

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI FRIDAY BENCH 'B' : NEW DELHI

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.5641/Del/2017  
Assessment Year : 2012-13

Deputy Commissioner of  
Income Tax,  
Circle-1(1)(1),  
International Taxation,  
New Delhi.

(Appellant)

Vs. M/s Convergys Customer  
Management Group Inc.,  
C/o PricewaterhouseCoopers  
Pvt.Ltd.,  
11A, Vishnu Digamer Marg,  
Sucheta Bhawan,  
New Delhi – 110 002.  
PAN : AACCC8989M.  
(Respondent)

Appellant by : Shri Piyush Chawla, AR.  
Respondent by : Ms. Nidhi Sharma, Senior DR.

Date of hearing : 26.07.2019  
Date of pronouncement : 31.07.2019

**ORDER**

**PER PRAMOD KUMAR, VP :**

The petition seeking early hearing of this appeal, on the ground that the issue in appeal has already been resolved under MAP proceedings under Section 90 of the Income-tax Act, 1961 read with Article 27 of the Indo US Double Taxation Avoidance Convention, came up for consideration before us today. On a perusal of records, and with the consent of the parties, we consider it appropriate to take up the appeal, for adjudication, at this stage itself.

2. The appeal is filed by the Assessing Officer and it calls into question correctness of the order dated 28<sup>th</sup> June, 2017 passed by the

CIT(A), in the matter of assessment under Section 143(3) of the Income-tax Act, 1961, for the assessment year 2012-13.

3. Grievances raised in the appeal are as follows :-

*“1. That in facts and circumstances of the case, and in law, the Id.CIT(A) erred in holding that the assessee does not have a Dependent Agent PE (Permanent Establishment) in India.*

*2. That in facts and circumstances of the case, and in law, the Ld.CIT(A) erred in holding that the assessee does not have a Service PE in India.*

*3. That in facts and circumstances of the case, and in law, the Ld.CIT(A) erred in not accepting, and in reducing, the profit attribution done by the AO.*

*4. That in facts and circumstances of the case, and in law, the Ld.CIT(A) erred in holding that receipts towards IPLC/link charges are not taxable as royalty in India. The Ld.CIT(A) further erred in not considering AO's finding that receipts towards IPLC/link charges are taxable as equipment royalty, and alternatively taxable as process royalty in India.*

*5. The appellant craves to add, amend, modify, or alter any grounds of appeal at the time or before the hearing of the appeal.”*

4. Vide order dated 11<sup>th</sup> December, 2017, passed by the Indian Competent Authority, the resolution arrived at between Indian and US Competent Authorities, in respect of this assessee and for the assessment years 2002-03 to 2012-13, has been taken on record. This document records the fact that without entering into determination of whether the assessee company has established an Indian Permanent Establishment (PE), “solely for the purpose of settling multiple years of dispute, the competent authorities of both the countries agree with the

following attribution of profits as shown in the table below". The table then set out, *inter alia*, indicates as follows :-

Profit attribution

Assessment Year	Income of Convergys US taxable in India (amount in ₹)
.....	.....
.....	.....
2012-13	(₹14,05,56,407)

5. The stand of the assessee is that "Given that Competent Authority assistance was sought on all the additions made ..... (by the Assessing Officer) ..... this resolution between the competent authorities determining the income/loss would subsume the income determined in the assessment order .....". The cross appeal filed by the assessee has already been withdrawn by the assessee under Rule 44H. We are thus urged to dismiss this appeal as not maintainable. It is submitted that "the present appeal is liable to be dismissed".

6. Learned Departmental Representative leaves it for us to take the appropriate call on the basis of material on record.

7. We find that the resolution arrived at under the MAP proceedings pertains to the Permanent Establishment related issues, and the grounds of appeal before us deal with the issue of royalty as well. The stand of the assessee to the effect that the MAP resolution would "subsume the income determined in the assessment order" as

“Competent authority assistance was sought on all the additions” is not verifiable from the material on record before us. In these circumstances, in our humble understanding, the right course of action for us will be to remit the matter to the file of the Assessing Officer for giving effect to the MAP resolution in accordance with the law. Whether addition in respect of royalty is covered by the MAP resolution or not is a call to be taken by the Assessing Officer. As regards the withdrawal of cross appeal by the assessee, that is a precondition for giving effect to MAP resolution, under Rule 44H(4)(ii), and that pertains to the issue in the MAP proceedings. As the assessee had already been successful in appeal on the issue of royalty, there could not have been ordinarily any occasion for the assessee to file appeal on the royalty issue. The cross appeal, therefore, does not necessarily imply that this appeal must be treated as withdrawn as well.

8. In the light of these discussions, and bearing in mind entirety of the case, we deem it fit and proper to remit the matter to the file of the Assessing Officer for giving effect to the resolution arrived at under the MAP proceedings. Ordered accordingly.

9. In the result, the appeal is allowed for statistical purposes in the terms indicated above.

Decision pronounced in the open Court on 31<sup>st</sup> July, 2019.

Sd/-

**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Sd/-

**(PRAMOD KUMAR)**  
**VICE PRESIDENT**

VK.

Copy forwarded to: -

1. Appellant : **Deputy Commissioner of Income Tax,  
Circle-1(1)(1), International Taxation,  
New Delhi.**
2. Respondent : **M/s Convergys Customer Management Group Inc.,  
C/o PricewaterhouseCoopers Pvt.Ltd.,  
11A, Vishnu Digamer Marg, Sucheta Bhawan,  
New Delhi – 110 002.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar