

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No. 1895/Bang/2017
Assessment Year : 2010-11

The Deputy Commissioner of Income Tax, Circle – 7 (1) (1), Bangalore.	Vs.	M/s. UE Development India Pvt. Ltd., # 116, 702, 7 th Floor, Pride Hulkul Building, Lalbagh Road, Bangalore – 560 027. PAN: AAACU5091N
APPELLANT		RESPONDENT
Assessee by	:	Shri Sanjay Mehta, CA
Revenue by	:	Shri K.R. Narayanan, JCIT (DR)
Date of hearing	:	22.08.2019
Date of Pronouncement	:	20.09.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the revenue and the same is directed against the order of Id. CIT(A)-7, Bangalore dated 25.07.2017 for Assessment Year 2010-11.

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

“1. The order of the learned CIT (A) is opposed to law and facts of the case.

2. "Whether on the facts and in the circumstances of the case, the CIT(A) is right in law in holding that in mirror transactions, ALP adjustments cannot be done, i.e., if one transaction is treated as at Arm's length, no adjustment can be done on the other related corresponding transaction of the AE without appreciating that this stand is against the provisions of section 92(3) of the I. T Act, 1961"?

3. For this and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.

4. The appellant craves leave to add, alter, amend and/or delete any of the grounds mentioned above.”

3. The Id. DR of revenue supported the assessment order whereas the Id. AR of assessee supported the order of Id. CIT(A). He also submitted that it is noted by Id. CIT(A) in para 5 of his order that the appeal of the revenue against the order of Id. CIT(A) for Assessment Year 2009-10 was dismissed

by the Tribunal in IT(TP)A No. 347/Bang/2014 dated 05.05.2017 relying on the earlier decision in the case of the assessee for Assessment Years 2004-05 to 2007-08 dated 30.08.2013. He submitted that the relevant Tribunal order are available on pages 165 to 181 being the Tribunal order in assessee's own case for Assessment Years 2004-05 to 2007-08 in IT(TP)A Nos. 1104/Bang/2011, 284 to 286/Bang/2012 dated 30.08.2013 and subsequent orders are also available on pages 182 to 195 for Assessment Year 2008-09, pages 196 to 203 for Assessment Year 2009-10. He submitted that the facts of the present year are similar and hence, the order of Id. CIT(A) should be confirmed. It was also submitted by him that in ITA No. 52 to 55/2014 all dated 12.07.2018, Hon'ble Karnataka High Court has confirmed all the four Tribunal orders in assessee's own case for Assessment Years 2004-05 to 2007 – 08 and he submitted a copy of these four judgments.

4. We have considered the rival submissions. First of all, we reproduce para nos. 5 and 6 of the order of Id. CIT(A).

“5. The appeal of the Revenue against the order of the CIT (A) for A.Y 2009-10 was dismissed by the ITAT in ITA No 374/Bang/2014 vide order dated 05-05-2017 relying on their earlier decision in case of the assessee for AY 2004-05 to 2007-08 dated 30-08-2013. Similarly, the order of the AO/TPO for the AY 2008-09 has also been struck down by the ITAT vide its order dated 14-06-2017 holding that

“-----In this factual view of the matter, and following the aforesaid decisions of the co-ordinate benches of the Tribunal(supra), we hold that where the TPO has accepted the transaction to be at ALP at the hands of the AE , then he cannot take a different stand in the case of the other party to the transaction, i.e. the assessee therein in the case on hand and accordingly set aside the orders of the AO/TPO on this issue. Consequently, the grounds raised by the assessee are allowed as indicated above.”

6. The facts in the case for the current year remain similar as earlier years. The appellant has also filed a copy of the assessment order under section 143(3) dated 15-03-2013 in the case of the AE, United Engineers (Malaysia) Berhard for AY 2010-11 where no adjustment has been made by the AO. Under the above facts and circumstances, respectfully following the decisions of the ITAT (supra) in the case of the appellant, the TP adjustment effected by the AO/TPO is struck down.”

5. From the above paras reproduced from the order of Id. CIT(A), it is seen that his decision is on the basis of earlier Tribunal orders in assessee's own case for Assessment Years 2004-05 to 2009-10. No difference in facts could be pointed out by Id. DR of revenue in the present year. The Tribunal order in

assessee's own case for Assessment Years 2004-05 to 2007-08 is approved by the Hon'ble Karnataka High Court in its four judgments in ITA Nos. 52 to 55/2014 all dated 12.07.2018. Before us, the Id. DR of revenue had placed reliance on the Tribunal order rendered in the case of Filtrex Technologies (P.) Ltd. Vs. ACIT as reported in [2018] 93 taxmann.com 301 (Bangalore – Trib.). He submitted a copy of this Tribunal order and it was pointed out before us that in para 16 of this Tribunal order, the Tribunal has noted about the various Tribunal orders rendered in the case of UE Development India (P.) Ltd. Vs. DCIT in IT(TP)A No. 1104/Bang/2011 and IT(TP)A Nos. 284 to 286/Bang/2012 for Assessment Years 2007-08 and 2004-05 to 2006-07. After this, in para 29 of the Tribunal order, the Tribunal has restored the matter back to the file of TPO for fresh decision. On perusal of this tribunal order rendered in the case of Filtrex Technologies (P.) Ltd. vs. ACIT (Supra), it is seen that in that case, the tribunal has decided the issue by following a judgment of Hon'ble Delhi High Court rendered in the case of CIT vs. Cushman & Wakefield India (P) Ltd. as reported in 46 Taxman.com 317 and the order of Special Bench of the tribunal rendered in the case of Instrumentarium Corporation Ltd. Vs ADIT as reported in 71 Taxman.com 193 but in the present case, the Tribunal order in assessee's own case for A. Ys. 2004 – 05 to 2007 – 08 has been approved by the Hon'ble Karnataka High Court as per its four Judgments all dated 12.07.2018 which is after the date of this Tribunal order i.e. 11.04.2018 and in view of this fact that Id. DR of revenue could not point out any difference in facts in present year and in these four years for which the tribunal order is approved by Hon'ble Karnataka High Court, we decline to interfere in the order of Id. CIT(A) by respectfully following these four judgments of Hon'ble Karnataka High Court in assessee's own case for Assessment Years 2004-05 to 2007-08.

6. In the result, the appeal filed by the revenue is dismissed.

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

Sd/-
(BEENA PILLAI)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 20th 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.