

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "C", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

ITA No.256/PUN/2021

निर्धारण वर्ष / Assessment Year : 2016-17

Neilsoft Private Limited, (Earlier known as Neilsoft Limited), Pride Parmar Galaxy 10/10A, 8 th Floor, Sadhu Vaswani Chowk, Pune – 411 001 PAN : AAACN1300P	Vs.	DCIT (TP) 2(1), Pune
Appellant		Respondent

Assessee by Shri Rahul Mehta &
Shri Aayush Modi
Revenue by Shri Piyush Kumar Singh Yadav
Date of hearing 05-01-2022
Date of pronouncement 07-01-2022

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the final assessment order dated 13-04-2021 passed by the Assessing Officer u/s 143(3) r.w.s. 144C(13) r.w.s. 143(3A) & 143(3B) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') in relation to the assessment year 2016-17.

2. The only issue raised through various grounds in this appeal is against the making of transfer pricing adjustment amounting to Rs.1,73,70,067/-.

3. Tersely stated, the facts of the case are that the assessee is an Indian Company engaged mainly in providing Engineering services. A return was filed along with Form No.3CEB declaring certain international transactions. The Assessing Officer (AO) made a reference to the Transfer Pricing Officer (TPO) for determining the Arm's Length Price (ALP) of the international transactions. The assessee received a sum of Rs.25,37,21,315/- in the international transaction of "Provision of Engineering services"; Rs.7,87,230/- from 'Provision of accounting services'; Rs.4,34,600/- from 'Provision of management services'. In addition, the assessee paid 'Consultancy and Professional fee' and also for 'Purchase of software products' from its Associated Enterprises (AEs). The assessee applied the Transactional Net Margin Method (TNMM) and determined its Profit Level Indicator (PLI) of Operating Profit to Operating Cost (OP/OC) from Services rendered to AEs at 18.04% and from Services to non-AEs at 13.44%. In addition, the assessee also carried on some Trading activity. Considering the internal TNMM with 13.44% PLI from

non-AE transactions of rendering services, the assessee declared that its international transaction of rendering services to AEs at 18.04% was at ALP. The TPO observed that the assessee had not maintained separate segmental accounts and the consolidated accounts were used for showing the above profit margins from three different segments. After discarding the assessee's allocation of expenses to different segments, the TPO applied external TNMM. He chose certain comparable companies with their adjusted OP/OC mean margin at 15.71%. Applying the same as benchmark, he notified transfer pricing adjustment of Rs.2,42,37,997/-. The Dispute Resolution Panel (DRP) made certain alterations to the comparables, which led to their mean OP/OC at 13.13%. The AO, giving effect to the direction rendered by the DRP, made addition of Rs.1.73 crore, against which the assessee has come up in appeal before the Tribunal.

4. We have heard both the sides and scanned through the relevant material on record. The assessee rendered Engineering Design services amounting to Rs.25.49 crore to its United States AE. Simultaneously, it also provided similar services in domestic market as well as other AEs in Europe with revenue at Rs.13.30 crore and Rs.49.00 crore respectively. Apart from that, the

assessee also undertook trading activity with revenue of Rs.21.10 crore. Though accounts were maintained in a consolidated manner, the assessee, for the purposes of benchmarking, worked out the PLI separately from services rendered to AE services; rendered to non-AE services; and trading. The details of such operating profit determination have been placed at page 173 of the paper book. The TPO did not accept the assessee's bifurcation of costs as allocated to the AE segment by observing that the hourly rate charges to AE *vis-à-vis* the non-AEs were varied and the assessee could not explain the basis of hourly rate charged to AEs and non-AEs; the assessee could not substantiate that Employee benefit expenses were allocated between AEs and non-AEs on the basis of actual man hours spent for AE and Non-AE projects; the expenses were not allocated on actual basis; the assessee could not furnish details of Cost Sheet of all major projects; and the Auditor who worked out separate profits from AE, non-AE and trading segments issued Certificate on the specific request of the Management. The DRP added further that the assessee purchased software products at Rs.36,82,882/- from its AEs and also availed Consultancy services for which a sum of Rs.2.53 crore was paid but it considered lower expenses in the computation of ALP from

the services AE segment with the result that a sum of Rs.76,53,927/- directly relatable to AE segment was allocated to other segments. It further observed that the assessee in its transfer pricing study report considered Provision of Engineering services; Provision of Accounting services; Receiving Technical Consultancy services and Provision for purchase of software for benchmarking. However, the Purchase of software products of Rs.36.82 lakh was allocated solely to the Trading segment, which ought to have been considered in the service AE segment.

5. Firstly, we take up the reasons adduced by the TPO for rejecting the assessee's allocation of Costs and determination of the PLI from services AE and services non-AE segments. The view point that hourly rate charged to AEs and non-AEs was different as was reflected from sample invoices does not justify rejection of the separate determination of operating profit from different segments. If the AEs has been charged at the higher price *vis-à-vis* the non-AEs for which respective invoices have been issued, there can be no reason to reject the separate profits. Even if the assessee had maintained separate accounts and booked such revenue on the basis of invoices at different rates between AEs and non-AEs, the situation would not have been any different. The

other view point of the TPO that the expenses were not allocated on actual basis and they were allocated on some basis either Revenue or on Employee ratio, is again not fully correct. We have seen segmental profit computed by the assessee, a copy placed at page 173 of the paper book. The assessee identified Revenue from services AEs; services non-AE and Trading separately and thereafter, started making deductions towards operating costs by taking Cost of goods sold on actual basis and other expenses on the basis of either Employee cost or Revenue. For example, Salaries have been bifurcated on the basis of number of hours spent by employees. Staff Welfare expenses, Power and Fuel, Repair & Maintenance (Building) and Repair and Maintenance (Machinery) have been bifurcated on the basis of Employee ratio; Payment to Auditors, Software License fees etc. is allocated in the revenue ratio. While certain other costs like Consultancy charges, Commission and Discount, Provision for Doubtful Trade Receivables have been done on actual basis. The DRP echoed the TPO's view by observing that the assessee did not consider Rs.76.53 lakh in the AE segment out of expenditure pertaining to purchase of software products and consultancy services incurred to the AE. This does not validate the DRP's point of view. It has

been noticed above that the assessee received Rs.26.00 crore from its AEs and Rs.63.00 crore from non-AEs for rendering similar services. The Consultancy services received were deployed commonly for rendering services both to the AEs and non-AEs. The other point of view taken by the DRP is that though the assessee initially mentioned in its transfer pricing study report that the purchase of software was also part of the services segment, but the same was eventually ignored. It is seen that such software was purchased by the assessee from its AE at Rs.36,82,882/-, which was eventually sold at Rs.1.55 crore. Logically, the purchase and sale of software ought to have been part of trading segment of the assessee and not the services segment. Though the assessee mentioned in its Transfer pricing study report that the purchase of software was considered for benchmarking the Service segment, but the transaction of purchase of software was not taken into consideration at the time of benchmarking the transaction. A mere wrong mention in the Transfer pricing study report about the inclusion of purchase of software does not place the case of the Revenue at a better pedestal when factually the purchase of software was not considered by the assessee for benchmarking. Thus, it is evident that the reasons ascribed by the authorities

below for rejecting the segmental profitability are not tenable. The corollary is that the segmental profitability, as determined by the assessee, was correct, as per which OP/OC from services to AR at 18.04% is better than OP/OC from non-AE services at 13.44% showing the international transaction at ALP.

6. There is another dimension of the case. The assessee rendered similar Services both to the AEs and non-AEs. Even if we ignore the separate segmental profitability and consolidate the service segment consisting of both the AEs and non-AEs as one unit, the combined PLI comes to 14.72%, as has been noted with tabulation in the objection raised by the assessee before the DRP at para no.10.4.9 showing OP/OE at 19.04% from services (AEs) and 14.33% from services (non-AEs) and aggregate at 14.72%. As against this combined margin from Services, the mean margin of the comparables taken by the AO in the order giving effect to the DRP's directions, is 13.13%. The assessee's combined margin is also better than that of the comparables, which makes the international transaction at ALP. The DRP adduced one more reason that the assessee did not consider purchase of software in the services segment which ought to have been considered, as was

initially stated in the Transfer pricing study report. The Software products were purchased by the assessee from its AE at Rs.36.00 lakh and it was sold at Rs.1.55 crore, thereby giving profit of Rs.1.19 crore. If this profit is also included in the operating profit of consolidated Service segment, the profit margin so considered earlier will further push up rather than reducing it. Viewed from any angle, it is clear that the international transaction of rendering software services to its AE is at ALP. We, therefore, order to delete the transfer pricing adjustment of Rs.1.73 crore.

7. In the result, the appeal is allowed.

Order pronounced in the Open Court on 07th January, 2022.

Sd/-
(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 07th January, 2022
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(DRP-3), Mumbai-1, CIT(DRP-3), Mumbai-2,
CIT(DRP-3), Mumbai-3,
4. The concerned CIT, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे “C” / DR ‘C’,
ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	05-01-2022	Sr.PS
2.	Draft placed before author	07-01-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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