

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'I-1', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. K. NARASIMHA CHARY, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.3784/Del/2017)
(for Assessment Year : 2011-12)

Deputy Commissioner of Income Tax, Circle-2(1), New Delhi-02 PAN No. AAFCA 9777 L (APPELLANT)	Vs.	M/s. Alcoa India Pvt. Ltd., 7 th Floor, Meridian Commercial Tower, New Delhi – 110 001. (RESPONDENT)
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Assessee by	Shri K. Mehboob, Sr. D.R.
Revenue by	Shri Prichey Solanki, C.A.

Date of hearing:	02/02/2021
Date of Pronouncement:	02/02/2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 16.12.2016 passed by the Commissioner of Income Tax (Appeals)-44, New Delhi relating to Assessment Year 2011-12.

2. Revenue has raised the following grounds of appeal:

1. *“The Ld CIT(A) has erred in law and on facts in directing the Transfer Pricing Officer (TPO) to include/exclude the following comparables on account of TP adjustment in arm's length price of market support segment amounting to Rs.93,07,498/- for the following reasons:*

- 1.1 *The Ld. CIT(A) has directed the TPO to include the comparable Asian Business Exhibition & Conference Limited in the list of final comparables on the ground of functional similarity. However, the Ld CIT(A) has erred in appreciating the fact that the comparable Asian Business Exhibition & Conference Limited is functionally dissimilar to the assessee as this comparable does not qualify the filters applied by the TPO and the functional dissimilarity of this comparable has also been discussed in the order of the TPO.*
- 1.2 *The Ld.CIT(A) has directed the TPO to include the comparable Gradiente Infotainment Ltd in the list of final comparables on the ground of functional similarity. However, the Ld CIT(A) has erred in appreciating the fact that the comparable Gradiente Infotainment Ltd is functionally dissimilar to the assessee as this comparable does not qualify the filters applied by the TPO and the functional dissimilarity of this comparable has also been discussed in the order of the TPO.*
- 1.3 *The Ld.CIT(A) has directed the TPO to exclude the comparable Info Edge India Ltd from the list of final comparables on the ground of functional dissimilarity and high advertisement expenditure. However, the Ld CIT(A) has erred in appreciating the fact that the comparable Info Edge India Ltd is functionally similar to the assessee. The filters applied by the TPO duly passed by this comparable and the inclusion of this comparable has broadly been discussed in the order of the TPO stating that under TNMM the standards of comparability are relatively relaxed and only broad similarity of functions is required.*
- 1.4 *The Ld. CIT(A) has directed the TPO to exclude the comparable Media Research Users Council from the list of final comparables on the ground of functional dissimilarity and abnormal profitability. However, the Ld CIT(A) has erred in appreciating the fact that the comparable Media Research Users Council is functionally similar to the assessee. The filters applied by the TPO duly passed by this comparable. On perusal of the annual report of this comparable, it has been found that company is very much into the market support services. The comparable has been examined under TNMM broad analysis of comparables on wider gamut of services and hence is a suitable comparable.*
2. *The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*

3. Assessee sought adjournment for the reason that no notice on fixation of hearing was received by the assessee.

4. On perusing the grounds raised by the Revenue, it was revealed that Revenue is aggrieved by the relief of Rs.93,07,498/- granted by CIT(A). When we inquired from the Learned DR that whether on the addition which is in dispute, the tax effect is less than the limit prescribed by CBDT Circular No.17/2019 dated 08.08.2019 and therefore whether the appeal of the Revenue was maintainable, Learned DR fairly conceded that the tax effect on the impugned addition is less than the limit prescribed by CBDT Circular. Considering the aforesaid, the request for adjournment by the assessee is rejected and we proceed to dispose of the appeal.

5. We have heard the Ld. DR and perused the material on record. On perusing the grounds of appeal raised by the Revenue, we find that Revenue is aggrieved by the order of Learned CIT(A) in respect of the relief given by him. We find that CBDT vide Circular No. 3/2018 dated 11.07.2018 had increased the limit for filing appeal before ITAT at Rs. 20 lakhs. The limit for filing appeals before ITAT and other authorities were enhanced by CBDT vide Circular No.17 of 2019 dated 08.08.2019. As per the aforesaid CBDT Circular dated 08.08.2019, no Department appeals are to be filed against relief given by the Learned CIT(A) before the Income Tax Appellate Tribunal unless the tax effect,

excluding interest, exceeds Rs.50 lakhs. We find that in the present case, the tax effect involved is less than Rs.50 lakhs. In the absence of any material placed on record by the Revenue to demonstrate that the issue in the present appeal is covered by exceptions provided in para 10 of the aforesaid CBDT Circular of 11.07.2018, we are of the view that the monetary limit prescribed by the instructions of the CBDT Circular dated 08.08.2019 would be applicable to the present appeal of the Department. We therefore hold the present appeal of Revenue to be not maintainable on account of low tax effect. However, in case there is any error in the computation of the tax effect involved or if for any reason, the aforesaid CBDT Circular is not applicable, it would be open to the Revenue to seek revival of the appeal. **Thus the appeal of the Revenue is dismissed.**

6. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 02.02.2021, immediately after conclusion of the hearing of the matter in virtual mode.

Sd/-

**(K. NARASIMHA CHARY)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 02.02.2021
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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI