

**THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

IT(TP)A No.2550/Bang/2018
Assessment Year : 2012-13

M/s. IHS Global Private Limited (formerly known as IHS Parts Managements Private Limited), 3 rd Floor, Plot No.13, 14 and 15, Industrial Area, Hoodi Village, Krishnarajapuram, Bengaluru – 560 066. PAN : AABCI 4372 D	Vs.	The Deputy Commissioner of Income Tax, Circle -3(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri. Sumeet Khurana, CA
Respondent by	:	Ms. Neera Malhotra, CIT(DR)(ITAT), Bengaluru

Date of hearing	:	16.09.2021
Date of Pronouncement	:	17.09.2021

ORDER

Per N. V. Vasudevan, Vice President:

This is an appeal by the assessee against the Order dated 12.07.2018 of CIT(A)-3, Bengaluru, passed relating to Assessment Year 2012-13. In this appeal, the assessee has challenged the order of the CIT(A) whereby the CIT(A) partly allowed the appeal of the assessee in respect of an addition of Rs.8,41,79,785/- made by the Transfer Pricing Officer (TPO) on account of determination of Arm's Length Price (ALP) in respect of an international transaction of rendering Information Technology enabled Services (ITeS) by the assessee to its Associated Enterprise (AE).

2. Before the Tribunal, the assessee has filed application for admission of an additional ground of appeal which reads as follows:

“1. Without prejudice to other grounds of appeal, the Appellant humbly prays for the application of the mark-up agreed in the Mutual Agreement Procedure with respect to the international transaction of provision of Information Technology enabled Services ('ITeS') to the Associated Enterprises ('AEs') based in the United States of America ('US') to the international transaction of provision of ITeS to the AEs based outside the US, which amounts to less than 6% of the total revenue.”

3. The reasons for filing the aforesaid additional ground of appeal has been stated in an application for admission of addition ground. It has been stated therein that in the Transfer Pricing ('TP') assessment, the learned TPO had provided the adjustment to international transaction of provision of Information Technology enabled Services ('ITeS') by the Appellant to its Associated Enterprises ('AEs') based out of the United States of America (US') and United Kingdom ('UK), and with domestic parties. The adjustment was upheld by the learned Commissioner of Income-tax (Appeals) in the first appellate proceedings. The Assessee filed the present appeal before the Tribunal. Parallely, the Assessee's AE, based out of the US, raised a Mutual Agreement Procedure ('MAP') request with the Competent Authorities of the US and India to resolve the TP dispute in relation to the international transaction of provision of ITeS by the Appellant to the US based AE. The percentage of revenue of the Assessee from the AE based in US was 94% of the total TP adjustment provided by the learned TPO. The Assessee has further submitted that the MAP request was resolved and the resolution arrived at was shared with the

Assessee vide letter dated 6 April 2021 by the learned Deputy Commissioner of Income-tax (OSD), APA — I. FT & TR — I, The Central Board of Direct Taxes, bearing F No. 480 / 17 / 2012 — APA — I. Subsequently and as required under the Rule 44G of the Income-tax Rules, 1962. the Assessee filed a request before the Tribunal on 22 April 2021 for withdrawing the appeal to the extent covered under the MAP resolution, i.e., with respect to the international transaction of provision of ITeS by the Appellant to its US based AE.

4. It is the plea of the Assessee before the Tribunal in the additional ground to apply the MAP resolution to the international transaction of provision of ITeS by the Assessee to the AEs based out of the US, which tantamount to less than 6% of the total TP adjustment provided by the learned TP Officer. It has further been submitted that the additional ground could not have been raised at the time of filing the original appeal in Form 36 because the MAP resolution was a subsequent event. It has also been submitted that adjudication of the additional ground would not require examination of any new facts and hence the Assessee has prayed for admission of additional ground.

5. After hearing the rival submissions on the application for admission of additional grounds we are of the view that the additional ground should be admitted for adjudication, keeping in mind the ratio laid down by the Hon'ble Supreme Court in the case of NTPC Ltd, 229ITR 388 (SC), wherein it was held that if additional ground can be decided from the facts already available on record and by application of law, the same should be admitted. Hence, the additional ground is admitted for adjudication.

6. The factual background as given by the assessee in the application for admission of additional grounds shows that 94% of the receipts from rendering ITeS was from AE located in USA which was settled in Mutual Agreement Procedure (MAP) and therefore to that extent, the grounds of appeal of the assessee would not survive. With regard to the remaining 6% of the receipts from ITeS, the admitted position is that those receipts are from AEs located at UK and domestic parties. It is in these circumstances that the assessee has prayed that the ALP of the transaction in so far as it relates to the receipts from AE in UK and others should be based on the rates accepted in the MAP proceedings in respect of transactions between the assessee and the AE at USA. In support of the assessee's claim, the assessee has placed reliance on the decision of the Hon'ble ITAT, Bengaluru Bench in the case of Amazon Development Centre India Pvt. Ltd., Vs. ITO [2018] 93 taxmann.com 183 (Bangalore - Trib.). In the aforesaid decision, the Tribunal on similar contention held that the margin accepted in the MAP between Indian entity and the US entity has to be applied to non-US AE transactions also as neither in the accounts of the assessee nor in the TP analysis of the assessee and also neither in the TPO's order any distinction has been made between US and non-US transactions.

7. Learned DR on the other hand placed reliance on the decision of the ITAT, Bengaluru Bench in the case of M/s. Oracle Solutions Services (India) Pvt. Ltd., Vs. DCIT IT(TP)A No.1041/Bang/2018 dated 06.02.2020, DCIT Vs. Global e-business Operations (P) Ltd., (2017) 86 taxmann.com 197, JCIT (LTU) Vs. Dell International Services India (P) Ltd., Vs. DCIT IT(TP)A 53/Bang/2014 dated 13.07.2018.

8. We have considered the rival submissions. In the case of Global e-business Operations (P) Ltd., the Tribunal remanded the issue to the TPO for considering afresh. The Tribunal reasoned that the percentage of transaction with the AE for which MAP proceedings were concluded and the transactions with the other AEs were not available and only if the percentage is less, the plea of the Assessee could be accepted. In the case of Dell International Services India (P) Ltd., (supra), the Tribunal restored the matter to the AE for considering afresh. In the case of Oracle Solutions Services (India) Pvt. Ltd., (supra), again the issue was remanded to the AO. We are of the view that in the light of the findings available with regard to percentage of US AE transactions and non-US AE transactions, it may not be necessary to remand the issue for fresh consideration as held in the case of Amazon Development Centre India Pvt. Ltd., (supra). The parties did not make any distinction between US AE transactions and non-US AE transactions. In such circumstances, we are of the view that the margins accepted in the MAP proceedings with the US AE will offer a valuable guide and can be adopted as the margin to non-US AE transactions also. We hold and direct accordingly. In view of the conclusions of the preliminary issue on the additional ground, we are of the view that the grounds raised by the assessee in this appeal may not require any consideration.

9. In the result, appeal of the assessee is partly allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(CHANDA POOJARI)
ACCOUNTANT MEMBER

Sd/-
(N. V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated : 17.09.2021.
/NS/*

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.