

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I-2", NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.1398/Del/2016
Assessment Year: 2004-05

M/s S-Net Freight (India) Pvt. Ltd., A-250, Lane No. 6, Mahipalpur Extension New Delhi-110037 PAN-AAFCS3703G (APPELLANT)	Vs	Income Tax Officer, Ward-22(1), New Delhi (RESPONDENT)
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Assessee by	Sh. Ashish Goel, CA
Department by	H.K. Choudhary, CIT DR
Date of hearing:	04/04/2019
Date of Pronouncement:	04/04/2019

ORDER

PER B. R. R KUMAR AM:

This appeal filed by the assessee is against the order passed by the ITO 22(1), New Delhi

Grounds of appeal taken by the assessee are as under:-

1. *On the facts and circumstances of the case, the order passed by the Ld. Assessing Officer (AO) is bad both in the eye of law and on facts.*
2. *On the facts and circumstances of the case, Ld. AO has erred both on facts and in law in passing the order without giving assessee a proper and adequate opportunity of being heard.*
3. *On the facts and circumstances of the case, Ld. AO has erred both on facts and in law in making the assessment at an income of Rs.47,98,780/-, as against income of Rs.27,76,765/- declared by the assessee.*
4. *On the facts and circumstances of the case, Ld. AO has erred both on facts and in law in making an addition of Rs.20,22,015/- on account of adjustment of difference in arm's length price.*
5. *On the facts and circumstances of the case, Ld. TPO has erred both on facts and*

in law in computing the adjustment on account of difference in Arm's Length Price not in consonance with the direction of the Hon'ble ITAT.

6. *On the facts and circumstances of the case, Ld. TPO has erred both on facts and in law in computing the Arm's Length Price on the basis of TNMM method, despite there being a clear direction of the Hon'ble ITAT for adopting PSM method.*

7. *On the facts and circumstances of the case, Ld. AO as well as Ld. TPO has erred both on facts and in law in computing the Arm's Length Price on the basis of TNMM method, despite the fact that the PSM method has been consistently followed by the assessee company and accepted by the Department in the subsequent years.*

8(i) *Without prejudice to the above, the Ld. TPO has erred in taking comparables without doing appropriate FAR analysis.*

(ii). *On the facts and circumstances of the case, Ld. TPO has erred both on facts and in law in taking those entities as comparables which are functionally dissimilar to that of the assessee, while computing the arm's length price.*

9 (i). *On the facts and circumstances of the case, Ld. TPO has erred both on facts and in law in wrongly computing the operating margins of the comparables.*

(ii). *On the facts and circumstances of the case, Ld. TPO has erred both on facts and in law in computing margins of the comparables by not including foreign exchange fluctuation as a part of operating revenue, while computing the margins.*

(iii) *On the facts and circumstances of the case, the Ld. TPO has erred on both facts and in law, in not allowing the assessee with the benefit of arm's length range of +/- 5%, to be given in view of the proviso to Section 92C(2) of the Act.*

10. *On the facts and circumstances of the case, Ld. AO has erred both on facts and in law in charging interest under Section 234A, Section 234B, Section 234C and Section 234D of the Act.*

2. Brief facts and history of the case are that the assessee company is engaged in the business of Air Freight, Ocean freight and Land Transport or any business of Freight contractors and Agents, forwarding packing hauling and transport agents and to arrange for the transportation of goods, wares and merchandise of all kinds. The assessment was originally framed u/s 143 (3) vide order dated 28.12.2006 at Rs. 61,52,715/- by making addition of Rs.43,69,441/- on the basis of ALP (Arm Length Price) calculated by the TPO. The addition of Rs.43,69,441/- was deleted by Ld. CIT(A)-XX vide his order dated 13.10.2009. The order of the CIT (A) dated 13.10.2009 was contested before this tribunal by the department, which vide its order dated 31.12.2013 in ITA No. 4670/DEL/2009 restored the matter back to the file of AO for fresh adjudication with the directions to allow the assessee an opportunity to file a fresh T.P. study with comparables, in accordance with law and that the revenue will take into account the fresh transfer pricing study, furnished by the assessee and adjudicate the matter de novo.

3. The TPO adopted the Transactional Net Margin Method (TNMM) and

determined the arm's length price as under:

Particulars	Amount
Operating Revenue	9,47,87,792
Arm's Length Margin	5.53%
Arm's Length Margin (Price)	52,41,765
Arm's Length operating cost	8,95,46,027
Cost shown by assessee	9,33,32,079
Difference	37,86,085
International Transactions	4,43,99,085
5% of International Transactions	22,19,954
Proportion of International Transactions to total cost (Rs. 44399085/Rs. 93332079)*100	47.57%
Proportionate Adjustment	18,01,066

4. Complying with the directions of Hon'ble DRP, the JCIT, TPO-3(1), New Delhi vide letter F.No. JCIT/TPO-3(1)/2015-16/430 dated 08.12.2015 has sent a report wherein the adjustment is increased from Rs. 18,01,066/- to Rs. 20,22,015/-. The relevant extract of the said report is given below:-

"In view of the directions issued by the DRP, the net operating margins of the companies for the F.Y. 2003-04 are given in the following table. The operating profit has been computed in the manner similar to the manner in which the net operating margin of the assessee has been computed.

S. No.	Company Name	NPM (%)
1.	ABC India Ltd.	4.86
2.	Patel on Board Couriers Ltd	3.61
3.	South Asia Corporation (Sical Logistics)	8.10
4.	Inter State Oil Carrier Limited	7.52
	Average	6.02%

Therefore, the arm's length operating margin on sales is 6.02%

5. Accordingly, the arm's length price of the international transaction related to providing of freight forwarding services to AEs is computed by the TPO in the following manner:-

Particulars	Amount
<i>Operating Revenue</i>	<i>9,47,87,792</i>
<i>Arm's Length Margin</i>	<i>6.02%</i>
<i>Arm's Length Margin (Price)</i>	<i>57,06,225</i>
<i>Arm's Length operating cost</i>	<i>8,90,81,567</i>

<i>Cost shown by assessee</i>	9,33,32,079
<i>Difference</i>	42,50,512
<i>International Transactions</i>	4,43,99,085
<i>5% of International Transactions</i>	22,19,954
<i>Proportion of International Transactions to total cost (Rs. 44399085/Rs. 93332079)*100</i>	47.57%
<i>Proportionate Adjustment</i>	20,22,015

6. In view of above adjustment as per report of TPO dated 08.12.2015, Rs. 20,22,015/- is added to the total income of the assessee company.

7. During the hearing before us, the ld. AR argued that the adjustment fall within 5% of harbor range of ALP taken by the TPO and hence no adjustment can be made. The ld. CIT DR could not controvert the computation on facts of the case.

8. Calculation of Arm's length Price to be done by TPO within +/-5% is as under:

ALP as per TPO	89,081,567
105% of ALP as per TPO	93,535,645
95% of ALP as per TPO	84,627,489
Cost shown by assessee	93,332,079
(Within +/-5% Safe Harbour Range of ALP taken by TPO)	

9. Since the case falls under the safe harbor range of +/-5% as shown above, we hereby hold that no adjustment is required in the case of the assessee and the addition made is hereby directed to be deleted.

10. In the result, appeal of the assessee is allowed and all the grounds are treated as disposed of.

Order pronounced in the open Court on 04.04.2019.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER
Dated: 04-04-2019.

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

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

Assistant Registrar
ITAT, New Delhi

Date of dictation	04.04.2019
Date on which the typed draft is placed before the dictating 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	
Date on which the final order is uploaded on the website of ITAT	04.04.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	