

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI ARUN KUMAR GARODIA, AM
AND SHRI GEORGE GEORGE K, JM**

IT (TP) A No.180/Bang/2017
Assessment Year : 2012-13

M/s. Cisco Systems Capital (India) Pvt. Ltd., Brigade South Parade, #10, M. G. Road, Bangalore – 560001. PAN: AACCC 4552 A	vs.	ACIT, Circle – 2 (1) (1), Bangalore.
APPELLANT		RESPONDENT
Assessee by	:	Shri. Rajan Vora, CA
Revenue by	:	Shri. Muzaffar Hussain, CIT(DR)(ITAT), Bengaluru
Date of Hearing	:	24.09.2020
Date of Pronouncement	:	09.10.2020

ORDER

PER SHRI A.K. GARODIA, AM:

This appeal is filed by the assessee and the same is directed against the Assessment Order dated 24.11.2016 passed by the AO under section 143(3) r.w.s. 144C of Income Tax Act, 1961 (hereinafter called ‘the Act’) for Assessment Year 2012-13 as per the directions of DRP.

2. The grounds raised by the assessee are as under:

A. Grounds of appeal relating to corporate tax matters

That on the facts and in the circumstances of the case and in law and based on the order of the Tribunal

1. *The learned AO has erred in law and in fact by disregarding the ownership status of Cisco Capital India in relation to the assets leased out by it under*

finance lease transaction and thereby disallowing depreciation claimed by the Appellant in the return of income in relation to such assets.

2. *Without prejudice to the above grounds, the learned AO has erred in law and in fact, by not allowing depreciation on the opening written down value (ANDV) of the block of assets leased out under finance lease arrangement, pursuant to allowance of depreciation on the same block of assets for prior years.*
3. *The learned AO has erred in law by re-computing the total income of the Appellant for AY 2011-12 without giving effect to the set off of brought forward depreciation loss from prior years.*

B. Grounds of appeal in relation to transfer pricing matters

4. *The learned TPO/ learned AO have erred, in law and in facts, by considering Comparable Uncontrolled Price (CUP) method as most appropriate method (without undertaking an objective analysis for identifying comparable transactions) and not accepting Transactional Net Margin Method (TNMM) adopted by the Appellant for determining the ALP of the international transaction pertaining to payment for availing administrative support services from Cisco Systems Capital Asia Pte. Ltd. ('CSC Singapore') and Cisco Systems Capital (Australia) Pty. Ltd. ('CSC Australia').*
5. *The learned TPO/ learned AO have erred, in law and in facts, in rejecting overseas Associated Enterprises ('AEs') (i.e. CSC Singapore & CSC Australia) as the tested party and considering Cisco Capital India as the tested party.*
6. *The learned TPO/ learned AO have erred, in law and in facts, in rejecting foreign comparables selected by the Appellant in the TP documentation maintained.*
7. *The learned TPO/ learned AO have erred, in law and in facts, by considering the payment made by the Appellant for availing administrative support services to its AEs as 'NIL' resulting in a disallowance of such payment.*
8. *The learned TPO/ learned AO have erred, in law and in fact, by determining the ALP of the administrative support fees paid to the AEs as 'NIL' without considering the fact that the revenue authorities are not empowered to question allowability of bonafide business expenditure incurred by the Appellant in the proceedings under section 92CA of the Act.*

C. Grounds in relation to other matters

9. *The learned Assessing Officer has erred in law by levying interest of INR 4,20,28,672 and INR 5,89,728 under sections 234B and 234C of the Act respectively on account of the adjustments proposed to the returned income*

3. In the course of hearing, it was submitted by learned AR of the assessee that he has filed a synopsis dated 11.12.2019 and in the said synopsis, it has been explained that one of the issues involved is regarding disallowance of depreciation on assets leased out under finance lease agreement. He pointed out before us that in Assessment Years 2011-12 and 2013-14 in assessee's own case, in IT(TP)A Nos.219/Bang/2018 and 611/Bang/2016 dated 07.06.2019, the Tribunal has restored back similar matter to the file of AO for a fresh adjudication with a direction to the AO to examine the arguments entered into by the assessee in light of decision of Hon'ble Apex Court rendered in the case of ICDS Ltd., (SC) in Civil Appeal No.3282/2008 and he pointed out that paras 6 to 8 of this Tribunal order are relevant in this regard and he submitted a copy of this Tribunal order. He submitted that in the present year also, this issue should be restored back to the file of AO with similar directions.

4. He further submitted that one more issue involved in this appeal is regarding TP addition. In this regard, he submitted a supplementary fact sheet and also submitted that on pages 524 to 532 of the Paper Book is another order of the Tribunal rendered in assessee's own case for Assessment Years 2008-09 and 2009-10 in ITA Nos.900, 901, 1009 and 1010/Bang/2019 dated 06.03.2020. He pointed out that para 9 of this Tribunal order is relevant in this regard as per which similar matter was decided by the Tribunal in those years on technical aspect and there is no decision on merit. At this juncture, the Bench wanted to know about the position in

Assessment Years 2010-11 and 2011-12. In reply, it was submitted by learned AR of the assessee that in these two years, the matter is pending before the DRP and hence, in the present year also, this matter should be restored back to the file of AO for a fresh decision along with the decision on the in respect of Corporate Tax issue and if the Bench feel proper, this matter may be restored to DRP also. Learned DR of the Revenue supported the orders of authorities below.

5. We have considered the rival submissions and in view of the above discussion, we feel it proper to restore back both the issues i.e. the issue regarding allowability of depreciation as well as the issue regarding TP addition to the file of AO for a fresh decision. We direct the AO to decide the depreciation issue afresh in line with the direction of the Tribunal in Assessment Year 2011-12 as per the Tribunal order in assessee's own case for that year and for ready reference, we reproduce paras 6 to 8 of this Tribunal order:

"6. The AO in this case has not followed the binding judgment of Hon'ble Supreme Court in the case of ICDS Ltd. V CIT [Civil Appeal No.3282 of 2008). He has from page 6 onwards in his order recorded views contrary to the ratio laid down by the Hon'ble Supreme Court. This cannot be approved. He relied on the judgment of Hon'ble Supreme Court in the case of M/s. Asea Brown Boveri Ltd. v. Industrial Finance Corporation of India & Ors. in CA 3574 of 1998 dated October 27, ,2004. This judgment is not on the issue of claim of depreciation of assets given IT(TP)A on financial lease under the Income-Tax Act, 1961 ["the Act"]. This judgment was rendered in an appeal under section 10 of the Special Courts (Trials of Offences relating to Transactions in Securities) Act, 1992. In fact, the judgment of Hon'ble Supreme Court in the case of ICDS Ltd. (supra) has been delivered much after the judgment in the case of Asea Brown Boveri Ltd (supra). Hence, these findings of the ld. AO, which were approved by the DRP are hereby reversed as these are not in accordance with law.

7. Be it as it may, as at page 18 of the final assessment order for the AY 2011-12, the AO records that the assessee was asked to produce copies of agreements and that

the assessee had only produced a few of them. We agree with the argument of the ld. DR that at least some more agreements have to be produced for examination before the AO, so that the submissions of the assessee that, the terms of the agreement in these financial leases are similar to the terms of the agreement considered by the Hon'ble Supreme Court in the case of ICDS Ltd. (supra) is correct or not.

8. In view of the above discussion, we set aside the issue to the file of the AO for fresh adjudication in accordance with law. The assessee is directed to produce copies of those agreements which the AO may call for. The AO shall examine these agreements and if the terms & conditions mentioned in these agreements are similar to the terms and conditions mentioned in the agreements considered by the Hon'ble Supreme Court in the case of ICDS Ltd. (supra) and if there are no material variations in the contracts, then depreciation has to be granted to the assessee as claimed. With these observations, we set aside this issue to the file of AO for fresh adjudication in accordance with the law.”

6. The AO should decide the issue regarding allowability of depreciation in the same line as per the direction of the Tribunal in Assessment Year 2011-12 as per paras 6 to 8 of that Tribunal order reproduced above.

7. Regarding TP issue also, this is the submission of the learned AR of the assessee before us that in Assessment Years 2010-11 and 2011-12, similar matter is pending before DRP but since we are restoring back the Corporate Tax issue to the file of AO for a fresh decision, we feel it proper to restore back this TP issue in the present year also to the file of AO for a fresh decision and the AO is directed to decide the TP issue in line with the final decision of AO as per the direction of DRP in Assessment Years 2010-11 and 2011-12.

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

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-

(GEORGE GEORGE K)

Judicial Member

Sd/-

(ARUN KUMAR GARODIA)

Accountant Member

Bangalore,

Dated, the 09th October, 2020.

/NS/*

Copy to:

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

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.