

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. KULDIP SINGH, JUDICIAL MEMBER**

ITA No.5719/Del/2010 & 5834/Del/2011
Assessment Year: 2006-07 & 2007-08

IBM Daksh Business Process Services Pvt. Ltd. Birla Tower, 1st Floor, 25 Barakhamba Road, Connaught Place, New Delhi-110001 PAN No. AABCD4187D (APPELLANT)	Vs	DCIT Circle -11 (1) New Delhi (RESPONDENT)
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Appellant by	Shri G. C. Srivastava, Advocate Mr. Parichay Solanki, CA Mr. Mayank Patawari, CA
Respondent by	Sh. Sanjay I. Bara, CIT DR

Date of hearing:	18/11/2019
Date of Pronouncement:	20/11/2019

ORDER

PER N. K. BILLAIYA, AM:

ITA No.5719/Del/2010 and 5834/Del/2011 are two separate appeals by the assessee preferred against two separate assessment orders for A. Y.2006-07 and 2007-08 framed u/s. 143 (3) r.w.s. 144 C of the Act.

2. Since common issues are involved in both these appeals they were heard together and are disposed of by this common order for the sake of convenience.

3. Assessee is jointly owned by IBM India and IBM Sah Limited Mauritius. Further assessee is the owner of IBM Daksh business process INC located in the Philippines.

4. Assessee is leading provider of BPO services to fortune 500 companies in the transaction processing and customer care services segments. Assessee also offers a host of integrated remote support services which included customer care and technical support through multiple communication channels, telemarketing, web based services including real time chat.

5. The international transactions which are under dispute are (1) provision of BPO services (2) provision of loan to subsidiary company.

6. At the very outset the counsel for the assessee stated that for the assessment year A. Y. 2007-08 to 2011-12 the appellant entered a MAP and received resolution under MAP with its associated enterprises namely IBM World Trade Corporation US with regard international transaction pertaining to provision of BPO services and payment of royalty. It is the say of the counsel that this dispute is now settled by the MAP and furnished the copy of MAP resolution. The counsel contended that since the

business profile of the assessee is the same nature of transactions are also the same and the tested party is also the same, therefore, the margin adopted under MAP should also be taken into consideration in A. Y. 2006-07 though A. Y. 2006-07 is not covered by the MAP resolution.

7. Per contra the DR stated that the MAP resolution is only in respect of the transactions with AE in USA and UK and there are other countries also involved in the impugned international transaction, therefore, MAP resolution should not be applied to the transactions with other countries.

8. We have carefully considered the rival contentions. It is true that MAP resolution is for the transactions with AE from USA and UK. It is equally true that the nature of transactions is similar with other countries. It is also true that the business profiles and tested party are the same. We are of the considered view that once the quarrel has been settled with the MAP resolution a different view for the transactions with other countries should not be taken as the business profile and the nature of the transactions are the same.

9. We have carefully perused the MAP resolution which is placed as Annexure-1 in the paper book. We accordingly direct the AO/ TPO to recompute the margins as settled by the MAP resolution dated 06.04.2018. We further direct the AO/ TPO to

adopt the same margin for the impugned international transactions for A.Y.2006-07.

10. In ITA No.5834/Del/2011 for A. Y. 2007-08 ground No.4 relate to the transfer pricing adjustment with respect to receipt of interest on loan extended by the assessee to its AE.

11. Facts on record show that the assessee has provided a loan of Rs. 15.93 crores to its AE IBM Philippines. The appellant had charged the interest @ 8% per annum on this loan since the interest charged @ 8% was higher than the fixed deposit rate, applying the CUP method, the appellant treated the same to be at arms length.

12. During the transfer pricing adjustment proceedings the TPO adopted the coupon rate of corporate bond prevailing in India for benchmarking the international transaction of receipt of interest and made adjustment of Rs.43.55 crores which was upheld by the DRP.

13. Before us the counsel for the assessee stated that since the loan was given to AE IBM Philippines adoption of coupon rates of corporate bonds prevailing in India is not correct. The DR stated that the assessee has also benchmark by comparing the interest rate with the prevailing fixed deposit interest rate in India which is also not correct.

14. We have given a thoughtful consideration to the rival contentions. We are of the considered view that in such international transaction LIBOR + is the best rate for benchmarking. In our humble opinion LIBOR + 150 basis points should be taken as the rate. We accordingly direct the AO /TPO to recompute the interest at LIBOR + 150 basis points and decide the issue afresh after giving a reasonable opportunity of being heard to the assessee.

15. Ground No.4 is treated as allowed for statistical purpose.

16. Ground No.8 relate to the disallowance of prior period expenses.

17. During the course of the assessment proceedings and on perusal of the audit report the AO noticed that the assessee has claimed prior period expenses of Rs.14499220/-in the P & L account. The AO further found that the assessee has not added back prior period expenses while computing its income. The assessee was asked to justify the same. In its reply the assessee explained nature of expenditure and contended that it has been crystallized during the year A.Y.2007-08 only, therefore, the same should be allowed.

18. This contention of the assessee did not find any favour with the AO who was of the opinion that prior period expenses cannot be allowed. The action of the AO was upheld by the DRP.

19. Before us the counsel for the assessee once again stated that liabilities crystallized during the year under consideration and, therefore, no disallowance should be made on account of this.

20. Per contra the DR stated that no documentary evidences were furnished and at the most the matter may be restored to the files of the AO.

21. We have considered the rival contentions. We are of the considered view that since the assessee was not given proper opportunity to demonstrate that the liability crystallized during A.Y.2007-08, in the interest of justice and fair play, we restore this issue to the files of the AO. The assessee is directed to furnish necessary documentary evidences to demonstrate that the liability actually crystallized in A.Y.2007-08 and the AO is directed to examine the same and decide the issue as per the provisions of the law. This ground is treated as allowed for statistical purpose.

22. The other ground relate to the charging of interest and short credit of TDS.

23. The AO is directed to charge interest as per the provisions of the law and give credit for TDS/ other taxes paid accordingly.

24. In the result, the appeals are allowed for statistical purpose.

The order is pronounced in the open court on 20.11.2019.

Sd/-
[KULDIP SINGH]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 20 November , 2019

Neha

Copy forwarded to:

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

Asst. Registrar
ITAT, New Delhi

Date of dictation	19.11.2019
Date on which the typed draft is placed before the dictating Member	20.11.2019
Date on which the typed draft is placed before the Other member	20.11.2019
Date on which the approved draft comes to the Sr.PS/PS	20.11.2019
Date on which the fair order is placed before the Dictating Member for Pronouncement	20.11.2019
Date on which the fair order comes back to the Sr. PS/ PS	20.11.2019
Date on which the final order is uploaded on the website of ITAT	20.11.2019
Date on which the file goes to the Bench Clerk	20.11.2019
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	