

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

**BEFORE SHRI B. R. R. KUMAR, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER**

**(THROUGH VIDEO CONFERENCING)
I.T.A. No. 536/DEL/2015 (A.Y 2010-11)**

Colt Technology Services (1) Pvt. Ltd. 103, Ashoka Estate, Barakhamba Road, New Delhi PAN No. AACCC3512G (APPELLANT)	Vs	DCIT Circle 6(1) New Delhi (RESPONDENT)
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I.T.A. No. 1908/DEL/2017 (A.Y 2012-13)

Colt Technology Services (1) Pvt. Ltd. 103, Ashoka Estate, Barakhamba Road, New Delhi PAN No. AACCC3512G (APPELLANT)	Vs	DCIT Circle 6(1), Room No. 390, C. R. Building New Delhi (RESPONDENT)
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Appellant by	Sh. Vikas Srivastava, AR & Sh. Mayank Aggarwal, Adv
Respondent by	Sh. Surender Pal, CIT (DR)

Date of Hearing	31.01.2022
Date of Pronouncement	13.04.2022

ORDER

PER YOGESH KUMAR U.S., JM

These two appeals are directed against different Final Assessment Orders dated 28/11/2014 and 27/01/2017 passed by Deputy Commissioner of Income Tax, New Delhi u/s 143(3) r/w Section 144C of Income tax Act, 1961('Act' for short) for the Assessment Year 2010-11 and 2012-13 respectively.

2. The grounds of appeal in **I.T.A. No. 536/DEL/2015 (A.Y 2010-11)** are as under:-

“1 The order dated November 28, 2014, passed by the Learned Deputy Commissioner of Income Tax, Circle 6(1), New Delhi (hereinafter referred as 'Ld. AO') under section 143(3) read with section 144C of the Income Tax Act, 1961 hereinafter referred as 'the Act') is bad in law and on the facts and circumstances of the case.

2. The reference made by the Ld. AO to the Learned Additional Commissioner of Income Tax, TPO-1(1), New Delhi (hereinafter referred as 'Ld. TPO') suffers from jurisdictional error as the Ld. AO has not recorded any reason on the basis of which he reached the conclusion that it was necessary or expedient to refer the matter to the Ld. TPO.

3. The Ld. AO as well as the Ld. TPO and the Hon'ble Dispute Resolution Panel hereinafter referred as (Hon'ble DRP) have erred in law as well as facts of the case in not accepting the Arm's Length Price (hereinafter referred as 'ALP') determined by the appellant.

4. The Ld. AO / Ld. TPO / Hon'ble DRP have erred in ignoring the fact that the appellant is entitled to deduction under section 10A of the Act on its profits from provision of Information Technology Enabled Services ('ITES') and Contract Software Development ('CSD') Services to overseas associated enterprises and there is no untoward motive to derive any tax advantage by manipulating transfer prices of International Transaction undertaken by it with its associated enterprises.

5. The Ld. AO / Ld. TPO / Hon'ble DRP have erred in determining the ALP on the basis of data for Financial Year ('FY')

2009-10 only and ignoring the data for two prior financial years i.e. FY 2008-09 and FY 2007-08.

6. *The Ld. AO / Ld. TPO / Hon'ble DRP have erred in rejecting the analysis conducted by the appellant and conducting a fresh comparability analysis for determining the ALP which did not take into consideration the functions and risks applicable to the appellants business.*

7. *The Ld. AO / Ld. TPO / Hon'ble DRP have erred in rejecting the quantitative filters adopted by the appellant, and adopting inappropriate quantitative filters for carrying out a fresh comparability analysis.*

8. *The Ld. AO / Ld. TPO / Hon'ble DRP have erred in arbitrarily rejecting certain companies selected by the appellant as comparables in terms of functions performed, assets employed and risks assumed, and in accepting certain companies which are not comparable to the appellant, for determining ALP.*

9. *The Ld. AO / Ld. TPO / Hon'ble DRP have erred in accepting companies with exceptionally high operating margins as comparables of the appellant on an arbitrary basis.*

10. *The Ld. AO / Ld. TPO / Hon'ble DRP have erred in rejecting companies with low profits / losses as comparables of the appellant on an arbitrary basis.*

11. *The Ld. TPO has erred in not providing the working capital adjustments to the appellant even after the specific directions of Hon'ble DRP.*

12. *The Ld. AO / Ld. TPO / Hon'ble DRP have erred in not allowing any risk adjustments to the appellant as it is remunerated on a cost plus mark-up basis and undertakes minimal risks.*

13. *The Ld. AO / Ld. TPO / Hon'ble DRP have erred in taking an inconsistent stand TV not applying the wages / sales ratio filter to the ITES segment (as applied in the CSD Segment) and thereby adopting an inconsistent stand between the ITES and CSD segments and applying this filter selectively only to the CSD segment.*

14. *The Ld. AO / Ld. TPO / Ld. DRP have erred in making a notional addition on account of interest on perceived delay in collection of receivables from the Associated Enterprises without taking due cognizance of the business model and submissions made by the appellant.*

15. *The Ld. AO / Ld. TPO / Ld. DRP has erred in making additions on the basis of notional interest by comparing it with SBI PLR ignoring that the said comparison is none of the 5 prescribed methods under the Indian transfer pricing regulations.*

16. *The Ld. AO / Ld. TPO / Ld. DRP have erred in considering the rate of interest chargeable on receivables at 300 basis points above SBI PLR on June 30, 2009, 14.75%.*

17. *The Ld. AO / Ld. TPO have erred in fact and in law by considering the arm's length value of some of the fixed assets imported by the appellant from its associated enterprises during the financial year 2009-10 as Nil, ignoring the valuation arrived by the Custom Authorities.*

18. *The Ld. AO / Ld. IPO have erred in making addition equivalent to the entire amount of fixed assets imported by the*

appellant instead of the corresponding depreciation amount.

19. *The Ld. AO / Ld. TPO / Hon'ble DRP have erred in ignoring the judicial pronouncements relied upon by the appellant.*

20. *The Ld. AO has erred in initiating penalty proceedings under section 271(l)(c) of the Act.”*

3. Brief facts of the case are that, the assessee Company is incorporated in India on April 1, 2004 and is a part of the Colt Group of Companies ('Colt Group') and provides Information Technology Enabled Services ('ITES') and contract software development ('CSD') solutions to its associated enterprises ('AEs'). The assessee performs back-end operations in all business areas such as network operations and engineering, IT service provisioning, sales and marketing support, human resources and finance.

4. The assessee company filed its return of income on 29.09.2010 electronically declaring an income of Rs. 18,08,195/- under normal provision of the Act after claiming deduction of Rs. 27,31,51,569/- and book profit declared at Rs. 20,28,16,758/-. The return was processed u/s 143(1) of the Act. Notice u/s 143(2) of the Act was served upon the assessee company. The representative of the assessee has participated and filed necessary details. During the year under consideration the assessee has entered into international transaction with its AE which is stated as under:-

S.No	Name of AE	Value of services rendered in ITES segment (in INR)	% share of services rendered in ITES segment
1	Colt Technology Services Group Limited, UK ("Colt U.K.")	2,264,865,085	92.54%
2	Colt Lux Group Holding Sarl, Luxembourg ("Colt Luxembourg")	182,694,954	7.46%

The case of the assessee was referred to Transfer Pricing Officer for determination of Arm's Length Price u/s 92CA of the Act, in respect of the said international transaction. The Ld. TPO vide its order dated 21/01/2014 has determined the Arm's Length Price with respect of the international transaction carried out by the assessee and directed the Assessing officer to add a sum of Rs.64,76,61,598/-. The draft assessment order came to be passed as per Section 143(3) read with Section 144C of the Act on 24.02.2014. The assessee has filed objection before the DRP and the DRP vide order dated 10/10/2014 restored the matter to file of the TPO for verification. The TPO vide his report dated 21/11/2014 has suggested that Rs. 55,20,72,545/- shall be treated as accumulative adjustment u/s 92CA of the Act. In compliance with the directions of the DRP and the order of the TPO, the Ld. AO by making addition of Rs. 55,20,72,496/- on account of ALP, passed the final assessment order on 28/11/2014.

5. Aggrieved by the final assessment order dated 28/11/2014, the assessee has preferred the present appeal on the grounds mentioned above.

6. The Ld. Counsel further assessee submitted that, the assessee has invoked mutual agreement procedure (MAP) with respect to its international transaction to its AE based in UK. Pursuant to the same, MAP resolution dated 12/02/2018 was arrived between India and UK competent authorities and the same was accepted by Colt. In the said MAP Resolution, the appropriate margin for service rendered under ITEs segment was agreed at 15.50% as against 11.94% earned by the Colt. The appropriate margin for service rendered under CSD segment was agreed at 14.50% as against 13.93% earned by Colt. Copy of MAP resolution is filed by the assessee before the Tribunal along with the application to revise grounds of appeal to restrict only to the issues which are not covered by MAP resolution. The ld. Counsel further submitted that, after the MAP resolution, the addition sustained in the case of

the assessee and which is the subject matter of the present appeal are as under:-

<i>S. No.</i>	<i>Particulars</i>	<i>Amount in INR</i>
<i>TP ADDITIONS</i>		
<i>A</i>	<i>ITES SEGMENT(Colt Luxembourg</i>	<i>33,131,928</i>
<i>B</i>	<i>Purchase of fixed assets</i>	<i>1,944,137</i>
<i>C</i>	<i>Interest on receivables</i>	<i>4,226,509</i>
	<i>Total additions</i>	<i>39,302,574</i>

7. The grounds of Appeal No. 1 to 13 are in respect of ITEs Segment on transaction with Colt Luxembourg. The Ld. AR submitted that, there is no distinction between services rendered by the assessee to Colt UK and Cold Luxembourg. Even the TPO has not made any distinction in its order and also while computing Arm's Length margin for ITEs segment. Further, even under the MAP resolution the costs in ITEs segment with respect to the transaction with Colt UK and Colt Luxembourg have been appropriated proportionately on the basis of revenue, thereby showing there is no distinction between the natures of services rendered by the assessee. The Ld. AR further contended that the quantum of UK transactions constitutes only 7.46% of the total transaction undertaken by the appellant in ITEs segment. Therefore, the margin accepted in MAP resolutions i.e. 15.50% should be applied to bench mark the ITEs services rendered by the assessee to Colt Luxembourg as against the margin of 32.24% computed by the Ld. TPO.

8. The Ld. AR has further submitted that, the margins accepted by MAP are applied in the similar transactions which are not covered under the MAP in the following cases:-

- i. Amazon Development Centre (India) (P.) Ltd. Vs. Income Tax Officer, Ward 11(1), Bangalore, [2018] 93 Taxmann.co 30(Bangalore-Trib.).
- ii. CGI Information System & Management Consultants(P)Ltd. Vs. Deputy Commissioner of Income-tax, Circle 11 (2), Bangalore, [2017] 81 taxmann.com 169 (Bangalore-Trib.)
- iii. J. P. Morgan Services (P.) Ltd. Vs. Deputy Commissioner of Income-tax (OSD)-8(1), Mumbai, 2016 (46) ITR (Trib.),
- iv. Novo Nordisk Service Centre (India) Pvt. Ltd. Vs. ACIT-2019 SCC Online ITAT 18103-IT(TP)A No. 307/Bang/2017-[TS-878-ITAT-2019 Bang-TPT
- v. Dy. Commissioner of Income Tax Circle 7(1)(1)/12(4) Bangalore Vs. M/s. Tesco Bengaluru Pvt. Ltd.

9. Per contra, the Ld. DR has relied on the orders of the Lower Authorities but not placed any material distinguishing the above facts of the assessee including entering into MAP resolution.

10. We have heard the parties perused the materials on record, we find force in the argument advanced by the Ld. AR.

11. The Bangalore Bench of the Tribunal in the case of Amazon Development Centre (India) (P.) Ltd. Vs. Income Tax Officer, Ward 11(1), Bangalore, [2018] 93 Taxmann.co 30(Bangalore-Trib.) , while dealing with issue as to whether the margins accepted by MAP to be applied or not in the similar transactions which are not covered under the MAP, held hereunder:-

“4.5.2 We have carefully perused and considered the arguments urged by both sides and the material on record. We observe that the CBDT letter in F.No.480/10/2011-FTD-1 dt.28.10.2015 has been issued in the case on hand in respect of the resolution of MAP proceedings for Assessment Years 2007-08 to 2009-10 on behalf of the Foreign Tax & Tax Research Division - I, APA-1, CBDT, New

Delhi wherein it has been confirmed that for Assessment Year 2008-09, for USA transactions under the ITES Segment, the margin has been determined at 18.82% as against a margin of 24.47% determined by the TPO. It has been further clarified by way of 'Note' in the said letter that apportionment between US and non-US ALP and Transfer Pricing Adjustment has been carried out by the APA-1 section of FT and TR Division of CBDT on the basis of 'US' and 'non-US' revenue. It is further noted that in the annual accounts of the assessee, no distinction has been made between 'US' and 'non-US' transactions. Similarly, in the orders passed by the authorities below also no distinction has ever been made between 'US' and 'non-US' transactions. Even before us, no distinction in facts or nature of transactions has been brought on record. In these factual circumstances of the case on hand, in our considered view, whatever margin has been determined for 92.86% of the transactions, the same should be determined / applied for the remaining 7.14% transactions as well.”

12. Similar views have been taken in the cases of CGI Information System & Management Consultants (P) Ltd. (supra), J. P. Morgan Services (P.) Ltd. Vs. Deputy Commissioner of Income-tax (OSD)-8(1), Mumbai (supra) and Novo Nordisk Service Centre (India) Pvt. Ltd. Vs. ACIT-2019 (supra).

13. In the view of the above said judicial pronouncements, by taking into consideration that, in the MAP Resolution, the margin accepted was 15.50% , we direct the AO/TPO to apply to benchmark ALP at 15.50% with respect to the ITEs segment on transaction with Colt Luxembourg. Accordingly, **we allow the Assessee's Grounds of Appeal No. 1 to 13.**

14. The Grounds No. 14 to 16 are in respect of interest on receivables. The Ld. Counsel for the assessee submitted that, the Ld. TPO in his order made adjustment amounting to INR 94,185,402/- by computing notional interest on the delayed receipt of payment in case of certain receivables with AE's at PLR plus 300 basis points. The Hon'ble DRP in its order directed the Ld. TPO to apply interest in keeping with safe harbor regulations i.e. SBI base rate on 30.06.2009 plus 300 basis points which amounted to 14.75% and the addition got revised to INR 93,362,245/-.

15. The Ld. Counsel for the assessee further submitted that, under the MAP Resolution dated 12.02.2018 entered into between Indian and UK Competent Authorities, the addition pertaining to UK in respect of the interest on receivables has been settled at 3 months average Euribor plus 200 basis points applied on receivables received beyond 90 days, amounting to Rs. 80,58,170/-. The Ld. Counsel further submitted that, after MAP settlement, the remaining addition which is subject matter of the present appeal pertains to delay in receivable from Colt Luxembourg is INR 42,26,509/-. By relying on the judicial pronouncements mentioned above, submitted that, the interest rate agreed in the MAP Resolution may be applied with respect to receivable by the appellant from Colt Luxembourg.

16. In view of the above discussed ratio laid down in the judicial pronouncements mentioned above and by taking into consideration that, in the MAP Resolution entered into between UK and Indian Authorities in respect of the addition pertaining to UK got settled at 3 months average Euribor plus 200 basis points applied on receivables beyond 90 days, we direct the AO/TPO to apply 3 months average Euribor plus 200 basis points on the receivables received beyond 90 days in respect of outstanding from Colt Luxembourg.
Accordingly, allow the Grounds No. 14 to 16 for statistical purpose.

17. The Ground Nos. 17 & 18 are in respect of purchase of fixed assets. The Ld. TPO added the entire amount of fixed assets purchased by the assessee from its AE's during the year. The DRP in its order directed the TPO to accept the value of fixed assets in case of those invoices from AE where it is mentioned that, they have been valued at the present depreciated value of equipment. Further directed the TPO to verify the book value in the AE's book and market price of assets in the invoices, wherein it is mentioned that assets have been valued at fair market value. The Ld. TPO has accepted the fixed asset purchases at Arm's Length where the AE's have mentioned that the sale by them is at depreciated value. However, the TPO has taken the value of the following 2 asset purchases as NIL. The details of the assets are hereunder:-

<i>Party Name</i>	<i>Invoice No.</i>	<i>Invoice Date</i>	<i>Asset description</i>	<i>Amount</i>	<i>Amount</i>
<i>Colt Technology Services GmBH Germany</i>	<i>08900701</i>	<i>16.09.2009</i>	<i>Test equipments (Copy of invoice at Page 2125 of the Appeal set Vol V)</i>	<i>EUR 5,034,73</i>	<i>INR 342,110</i>
<i>Colt Technology Services UK</i>	<i>GLSS6</i>	<i>23.03.2010</i>	<i>Test equipments (Copy of invoice at Page 2144 of the Appeal set Vol V)</i>		<i>INR 1,602,027</i>
				<i>Total</i>	<i>INR 1,944,137</i>

18. The Ld. AR submitted that the value claimed by the assessee were also accepted by the custom authorities and drawn our attention to the chartered engineer certificate for import of used network equipment /hardware dated 09.11.2009. The total value of those purchases amounted to only 0.87% of the

total turnover and comprises only 3.07% of total value of fixed assets owned by the assessee. Further, none of the capital items were of a nature that would sell by an independent entity to another entity in an Arm's Length scenario on a free of cost basis. Therefore, value cannot be assumed at NIL. Further contended that, the price paid by the assessee for purchase of fixed assets is less than the value that has been assessed by the custom authorities, hence, the purchase of fixed assets are at Arm's Length under the Indian Transfer Pricing Regulations.

19. Per contra, we heard the Ld. DR on the issue who has relied on the orders of the Lower Authorities.

20. On hearing both the sides, we are agreeing with the argument advanced by the Ld. AR. In the case of Assistant Commissioner of Income Tax Vs. Coastal Energy Pvt. Ltd, Chennai Ay 2006-07 (ITA No. 2099/Mds/2010) dated 13/07/2011, it is held that, the custom authorities are assigning the value to imported goods on the basis of scientifically formulated methods and they are responsible for determining a fair value of the imported goods.

21. By considering the facts and circumstances of the case, we are of the opinion that, the fixed assets purchased by the assessee cannot be taken as NIL and the value assigned by the custom authorities are to be taken as the fair value of the fixed assets purchased by the assessee. **Accordingly, we allow the Assessee's Grounds of Appeal No. 17 & 18.**

22. The Assessee's Grounds of Appeal No. 19 is general in nature and the Assessee's Grounds of Appeal No. 20 is consequential in nature. **Thus, the Assessee's Grounds of Appeal No. 19 & 20 are dismissed.**

23. The grounds of appeal in **I.T.A. No. 1908/DEL/2017 (A.Y 2012-13)** are as under:-

1. *The order dated January 27, 2017, passed by the Learned Assistant Commissioner of Income Tax, Circle 6(1), New Delhi (hereinafter referred as Ld. AO) under section 143(3) read with section 144C of the Income Tax Act, 1961 hereinafter referred as 'the Act') is bad in law and on the facts and circumstances of the case.*

2. *The reference made by the Ld. AO to the Learned Deputy Commissioner of Income Tax, TPO-1(2)(1), New Delhi (hereinafter referred as 'Ld. TPO') suffers from jurisdictional error as the Ld. AO has not recorded any reason on the basis of which he reached the conclusion that it was necessary or expedient to refer the matter to the Ld. TPO.*

3. *The Ld. AO as well as the Ld. TPO and the Hon'ble Dispute Resolution Panel -1 hereinafter referred as 'Hon'ble DRP') have erred in law as well as facts of the case in not accepting the Arm's Length Price (hereinafter referred as 'ALP') determined by the appellant.*

4. *The Ld. AO / Ld. TPO / Hon'ble DRP have erred in determining the ALP on the basis of data for Financial Year ('FY¹) 2011-12 only and ignoring the data for two prior financial years i.e. FY 2010-11 and FY 2009-10.*

5. *The Ld. AO / Ld. TPO / Hon'ble DRP have erred in rejecting the analysis conducted by the appellant and conducting a fresh comparability analysis for determining the ALP which did not take into consideration the functions and risks applicable to the appellants business.*

6. *The Ld. AO / Ld. TPO / Hon'ble DRP have erred in rejecting the quantitative filters adopted by the appellant, and adopting inappropriate quantitative filters for earning out a fresh comparability analysis.*

7. *The Ld. AO / Ld. TPO / Hon'ble DRP have erred in arbitrarily rejecting certain companies selected by the appellant as comparables in terms of functions performed, assets employed and risks assumed, and in accepting certain companies which are not comparable to the appellant, for determining ALP.*
8. *The Ld. AO / Ld. TPO / Hon'ble DRP have erred in accepting companies with exceptionally high operating margins as comparables of the appellant on an arbitrary basis.*
9. *The Ld. AO / Ld. TPO / Hon'ble DRP have erred in accepting companies with significantly high turnover as compared to the appellant.*
10. *The Ld. AO / Ld. TPO / Hon'ble DRP have erred in not allowing any risk adjustments to the appellant as it is remunerated on a cost plus mark-up basis and undertakes minimal risks.*
11. *The Ld. AO / Ld. TPO / Hon'ble DRP have erred in ignoring the judicial pronouncements relied upon by the appellant.*
12. *The Ld. AO has erred in levying the interest under section 234B of the Act.*
13. *The Ld. AO has erred in initiating penalty proceedings under section 271(l)(c) of the Act.*
14. *The above grounds of appeals are independent and without prejudice to one another.*
15. *The appellant craves leave to add / withdraw / amend any ground of appeal at the time of hearing.*

Additional Grounds of Appeal

“1. That on the facts and circumstances of the case and in law, the Ld. AO has erred in levying interest u/s 234B and 234C of the Income-tax Act, 1961 (‘Act’) on the additional income agreed as per the Advance Pricing Agreement entered between the appellant and the Central Board of Direct Taxes and offered to tax by the appellant in the modified return of income u/s 92CD(1) of the Act.”

24. Brief facts of the case are that, the assessee company filed its return of income for A.Y 2012-13 on 30.11.2012 declaring an income of Rs. 49,04,70,740/-. Thereafter, the case was selected for scrutiny and notice u/s 143(2) of the Act was issued and served upon the assessee within the limitation period. Questionnaire was issued to the assessee on along with the notice u/s 142(1) of the Act asking to submit the required information. In response to the statutory notices, the Representative of the assessee was duly represented, produced the books of accounts along with supporting bills and vouchers.

25. During the year under consideration, the assessee had international transactions with associated enterprises/concerns. In order to determine Arm’s Length Price in relation to international transactions, the case was referred to TPO. The Ld. TPO has passed order u/s 92CA(3) of the Act dated 29.01.2016, by making an upward adjustment of Rs. 39,13,60,121/-. The assessee has been asked to explain why a sum of Rs. 39,13,60,121/- should not be added to the taxable income of the assessee as determined by the TPO. The assessee company has filed its reply, the submission of the assessee has been considered and which has not been accepted by the AO, an amount of Rs. 39,13,60,121/- being the difference in the Arm’s Length Price determined by the TPO was added back to the total income of the assessee vide draft assessment order dated 23.03.2016.

26. In response to the draft assessment order dated 23/03/2016, the assessee filed objection before the DRP against the variation proposed to be made in the draft order. The DRP after considering the objection of the assessee vide order dated 09/12/2016, issued direction to the TPO u/s 144C(5) of the Act. In compliance with the directions of the DRP and the findings of the TPO, an amount of Rs. 33,82,68,328/- added back to the total income of the assessee and passed final assessment order on 27/01/2017.

27. Aggrieved by the final assessment order dated 27/01/2017, the assessee has preferred the present appeal on the grounds mentioned above.

28. The Ld. Counsel for the assessee submitted that, during the relevant year the assessee has rendered ITEs Services to its AE's based in UK and Luxembourg further the entire service under the segment Contract Software Development Segment were rendered to AE's based in UK. The details of the bifurcation of services rendered in the Information Technology Enabled Services (ITEs) are as under:-

S. No.	Name of AE	Value of services rendered in ITES segment (in INR)	% share of services rendered in ITES segment
1	Colt Technology Services Group Limited, UK ("Colt U.K)	2,44,34,41,267	94.25%
2	Colt Lux Group Holding Sarl, Luxembourg ("Colt Luxembourg')	14,90,71,372	5.75%

29. The Ld. Counsel further submitted that, the assessee has entered into an Advance Pricing Agreement (APA) on 30/08/2017 with respect to its international transactions with its AE's based in UK for AY 2015-16 to AY

2019-20 along with roll back for the AY 2011-12 to AY 2014-15. As per the said advance pricing arrangement, the appropriate margin for the services rendered under ITEs Segment was decided at 15.50% as against 12.29% earned by assessee. The assessee has filed copy of the advance pricing agreement along with application to revised grounds of appeal to restrict the issue only to the issues which are not covered by APF. Therefore, the additions sustained in the present appeal are as follows:-

<i>Particulars</i>	<i>Amount in INR</i>
<i>TP Additions:-</i>	
<i>ITES Segments (Colt Luxembourg)</i>	<i>1,47,75,630</i>
Total addition	<i>1,47,75,630</i>

Further submitted that, margin agreed for the information technology (ITES) enabled services segment in advances pricing agreement is same as agreed in the MAP Resolution for ITES Services for the AY 2006-07 to AY 2010-11.

30. The grounds of Appeal No. 1 to 11 are in respect of ITEs Segment on transaction with Colt Luxembourg. The Ld. AR submitted that, there is no distinction between services rendered by the assessee to Colt UK and Colt Luxembourg. Even the TPO has not made any distinction in its order and also while computing Arm's Length margin for ITEs segment. Further, under the APA, the costs in ITEs segment with respect to the transaction with Colt UK and Colt Luxembourg have been appropriated proportionately on the basis of revenue, thereby showing there is no distinction between the natures of services rendered by the assessee. The Ld. AR further contended that quantum of UK transactions constitutes only 5.75% of the total transaction undertaken by the assessee in ITES segment. The Ld. Counsel for the assessee has relied on the several judicial pronouncements to support his contentions. Therefore, submitted that, the margin accepted in APA resolution

(15.50%) should be applied to benchmark the ITES services rendered by the appellant to Colt Luxembourg as against the margin of 26.60% computed by the Ld. TPO.

31. The above issue has already been dealt and decided by us of Assessee's own case in ITA No. 536/Del/2015 for AY 2010-11 in favour of the assessee. **Ergo, we allow the Grounds of appeal No. 1 to 11 of present appeal.**

32. The Assessee's Grounds of appeal No. 12 & 13 are in respect of levying interest and initiating penalty proceedings which is consequential in nature which requires no adjudication. The Grounds of Appeal No. 14 & 15 are too general in nature which need not be adjudicated. Accordingly, **Assessee's Grounds No. 12 to 15 are dismissed.**

33. The additional ground of appeal is directed against levying of interest u/s 234B and 234C of the Act on additional income arising on account of APA entered into by the assessee. The Ld. Counsel for the assessee submitted that, the assessee had entered into APA for AY 2015-16 to AY 2019-20 with roll back for the AY 2011-12 to AY 2014-15. Pursuant to the APA appellant has filed modified return for AY 2011-12 on 27/11/2017 declared an income of Rs. 58,72,70,320/- as against the income of Rs. 49,04,70,740/- declared in original return of income, thereby declared an additional income of Rs. 9,67,99,580/-. As per Section 92CD(2) of the Act the modified return filed pursuant to the APA, all other provisions shall apply as if the modified return is filed u/s 139 of the Act. Since, assessee cannot estimate the additional income at the time of advance tax instalment and at the time of filing income tax return, did not pay advance tax on such income. Therefore, submitted that interest u/s 234C and 234B of the Act for non/short payment of advance tax installment and delay in payment of income tax respectively should not be levied on such additional income declared by the assessee in its modified return of income.

34. Per contra, the Ld. DR has relied on the observations and conclusions of the Lower Authorities.

35. We have heard the Ld. AR and also Ld. DR on the issue in dispute, we are agreeing with the argument of the Ld. AR.

36. In the case of Prime Securities Ltd. Vs. Assistant Commissioner of Income Tax (Investigation), [2012] 20 taxmann.com 757 (Bombay), the Hon'ble High Court of Karnataka, while dealing with the issue of levying interest u/s sections 234A, 234B and 234C for non/short payment of advance tax installment and delay in payment of income tax held as under:-

“9.

Perusal of the above provisions shows that liability to pay interest arises on failure of the assessee to pay advance tax under section 208 or advance tax payable under section 210 is paid less than 90 per cent. Perusal of the provisions of sections 208 and 209 shows that for the purpose of payment of advance tax the assessee has to estimate his current income and then he has to calculate income-tax on that income at the rate in force in the financial year. Thus, the amount of advance tax is to be decided by the assessee after estimating his current income and then applying law in force for deciding the amount of tax. It is an admitted position in the present case that the date on which the appellant paid the advance tax it had estimated its income and liability for payment of advance tax in accordance with law that was in force. Therefore, it is obvious that there was no failure on the part of the appellant to pay advance tax in accordance with the provisions of sections 208 and 209. So far as the judgment of the Supreme Court in the case of Ghaswala [2001] 252 ITR 1 is concerned, the Supreme Court was concerned with the

powers of the Settlement Commission in granting waiver of interest and for that purpose the Supreme Court considered the provisions of sections 234A, 234B and 234C. The Supreme Court in no uncertain terms held that the interest is compensatory in nature. The court read the provisions of sections 234A, 234B and 234C as mandatory in character holding that after the amendment in the provisions in the Finance Act, 1987, that with the use of the expression "shall" therein the Legislature clearly indicated that its intention to make the collection of statutory interest mandatory. It is for this purpose that the court proceeded to decide that even the Settlement Commission which was vested with the vast power had no power to waive the interest payable under these provisions. Going by this interpretation of sections 234A, 234B and 234C as given by the Constitution Bench of the Supreme Court, it is clear that the interest is payable in case the advance tax is not paid in consonance with the law in force at the time when the advance tax is paid and there is a default. Therefore, for charging interest under section 234B, committing of default in payment of advance tax is condition precedent. Perusal of the judgment of the Delhi High Court, which is relied on by the learned counsel appearing for the respondent, shows that in that case also the Delhi High Court has held that for charging of interest establishment of default in payment of advance tax is necessary. In the present case, it is nobody's case that the appellant at the time of payment of advance tax has committed any default or that payment of advance tax made by the appellant was not in consonance with law. The Division Bench of this court in its judgment in the case of the appellant, referred to above, has held that the return filed by the appellant was in consonance with law and there was only a formal defect and the moment that defect was cured, the return related back to the original date. In our opinion,

when the Supreme Court in Ghaswala's case [2001] 252 ITR 1 says that charging of interest under section 234B is mandatory, what it really means is that once the assessee is found liable to pay interest, then recovery of interest is mandatory and recovery of that interest cannot be waived for any reason. But for charging interest under that section, it has to be established that the assessee has committed default in payment of advance tax. In our opinion, as in the present case it is nobody's case that the appellant has committed a default in payment of advance tax when it actually paid it, the appellant cannot be held liable to pay interest under section 234B. In so far as the observations in the order of the Tribunal, that the appellant should have anticipated the events that took place in March, 1992 are concerned, in our opinion, they have no substance. In our opinion, it is rightly submitted that it was not possible for the appellant to anticipate the events that were to take place in the next financial year and pay advance tax on the basis of those anticipated events.”

36.1. The similar views have been taken by the Hon'ble Delhi High Court in the case of Escorts Ltd. Vs. CIT [2003]127 Taxman 574 (Delhi), City Union Bank Ltd. Vs. Assistant Commissioner of Income Tax [2020] 116 taxmann.com 139 (Madras), CIT, Meerut Vs. Prem Kumar [2008] 169 Taxman 351 (Allahabad) and CIT Vs. Akbar Ali Dhala [2014] 226 Taxman 254 (Mad).

37. By following the ratio laid down in the judgment mentioned supra, we hold that, the levy of interest u/s 234B and 234C of the Income Tax Act on additional income agreed as per advance pricing agreement entered between appellant and the CBDT is illegal. **Ergo, we allow the additional grounds of appeal.**

38. **In the result, both the ITA No. 536/Del/2015 and 1908/Del/2017 filed by the assessee are allowed for statistical purpose.**

Order pronounced in the Open Court on this 13th Day of April, 2022

Sd/-

**(B. R. R. KUMAR)
ACCOUNTANT MEMBER**

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Dated: 13/04/2022
*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI