

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'I': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.5640/Del/2011  
(Assessment Year: 2004-05)**

ACIT, Circle 2 (1),  
New Delhi.

vs.

M/s. BBC World (India) Pvt.Ltd.,  
518-522, World Trade Centre,  
Babar Road,  
New Delhi.

**(PAN : AABCB5209Q)**

**CO No.51/Del/2012  
(in ITA No.5640/Del/2011)  
(Assessment Year: 2004-05)**

M/s. BBC World (India) Pvt.Ltd.,  
518-522, World Trade Centre,  
Babar Road,  
New Delhi.

vs. ACIT, Circle 2 (1),  
New Delhi.

**(PAN : AABCB5209Q)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Darpan Kirpalani, Advocate  
REVENUE BY : Shri Manu Chaurasia, Sr. DR

Date of Hearing : 19.10.2023

Date of Order : 10.11.2023

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This is an appeal by the Revenue and the cross objection by the assessee arising out of the order of Id. CIT (Appeals)-XX, New Delhi dated 31.10.2011 for the assessment year 2004-05.

2. Earlier this appeal was disposed off by a common order dated 18.10.2019 along with several other cases of the same group. Subsequently, vide order dated 24.03.2023 in Misc. Application Nos.176 & 213/Del/2020, the aforesaid order was recalled for fresh adjudication. Pursuant to the above recall, we have heard both the parties and perused the records.

3. The grounds of appeal taken by the Revenue read as under :-

“1.(a) The Ld. CIT (A) has erred on facts and in law in deleting addition of Rs.1,09,56542/- made on account of transfer pricing adjustment as :

(b) The Ld. CIT (A) has inter-alia erred in law in accepting the assessee's contention that it is only intermediary between third party and AE.

(c) The Ld. CIT (A) inter-alia erred in not appreciating that the soul of the Market Support Services functions is present in India as the assessee company is responsible for discharging such functions as an independent organization and a lot of effort is required to be put into by it for providing business promotion and research services and, therefore, it needs to be adequately compensated for such efforts. Therefore, such cost cannot be ignored and excluded for the purpose of computation of Arm's Length Price of Market support service fee.”

4. At the outset, ld. DR for the Revenue submitted that the order of the Tribunal in other years of the same assessee's case should be followed for this year as facts are identical.

5. Per contra, Id. Counsel of the assessee strongly objected to the same and submitted that the matter may be decided on its own merits as the facts of the present year are different.

6. Upon careful consideration, we are inclined to decide the issue afresh pursuant the recall of the Tribunal order to decide the issue afresh.

7. Brief facts of the case are that the assessee, BBC World (India) Private Limited ('BWIPL') formerly known as BBC Worldwide (India) Private Limited. During the year, 75% of the shareholding is with BBC World Limited and 25% with Worldwide Channel Investments Limited. The ultimate holding company is BBC Commercial Holding Company. BBC group is engaged in broadcasting international TV Channels throughout the world, production and distribution of TV & Radio programs and other related activities including publication and mercantile. The following international transaction was undertaken by the assessee :-

S.No.	Description of transaction	Method	Value (in Rs.)
1.	Providing market Support Service & Other Miscellaneous services	TNMM	10,22,44,145
2.	Providing distribution support services	TNMM	1,03,33,354
3.	Interest on ECB loan	-	18,04,060
4.	One Time Grant received	-	1,75,31,533

8. Apropos the issue of action of the TPO charging mark-up on the third party costs incurred by the assessee : As mentioned in the note 10 of

schedule 14 of the audited account of the company, during the financial year relevant to the assessment year 2004-05, the assessee renegotiated its agreement with BBC World Ltd. and BBC World Distribution Ltd. An amount of Rs.7,03,70,841/- under various heads of accounts (as mentioned in para 6 of the TP order) were expended by the assessee and they were reimbursed by the contracting parties. These expenses are as follows :-

Account Head	Amount (in Rupees)
Operating expenses	
Rent	10752452
Research	6072888
Rates and Taxes	14612
Travel and Conveyance	2570130
Advertisement and Publicity	18446837
Business promotion	2805792
Electricity	672958
Insurance	402100
Printing and stationery	1115649
Repairs and maintenance – others	377881
Communication	197228
Office expense	963662
Legal and Professional	7416015
Entertainment	216970
Membership and Subscription	863392
Trade Events	2116682
Brokerage and commission	547820
Miscellaneous	428438
	55981506
Personnel Expenses	
Salaries, wages and bonus	9330732
Contribution to provident fund	539540
Staff Welfare	797345
	10667617
Depreciation	3721718
Total	70370841

TPO examined whether reimbursement of expenses without any mark-up is justified in this case.

9. According to the assessee, these expenses were not germane to the main services provided to the assessee. As per the agreement between the appellant and BBC World and BBC WDL, all cost incurred by the assessee on payment to third party vendor for marketing and research for the channel were reimbursed at cost, as these costs were incurred by the assessee on behalf of the channel and its principals. In the same way, all cost incurred under the division of finance, administration and direction were reimbursed at cost. These costs pertain to the expenditure incurred inter-alia on compliance by the assessee with various tax laws, on payment of rent etc. According to the assessee, no extra services were rendered by incurring these expenses.

10. On the other hand, TPO opined that the agreement between the assessee and its associated enterprises (AEs) covers all the activities on which the assessee is expected to provide the services to its AEs. Literally there are no area left which can be considered as an activity which is outside the purview of the service agreement which can be reimbursed at cost. The TPO further analyzed the agreements. In addition, the TPO has concluded that the assessee has no independent business interest in India other than promoting the interest of its AEs. The central activity of the assessee is to

market advertisements and sponsorships on BBC World Channel, to carry out research in respect of performance and viewership of BBC and to carry out distribution and marketing activities of BBC. The so called "pass through cost" is incurred by the assessee in carrying out its contractual obligation with its AEs. Therefore, the TPO concluded that 'the argument of pure reimbursement of the expenses on "purely reimbursement basis" is misplaced. The business activity in service sector necessarily incurs such kind of expenses which are so thickly related to core business activity that they cannot be taken on pure reimbursement.

11. Ld. CIT (A) decided the issue as under :-

“ I have considered the arguments of the appellant as well as the TPO. I am in agreement with the observation of the TPO that these activities are the . main activity of the appellant undertaken for its AEs. The appellant is engaged in the activities related to business promotion and marketing of BBC Enterprises. The core activity of the appellant is sale of airtime in the form of advertisement, marketing of BBC Channel amongst cable operators and promotion of viewership of the channel. However, as submitted by the assessee, there are certain expenses like 1) advertisement and publicity, 2) business promotion and 3) participation in trade events which were undertaken by the assessee at the request of the overseas entity. The budget was also controlled by the AE. The risk and outcome of these expenses are borne or attributed to the AE. The expenses relating to advertisement are on buying of advertisement space in the newspapers. In such activities the cost involved is too high and the effort required to buy such space is not much. Therefore, they should be treated as pass through cost. Other than these three items all other items should be considered as part of the cost base of the appellant and should be marked up.

.....

In view of the above, the pass through cost to the extent which are directly relatable to third parties, namely, 1) advertisement and publicity, 2) business promotion and 3) participation in trade events only should be excluded from the cost base of the appellant.”

12. We have heard both the parties and perused the records. We find that there was an agreement between the assessee and its AE which was examined by the authorities below. We find ourselves in agreement with the view and reasoning adopted by the Id. CIT (A). As found by the Id. CIT, there were certain expenses like advertisement & publicity, business promotion and participation in trade events which were undertaken by the assessee at the request of the overseas entity. The budget in this regard is also controlled by the AE. The risk and outcome of these expenses were borne or attributed to the AE. The expenses relating to advertisement were on buying of advertisement space in the newspapers; that in such activities, the cost involved is too high and the effort required to buy such space is not much. On these reasoning, Id. CIT (A) held that they should be treated as pass through cost. From the above, we are of the opinion that Id. CIT (A) rightly held that other than these three items, all other items should be considered as part of the cost base of the appellant and should be marked up. Thus, we hold that the TPO's order in this regard has no cogent basis. The reference to ITAT order for AYs 2002-03 & 2003-04 is also not germane as in those cases, ITAT found that the agreement was not before the authorities below. Accordingly, in the background of the aforesaid discussion, we uphold the order of the Id. CIT (A) in this regard.

13. Apropos foreign exchange loss being operational in nature : On this issue, the TPO opined that as the assessee company is a captive service provider all costs inclusive of any loss arising out of forex fluctuations and interest cost should have been marked up. He also opined that in service segment any loan taken for general office purposes cannot be anything else except operation expense. That the assessee is not carrying any significant inventories and therefore the loans and advances taken by it are for the operational purpose only. In this way, he justified the inclusion of interest expenses and forex loss for calculation of the PLI of the assessee.

14. On the other hand, the assessee contended that the forex loss partakes the nature of interest cost and all the financial charges are excluded in the hands of the comparable company while calculating the PLI of the company. Therefore, they should be excluded while computing the PLI of the assessee.

15. Considering the above, Id. CIT (A) held as under :-

“ I have carefully considered the submission made by the appellant. Most important aspect of benchmarking analysis is treating the comparables on the same footing as in the case of the assessee and if certain expenses are excluded in the hands of the comparable same should be excluded in the hands of the tested party - in this case the tested party is the appellant. Financial charges are normally excluded while arriving at the operating margins. This matter was subject matter of adjudication for the AY 2003-04. The Ld. predecessor of mine also has held that these expenses as non operating in nature. The relevant part of the order dated 29.03.2011 (Appeal No. 147/2006-07) for the AY 2003-04 is reproduced below.-

"37. The appellant has raised an issue as to whether foreign exchange loss (being part of finance costs) is to be considered as operating expense. I have perused the reply of the appellant and I



am of the view that foreign exchange loss is non-operating in nature as it partakes the nature of interest cost. The TPO has considered interest expense as a non-operating expenditure. Therefore, J consider foreign exchange loss to be non-operating in nature and exclude it from the calculation of PLI.”

In view of the above, I hold that these two items, namely, forex fluctuation loss and interest expenses should be excluded while computing the PLI of the assessee.”

16. Against the above order, Revenue is in appeal before us.

17. We have heard both the parties and perused the records. Upon careful consideration, we find ourselves in agreement with the reasoning adopted by the Id. CIT (A). Furthermore, Id. Counsel of the assessee has relied upon the decision of ITAT in the case of DHL Express (India) Pvt. Ltd. In ITA No.7360/Mum/2020 for AY 2006-07 for the following proposition :-

“We agree with the submissions of the Ld. Counsel of the assessee that interest income, rent receipts, dividend receipts, penalty collected, rent deposits returned back, foreign exchange fluctuations and profit on sale of assets do not form part of the operational income because these items have nothing to do with the main operations of the assessee.”

Accordingly, in view of the above, we uphold the order of the Id. CIT (A) on this issue.

18. The ground taken by the assessee in the cross objection read as under:-

“On the facts and circumstances of the case and in law, we wish to rely on the order dated October 31, 2011 issued under section

250 of the income Tax Act, 1961 passed by Commissioner of Income Tax (Appeals)-XX, New Delhi and grounds of appeal filed in Form 35 before the Commissioner of Income Tax (Appeals)-XX, New Delhi.”

19. Since we have already upheld the order of the Id. CIT (A), the cross objection filed by the assessee has become infructuous and dismissed as such.

20. In the result, the appeal filed by the Revenue and the cross objection filed by the assessee are dismissed.

**Order pronounced in the open court on this 10<sup>th</sup> day of November, 2023.**

**Sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 10<sup>th</sup> day of November, 2023  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-XX, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**