

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

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 369/DEL/2016 (A.Y 2011-12)

ACIT Circle-27(2), Room No. 408, 4 th Floor, D-Block, Civic Centre Delhi (APPELLANT)	Vs	Wolters Kluwer (India) Pvt. Ltd. 1221, Devika Tower-6 Nehru Place New Delhi AAACW6190J (RESPONDENT)
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I.T.A. No. 396/DEL/2016 (A.Y 2011-12)

Wolters Kluwer (India) Pvt. Ltd. 1221, Devika Tower-6 Nehru Place New Delhi AAACW6190J (APPELLANT)	Vs	DCIT Circle-27(2) C.R. Building New Delhi. (RESPONDENT)
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Appellant by	Sh. Mukesh Butani, Sh. Shreyash Shah, Sh. H. K. Choudhary, CIT DRS
Respondent by	Mrs. Namita Pandey, Sr. DR

Date of Hearing	12.12.2018
Date of Pronouncement	15.02.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee as well as by the Revenue against the Assessment Order dated 27/11/2015 passed u/s 143(3)/144C/92CA (4) of the Income Tax Act, for Assessment Year 2011-12.

2. The grounds of appeal are as under:-

I.T.A. No. 369/DEL/2016 (Revenue's appeal)

1. *“On the facts and in the circumstances of the case, the DRP-2 erred in directing AO to complete the assessment as per observations made by DRP in the order which resulting in reducing the addition to Rs.26,07,240/- in place of original recommended ALP of Rs.54,82,095/- for the International transactions undertaken the assessee company with its associate/parent enterprise.*
2. *“On the facts and in the circumstances of the case, the DRP-II erred in directing TPO to exclude below mentioned companies from the final set of comparables :-*
 - (viii) Aptico Ltd.*
 - (ix) CDSL Ventures Ltd.*
 - (x) TSR Darashaw Ltd.*
 - (xi) Killick Agencies & Marketing*
3. *“On the facts and in the circumstances of the case, the DRP-2 erred in deleting addition of Rs.1,63,796/- made by AO on treating the expenditure of legal and professional fees as capital in nature by a non-speaking order.”*
4. *“On the facts and in the circumstances of the case, the DRP-2 erred in deleting addition of Rs.5,22,922/- made by AO on treating the expenditure of website designing charges as capital in nature by a non-speaking order.”*
5. *The appellant craves, leave or 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.”*

I.T.A. No. 396/DEL/2016 (Assessee's appeal)

“Appeal under section 253(1) of the Income Tax Act, 1961 (“Act”) against the order dated November 27, 2015 (received on December 02, 2015) passed under section 143(3) r.w.s. 144C(4) of the Act, passed by the Deputy Commissioner of Income - Tax, Circle -27 (2), C R Building, New Delhi (“AO”) for the aforesaid assessment year (“AY”).

GROUNDS OF APPEAL

1. *That on the facts and circumstances of the case and in law, the AO has erred in assessing the total income of the Appellant for the relevant AY at INR 31,272,280 as against the returned income of INR 28,665,037.*
2. *That on the facts and circumstances of the case and in law, the Hon'ble Dispute Resolution Panel ("DRP") / AO / Transfer Pricing Officer ("TPO") erred in providing a partial relief of INR 2,874,855 against the transfer pricing adjustment of INR 5,482,095 proposed by the TPO in respect of the international transaction relating to business support services*
3. *That on the facts and circumstances of the facts and in law, the DRP / AO / TPO while re-determining arm's length price with respect to the international transaction relating to business support services have erred in (a) not fully appreciating the business model, functional, asset and risk analysis, (b) not accepting the economic analysis done in accordance with the provisions of the Act read with the Rules and (c) making several observations / findings based on incorrect interpretation of law and contrary to facts of the case.*
4. *That on the facts and circumstances of the case and in law, the DRP / AO / TPO have erred, in arbitrarily rejecting certain functionally comparable companies identified by the Appellant on a subjective / arbitrary basis, inter alia, using unreasonable comparability criterion.*
5. *That on the facts and circumstances of the case and in law, the DRP / AO / TPO have erred in arbitrarily selecting certain comparable companies based on incorrect appreciation of functional, asset and risk profile.*
6. *That on the facts and circumstances of the case and in law, the DRP Assessing Officer / TPO erred in law and on facts in incorrectly computing the operating margins of the proposed comparable companies.*
7. *That on the facts and circumstances of the case and in law, the DRP / AO /*

TPO erred in rejecting/ modifying the search process and filters adopted by the Appellant for the purpose of benchmarking its international transaction of rendering business support services in an arbitrary manner.

8. *That on the facts and circumstances of the case and in law, the DRP / AO / TPO erred in not providing appropriate economic adjustments, as required under Rule 10B(1)(e)(iii) of the Rules, on account of differences in risk profile between the Appellant and the comparable companies.*

9. *That on the facts and circumstances of the case and in law, the DRP / AO / TPO have erred by ignoring the provisions of Rule 10B(4) of the Rules and judicial pronouncements, which permit the usage of multiple year data of comparable companies for the purpose of determination of the arm's length price as defined under section 92F of the Act.*

10. *That on the facts and circumstances of the case and in law, the DRP / AO / TPO erred in not providing the Appellant the benefit of (+/-) 5% range as provided by the proviso to section 92C(2) of the Act.*

11. *That on the facts and circumstances of the case and in law, the A.O has erred in charging interest u/s 234A, 234B, 234C and 234D of the Act.*

Each of the above grounds are independent and without prejudice to the other grounds of appeal preferred by the appellant.”

3. During the year, the assessee company was engaged in the Business of Acquiring Rights and to Print/Reprint, through third party Printers, Books, Periodicals and Journals for distribution in India and Export thereof, Import of Books, Periodicals and Journals and Distributing the same in India and Rendering Marketing and other related Services to Group Company. The return of income was filed on 29.11.2011 declaring income of Rs. 2,86,65,037/-. During the course of assessment proceedings, the details of legal and professional charges of Rs. 1,80,09,606/- along with supporting evidences were called. A reference u/s 92CA of the Income Tax Act, 1961 was made to the

TPO. The TPO vide order dated 21.01.2015 proposed addition of Rs. 54,82,095 being shortfall adjustment u/s 92CA of the Act. A draft assessment order was passed on 17.03.2015. The assessee company filed objection before the DRP. The DRP vide order dated 23.10.2015, issued certain directions to the Assessing Officer/TPO. The assessee filed additional grounds of objection and the DRP vide direction dated 05.11.2015 directed the Assessing Officer to verify the submission of the assessee in respect of the nature of the expenses and in case the professional expenses referred to by the assessee are not covered under Section 35DD, then allow the charges paid for development of website and towards legal and professional fees as revenue expenditure. Accordingly, the Assessing Officer vide order dated 27.11.2015 sustained only addition of Rs. 26,07,240/- towards the transfer pricing adjustment on account of arm's length pricing of assessee's international transaction with its AEs.

4. Being aggrieved by the Assessment Order and the directions of the DRP, both the assessee as well as revenue filed present appeals before us.

5. The Ld. AR submitted that the issue contested in the assessee's appeal is already dealt by the Tribunal in assessee's own case for A.Y. 2010-11 being ITA No. 1700/Del/2015 order dated 06.07.2018. As regards revenue's appeal, the Ld. AR submitted the chart in respect of comparables which have to be excluded and which comparables have to be included and this issue is also covered by the decision of the Tribunal in assessee's own case. The Ld. AR submitted that the DRP rightly excluded comparables such as Apitco Limited, CDSL Ventures Limited, Killick Agencies & Marketing Limited and TSR Darashw Limited which are contested by the Revenue in its appeal, because these companies are functionally different. As regards to Ground Nos. 3 and 4 of the Revenue's appeal, the Ld. AR relied upon the directions of the DRP.

6. As regards, assessee's appeal is concerned relating to exclusion and inclusion of the comparables, the Ld. AR further made submission that Global

Procurement Consultants Limited also has to be excluded as this comparable company provides procurement related services. The company's consultancy services include preparing and reviewing technical specifications, estimation of costs, selection of vendors, Inspection and expediting, Quality control and time management and all contractual aspects involved in procurement. The Ld. AR submitted that as per audit report, the company has contracts with the World bank, wherein the company will conduct procurement post review of over 50 major World Bank funded projects in India. These services are completely different from the operational profile of the assessee in the market support segment. The Ld. AR relied upon the decision of the Tribunal in case of Adidas Technical Services (P.) Ltd. vs. DCIT (ITA No. 1233/Del/2015). The Ld. AR also submitted that BVG India Limited and Office Care Services Limited these two comparables have to be included as they both passes service income filter with threshold of 50% and in-fact, the TPO wrongly observed that these companies earns 60.31% and 99.97% of its income from services.

7. The Ld. DR relied upon the order of the TPO/AO. The Ld. DR further submitted that as regards assessee's appeal is concerned, the DRP has rightly excluded BVG India Ltd. and Office Care Services Ltd. as the company has failed the service income filter. As regards the exclusion of Global Procurement Consultants Ltd., the Ld. DR submitted that this comparable is functionally comparable as it provides a comprehensive range of procurement advisory services and allied activities.

8. We have heard both the parties and perused all the relevant material available on records. It is pertinent to note that as regards Revenue's appeal is concerned all the comparables contested by the revenue are already excluded in case of Adidas Technical services (P.) Ltd. vs. DCIT and the Tribunal in assessee's own case for A.Y. 2010-11 directed the TPO to decide the issue in controversy in the light of the decision of the coordinate Bench of the Tribunal in case of Adidas Technical services (P.) Ltd. and allowed the appeal of the

assessee for statistical purpose. The assessee company's profile in the present year also remains the same to that of earlier A.Y. 2010-11. The Ld. AR pointed out for each of the comparables and its functional profile along with FAR analysis from the records. After going through the records, it can be seen that the DRP has rightly excluded these comparables. Thus, there is no need to interfere with the directions of the DRP. Hence, Ground No. 2 of the Revenue's appeal is dismissed.

9. As regards to Ground Nos. 3 and 4, the DRP has rightly directed the Assessing Officer to verify the submission of the assessee in respect of the nature of the expenses and in case the professional expenses referred to by the assessee are not covered under Section 35DD, then allow the charges paid for development of website and towards legal and professional fees as revenue expenditure. There is no need to interfere with the said directions of the DRP. Thus, Ground Nos. 3 and 4 are dismissed. Therefore, appeal of the revenue is dismissed.

10. As regards to assessee's appeal, the issue of exclusion of Global Procurement Consultants Limited and the issue of inclusion of BVG India Limited and Office Care Services Limited, both these aspect has to be looked into by the TPO as the functional profile set out by the assessee before us, it will be appropriate to remand back this issue to the file of the TPO/AO to verify. Thus, matter is remanded back to the file of the TPO/AO. Needless to say, the assessee company be given opportunity of hearing by following principles of natural justice. In respect of the correct applicability of the filters, it is pertinent to note that the Tribunal in A.Y. 2010-11 held as under:

"11. Keeping in view the contentions raised by the ld. AR for the parties to the appeal, we are of the considered view that filter of rejecting companies whose manufacturing/trading income is greater than 50% are required to be rejected is in fact broader one leading to the broader set of potential comparables. Moreover, TPO in the subsequent year has accepted taxpayer's

filter of rejecting companies whose manufacturing/trading income is greater than 50% in the subsequent year for A.Y. 2012-13, particularly when the taxpayer has not undergone any change in its business model. So, in these circumstances, we are of the considered view that the matter is required to be set aside to the TPO to be decided afresh after providing an opportunity of being heard by applying the rule of consistency.”

Thus, the issue of applying correct filter in the present appeal filed by the assessee is also same. Therefore, we are also remanding this issue to the file of the TPO/AO and directing the TPO/AO to be decided afresh after providing an opportunity of hearing to the assessee by applying the rule of consistency.

11. In result, appeal being ITA No. 369/Del/2016 filed by the Revenue is dismissed and appeal being ITA No. 396/Del/2016 filed by the Assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court on 15th February, 2019.

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 15/02/2019
R. Naheed *

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	13 .12.2018
Date on which the typed draft is placed before the dictating Member	13 .12.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	15 .02.2019
Date on which the final order is uploaded on the website of ITAT	15 .02.2019
Date on which the file goes to the Bench Clerk	15 .02.2019
Date on which the file goes to the Head Clerk	