

directions of the Hon'ble Dispute Resolution Panel ('DRP') proposing a transfer pricing adjustment of Rs.7,72,75,054 is bad in law.

The Appellant therefore prays that the transfer pricing adjustment be deleted.

2. *On the facts and circumstances of the case and in law, the Hon'ble DRP/Ld. AO/Ld. TPO erred in disregarding the audited segmental results on the alleged ground that the segmental results submitted by the assessee are not reliable.*

The Appellant therefore prays that the Ld. AO/Ld. TPO be directed to consider the segmental results for benchmarking the international transaction of provision of business support services.

3. *On the facts and circumstances of the case and in law, the Hon'ble DRP erred in aggregating the segments of "Business Support Services" and "Trading of Finished Dosage Formulations" and thereby directing the Ld. AO/Ld. TPO to consider the "entity level profit level indicator" for benchmarking the international transactions of provision of business support services.*

The Appellant therefore prays that direction of Hon'ble Panel of aggregating the segments of "Business Support Services" and "Trading of Finished Dosage Formulations" as well as to consider the "entity level profit level indicator" be quashed and the Ld. AO/Ld. TPO be directed to consider the segmental results for benchmarking the international transaction of provision of business support services.

4. *On the facts and circumstances of the case and in law, the Hon'ble DRP erred in confirming the action of the Ld. AO/Ld. TPO in selecting the Apitco Ltd. as a comparable company while benchmarking the international transactions of provision of business support services.*

The Appellant therefore prays that the Apitco Ltd. be held as incomparable.

5. *On the facts and circumstances of the case and in law, the Hon'ble DRP erred in confirming the action of the Ld. AO/Ld. TPO in selecting the Agricultural Finance Corporation Ltd. as a comparable company while benchmarking the international transactions of provision of business support services."*

2. Brief facts of the case are as under. During the year under consideration, the assessee has carried out its business activities in two Segments, viz. Business Support Services and Trading in FDF. The income in respect of Business Support Services is from the services provided to its AE, for which it is remunerated at cost plus mark up of 20%. The trading in FDF activity entails purchase and sales from/to third parties and this was a new activity, started during the year under consideration. It is submitted by the assessee that in its accounting software, i.e. SAP – ERP, there are various accounting codes and the direct costs related to the specific segment are directly accounted in the respective segment. It was further submitted that common costs, like bank charges, insurance of gratuity, audit fees, statutory fees, etc., aggregating to only Rs.7,73,926/- were apportioned to both the segments on the basis of Segmental costs. The TPO did not agree with the Segmental result submitted by the assessee and re-casted the segmental accounts after apportioning the entire costs on the basis of turnovers of each segment. Further, the TPO adopted 20% margin, i.e. the mark-up charged by the Assessee to its AE as ALP, as against 8.86% being the margin of comparables and made an adjustment of Rs.18,66,00,267/- to the Business Support Services segment.

3. Upon assessee's objections, the DRP considered the issue. It noted that assessee has furnished duly certified segmental results. Hence, it upheld the action of the Transfer Pricing Officer (TPO) in rejecting the segmental results submitted by the assessee. However, it upheld the assessee's objection in the TPO making a mark-up of 20%, and directed that the same should be 8.66%.

4. The assessee is in appeal before us regarding the rejection of the segmental results and prays that it may be directed that segmental results as furnished by the assessee should be considered. We note that the DRP has held that segmental results have been correctly found to be incorrect. For this, it referred to treatment of three major expenditure as under.

5. As regards lease rent of Rs. 2.42 crores, it observed that major portion consists of Rs.180.96 lakhs for the premises which, according to the DRP, can only be occupied by companies engaged in IT/IT enabled services and financial services. Hence, it held that this premises cannot be occupied by the segment of trading in FDF of the assessee. Hence, it held that apportionment of this expense to the segment of trading in FDF is not justified. In this regard, we find that the learned Dispute Resolution Panel has not given any basis of its wisdom that this premises cannot be used by the trading segment in FDF. In our considered opinion, this distinction brought about by the learned Dispute Relation Panel is based upon surmise and conjecture without any cogent material brought on record.

6. Furthermore, as regards recruitment expenses of Rs.2.14 crores, without giving any details whatsoever, the DRP observed that this expenditure clearly pertains to the period prior to the commencement of the new business of trading in FDF and it will lead to enduring benefit. Hence, the DRP held that this expenditure should be treated as capital expenditure and not claimed as fully deductible revenue expenditure. In this regard, we note that on what basis the DRP is of the opinion the recruitment expenses are capital in nature are also not spelt out. In our considered opinion, recruitment is normal

business function and is a part of day-to-day activity. It cannot be held to be not falling in the realm of revenue expenditure.

7. Similarly, the DRP held that legal and professional charges of Rs.2.47 crores include consultancy fee towards “branded generic plan in India – crafting a winning strategy project” and pharma industry audit. The DRP opined that these are also capital expenditure and have been wrongly claimed at fully deductible expenditure. The DRP directed the AO/TPO to take appropriate action in respect of these capital expenses for the segment of trading in FDF. Here again, we find that professional consultancy charges paid have been booked to the revenue and DRP is quite incorrect in holding them to be capital expenditure, without bringing on record the reason for directing that these are capital expenditure. What project came into existence after the consultancy fee has not at all been referred. Hence, these observations are also based upon surmise.

8. Accordingly, in our considered opinion, firstly there is no basis for the Transfer Pricing Officer to reject the segmental results, which were submitted to him by the assessee duly certified. The DRP also has found fault in the segmental detail as mentioned above which are without any cogent basis and they are liable to be rejected. Furthermore, assessee’s submission that segmental results in subsequent years have been accepted also supports the case of the assessee. Accordingly, we set aside the rejection of segmental results by the TPO and direct that segmental results submitted by the assessee should be duly considered.

9. In the result, this appeal filed by the assessee stands allowed in as much as we direct that the segmental results furnished by the assessee should be considered.

Order pronounced in the open court on 20th day of March, 2020.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai, Date : 20th March, 2020

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "J" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai