आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ "आई-2", नई दिल्ली में

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I-2, NEW DELHI

सुश्री सुषमा चावला, उपाध्यक्ष एवं श्री आर के पांडा, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, VP & SHRI R.K. PANDA, AM

[THROUGH VIDEO CONFERENCING]

आयकर अपील सं. / ITA No. 1982/Del/2015
निर्धारण वर्ष / Assessment Year: 2010-11

M/s. American Express Services
India Private Limited
(Earlier known as American Express Services
India Limited),
Metropolitan Saket,
7th Floor, Office Block,
District Centre, Saket,
New Delhi-110017
PAN-**AABCT0555D** .....अपीलार्थी/Appellant

vs

The DCIT,
Circle-2(2),
Central Revenue Building,
New Delhi ..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by: Sh. Nageshwar Rao, Advcate, &
Sh S. Chakrabarty, AR

प्रत्यर्थी की ओर से / Respondent by: Sh. Anupam Kant Garg, CIT-DR

सुनवाई की तारीख / **Date of Hearing : 17.09.2020**	घोषणा की तारीख / **Date of Pronouncement: 21.10.2020**

आदेश / ORDER

PER SUSHMA CHOWLA, VP

This appeal filed by the assessee is against the final assessment order dated 28.01.2015, relating to assessment year 2010-11 passed under section 143(3) r.w.s. 144C of the Income Tax Act, 1961 (in short "the Act").

2. The assessee has raised following grounds of appeal:-

1. The order passed by the Learned Additional Commissioner of Income Tax, Transfer Pricing Officer- 1(1), New Delhi ("the Learned TPO"), draft assessment order passed by the Deputy Commissioner of Income-Tax, Circle 1(1), New Delhi ("the then Learned AO") and final assessment order passed by the Deputy Commissioner of Income Tax, Circle 2(2), New Delhi ("the Learned AO"), pursuant to the directions of the Hon'ble Dispute Resolution Panel - I ("the Hon'ble DRP"), are bad in law and void- ab-initio.

2. The Learned AO following the order of the Learned TPO and DRP has erred in law and on the facts of the case in determining the total income of the Appellant at Rs 48,980,680/- as against the returned income of Rs 45,254,000/- therefore, to the extent of additions/disallowances made by the Learned AO, the order of the Learned AO is bad in law and needs to be annulled.

Part I - Transfer pricing grounds of appeal

3. That on facts of the case and in law, the TPO/AO/ DRP have erred in rejecting the economic analysis undertaken by the Appellant by conducting a fresh economic analysis for international transaction pertaining to provision of back office support services ("impugned transaction").

4. That on facts of the case and in law, the TPO/AO/DRP have erred in conducting a fresh economic analysis by using arbitrary filters for identifying companies comparable to the Appellant. The arbitrary filters applied by the TPO and confirmed by the AO/DRP inter-alia include the following:

- To reject companies having turnover less than INR 5 Crores;
- To reject companies having different accounting year than that of the Appellant;
- To reject companies having peculiar economic circumstances which are not in line with the industry trend and companies which showed diminishing revenue trend; and
- To reject companies having export revenue less than 75 percent of the operating revenue.

5. That on facts of the case and in law, the TPO/AO/DRP have erred in using single year data for financial year ("FY") 2009-10 of alleged comparable companies without considering the fact that the same was not available to the Appellant at the time of complying with the transfer pricing documentation requirements and disregarding the Appellant's claim for use of multiple year data for computing the arm's length price.

6. That on facts and in law, the TPO/AO/DRP have grossly erred in applying the turnover filter on segmental revenue instead of the total revenue of the company as a whole in case of company namely CG-Vak Software & Exports Limited without appreciating the segmental revenue of the Appellant which is far less than the INR 5 crore threshold of the turnover filter.

7. That on facts of the case and in law, the TPO/AO/DRP have erred in selecting companies in the final set of alleged comparables which are functionally different as compared to the Appellant for the impugned transaction.

8. That on facts of the case and in law, the TPO/AO/DRP have erred in law and in facts by selecting certain companies which are earning super normal profits as comparable to the Appellant.

9. That on facts of the case and in law, the TPO/AO/DRP have erred in rejecting certain companies and adding certain companies to the final set of alleged comparable companies on an ad-hoc basis, thereby resorting to cherry picking of comparable companies for benchmarking the impugned transaction.

10. That on facts of the case and in law, the TPO/AO/DRP without appreciating the functional analysis undertaken by the Appellant in its Transfer Pricing study, have erred by identifying companies which are engaged in providing Knowledge Process Outsourcing services by stating that the Appellant is engaged in providing high end services whereas the Appellant is only engaged in rendering provision of back office support services.

11. That on facts of the case and in law, the DRP without appreciating the risk profile of the Appellant, have erred in stating that the Appellant bears the significant risks and accordingly failed to make appropriate adjustments to account for varying risk profiles of the Appellant vis-a-vis the alleged comparables for impugned transaction

12. That on facts of the case and in law, the DRP ignored the principle of natural justice by not giving a finding on the additional evidence filed by the Appellant with respect to comparable company namely Microland Limited.

13. That on facts of the case and in law, the TPO/AO/DRP have erred and vitiated the principle of natural justice by not giving due cognizance to the detailed analysis and technical arguments submitted by the Appellant in respect of certain companies.

14. That on facts of the case and in law, the DRP has grossly erred in giving a direction to rectify the arithmetical errors in the computation

of the operating margins of alleged comparable companies in compliance with the Income Tax Act ("the Act") without appreciating that Indian regulations do not enumerate the methodology for computing operating margins which may apply to the Appellant. The DRP has erred in directing the TPO to rectify the margins of alleged comparables using safe harbour rules without understanding that:

a. Appellant has not applied for being assessed under safe harbor provisions
b. Safe harbour provisions do not reflect arm's length nature of margins
c. Safe harbour rules cannot be applied retrospectively and are only applicable for assessment year ("AY") 2013-14 and AY 2014-15 on specific application by a taxpayer

15. That on facts of the case and in law, the TPO/AO/DRP have erred by not considering that the adjustment to the arm's length price, if any, should be limited to the lower end of the 5 percent range as the Appellant has the right to exercise this option under the second proviso to section 92C(2) of the Act.

16. That on facts and in law, the TPO/AO/DRP have grossly erred by charging interest on credit period granted by the company under normal trade practices.

14. That on facts of the case and in law, the DRP/AO has erred in confirming that AO/TPO has discharged his statutory onus by establishing that the conditions specified in clause (a) to (d) of Section 92C(3) of the Act have been satisfied before disregarding the arm's length price determined by the Appellant and proceeding to determine the arm's length price.

Part II - Corporate tax grounds of appeal

Disregard of acquisition cost of business database

4.1 That on the facts and circumstances of the case and in law, the Hon'ble DRP has erred in confirming and accordingly, the Learned AO has erred in restricting the cost of acquired database to Rs 30,000,000 instead of Rs 120,000,000 as confirmed by the Learned TPO for AY 2002-03.

4.2 That on facts and circumstances of the case and in law, the Hon'ble DRP and the Learned AO has erred in not following the decision of Hon'ble Income Tax Appellate Tribunal ("Hon'ble ITAT"), Mumbai in appellant's own case for AY 2002-03 which is binding on them.

Disallowance of depreciation on such database

5.1 That on facts and circumstances of the case and in law, the Hon'ble DRP has erred in confirming and accordingly, the Learned AO has erred in disallowing the claim of the appellant for Rs. 1,238,745, being the amount of depreciation on the acquired business database under section 32 of the Act.

5.2 . That on facts and circumstances of the case and in law, the Hon'ble DRP has erred in confirming and accordingly, the Learned AO has erred in following the assessment orders passed by his predecessor for assessment years 2002-03 to 2009-10 that the acquired business database could not be regarded as plant and machinery.

5.3 That on facts and circumstances of the case and in law, the Hon'ble DRP has erred in confirming and accordingly the Learned AO has erred in not appreciating that the database falls under the head of "intangible asset" and accordingly, depreciation of Rs. 3,003,387 should be allowed on the same.

5.4 That on facts and circumstances of the case and in law, the Hon'ble DRP and Learned AO has erred in not following the decision of Hon'ble ITAT, Mumbai in appellant's own case for AY 2002-03 which is binding on them.

Disregard of cost of goodwill

6. That on facts and circumstances of the case and in law, the Hon'ble DRP has
erred in confirming and accordingly the Learned AO has erred in restricting the cost of goodwill to Rs NIL instead of Rs 80,000,000 on the basis that no goodwill exists in the business acquired.

Allowability of depreciation on goodwill

7. That on facts and circumstances of the case and in law, the Hon'ble DRP has erred in confirming and accordingly the Learned AO has erred in not appreciating the fact that goodwill purchased for the purpose of business should be considered as "intangible assets" and accordingly, depreciation of Rs. 2,002,258 should be allowed as per section 32 of the Act.

Part III- General grounds of appeal

8. That on facts and circumstances of the case and in law, the Learned AO has erred in withdrawing interest u/s 244A of the Act of

Rs 82,335 and also erred in charging interest of Rs 310,278 under section 234D of the Act.

9. That on facts and circumstances of the case and in law, the Learned have grossly erred in initiating penalty proceedings under section 271(1)(c) of the Act.

3. The issue raised in the present appeal is against the transfer pricing adjustment made in the segment of business support services. The assessee has raised several grounds of appeal in this regard, but the main issue to be decided is the selection of comparables in order to benchmark the international transactions undertaken by the assessee with its Associate Enterprises (in short 'AE'). The other linked issue raised is vide grounds of appeal nos. 7, 13 and 14 against the applicability of safe harbor rules or not to the year under consideration. Further the assessee is also aggrieved by charging of interest on receivables and making adjustment in this regard, though working capital adjustment has been allowed to the assessee. Further, the corporate tax grounds of appeal raised by the assessee is against the restriction of cost of acquired database to Rs.3,00,00,000/- instead of Rs.12,00,00,000/- and the consequent disallowance of depreciation on such database. Another issue raised is against the order of the Assessing Officer in restricting the cost of goodwill to nil and in not allowing depreciation on such goodwill.

4. Briefly, in the facts of the case, the assessee for the year under consideration, had furnished the return of income declaring total income at Rs.4,52,54,004/-. The case of the assessee was selected for scrutiny. The assessee was engaged in the business of marketing and distribution of credit cards and personal loans. The assessee was also engaged in buying and selling

of foreign currency and traveler's cheque and is an authorized full fledged money changer. During the year under consideration, the assessee had undertaken international transactions with its AE. The Assessing Officer made reference under section 92CA(1) of the Income Tax Act, 1961 (in short 'the Act') to the TPO to benchmark the Arm's Length Price (in short 'ALP') of the international transactions undertaken by the assessee. The TPO conducted FAR analysis of the international transactions undertaken by the assessee and noted that the assessee was providing services to its AE under the head provision of marketing support services and also under ITeS segment.

5. The assessee was compensated by AE for services rendered on cost plus 15% markup basis. The cost comprised of staff salaries, all administrative costs indirectly incurred in respect of the services rendered after undertaking the functions performed and the risk assumed. The TPO proposed certain revised filters to benchmark the international transactions undertaken by the assessee. The assessee had selected 10 comparables for benchmarking the international transactions but only 4 out of 10 comparables were finally selected by the TPO. The TPO also proposed another six comparables for transfer pricing analysis and thus in all 10 companies were selected as comparables. The mean margin of the comparables worked out to 34.73% and the assessee was show caused as to why adjustment of Rs.15,44,931/- should not be made in its hands in ITeS Segment. In respect of other segment i.e. provision of marketing service, the TPO finally selected 8 companies as comparables whose mean margins worked out to 24.76% and adjustment of Rs.3.51 Crores was proposed in the said segment. The TPO after considering

the objections of the assessee to the selection of the comparables under the segment provision of marketing support services proposed adjustment of Rs.2.86 crores. Similarly, in the segment of provision of IT Enabled Services, the TPO selected 10 comparables and finally worked out the mean margin of the comparables at 35.77% and proposed adjustment of Rs.15,44,931/-. The Assessing Officer issued draft assessment order against which the assessee filed objections before the DRP, in-turn the DRP issued directions to the Assessing Officer/TPO. Consequent to the said directions, the Assessing Officer/TPO passed consequent order, wherein, under the segment of provision of marketing support services, no adjustment was made. However, under the segment of provision of IT Enabled Services, adjustment of Rs.14,12,058/- was made in the hands of the assessee. Further, adjustment was made on account of interest due on receivables which was not received within the due period and applying rate of interest @14.88%, an adjustment of Rs.10,75,876/- was made. The assessee is in appeal against both these adjustments. In addition, it has also raised the issue against the corporate tax additions made in the hands of the assessee.

6. The Ld. AR for the assessee pointed out that major business of the assessee is provision of marketing support services and the results of the said segment had been accepted. However, adjustment has been made in the second segment of provision of IT Enabled Services. The Ld. AR for the assessee pointed out that the TPO had finally selected 10 companies as comparable, whose mean margin was worked out at 34.98% and on a turnover of Rs.1.17 crores adjustment of Rs.14,12,058/- was made. The assessee

pointed out that it is aggrieved by the inclusion of certain concerns which are functionally not comparable to the assessee, which are as under:-

- Accentia Technologies Ltd.
- Infosys BPO Limited
- eClerx Services Limited
- TCS E-serve Limited
- TCS E-Serve International Ltd.

7. The assessee is also aggrieved by the non-inclusion of R Systems International Limited (segmental) and Caliber Point Business Solutions Limited. The Ld. AR for the assessee pointed out that in case, the revised list of comparables is accepted, then the margin shown by the assessee would be within +/-5% of the mean margins of the comparables. The Ld. AR for the assessee also pointed out that after this all other issues raised in relation to Transfer Pricing adjustment would become academic.

8. The Ld. DR for the Revenue strongly placed reliance on the orders of the authorities below.

9. We have heard the rival contentions and perused the records. The assessee is mainly engaged in providing business support services to its group entities as per service agreement entered into between the parties. The major business of the assessee is the provision of market support services. The AO and TPO had benchmarked the aforesaid international transactions and after directions of the DRP, the same was accepted to be at Arm's Length. Now, coming to the next segment of provision of IT Enabled Services, the TPO had

selected 10 concerns as comparables to the assessee whose mean margins worked out to 34.98% on final analysis. The assessee is aggrieved by the inclusion of certain concerns and by the exclusion of two concerns which were functionally selected by it to benchmark the international transaction. The list of the final comparables selected by the TPO read as under:-

S. No.	**Name of the Company**
1	Accentia Technologies Ltd.
2	Cosmic Global Ltd.
3	e4e Healthcare Business Private Limited
4	Fotune Infotech Limited
5	Igate Global Solutions Limited
6	Infosys BPO Limited
7	Jindal Intellicom Private Limited
8	TCS e Serve Limited
9	TCS e Serve International Limited
10	eClerx Services Limited
11	Omega Healthcare Management Services Pvt. Ltd.

10. An initial adjustment of Rs.15,44,931/- was proposed in the said segment; however, after the directions of the DRP, the same was reduced to Rs.14,12,058/-. As pointed out in the paras above, the assessee was engaged in the marketing and distribution of credit cards and personal loans. It was also engaged in buying and selling foreign currency and travelers cheque and is

an authorized full fledged money changer. As part of services, it was providing support services to its AE.

11. The assessee is aggrieved by the inclusion of the Accentia Technologies Ltd. in the final set of comparables. The plea of the assessee before us is that the said concern is engaged in diversified services which includes HRCM (using SaaS model), also is KPO and not BPO. Further it owns significant intangible assets to the extent of 67%. Another aspect pointed out was that during the year, there was extra-ordinary activity of amalgamation. The assessee also pointed out that the TPO had included the said concern on the ground that the concern was engaged in HCRM consisting of various closely related activities, but no revenue was generated from SaaS. It was also pointed out that the amalgamation did not affect the profitability of the company. The DRP had held such concern to be engaged in rendering ITeS services and thus was similar to the profile of the assessee. The Ld. AR for the assessee pointed out that the issue stands covered by the order of the Tribunal in the case of sister concern i.e. American Express (I) P. Ltd. in ITA No.1426/Del/2015, relating to Assessment Year 2010-11, vide order dated 17/07/2019. In the entirety of the submissions made by the Ld. AR for the assessee and in view of the services provided by the assessee, which are back office services, the concern Accentia Technologies Ltd. cannot be held to be comparable to the assessee on the ground of it being not functionally comparable. The said proposition is laid down in the case of sister concern (supra) vide para 28 at page 19 of the order. Another aspect to be kept in mind is the extraordinary event of amalgamation, which has occurred during the year and such concern with extraordinary event

cannot be held to be comparable in the year of the amalgamation. Accordingly, we hold so. The AO/TPO is directed to exclude Accentia Technologies Ltd. from the final list of comparables.

12. Now coming to the concern Infosys BPO Limited, which is selected as functionally comparable concern to the assessee. In the first instance, it has large scale of operations totalling Rs.1126 Crores against the total turnover of the assessee as Rs.1.17 Crores. Further, the said concern is engaged in wide set of services and the margins of the said concern cannot be compared with the margins of the assessee. We find support from the ratio laid down by the Tribunal in the case of sister concern itself. Similar is the proposition for the TCS E-serve Ltd. and TCS E-serve International Ltd.

13. Similar issue of exclusion of TCS E-serve Limited and TCS E-serve International Ltd. has been adjudicated in the case of Integreon (India) Pvt. Ltd. vs DCIT in ITA No.1277/Del/2017, relating to Assessment Year 2012-13, vide order dated 31.08.2020 and it was held as under:-

> *"9. We find that the issue of exclusion of TCS e-Serve Ltd. from the final list of comparables on the ground of the said concern having both brand value and high turnover was agitated before the Tribunal (supra) in assessee's own case in Assessment Year 2011-12. The Tribunal in turn relied on the ratio laid down by the Delhi Bench of Tribunal in B.C. Management Services P.Ltd. 83 Taxmann.com 346. The relevant finding of the said case are reproduced by the Tribunal in para 14 and are being referred, but not being reproduced for the sake of brevity. It may further be pointed out that against the said order in B.C. Management Services P.Ltd.(supra), the Revenue filed an appeal before the Hon'ble High Court and the question of law raised was as under:-*

1. "Whether the exclusion of four comparables i.e. e-Clerx Pvt.ltd., M/s ICRA Techno Analytics Ltd., M//s. TCS E-Serve Ltd. and M/s. Accentia Technologies Pvt.ltd., are sustainable and not erroneous?"

10. The Hon'ble Jurisdictional High Court dismissed the appeal of the Revenue observing as under:-

"The third comparable that the AO/TPO excluded is TCS E-serve. The ITAT observed that though there is a close functional similarity between that entity and the assessee, however, there is a close connection between TCS E-serve and TA T A Consultancy Service Ltd. which was high brand value; that distinguished it and marked it out for exclusion. The ITAT recorded that the brand value associated with TCS Consultancy reflected impacted TCS E-serve profitability in a very positive manner. This inference too in the opinion of Court, cannot be termed as unreasonable. The rationale for exclusion IS therefore upheld."

11. The Hon'ble High Court thus was of the view that where TCS e-serve Ltd. has high brand value then it cannot be selected as comparable with a concern whose brand value is less. The Ld.DR for the Revenue stressed that the global entity of which the assessee is the subsidiary has high brand value. We find no merit in the stand of the Revenue in this regard. Even on the second issue of high turnover, the said concern i.e. TCS e-Serve Ltd. cannot be selected as comparable. The total turnover of the assessee during the year is Rs.30.92 crores. On the other hand, the turnover of the TCS e-Serve Ltd. is Rs.1578 crores. Accordingly we hold that the TCS e-Serve Ltd. is to be excluded from the final list of comparables. Similarly, Infosys BPO Ltd. which has both brand value and high turnover of Rs.1312 crores cannot be selected as a concern comparable to the assessee whose total turnover is only Rs.31 crores (approx.). Accordingly, we hold so."

14. Following the same parity of reasoning, since the said concerns are functionally dissimilar, there is no merit in including the same in the final list

of comparables. The Assessing Officer/TPO is directed to exclude Infosys BPO Ltd, TCS E-serve Ltd. and TCS E-serve International Ltd. accordingly.

15. The last concern which the assessee wants to exclude from final set of comparables is eClerx Services Limited, on the ground that it is engaged in providing KPO services as against the assessee providing BPO services. The Hon'ble Delhi High Court in Rampgreen Solutions Pvt. Limited in ITA No.102/2015, vide order dated 10.08.2015 has held that the margins of the concerns providing KPO services cannot be compared with the margins of the concern providing BPO services. Since, the assessee is engaged in providing BPO services and eClerx Services Limited is engaged in KPO services, we find no merit in the inclusion of said concern in final set of comparables. Accordingly, we direct the AO/TPO to exclude the said concern from the final set of comparables.

16. Now, coming to the inclusion of the two concerns i.e. M/s. R Systems International Limited (segmental) and M/s. Caliber Point Business Solutions Limited. The case of the assessee is that the said concerns have been accepted to be functionally comparabales to the assessee in Assessment Years 2008-09 and 2009-10, however, the said concerns were excluded on the ground that the year ending of both the concerns was other than March closing.

17. The Ld. AR for the assessee placed reliance on the ratio laid down by the Hon'ble Delhi High Court in the case of M/s. Mckinsey Knowledge Centre India Pvt. Ltd. in ITA No. 217 of 2014, judgment dated 27.03.2015. We find that the Hon'ble High Court has held that in case the data is available on record and

results for financial year can reasonably be extrapolated, then the comparable cannot be excluded solely on the ground that the comparables have different financial year endings. We hold that in case from the available data on record, the results for the financial year as that of the tested party can be made available by the assessee, the AO/TPO may verify the same and include the said concerns i.e. M/s. R Systems International Limited (segmental) and M/s. Caliber Point Business Solutions Limited in the final list of comparables. We direct the Assessing Officer to afford reasonable opportunity of hearing to the assessee in order to decide the same and accordingly re-compute the Arm's length price of ITeS Segment.

18. The grounds of appeal no. 1 and 2 raised by the assessee being general in nature do not require any separate adjudication.

19. Under part-I, the assessee has raised the issue of transfer pricing adjustment. We have already elaborated on the issue in paras above and the Assessing Officer is thus directed to re-compute the adjustment on account of transfer pricing in the hands of the assessee, if any, after affording reasonable opportunity of hearing to the assessee on the ground of inclusion of two concerns i.e. M/s. R Systems International Limited (segmental) and M/s. Caliber Point Business Solutions Limited, as per our directions in the paras above. Other concerns as directed are to be excluded from final list of comparables. We hold so.

20. The ground of appeal nso.7, 13 and 14 are against the application of Safe Harbor Rules. The Hon'ble Delhi High Court in Pr. CIT vs Fiserv India Pvt. Ltd.,

in ITA No.17/2016, order dated 06.01.2016, vide para-10 has held that Safe Harbour Notification dated 18th September 2013 relied upon by the Revenue is prospective. Since, Safe Harbour Rules are not operative for the year under consideration; hence, the orders of authorities below are reversed on this ground.

21. Now, coming to the ground no.16 under part-I i.e. on account of interest chargeable on receivables. The case of the AO/TPO is that where the assessee had not received the amount due from AEs within specified period, then interest is chargeable on the aforesaid receivables. The Ld. AR for the assessee pointed out that this issue stands covered by the ratio laid down by the Hon'ble Delhi High Court in Pr. CIT vs Kusum Health Care Pvt. Ltd. in ITA No.765/2016, judgment dated 25.04.2017, as working capital adjustment has been allowed to the assessee.

22. The Ld. DR for the Revenue placed reliance on the orders of authorities below.

23. We have heard the rival contention and perused the records. The assessee is aggrieved by the adjustment made on account of interest on receivables. The issue arising in the present appeal before us is similar to the issue before the Hon'ble Delhi High Court in Pr. CIT vs Kusum Health Care Pvt. Ltd.(supra), wherein it was held that if working capital adjustment is allowed to the assessee, then no further adjustment is to be made on account of interest on receivables. Applying the ratio laid down by the Hon'ble Delhi High Court in Pr. CIT vs Kusum Health Care Pvt. Ltd. (supra), we find no merit in the

adjustment made by the AO/TPO in this regard as working capital adjustment has been allowed in the hands of the assessee.

24. Now, coming to part-II of the grounds of appeal, the assessee has raised corporate tax grounds of appeal against the restriction of cost of acquired database to Rs.3,00,00,000/- instead of Rs.12,00,00,000/- and the consequent disallowance of depreciation on such database.

25. The Ld. AR for the assessee pointed out that the issue of value and depreciation on acquired database stands covered by the order of the Tribunal in assessee's own case in ITA No.4106/Mum/2007, relating to Assessment Year 2002-03, vide order dated 03.02.2012.

26. The Ld. DR for the Revenue strongly placed reliance on the orders of the authorities below.

27. We find that this issue stands covered by the order of the Tribunal in assessee's own case. The relevant observation of the Tribunal is reproduced hereunder:-

> *"8. We find that it is not in dispute that the transaction between the assessee and American Express Bank, inter alia, including for purchase of Acquired Business Database were subjected to transfer pricing scrutiny and, the Transfer Pricing Officer vide order dated 15.2.2005 has accepted the transaction without making any adjustment to the arms length price. In this view of the matter and as held by Hon'ble Delhi High Court in the case of CIT vs. Oracle India Pvt Ltd (243 CTR 103), when the price fixed is acceptable as arms length price by Transfer Pricing Officer (TPO) under section 92 of the Act, it cannot be open to the Assessing Officer to disturb that price so paid as unreasonable. We have also noted that the Assessing Officer has doubted the appropriateness of the consideration of Rs.12 crores without any cogent material to come to the conclusion that this is excessive or unreasonable, but then the TPO whose duty is it to examine whether or not the price paid in intra associate enterprises transactions are at arms length price or not has accepted the transaction without*

making any arms length price adjustment. There is no material whatsoever to establish or even indicate that the price of Rs.12 crores paid for the Acquired Business Database is excessive or unreasonable and only the basis of Assessing Officer's coming to the conclusion about his subjective judgment. When the valuation of Acquired Business Database has been examined by TPO while concluding that the database price adjustment for the said year and no adverse inferences have been recorded in respect of the same, there could be no good reason for the AO to deviate from the stand of the TPO and substitute his own opinion as to what should be the correct price at which Acquired Business Database should have been purchased. In this view of the matter and in the light of the judgment of Hon'ble Delhi High Court in the case of Oracle India P. Ltd (supra), we are of the considered view that the CIT(A) was indeed in error in restricting the value of Acquired Business Database at Rs.3 crores as against Rs.12 crores paid by the assessee. To this extent, we vacate the order of the CIT(A). We further find that so far as the question about admissibility of depreciation of Acquired Business Database is concerned, this issue is covered in favour of the assessee by the judgment of Hon'ble Delhi High Court in the case of CIT vs. Hindustan Coca Cola Beverages Pvt Ltd (331 ITR 192), wherein, Their Lordships, inter alia, have observed that "It is worth noting, the scope of section 32 has been widened by the Finance (No. 2) Act, 1998 whereby depreciation is now allowed on intangible assets acquired on or after 1st April, 1998. As per section 32(1)(ii), depreciation is allowable in respect of know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature." In view of these discussions as also bearing in mind the entirety of the case, we are of the considered opinion that the CIT(A) ought to have allowed the depreciation on the entire payment of Rs.12 crores towards Acquired Business Database. We, therefore, reject the appeal filed by the Assessing Officer against partial relief granted by the CIT(A) and uphold the grievance of the assessee in this regard.

9. As regards the question of claiming payment towards acquiring database as revenue expenditure, learned counsel for the assessee did not press the same. Accordingly, the grievance is dismissed as not pressed."

28. In the entirety of the submissions made by the Ld. AR for the assessee and following the same parity of reasoning as in assessee's own case for earlier assessment year, we find no merit in restriction of cost of acquired database and the consequent disallowance of depreciation on such database by the Assessing Officer/TPO. Thus, the Assessing Officer is directed to allow

depreciation on entire payment of Rs.12 Crores towards acquired Business database.

29. Another issue raised by the assessee is against the order of the Assessing Officer in restricting the cost of goodwill to nil and not allowing depreciation on it. The Ld. AR for the assessee again pointed out that this issue is also covered by the decision of the Tribunal in assessee's own case in Cross Objection No.202/Mum/2009 (arising out of ITA No.4106/Mum/2007), relating to Assessment Year 2002-03, order dated 29.10.2014.

30. The Ld. DR for the Revenue strongly placed reliance on the orders of the authorities below.

31. We find that this issue is also covered by the decision of the Tribunal in assessee's own case. The relevant findings of the Tribunal read as under:-

> *"3. At the time of hearing before us, the AR pointed out that the issue was impugned in the assessment year and the issue of valuation of goodwill travelled upto the ITAT, Mumbai and the coordinate Bench in the original order held that the valuation of Goodwill was correct and held that entire payment of Rs.12crores was towards acquire business, thereby allowing a claim.*
>
> *4. Respectfully following the order of the ITAT in assessee's own case, we hold that the assessee acquired the business along with goodwill and also that the valuation thereof was correct.*
>
> *5. We now come to the issue of allowance of depreciation of goodwill, acquired by the assessee. The AO disallowed the claim of deprecation on goodwill, because, goodwill did not feature as a depreciable intangible asset in section 32.*
>
> *6. The AR pointed out that the issue is now covered by the decision of CIT vs Smifs Securities Ltd., reported in 348 ITR 302, rendered by Hon'ble Supreme Court."*
>
> *7. We, therefore, allow grounds no.6 & 7."*

32. The issue of depreciation on goodwill stands covered in favour of the assessee in line with the order of the Tribunal in assessee's own case in Assessment Year 2002-03 (supra). Following the same parity of reasoning, we allow the claim of depreciation on goodwill.

33. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 21st October, 2020.

Sd/-	**Sd/-**
(R.K. PANDA)	**(SUSHMA CHOWLA)**
लेखा सदस्य/ACCOUNTANT MEMBER	**उपाध्यक्ष / VICE PRESIDENT**

दिल्ली / दिनांक Dated : 21st October, 2020

Shekhar, Sr. PS;

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण ,दिल्ली
Assistant Registrar, ITAT, Delhi