



IN THE INCOME TAX APPELLATE TRIBUNAL "K", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM

&

SHRI RAM LAL NEGI, JM

ITA No.1778/Mum/2016

(Assessment Year :2011-12)

M/s. Franklin Templeton International Services (India) Pvt. Ltd., Tower 2, 13 th Floor Indiabulls Finance Centre Senapati Bapat Marg Elphinstone (W) Mumbai – 400 013	Vs.	Assistant Commissioner of Income Tax, Circle 6(3)(1), Room No.506, Aayakar Bhavan, M.K. Road, Mumbai – 400 020
PAN/GIR No.AAACF6496L		
(Appellant)	..	(Respondent)

Assessee by	Shri Madhur Agrawal
Revenue by	Shri V. Janardhanan
Date of Hearing	20/06/2018
Date of Pronouncement	20/06/2018

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of DRP dated 05/11/2015 for A.Y.2011-12 in the matter of order passed u/s. 144C (5) of the IT Act and consequent order of AO u/s.143(3) r.w.s. 144C(13) of the IT Act.

2. In this appeal, assessee is aggrieved for transfer pricing adjustment relating to data processing services and also for disallowance of repair and maintenance expenses of Rs.36,33,865/-.

3. Rival contentions have been heard and record perused. Facts in brief are that assessee is engaged in the business of providing data processing and support services and software support services to the FTI group companies. During the course of assessment, AO has made an addition on account of transfer pricing adjustment relating to data processing services as suggested by TPO. AO has also disallowed part of the repair and maintenance expenditure claimed by the assessee.

4. By the impugned order, CIT(A) confirmed the transfer pricing adjustment, however, he has given partial relief in respect of expenditure under the head 'repairs and maintenance' and confirmed the balance disallowance of Rs.36,33,865/- against which assessee is in further appeal before us.

5. At the outset, learned AR stated that as per the instruction of client, he is not going to press ground No.1 with regard to transfer pricing adjustment relating to data processing. Accordingly, Ground No.1 is dismissed as not pressed.

6. With regard to the expenditure of repairs and maintenance we found that during the course of assessment proceedings the break-up of repairs and maintenance expenses amounting to Rs 79,861,696 were submitted by the assessee. Out of the total repairs and maintenance expenses incurred, the learned AO has disallowed an amount aggregating to Rs 3,740,919 the details of which are tabulated below:

Sr.no.	Nature of repairs and maintenance expenses	Details	Amount
1	Polishing machine	Consumable	16,649
2	Soap Dispenser Plate	Consumable	114,265
3	Cooker Utensils	Consumable	82,152
4	Touch Screen for Automation	repairs and maintenance/ up-gradation of electrical fittings	137,400
5	Website Charges	Website support ant maintenance charges	114,515
6	Security System Supplier	Annual maintenance contract Rs 686.6 18	1,442,814
		Supply of kitchen equipment Rs 147.263	
		Security System Supplier Rs 608.933	
7	Workstation Modification Expenses	Repairs to Furniture and fixtures	1,833,124
		Total	3,740,919

7. By the impugned order, CIT(A) allowed assessee's claim of website charges and also annual maintenance contract of Rs.1,14,515/- and Rs.6,86,618/- respectfully. The balance repairs and maintenance was disallowed on the plea of not having in the nature of current repair. Learned AR drawn our attention to the nature of expenditure incurred on account of repair and maintenance and contended that the expenses viz. polishing machine, soap dispenser plate, cooker utensils, supply of kitchen equipment are in the nature of consumables. These expenses are

incurred in the normal course of undertaking its business and are recurring in nature. As per learned AR, wherever applicable the assessee has also deducted appropriate taxes in respect of the above expenses. Our attention was also invited to clause 17 of the tax audit report where no amount has been shown as debited to the profit and loss account being capital in nature.

8. He further contended that assessee has made provision for repairs and maintenance expenditure at the end of the year amounting to Rs.6,94,079/- towards net incremental year end provision created for repairs and maintenance. As per learned AR, the assessee follows mercantile system of accounting. In light of the accounting method followed by the assessee and given that certain services have been utilized by the assessee in the subject assessment year it is required to make provision of repairs and maintenance expenses in respect of such services, on an estimated basis. The net incremental year end provision for repairs and maintenance expenses of Rs 694,079 during the year comprises of the following:

Item	Amount in Rs.
Reversal of provision pertaining to March 2010	(4,278,865)
Provision made for the year ended March 2011	4,972,944
Net incremental provisions	694,079

9. On the other hand it was contended by learned DR that expenditure so incurred has resulted in enduring benefit, therefore,

CIT(A) has correctly confirmed the disallowance being in the nature of capital expenditure.

10. We have considered rival contentions and carefully gone through the orders of the authorities below. We have also deliberated on the judicial pronouncements referred by lower authorities in their respective orders as well as cited by learned AR during the course of hearing before us in the context of factual matrix of the case. From the record we found that assessee has mainly incurred expenditure towards consumables such as cooker utensils, supply of kitchen equipment and soap dispenser plates etc., amount of which are very low. Keeping in view the nature of expenditure vis-à-vis its useful life, we observe that these expenditure are on account of repairs and maintenance and essentially revenue in nature. Furthermore, with respect to the provision for repair and maintenance so made at the year end, we found that the provision made for the year ended on March 2011 amounting to Rs.4,972,944 is a year-end accounting provision that has been reversed in the beginning of the next year. Similarly, the provisions made in March 2010 of Rs 4,278,865 was also reversed on the first day of the following year. The assessee reverses the entire provision for expenses on the first day of the next financial year when the actual invoices are subsequently received that the parties are credited. Such invoices are generally received after the closing of books for year-end purposes. The assessee is following the mercantile system of accounting under which a liability already accrued, though to be

discharged at a future date, is a proper charge while working out profits of its business. Since, the services were availed during the year under consideration, irrespective of the fact that invoices from vendors were not received during the year; the same should be allowed as a deduction during the year only. In this connection, reliance is placed on the following judicial precedents:

- *Bharat Earth Movers v CIT [20091 (245 ITR 42H)*
- *Metal Box Co. of India Ltd v. their workmen [19691 (73 ITR 53) (SC)*
- *Calcutta Co Ltd. v CIT [19591 (37 ITR 1) (SC)*

11. In view of the above discussion, we do not find any merit for disallowance of expenditure incurred under the head 'repairs and maintenance' amounting to Rs.36,33,865/-. We direct accordingly.

12. Learned AR has also raised an additional ground to the effect that incase of disallowance of repairs and maintenances expenditure, the deduction eligible u/s.10A and 10B should be increased. We are in agreement with learned AR that disallowance of repairs and maintenance expenditure resulted into increase in profit. Assessee is eligible for enhanced claim of deduction u/s.10A and 10B of the IT Act. However, since we have already decided the main issue in favour of the assessee and directed the AO to allow the expenditure of repairs and maintenance as Revenue expenditure, the additional ground so raised by the assessee has become infructuous.

11. In the result, appeal of the assessee is allowed in part in terms indicated hereinabove.

Order pronounced in the open court on this 20/06/2018

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 20/06/2018

Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai