

आयकर अपीलिय अधिकरण "J" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
BEFORE SRI MAHAVIR SINGH, JM AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं/ ITA No. 125/Mum/2015

(निर्धारण वर्ष / Assessment Year 2009-10)

TUV SUD South Asia Private Limited
TUV House, Off Saki Vihar Road, Saki Naka
Andheri (East), Mumbai-400 092

..... Appellant
/ अपीलार्थी

स्थायी लेखा सं / PAN - AABCT0716G

v/s

The Income Tax
Room No. 02, Aayakar Bhava,
2nd Floor, M.K. Road,
Mumbai-400 020

.....Respondent
/ प्रत्यर्थी

अपीलार्थी की ओर से / Appellant by	:	Shri Nishant Thakkar, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Pavan Kumar Beerla, DR

सुनवाई की तारीख / Date of hearing:	11.09.2019
घोषणा की तारीख / Date of pronouncement :	11.09.2019

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/

PER MAHAVIR SINGH, JM:

This appeal is arising out of the order of Commissioner of Income Tax (Appeals)-15, Mumbai in Appeal Nos. CIT(A)-15/Arr.

206/14-15 dated 14.10.2014. The Assessment was framed by the Income Tax Officer 8(3)-3, Mumbai (in short ITO/ AO) for AY 2009-10 vide dated 18.04.2013 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The first issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO/ Transfer Pricing Officer in making adjustment on account of Mark up of 5% on the regional management fee amounting to Rs. 8,81,286/-. At the outset, the learned Counsel for the assessee stated that he has instructions from the assessee not to press this issue due to smallness of the amount. The learned Sr. Departmental Representative has not objected for the same. Hence, this issue is dismissed as not pressed.

3. The second issue in this appeal of the assessee is against the order of CIT(A) confirming the action of the AO / Transfer Pricing Officer in making addition of ₹ 79,97,024/- on account of transfer pricing adjustment to IT services fees payable to its associated enterprises. For this assessee has raised the following ground No. 3: -

"3.0: Re: Addition on account disallowance of entire reimbursement pertaining to availing IT support services amounting to ₹ 79,97,024/- from AE.

3.1 The learned AO/ Transfer Pricing Officer erred in law and facts by making addition of ₹ 79,97,024/- on account of transfer pricing adjustment to IT services fees payable to its associated enterprise.

3.2 The appellant submits that that considering the facts and circumstances of its case, all the supporting documents were placed on record before the Hon'ble CIT(A) which are overlooked and the addition so sustained is not warranted.

3.3 The appellant submits that the AO be directed to delete the addition so made by him and to re-compute its total income accordingly."

4. At the outset, the learned Counsel for the assessee took us through the order of CIT(A) at Para 5.3 clause i and the relevant para, he pointed out, reads as under: -

"..... In fact, in the letter dated 21.12.12, the Transfer Pricing Officer has given an opportunity to produce copies of subcontracting agreements with the AEs and also the copies of invoices based thereon, furnish copies of agreements for

payment of such license fee and justify the same to the Ae, to furnish a detailed note regarding nature of reimbursements and proof of incurring such expenses and copy of agreements with the AEs etc. Further, the Transfer Pricing Officer has clearly mentioned that the assessee had not produced any back-to-back invoices to prove that these expenses are passed on to the assessee on cost to cost basis and hence, now it cannot take the plea that all the details were produced. In fact, in the submissions made before Transfer Pricing Officer it has agreed that back to back invoices could not be produced and this fact has not been denied even during the course of appellate proceedings. Accordingly, all these evidences which are being produced during the appellate proceedings now amount to furnish of additional evidence. However, no application requesting to admit this additional evidence has been filed highlighting reasonable cause under Rule 46A, for want of which the additional evidence filed by it cannot be admitted.

Reliance in this regard is placed on the judgements of Hon'ble Courts as referred to in the preceding ground."

5. In view of the above, the learned Counsel for the assessee stated that the sub-contracting agreement with the AEs and the copies of invoices were placed before AO and even now before Tribunal in its paper book. He particularly referred to page 216 of assessee's paper book, wherein the addendum to existing contract was added and also referred to pages 281 and 316 which are very relevant for deciding TP adjustment made by Transfer Pricing Officer/ Assessing Officer. The learned Counsel stated that these documents are very vital and CIT(A) has simply brushed aside the averments of the assessee, he only requested that these documents be admitted and matter can be referred back to the file of the CIT(A) for fresh adjudication after considering these documents on this issue. When these facts were confronted to the learned Sr. Departmental Representative, he fairly agreed that the matter can be restored back to the file of the CIT(A).

6. After hearing both the sides and going through the facts of the case in entirety, the admitted position is that the CIT(A) has not admitted these documents as produced by the assessee. In the interest of justice, we admit these evidences and direct the CIT(A) to consider these evidences and after considering, decide the issue on merits as regards to the TP adjustment on this



issue. This issue of assessee's appeal is set aside to the file of the CIT(A) and allowed for statistical purposes.

7. In the Result, the appeal of assessee is partly allowed.

Order pronounced in the open court on 11.09.2019.

Sd/-

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)
(लेखा सदस्य / ACCOUNTANT MEMBER)

(महावीर सिंह / MAHAVIR SINGH)
(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 11.09.2019

सुदीप सरकार, व. निजी सचिव / *Sudip Sarkar, Sr.PS*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai