

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: '1-2', NEW DELHI**

**BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.152/Del/2015
Assessment Year: 2008-09

BSI Group India Pvt. Ltd., (Earlier Known as BSI Management Systems India Pvt. Ltd.), A-2, The MIRA Corporate Suites, Plot No. 1 & 2, Ishwar Nagar, Mathura	Vs.	Income Tax Officer, Ward-3(1), New Delhi
PAN :AACB3790L		
(Appellant)		(Respondent)

And

ITA No.108/Del/2015
Assessment Year: 2008-09

DCIT, Circle-5(1), New Delhi	Vs.	BSI Management Systems India Pvt. Ltd., A-2, The MIRA Corporate Suites, Plot No. 1 & 2, Ishwar Nagar Mathura Road, New Delhi
PAN :AACB3790L		
(Appellant)		(Respondent)

Assessee by	Shri Maneesh Bawa, Adv. & Shri Ashish Garg, Adv.
Department by	Shri B.P. Singh, Sr.DR

Date of hearing	13.08.2018
Date of pronouncement	20.08.2018

ORDER**PER BENCH:**

These cross appeals by the assessee and the Revenue respectively are directed against order dated 31/10/2014 passed by Ld. Commissioner of Income-tax (Appeals)-XX, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2008-09.

2. The grounds of appeal raised by the assessee in ITA No. 152/Del/2015 are reproduced as under:

"The addition amounting to INR 6,771,462 in connection to Management/ Business Support Services confirmed by the Hon'ble Commissioner of Income-tax (Appeals) - XX, New Delhi [the Ld. CIT(A)] vide order dated October 31, 2014 (served on the Appellant on November 13, 2014) passed under section 250 of the Act is not in accordance with the law and therefore not sustainable. In this regard, the Learned CIT(A) erred by:

1.1 Failing to discharge statutory obligation of providing reasons/ supporting evidence/ data/ information to justify the conclusion that 30 percent of the Management/ Business Support Services were duplicative/ incidental or shareholder in nature which is in violation to Section 250(6) of the Act.

1.2 Misconstruing the Appellant's business model and by continually overlooking the supporting evidence that the Appellant filed /adduced during the course of the proceedings to support the 'real benefits' it received in return for the Management/ Business Support Services Payment, and consequently arriving at a conclusion which is divorced from the underlying facts and is based purely on his own conjectures and surmises.

In this regard, the observations made by the Ld. CIT(A) (in para 3.7 of the CIT(A) Order) are perverse on facts and based on misplaced notions owing to, but not limited to, the following:

- a. *The CIT(A) failed to appreciate the certificates issued by Independent Chartered Accountant on methodology followed (including details on exclusion of UK specific costs) to appropriately allocate total cost pool to the Appellant and other BSI Group entities, observation made with respect to SAP, Cognos, etc. based on which it was concluded that the cost allocation methodology followed by BSI Group is consistent with the OECD TP Guidelines, etc.;*
 - b. *By misconstruing management systems division support as shareholder activity (stewardship expenses) without appreciating the underlying nature of services and tangible operating benefits derived by the Appellant therefrom;*
 - c. *By conveniently overlooking relevant evidence produced by the Appellant during the course of proceedings, including the fact that the Appellant has minimal staff in the Management/ Business Support area in which it availed assistance from the associated enterprise ("AE");*
 - d. *By reaching an erroneous conclusion that only allocation of actual cost qualified the arm's length test. While taking the disputed position, the Ld. CIT(A) also overlooked the well established market practice wherein third party service providers enter into arrangements based on budgeted estimates also;*
 - e. *Notwithstanding and without prejudice to point #d, the Ld. CIT(A) erred by not reckoning the disallowance made, while computing the value of 'ad-hoc' 30 percent of Management/ Business Support Service Charges that are alleged to be duplicative or shareholder (stewardship) in nature. Thus, leading to double disallowance.*
- 1.3 *Not providing the Appellant a reasonable opportunity of being heard or to place corroborative/ additional evidence on record to challenge the 'ad hoc' basis adopted to confirm the transfer pricing adjustment, which is against the 'principle of natural justice'.*
 - 1.4 *Not adjudicating the ground on interest under section 244A and 234D of the Act.*

1.5 Not adjudicating the ground on initiating penalty proceedings under section 271(1)(c) of the Act.”

2.1 The grounds of appeal raised by the Revenue in ITA No. 108/Del/2015 are reproduced as under:

“The Assessing Officer, Deputy Commissioner of Income Tax Circle 5(1), New Delhi is hereby directed to file an appeal in the above mentioned case before the ITAT, New Delhi on the following grounds of appeal:

- i) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition/disallowance made by the AO to Rs.67,71,462 instead of Rs.225,71,539 as recommended by the TPO and taking the cost allocation on prorata basis, which is only on estimate basis, since no independent party would make payment on estimated basis to a third party.*
- ii) The Ld. CIT(A) has erred in not considering the fact that the documents submitted by the assessee before him revealed that they pertain to monthly management report, and do not bestow BSI India with any added advantage in managing its own affairs, as these documents failed to establish that these procedures have been executed for the benefit of the assessee.*
- iii) The Ld. CIT(A) has erred in not considering the fact the assessee has claimed that the training cost was paid to obtain specialized training services, whereas the assessee has a pool of talented workforce comprising HR Manager to whom it is paying salary, which prima facie shows that there is duplication of services.*
- iv) The Id. CIT(A) has also erred in ignoring the fact that sharing of global practices by the AE with the Indian Company serves the interest of the AE by way of maintaining uniformity and standardized practices amongst its subsidiaries across the globe and at the best they may be*

regarded as shareholder activity and does not call for any compensation by the Indian Company.

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

3. The briefly stated facts of the case are that the assessee company was engaged in the business of ISO certification and training. For the year under consideration, the assessee filed return of income declaring loss of Rs.1,19,85,390/- on 28/09/2008. The case was selected for scrutiny and notice under section 143(2) of the Income-tax Act, 1961 (in short ‘the Act’) was issued and served. The Assessing Officer observed international transactions carried out by the assessee with its Associated Enterprises (AEs) and accordingly referred the matter to the Transfer Pricing Officer (TPO) for determination of the Arm’s Length Price (ALP) of the international transactions. The Ld. TPO in his order dated 28/10/2011 accepted the value of all international transactions except the value of international transactions relating to receipt of management services amounting to Rs.22,571,539/-. The management services included Marketing Services, IT Services, HR Services and Corporate Services. Regarding receipt of management services, the assessee submitted an agreement executed on 19/01/2006 between the British Standard Institution (BSI) and BSI India Private Limited, wherein markup @ 5% of cost had been agreed . The assessee took the AE as tested party and applied cost-plus method for determination of arm’s length price and claimed that cost plus markup @5% charged by the associated enterprise was appropriate and at arm’s length. However, according to the

learned TPO, the assessee failed to demonstrate that those services were specifically requisitioned by the assessee on any occasion and their corresponding benefit to the assessee. In view of the learned TPO, no uncontrolled enterprise would have paid any amount for such services. The Ld. TPO took the assessee as tested party and by applying CUP method, determined the value of the receipt of management services at NIL. The learned TPO observed that these services did not result into any benefit to the assessee and there was no evidence of receipt of the services. The learned TPO also referred to the definition of shareholder services. The learned TPO noted several defects in the benchmarking of the transaction made by the assessee and accordingly rejected it. The learned Transfer Pricing Officer proposed an addition of Rs.2,25,71,539/-. The Assessing Officer after taking into account proposed TP adjustment, passed assessment order under section 143(3) read with section 144C of the Act on 09/02/2012 determining total income at Rs.1,11,92,720/-. Aggrieved, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) following his finding in assessment year 2007-08, partly allowed the appeal of the assessee observing as under:

“3.7.4 I have considered the observation of the TPO in the remand report, the reply of the appellant to the remand report and also the report of PWC. I have also gone through the paper book submitted by the appellant during the course of the appellate proceedings. On perusal of the details of the Management Systems Divisional Support costs, I find that some of the expenses allocated under this head include the elements of share-holder services. Cognos Software is used for global finance reporting system. One of the major application of SAP is for global finance reporting system. Moreover, the central administration cost has also the element of share-holder

services. In AY 2007-08, I have held that 20% of Management Services is in the nature of share-holder services and 10% of it is in the nature of duplication of services/ incidental services. The facts of the present case are similar to the facts as in AY 2007-08. Considering the report of PWC, the observation of the TPO in the remand report and other details, I am of the view that 20% of Management Services is in the nature of share-holder services and 10% of it is in the nature of duplication of services/ incidental services. Thus, the amount of Rs.67,71,462/- being 30% of Management Services should not be allocated by BSI UK to BSI India. Accordingly, the AO/TPO is directed to restrict the disallowance on account of Management Services to Rs 67,71,462/-. Thus the appellant gets a relief of Rs.1,58,00,077/-. These grounds of appeal are partly allowed.”

- 4.** Aggrieved, with the finding of the Ld. CIT(A) both the assessee and the Revenue are in appeal before the Tribunal raising the respective grounds.
- 5.** Before us, the Ld. counsel of the assessee submitted that the Tribunal in the case of the assessee for assessment year 2007-08 in ITA No. 104 & 80/Del/2014 has restored the issue of adjustment to value of management services to the file of the Ld. Commissioner of Income-tax (Appeals) for re-adjudication. Accordingly, he submitted that issue involved in present appeals of the assessee and the Revenue being identical to the issue involved in assessment year 2007-08, it may be restored to the file of the Ld. CIT(A).
- 6.** The Ld. DR also could not controvert the fact that identical issue has been restored to the file of the Ld. CIT(A) in assessment year 2007-08.
- 7.** We have heard the rival submission and perused the relevant material on record. The Tribunal in ITA

Nos.104/Del/2014 & 80/Del/2014 for assessment year 2007-08 has restored the issue of determining arms length price of management services availed by the assessee to the file of the Ld. CIT(A) observing as under:

“5. We have heard the rival submissions and perused the material available on record. As far as the assessee’s appeal is concerned, it is seen that the Ld. Commissioner of Income Tax (A) has noted in Para 3.9 of the impugned order that under Management Systems Divisional Support costs, some of the expenses allocated include elements of shareholder services. Thereafter, the Ld. Commissioner of Income Tax (A) has observed that the central administrative costs also have element of shareholder services and, thereafter, the Ld. Commissioner of Income Tax (A) has made the estimation that 20% of management services is in the nature of shareholder services and 10% of the same is in the nature of duplication of services/incidental services. Thus, it is seen that the Ld. Commissioner of Income Tax (A) has sustained the adjustment of Rs. 36,13,723/- on an estimate basis without considering the Cost Allocation Methodology Report which was very much before him. The Ld. Commissioner of Income Tax (A) has not given any basis for arriving at the figure of 20% adjustment required to be made towards shareholder costs and 10% towards duplication of services/incidental services. In such a situation, we are unable to concur with the findings of the Ld. Commissioner of Income Tax (A) in this regard and we are of the considered opinion that in the interest of justice, the issue should be re-examined by the Ld. Commissioner of Income Tax (A) so as to reach a conclusion after duly considering the explanation of the assessee along with the Cost Allocation Methodology Report and the evidences filed by the assessee in this regard. Accordingly, we restore the grounds raised by the assessee to the file of the Ld. Commissioner of Income Tax (A) with the direction to adjudicate the issue on merits and quantify the adjustment, if any, after considering the various evidences

furnished by the assessee in this regard and after giving a proper opportunity to the assessee to present its case.

5. Accordingly, the assessee's appeal stands allowed for statistical purposes.

6. Coming to the appeal preferred by the department, the department is challenging the relief of Rs. 61,51,731/- granted to the assessee with respect to the transfer pricing adjustment and the ground are related to the grounds in assessee's appeal. It is seen that the Ld. Commissioner of Income Tax (A) has admitted additional evidences in terms of Rule 46A of the Income Tax Rules, 1962 after obtaining comments of the Assessing Officer/TPO. Thereafter, the Ld. Commissioner of Income Tax (A) has proceeded to delete the transfer pricing adjustment of Rs. 61,51,731/- after reaching a conclusion that 30% of the transaction value should be sustained on account of shareholder services and duplication of services/incidental services. However, a perusal of the order of the Ld. Commissioner of Income Tax (A) shows that the basis for deleting the ALP adjustment of Rs. 61,51,731/- is not spelt out in the impugned order in clear terms. The Ld. Commissioner of Income Tax (A) has not discussed the reasons for reaching the conclusion that except for 30% of the expenses, why the remaining 70% of the ALP adjustment needed to be deleted. Thus, it is our considered opinion that the Ld. Commissioner of Income Tax (A) has not specified in clear terms the reasons for his allowing the impugned relief to the assessee. We have already restored the assessee's appeal challenging the sustenance of 30% of the ALP adjustment to the file of the Ld. Commissioner of Income Tax (A) for re-adjudication and it will be in the fitness of things if the grounds raised in the department's appeal are also restored to the file of the Ld. Commissioner of Income Tax (A) for re-adjudication after providing an adequate opportunity to the assessee. Accordingly, we restore the grounds raised by the revenue to the file of the Ld. Commissioner of Income Tax (A) with the direction to re-adjudicate the issue on merits by passing a speaking order and after duly giving the reasons behind a particular adjudication. Needless to say, the assessee will be provided adequate opportunity to present its case.

7. Accordingly, the appeal of the department stands allowed for statistical purposes.”

8. We have noticed that the Ld. CIT(A) in the year into consideration has followed his finding in assessment year 2007-08. Since the facts and circumstances qua the issue in dispute involved in both the present appeals in the year under consideration are identical to assessment year 2007-08, respectfully, following the direction of the Tribunal (supra), we restore grounds raised in the appeal of the assessee as well as Revenue to the file of the Ld. CIT(A) for deciding afresh keeping in view the direction of the Tribunal (supra). Needless to say, both the assessee and the Revenue shall be afforded adequate opportunity of being heard.

9. In the result, both the appeal, of the assessee and Revenue are allowed for statistical purposes.

The decision is pronounced in the open court on 20th August, 2018.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 20th August, 2018.

RK/-(D.T.D.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR