

IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH 'E' NEW DELHI

BEFORE : SHRI I.C. SUDHIR, JUDICIAL MEMBER &  
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA No. 4268/Del./2011  
Asstt. Year : 2004-05

Income-tax Officer,  
Ward 13(2), New Delhi.  
  
(Appellant)

vs. M/s. Network Programs (I) Ltd.,  
2, Western Avenue, Maharani Bagh,  
New Delhi. (PAN: AAACN 1499H).  
  
(Respondent)

Appellant by : Sh. Rajesh Jain, C.A.  
Respondent by : Sh. Rajesh Kumar, Sr. DR  
  
Date of hearing : 17.01.2017  
Date of pronouncement : 09.02.2017

ORDER

Per L.P. Sahu, Accountant Member:

This is an appeal filed by the Revenue against the order of Id. CIT(A)-XX, New Delhi dated 29.07.2011 for the assessment year 2004-05 on the following grounds :

*"1. That on the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition of Rs 96,07,684/-made by the AO to the income of the assessee company being the difference between arms length pricing computed by the Transfer Pricing Officer and value of the international transaction with associate company shown by the assessee.*

*2. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate that the addition made by the AO on account of difference in value of international transaction was discussed*

*at length by the TPO while framing the order u/s 92CA(3) dated 15.12.2006. Further the Ld. CIT(A) while relying on the fact that the TPO had taken the comparables with the financial data for the year 2002-03 instead of for the financial year 2003-04 (the year under consideration) has failed to appreciate the fact that the proviso to the Sub-Rule 4 of Rule 10B of the I.T. Rules states otherwise.*

*3. That on the facts and circumstances of the case and in law the Ld. (A) has erred in deleting the addition of Rs. 12,04,270/- made by the AO on account of gross profit @ 8.46% taken/computed on local business.*

*4. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate the fact that during assessment proceedings the assessee was not able to furnish any justification for more expenses attributed toward local business as compared to that on international business. In the absence of proper justification from the assessee regarding unbalanced allocation of expenses towards local and international business, the AO had rightly made the above addition.”*

2. The brief facts of the case are that the assessee filed return of income declaring loss of Rs.1,84,59,693/-. The case was taken up for scrutiny and statutory notices were issued. In response to the notice, the assessee submitted that Network Programs (I) Ltd. incorporated in 1994 is the parent of Network Programs USA Inc. Network Programs group offers software solutions and services in the area of telecommunications, networking, broadband switching, e-Commerce and internet. The group has established off-shore software development centres to provide services to their clients. The total turnover during the impugned year was Rs.9,31,48,206/-. The Company made sales to its Associate Enterprises, non-associate enterprise

and domestic sales, the details of operating margin analysis submitted before the AO/TPO are as under :

	Export Sales		Domestic Sales
	Associate Company	Non-associate Company	
Sales	4,70,38,487	3,54,34,578	1,06,75,141
Expenditure	4,26,89,563	3,29,08,969	2,49,10,013
Profit	4348,924	26,25,609	(-)1,42,34,972

3. The case was referred to the TPO u/s. 92CA(3) for determination of Arm's Length Price of international transactions entered into by the assessee to its associate enterprise. The assessee submitted the TP study report before the TPO and by using multiple year data, he calculated the arithmetical mean at 9.97% which is at paper book page 173, by using the data of 45 companies. The assessee has maintained the books of account, but not separately for the sales made to associate companies, non-associate companies and domestic sales. While doing segmentation, the appellant has taken the sales figures which were clearly identifiable since the sales were made to AEs and Non-AEs and domestic sales are identifiable. But in case of expenditure incurred, he charged proportionately on the basis of either sales made or number of employees engaged in the cost centres and the allocation of the cost is as under :

- Overheads and Depreciation was allocated on the basis of % of sale
- International travel expense was pertaining to export income.

- Personnel expenses were allocated based on the manpower engaged

4. The TPO was not agreed from the submissions and he calculated the Arms Length PLI at 11.71% and ratio of Revenue from services provided to AE to the total revenue at 50.49% thereby he charged operating expenses relating to the provisions of services to the AE Rs.5,07,08,236/- whereas the assessee has calculated total operating expenditure at Rs.4,26,89,563/-.

Finally, ld. AO/TPO determined the arm's length PLI as under :

(i). Operating Expenses related to provision of services to AE	5,07,08,236
(ii). Arm's length Price of International transactions, i.e. 111.71% to the cost	5,66,46,171
(iii) Value of international transactions	<u>4,70,38,487</u>
Difference (ii – iii)	<u>96,07,684</u>

As per the above calculation, the ld. AO/TPO made upward adjustment of Rs.96,07,684/- in the total income of the assessee company in respect of international transactions of providing software development services to the AE to align the international transactions with arm's length standard. Further, during the course of scrutiny proceedings, the Assessing Officer noted that there is a gross profit earned on export sales of 8.45% whereas the loss noted was 175% on domestic sales i.e., Rs.1,42,34,872/-. Against this observation of the Assessing Officer, the assessee submitted reply but the AO as not satisfied

and without rejecting the books of accounts, he drew inference that there is a imbalanced allocation of expenses towards local business and international business and computed 8.46% of Rs.1,42,34,872/- and made addition as a profit on domestic sales. Aggrieved by the order of the Assessing Officer, the assessee appealed before the CIT(A). He made detailed written submissions before the CIT(A) and filed additional evidence u/r 46A of the IT Rules, 1962. The additional evidences were sent to the TPO calling for remand report in respect of international transactions which was submitted by the TPO on 06.11.2009. The ld. CIT(A) after considering the detailed submissions and the remand report, deleted the addition of Rs.96,07,689/- in respect of international transactions undertaken to its AEs. Further the ld. CIT(A) also deleted the arbitrary addition of Rs.12,04,270/-. Aggrieved by the above order of the ld. CIT(A), the Revenue is in appeal before the ITAT.

5. The ld. DR relied on the order of the AO/TPO. On the other hand, the ld. AR relied on the order of the CIT(A) and the submissions made before him.

6. After hearing both the parties and perusing the materials available on record, we find that the ld. CIT(A) after considering the submissions of the

assessee and the remand report submitted by the TPO, has made reasoned order which needs no interference. We reproduce the same as under :

*“7.3. The issue is considered carefully. The AO did not reject the books of accounts of the appellant. He has not given any finding regarding the reliability of the books of accounts maintained by the appellant.*

*7.4. There is no reason for the AO to make an addition on an estimation basis when the books of accounts of the appellant were not rejected. The AO has not analyzed the reason for loss suffered by the appellant. Therefore, in view of the submission of the appellant, it is clear that the appellant is incurring losses on account of business reasons and hence the arbitrarily estimated GP addition of Rs. 12,04,270/- is not sustainable. Appellant gets relief under this ground of appeal (Relief given-Rs. 12,04,270/-)”.*

7. From the above finding of the CIT(A), it is clear that the OP/TC calculated by the assessee is 10.19% and the TPO has worked out in his remand report average OP/TC at 7.44%. Therefore, we think that there is no need to adjustment in PLI as computed by the assessee which is more than the TPO's calculation for determination of Arm's length price of international transactions with its AEs. Therefore, the appeal of the Revenue in respect of ground No. 1 & 2 is dismissed.

8. In respect of ground No. 3 & 4, the Id. CIT(A) has rightly deleted the addition made by the AO as noted above because the AO has made additions only on arbitrary basis. The Id. AO has not analyzed the losses incurred by the

assessee in previous years and had made the additions due to loss incurred on domestic transactions, which is clear from the submissions of the assessee. Even the AO has not rejected the books of accounts of the assessee. Such additions made by the AO on adhoc basis, are not permissible to be made under the IT Act. We, therefore, do not find any justification to interfere with the order of the Id. CIT(A). Accordingly, the grounds No. 3 & 4 are dismissed. Accordingly, the appeal of the Revenue is dismissed.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 09.02.2017.

Sd/-  
(I.C. SUDHIR)  
Judicial Member

Sd/-  
(L.P. SAHU)  
Accountant Member

Dated : 09.02.2017

\*aks/-

*Copy of order forwarded to:*

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Delhi Benches, New Delhi*