

IN THE INCOME TAX APPELLATE TRIBUNAL
"K" Bench, Mumbai
Before S/Shri B.R.Baskaran (AM) & Amarjit Singh (JM)

I.(TP).A. No. 1288/Mum/2016 (Assessment Year 2011-12)

Progress Software Solution (India) Private Limited C/o. Progress Software Development Pvt. Ltd. 4 th Floor, No.18, 1 Labs Centre, 8, Software Unit Layout, Madhapur Hyderabad-500 081. PAN : AA ACT7450Q (Appellant)	Vs.	ITO 13(1)(4) Room No. 216 2 nd Floor Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri Mahaveer C. Jain
Department by	Shri Jayant Kumar & Shri Kiran Unavekar
Date of Hearing	2.8.2018
Date of Pronouncement	10.8.2018

O R D E R

Per B.R. Baskaran (AM) :-

The assessee has filed this appeal challenging the order passed by Assessing Officer u/s. 143(3) read with section 144C(13) of the Act pursuant to the direction issued by learned DRP. The assessee is aggrieved by the decision of the tax authorities in rejecting segmental profit and loss account and making transfer pricing adjustment at entity level. The assessee has also raised grounds with regard to addition made on the basis of form No. 26AS statement and in not granting setting off of brought forward losses.

2. The Learned Counsel appearing for the assessee submitted that the assessee is a subsidiary of Progress Software Corporation, USA. It has got two segments namely Information Technology segment and Trading of Software segment. He further submitted that both segments are located at different places, i.e. the information Technology division is located in Mumbai and the

trading Segment is located in Chennai. The Learned AR submitted that the assessee has furnished segmental profit and loss account and benchmarked its international transactions with its AE accordingly. However, the TPO rejected segmental profit and loss account; considered margin at entity level and proposed adjustment of ₹ 420.72 lakhs. The same was confirmed by learned DRP.

3. The Learned AR submitted that the assessee has furnished audit certificate with regard to segmental profit and loss account and further the operations carried out in both segments are totally different. Accordingly, the learned AR submitted that there is no justification in rejecting segmental results.

4. We heard Ld D.R. When it was pointed that there is merit in the contentions of the assessee for considering segmental results, since both the segments are dealing in different activities, the Learned DR submitted that the assessee has incurred certain common expenses and allocation of the same between two segments was not properly explained.

5. We have heard the parties and perused the record. We noticed that the assessee is having two segments and both segments are located in geographically two different locations, i.e., Information Technology segment located in Mumbai and is said to be engaged in the software development activity. The trading segment is located in Chennai and is said to be engaged in resale of software products of its parent company. Admittedly, both segments are carrying on two different activities. The assessee also claimed to have furnished segmental profit and loss account. Before us, the assessee furnished a copy of audit certificate also. Under these set of facts, we are of the view that there is merit in the claim of the assessee that, for the purpose of determining arm's length price of transactions, segmental results should be considered. The Ld D.R raised an issue relating to allocation of common expenses, which can always be examined by the tax authorities. Accordingly,

we set aside the order passed by the tax authorities and restore this issue to the file of the Assessing Officer/TPO for determining arm's length price of international transactions entered with associated enterprises of the assessee by considering segmental results furnished by the assessee.

6. The next issue relates to addition made on the basis of 26AS statement. The Learned AR submitted that the assessee would be in a position to offer explanations in this regard. Accordingly, we are of the view that the assessee may be given one more opportunity to explain this issue. Accordingly, we restore this issue to the file of Assessing Officer on for examining it afresh.

7. The next issue relates to claim for setting off of brought forward losses. This issue also requires examination at the end of the Assessing Officer. Accordingly, we restore this issue to the file of the Assessing Officer for examining the claim of the assessee in accordance with law.

8. Needless to mention, the assessee should be provided with adequate opportunity of being heard.

9. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order has been pronounced in the Court on 10.8.2018.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 10/8/2018

Copy of the Order forwarded to :

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

6. Guard File.

//True Copy//

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BY ORDER,

(Senior Private Secretary)
ITAT, Mumbai