

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

Before Sh. Kul Bharat, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 970/Del/2016 : Asstt. Year : 2011-12

ITA No. 1118/Del/2017 : Asstt. Year : 2012-13

Atrenta (India) Pvt. Ltd., C/o M/s S B Garg & Co., CAs, 20/17, Shakti Nagar, Delhi-110007	Vs	DCIT, Circle-3(2), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAECA2163M		

Assessee by : Sh. Sachin Kumar, Adv.

Revenue by : Sh. F. R. Meena, Sr. DR

Date of Hearing: 08.07.2021

Date of Pronouncement: 23.08.2021

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee against the orders passed by the AO u/s 144C(1) r.w.s. 143(3) of the Income Tax Act, 1961.

2. Ground No. 2 of the assessee is as under:

"2. The order passed by the Id. Assistant Commissioner of Income Tax, as the Transfer Pricing Officer - 1 (1)(1), New Delhi (hereafter the TPO) is without jurisdiction, bad in law, null and void ab-initio inter alia because:

- (1) *The transfer pricing proceedings were taken up by the Id. Additional Commissioner of Income Tax, as the Transfer Pricing Officer - 1(1), New Delhi and there is no order by the Competent / Higher Authority transferring the proceedings to the Id. TPO;*
- (2) *The Id. TPO failed to provide any opportunity of personal hearing to the Assessee after issuing the show cause notice, despite specific request;*
- (3) *The Id. TPO failed to provide, to the Assessee, the material relied upon by the Id. TPO, despite specific request;*
- (4) *The Id. TPO failed to allow inspection of the material relied upon by the Id. TPO, despite specific request;*
- (5) *The order has been passed by the Id. TPO with the approval of the Higher Authority;*
- (6) *The observations, by the Id. TPO, are against the facts of the case;*
- (7) *The order of the Id. TPO is non-speaking inter alia because the Id. TPO did not consider the submissions of the Assessee and did not provide reasons / basis for the decision."*

3. The Id. DRP did not adjudicate this issue raised by the assessee specifically before them and held at para 17 that the

proceedings before DRP are a continuation of assessment proceedings and the assessee had full opportunity before the DRP. The Id. DR relied on the order of the Id. DRP.

4. We have gone through the record and hold that based on the specifics peculiar to the instant case, interest of justice would be well served for both the parties if an opportunity of being heard is given to the assessee before the TPO. The TPO shall also make sentient of the assessee on the material relied upon in determining the ALP.

5. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order Pronounced in the Open Court on 23/08/2021.

Sd/-

(Kul Bharat)
Judicial Member

Dated: 23/08/2021

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR