee was Rs. 16,32,67,677/- wherein the margin of comparables of 29.70% was applied resulting into ALP of Rs. 21,17,58,177/- wherein the price is shown by assessee at Rs. 17,67,31,956/- ad thus proposed an adjustment under Section 92CA of Rs. 3,50,26,221/- by order passed under Section 92CA(3) of the Income Tax Act on 29.01.2014.
6. The above adjustment was incorporated by the Id. Assessing Officer and passed an order under Section 143(3) of the Act on 15.05.2014 determining total taxable income of the assessee at Rs. 5,21,26,664/- against the returned income of Rs. 1,58,35,913/-. Assessee aggrieved by that order preferred an appeal before the Id. CIT (Appeals).

7. The ld. CIT (Appeals) directed for exclusion of certain comparables against which the Revenue is aggrieved and has challenged the exclusion of TSR Darashaw Ltd. directed by the ld. CIT (Appeals). Thus, in I.T. Appeal 3961 (Del) of 2018 the ld. Assessing Officer is aggrieved with this order to that extent of the CIT (Appeals).
8. The assessee is aggrieved with the other findings of the ld. CIT (Appeals). However, the assessee submits that if the revised set of comparable companies and resulting adjustment after the order of the ld. CIT (Appeals) are considered, then only 7 comparable remains whose average margin is 10.62% and if same is applied to the total operating cost base of the assessee the difference between ALP and international transaction is only of Rs. 38,74,748/- which is less than 5% of the international transaction i.e. Rs. 88,36,598/- and, therefore, if the plus / minus 5% range of transaction is considered then no adjustment is warranted. However, assessee is in appeal against the order of the ld. CIT (Appeals) in I.T. Appeal No. 1398 (Del) of 2018.
9. On the appeal of the ld. Assessing Officer, the ld. DR relied on the order of the ld. TPO. The ld. AR submitted that total tax effect in the appeal of the Revenue wherein only one comparable is challenged is merely Rs. 34,36,924/- and, therefore, the appeal does not survive. Even otherwise, he relied on the order of the ld. CIT (Appeals) for exclusion of TSR Darashaw Ltd..
10. On the appeal of the assessee, the ld. DR agreed that adjustment falls within plus or minus 5% of the international transaction and, therefore, no adjustment is warranted.
11. We have carefully considered the rival contentions and perused the orders of the lower authorities. We have also gone through the paper book filed by the assessee as well as synopsis submitted before us. We first come to the appeal of the assessee. On the basis of the order of the ld. CIT (Appeals) and based on the rectification application moved by the assessee, the ld. Transfer Pricing Officer has passed an order under Section 154 of the Act on 29.08.2019 wherein it is held that now short-fall of adjustment under Section 92CA is only Rs. 38,74,748/-, which is less than 5% of the international transaction i.e. Rs. 88,36,598/- and, therefore, no adjustment

is warranted. As the ld. TPO himself based on the order of the ld. CIT (Appeals) has rectified an error and has stated that no adjustment is proposed, appeal of the assessee becomes infructuous and hence dismissed.

12. Now coming to the appeal of the ld. Assessing Officer wherein the only comparable that is challenged is TSR Darashaw Ltd. The difference of adjustment on account of the same results into the total tax effect of Rs. 34,36,924/- which is less than the minimum tax sum for which the Revenue should prefer an appeal before the ITAT, hence the appeal of the Revenue, being low tax appeal, is dismissed.
13. In the result both the appeals are dismissed.

Order pronounced in the open court on : 05 /04/2021.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated : 05 /04/2021.

MEHTA

Copy forwarded to

1. Appellants;
2. Respondents;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	31.03.2021
Date on which the typed draft is placed before the dictating member	31.03.2021
Date on which the typed draft is placed before the other member	5.04.2021
Date on which the approved draft comes to the Sr. PS/ PS	5.04.2021
Date on which the fair order is placed before the dictating member for pronouncement	5.04.2021
Date on which the fair order comes back to the Sr. PS/ PS	5.04.2021
Date on which the final order is uploaded on the website of ITAT	5.04.2021
date on which the file goes to the Bench Clerk	5.04.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	