

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I-1": NEW DELHI**

**BEFORE
SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 394/Del/2016
Asstt. Year : 2011-12

KaZStory Engineering India Pvt. Ltd. 6, Jain Bhawan, 12, Bhagat Singh Marg, New Delhi PAN AACCK7331F (Appellant)	Vs.	DCIT Circle-14(1) C.R. Building New Delhi. (Respondent)
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Assessee by:	None
Department by:	Shri Surender Pal, CIT-DR
Date of Hearing	02.05.2022
Date of pronouncement	02.05.2022

ORDER

PER ASTHA CHANDRA, JM

The appeal by the assessee is preferred against the order dated 29.12.2015 of the Ld. Assistant Commissioner of Income Tax, Circle-14(1), New Delhi ("**ACIT/ AO**") pertaining to assessment year ("**AY**") 2011-12.

2. The assessee is a company engaged in the business of engineering, construction, commissioning, drilling, production, transportation and distribution of crude oil, shale oil, oil products and gases. It filed its return for AY 2011-12 on 30.11.2011 declaring total loss of Rs. 2,62,09,251/-. The return was processed under section 143(1) of the Income Tax Act, 1961 ("**the Act**"). Subsequently, the case was selected under CASS for scrutiny.

2.1 During AY 2011-12, the assessee had entered into international transaction with its Associated Enterprises (“**AEs**”) in respect of provision of Engineering services to AEs. The Ld. Assessing Officer (“**AO**”), therefore referred the case to Transfer Pricing Officer (“**TPO**”) who vide his order dated 29.01.2015 proposed a total adjustment of Rs. 4,27,32,829/- in respect of provision Engineering services to AEs tabulated below :

Computation of Arm’s length price:-

Operational cost	Rs. 13,45,03,729/-
Arm’s Length Price at a Margin of 24.29%	Rs. 16,71,74,685/-
Price received	Rs. 12,44,41,856/-
105% of Price Received	Rs. 13,06,63,949/-
Adjustment under section 92CA	Rs. 4,27,32,829/-

Accordingly, the Ld. TPO enhanced the income of the assessee by Rs. 4,27,32,829/-.

2.2 Aggrieved, the assessee appealed before Hon’ble DRP who vide its order dated 19.11.2015 directed the Ld. TPO to re-compute the Arm’s Length Price (“**ALP**”) incorporating the following observations :-

1. Exclusion of IBI Chematur Engineering & Consultancy Ltd. from final list of comparables.
2. Inclusion of M.N. Dastur & Company Pvt. Ltd. and Cades Digitech Pvt. Ltd. in final list of comparables.

2.3 The Ld. TPO passed the appeal effect order dated 18.12.2015 wherein he reduced the earlier adjustment of Rs. 4,27,32,829/- to Rs. 3,72,58,527/-. Accordingly, the Ld. AO disallowed the said amount of Rs. 3,72,58,527/- and added the same to the total income of the assessee in the assessment order

dated 29.12.2015 passed under section 143(3) read with section 92CA(3) of the Act.

3. Being aggrieved, the assessee is in appeal before the Tribunal challenging the impugned addition by taking the following grounds :-

“1. This ground is general in nature

1.1. That, the Learned Deputy Commissioner of Income Tax, Transfer Pricing Officer -2(3) (1) (hereinafter referred as ‘Ld. TPO’)/ Hon’ble DRP has grossly erred in making/upholding an adjustment of Rs. 3,72,58,527 in respect of provision of engineering services to associated enterprises (“AEs”) and in not appreciating that none of the conditions set out in section 92C(3) of the Act are satisfied in the present case.

2. Rejection of the economic analysis of the Appellant

2.1. That on the facts and circumstances of the case and in law, Ld. TPO/Hon’ble DRP have erred in not accepting the economic analysis of the Appellant, for determination of the arm’s length price (ALP) in connection with the impugned international transactions.

2.2. That the Ld. TPO/ Hon’ble DRP has grossly erred in facts and circumstances by rejecting the Comparable Uncontrolled Price (“CUP”) Method as the most appropriate method (“MAM”) followed by the assessee in the Transfer Pricing documentation for the transaction of provision of engineering services to AEs citing the following reasons:

A. Price which is quoted cannot be compared with the price which is charged

B. Difference in geographical location of receipt of services

3. Adoption of the most appropriate method (“MAM”)

3.1 That the Ld. TPO/ Hon’ble DRP erred in facts and in law in summarily rejecting the submission/s of Appellant without conducting the analysis of selecting the MAM as prescribed under Section 92(C) read with Rule 10C of the Rules.

- 3.2. *The Ld. TPO/ Hon'ble DRP erred in law by upholding the determination of the ALP of the international transaction using TNMM without following the manner of applying the TNMM prescribed under Rule 10B(1)(e) of the Rules.*
- 3.3. *Without prejudice to the above grounds, the Ld. TPO/ Hon'ble DRP for the purpose of benchmarking the transaction of provision of engineering services has erred in*
 - A. *selecting inappropriate filters*
 - B. *incorrect exclusion/ inclusion of comparable companies*
- 3.4. *The Ld. TPO hasn't considered the correct margins as furnished by the Assessee as directed by the DRP in its order.*
- 3.5. *The Ld. TPO/ Hon'ble DRP grossly erred on facts and in law in not appreciating that 'Engineering Expenses' of Rs. 3,54,36,435/- relates to actual operating expenditure pertaining to non-AE's and could not be the subject matter of allocation on an ad hoc basis to expenditure relatable to international transaction with AEs.*
- 3.6. *Without prejudice to the above ground, the Ld. AO/TPO has erred on facts and in law in not considering the segmental profitability of the Assessee and Hon'ble DRP erred in not adjudicating this ground.*
- 3.7. *The Learned TPO/ Hon'ble DRP has erred by not providing the capacity utilization adjustment as claimed by the Assessee.*
- 3.8. *The TPO/ Hon'ble DRP has erred, in law and facts, by not making suitable adjustment to account for the differences in the risk profile of the Assessee vis-a-vis the comparable companies*
4. *Transfer pricing adjustment based on incorrect assumptions*
 - 4.1. *The Ld. TPO/ Hon'ble DRP erred in passing an order that is perverse in law ignoring the relevant submissions, information and documents provided by the Appellant to substantiate the application of CUP methodology to benchmark the captioned international transaction of provision of engineering services, and based on a preoccupied mind*

reached at an inappropriate conclusion that use of TNMM for benchmarking the impugned international transaction is more sound.

5. *Levying interest under section 234A, 234B, 234C and 234D*

5.1. *That on the facts and in the circumstances of the case, the Ld. AO has erred in charging interest under 234A, 234B, 234C and 234D of the Act, as consequences of the additions made in the assessment order passed under section 143(3) read with section 144C of the Act..*

5.2. *The Appellant denies its liability to such interest and prays that the AO be directed to delete the levy of aforesaid interest as it is entirely a result of additions/disallowance and consequential in nature.*

6. *Penalty proceedings initiated u/s 271(1)(c) of the Act*

6.1. *The Ld. AO has erred in initiating penalty proceedings under Section 271(1)(c) read with Section 274 of the Act against the Appellant.”*

3.1 The assessee requested for admission of additional ground No. 7 vide letter dated 06.11.2017 which reads as under :-

Ground No. 7 – Without prejudice to our other grounds of appeal the benefit of +/-5 per cent variation from the mean, which is permitted under the provisions of Section 92C(2) of the Income Tax Act, 1961 should be allowed, as applicable.”

3.2 Since the assessee has raised legal issue, we admitted the additional ground No. 7 for adjudication.

4. Notices of hearing issued on 13.08.2021, 11.11.2021, 27.12.2021 and 14.02.2022 fixing the hearing on 11.10.2021, 13.12.2021, 10.02.2022 and 02.05.2022 respectively have all been returned by the postal authorities with the remark 'left'. There being no hope of service of notice upon the assessee, we proceeded to dispose of the appeal ex-parte after hearing the Ld. DR.

5. The Ld. DR supported the order of the Ld. AO.
6. The grievances of the assessee are that the Ld. TPO/ Hon'ble DRP erred in not accepting the economic analysis of the assessee for determination of ALP, rejecting the CUP method as Most Appropriate Method (MAM) followed by the assessee; adopting instead Transactional Net Marginal Method (TNMM) for determination of ALP and lastly without prejudice, to allow the benefit of +/-5 per cent variation from the mean.
7. We have gone through the Ld. TPO's order under section 92CA(3) dated 29.01.2015, Directions of the Hon'ble DRP under section 144C(5) dated 19.11.2015, revised order of the Ld. TPO dated 18.12.2015 giving effect to the Hon'ble DRP's order and the final impugned assessment order dated 29.12.2015 wherein adjustment in the ALP of international transaction with AEs amounting to Rs. 3,72,58,527/- has been made resulting in the impugned addition. We have arrived at the conclusion that the Ld. TPO and the Hon'ble DRP have passed well reasoned order/direction. We, therefore, hold that no interference in the order of the Ld. AO is called for. The impugned addition on account of adjustment in the ALP of international transaction entered into by the assessee with its AEs, is confirmed.
8. Consequently, the appeal of the assessee fails.
9. In the result, the appeal is dismissed.

Order pronounced in the open court at time of hearing on 2nd May, 2022.

sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER
Dated: 02/05/2022

Veena

sd/-

(ASTHA CHANDRA)
JUDICIAL MEMBER

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	