

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B”BENCH: BANGALORE**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

IT(TP)A No.181/Bang/2021
Assessment Year: 2016-17

NetApp India Marketing & Services Pvt. Ltd. 4 th Floor, Prestige Khoday Towers 21 st Floor, Municipal No.5 Raj Bhavan Road Bangalore 560 001. PAN NO : AADCN5548A	Vs.	ACIT Circle-5(1)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Sri G.C. Srivastava, A.R.
Respondent by	:	Sri Manjunath Karkihalli, D.R.

Date of Hearing	:	12.04.2022
Date of Pronouncement	:	22.04.2022

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the assessment order dated 28.3.2021 passed by the A.O. u/s 143(3) r.w.s. 144C(13) of the Act for the assessment year 2016-17 in pursuance of directions given by Ld. Dispute Resolution Panel (“DRP”). The assessee has filed revised grounds of appeal containing 13 grounds. However, at the time of hearing, the Ld. A.R. confined his argument on the following issues:-

- a) TP adjustment made in respect of marketing and post-sales support services.

- b) Non-granting of working capital adjustment.
- c) TP adjustment made in respect of outstanding receivables by charging notional interest thereon.

2. The assessee herein is a subsidiary of NetApp BV, Netherlands, which in turn a subsidiary of NetApp. The assessee provides pre-sales/marketing support services and after sales/technical support services to its Associated Enterprises. The said services consist of (a) identifying potential business opportunities, channel partners and customers for NetApp products, (b) distribution and dissemination of information on NetApp products, (c) after sales/technical support services. For all these activities, the assessee is remunerated at an arm's length service fee based on a cost-plus mark-up. The assessee benchmarked the above said transactions separately for "marketing support services" and "technical support services". However, the TPO aggregated both transactions and accordingly rejected the TP study of the assessee. The TPO adopted TNM method as most appropriate method and OP/OC as profit level indicator. The TPO selected following 4 comparable companies:-

<i>Sl.No.</i>	<i>Company Name</i>	<i>Margin as per TPO's order</i>
<i>1</i>	<i>Focus Suites Solutions & Services Ltd.</i>	<i>12.58%</i>
<i>2</i>	<i>Ugam Solutions Pvt. Ltd.</i>	<i>14.48%</i>
<i>3</i>	<i>Axience Consulting Pvt. Ltd.</i>	<i>22.06%</i>
<i>4</i>	<i>Majestic Research Services & Solutions Ltd.</i>	<i>26.835</i>
	<i>Arithmetic Mean</i>	<i>18.98%</i>

3. Accordingly, he made transfer pricing adjustment of Rs.6,84,23,242/-. The TPO also made TP adjustment on account of interest on delayed receivables to the tune of Rs.9,49,925/- by adopting LIBOR-6months+450 basis points, which worked out to

4.4985%. The Ld. DRP confirmed the adjustment made by the TPO. The A.O. accordingly passed the final assessment order by making addition of transfer pricing adjustment referred above. Aggrieved, the assessee has filed this appeal before us.

4. With regard to transfer pricing adjustment in respect of marketing support services and technical support services, the Ld. A.R. submitted that the assessee is not challenging the decision of TPO in aggregating both segments. He further submitted that the assessee has raised ground no.5 seeking exclusion of 3 comparable companies, viz., (a) Focus Suites Solutions & Services Ltd. (b) Ugam Solutions Pvt. Ltd. & (c) Axience Consulting Pvt. Ltd.. However, in the written submission, the assessee has sought exclusion of M/s. Ugam Solutions Pvt. Ltd only. The Ld A.R submitted that the assessee is not pressing this ground relating to exclusion of the above said three companies.

5. The Ld. A.R. further submitted that the assessee has sought inclusion of 13 comparable companies in ground No.6. However, the assessee is restricting its contention for inclusion of following 4 comparables only:-

1. Esha Media Research Limited
2. Cheers Interactive India Pvt. Ltd.
3. Goldmine Advertising Limited &
4. Nielsen (India) Pvt. Ltd.

5.1 With regard to the inclusion of above said companies, the Ld. A.R. submitted that the TPO has rejected M/s. Esha Media Research Ltd. observing that it fails net-worth filter. Inviting our attention to page No.64 of the paper book, the Ld. A.R. submitted that the above said company is having positive net-worth and hence, the TPO was not correct in observing that it has failed net-

worth filter. With regard to remaining 3 companies, the TPO did not discuss anything in his order and has only observed that he has confined himself to only those comparables, which finds place in the accept/reject matrix selected by him. The Ld. A.R. submitted that all the above said 4 companies are very much comparable with the activities of the assessee and hence the TPO was not justified in not considering them. He submitted that the Ld. DRP also upheld the order passed by TPO. Accordingly, he prayed that all these 4 comparables may be restored to the file of the TPO for examining the contentions of the assessee. He further submitted that the TPO has not granted working capital adjustment which may kindly be directed to be granted.

6. We heard Ld. D.R. on this issue and perused the record. We notice that the assessee has sought inclusion of all the above said 4 comparable companies before TPO. However, the TPO has commented only on M/s. Esha Media Research Ltd. and it was shown us that the reasoning given by TPO for rejecting this company is against the facts available in the annual report of the above said company. Further, the TPO has not examined the remaining 3 companies also. According to the Ld. A.R., all these 4 companies are functionally comparable with the activities carried on by the assessee. Accordingly, we are of the view that there is merit in the contentions of the assessee that all these 4 companies need to be examined by the TPO. Accordingly, we restore all these 4 companies to the file of the AO/TPO for examining the above said four companies.

7. We notice that the TPO has not granted working capital adjustment by making certain observations. However, it is a well settled proposition that working capital adjustment is required to be made in order to determine the arm's length price of the

transaction. Accordingly, we restore this claim of the assessee also to the file of the TPO. We also direct the assessee to furnish the necessary details to support the claim of working capital adjustment.

8. The next issue relates to transfer pricing adjustment made by way of interest on outstanding receivables. The Ld. A.R. submitted that the TPO has computed the interest without determining the actual days of delay, reasons for the delay and also without examining the agreements with regard to the payments. Accordingly, he submitted that this issue may also be restored to the file of the TPO for examining it afresh.

9. We heard Ld. D.R. on this issue and perused the record. We notice that the assessee did not furnish the details as called for by TPO in this regard and hence, the TPO was constrained to compute the interest on outstanding receivables on adhoc basis. However, we find merit in the submission of Ld. A.R. that the interest has to be computed only for actual days of delay, if any, after considering the contentions of the assessee. Accordingly, in the interest of natural justice, we restore this issue also to the file of TPO for examining it afresh. We also direct the assessee to furnish the details that were/may be called for by the TPO with regard to this issue.

10. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 22nd Apr, 2022

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 22nd Apr, 2022.
VG/SPS

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Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**