

**INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "I-2": NEW DELHI]**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 2397/Del/2017
(Assessment Year: 2009-10)

DCIT, Circle-4(1), Gurgaon	Vs.	Teradata India Pvt. Ltd, 304, 3 rd Floor, Tower-4A, DLF Corporate Park, Phase- III, Gurgaon PAN : AACCT6715A
(Appellant)		(Respondent)

Revenue by :	Shri Raman Chopra, CIT DR
Assessee by:	Shri Ajit Korde, CA
Date of Hearing	26/02/2020
Date of pronouncement	20/05/2020

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the ld. DCIT, Circle 4 (1), Gurgaon, against the direction of the ld. Dispute Resolution Panel-II, Mumbai, dated 28.11.2013 for Assessment Year 2009-10.
2. The revenue has raised the following ground of appeal:-
 - “1) *That the Ld. DRP erred in law and facts in allowing relief of Rs. 20,71,98,651 on account of TP Adjustment made by the AO/TPO in respect of the Distribution Activity by accepting the contention of the assessee and without appreciating the detailed reasons given by the TPO in his order.*
 - 1.1 *That the Ld. DRP erred in law and facts in directing the AO/TPO to consider the subvention fee of Rs. 22 cr in the BPO segment.*
 - 1.2 *That the DRP erred in law and facts in directing the AO/TPO to compute ALP on the basis of Segmental Accounts without appreciating the fact that the segmental accounts have not been provided in the Audited Accounts.*

- 1.3 *That the Ld. DRP erred in law and facts in holding that NIL adjustment is called for the distribution segment and BPO segment (except for the Infrastructure Support Services).*
 - 2) *That the Ld. DRP erred in law and facts in allowing relief of Rs. 10,04,85,336/- on account of TP adjustment made by the AO/TPO in respect of the Infra Group Services by accepting the contention of the assessee and without appreciating the detailed reasons given by the TPO in his order.*
 - 2.1 *That the Ld. DRP erred in law and facts in allowing relief of Rs. 10,04,85,336/- on account of TP Adjustment made by the AO/TPO in respect of the Intra Group services without appreciating the fact that the assessee failed to submit any evidence of receipt of services and that the above services are duplication of services and thus the ALP is NIL as no independent party would have paid for these services.*
 - 2.2 *That the Ld. DRP erred in law and facts in allowing relief of Rs. 10,04,85,336/- on account of TP Adjustment made by the AO/TPO in respect of Intra Group Services by holding that the above TP Adjustment is double addition without appreciating the fact that each transaction is required to be benchmarked separately.*
 - 3) *That the directions of the DRP are perverse, erroneous and are not tenable on facts and in law.”*
3. The assessee is a company engaged in the business of providing data warehousing Solutions in the nature of sales support and service of electronic data warehouse, hard ware and software. The assessee filed its return of income on 30.03.2009 declaring income of Rs.6,35,28,820/-.
 4. Assessee is a fully owned subsidiary of a corporation. The primary role of the assessee is distribution of enterprise data warehousing hardware and associated software in the Indian market. The learned transfer-pricing officer noted that the profits and loss account reveals that only 24% of the revenue is from distribution and the balance revenue is from rendering software services. Despite this the assessee has not maintain any segmental account in its audit report and the segmental profits are not reported in the financial statements. On questioned by the learned transfer pricing Officer the assessee reported his profit and loss into main heads namely marketing and distribution and total services. The total services are reported to comprise of providing contract research and development facility for US Company, hosting global consulting Centre wherein professional services are provided to other known Indian affiliates and provision of

infrastructure support services. The assessee entered into following international transactions and were benchmarked as under:-

serial number	nature of transaction	amount of international transaction	method used by the assessee	business segment	Price margin	Comparables	
						Type of companies	Arithmetic mean and price range
1	Purchase of hardware and software for local distribution	185859094	Transactional net margin method	Distribution of enterprise data warehousing hardware	3%	Software	3.17%
2	Provision of technical professional and research and development services received	1302515715	Transactional net margin method	Software development and business process outsourcing	13%	technical support services, software product allotment and infrastructure support services	9.51%
3	Availing of services	(160485336)	Transactional net margin method	Business process outsourcing			
4	Import of fixed assets	(4538608)	Transactional net margin method				
5	Reimbursement of expenses (received)	48361874	No method				
6	Reimbursement of expenses (paid)	41263895	At cost				

5. Based on the above analysis assessee submitted that its transactions are at arm's length. However, the assessee did not have any segmental account created demonstrating earning of net profit margin as stated above.
6. Therefore, the Id. TPO determined the international transaction of various services was benchmarked by the assessee by adopting the net transaction method aggregating all the transactions of the assessee. There is no dispute between the methods of determination of ALP. However while doing so the learned transfer pricing officer held that normally in a multi segment company comparison is made between segmented profit and industry margin. Since in the case of the assessee it is not possible, weighted average

margin analysis was done. Margin of software industry, business process outsourcing industry and computer peripherals distribution industry is separately computed. Then the margin is apportioned in the ratio of turnover. Such an analysis was done by the learned transfer pricing officer as under:-

particulars	software segment	BPO segment	Distribution segment	
Segmental Turnover	40	109.1	17.6	
Total turnover	166.7	166.7	166.7	
Weight	0.23995	0.65447	0.10558	
Comparable margin	13.30 percent	28.45%	4.17%	
Margin*weight	3.19%	18.62%	0.44%	22.25%

Based on the above analysis he determined the arm's length price of the sales of enterprise data warehousing services and income from services by estimating the profit at ₹ 3 37966670/- against the actual profit on by the assessee of ₹ 1 24268019. It resulted into a variation of rupees to 13698651. This adjustment was proposed.

7. With respect to the availment of the services of Rs.10,04,85,336/-, he determined the ALP of the same at 'NIL'. Therefore, total adjustment of Rs.31,41,83,987/- was proposed. Same was included in the draft assessment order dated 27.02.2013. Assessee preferred an objection before the Id. Dispute Resolution Panel. The Id. DRP on the issue of weighted average margin held that the subvention fee should be considered in the distribution segment. Further with respect to the intra group services it directed the AO to delete the adjustment of intra group services as it amounts to double addition. Consequently, the assessment order under section 143(3) of the Act was passed on 30th January, 2014.
8. The learned assessing officer not satisfied with the direction of the learned dispute resolution panel preferred an appeal against the direction of the learned DRP.

9. The learned departmental representative vehemently supported the order of the learned transfer pricing Officer. He submitted that assessee has not submitted the segmental data in its financial statements and therefore the learned transfer-pricing officer has considered the segmental revenue and segment of profit based on weighted average mean. The subvention income transfer-pricing officer has already taken as operating income but in absence of any details before the transfer-pricing officer same was considered in BPO segment. With respect to the availment of services he submitted that same are duplicative in nature and therefore the learned that TPO has computed the arms length price of the same at rupees nil.
10. The learned that authorised representative supported his submissions made before the learned dispute resolution panel. He therefore submitted that there is no infirmity in the direction of the learned DRP on both these grounds.
11. We have heard the rival contentions and perused the orders of the lower authorities.
12. The first ground of appeal is with respect to relief of Rs.20,71,98,651/- granted by the DRP. The facts of the issue says that as assessee operate as a limited risk distributor and is assured 3% operating profit margin for its distribution activity. Any shortfall in the margin is made good by its AE by payment of subvention fee. During the year the assessee received subvention fee of Rs.21,75,54,831/-. While working out the margin of the assessee the learned transfer-pricing officer took it as operating income correctly. However, while working the segment wise margin of weighted average basis this subvention income was considered in BPO segment instead of distribution segment. The learned DRP has directed the AO / TPO to consider the amount of subvention fee for distribution segment. Such direction does not have any infirmity. Therefore, ground No. 1 of appeal is dismissed.
13. Ground No. 2 relates to the determination of ALP of intra group charges as 'NIL'. The facts show that the assessee has entered into an integrated service agreement with its U.S. parent. This agreement is a shared service

cost arrangement on centralized basis. The assessee is remunerated on cost plus percentage basis. The ld. TPO held that it is a duplicative services and thus the ALP is determined at 'NIL'. The DRP directed AO to delete as it amounts to double addition. In fact, the reasons for holding so are that assessee is operating on a cost-plus arrangement with AE for intra group services. Therefore, whatever payment is made by the assessee to its associated enterprises forms part of its cost base. On that, cost along with mark up is recovered from the AE. For assessment year 2008-09 on similar circumstances, the DRP accepted the same holding that it leads to double adjustment. For the same reason for this year the DRP has held that it leads to a double addition. We do not find any infirmity in the direction of the Dispute Resolution Panel. Accordingly ground No. 2 is dismissed.

14. In the result, the appeal of the Assessing Officer is dismissed.

Order pronounced in the open court on **20/05/2020**.

-Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 20/05/2020

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1. Appellant;
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi