

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'I-1', NEW DELHI**

**Before Sh. N. K. Saini, AM and Sh. Kuldip Singh, JM**

**ITA No. 991/Del/2014 : Asstt. Year : 2009-10**

DCIT, Circle-18(1), New Delhi	Vs	M/s Xchanging Technology Services India Pvt. Ltd., Rectangel- I, D-4, District Centre, Saket, New Delhi-110019
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

**CO No. 246/Del/2016 : Asstt. Year : 2009-10**

M/s Xchanging Technology Services India Pvt. Ltd., Rectangel-I, D-4, District Centre, Saket, New Delhi-110019	Vs	DCIT, Circle-18(1), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AABCR5609L</b>		

**Assessee by : Sh. Nageshwar Rao, Adv.**

**Revenue by : Sh. Amrendra Kumar, CIT DR**

<b>Date of Hearing : 29.03.2017</b>	<b>Date of Pronouncement : 31.03.2017</b>
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**ORDER**

**Per N. K. Saini, AM:**

The appeal by the department and the Cross Objection by the assessee are directed against the order dated 29.01.2014 passed by the AO u/s 143(3) r.w.s. 144C(4) of the Income Tax Act, 1961 (hereinafter referred to as the Act).

2. Following grounds have been raised in this appeal:

*“1. On the facts and circumstances of the case and in law, Ld. DRP-II, New Delhi erred in directing to*

*reduce the proposed addition on account of TP Adjustment Rs.2,43,80,550/- u/s 92CA of the Act.*

*2. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any grounds(s) of appeal at any time before or during the hearing of appeal.”*

3. From the above grounds, it is clear that the grievance of the assessee relates to the direction of the DRP to reduce the proposed addition on account of TP Adjustment.

4. The Id. Counsel for the assessee at the very outset stated that it is not clear as to how this appeal has been filed by the department, particularly when the AO had made an adjustment of Rs.6,11,17,557/- on the basis of recommendation made by the TPO on the direction of the DRP vide order dated 20.12.2013, who directed the TPO to check the margin of comparables given by the assessee and accept the correct margin. It was also pointed out that the assessee filed an appeal before the ITAT Delhi Bench -I, New Delhi in ITA No.1897/Del/2014 for the assessment year under consideration which has been disposed off vide order dated 24.04.2015 wherein the determination of ALP on the provisions of ITES only, was remanded back to the AO/TPO, but the department had not objected to the

adjustment on account of IT enabled services and software development services and also the adjustment reduced by the TPO to Rs.6,11,17,557/- against the proposed adjustment of Rs.8,54,98,108/-.

5. In his rival submissions the ld. CIT DR relied on the order passed by the TPO.

6. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the TPO proposed the adjustment of Rs.8,54,98,108/- on the provisions of IT Enabled Services and Software Development Services on account of Arm's Length Price of assessee's international transactions with its Associated Enterprises. Thereafter, the AO proposed the said adjustment in the draft assessment order. The assessee objected to the said adjustment and the DRP after considering the submissions of the assessee directed the TPO to examine the calculation produced by the assessee. This fact has been mentioned by the AO in para 3.2 of the assessment order dated 29.01.2014 which read as under:

*“3,2 DRP Vide its order dated 20/12/2013 directed TPO to check the margins of the comparables given*

*by the assessee and accept the correct margin for the determination for ALP, TPO vide F.No. ADDL. DIT/TPO-II(4)/2013-14/401 dated 21/01/2014 has recalculated international transaction related to provision of IT Enabled Services after considering working capital adjustment based on the guidelines provided by OECD Transfer Pricing guidelines, 2010 and adjustment amount Rs. 6,11,17,557/-. In the other segment TPO has recalculated the arm's length price of the international transaction related to provision software development services and no addition is proposed in this segment.*

*Accordingly, an adjustment of Rs. 6,11,17,557/- as per TPO's order u/s 92CA (3) of the Act is being made to the returned income on account of arm's length pricing of assessee's international transactions with its associate enterprises.”*

*(Addition: Rs.6,11,17,557/-)*

7. From the above observation of the AO, it is crystal clear that the adjustment of Rs.8,54,98,108/- proposed in the draft assessment order was re-calculated by the TPO based on the guidelines provided by OECD Transfer Pricing adjustment, 2010 and an adjustment of Rs.6,11,17,557/- was worked out. From the above narrated facts, it cannot be said that the DRP has allowed any relief amounting to Rs.2,43,80,550/- (Rs.8,54,98,108 ó Rs.6,11,17,557) rather the TPO himself on being satisfied after proper verification

worked the adjustment which has been made by the AO. Therefore, this appeal filed by the department is without any basis and is not maintainable. Accordingly, the same is dismissed.

8. Since, we have dismissed the appeal of the department, the Cross Objection filed by the assessee emerging out of the said appeal i.e. ITA No. 991/Del/2014 becomes infructuous.

9. In the result, the appeal by the department and Cross Objection of the assessee are dismissed.

(Order Pronounced in the Court on 31/03/2017)

Sd/-  
**(Kuldip Singh)**  
**JUDICIAL MEMBER**

**Dated: 31/03/2017**

\*Subodh\*

Copy forwarded to:

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

Sd/-  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**ASSISTANT REGISTRAR**