

**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.422/Del./2019
(Assessment Year : 2010-11)**

**ITA No.423/Del./2019
(Assessment Year : 2010-11)**

FIS Global Business Solutions India vs. DCIT, Circle 11 (1),
Private Limited, New Delhi.
S – 405 (LGF), Greater Kailash Part II,
New Delhi – 110 048.

(PAN : AAACH2815H)

**ITA No.3087/Del./2019
(Assessment Year : 2010-11)**

**ITA No.579/Del./2019
(Assessment Year : 2010-11)**

DCIT, Circle 11 (1), vs. FIS Global Business Solutions India
New Delhi. Private Limited,
S – 405 (LGF), Greater Kailash Part II,
New Delhi – 110 048.

(PAN : AAACH2815H)

(APPELLANT)

(RESPONDENT)

**ASSESSEE BY : Shri Vishal Kalra, Advocate
REVENUE BY : Ms. Shashi Kajle, Senior DR**

Date of Hearing : 04.03.2020
Date of Order : 18.06.2020

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Aforesaid four cross appeals filed by FIS Global Business Solutions India Private Limited (hereinafter referred to as 'the taxpayer') and DCIT, Circle 11 (1), New Delhi (hereinafter referred to as 'the Revenue') challenging the composite impugned orders dated 12.10.2018 passed by the Commissioner of Income-tax (Appeals)-43, New Delhi dismissing of the appeals filed against the orders passed by the Assessing Officer (AO) under section 143 (3) read with section 144C and order under section 154 read with section 143 (3) of the Income-tax Act, 1961 (for short 'the Act') for the same year i.e. Assessment Year 2010-11 are being disposed off by this consolidated order to avoid the repetition of discussion.

2. Appellant, FIS Global Business Solutions India Private Limited, the taxpayer, by filing the present appeals sought to set aside the impugned orders both dated 12.10.2018 passed by the Id. Commissioner of Income-tax (Appeals)-43, New Delhi challenging the orders passed by the Id. TPO/AO qua the assessment year 2010-11 on the grounds inter alia that :-

“ITA NO.422/DEL/2019

1. *That on the facts and circumstances of the case and in law, the Learned Assessing Officer ("Ld. AO")/ Commissioner of Income Tax(Appeals) ("Ld.CIT(A"))! Transfer Pricing Officer ("Ld.TPO") has erred in assessing the total income of the Appellant under section 143(3) read with section 144C of the Act, for the relevant assessment year at INR 51,94,13,025 as against the returned income of INR 33,64,00,315.*

2. *That on the facts and circumstances of the case and in law, the AO/ CIT(A) have erred in not appreciating that the reference made by the Ld. AO to the Ld. TPO for determination of arm's length price was void ab-initio and bad in law as the Ld. AO failed to provide copy of approval granted by the Commissioner of Income-tax and affording any opportunity of being heard to the Appellant, in violation of the principles of natural justice*

3. *The Ld. TPO/ AO/ Ld. CIT(A) erred on facts and circumstances of the case in determining the arm's length adjustment to the Appellant's international transactions from Associated Enterprises ("AEs") and thereby resulting in the enhancement of returned income of the Appellant.*

4. *The Ld. AO/ TPO/ CIT(A) erred on facts and in law in the assessment of the arm's length price of the Appellant's international transactions with associated enterprises for its IT enabled Services ("ITeS") segment in the following manner:*

4.1. *The Ld. AO/Ld. TPO/Ld. CIT(A) erred in rejecting the quantitative filters selected by the Appellant in the TP documentation/ fresh search by applying few additional/ modified quantitative filters which lacked valid and cogent reasoning*

4.2. *That on facts and circumstances of the case and in law, the Ld. AO/ CIT(A)/ TPO have erred in rejecting the transfer pricing study of the Appellant and using arbitrary filters*

4.3. *That on the facts and circumstances of the case and in law, the Ld. AO/ CIT(A)/ TPO have erred, in arbitrarily rejecting certain functionally comparable companies identified by the Appellant on a subjective basis, inter alia, using unreasonable comparability criteria.*

4.4. *That on the facts and circumstances of the case and in law, the Ld. AO/ TPO/ CIT(A) have erred in arbitrarily selecting comparable companies based on incorrect appreciation of functional, asset and risk profile, and arbitrary filters.*

4.5. *The Ld. AO/ TPO/ CIT(A) erred in denying the economic adjustment for the difference in working capital of the Appellant vis-a-vis comparable companies.*

4.6. *The Ld. AOI TPO/ CIT(A) erred in denying the economic adjustment for the difference in risk profile of the Appellant vis-a-vis comparable companies.*

4.7. *The Ld. AO/ TPO/ CIT(A) wrongly computed the margins of the comparable companies.*

4.8. *That the Ld. AO/ TPO/ CIT(A) has erred in making a transfer pricing adjustment especially as the Hon'ble Commissioner of Income Tax (Appeals) has accepted the arm's length nature of the international transactions in FY 2004-05, FY 2006-07, FY 2007-08 and FY 2008-09.*

4.9 *The Ld. AO/ TPO/ CIT(A) considered the current year (i.e. financial year 2009-10) data for comparability despite the fact that at the time of comparison done by the Appellant, data for financial year 2009-10 was not available within the public domain.*

5. *That the Ld. AO/ TPO/ CIT(A) erred by not giving due cognizance to the fact that the Appellant has entered into Advance Pricing Agreement with CBDT for identical international transactions and has erred in not applying the terms of Advance Pricing Agreement to international transactions with AEs despite the fact that there is no change in the Functions, Assets and Risks ("FAR") of the Appellant in the relevant year compared to the years covered under APA.*

6. *On the facts and circumstances of the case, the Ld. AO has erred in levying interest under section 234B of the Act.*

7. *On the facts and circumstances of the case, the Ld. AO has erred both in facts and in law in initiating penalty proceedings under section 271(1)(c) of the Act."*

"ITA NO.423/DEL/2019

1. *That on the facts and circumstances of the case and in law, the Assessing Officer ("AO") Commissioner of Income Tax(Appeals) ("Ld.CIT(A)"/ Transfer Pricing Officer ("Ld.TPO") has erred in assessing the total income of the Appellant under section 154 read with section 143(3) of the Act, for the relevant assessment year at INR 65,26,55,040 as against the returned income of INR 33,64,00,315.*

2. *The Ld. TPO/ AO/ CIT(A) erred on facts and circumstances of the case in determining the arm's length adjustment to the Appellant's international transactions from Associated Enterprises ("AEs") and thereby resulting in the enhancement of returned income of the Appellant.*

3. *The Ld. AO/ TPO/ CIT(A) erred on facts and in law in the assessment of the arm's length price of the Appellant's international transactions with associated enterprises for its Software Development Services ("SDS") segment in the following manner:*

3.1. *The Ld. AO/Ld. TPO/Ld. CIT(A) erred in rejecting the quantitative filters selected by the Appellant in the TP documentation/ fresh search by applying few additional/ modified quantitative filters which lacked valid and cogent reasoning*

3.2. *That on facts and circumstances of the case and in law, the Ld. AO/ CIT(A)/ TPO have erred in rejecting the transfer pricing study of the Appellant and using arbitrary filters*

3.3. *That on the facts and circumstances of the case and in law, the Ld. AO/ CIT(A)/ TPO have erred, in arbitrarily rejecting certain functionally comparable companies identified by the Appellant on a subjective basis, inter alia, using unreasonable comparability criteria.*

3.4. *That on the facts and circumstances of the case and in law, the Ld. AO/ TPO/ CIT(A) have erred in arbitrarily selecting comparable companies based on incorrect appreciation of functional, asset and risk profile, and arbitrary filters .*

3.5 *The Ld. AO/ TPO/CIT(A) erred in denying the economic adjustment for the difference in working capital of the Appellant vis-a-vis comparable companies.*

3.6 *The Ld. AO/ TPO/ CIT(A) erred in denying the economic adjustment for the difference in risk profile of the Appellant vis-a-vis comparable companies.*

3.7 *The Ld. AO/ TPO/ CIT(A) wrongly computed the margins of the comparable companies.*

3.8 *That the Ld. AO/ TPO/ CIT(A) has erred in making a transfer pricing adjustment especially as the Hon'ble Commissioner of Income Tax (Appeals) has accepted the arm's length nature of the international transactions in FY 2004-05, FY 2006-07, FY 2007-08 and FY 2008-09.*

3.9 The Ld. AO/ TPO/ CIT(A) considered the current year (i.e. financial year 2009-10) data for comparability despite the fact that at the time of comparison done by the Appellant, data for financial year 2009-10 was not available within the public domain.

4. That the Ld. AO/ TPO/ CIT(A) erred by not giving due cognizance to the fact that the Appellant has entered into Advance Pricing Agreement with CBDT for identical international transactions and has erred in not applying the terms of Advance Pricing Agreement to international transactions with AEs despite the fact that there is no change in the Functions, Assets and Risks ("FAR") of the Appellant in the relevant year compared to the years covered under APA.

5. On the facts and circumstances of the case, the Ld. AO has erred in levying interest under section 234A of the Act, ignoring the fact that the return was filed within the statutory due date as extended by CBDT. Further, the Ld. CIT(A) erred in not giving any specific finding in relation to incorrect levy of interest under section 234A of the Act.

6. On the facts and circumstances of the case, the Ld. AO has erred in levying interest under section 234B and 234C of the Act.

7. On the facts and circumstances of the case, the Ld. AO has erred both in facts and in law in initiating penalty proceedings under section 271 (1)(c) of the Act.”

3. Appellant, DCIT, Circle 11 (1), New Delhi by filing the present appeals sought to set aside the impugned orders both dated 12.10.2018 passed by the Id. Commissioner of Income-tax (Appeals)-43, New Delhi challenging the orders passed by the Id. TPO/AO qua the assessment year 2010-11 on the grounds inter alia that :-

“ITA NO.3087/DEL/2019

“1. The Ld. Commissioner of Income-tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs.4,30,50,8768/- made by the AO on account of ALP adjustment of international transactions from Associated Enterprises.”

“ITA NO.579/DEL/2019

“1. The Ld. Commissioner of Income-tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs.4,30,50,8768/- made by the AO on account of ALP adjustment of international transactions from Associated Enterprises.”

4. At the very outset, the ld. DR for the Revenue submitted that there is a delay of 70 days in ITA No.3087/Del/2019 filed by the Revenue in filing the appeal before the Tribunal and sought to condone the delay. Keeping in view the reasonable cause given in the application, the delay of 70 days in filing the present appeal is hereby condoned.

5. Briefly stated the facts necessary for adjudication of the controversy at hand are : FIS Global Business Solutions India Private Limited (formerly eFunds International India Private Limited), the taxpayer was incorporated in July 1997 and operates as a software development centre for group companies and a dedicated provider of Business Process Outsourcing (BPO) services to its Associated Enterprises (AE). The taxpayer operates through the following business divisions :-

- (i) Software Development Centre (SDC), Chennai : The company has a software development centre located in Chennai which provides software product

development and related support services to its AEs;

and

- (ii) Shared Services Centres (SSC), Gurgaon : The SSC is engaged in the provision of financial shared services and data entry services (FSS). This centre acts as a dedicated finance and accounts business process outsourcing centre for the customers of its associated enterprises.

6. During the year under assessment, the taxpayer entered into international transaction with its AE as under :-

<i>S.No.</i>	<i>International Transaction</i>	<i>Amount (in Rs.)</i>
<i>1</i>	<i>Software Development Services</i>	<i>684,304,076</i>
<i>2</i>	<i>Business Process management and call centre services</i>	<i>1,579,457,268</i>
<i>3</i>	<i>Interest received (Loan with interest 6.25%)</i>	<i>41,392,674</i>
<i>4</i>	<i>Interest received (loan with interest 6.00%)</i>	<i>23,796,074</i>

7. The taxpayer in order to benchmark its international transactions qua “Software Development Services” (SDS) adopted Transactional Net Margin Method (TNMM) with Operating Profit/ Operating Cost (OP/OS) as Profit Level Indicator (PLI) as the Most Appropriate Method (MAM) chosen 11 comparables and computed average margin by using multiple year data at 13.94% as against its own margin of 15.64% and found its transactions at

arm's length. However, Id. TPO accepted the method of TNMM with OP/OC as Profit Level Indicator (PLI) adopted by the taxpayer after applying various filters enumerated in para 2.1 of the TP order and after calling objections of the taxpayer, finally selected 13 comparables with average of 27.55% and computed the margin of the taxpayer at 9.75% and consequently proposed adjustment at Rs.547,40,801/-.

8. In order to benchmark the international transactions qua ITES, the taxpayer again applied TNMM with OP/OC as the PLI as MAM chosen 10 comparables and computed margin at 13.94% as against taxpayer's own margin of 15.64% and found its transactions at arm's length. However, Id. TPO after applying various filters accepted the method of TNMM with OP/OC as PLI adopted by the taxpayer chosen 9 comparables with margin of 32.07% and computed the margin of the taxpayer at 18.57% and thereby proposed the adjustment at Rs.17,80,96,798/-.

9. Ld. TPO also proposed adjustment on account of interest to be received by the taxpayer on loan advanced to the AE @ 14.88% per annum at Rs.7,85,01,217/-.

10. The taxpayer carried the matter before the Id. CIT (A) by way of filing the appeal who has partly allowed the same by making exclusion of five comparables and thereby reduced the

adjustment from Rs.17,80,96,798/- to Rs.14,93,29,567/- in the SDC segment and reduced the adjustment from Rs.54,74,08,012/- to Rs.4,04,57,154/- by rejecting the two comparables in ITES segment and also deleted the addition of Rs.7,85,01,217/- and Rs.49,15,912/- on account of interest receivables and loans advanced to its AE and on account of foreign travel expenses respectively.

11. Consequently, TPO/AO after giving effect to the order passed by the Id. CIT (A) made the adjustment of Rs.14,93,29,567/- and Rs.4,04,57,154/- in ITES and SDC segment respectively.

12. However, AO after invoking the provisions contained u/s 154 read with section 143 (3) passed rectification order dated 04.02.2016 by rectifying the amount of ALP adjustment of Rs.5,47,40,801/- and Rs.7,85,01,217/- in SDC segment and interest receivables on loan advanced respectively.

13. Feeling aggrieved, the taxpayer as well as the Revenue have come up before the Tribunal by way of filing the present cross appeals.

14. 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.

(TAXPAYER'S APPEALS)

**GROUND NOS.1 TO 4 & 4.1 TO 4.9 OF
ITA NO.422/DEL/2019**

**GROUND NOS.1 TO 3 & 3.1 to 3.9 OF
ITA NO.422/DEL/2019**

AND

**GROUND NO.5 OF ITA NO.422/DEL/2019
GROUND NO.4 OF ITA NO.423/DEL/2019**

(REVENUE'S APPEALS)

**GROUND NO.1 OF ITA NO.579/DEL/2019
GROUND NO.1 OF ITA NO.3087/DEL/2019**

15. Ground Nos.1 to 4 & 4.1 to 4.9 and Grounds No.1 to 3 & 3.1 to 3.9 of ITA Nos.422/Del/2019 & 423/Del/2019 respectively raised by the taxpayer regarding transfer pricing adjustment made by the AO/TPO/CIT(A) have not been pressed during the course of arguments rather ld. AR for the taxpayer argued Ground No.5 & Ground No.4 of ITA Nos.422/Del/2019 & 423/Del/2019 respectively seeking relief on the basis of Advance Pricing Agreement (APA) entered into with Central Board of Direct Taxes (CBDT) on 29.08.2016 for consecutive 5 years from FY 2014-15 to FY 2018-19 (referred to as 'APA years') and consecutive 4

years from FY 2010-11 to FY 2013-14 (referred to as 'Rollback years').

16. Ld. AR for the taxpayer contended that AO/TPO/CIT(A) have not taken cognizance of the fact that the taxpayer has entered into Advance Pricing Agreement (APA) with CBDT for identical international transactions thus not applied the terms of the APA to international transactions with its AE despite the fact that there is no change in the FAR of the taxpayer in the relevant year vis-à-vis years covered under APA.

17. Undisputedly, the taxpayer has entered into APA dated August 29, 2016 with CBDT, available at pages 17 to 56 of the paper book volume 1. Terms of Agreement and covered transactions of APA read as under :-

“2. The term of the Agreement

The Agreement shall apply to consecutive five years commencing from Previous Year 2014-15 to Previous Year 2018-19(relevant to Assessment Years 2015-16 to 2019-20).

The Agreement shall also apply to consecutive four rollback years commencing from Previous Year 2010-11 to Previous Year 2013-14 (relevant to Assessment Years 2011-12 to 2014-15) {hereinafter referred to as "Rollback Years"}.

3. Covered Transaction

The international transactions of Provision of Software Development Services including debtors/receivables, Provision of IT-Enabled Services including debtors/receivables, Reimbursement of ESPP and ESOP/RSUs paid/payable and Reimbursement of expenses between the Applicant and its AEs, as described in Appendix I, shall be the covered transactions for

the Agreement and this Agreement shall apply to these international transactions.”

18. It is also agreed upon in APA the arm's length price as under:-

“6. Arm's Length Price

The Arm's length price (hereinafter referred to as "ALP") of the covered transactions shall be 16.60% for the Previous Year of the APA term.

The determination of ALP for Rollback Years is subject to the condition that the ALP would get modified to the extent that it does not result in reducing the total income or increasing the total loss, as the case may be, of the Applicant as already declared in the returns of income of the said years.”

19. Ld. AR for the taxpayer contended that APA are duly applicable to the international transactions entered into between the taxpayer and its AE during the year under assessment as there is no change in the Functions, Assets & Risks (FAR) of the taxpayer during the year under assessment vis-à-vis years covered under APA and relied upon the cases cited as *PCIT vs. Ameriprise India Pvt. Ltd. in ITA No.206/2016 rendered by Hon'ble Delhi High Court and cases cited as Spencer Stuart (India) Pvt. Ltd. vs. ACIT in ITA Nos.7117/Mum/2012, 1680/Mum/2014, 922/Mum/2015 & 1832/Mum/2016 and 3I India Pvt. Ltd. vs. DCIT in ITA No.581/Mum/2015 rendered by the coordinate Bench of the Tribunal.*

20. Undisputedly, arm's length margin (Operating Profit / Operative Cost) (OP/OC) agreed upon in the APA is 16.60% for both the segments viz. SDS segment and ITES segment whereas during the year under assessment consolidated margin (OP/OC) of the taxpayer is 19.26% (i.e. SDS segment 18.68% and ITES segment 18.57%). The taxpayer computed the consolidated margin (OP/OC) for the year under consideration as per APA at 19.26% (i.e. 21.20% for SDS segment and 18.39% for ITES segment), available at page 57 of the paper book, which is extracted as under:-

<i>Particulars</i>	<i>Software Development Service Segment (A)</i>	<i>ITES/ BPO Service Segment (B)</i>	<i>Non Operating Item (C)</i>	<i>Total (A+B+C)</i>	<i>Reco as per Audited Financials FY 2009-10</i>
<i>Income</i>					
<i>Revenue</i>	71,81,31,453	1,56,43,92,305		2,28,25,23,758	2,28,25,23,758
<i>Add : Non Operating Income</i>			2,75,61,058	2,75,61,058	9,71,13,873
<i>Interest Income on FD</i>			6,51,88,748	6,51,88,748	
<i>Interest Income on Loans</i>			14,56,140	14,56,140	
<i>Profit on Sale of Assets</i>			29,07,927	29,07,927	
<i>Interest on Tax refund</i>					
<i>Total Income</i>	71,81,31,453	1,56,43,92,305		2,37,96,37,631	2,37,96,37,631
<i>Expenditure</i>					
<i>Direct Cost</i>	33,42,62,321	85,33,87,455		1,18,76,49,776	
<i>Indirect Cost</i>	20,90,58,085	30,04,66,214		50,95,24,299	
<i>Corporate Allocation</i>	2,64,33,176	9,02,19,123		11,66,52,299	
<i>Depreciation</i>	2,26,91,805	7,71,15,736		9,98,07,541	
<i>Bank</i>	90,463	2,37,096		3,27,559	

<i>Charges</i>					
<i>Add : Non Operating Expenses</i>					
<i>Interest on Secured Loan</i>			9,97,637	9,97,637	1,94,02,54,250
<i>Foreign exchange operating gain / loss</i>			1,40,92,023	1,40,92,023	
<i>ESOP Cost</i>			1,30,71,913	1,30,71,913	
<i>Corporate Allocation – Non Operating Cost (Revenue Diff)</i>			(18,68,795)	(18,68,795)	
<i>Total Expenditure</i>	59,25,35,850	1,32,14,25,623	2,62,92,778	1,94,02,54,250	
<i>Operating Profit</i>	12,55,95,603	24,29,66,682		36,85,62,286	
<i>Operating Profit/ Operating Cost</i>	21.20%	18.39%		19.26%	
<i>PBT as per audited financials as on 31st March 2010</i>				43,93,83,381	

21. Ld. DR for the Revenue without disputing the fact that there is no change in the FAR of the taxpayer in the year under assessment vis-à-vis years covered under APA and has also not disputed the consolidated margin of 19.26% computed by the taxpayer as per terms of the APA agreement, extracted in the preceding para, contended that since APA has been entered into between the taxpayer of the CBDT for specific years, the same cannot be applied to the years under assessment. The ld. DR further contended that ALP rate agreed upon in the APA for earlier

and subsequent years cannot overrule the statutory determination of ALP made by the TPO as per method prescribed under the law.

22. We are of the considered view that contention raised by the ld. DR is not tenable for the reason that when undisputedly there is no change in the FAR of the taxpayer in the year under assessment vis-à-vis years covered under APA and consolidated margin (OP/OC) computed as per APA at 19.26% is much more than the consolidated margin agreed upon between the taxpayer and the CBDT for the years covered under APA at 16.60% for both the segments, APA though not specifically applicable to the year under assessment, is having persuasive value to the dispute between the parties for other years.

23. Hon'ble Delhi High Court in the case of *PCIT vs. Ameriprise India Pvt. Ltd.* (supra) held that when under the APA entered into between the taxpayer and the CBDT under section 92CC aforementioned cost plus pricing methodology has been implicitly accepted, the APA has persuasive value to the dispute in question for other years.

24. Coordinate Bench of the Tribunal in the case of *3I India Private Ltd. vs. DCIT* (supra) also relied upon APA entered into between the taxpayer and the CBDT for the subsequent years and has held as under :-

“18 Whence, on similar functions and the transactions the Arm’s length price has been agreed at 21% which if compared with the margin of 20% in this year, then same is not at variance, therefore, it can be held that the assessee’s margin of 20% for the functions performed are at Arm’s Length Price. Accordingly, we hold that upward adjustment of Rs.8,83,93,866/- is without any basis and is directed to be deleted.”

25. Coordinate Bench of the Tribunal in another case tilted as *Spencer Staurt (India) Pvt. Ltd. vs. ACIT* (supra) also decided the identical issue in favour of the taxpayer in the similar facts and circumstances by relying upon the APA which was for subsequent years by observing as under :-

“13. We have considered rival contentions and carefully gone through the orders of the authorities below, APA dated 30th August 2016, as well as the order passed by the Tribunal dated 01/06/2018 in case of assessee's AE. We found that APA has laid down the application of most appropriate transfer pricing method and the arm's length price for these transactions. We also found that after having a great discussion, the Functions performed, assets employed and risk undertaken by the assessee and its associated enterprises was found to be reasonable. Accordingly, we allow assessee to withdraw these grounds for the A.Y.2008-09 and 2009-10 in so far as these grounds are covered by the APA, the principle laid down in the APA for benchmarking analysis in respect of the international transactions being guidance value since there is no change in the said assessment years in the nature of international transactions. We also direct the Department to pass an order giving effect u/s.92 CD (5) of the Act in the A.Y. 2010-11 & 2011-12. Whereas for A.Y.2008-09 and A.Y.2009-10, we observe that the principles laid down in the APA for benchmarking/ comparability analysis in respect of the international

transactions shall have a guidance value since there is no change in the said Assessment Years in the nature of the international transactions, functional, Asset and Risk ('FAR') profile of the assessee and the AEs. We direct accordingly."

26. So, in view of what has been discussed above and following the orders (supra) passed by the coordinate Bench of the Tribunal, we are of the considered view that when in the APA entered into between the taxpayer and the CBDT though for the roll back years and subsequent years, application of most appropriate transfer pricing method and arm's length price of these transactions have already been agreed upon between the taxpayer and CBDT and there is no change in the FAR and nature of international transactions entered into during the year under consideration vis-à-vis earlier years and subsequent years, principle laid down in the APA for benchmarking the international transactions in question shall have a guidance value. Moreso these days, it is endeavour of the Union of India to stop avoidable litigations and this case falls in the category of cases where litigation can be minimized.

27. For the sake of repetition, it is brought on record by the taxpayer the consolidated margin (OP/OC) for the year under assessment as 19.26% as against ALP agreed upon between the

parties to the appeal under APA at 16.60%. So, we are of the considered view that transfer pricing adjustment made by the AO/TPO/CIT(A) by applying Transfer Pricing principles is not sustainable, hence ordered to be deleted subject to the verification of computation of margin made by the taxpayer as per APA referred in the preceding para no.20. Consequently, Ground No.5 & Ground No.4 of ITA Nos.422/Del/2019 & 423/Del/2019 raised by the taxpayer are determined in favour of the taxpayer and Ground No.1 of ITA No.579/DEL/2019 & 3087/DEL/2019 raised by the Revenue are determined against the Revenue.

(TAXPAYER'S APPEALS)

GROUND NO.6 OF ITA NO.422/DEL/2019

AND

GROUND NOS.5 & 6 OF ITA NO.423/DEL/2019

28. The taxpayer challenged the levying of interest by the AO u/s 234A, 234B & 234C of the Act on the ground that AO has ignored the fact that the Income-tax return filed by the taxpayer on 14.10.2010 u/s 139 of the Act i.e. within the due date which was extended upto 15.10.2010 from 13.09.2010 vide CBDT order dated 27.09.2010, copy available at page 1305 of the paper book volume-2. When the income-tax return has been filed by the

taxpayer within the prescribed due date (extended date upto 15.10.2010), no interest is leviable. So, AO is directed to delete the interest accordingly after due verification.

(TAXPAYER'S APPEALS)

GROUND NO.7 OF ITA NO.422/DEL/2019

AND

GROUND NO.7 OF ITA NO.423/DEL/2019

29. Ground No.7 of ITA No.422/Del/2019 & ITA No.423/Del/2019 being premature needs no specific findings.

30. Resultantly, the appeals filed by the taxpayer being ITA Nos.422/Del/2019 & 423/De31/2019 are allowed and the appeals filed by the Revenue being ITA Nos.3087/Del/2019 & 579/Del/2019 are dismissed.

Order pronounced in open court on this 18th day of June, 2020.

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

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

**Dated the 18th day of June, 2020
TS**

Copy forwarded to:

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

**AR, ITAT
NEW DELHI.**