

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

**Before Sh. N. K. Saini, Hon'ble Vice President  
and**

**Smt. Beena A. Pillai, Judicial Member**

**SA No. 684/Del/2018 : Asstt. Year : 2014-15**

**&**

**ITA No. 6133/Del/2018 : Asstt. Year : 2014-15**

Mavenir India Pvt. Ltd. (earlier known as Comverse Network Systems India Pvt. Ltd.), 14 <sup>th</sup> Floor, Tower-B, Building No. 5, DLF Epitome, DLF Cyber City, Gurgaon-122002	Vs	Deputy Commissioner of Income Tax, Circle-2(1), Gurgaon
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AABCC3425B</b>		

**Assessee by : Sh. Salil Kapoor, Adv. &**

**Ms. Ananya Kapoor, Adv.**

**Revenue by : Sh. Sandeep Kr. Mishra, Sr. DR**

<b>Date of Hearing : 19.12.2018</b>
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<b>Date of Pronouncement : 31.12.2018</b>
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**ORDER**

**Per N. K. Saini, Vide President:**

The appeal has been filed by the assessee against the order dated 24.08.2018 passed by the AO u/s 143(3)/144C of the Income Tax Act, 1961 (hereinafter referred to as the Act) and the Stay Application filed by the assessee is arising out of the assessee's appeal in ITA No. 6133/Del/2018.

2. Following grounds have been raised in this appeal by the assessee:

*“1. The learned TPO / AO / DRP have erred in making an addition of INR 69,864,774 to the total income of the Appellant in respect of international transaction pertaining to availing support and management services by the Appellant from its Associated Enterprise (“AE”).*

*2. That, in respect of international transaction pertaining to availing support and management services by the Appellant from its AE, the learned TPO / AO / DRP have, on facts and circumstances of the case and in law erred in:*

- a. Placing reliance on the tangible benefit test and questioning the commercial rationale of the said transactions for determination of ALP, when the same is irrelevant for computation of ALP;*
- b. Assuming on the basis of conjectures and surmises that ‘no benefit’ has been conferred on the Appellant by availing such services from its AEs and disregarding the elaborate submissions and documents presented by the Appellant during the course of assessment and DRP proceedings;*
- c. In routinely following DRP order for AY 2012-13 and AY 2013-14 ignoring the submissions and evidence furnished by Appellant for availing management and support services by the Appellant from its AE; and*
- d. Undertaking the determination of ALP of the said transactions using Comparable Uncontrolled Price (“CUP”) method as NIL on an arbitrary basis without following the methodology of applying CUP method as prescribed under Section 92C(1) of the Act read with Rule 10B(1)(a) of the Rules i.e. identifying any transaction(s) as prescribed in Section 92F(ii) of the Act;*

***Other grounds***

*3. The learned AO has erred in not granting full credit of*

*Withholding tax credit as claimed by the Appellant in its return of income.*

*4. The learned AO has grossly erred in initiating penalty proceedings under section 271(1)(c) of the Act.*

*5. The learned AO has erred in charging consequential interest under section 234B and 234C of the Act.*

*The Appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.*

*The Appellant prays for appropriate relief based on the said grounds of appeal and the facts circumstances of the case.”*

3. During the course of hearing, the ld. Counsel for the assessee at the very outset stated that in this case, the ld. DRP issued the directions to the TPO/AO on the basis of the directions given in earlier years i.e. assessment years 2012-13 and 2013-14. A reference was made to page no. 14 of the order dated 17.07.2018 passed by the ld. DRP. It was further stated that the appeals for the assessment years 2012-13 and 2013-14 in ITA No. 408/Del/2017 and 7328/Del/2017 respectively were filed by the assessee in the ITAT wherein the matter was remanded back to the TPO. Therefore, for the year under consideration i.e. assessment year 2014-15, the same course to be adopted as the facts involved are identical.

4. In his rival submissions, the ld. Sr. DR supported the orders of the authorities below but could not controverted the aforesaid contention of the ld. Counsel for the assessee.

5. We have considered the submissions of both the parties and perused the material available on the record. It is noticed that a similar issue having

identical facts was a subject matter of the assessee's appeals for the preceding assessment years 2012-13 and 2013-14 in ITA Nos. 408 & 7328/Del/2017 respectively wherein the matter has been restored to the file of the TPO. The relevant findings have been given in paras 14 to 22 of the order dated 31.07.2018 which read as under:

*"14. Before us, the Id. AR vehemently stated that the TPO did not give any justification in rejecting the comparables of the assessee. It is the say of the Id. AR that in the cases of comparables, Nu Tek India Limited and Teracom Limited, the TPO has simply mentioned that these are functionally different. The Id. AR continued by stating that in the cases of Himachal Futuristic Communications Ltd and Tele-communications Consultants India Limited, the TPO has contradicted himself in as much as he rejected these comparables by taking filters which he himself has considered for selection of comparables.*

*15. In its rebuttal, the Id. DR pointed out that there is nothing wrong in rejecting these comparables as the assessee does not have any turn key project as was in the case of Himachal Futuristic Communications Ltd.*

*16. In so far as comparables used by the TPO, the Id. AR pointed out that each comparable is functionally different to which the Id. DR pointed out that if the application of TNMM is expanded, then the comparables used by the TPO also deserve to be included if the comparables used by the assessee have to be considered. It is the say of the Id. DR that if the TNMM is used at entity basis, then all the services qualify as comparable. At this stage, the Id. Counsel drew out attention to the decision of the coordinate bench in assessee's own case in A.Y 2008-09 in ITA No. 6334/DEL/2012 wherein the findings read as under:*

*"6. We find that in view of our direction to exclude the comparables chosen the TPO and one comparable chosen by the assessee as well as exclusion of the remaining two comparables by the TPO not challenged by the assessee before us, has left with no comparable in the sales and post sale support segment for determination of arm's length price. In view of the above*

*facts and circumstances, we restore the matter to the TPO for carrying out a fresh search and selection of comparables having functions similarity to the segment of sales and post sales support and compute the adjustment accordingly as per law. Needless to mention that the assessee shall be provided sufficient opportunity of hearing."*

*17. We find that the facts of the year under consideration appear to be similar to the facts of A.Y 2008-09. In our considered opinion, the comparables selected by the assessee and also by the TPO are functionally different from the functions of the assessee. In the light of findings given in A.Y 2008-09, we are of the view that both the assessee and TPO must carry out fresh search for selection of comparables having functions, similarity in the segment sales and post sales support. We, accordingly, restore this issue to the file of the TPO with the above directions. The TPO is directed to decide the issue afresh after giving reasonable opportunity of being heard to the assessee.*

*18. In so far as provision of management and support services are concerned, we find that the assessee has given complete details of the technical services utilised by it from its AE and the same are exhibited at pages 704 to 708 of the paper book. Details of management services have also been given by the assessee. We find that the TPO/DRP has nowhere considered the details submitted by the assessee.*

*19. Before us, the Id. DR pointed out that in so far as management services are concerned, the assessee has not brought anything on record to suggest what type of services were given by the AEs for which the assessee had made the payments.*

*20. In so far as technical services are concerned, the Id. DR fairly conceded that the details were furnished but not properly appreciated by the TPO.*

*21. Considering the facts in totality, we are of the considered view that this issue also needs fresh adjudication. We, accordingly, restore this issue to the file of the TPO. The TPO is directed to decide the issue afresh after considering the detailed submissions/documentary evidences furnished by the assessee. The assessee is directed to furnish the details of services utilised by it*

*for which it has made the payments to its AEs. The assessee is further directed to demonstrate what benefits it has received from its AEs. The TPO is directed to consider the same and decide the issue afresh after giving reasonable opportunity of being heard to the assessee.*

*22. As mentioned elsewhere, the issue relating to provisions of management and support services is common in ITA Nos. 7328 & 408/DEL/2017. Both these appeals are disposed of accordingly.”*

6. So, respectfully following the aforesaid referred to order dated 31.07.2018 in ITA Nos. 408 & 7328/Del/2017 for the assessment years 2012-13 & 2013-14 respectively, the issues raised in the present appeal are remanded back to the file of the TPO to be decided as has been directed in the said order.

7. Since, we have disposed off the appeal of the assessee, the Stay Application now become infructuous. Accordingly, the same is dismissed.

8. In the result, the appeal of the assessee is allowed for statistical purposes and Stay Application is dismissed as infructuous.

(Order Pronounced in the Open Court on 31/12/2018)

Sd/-  
**(Beena A. Pillai)**  
**JUDICIAL MEMBER**

Sd/-  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 31/12/2018**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**