

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES : "B", BANGALORE**

**BEFORE SHRI N.V.VASUDEVAN, VICE PRESIDENT  
AND  
SHRI B.R.BASKARAN, ACCOUNTANT MEMBER**

**IT(TP)TA No.702(Bang)/2016  
(Assessment Year : 2011-12)**

M/s Texas Instruments (India) Pvt.Ltd.,  
No.66/3, Adjacent to LRDE, Bagmane Tech Park,  
Byrasandra, C.V.Raman Nagar Post,  
Bangalore-560 093  
PAN No.AAACN4844Q

Appellant

**Vs**

The Deputy Commissioner of Income Tax,  
Circle-7(1)(1), R No.240, II Floor, BMTC Building,  
80 ft Road, Koramangala,  
Bangalore-560 095

Respondent

**Appellant by : Shri Sumeet Khurana, CA  
Revenue by : Shri Muzaffar Hussain, CIT-DR**

**Date of hearing : 23-07-2020  
Date of pronouncement :29-07-2020**

**ORDER**

**PER N.V.VASUDEVAN, VICE PRESIDENT**

This is an appeal by the Assessee against the final order of assessment dated 29-01-2016 of the DCIT, Circle-7(1)(1), Bangalore passed u/s 43(3) r.w.s. 144C of the It Act, 1961 (Act) in relation to AY: 2011-12.

2. The only issue that needs to be adjudicated in this appeal is with regard to the correctness of determination of arms Length Price (**ALP**) in respect of an international transaction of rendering software development services by the Assessee to its Associated Enterpris (AE) in accordance with the provisions of sec.92 of the IT Act.

3. When this appeal was taken up for hearing, Id. Counsel for the Assessee pointed out that the Assessee has filed an application for admitting additional ground no.6 which reads as follows;

*“6. Without prejudice to the grounds of appeal no.1 to 5 on the facts and in the circumstance of the case and in law, the Bilateral Advance Pricing Agreement which is entered between Texas Instruments and the Central Board of Direct Taxes on 28 March 2018 covering the Financial Years 2010-11 to 2017-18 ought to be applied for the captioned AY in the case of Natsem India Designs Private Limited whose successor in interest is Texas Instruments.*

*It is the humble prayer of the appellant that the transfer pricing adjustment of INR5,98,47,999/- should be deleted”.*

4. The Assessee has also filed an application for admission of additional ground no.4 & 5 which reads as follows:

*“4.On the facts and in the circumstances of the case and in law, the Id.TPO erred in passing order u/s 92CA(3) of the IT Act, 1961(Act) in the name of Natsem India Design Private Limited, an entity which is not in existence on the date of passing the order on account of its amalgamation with the appellant.*

*It is the humble prayer of the appellant that the transfer pricing order passed by the Id.TPO be held as void-ab-initio, illegal and bad in law and as such deserves to be quashed.*

*5. On the facts and in the circumstance of the case and in law, the Id.AO erred in passing draft assessment order u/s 143(3) r.w.s.144C of the Act in the name of Natsem India Design Private Limited, an entity which is not in existence on the date f passing order on account of its amalgamation with the appellant.*

It is the humble prayer of the appellant that the transfer pricing order passed by the Id.TPO be held as void-ab-initio, illegal and bad in law and as such deserves to be quashed”

5. In the original ground Assessee has raised three grounds and those grounds are with regard to the determination of **ALP** by the TPO and the directions of the DRP. We are of the view that it would be just and appropriate to admit additional ground no.6 raised by the Assessee as adjudicating of that ground would put the dispute between the Assessee and the Department at rest.

6. In the petition for admission of ground no.6 the Assessee has submitted, that additional ground no.6 relates to the Bilateral Advance Pricing Agreement (Bilateral APA) entered between Texas Instruments and the Central Board of Direct Taxes (CBDT) for the FYs: 2010-11 to 2017-18 on 28 March, 2018. It has been submitted that without prejudice to the other grounds of appeal, the Bilateral APA agreed between the CBDT and Texas Instruments (successor in interest of Natsem India Design Private Limited) on 28 March 2018, and that the said agreement also covers the relevant transaction with its Associated Enterprise based out of the United States of America for the relevant AY under appeal. Given this, the Assessee requires that the aforesaid Bilateral APA be applied to this appeal of the Natsem India also whose successor in the interest is Texas Instruments. It has also been submitted that the Bilateral APA was finalised after the appellant has filed the Memorandum of Appeal on 01 April 2016 and the said facts were not present before the lower authorities at the time of assessment proceedings of Natsem India.

6. We have considered the request of the Assessee for admission of the additional ground and we are of the view that the additional ground sought to be raised is purely a legal ground and have to be admitted for adjudication. Section 92CC of the Income Tax Act, 1961 empowers the Central Board of Direct Taxes ("CBDT") to enter into an Advance Pricing Agreement ("APA") with any person. An APA is essentially a contract between a taxpayer and the tax authorities that sets out beforehand the method for determining the arm's length price ("ALP") or specifying the manner in which the ALP is to be determined pertaining to transactions between a subsidiary and its foreign parent. The agreement entered into is valid for a period, not exceeding 5 (five) consecutive financial years, as may be mentioned in the agreement. The Finance (No.2) Act, 2014 amended the Act to permit roll back of APAs for a maximum period of 4 (four) prior years with effect from 1 October 2014. Rollback provisions essentially mean that a negotiated position on pricing of an international transaction reached under the advance pricing arrangement can be applied to a similar transaction for up to 4 (four) years in the past. The CBDT, on 14 March 2015, has notified the announced Income-tax (Third Amendment) Rules, 2015 ('APA Roll Back Rules') to prescribe the conditions, procedure and manner for such roll back mechanism. In terms of the Bilateral APA entered into between the Assessee and the CBDT and in view of the fact that the Bilateral APA is also in respect of the assessment year 2011-12 which is the instant appeal before the Tribunal, we deem it fit and proper to admit the additional ground.

7. As far as the prayer made in the additional ground is concerned, we are of the view that the prayer has to be accepted. Since the Bilateral APA covers assessment year 2011-12 also, the price agreed therein has to be applied for AY: 2011-12 also. Accordingly, we direct the AO/TPO to apply the price agreed under the Bilateral APA between the Assessee and the

CBDT and determine the ALP accordingly. The AO shall afford an opportunity of being heard to the Assessee. Accordingly, the appeal of the Assessee is treated as allowed for statistical purposes. All other grounds were not pressed for adjudication.

8. In the result, the appeal of the Assessee is allowed for statistical purposes.

Order pronounced on 29<sup>th</sup> July, 2020

Sd/-

**(B.R.BASKARAN)**  
**ACCOUNTANT MEMBER**

Sd/-

**(N.V.VASUDEVAN)**  
**VICE-PRESIDENT**

Bangalore

Dated : 29-07-2020.

\*am / *Desai S Murthy*

Copy to :

1. The Assessee
2. The Revenue
3. The CIT concerned.
4. The CIT(A) concerned.
5. DR
6. GF

By order

Asst. Registrar