

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'I' BENCH,
NEW DELHI**

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

**ITA No.533/DEL/2016
[Assessment Year: 2011-12]**

Bentley Systems India Private
Limited,
203, 02mnd Floor, Okhla Industrial
Estate, Phase-III,
New Delhi-110020

PAN-AABCB5645E

Assessee

DCIT,
Circle-4(2),
New Delhi

Revenue

Assessee by Shri AjitKorde
Revenue by Shri Sandeep Kumar Mishra

Date of Hearing 31/07/2019

Date of Pronouncement 02/09/2019

ORDER

PER K.NARASIMHA CHARY, JUDICIAL MEMBER,

Aggrieved by the order dated 24/11/2015 passed u/s 143(3) read with section 144C of the Income Tax Act, 1961 (in short 'the Act') pursuant to direction dated 30/09/2015 issued by the Dispute Resolution Panel-1, New Delhi (in short 'DRP'). M/s Bentley Systems India Private Limited (the assessee) preferred this appeal stating that determination of comparable uncontrolled price method as most appropriate method by the TPO is erroneous.

2. Briefly, stated that the facts of the case are that the assessee is engaged in the business of providing collaborative software solutions besides undertaking software development, training and consultancy services. For the Assessment year 2011-12, they have filed its return of income on 30/11/2011 declaring total

income of Rs.1,36,28,120/-under normal provisions of the Act and book profit of Rs.1,57,57,136/- under special provisions of the Act.

3. It was noticed by the Ld. AO that during the year under consideration, the assessee entered in to international transactions with Associate Enterprises, as such determination of Arm's Length Price (in short 'ALP') was referred to the Ld. TPO. Ld. TPO, by order dated 12/01/2015 suggested an adjustment of Rs.1,48,36,064/- comprising of Rs.1,17,19,732/- on account of software development services of Rs.31,16,332/- on account of corporate services charge. The assessee conducted TNMM using OP/TC as the PLI to benchmark the international transactions. Ld. TPO segregated the transactions and applied CUP method as more appropriate method, suggested the adjustment in respect of the intra group services. Ld. DRP held that the payment for intra group services to AE is a separate international transaction independent of financial resolutions and the capable of verification separately. Being aggrieved by the same, the assessee preferred this appeal.

4. At the outset, it is an argument of the Ld. AR, in so far as, the intra group services are in respect of the AY 2007-08, 2009-10 and 201-11 also, Ld. TPO determined the Comparable Uncontrolled Method (CUP) as the most appropriate method to Benchmark the international transaction of Corporate Services and the same was upheld by the Ld. DRP. He further submitted that in appeal, the Tribunal had taken the consistent view that the intercompany agreements for availing of corporate services have to be considered afresh and for such purpose the matter had to be remanded back to the file of the Ld. TPO for consideration of the evidence made available by the assessee. It is prayed that similar course may be adopted for this Assessment Year also.

5. The Ld. DR heavily relied upon the orders of authorities below. He, however reported no objection for remanding the matter to the file of Ld. TPO.

6. We have gone through the record in the light of the submissions made by either side. For AY 2007-08, under similar circumstances, a co-ordinate Bench of this Tribunal in ITA No.6160/DEL/2013 held that the record was not considered properly by the DRP in the light of the intercompany agreements for availing of corporate services and there was need to set-aside the issue to the file of the Ld. AO for afresh adjudication after obtaining a report from the Ld. TPO. So also, for the Assessment Years 2009-10 and 2010-11, this issue was considered by the Tribunal in ITA No.6161/Del/2013 and ITA No.6261/Del/2015 and by order dated 04/11/2015 gave specific directions that there was need to consideration of additional evidence filed before the Ld. DRP.

7. It is submitted by the Ld. AR that material placed before the Tribunal in this appeal by way of paper book has bearing on the on the issue which goes to the root of the matter and therefore it is just and proper to set-aside the impugned order and remanded the matter to the file of the Ld. TPO/AO for consideration of the material produced/to be produced by the assessee for taking afresh view in the light of the inter company agreement of availing of corporate services and addendum to the transfer price agreement. While accepting this submission of the Ld. AR, we are of the considered opinion that this material has to be taken into consideration by the Ld. TPO by AR for proper determination of the ALP in respect of Corporate Services. We, accordingly, set-aside the issue to the file of the Ld. TPO/AO for determination of the Arm's Length Price.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this the 02nd September, 2019

Sd/-
[PRAMOD KUMAR]
VICE PRESIDENT

Sd/-
[K. NARASIMHA CHARY]
JUDICIAL MEMBER

Delhi; Dated: /09/2019. *Shelkar, Sr. P.S*

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi