

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F" NEW DELHI  
BEFORE SHRI S.V. MEHROTRA : ACCOUNTANT MEMBER  
AND  
SHRI C.M. GARG: JUDICIAL MEMBER

ITA no. 3256/Del/2014

Asstt. Yr: 2005-06

Rolls Royce India Ltd., 2 <sup>nd</sup> Floor, Birla Tower (West), 25, Barakhamba Road, New Delhi. PAN: AAACR 4693 K ( Appellant )	Vs. ADIT International Tax, Circle-2(1), New Delhi.      (Respondent)
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Appellant	by	:	Ms.Khyati Dadhwal Adv.
Respondent	by	:	Ms. Rakhi Bimal Sr. DR

Date of hearing	:	09/05/2016.
Date of order	:	12/05/2016.

**ORDER**

**PER S.V. MEHROTRA, A.M:**

This is assessee's appeal assailing the order dated 28.2.2014, passed by the Id. CIT(A)-XXII, New Delhi in appeal no. 37/20/08-09, for A.Y. 2005-06

2. Brief facts of the case are that the assessee Rolls Royce India Limited is incorporated in UK and is 100% owned by Rolls Royce International Ltd. which in turn is wholly owned by Rolls Royce PLC. The assessee operates through an office in India. It provides commercial information services and marketing support services to Rolls Royce International Ltd. relating to Indian Territory and neighboring countries. The Liaison Office is compensated on cost + 6% of the reimbursed expenses in pursuance of an

agreement between Rolls Royce International Ltd. and Rolls Royce (India Ltd)., effective from 01.01.2001.

3. The assessee had filed return declaring its total income of Rs. 90,90,337/-. The AO, vide its order dated 3.9.2008, computed the total income as under:

i)	Total costs incurred by assessee during F.Y. 2004-05	15, 15,05,620
ii)	Arm's Length margin over Costs (Also in the TPO Order)	19.30%
iii)	Arm's Length Price of said - transaction of providing services to the AE is determined at (Total Costs as in (i) + 19.30% of Total cost as in (i)	18,07,46,205
iv)	Actual total amount received by the assessee for rendering Services (including Total Costs 15, 15,05,620 and 6% Margin 90,90,337)	16,05,95,957
v)	Therefore, differential amount to be charged as taxable i.e. adjustment to the total income	2,01,50,248
	Finally, Total Income is as below	
	(a) Returned total Income	90,90,248
Add		
	(b) Adjustment - to the arm's length margin	2,01,50,248
	Net Assessed Income	
	(Total Taxable Income)	2,92,40,585

4. The assessee preferred appeal before Id. CIT(A), who vide its order dated 28.2.2014 dismissed the assessee's appeal. Being aggrieved with the order of Id. CIT(A), the assessee is in appeal before us and has taken following grounds of appeal:

- “1. *The order passed by the Learned Commissioner of Income Tax (Appeals) - XXII ("Ld. CIT(A)") under Section 250(6) of the Income Tax Act, 1961 ("the Act") is bad in law and on the facts of the case.*
2. *The Ld. CIT(A) has erred in law and on the facts of the case by holding that the appellant has used the pendency of Mutual Agreement Procedure ("MAP") as an excuse to delay appellate proceedings, and has deliberately avoided submission of details.*
3. *The Ld. CIT(A) has erred in law and on the facts of the case by not keeping the appellate proceedings in abeyance as the appellant was awaiting communication of MAP resolution from the Indian competent authority.*
4. *The Ld. CIT(A) has erred in law and on the facts of the case by observing that there is no certainty with regard to the MAP resolution, despite the appellant having submitted the communication received from the competent authority of the United Kingdom.*
5. *The Ld. CIT(A) has erred in law and on the facts of the case by observing that the appellant was apprehensive that further inquiry would lead to discovery of more evidence against the appellant.*
6. *The Ld. CIT(A) has erred in law and on the facts of the case by misunderstanding the business model of the appellant.*
7. *The Ld. CIT(A) has erred in law and on the facts of the case by summarily rejecting the Transfer Pricing analysis conducted by the appellant, due to non- submission of certain information.*
8. *The Ld. CIT(A) has erred in law and on the facts of the case by not examining the details that were filed by the appellant.*
9. *The Ld. CIT(A) has erred in law and on the facts of the case by making certain observations which are not relevant to the appellant's case, which speaks of non-application of mind.*

10. *The Ld. CIT(A) has erred in law and on the facts of the case by confirming the arm's length analysis conducted by the Learned Transfer Pricing Officer ("Ld. TPO"), and thereby confirming the Transfer Pricing adjustment of Rs. 2,01,50,248.*

11. *The Ld. CIT(A) has erred in law and on the facts of the case by relying upon findings of the IT AT in earlier years in the case of the Associated Enterprise of the appellant i.e. Rolls Royce PIC; but without bringing on record any contemporaneous evidence of the appellant having provided any services beyond the scope of its agreement.*

12. *The Ld. CIT(A) has erred in law and on the facts of the case by rejecting the arguments of the appellant against the choice of comparables made by the Ld. TPO.*

13. *The Ld. CIT(A) has erred in law and on the facts of the case by rejecting the arguments of the appellant against the action of the Ld. TPO in rejecting use of multiple year data.*

14. *The Ld. CIT(A) has erred in law and on the facts of the case by not allowing working capital adjustments in the case of the appellant.*

15. *The Ld. CIT(A) has erred in law and on the facts of the case by confirming the adjustment of 10% to the operating margin of the comparables on account of the low risk profile of the appellant; and in observing that the appellant bears marketing risk and therefore higher risk adjustment should not be made.*

16. *The Ld. CIT(A) has erred in law and on the facts and circumstances of the case by upholding the levy of interest under Section 234B of the Act.*

17. *The above grounds of appeals are independent and without prejudice to one another.*

18. *The appellant may be allowed to add / withdraw or mend any ground of appeal at the time of hearing.*

5. Simultaneously, while assessee was pursuing its remedies provided under the Income-tax Act, it had also initiated the MAP proceedings under Article 27 of the DTAA for AY 1998-99 to AY 2005-06. For the present we are concerned with the AY 2005-06 only. The assessee vide its letter dated 23.1.2014 filed with the Tribunal on 23.1.2014 had stated as under:

*“January 23, 2014                      Law Offices*

*The Deputy Director of Income Tax  
Circle - 2(1), International Taxation  
Room No. 419,  
Dr. S. P. Mukharjee Civic Center,  
J. L. N. Marg, New Delhi-110002*

*Re: M/s. Rolls Royce India Limited /PAN AAACR 4693 K*

*Sub: Conclusion of Mutual Agreement Procedure ' ("MAP")  
under the Double Taxation Avoidance Agreement between  
India and United Kingdom of Great 'Britain and Northern  
Ireland ( “DTAA” ) for the AY 1998-99 to AY. 2005-06*

*Dear Sir*

*This is with reference to the captioned subject.*

*In this respect, we under the instructions of and on behalf of  
our J client M/s Rolls Royce India Limited ("the Company")  
submit that the Company has initiated the MAP proceedings  
under Article 27 of the DTAA in its case for the AY 1998-99 to  
A Y to AY 2005-06.*

*The Company has received a written communication from the  
Competent Authority ill United Kingdom intimating conclusion  
of MAP proceedings, A copy of the aforesaid letter is enclosed  
herewith as Annexure 1.*

*As per the MAP conclusion between Competent Authority of  
India and United Kingdom, the assessed income of the*



*ROLLS-ROYCE INDIA Ltd (RRIL)  
MUTUAL AGREEMENT PROCEDURE (MAP)  
UK/INDIA DOUBLE TAXATION AGREEMENT*

*This letter confirms the mutual agreement reached between the UK and India at a meeting of the competent authorities in July 2012 to try to resolve issues of double taxation affecting the UK company Rolls-Royce India Ltd.*

*India has agreed to withdraw the amounts of profits it has assessed as shown in the table below headed Indian MAP Settlement. The UK has agreed to relieve the amounts in the table subject to the years being in date for MAP applications. As I explained on the phone, the company was out of date in making its MAP applications for years prior to the year ended 31 December 2001 (albeit through no fault of its own) and the UK cannot relieve the Indian tax on the agreed adjustments included in their assessments on RRIL for the periods prior to 2001.*

*I have shown in more detail on a separate spreadsheet the basis for the MAP settlement.*

*Please let me know if you have any enquiries about the figures. Information is available in large print, audio tape and Braille formats.*

*Type Talk service prefix number-18001*

*Judith Knott (Director)*

Accounts year (PY basis)	Calendar Year	Indian assessment reduced by Rs	Indian assessment reduced by £	UK assessment reduced by Rs.	UK assessment reduced by £	Reduction in UK assessment in date £	Ave exchange rate
1997/8	1998	6,443,181	88,019	6,001,309	97,582		61.5
1998/9	1999	6,193,885	88,865	6,866,828	98,520		69.7
1999/00	2000	8,215,751	121,715	9,108,371	134,939		67.5
2000/01	2001	11,102,720	164,485	12,309,002	180,220	152,210	68.3
2001/02	2002	9,709,603	142,161	9,709,603	129,808	131,796	74.8
2002/03	2003	4,1015,950	548,342	9,599,884	123,551	104,042	77.7
2003/04	2004	3,603,136	46,372	7,454,764	90,003	106,326	82.8
2004/05	2005	11,059,911	133,574	9,090,337	109,787	27,447	61.5
Total excluding 97/8 99/00		96,314,137	1,333,533	70,140,098	658,587	521,820	

6. Vide letter dated 5.1.2016 the assessee sought adjournment on the ground that formal communication regarding the resolution arrived as per the provisions of Article 27 of the India -UK DTAA was awaited from the Competent Authority. The case was adjourned on 3.5.2016 to enable the parties to find out the status of proceedings under MAP. Again assessee sought adjournment on 3.5.2016 on the ground that effect was to be given to the resolution passed. At the time of hearing ld. counsel for the assessee pointed out that effect is likely to be given to the resolution arrived at between UK & India.

7. We have considered the submissions of both the parties. A bare perusal of the letter dated 27.3.2013 from Judith Knott (Director), reproduced above, clearly shows that at a meeting of the Competent Authorities in July 2012, an agreement had been arrived at and along with the said letter all conclusions as per agreement were furnished which have been reproduced earlier.

8. Considering the contents of various letters filed before us including adjournment applications, we are of the considered opinion that (the matter should be restored to the file of AO to pass order as per the mutual agreement reached between UK & India at a meeting of the Competent Authorities in July 2012. Once the agreement has been arrived at between Competent Authorities of UK and India and nothing has been brought on record by the department regarding any dispute on the terms of agreement then only effect remains to be given to the agreement arrived at by passing formal order by AO.

9. Under such circumstances, no fruitful purpose would be served by keeping the appeal pending as entire exercise is to be done by AO. However,

we may clarify that in case there is any disagreement on any terms, then assessee would be free to take proper legal action, as deem fit.

10. In the result, assessee's appeal is dismissed as infructuous.

Order pronouncement in open court on 12/05/2016.

Sd/-  
(C.M. GARG)  
JUDICIAL MEMBER  
Dated: 12/05/2016.

Sd/-  
(S.V. MEHROTRA)  
ACCOUNTANT MEMBER

**\*MP\***

Copy of order to:

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.