

आयकर अपीलीय अधिकरण 'डी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.1386/Chny/2014**
(निर्धारण वर्ष / **Assessment Year: 2009-10**)

M/s. MPS Ltd. (formerly known as Macmillan India Ltd.) RR Tower IV Super A 16/17 Thiru-vi-ka Industrial Estate, Guindy, Chennai – 600 017	बनाम/ Vs.	ACIT Company Circle-IV(3), Chennai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAACM-2423-L		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri S.P. Chidambaram (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri S. Palani Kumar- Ld. CIT- DR

सुनवाई की तारीख/ Date of Hearing	:	07-12-2021
घोषणा की तारीख / Date of Pronouncement	:	31-01-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aggrieved by confirmation of certain Transfer-pricing adjustment for Assessment Year (AY) 2009-10, the assessee is in further appeal before us. The final assessment order has been passed by Ld. Assessing Officer (AO) on 28.02.2014 u/s 143(3) r.w.s. 144C(13) & 92CA(3) of the

Act pursuant to the directions of the Ld. Dispute Resolution Panel, Chennai (DRP) dated 20.12.2013 passed u/s 144C(5).

2. Though the assessee has raised multiple grounds of appeal, however, Ld. AR made limited submission for exclusion of one comparable entity i.e., M/s Cosmic Global Limited from final set of comparable entities as adopted by Ld. Transfer Pricing Officer (TPO). The same is on the basis of Tribunal's order in assessee's own case for AY 2010-11, a copy of which has been placed on record. The Ld. CIT-DR, on the other hand, made arguments in support of inclusion of this entity. Having heard rival submissions, our adjudication would be as under.

3. The assessee being resident corporate assessee is stated to be engaged in providing high quality publication solutions. The international transactions carried out by the assessee with its Associated Enterprises (AE) during the year were referred to Ld. TPO for determination of Arm's Length Price (ALP). One of the transactions was rendering of services by the assessee in the area of IT enabled services (ITeS). This transaction was benchmarked using Transactional Net Margin Method (TNMM). In its Transfer Pricing study report, the assessee computed average margin of 5 comparable entities @8.84% as against assessee's margin of 11.18% and therefore, no adjustment was offered. During proceedings, the assessee updated margins of comparable entities on the basis of data for financial year 2008-09 and reflected mean margin of 14.71% with respect to 4 comparable entities. One of the entities was M/s Cosmic Global Ltd. The assessee's own margin was revised to 10%. However, Ld. TPO, adjusting the selection criteria and various filters, adopted 6 comparable entities having mean margin of 26.05%. M/s

Cosmic Global Ltd. having margin of 48.10% was also included in final set of comparable entities despite the objection of the assessee that this entity earned super profits and hence, not comparable. Accordingly, an adjustment of Rs.1845.78 Lacs was offered by Ld. TPO in its order dated 31.12.2012. However, this adjustment has been revised by Ld. TPO to Rs.656.08 Lacs in rectification order dated 08.03.2013 passed u/s 154. The same was incorporated in the draft assessment order dated 22.03.2013 which was subjected to objections before Ld. DRP.

4. The Ld. DRP, after considering assessee's submissions, directed for exclusion of one entity, however, retained M/s Cosmic Global Ltd. despite the objection of the assessee. The directions of Ld. DRP reduced the TP adjustment to Rs.312.73 Lacs in the final assessment order dated 28.02.2014. Aggrieved, the assessee is in further appeal before us with limiter prayer of exclusion of M/s Cosmic Global Ltd.

5. Upon perusal of Tribunal's order in assessee's own case for AY 2010-11 vide ITA No.963/Chny/2015 order dated 03.04.2018, we find that the assessee sought exclusion of this entity and the matter was remitted back to the file of Ld. TPO/ AO for fresh examination. Pursuant to this order, Ld. TPO has passed an order on 25.10.2019 wherein this entity has been excluded. Therefore, finding strength in the argument of Ld. AR, we remit the matter back to the file of Ld. TPO / AO on similar lines as done by co-ordinate bench in AY 2010-11 for the limited purpose of examining assessee's claim for exclusion of M/s Cosmic Global Ltd. The grounds raised thus stand partly allowed for statistical purposes. No other ground has been urged before us.

6. The appeal stand partly allowed for statistical purposes.

Order pronounced on 31st January, 2022

Sd/-
(V. DURGA RAO)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 31-01-2022
EDN/-

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF