

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'I-1, NEW DELHI

BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER

ITA No. 7199/Del/2017
S.A. No. 717/Del/2017
Assessment Year 2009-10

ITA No. 8311/Del/2018
S.A. No. 157/Del/2019
Assessment Year 2010-11

ITA No. 7200/Del/2017
S.A. No. 718/Del/2017
Assessment Year 2013-14

M/s JCB India Ltd. B1/I-1, 2 nd Floor Mohan Cooperative Industrial Estate Mathura Road New Delhi 110 044 PAN: AAACE0078P	vs.	ACIT, Circle 13(2) C.R.Building New Delhi
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ITA No. 1546/Del/2016
Assessment Year 2011-12

ACIT, Circle 13(2) C.R.Building New Delhi	vs.	M/s JCB India Ltd. New Delhi
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(Appellant)

(Respondent)

Assessee by : Sh. M.S.Syali, Sr.Adv. &
Sh. Tarandeep Singh, Adv.
Department by : Sh. Sandeep Kr.Mishra, Sr.D.R.

Date of Hearing : 21/05/2019
Date of Pronouncement: 31/05/2019

ORDER

PER BENCH

Present appeals and Stay Applications have been filed by assessee against final assessment order passed by Ld.ACIT. It is also submitted that there is a Cross Appeal filed by Revenue for A.Y. 2011-12. The details of impugned order are as under:

S. No.	Assessment year	Date of impugned order
1.	2009-10	13/09/17
2.	2010-11	13/11/18
3.	2011-12	13/01/16
4.	2013-14	30/10/17

2. Ld.Counsel submitted before us that revenue has entered into settlement with assessee under mutual agreement procedure (MAP) between Competent Authority of India and Competent Authority of UK under Article 27 of India UK Double Taxation Avoidance Agreement. It has been submitted that only issue that needs to be considered in all these appeals are in respect of determination of arm's length price of royalty paid by assessee to its Associated Enterprise (AE), wherein revenue disputed benchmarking methodology adopted by assessee. He submitted that by virtue of MAP resolution, appeals filed in respect of present assessment years needs to be withdrawn. Ld.Counsel placed before us letter dated 02/05/2019, received from Office of Dy. Commissioner of Income Tax Circle 13 (2) in regards to the same. Placing reliance upon chart at page 2-3 of compilation filed before us today, Ld.Counsel submitted that TP adjustment in relation to international transaction of royalty payment for years under consideration would be as under:

A.Y.	Pre-Royalty Profit	Filed position on Royalty rate	CAs agreement on Royalty rate
2009-10	14.75%	5%	4%
2010-11	22.96%	5%	5%
2011-12	18.91%	5%	5%
2012-13	19.38%	5%	5%
2013-14	16.57%	5%	4%

2.1. He further submitted that for assessment year 2013-14, assessee also entered into international transaction with its AE in Germany, for which there is no settlement/MAP, that has been arrived at. He submitted that to that extent, transaction of assessee with its AE Germany will have to be analysed on the basis of FAR, and arm's length price of transaction would have to be determined as per Section 92 CA of Income Tax Act, 1961 read with Rule 10 B of Income Tax Rules, 1963.

2.2. Ld. CIT DR did not oppose to the proposition advanced by Ld.Counsel.

3. We have perused submissions advanced by both sides in light of records placed before us. We have perused resolution of dispute under MAP with United Kingdom in case of assessee for years under consideration.

3.1. In the light of aforesaid understanding between revenue and Competent Authority of UK, assessee is allowed to withdraw its appeals for A.Y. 2009-10, 2010-11, 2011-12 and 2013-14 wherein the issues raised are in respect of transaction that stands fully covered by MAP resolution.

3.2. In respect of assessment year 2013-14, it has been submitted that, assessee had transaction with non-UK based AE, for which there is no MAP resolution. MAP is drawn after considering relevant aspects giving rise to transfer pricing adjustment to with a particular UK to determine the arm's length price, same parameters cannot be applied to determine the arm's length price of transaction with non-UK based AE. We draw our support from the

view expressed by *Hon'ble Bombay High Court* in case of *Pr.CIT vs JP Morgan Services India Pvt.Ltd.*, reported in *2019- TII-33-HC-MUM-TP*.

3.3. Accordingly we direct Ld. TPO to determine arm's length price of international transaction entered into by assessee with Associated Enterprise in Germany for A.Y. 2013-14, as per law. Needless to say that proper opportunity shall be granted to assessee to represent its case.

4. In the result appeal for assessment year 2009-10, 2013-14 in respect of transaction with non-AE is set aside to Id.TPO as per the directions hereinabove, and in respect of assessment year 2010-11 and 2011-12 the assessee is allowed to withdraw the appeal.

In respect of appeal filed by Revenue for A.Y. 2011-12 the same stands dismissed pursuant to MAP Resolution.

In respect of issues raised by assessee on the issues covered under MAP for A.Y. 2013-14 appeal stands withdrawn.

5. As we have already disposed of appeals for assessment year under consideration, respective Stay Applications filed in respect of years under consideration, therefore, stands infructuous and are dismissed as infructuous.

Order pronounced in open court on 31/05/2019.

Sd/-

(R.K.PANDA)
ACCOUNTANT MEMBER

Sd/-

(BEENA A PILLAI)
JUDICIAL MEMBER

Dt. 31st May, 2019

- gmv

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Appellant
Respondent
CIT
CIT(A)
DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

	Date
Draft dictated on	28/05/19
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Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	