

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

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

**ITA No.5182/Del/2016
Assessment Year: 2009-10**

ACIT, CIRCLE – 4,
Gurgaon.

Applicant

Vs Tower Watson India Pvt. Ltd.
(Formerly known as Watson Wyatt India Pvt. Ltd.)
2nd Floor, Tower-B, Unitech Business Park,
South City-1, Sector-4, Gurgaon.
AAACG2955K
Respondent

**Assessee by Mr. Ajit Korde, Advocate
Revenue by Ms. Nidhi Sharma, Sr. DR**

**Date of Hearing 01.08.2019
Date of Pronouncement 02.09.2019**

ORDER

PER NARASIMHA K. CHARY, JM

Challenging the order dated 2/6/2016 passed by the learned Commissioner of Income Tax (Appeals)-58, Mumbai, on the application of Tower Watson India private Limited (“the assessee”), rectifying the order for the assessment year 2009-10, Revenue filed this appeal.

2. Brief facts of the case are that contending that there are certain mistakes in the order for the assessment year 2009-10, apparent from record which need to be rectified, the assessee filed an application against

the order of Ld. CIT(A) for the assessment year 2009-10. According to the assessee ground No. 3.9 in the grounds of appeal was not considered nor adjudicated. Secondly, in respect of Gr. No. 5, in spite of the fact that a mistake that has crept in in form No. 3 CEB showing the expense of Rs. 1,29,00,270/-instead of income of Rs. 36,39,922/-was brought to the notice of the Ld. CIT(A), by way of a note to the table,the same was not considered by the Ld. CIT(A) while deciding the issue. Assessee, therefore, filed the rectification application before the Ld. CIT(A).

3. It is the submission of the Ld. AR that both these aspects are mistakes apparent on record to be rectified by the authority below. Non-adjudication of a ground and non-consideration of fact revealed by way of a note appended to the table showing the error in making the adjustment with respect to the international transactions, undoubtedly, constitutes mistake apparent on the face of record.

4. Per contra, it is the submission of the Ld. DR that only mistakes apparent on record are rectifiable but not the mistakes of judgement. He, however, did not controvert facts adverted to by the Ld. CIT(A) in the impugned order.

5. We have gone through the record in the light of the submissions made on either side. As could be seen from the impugned order, there is no dispute that ground No. 3.9 of the grounds of appeal of the assessee missed the attention of the Ld. CIT(A) while passing the original appellate order. On examination of the record in the light of the submissions made by the assessee, in the impugned order, Ld. CIT(A) reached a factual conclusion that the issue of computation of operating margin by factoring certain income was not adjudicated by the Ld. CIT(A) in the original order

and the Ld. CIT(A) also had not provided any reason for non-adjudication of such ground indicating that the ground had reminded to be adjudicated by oversight. This factual finding of the Ld. CIT(A) is not controverted by the Ld. DR. We, therefore, have no hesitation to hold that no error was committed by the Ld. CIT(A) in rectifying the mistake by adjudicating this ground, which missed the attention of the Ld. CIT(A) while passing the original appellate order.

6. Now coming to the second aspect of the rectification order, it relates to ground No. 5 of the appeal in respect of payment towards cost allocation made by the assessee to its AE. It is contended by the assessee that, while passing the Transfer Pricing Order, Ld. TPO had considered certain erroneous amounts while making an adjustment with respect to the payments towards cost allocation made to the AE. According to them a sum of Rs. 1,29,00,270/-was inadvertently reported as expense instead of an income of Rs. 36,39,922/-and such an error had occurred because the debit note amount of Rs. 46,30,174/-and the credit note amount of Rs.82,70,096/-were erroneously aggregated instead of netting of the same.

7. It was submitted before the Ld. CIT(A) at the time of hearing of the rectification application that this issue was before the Ld. CIT(A) while deciding the original appeal, since it was specified in the form of a note to the table and this table was not considered or reproduced by the Ld. CIT(A) nor any direction was given with respect to this amount while deciding the issue.

8. On this aspect, in the impugned order, Ld. CIT(A) held that the issue of adjustment to cost had already been decided by Ld. CIT(A) while

deciding issue on merits and the rectification application can only be entertained with respect to the visible flaws in the order of Ld. CIT(A) and not for the adjudication of grounds; and that since it was already directed in the original order that the income of the assessee was liable to be adjusted in accordance with the ALP determining, no further directions need be issued to the Ld. TPO.

9. In the impugned order, Ld. CIT(A) categorically held that the rectification application could be made by the assessee for correction of certain figures and adjudication of a ground not decided in earlier, and the scope of such an application cannot be moved beyond such point. On this premise, Ld. CIT(A) refused to issue any direction to the Ld. TPO in respect of ground No. 5 of the ground of appeal. In such an event the Revenue need not have any grievance against such a finding of the Ld. CIT(A). On this score also we do not find anything to interfere with the findings of the Ld. CIT(A). On both the issues, the impugned order does not suffer any illegality or irregularity warranting interference by the Tribunal. Grounds of appeal of Revenue are devoid of merits and are, accordingly, dismissed.
10. In the result, appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 2nd September, 2019

Sd/-

sd/-

**(PRAMOD KUMAR)
VICE PRESIDENT**

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

Dated: 2nd September, 2019

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

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