

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE**

**BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.2180/Bang/2018
Assessment year : 2012-13

M/s Norwich Clinical Services Pvt. Ltd., No.147/F, Ground & First Floor, 8 th Main, 3 rd Block, Koramangala, Bengaluru-560 034.	Vs.	The Asst. Commissioner of Income-tax, Circle-2(3)(1), Bengaluru.
PAN – AADCN 1161B		
APPELLANT		RESPONDENT

Revenue by	:	Shri G.S Prashanth, C.A
Assessee by	:	Shri Priyadarshi Misra, JCIT (DR)

Date of hearing	:	03.03.2020
Date of Pronouncement	:	04.03.2020

ORDER

Per B.R Baskaran, Accountant Member :

The appeal filed by the assessee is directed against the order dated 26/4/2018 passed by 1d CIT(A)-5, Bengaluru and it relates to the asst. year 2012-13.

2. At the time of hearing the 1d AR first advanced his argument on ground No.6, which read as under:-

“6. a) The order of assessment is bad in law as the learned assessing officer exceeded the jurisdiction in not referring the matter to TPO for determination of

ALP and therefore the order passed needs to be quashed on the facts of the case.

b) The action of the learned assessing officer in determining ALP without reference to TPO is contrary to the CBDT Instruction No. 3 of 2003 and thus the assessment order has no legs to stand the test of law on the facts of the case.”

3. The ld counsel for the assessee submitted that the assessee company is engaged in the business of providing clinical research services. During the year under consideration it had entered into international transactions with its associated enterprises (AE) to the tune of Rs.6.15 crore. The assessee adopted CUP method as most appropriate method to being mark its international transactions in its transfer pricing study. The ld AR submitted that the AO himself has, however, adopted “cost plus method” without referring the matter to TPO and accordingly made transfer pricing adjustment of Rs.9.55 crore. The ld AR submitted that the action of the AO is in violation of CBDT Instruction No.3/2003 dated 20/5/2003, wherein the CBDT has stated that the reference to the transfer pricing officer u/s 92CA of the Act is compulsory wherever the aggregate value of international transaction exceeds Rs.5 crores of rupees.

4. The ld AR further submitted that an identical issue of violation of instruction of CBDT referred above was considered by Hon’ble Supreme Court in the case of PCIT Vs. SG Asia Holdings (India) Pvt. Ltd., (2019) 108 Taxmann.com 213 and the matter was

restored to the file of AO so that appropriate reference could be made to the TPO in terms of sec. 92CA(1) of the Act. Accordingly the ld AR submitted that the impugned asst. order be quashed and the matter may be restored to the file of the AO.

5. The ld DR also agreed to the prayer put forth by ld AR.

6. We have heard the parties and perused the record. It is an admitted fact that the aggregate value of international transactions entered by the assessee with its AE has exceeded the threshold limit of Rs.5.00 crores fixed by the CBDT in its instruction referred above. As per the said instructions, the AO is required to refer the matter of determination of ALP of international transactions to the Transfer Pricing officer, when the aggregate value of international transactions exceeded Rs.5.00 crores. Admittedly, the AO has not referred the matter to the TPO. As per the decision rendered by Hon'ble Supreme Court in the case of PCIT Vs. SG Asia Holdings (India) Pvt. Ltd.,(Supra), the matter requires to be restored to the file of AO for complying with the provisions of sec.92CA and instructions issued by CBDT. Accordingly, we deem it proper to restore impugned issue to the file of the AO so that appropriate reference would be made to the TPO and matters may be decided afresh. Accordingly we set aside the order passed by ld CIT(A) on this issue and restore the same to the file of AO for examining it afresh in accordance with law and in compliance of CBDT instruction referred above.

7. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 4th March, 2020.

Sd/-
(Beena Pillai)
Judicial Member
Bangalore,
Dated, 4th March, 2020.
/ vms /

Sd/-
(B.R Baskaran)
Accountant Member

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.