

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

Before Sh. Saktijit Dey, Judicial Member

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

ITA No. 3712/Del/2018 : Asstt. Year : 2011-12

DCIT, Circle-12(2), New Delhi (APPELLANT)	Vs	In Trading Pvt. Ltd., D-15, Geetanjali Enclave, New Delhi-110017 (RESPONDENT)
PAN No. AABCI0777J		

Assessee by : None

Revenue by : Sh. Mrinal Kumar Das, Sr. DR

Date of Hearing: 06.01.2022

Date of Pronouncement: 10.01.2022

ORDER

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

The present appeal has been filed by the revenue against the order of Id. CIT(A)-44, New Delhi dated 28.02.2018.

2. Following grounds have been raised by the revenue:

"1. Whether the order of Id. CIT(A) is perverse in accepting the internal TNMM of the assessee ignoring the fact that the assessee company has been changing its stand before the authorities and even offered adjustment under external TNMM during TP proceedings.

2. Whether the order of Id. CIT(A) is perverse in ignoring the fact that there is no such segment reporting in the financial of the taxpayer that established its action of distributing of revenue between foreign AE and non-AE as genuine allocation and no such segmental reporting was furnished at the time of the original TP proceedings."

3. The appeal has been filed on 17.05.2018. Hearings have been held on 24.12.2020, 01.03.2021 and 06.07.2021. None

appeared on behalf of the assessee on any of the dates. It was pointed out that the revenue authorities on 09.09.2021 as to futility of the appeal filed as the amount in dispute as well as the core grievance of the revenue has not been made clear in the appeal. No reply has been received till today inspite of a lag of three months. At this juncture we feel it is no more required. Hence, it is decided to dispose the appeal on the merits of the case.

4. In the case, the AO made addition on account of Transfer Pricing adjustment of Rs.1,67,85,136/- which culminated into contraption of returned loss of Rs.7,80,30,578/- to Rs.6,12,26,929/- The assessee has enclosed the export segment results, indicating that the assessee has made operating profit in its export sales. A duly certified segment accounts by a Chartered Accountant is enclosed as an annexure to this submission, which proves that the assessee has earned margin of 0.74% on overall export sales to AE segment as against the margin of 0.39% on export sales to non-AE segment. The Ld. CIT(A), in view of the above submission, relying on the judgment in the case of Birla Soft India Ltd. in ITA No. 284/Del/2013 as directed the TPO/AO to determine the ALP of the international transactions with the AE by making internal comparison of the net margins earned by the appellant from international transaction with AE and margin earned by the AE from international transactions with unrelated parties. The AO/TPO was further directed to calculate the costs of the segments on the basis of the certificate of the CA which has not been objected by the TPO on the remand report.

5. Since, we find no error of law or facts on the directions of the Id. CIT(A) given to the TPO/AO, we hold that the appeal filed by the revenue is infructuous and being dismissed.

6. In the result, the appeal of the revenue is dismissed.
Order Pronounced in the Open Court on 10/01/2022.

Sd/-

(Saktijit Dey)
Judicial Member

Dated: 10/01/2022

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