

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I-1" New Delhi**

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

**आ.अ.सं./I.T.A No.5584/Del/2011
निर्धारणवर्ष/Assessment Year:2007-08**

Jones Lang LaSalle Property Consultants (India) Pvt. Ltd. 1108-1110, Ashoka Estate, Barakhamba Road, Connaught Place, New Delhi.	बनाम Vs.	ACIT Circle 4(1), New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent
PAN No. AAACL2089B		

**आ.अ.सं./I.T.A No.6465/Del/2012
निर्धारणवर्ष/Assessment Year:2008-09**

Jones Lang LaSalle Property Consultants (India) Pvt. Ltd. 1108-1110, Ashoka Estate, Barakhamba Road, Connaught Place, New Delhi.	बनाम Vs.	ACIT Circle 4(1), New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent
PAN No. AAACL2089B		

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**आ.अ.सं./I.T.A No.1648/Del/2014
निर्धारणवर्ष/Assessment Year:2009-10**

Jones Lang LaSalle Property Consultants (India) Pvt. Ltd. 1108-1110, Ashoka Estate, Barakhamba Road, Connaught Place, New Delhi.	बनाम Vs.	DCIT Circle 4(1), New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent
PAN No. AAACL2089B		

निर्धारितकीओरसे /Assessee by	Shri Nageswar Rao, Advocate & Ms. Sherry Goyal, Advocate
राजस्वकीओरसे /Revenue by	Shri Sanjay I. Bara, CIT DR
सुनवाईकीतारीख/ Date of hearing:	21.11.2019
उद्घोषणाकीतारीख/Pronouncement on	22.11.2019

आदेश /O R D E R

PER BENCH:

1. These are three separate appeals by the assessee preferred against three separate orders for assessment years 2007-08, 2008-09 and 2009-10. Since, common issues are involved in all these appeals they were heard together and are disposed of by this common order for the sake of convenience and brevity.

ITA No. 5584/Del/2011 A.Y. 2007-08 :-

2. Ground no. 1 relates to the addition on account of transfer pricing amounting to Rs. 10,53,11,989/-.

3. The appellant company is engaged in providing real estate consultancy, brokerage, design and construction of office interiors and provision of project management services. The services provided by the appellant to its associated enterprises are broadly grouped as:

- i. Property management advisory and brokerage services and;
- ii. Recovery of expenses.

4. The appellant also avails the following services from its associated enterprises:

- i. Property management services;
- ii. Space acquisition, leasing and management services;
- iii. Marketing support services;
- iv. Management charge business service assistance.

5. The details of International transaction are as under:

S.No.	Nature of International Transactions	Value (Amt. in INR)		Method applied
		Received/ Receivable	Paid/Payable	
1.	Property Management advisory and brokerage services	31,36,976		Transactional Net Margin (TNMM)
	Availing of Services			
2.	Business services charges		105,311,989	
	Professional fee		10,759,792	
3.	Reimbursement of Expenses			
	Software license fees		2,478,420	
	ESOP Charges		7,925,165	
	Reimbursement of traveling and related expenses		3,747,627	
4.	Prior period expense & income			
	Prior period service Income	7,173,596		
	Prior period income	351,930		
5.	Recovery of Expenses			
	Recovery of traveling and related expenses	5,150,634		

6. In its transfer pricing study the assessee has selected TNMM as the Most Appropriate Method for benchmarking the afore-stated International transactions. For the purpose of applying TNMM Operating Profit to Total Cost was considered as the base to demonstrate its *adherence* to the

arm's length provisions contained in the Income Tax Act. Assessee was selected as the tested party. OP/TC was taken as the PLI and the PLI is calculated at 16.53%. The assessee has taken 7 comparables and the PLI of the comparables is at 11.35% by taking 3 years weighted average and since the margin of the assessee is higher than that of comparables the International transactions entered into with the AE are stated to be at arm's length.

7. During the transfer pricing assessment proceedings, the TPO singled out business service charges paid to the AE amounting to Rs. 10.53 crores and issued a show-cause notice which read as under: -

“Business Service Charges Paid to the AE :

It is seen from the details of international transactions mentioned in the TP Report that the assessee has made certain payment to its AE under the following heads:

<i>Availing of business services; charges paid</i>	<i>10.53 crores</i>
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In this regard a show-cause notice dated 29.09.2010 was issued to the assessee, the relevant portion of which is reproduced below:

[Quote]

In continuation of the proceedings so far, it may also be recalled that you had submitted certain details regarding receipt of this services from your AE. In this connection please submit the following:

- 1. Identity each of the Services actually received by you from the AEs for which the amount has been*

paid.

2. *Please submit the contemporaneous documentary evidence to show that these services have actually been received by you.*
3. *Please state the details of payment made by you for each of the availed services.*
4. *Please furnish the copy of account of the AEs (providing the services) in your books of accounts and your copy of accounts in the books of AEs (providing the services).*
5. *How the payment has been quantified? Also please state as to whether any cost benefit analysis was done? If so the details thereof should be furnished. The cost benefit analysis should be (a) with reference to the cost of the services and benefit received there from and (b) services received from AEs vis a vis independent parties.*
6. *Whether any such services have been availed from independent parties? If yes the details of such expenditure may be furnished.*
7. *Furnish the copy of agreements with AEs for receiving such services.*

8. *Please state as to what tangible and direct benefit has been derived by you.*
9. *Documentary evidence of cost incurred by the AE for rendering each type of services purportedly received by you and the mark up applied, if any by the AE.*
10. *Whether AE is rendering such services to any other AEs/Independent parties. If yes the details thereof. Whether such payments are paid by any independent concern or entity in any other country through which Jones Lang Lasalle/AE Group carries on similar business as that of you. If yes, copies of the agreements for such services and also the basis on which such payments are paid.*
11. *If the AE has rendered services to more than one entities including you, then the basis of allocation amongst various entities. Also furnish the basis of choosing a particular allocation key.*

Please note that in the event of your being unable to provide these details in a satisfactory manner, the arm's length price in respect of all these transaction amounting to Rs. 10.53 Crores shall be reduced to 'nil'.

8. The assessee furnished a detailed reply dated 11.10.2010 the main objections read as under:

“[Unquote]

The assessee has submitted its reply dated 11.10.2010. The main objection of the assessee regarding benchmarking is:

“For ascertaining the arm’s length character of the international transaction of receipt of business services, the assessee has aggregated this transaction with its property management advisory and brokerage services and carried out the economic analysis on the basis of ‘Company as a Whole’ approach under the Transactional Net Margin Method (TNMM). Since the Net Cost Plus Markup (NCP) earned by the assessee from its operations during FY 2006-07, after considering the payment for business services, is comparable to the NCP of comparable companies, the transaction of receipt of business services has been regarded to be compliant with the arm’s length standard from an Indian Transfer Pricing Regulations perspective.

The assessee has selected the TNMM as the Most Appropriate Method (‘MAM’) to justify the principal function of property management advisory and brokerage services. The MAM has been selected keeping in view the provisions of Rule 10C of the Rules.”

9. The reply of the assessee did not find any favour with the AO who was of the opinion that the aggregation approach adopted by the assessee is not acceptable. The TPO further dismissed the contention of

the assessee that the margins earned by it justify the business service payment.

10. The TPO was of the firm belief that as payment of business service is a class of transaction of its own it requires separate analysis. The TPO proceeded by analyzing business service transaction separately under CUP Method.

11. The TPO then analyzed the business service transaction by discussing each of the services after considering the contention of the assessee as under:

“Let us now proceed to discuss each of the services said to be received separately. The main contentions of the assessee are as under:

- 1. JLL India has entered into an agreement with Jones Lang LaSalle Property Consultants Pte. Limited, Singapore (“JLL Singapore”) for the receipt of business support services. JLL Group has a Regional Headquarter in Singapore for the Asia Pacific Region.*
- 2. During AY 2007-08, JLL India had requested JLL Singapore to provide various services including Human Resource Services. Information Technology Services, Legal & Compliance Services. Marketing & Communication Services. Strategy Implementation Services. Hotel Services. Tax Services and Research Services.*

3. **Human Resource Services:** *JLL India approached JLL Singapore for assistance on recruitment, selection development, efficient utilization of resources, compensation and motivation of human resources by the organization as it was necessary to ensure the hiring of qualified personnel, the motivation and development of existing talent, the maintenance of good working relations between employee-employer and clients and conflict resolutions.*
4. **IT Services:** *The business leaders of JLL India saw the increasing need for a proper infrastructure to manage the needs of a fast expanding business, customers, employees, vendors, suppliers, information, data, etc. These include the use of computers and software to manage information, store information, protect information, process the information, transmit the information as necessary, and later retrieve information as necessary.*
5. **Legal and Compliance Services:** *With the increased complexity of doing business contributed by competition and changes in regulations, the leaders of JLL India needed to ensure that it is showing sound judgment on legal risk management, that it is saving money through retaining risk where it is considered prudent to do so, and that it is reducing the chances of a major surprise causing damage. In addition, we need to have comfort that all transactions are legal, ethical, and are in the best interests of JLL India.*

JLL India was primarily given assistance in negotiating and reviewing documents and contracts, and to a lesser extent, it got assistance in handling disputes/litigation.

6. Operating Coordination and Strategy Implementation

Services: The client base in JLL India includes many clients and prospective clients which are international companies and real estate investors, owners and operators. In order to provide the best quality service and work, JLL India sought out the experience and expertise of the regional service groups of JLL Singapore for advice assistance to provide the needed work to best serve all types of clients.

7. Financial Accounting Advisory Services: *JLL India has requested JLL Singapore in providing financial accounting advisory services.*

8. Research Services: *JLL Singapore provides research services on the requirements of JLL India after banking on a team of researchers who bring together data from over 30 cities, allowing an unparalleled depth of analysis that spans the whole property spectrum, including economics, econometrics, finance, planning and valuation.*

9. Tax Services: *The assessee realized that were facing many queries from outside India for investments, costs of doing business in India, cross-border payments and remittances out of India.*

12. The afore-stated contentions of the assessee were also dismissed by the TPO who was of the firm belief that the assessee has not been

able to substantiate that the payment of business services has actually increased the profit of the assessee. The TPO further observed that the basis of indirect charge also not answered the benefit test. According to the TPO the assessee cannot escape its responsibility of having to show the actual benefit it has received and no independent party would make such payment in similar circumstances.

13. The TPO further observed that in order to examine the arm's length price of Intra Group Services received by one of the AE following essential information should be available:

1. *Whether the AE has received intra group services?*
2. *What are the economic and commercial benefits derived by the recipient of intra group services?*
3. *In order to identify the charges relating to services, there should be a mechanism in place which can identify (i) the cost incurred by the AE in providing the intra group services and (ii) the basis of allocation of cost to various AEs.*
4. *Whether a comparable independent enterprise would have paid for the services in comparable circumstances?*

14. After making observations as mentioned hereinabove the TPO was of the opinion that the assessee has not been able to prove that it has actually received services of some value that call for such a huge payment. The TPO observed that the evidences furnished by the assessee are only brochure type evidence. No independent party would

be paid for such services in an uncontrolled environment. The TPO opined that the assessee has not even submitted the basis of quantification of these charges. No invoices have either been submitted or produced for verification during the TP Audit hearing proceedings.

15. The TPO concluded by holding that the assessee has not been able to show that any tangible benefit has passed to it following the payment of these business service charges.

16. Since, according to the TPO the assessee has not been able to demonstrate that an independent party would have made a payment of Rs. 10.53 crores for business services, therefore, by the application of CUP the arm's length price in respect of this transaction is determined at 'nil'. Accordingly, addition of Rs. 10,53,11,989/- was made.

17. Objections were raised before the DRP but without any success.

18. Before us, the Counsel for the assessee vehemently stated that the TPO as well as the DRP grossly erred in analyzing the International Transaction in the light of the benefit test. It is the say of the Counsel that the TPO cannot question the benefits derived by an International Transaction. All that is required is to determine the arm's length price and make adjustments if required. By disallowing the entire business service charges the order of the TPO is not only erroneous but bad in

law. The Counsel further stated that TNMM is the Most Appropriate Method in such a scenario and since, the margin of the assessee is much higher than of the comparables, no adjustment was required.

19. In alternative the Counsel stated that the assessee has ample of evidences to demonstrate that the business services were actually rendered by the AEs. The Counsel furnished volumes of Paper Book which run into pages 1 to 2188.

20. Per contra, the DR strongly supported the findings of the TPO. It is the say of the DR that the Hon'ble High Court of Delhi in the case of Sony Ericsson Mobile Communication 374 ITR 118 has held that when the AO/TPO accepts the comparables adopted by the assessee as a bundled transaction then any item of expenditure should not be taken out. It is the say of the DR that since in the case in hand the TPO has not accepted the aggregate approach then it is correct to treat the business service charges as a separate transaction for benchmarking separately. The DR further contended that it is incumbent upon the assessee to demonstrate the rendition of services by supporting evidences.

21. We have given a thoughtful consideration to the orders of the authorities below. At the very outset, we do not accept the main contention of the TPO that the assessee has not derived any benefit from the impugned transaction. For this proposition, we draw support from

the decision of the Hon'ble Delhi High Court in the case of EKL Appliances 345 ITR 241, wherein the Hon'ble High Court has held that "the only condition is that the expenditure should have been incurred wholly and exclusively for the purpose of business and nothing more". The Hon'ble High Court further observed that "so long as the expenditure or payment has been demonstrated to have been incurred or laid out for the purposes of business, it is no concern of the TPO to disallow the same on any extraneous reasoning. As provided in the OECD Guidelines, he is expected to examine the International transaction as he actually finds the same and then make suitable adjustment but a wholesome disallowance of the expenditure, particularly on the grounds which have been given by the TPO is not contemplated or authorized".

22. Respectfully following the decision of the Hon'ble Delhi High Court (supra), we dismiss the contentions of the TPO that the assessee has failed to demonstrate any benefit derived from the business service charges transaction.

23. As mentioned elsewhere the only thing which is needed to be proved is the rendition of the services. As mentioned elsewhere the assessee has furnished documents running upto 2188 pages to demonstrate that it has actually received the services from its AE which are supported by documentary evidences. In our considered opinion,

these documents need to be verified by the TPO. We, accordingly, set aside the issue to the files of the TPO. The assessee is directed to furnish all the supporting evidences and the TPO is directed to examine the same and decide the issue afresh *dehors* benefit test after giving a reasonable opportunity of being heard to the assessee. Ground no. 1 with its sub ground is allowed for statistical purpose.

24. Ground no. 2 relates to the addition on account of depreciation on UPS.

25. During the course of scrutiny assessment proceedings, the AO noticed that the assessee has claimed depreciation @ 60% on computer peripherals which do not come under the definition of computers. The assessee was asked to justify its claim of depreciation @ 60% on UPS. The assessee filed a detailed reply in support of its claim but the same was rejected by the AO who was of the opinion that UPS is only an alternative power supply and a computer system can function without UPS and UPS can be used to ensure uninterrupted power supply to other electronic equipment. Accordingly, depreciation @ 15% was allowed and addition of Rs. 4,23,000/- was made.

26. Objections were raised before the DRP but without any success. Before us, the Counsel for the assessee reiterated what has been stated before the lower authorities. The DR supported the findings of the TPO.

27. We have carefully considered the orders of the authorities below. In our considered opinion, in a host of judicial decisions it has been held that UPS is also one of the computer peripherals eligible for depreciation @ 60%. To name a few judicial decisions Pentair Water India Pvt. Limited vs. Addl. CIT (2014) 47 taxmann.com 132 (Panji), Macawber Engineering System (I) (P) Limited vs. ACIT (2013) 33 taxmann.com 587 (Mum.) and Goa Tourism Development Limited 102 taxmann.com 437 (Bom.). Incidentally, it will not be out of place to mention here that in AY 2008-09 the DRP allowed the claim of depreciation @ 60% by relying upon the decision of the Hon'ble Delhi High Court in the case of City Corp. Maruti Finance Limited in ITA No. 1712 & 1714/2010 and the Revenue has accepted this finding of the DRP.

28. Considering the judicial decisions discussed hereinabove, we direct the AO to allow depreciation @ 60%. Ground no. 2 is accordingly allowed.

29. Ground no. 3 relates to the claim of bad debts written off amounting to Rs. 64,27,276/-.

30. During the course of the scrutiny assessment proceedings, vide submission dated 07.12.2010 the assessee claimed write off of bad debts amounting to Rs. 64,27,276/-. This claim was denied by the AO who was

of the firm belief that the claim should have been made by a revised return of income. Applying the ratio laid down by the Hon'ble Supreme Court in the case of Goetz India Pvt. Limited 284 ITR 323. The AO dismissed the claim.

31. The matter was reiterated before the DRP but without any success.

32. Before us, the Counsel for the assessee reiterated the claim of bad debts stating that it has actually been written off and should be allowed. Per contra, the DR strongly supported the findings of the AO.

33. We have carefully considered the orders of the authorities below. It is true that the claim of write off of bad debts was made during the assessment proceedings without filing a revised return of income. It is equally true that the ratio laid down by the Hon'ble Supreme Court in the case of Goetz India Pvt. Limited do not put any fetter on the appellate authority to entertain a claim. We, accordingly, restore the issue to the files of the AO. The assessee is directed to demonstrate its claim of write off of bad debts in the light of the provisions of Sec. 36(2) of the Act and the AO is directed to examine the claim and decide the issue afresh as per the provisions of law after giving a reasonable opportunity of being heard to the assessee. Ground no. 3 is treated as allowed for statistical purpose.

34. In the result, ITA No. 5584/Del/2011 is allowed in part for statistical purposes.

ITA No. 6465/Del/2012 AY 2008-09: -

35. Ground no. 1 relates to the transfer pricing addition amounting to Rs. 33,02,23,195/- in respect of business service charges.

36. This issue has been discussed at length by us in ITA No. 5584/Del/2011 (supra).

37. The only distinguishing factor which we have found during this assessment year is that the TPO himself has adopted an aggregated approach for benchmarking this transaction under TNMM, whereas in AY 2007-08 as discussed elsewhere the TPO has adopted a segregated approach by taking CUP at 'nil'.

38. Without going into the merits of the transfer pricing assessment, we are of the considered view that once we have taken a view and explained in detail while deciding this issue in ITA No. 5584/Del/2011 (supra), we direct the TPO to adopt the same approach for this year also in the same line after verifying the evidences to be verified as mentioned in AY 2007-08. With similar directions as given in AY 2007-08 ground no. 1 is treated as allowed for statistical purposes.

39. Ground no. 2 relates to the addition of Rs. 9,263/- made u/s 14A read with Rule 8D.

40. For the smallness of the amount the Counsel did not press this ground and the same is dismissed as not pressed.

41. In the result, the appeal is partly allowed for statistical purposes.

ITA No. 1648/Del/2014 AY 2009-10:

42. Ground no. 1 to 4 relate to the transfer pricing additions on account of business service charges payment amounting to Rs. 22,87,53,985/-.

43. We have discussed and decided this issue in detail in AY 2007-08 in ITA No. 5584/Del/2011 (supra). The TPO is directed to decide this issue in line with our directions given in AY 2007-08 after giving a reasonable and fair opportunity of being heard to the assessee. Ground nos. 1 to 4 are treated as allowed for statistical purposes.

44. Ground no. 5 relates to the disallowance of Rs. 18,618/- made u/s 14A read with Rule 8D.

45. For the smallness of the amount the Counsel did not press this ground and the same is dismissed as not pressed.

46. The other grounds relate to non grant of TDS credit, levy of interest u/s 234D etc.

47. The AO is directed to grant TDS credit as per the evidence furnished by the assessee and charge interest as per the provisions of law.

48. In the result, the appeal is partly allowed.

The order pronounced in the open court on 22.11.2019

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 22nd November, 2019

**Kavita Arora, Sr. PS*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi

