IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE-PRESIDENT AND
SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

IT(TP)A No. 307/Bang/2017
Assessment Year : 2012-13

M/s. Novo Nordisk Service Centre (India) Pvt. Ltd., 2nd Floor, Prestige Featherlite Tech Park, Plot No. 148, EPIP Area, 2nd Phase, Whitefield, Bangalore – 560 006. **PAN: AADCN5325P**	Vs.	The Assistant Commissioner of Income Tax, Circle – 5 (1) (1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Keerthi Narayan, CA
Revenue by	:	Smt. Vandana Sagar, CIT (DR)

Date of hearing	:	28.08.2019
Date of Pronouncement	:	06.09.2019

O R D E R

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the assessment order passed by the AO on 30.12.2016 u/s. 143(3) r.w.s. 144C of the IT Act, 1961 as per the directions of the DRP for Assessment Year 2012-13.

2. The grounds raised by the assessee are as under.

> "*Based on the facts and circumstances of the case and in law, Novo Nordisk Service Centre (India) Private Limited (hereinafter referred to as "NNSCIPL" or the "Company" or the "Appellant"), respectfully craves leave to prefer an appeal against the order passed by the Assistant Commissioner of Income Tax, Circle 5(1)(1) (the "learned AO"), dated 30 December 2016, under section 143(3) read with section 144C(3) of the Income Tax Act, 1961 ("the Act") in pursuance of the directions issued by Dispute Resolution Panel (DRP"), Bangalore dated 18 October 2016 under section 144C(5) of the Act ("impugned order") inter-alia on the following grounds:*
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> *That on the facts and circumstances of the case and in law:*
> *1. The order of the learned AO and directions of the Hon'ble DRP are based on incorrect interpretation of law and therefore, are bad in law.*
>
> *2. On the facts and in the circumstances of the case and in law and*

based on the directions of DRP, the learned AO erred in assessing the total income of the Appellant at Rs. 18,50,17,585 as against returned income of Rs. 13,62,88,020 computed by the Appellant.
3. The learned AO has erred in law and in fact, in determining a sum of Rs. 56,95,089 as the balance demand payable by the Appellant.

Transfer pricing grounds:
4. The learned AO / Transfer Pricing Officer ("TPO") erred in making an addition of Rs. 4,87,29,565 to the total income of the Appellant on account of adjustment to the arm's length price with respect to the Information Technology enabled Services transaction entered into by the Appellant with its associated enterprise.
5. The learned AO / TPO and DRP have erred, in law and in facts, by not accepting the economic analysis undertaken by the Appellant in accordance with the provisions of the Act read with the Rules, and conducting a fresh economic analysis for the determination of the ALP in connection with the impugned international transaction and holding that the Appellant's international transaction is not at arm's length.
6. The learned AO / TPO and DRP have erred, in law and in facts, by determining the arm's length margin/ price using only FY 2011-12 data which was not entirely available to the Appellant at the time of complying with the transfer pricing documentation requirements.
7. The learned AO / TPO have exercised powers under Section 133(6) of the Act to obtain information which was not available in public domain and relying on the same for comparability purposes.
8. The learned TPO / AO and the DRP have erred, in law and in facts, by accepting/rejecting companies based on unreasonable comparable criteria and also accepted certain comparables being functionally different to that of Appellant. The Appellant craves leave to contest selection of all comparables (whether or not mentioned specifically herein above) included by TPO or Hon'ble DRP in comparable set and upheld by Hon'ble DRP at the time of hearing.

Although some of the companies were chosen as comparables in transfer pricing study, upon consideration of more details some of these comparables in case found to be not comparable for different reasons, appellant craves leave to urge the same at the time of hearing.

9. The learned TPO / AO have erred, in law and in facts, by incorrectly computing the working capital adjustment benefit.
10. The learned AO / TPO and DRP have erred, in law and facts, by not making suitable adjustments to account for differences in the risk profile of the Appellant vis-a-vis the comparables.

General grounds:
11. The learned AO, has erred, in law and in facts, in levying surcharge at the rate of 10% instead of considering the applicable rate of 5% read with the Finance Act 2011-12, for the AY 2012-13. Consequently, in view of the aforementioned incorrect surcharge rate being applied. the learned AO has erred in computing education cess, secondary and

higher education cess and interest under section 234B of the Act.

12. The learned AO has erred, in law, and in facts, in levying interest of Rs. 20,67,644 under section 234B of the Act.

13. The learned AO erred, in law and in facts, in initiating penalty proceedings u/s 271(1)(c) of the Act.
The Appellant submits that each of the above grounds is independent and without prejudice to one another.

The Appellant craves leave to add, alter, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal, so as to enable the Hon'ble Tribunal to decide on the appeal in accordance with the law."

3. At the very outset, the ld. AR of assessee submitted a letter dated 28.08.2019 and pointed out that it is stated in this letter that out of total international transactions with the AE of the assessee, an amount of Rs. 73,43,08,443/- equal to 95.89% is in respect of AE in Denmark and this transaction is covered under MAP as per which it was agreed by India and Denmark that 17% markup should be considered over cost. He submitted that the appeal of the assessee regarding transactions with the AE of Denmark is to be rejected because it is covered by MAP. Regarding the remaining transactions of Rs. 3,14,69,004/- equal to 4.11% of total international transactions with AE, he submitted that these transactions are with non-Denmark AEs and therefore, not covered under MAP. But this is the request of the assessee that the same markup of 17% can be applied regarding these transactions with non-Denmark AEs also and in support of his contention, reliance was placed on the Tribunal order rendered in the case of ANZ Operations and Technology Pvt. Ltd. ("ANZOT") Vs. DCIT in IT(TP)A No. 328/Bang/2014 dated 25.04.2019, copy available on pages 900 to 905 of the paper book and reliance was also placed on another Tribunal order rendered in the case of Textron India Pvt. Ltd. Vs. DCIT in IT(TP)A No. 5/Bang/2014 dated 25.01.2019, copy available on pages 906 to 920 of the paper book. Our attention was drawn to para no. 7 of the first Tribunal order available on page no. 904 of the paper book. The ld. DR of revenue supported the assessment order.

4. We have considered the rival submissions. First of all, we reproduce para no. 7 of the Tribunal order rendered in the case of ANZ Operations and

Technology Pvt. Ltd. ("ANZOT") Vs. DCIT (supra) from page no. 904 of the paper book. This para reads as under.

> "*7. Respectfully following this Tribunal order, we hold that in respect of transaction with non-Australian entities, the same basis should be adopted as have been agreed by assessee in the MAP resolution for transaction with Australian entities. As per the chart submitted by ld. AR of assessee, it is submitted that the agreed rate for software development segment in respect of Australian entities is 18.50% whereas agreed rate for ITES segment is 19.50%. The OP/OC rate for software development sector declared by the assessee is shown at 10.03% whereas the same for ITES sector is shown at 15.26% and therefore, the adjustment called for in software development segment is 8.47% i.e. 18.50% (-) 10.03% and for ITES segment, the adjustment called for is 4.24% i.e. 19.50% (-) 15.26%. We direct the AO to examine these contentions raised before us and restrict the TP adjustment as per MAP resolution in respect of Australian entities for both the segments in respect of transactions with Australian entities as well as transactions with non-Australian entities.*"

5. No contrary judgment was brought to our notice by ld. DR of revenue and hence, respectfully following this Tribunal order, we hold that in the present case also, the AO should restrict the TP adjustment in respect of non-Denmark AEs as per MAP resolution in respect of Denmark AEs.

6. In the result, the appeal filed by the assessee stands partly allowed in the terms indicated above.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(N.V. VASUDEVAN)
Vice-President

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 06th September, 2019.
/MS/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.