

आयकर अपीलिय अधिकरण पुणे न्यायपीठ "बी" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं, श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.1455/PUN/2015

निर्धारण वर्ष / Assessment Year : 2007-08

Amdocs Development Centre India LLP,
(Formerly known as Amdocs Development Centre
India Private Limited which was the legal
successor to Amdocs Business Services Private Limited),
Cyber City – 2, 6th Floor, Magarpatta City, Hadapsar,
Pune-411028

PAN : ABHFA6017F

.... अपीलार्थी/Appellant

Vs.

The Deputy Commissioner of Income Tax,
Circle – 1(1), Pune

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1486/PUN/2015

निर्धारण वर्ष / Assessment Year : 2007-08

The Deputy Commissioner of Income Tax,
Circle – 1(1), Pune

.... अपीलार्थी/Appellant

Vs.

Amdocs Development Centre India Pvt. Ltd.,
(Legal successor to Amdocs Business Services Pvt. Ltd.),
6th Floor, Tower 2, Cyber City, Magarpatta, Hadapsar,
Pune-411013

PAN : AAECA5803G

.... प्रत्यर्थी / Respondent

Assessee by : Shri Danesh Bafna

Revenue by : Shri Gaurav Batham

सुनवाई की तारीख / Date of Hearing : 27.08.2018	घोषणा की तारीख / Date of Pronouncement: 31.08.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The cross appeals filed by the assessee and the Revenue are against the order of Commissioner of Income Tax (Appeals)-13, Pune, dated 31.08.2015 relating to assessment year 2007-08 against order passed under section 143(3) r.w.s. 254 of the Income-tax Act, 1961 (in short 'the Act').

2. The cross appeals filed by the assessee and the Revenue were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The assessee has raised the following grounds of appeal:-

“Ground 1

On the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) ('Ld. CIT(A),) has erred in remanding the matter back to the Learned Assessing Officer ('Ld. AO') for computing the quantum of capacity utilisation adjustment.

Ground 2

On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in rejecting the methodology adopted by the Appellant for computing the quantum of capacity utilisation adjustment.

The above grounds are without prejudice to each other.

Your appellant craves leave to add, amend, alter, modify and/or substitute, and to withdraw the above grounds of appeal.”

4. The Revenue has raised the following grounds of appeal:-

“1. The order of the Ld. Commissioner of Income-tax (Appeals) is contrary to law and to the facts and circumstances of the case.

2. The Ld. CIT(A) has grossly erred in directing the AO to obtain the average space utilization per seat of the comparable companies and compare it with the average space utilization per seat of the Appellant Company although no such direction was given by Hon'ble ITAT.

3. *The Ld. CIT(A) has grossly erred in stating that AO may obtain average of the ratio of total salary registered by the comparable companies vis a vis the same ratio of the Appellant and grant the economic adjustment for both the differences and difference in excess fixed expenses such as electricity etc although no such direction was given by Hon'ble ITAT.*
4. *For these and such other grounds as may be urged at the time of hearing, the order of the Ld. Commissioner of Income-tax (Appeals) may be vacated and that of the assessing office be restored.*
5. *The appellant craves to add, amend, alter or delete any of the grounds of appeal during the course of appellate proceedings before the Hon'ble Tribunal."*

5. Briefly, in the facts of the case, the assessee was engaged in ITES services. The year under appeal i.e. assessment year 2007-08 was the first full year of operations of the assessee and hence it had asked for certain economic adjustments. The Tribunal in ITA No. 1412/PN/2011 vide its order dated 23.07.2012 had directed Assessing Officer to allow adjustment on account of under capacity utilization and remanded the issue back to the file of Assessing Officer for computing the adjustment. The Assessing Officer denied the said adjustment to the assessee.

6. The Commissioner of Income Tax (Appeals) after referring to the directions of the Tribunal under para noted that the Assessing Officer/TPO had denied adjustment on account of capacity utilization. After considering the submissions of the assessee accepted the arguments of the assessee that the Tribunal had remitted the issue for computing the working capital adjustment. Hence, the Assessing Officer had to comply with the same but in the absence of the data not being correctly furnished by the assessee before the TPO, he could not comply with the directions of the Tribunal. Then vide para 2.3.7 at page 13 the Commissioner of Income Tax (Appeals) noted that the computation

was filed by the assessee, according to which it had paid excess rent and salary, which did not commensurate with sales. He further observed as under :

“2.3.7The justification of excess rent is that the space was hired in excess considering the possibility of future expansion. Similarly, Certain excess fixed costs were incurred for the higher space etc. Conceptually, I am with the Appellant as the Appellant need to granted certain economic adjustment for incurring unproductive expenses during its start-up phase. However, the Appellant has again proposed the adjustment disregarding the comparable companies' situation on the same parameters. As stated, the Appellant's approach is against the provisions of Rule 108(3) and Rule 108(1)(e)(iii), which mandates ascertaining and quantifying the difference between the tested party and comparable companies on a given parameter and then make the adjustment for such difference. I find that the Appellant has not considered comparable companies at all in its alternative computation. Therefore, I do not accept the revised computation furnished by the Appellant.”

7. The Commissioner of Income Tax (Appeals) then directed the Assessing Officer to obtain average of the ratio of total salary to total sales registered by the comparable companies vis-à-vis the same ratio of the assessee and grant the economic adjustment for both the differences as directed by the Hon'ble Tribunal.

8. Both the assessee and the Revenue are in appeal against the directions of the Commissioner of Income Tax (Appeals). The assessee is aggrieved by the order of Commissioner of Income Tax (Appeals) in remitting the matter back to the file of Assessing Officer for computing the quantum of capacity utilization adjustments. The assessee also aggrieved by the order of Commissioner of Income Tax (Appeals) in rejecting methodology adopted by the assessee for computing the quantum of capacity utilization adjustment.

9. The Revenue is in appeal against the order of Commissioner of Income Tax (Appeals) in directing the Assessing Officer to obtain the average space utilization per seat of the comparable companies and compare it with the

average space utilization per seat of the assessee company. The Revenue is also aggrieved by the order of Commissioner of Income Tax in stating that Assessing Officer may obtain average of the ratio of total salary registered by the comparable companies vis-à-vis the same ratio of the assessee and grant the economic adjustment for both the differences and difference in excess fixed expenses such as electricity etc.

10. The Id. AR for the assessee pointed out that while computing the economic adjustments in the hands of the assessee there is no dispute with regard to the depreciation adjustment. There is dispute only with reference to personnel cost adjustment. He further pointed out that the total revenue earned by the assessee during the year was Rs.13.90 crores on which personnel cost was Rs.9.47 crores. In case personnel cost to sales ratio is worked out then the same works to 68.14% which was much higher than the personnel cost/sales ratio of comparables finally selected, which works out to 36.72%. The Id. AR for the assessee pointed out that salary to be charged as per percentage of comparables would be Rs.5.10 crores as against the cost incurred of Rs.9.47 crores. He thus, stated that in case the adjustment is made of excess cost borne by the assessee at Rs.4.36 crores than the adjusted OP/TC would work out to 13.57%. The mean margins of the comparable companies is 15.57% and hence the international transactions undertaken by the assessee would be within +/- 5% range as provided u/s.92C(2) of the Act and no adjustment is warranted post the economic adjustment.

11. The learned Departmental Representative for the Revenue on the other hand placed reliance on the order of the authorities below.

12. The Id. AR for the assessee in rejoinder pointed out that the assessee's appeal is filed against the directions of Commissioner of Income Tax (Appeals) in remitting the issue back to the Assessing Officer.

13. We have heard the rival contentions and perused the records. The limited issue which arises in the present appeal is consequent to the directions of Tribunal in assessee's own case vide order dated 23.07.2012. The Tribunal had remitted the matter back to the file of Assessing Officer for computing the adjustments on account of under capacity utilization. The Assessing Officer/TPO denied the same as complete data was not furnished. However, the Commissioner of Income Tax (Appeals) directed the Assessing Officer to compute the adjustment by taking into account the difference in salary cost to sales ratio of the assessee vis-à-vis comparable companies. The assessee before us has filed the computation of amount of adjustment to be made on account of salary cost. After taking the percentage of personnel cost to sale ratio of comparables the working is as under :

Particulars	Reference	Data Flag	Amount (in Rs.)
Total invoicing/Sales	Pg.178 of paper book	[a]	139,031,479
Personal costs of ABSL	Working Note 1 below	[b]	94,740,602
Personal costs/sales of ABSL	NA	[c=b/a]	68.14%
Personal costs/sales ratio of comparables	Pg. 168 of paper book	[d]	36.72%
Salary to be charged as per % of comparables	NA	[e=a*d]	51,054,688
Adjustment	NA	[f=b-e]	43,685,914

14. The break up of personnel cost deducted by the assessee is as under :

Particulars	Reference	Amount (in Rs.)
Personal cost	Pg. 183 of paper book	86,042,213
Training costs		2,103,173
Recruitment cost		6,595,216
Total		94,740,602

15. The assessee has also furnished the details of personnel cost/sales ratio of comparables and the average works out to 36.72%. In case the personnel cost adjustment is allowed to the assessee the adjusted operating profit would work out as under:

Particulars	Paper book Pg. Ref.	Reference	Amount (in Rs.)
Operating Revenue	178	[a]	13,90,31,479
Total costs	178		20,23,72,661
Less: non-operating expenses and economic adjustment			
Financial Expenses	178		-2,236,395
Personal costs adjustment	167	Annexure 1	-43,685,914
Depreciation adjustment on account of excess depreciation charged vis-a -vis the rates prescribed under the Companies Act. (as allowed by the Hon'ble Tribunal and verified and allowed by the Assessing Officer as well)	163		-34,033,190
Adjusted Operating Costs ("TC")		[b]	12,24,17,162
Adjusted Operating Profit ('OP')		[c=a-b]	1,66,14,318
Adjusted OP/TC		[d=c/b]	13.57%

16. After allowing the personnel cost adjustment, depreciation adjustment and the non-operating expenses i.e. financial expenses as deduction out of operating revenue, the adjusted operating profit works out to Rs.1.66 crores. The adjusted OP/TC of the assessee thus works to 13.57% as against the mean margins of the comparables, which has been taken by the Assessing Officer/TPO at 15.57%. Since, the adjusted operating margins of the assessee on account of transfer pricing provision are within the range of +/- 5% no adjustment is warranted in the hands of the assessee. Accordingly, the

Assessing Officer is directed to delete the addition made on account of TP adjustments. Thus, the grounds of appeal raised by the assessee are dismissed and the grounds of appeal raised by the Revenue are partly allowed.

17. In the result, the appeal of the assessee is dismissed and the appeal of the Revenue is partly allowed.

Order pronounced on this 31st day of August, 2018.

Sd/-
(D.KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 31st August, 2018.
RK/GCVSR

आदेश की प्रतिलिपि अग्रहित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The Commissioner of Income Tax (Appeals)-13, Pune;
4. The Pr. C.I.T. – 1, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune