

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I-1' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1697/Del./2017
(Assessment Year : 2009-10)**

Destination of the Worth (Subcontinent) Pvt. Ltd.,
207, Chiranji Tower, 43, Nehru Place,
New Delhi – 110 019. vs. DCIT, Circle 11 (1),
New Delhi.

(PAN : AACCD1178P)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Sweta Gupta, CA

REVENUE BY : Shri B. Ramanjaneyulu, Senior DR

Date of Hearing : 08.01.2020

Date of Order : 29.01.2020

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. Destination of the Worth (Subcontinent) Pvt. Ltd. (hereinafter referred to as 'the taxpayer') by filing the present appeal sought to set aside the impugned order dated 28.09.2016 passed by Commissioner of Income-tax (Appeals) – 44, New Delhi qua the Assessment Year 2009-10 on the grounds inter alia that:-

“1. In law and on facts and circumstances of the case, Ld Commissioner of Income Tax (A) (Ld. CIT (A)) has erred in making an addition of Rs.1,66,27,826/- to the total income of the appellant on account of adjustment in the Arm's Length Price (ALP) of the international transactions.

2. *In law and on facts and circumstances of the case, Ld. CIT(A) erred in disregarding Resale Price Method (RPM) and Cost Plus Method (CPM) as the most appropriate method and arbitrarily applying Transactional Net Margin Method (TNMM) as the most appropriate method for determining arm's length price (ALP) of international transactions of outbound travel related services and inbound travel related services pertaining to the following reasons:*

A. *Ld. CIT(A) failed to appreciate that with respect to the international transactions of outbound travel services, the appellant is only acting as an intermediary/ reseller and is not adding any Significant value to the services procured from Associated enterprises (AEs) accordingly transactions should be benchmarked applying RPM as the most appropriate method.*

B. *In the case of Inbound travel services, direct and indirect cost of services is identifiable both with respect to the services provided to AEs and to Non AEs, accordingly, Ld. CIT (A) ought to have accepted CPM for determining the arm's length price of the Inbound travel services provided to AEs.*

C. *Ld. CIT (A) failed to present any cogent reasons for applying TNMM and disregarding RPM and CPM for determining the arm's length price of the International transaction.*

D. *In the subsequent years also similar methodology has been followed by the Appellant (i.e. RPM for outbound travel services and CPM for inbound travel services) and has been accepted by Ld. Transfer Pricing Officer (Ld. TPO), accordingly the addition made by the Ld. CIT (A) is against the 'Rule of consistency'.*

3. *Without prejudice to the above, in law and on facts and circumstances of the case, Ld. CIT (A) erred in resorting to external comparables for the purpose of applying TNMM after itself appreciating the judgment of Hon'ble Tribunal for the AY 2006-07 and AY 2007-08 in appellant's own case giving preference to internal comparable over external comparables. Ld CIT (A) ought to have given preference to internal comparables after itself acknowledging the fact that in the case of Appellant Internal comparables are available.*

4. *Without prejudice to the above, in law and on facts and circumstances of the case, Ld. CIT (A) erred in affording reasonable opportunity to the Appellant for furnishing segmental profitability for outbound and inbound services at the operating profitability level for determining ALP of Inbound and outbound*

travel related services and passed the order merely on the presumption that segment profitability could not be determined at the operating profit level.

5. *Without prejudice to the above, in law and on facts and circumstances of the case, Ld. CIT (A) erred in considering Club 7 Holiday Ltd. and Indo Asia Leisure Services Ltd. as comparable to the Appellant which are operating in different geography and are also catering to different market. Thus, not fulfilling the comparability criteria laid down as per Rule 10B(f)(2).*

6. *Without prejudice to the above, in law and on facts and circumstances, Ld. CIT (A) erred in not allowing variation to the extent of (+/-) 5%, while determining the arm's length price of the 'International transaction' as per Section 92C(2).*

7. *In law and on facts and circumstances of the case the appellant in the interest of justice, may be allowed to adduce additional evidence as may be necessary in support of the grounds raised hereinabove after following due procedures laid down in the Income Tax (Appellate Tribunals) Rules, 1963.*

8. *In law and on facts and circumstances of the case, the appellant may be allowed to add, supplement, revise, amend or withdraw any of the grounds raised herein above at or before the time of hearing."*

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : M/s. Destination of the Worth (Subcontinent) Pvt. Ltd., the taxpayer is a wholly owned subsidiary of Destination of the World Holdings establishment, Liechtenstein. The taxpayer is into rendering inbound, outbound and domestic transfer services to India, Nepal and Bangladesh. Inbound services comprise of car rentals, airport transfers, site scene tours, travel insurance and customize packages. Outbound services comprise of meetings, conventions and exhibitions and travel to various destinations of the world. During the year under assessment, the taxpayer entered into

international transactions as reported in Form No.3CEB with its Associated Enterprises (AE) as under :-

<i>S. No.</i>	<i>Description of transaction</i>	<i>Method</i>	<i>Value (in Rs.)</i>
<i>1</i>	<i>Outbound Travel Related Services</i>	<i>RPM</i>	<i>23,42,55,679</i>
<i>2</i>	<i>Inbound Travel Related Services</i>	<i>CPM</i>	<i>2,91,53,914</i>
<i>3</i>	<i>Charged Back of Expenses by Assessee</i>	<i>-</i>	<i>75,64,684</i>
<i>4</i>	<i>Charged Back of Expenses to assessee (excluding transactions of receipt of management services)</i>	<i>-</i>	<i>14,89,349</i>
<i>5</i>	<i>Payment of management fees</i>	<i>-</i>	<i>27,74,63,626</i>

3. The taxpayer in order to benchmark its international transactions for outbound travel related services applied internal Resale Price Method (RPM) with Gross Profit/Sales (GP/Sales) in AE segment at 9.66% and GP/Sales in non-AE segment at 10.29% and found its transactions at arm's length. The taxpayer in order to benchmark its international transactions qua inbound travel related services applied internal cost plus method with GP/Sales in AE segment at 14.33% and GP/Sales in non-AE sales segment at 14.66% and again found its transactions at arm's length.

4. The Transfer Pricing Officer (TPO) however rejected the taxpayer's approach and applied external Transactional Net Margin Method (TNMM) selected 2 comparables viz. Club 7 Holiday Ltd. and Indo Asia Leisure Services Ltd. and ultimately arrived at average gross profit margin with OP/Sales of these 2 comparables

at 3.93% as against net profit margin of the taxpayer at (-)2.48% and consequently made upward adjustment to the tune of Rs.1,66,27,826/- on account of ALP of international transactions of inbound and outbound of the services.

5. Assessee carried the matter by way of appeal before the Id. CIT (A) who has dismissed the appeal. Feeling aggrieved, the taxpayer has come up before the Tribunal by way of filing the present appeal.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

7. At the very outset, Id. AR for the taxpayer contended that the issue as to applying the method of benchmarking the international transactions is covered against the taxpayer by the order passed by the coordinate Bench of the Tribunal in *taxpayer's own case for AY 2007-08 passed in ITA No.1635/Del/2013 order dated 31.07.2014* whereby internal TNMM has been upheld to benchmark the international transactions and the Tribunal also upheld the segmental accounts which were prepared using sales as the basis for allocation of common expenses and similarly TNMM has been upheld by the Tribunal in *taxpayer's own case for AY*

2006-07 also decided in ITA No.5534/Del/2010 order dated 08.07.2011 but due to non-availability of segment, addition was made.

8. However, when we examine the order passed by the Id. CIT(A) particularly para 4.3, it has come on record that, *“during the appellate proceedings, the taxpayer has failed to provide working of the net profit margin for 2 segments i.e. outbound and inbound travel related services, however on combined basis i.e. AE as well as non-AE transactions taking together nor separately for AE and another party from which internal comparables can be examined on TNMM for inbound and outbound services”*. This factual position has not been disputed by the Id. AR for the taxpayer.

9. In the absence of working of net profit margin of internal comparables for inbound and outbound services, the issue as to benchmarking the international transactions cannot be decided.

10. Now, the taxpayer has come up with segmental account in tabulated form explained in page 2 & 3 of the synopsis which is required to be examined by the TPO to benchmark the international transactions. So, the TPO is directed to benchmark the international transactions by applying TNMM on the basis of internal comparables in view of the working supplied by the

taxpayer. So, the case is remanded back to the TPO to decide afresh after providing opportunity of being heard to the taxpayer by following the decisions rendered by the Tribunal in AYs 2007-08 & 2006-07 in taxpayer's own case. Consequently, the appeal of the taxpayer is allowed for statistical purposes.

Order pronounced in open court on this 29th day of January, 2020.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 29th day of January, 2020.
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-44, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**