

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA Nos.1016 & 1017/Del/2016  
Assessment Years: 2009-10 & 2010-11

M/s. UTStarcom India Telecom Pvt. Ltd., 10 <sup>th</sup> Floor, Signature Tower-B, South City-1, Gurgaon	<b>Vs.</b>	DCIT, Circle-18(1), New Delhi
<b>PAN :AAACU7110N</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri Jasmit Singh, Advocate
Respondent by	Shri H.K. Choudhary, CIT(DR)

Date of hearing	14.02.2019
Date of pronouncement	04.04.2019

**ORDER**

**PER O.P. KANT, A.M.:**

These two appeals by the assessee are directed against two separate orders dated 15/10/2015 passed by the Ld. Commissioner of Income-tax (Appeals)-44, New Delhi [in short 'the Ld. CIT(A)'] for assessment years 2009-10 and 2010-11 respectively. The grounds of appeal raised by the assessee are reproduced as under:

**Grounds of appeal for AY: 2009-10**

*In view of the facts of the case and relevant legal provisions under the Income-tax Act, 1961 ('the Act'), the taxpayer-appellant believes that the impugned order of the Commissioner of Income-tax (Appeals) - 44, New Delhi ('learned CIT') dated October 15, 2015, is not sustainable in the eyes of law since:*

- 1. Learned CIT(A) erred in misconstruing the functional and risk profile of the Appellant.*
- 2. Learned CIT(A) erred in terms of approving TPO's approach of summarily rejecting the Transfer Pricing analysis carried out by the Appellant, selecting erroneous filters and functionally dissimilar companies while applying Transactional Net Margin Method ('TNMM').*
- 3. Learned CIT(A) erred in not granting appropriate adjustments as warranted under Rule 10B of the Income-tax Rules, 1962 ('the Rules').*

*The above grounds of appeal are without prejudice and notwithstanding each other.*

*Any consequential relief, to which the Appellant may be entitled under the law in pursuance of the aforesaid grounds of appeal, or otherwise, may be thus granted.*

*The Appellant craves leave to add, alter, omit or substitute any or all of the above grounds of appeal, at any time before or at the time of hearing of the appeal.*

**Grounds of appeal for AY: 2010-11**

*In view of the facts of the case and relevant legal provisions under the Income-tax Act, 1961 ('the Act'), the taxpayer-appellant believes that the impugned order of the Commissioner of Income-tax (Appeals) - 44, New Delhi ('learned CIT') dated October 15, 2015, is not sustainable in the eyes of law since:*

- 1. Learned CIT(A) erred in misconstruing the functional and risk profile of the Appellant.*
- 2. Learned CIT(A) erred in terms of approving TPO's approach of summarily rejecting the Transfer Pricing analysis carried out by the Appellant, selecting erroneous filters and functionally dissimilar companies while applying Transactional Net Margin Method ('TNMM').*
- 3. Learned CIT(A) erred in not granting appropriate adjustments as warranted under Rule 10B of the Income-tax Rules, 1962 ('the Rules').*

*The above grounds of appeal are without prejudice and notwithstanding each other.*

*Any consequential relief, to which the Appellant may be entitled under the law in pursuance of the aforesaid grounds of appeal, or otherwise, may be thus granted.*

*The Appellant craves leave to add, alter, omit or substitute any or all of the above grounds of appeal, at any time before or at the time of hearing of the appeal.*

**2.** At the outset, before us the learned counsel of the assessee submitted that in the instant appeals, the assessee is aggrieved with the transfer pricing adjustment. He submitted that though the assessee filed appeal before the Tribunal and simultaneously, requested the Assessing Officer to give appeal effect of the order of the Ld. CIT(A). He further submitted that now by way of letter dated 07/02/2019, the learned transfer pricing officer (TPO) has given effect to the order of the Ld. CIT(A) and as a result of which, the transfer pricing adjustment has been reduced to Nil. The learned DR also on perusal of the latter dated 7/02/2019 of the learned TPO, could not controvert the fact that the resultant transfer pricing adjustment after the effect of the order of the Ld. CIT(A) is NIL. We have been also informed that no appeal has been filed by the revenue against the order of the Ld. CIT(A).

**3.** We have perused the order of learned TPO dated 7/02/2019 giving effect to the finding of the Ld. CIT(A) of excluding certain comparables and allowing the risk adjustment. The relevant part of the order giving effect of the learned TPO in assessment year 2009-10 and 2010-11 is reproduced as under:

**In AY: 2009-10**

<i>Particulars</i>	<i>Proposed TP Adjustment</i>
<i>Operating Cost(A)</i>	<i>8,05,41,591/-</i>
<i>OP/TC</i>	<i>17.29%</i>
<i>Margin</i>	<i>1,39,25,641/-</i>
<i>Arm's Length Price</i>	<i>9,44,67,232/-</i>
<i>Price Charged by the assessee</i>	<i>9,26,22,829/-</i>
<i>Difference</i>	<i>18,44,403/-</i>
<i>(+), (-) 5% difference</i>	<i>46,31,141/-</i>
<i>Adjustment required</i>	<i>Nil</i>

**In AY: 2010-11**

Particulars	Proposed TP Adjustment
Operating Cost(A)	6,46,59,702/-
OP/TC	14.35%
Arm's Length Margin(B)	7.39,38,369/-
Profit of the assessee as per segmental(C)	7,43,58,657/-
Difference to be adjusted(B-C)	(-)420288

**4.** The assessee has requested before us that the learned Assessing Officer might be directed to incorporate the order of the learned TPO dated 7/02/2019 and pass the resultant demand of taxes accordingly. Since the TPO has already intimated the Assessing Officer the result of effect giving order of the Ld. CIT(A), we direct the Assessing Officer to take necessary action to give effect of the order of the Ld. CIT(A).

**5.** We find that as a result of the order of the TPO giving effect to the order of the Ld. CIT(A), the transfer pricing adjustment has been reduced to nil, in such circumstances, the assessee is not having any grievance against the order of the Ld. CIT(A). In view of the above, the appeals filed by the assessee have been rendered infructuous.

6. In the result, both the appeals of the assessee are dismissed.  
***Order pronounced in the open court on 4<sup>th</sup> April, 2019.***

**Sd/-**  
**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**

**Sd/-**  
**[O.P. KANT]**  
**ACCOUNTANT MEMBER**

Dated: 4<sup>th</sup> April, 2019.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi