

IN THE INCOME-TAX APPELLATE TRIBUNAL “K” BENCH MUMBAI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER

IT(TP)A. No. 2379/Mum/2017 (Assessment Year 2012-13)

M/s DNV GL SE-India Branch, 6 Th Floor, Equinox Business Park, Tower III, LBS Marg, Kurla Complex, Kurla (West), Mumbai-400070 PAN: AAACG7903R	Vs.	DCIT (IT)-2(1)(2), Mumbai.
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Appellant

Respondent

Appellant by : Shri M. Subramanian (AR)
Respondent by : Shri Rajesh Kumar Mishra
(Addl. CIT)

Date of Hearing : 11.11.2018

Date of Pronouncement : 11.11.2019

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT
PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by assessee under section 253 of the Income-tax Act ('the Act') is directed against the assessment order dated 27.01.2017 under section 143(3) r.w.s. 144C(13) passed in pursuance of direction of Dispute Resolution Panel (DRP) dated 08.12.2016 under section 144C(5) for Assessment Year 2012-13.
2. Brief facts of the case are that the assessee-company is a tax resident of Germany and engaged in the business of inspection and certification services in Marine Industries, filed its return of income on 30.11.2011 declaring total income of Rs. 1,27,75,313/-. The return of income was selected for scrutiny. In the return of income the assessee reported international transaction with

its associated enterprises (AE). The assessee selected comparable uncontrolled price (CUP) as most appropriate method to conclude the transaction at arm's length. The assessing officer made reference under section 92CA(1) to transfer pricing officer (TPO) for computation of Arms Length Price (ALP). The learned TPO after granting opportunity to the assessee suggested upward of adjustment of Rs. 2,06,71,083/-. Consequent upon receipt of order of TPO, the assessing officer passed Draft Assessment Order. The Draft Assessment Order was served upon the assessee. The assessee filed objection before the DRP. Before DRP, the assessee made submission that issue is covered by the decision of Tribunal in assessee's case for Assessment Year 2007-08, however, the Id. CIT(A) rejected the submission of assessee by taking view that the decision of Tribunal is not accepted by department and appeal has been filed before Hon'ble Bombay High Court. Accordingly, the DRP rejected the objection vide its direction dated 18.12.2016. However, the Assessing Officer/TPO was directed to make only one addition of Rs. 20671083. On receipt of order of DRP dated 18.12.2016, the Assessing Officer passed the final assessment order dated 27.01.2017 and made addition of Rs. 20671083/-. Thus, aggrieved by the additions made in pursuance of order of DRP, the assessee has filed the present appeal before Tribunal.

3. We have heard the submission of learned authorized representative (AR) of the assessee and the learned departmental representative (DR) for the revenue and perused the material available on record. At the outset of hearing the learned AR of the assessee submits that the grounds of appeal are covered in favour of assessee by the decision of Tribunal in assessee's own case for assessment year 2007-08, 2010-11 & 2011-12, wherein it was held revenue earned by the head office should not be subject to tax in India. It was submitted that there is no change in the facts for the year under consideration. The learned AR for the assessee also placed on record the copy of decision of Tribunal for Assessment Year 2007-08, 2010-11 & 2011-12 in ITA No. 8975/Mum/2010, 3915/Mum/2018 & 3139/Mum/2018 respectively.
4. On the other hand, the ld. DR for the revenue supported the order of authorities below.
5. We have noted that in appeal for Assessment Year 2010-11 in ITA No. 3915/Mum/2018 dated 25.10.2019, the co-ordinate bench of Tribunal by following the decision of Tribunal in Assessment Year 2007-08 & 2011-12 passed the following order:

“7. Having considered the submissions of the parties, we find that while deciding identical issue relating to attribution of income / profit earned by the Head Office to the Indian Branches in the assessment year 2007-08, the Tribunal in ITA no.8975/Mum./2010, dated 5th June cannot be taxed in India unless they are attributable to the Indian Branches. After verifying the facts on record, the

Tribunal recorded a factual finding that the income / revenue of the Head Office is not attributable to the Indian Branches, hence, as per Article-7 of the India-Germany Tax Treaty, it is not taxable in India. The same view was reiterated by the Tribunal while deciding Revenue's appeal in assessment year 2011-12, vide ITA No.3139/Mum/2018, dated 29th May 2019. Further, in the aforesaid order, the Tribunal had also dealt with the identical issue of transfer pricing adjustment by upholding the decision of the learned Commissioner (Appeals) in deleting the addition. On a careful examination of the facts involved in the impugned assessment year as well as assessment years 2007-08 and 2011-12, wherein, identical issues were decided earlier by the Tribunal, we find no difference. Therefore, respectfully following the decisions of the Co-ordinate Bench in assessee's own case, as referred to above, we uphold the decision of learned Commissioner (Appeals) on the disputed issue. Grounds raised are dismissed.”

6. Considering the consistent decision of the coordinate bench of tribunal, on identical issues, when no material difference in facts are brought to our notice, therefore, we do not find any merit in making addition/adjustment on account of attribution of head officer share in invoices raised by head office and head office share in invoices raised by Indian branch. Thus the grounds of appeal raised by assessee are allowed in favour of assessee being covered in favour of assessee by the order of Tribunal in earlier years as stated above.
7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 11/11/2019.

Sd/-

SHAMIM YAHYA
ACCOUNTANT MEMBER

Mumbai, Date: 11.11.2019
SK

Sd/-

PAWAN SINGH
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "K" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

**Dy./Asst. Registrar
ITAT, Mumbai**