

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.1479/Del./2014
(ASSESSMENT YEAR : 2009-10)**

Globe Ground India Pvt. Ltd.,
E-9, Connaught House,
Connaught Place,
New Delhi – 110 001.

vs. DCIT, Circle 12 (1),
New Delhi.

(PAN : AAACG8313K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Tarandeep Singh, Advocate
Shri Pulkit Verma, Advocate

REVENUE BY : Shri Mahesh Shah, CIT DR

Date of Hearing : 27.07.2022

Date of Order : 30.08.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of Assessing Officer dated 20.01.2014 passed under section 143(3) r.w.s. 144C of the Income-tax Act, 1961 (for short 'the Act') pursuant to the directions of the Dispute Resolution Panel (DRP).

2. The grounds of appeal raised by the assessee read as under :-

“1. That on facts and in law the orders passed by the Assessing Officer [hereinafter referred as "AO"] / Dispute Resolution Panel [hereinafter referred as "DRP"] / Transfer

Pricing Officer [hereinafter referred as "TPO"] are bad in law and void ab-initio.

1.1 That on facts and in law, the assumption of jurisdiction by the AO/TPO to determine Arm's Length Price is bad in law and void ab-initio.

2. That on facts and in law the DRP erred in sustaining an adjustment to total income of Rs.8,37,93,883/- under Chapter-X of the Income Tax Act, 1961.

2.1 That on facts and in law the DRP erred in issuing directions to AO/TPO resulting in enhancement of TP adjustment by Rs 52,66,229/- (i.e from Rs.8,37,93,883/- to Rs.8,90,60,1121-).

3. That on facts and in law the TPO erred in observing that the appellant is providing following services:

- (a) Fuel Management
- (b) Escort Services

4. That on facts and in law the TPO erred in rejecting and the DRP inter alia erred in upholding the rejection of economic and benchmarking analysis conducted by the appellant.

4.1 That without prejudice on facts and in law the TPO/DRP erred in:

- (a) Rejecting the use of internal TNMM benchmarking analysis conducted by the appellant.
- (b) Rejecting the use of multiple year data.
- (c) Holding that the segmental accounts submitted by the appellant are not reliable.
- (d) Computing PLI of the tested party at 3.91 %.
- (e) Computing PLI of comparable companies at 24.84%.

- (e) Rejecting applicability of an upper turnover filter of Rs.1,000cr.
- (f) Not conducting a fresh search for comparable companies after rejecting the benchmarking process applied by the appellant.
- (g) Using following companies as comparables:
 - (i) Container Corporation of India Limited
 - (ii) Delhi International Airport Private Limited
 - (iii) Sanco Trans Limited

4.2 That without prejudice on facts and in law the TPO/DRP erred in rejecting the use of alternate set comparable companies proposed by the appellant vide written submissions dated 07th December 2012.

5. That on facts and in law the DRP erred in holding/observing that the internal TNMM used by the appellant in the instant case is a sort of CUP.

5.1 That on facts and in law the DRP erred in wrongly characterizing/re-classifying the nature/category of services rendered by the appellant.

6. That without prejudice on facts and in law the DRP erred in not directing the AO to allow the benefit for adjustment of the Arm's Length Price ("ALP") by $\pm 5\%$ as per the proviso to section 92C(2).

7. That on facts and in law the AO/DRP erred in making/upholding a disallowance of Rs.13,38,424/- on account of bad debts written off.”

3. Apropos transfer pricing adjustment. Brief facts of the case are that the taxpayer filed its return of income on 30.09.2009 declaring income of Rs.4,91,82,210/-. Since the taxpayer had undertaken international transactions with its associated enterprises, a reference was made by the

Assessing Officer (AO) to the Transfer Pricing Officer, New Delhi, under section 92CA(1). Vide order dated 09.01.2013 the Transfer Pricing Officer (TPO) proposed an addition of Rs.8,37,93,883 and AO vide his draft assessment order dated 08.03.2013 after considering the above International transaction, proposed to assess the taxpayer at an income of Rs.13,72,42,420.

4. The taxpayer company (GGIPL) is a subsidiary of Globe Ground Deutschland GmbH ("GGO"). GGD holds 51 percent shares in GGIPL. GGIPL is engaged in airport ground handling services which inter-alia includes passenger services, ramp services, cargo handling services, security services, and other airport ground handling support services to airlines.

5. The international transactions entered into are tabulated below:-

S.No.	Types of International Transaction	Method Selected	Total value of transaction
(i)	Provision of Grounding handling services	TNMM	414,263,721
(ii)	Receipt of Training		3,156,900
(iii)	Payment for Professional services received		886,630
(iv)	Payment for chip cards		751,347
(v)	Reimbursement of expenses		7,040,259

6. The taxpayer furnished its TP study and selected TNMM as the most appropriate method to benchmark its international transactions at S.No. (i) to (iv). Since the taxpayer was providing ground handling services both to its AE and non AE, the taxpayer computed the operating profit (OP/TC) for each of this segments. The OP/TC of AE segment was 61.22% and that of non AE segment was (-)34.42%, therefore the taxpayer held that since the

profit of AE segment was more than the non AE segment therefore, the payments charged for providing ground handling services to its AE was at arm's length.

7. However, in TPO's view the method of using internal TNMM was not correct because there was no reliability about the segmental accounts drawn up because the same were not part of the audited financials and further reasonable allocation keys were not present while allocating expenses between AE and non AE transactions and further certain costs were also not allotted to the segment C (others). Accordingly, TPO applied the external TNMM by taking comparables which were selected in the last year's TP audit and approved by the earlier DRP also. Therefore, by applying the average margin of the comparables of 24.84% and determined the arm's length price of the international transaction at Rs.49,80,57,604 as against Rs.41,42,63,721 charged by the taxpayer and thus proposed an addition of Rs.8,37,93,883. The TPO's computation in this regard can be gainfully referred as under :-

“Computation of the Arm's Length Price

7. Following the discussions in the preceding paras the comparables that shall be used are :-

S.No.	Name of the company	OP/OC as per AR
1	Container Corpn. of India Ltd.	31.67
2	Delhi International Airport Pvt. Ltd.	1.14
3	Sanco Trans Ltd.	41.71
	AVERAGE	24.84

8. Calculation of arms length price :-

Operational Cost	398,956,748
Arm's Length Price at a Margin of 24.84%	498,057,604
Price received	414,263,721
Proposed adjustment u/s 92CA	83,793,883

The arm's length price related to providing ground handling services is determined at Rs.49,80,57,604/- as against Rs.41,42,63,721/- determined by the assessee. The upward adjustment of Rs.8,37,93,883/- is required to bring it to arms length. The assessee shall not get the benefit of proviso to Sec.92C(2) as the difference arrived at is more than 5% of the value of international transactions.”

8. Upon taxpayer's objections, the DRP rejected the same. Against this order, the taxpayer has come up in appeal before the Tribunal.
9. We have heard both the sides and perused the material available on record.
10. Ld. counsel of the taxpayer made the following submissions :-

“It is submitted that 'A' is a subsidiary of GlobeGround Deutschland GmbH ("GGD") which holds 51% shares in 'A'. 'A' is engaged in Airport Ground Handling Services. During the year under consideration 'A' is engaged in providing ground handling services for Lufthansa Airlines. These services are provided as part of an agreement that the 'A' has executed with its AE.

A. At the outset it is submitted that the TPO has not properly appreciated the functional profile of the 'A' - Copy of order dated 09th January 2013 passed by the TPO for AY 2009-10 is enclosed at pages 126 to 149 of PB-1. At page 127, para 2 show-cause notice issued by TPO is reproduced. TPO records (at pages 129 - 130) that he has examined the website of the 'A'. In this regard it is submitted that the TPO has not properly appreciated the functional profile of the 'A'. Similar allegations were levied by the TPO in case of 'A' for AY 2007-08. Issue was adjudicated upon by Hon'ble ITAT vide order dated 18th

February 2019 reported in (2019) 103 taxmann.com 268(Del) and at para 7 it was held as under:

“7. We have carefully considered the rival contentions and also perused the orders of the lower authorities. Firstly it is important to identify the exact nature of the services rendered by the assessee to understand the functional profile of the assessee. Such profile has been disputed by the assessee wide ground number 2.2 of the grounds of appeal. The functional profile stated in the transfer pricing study report prepared by the assessee is sketchy and does not deserve any mention. The learned transfer pricing officer in para number 2 is extracted the activities carried out by the assessee from the website of the assessee. On that basis the learned transfer pricing officer and stated that the assessee is providing a very specific mission services and having a specialized functions which require critical knowledge of the dynamics of the industry, specialized training of the staff of the assessee. And therefore looking at the present environment of high security the functions and responsibility of the company and the employees of the assessee become almost significant and require high-quality. Therefore the learned transfer pricing officer proceeded to compare the functions of the assessee on those criteria. Assessee has objected before the learned transfer pricing officer that learned transfer pricing officer is not appreciated activities of the assessee which are in the nature of only business support services. It was further contended by the assessee that it is not providing any refueling services or any security services and therefore the services provided by the assessee are not specialized services. Such objection is recorded in para number 3.1 of the order of the learned transfer pricing officer. The assessee has submitted the copy of the ground handling agreement between the assessee and its associated enterprises. It is a standard ground handling agreement between the parties effective from 01/02/2002 and it is claimed that the same agreement continues. The services to be provided by the assessee are listed in paragraph 1 of the agreement. Same are also compared with the standard ground handling agreement version of

1998 and it is found that assessee would be providing following services:-

... ..

According to the above extraction the assessee does not provide any lounge service, ticketing services, Crew briefing, fuelling supervisions, aircraft Security services, other than listed above. Therefore it is apparent that the learned transfer pricing officer has wrongly interpreted the functions provided by the assessee. The assessee is providing mainly the passengers and baggage handling services as listed in section 4 of the above version. The other services provided are the informative services such as informing the airport activities concerning the specific carriers' aircraft to the concerned persons/agencies/other operators and to operate certain facilities available at the airport for these passenger and baggage services. Therefore according to the above finding the functional profile of the assessee is now undisputed. In the revenue profile of the assessee it derives income from providing ground services inclusive of all type of cargo and passenger handling services to the airlines at Indian airports. In its asset base it does not have any immovable property but the total asset base is INR 25,76,70,389/-."

The above conclusions of Hon'ble IT AT has thereafter also been followed in case of 'A' for AY 2008-09 {refer ITAT order dated 30th June 2021 in ITA No. 5711/Dell2012 copy enclosed at pages 106-131, relevant at pages 117 to 123, para 5 and 5.1.}

It is therefore submitted that the TPO has not properly appreciated the functional profile of the 'A'. Once the understanding of functional profile by the TPO was wrong there was bound to be errors in search and selection of comparable companies.

B. Once the functional profile as accepted by Hon'ble ITAT in immediately preceding year is considered then the following comparable companies selected by the TPO and upheld by the DRP merit exclusion.

(i) Container Corporation of India - TPO has upheld selection of this comparable at page 134, para (i). DRP has

further upheld selection of this comparable in a summary manner without at page 38, last para without any objective analysis. Following facts pertaining to this comparable are highlighted (with reference to its audited annual accounts) which will merit its exclusion:

Submissions	Paper Book Annual Accounts
It is Government Company - Govt. holds 63.09% of share capital.	Pg 136/142
Container Corporation of India's income from operation are from Freight, Handling, Terminal Service charges, Demurrage and others of Rs. 3,417.16 crores. There are no segmental accounts prepared	Pg145 & Pg 151, para 7(1)
It is not a employee-oriented company ratio of employee cost is 2.36% (i.e 80.84 cr 13417.16 cr) whereas assessee's employee cost is 47%. This is an important fact which merits consideration. DRP in case of 'A' for AY 08-09 - DRP has directed exclusion of Cochin International Airport (CIAL) taking employee cost as one of the important factors.	Pg 149
This is Giant Company with (a) turnover of more than Rs. 3417.16 crores, (b) fixed asset base of around Rs. 2640.95 crores (c) Container fleet of 13,576 units (d) Speed Wagons of 8117 . (e) Owing Terminals 'A' on the other hand is a service-oriented company with turnover of Rs 72.05 cr (refer page 7) and fixed asset base (gross) of only Rs.31.22 crores (refer page 10).	Pg 145 Pg 146 Pg 137 Pg 137 Pg 137
Till last year Container Corporation of India was operating in Virtual Monopoly conditions - used to be 100% market share for Rail.	
Claims benefit u/s 80IA business of infrastructure development.	Pg 151, para 2(d)

For above stated reasons Hon'ble ITAT in case of 'A' for A Y 2008-09 has rejected the use of Container Corporation of India as a comparable. {refer ITAT order dated 30th June 2021 in ITA No. 5711/Del/2012 copy enclosed at pages 106-131, relevant at pages 125 to 127, para 5.3.1.0}

(ii) Sanco Trans Limited - TPO has upheld selection of this comparable at page 135, para (iii). DRP has further upheld selection of this comparable in a summary manner without at page 38, last para without any objective analysis. It is submitted that MIs Sanco Trans is a company which is principally engaged in a single business segment viz. Cushions cleaning and forwarding, container freight station and related activities. Director's Report (at page 205 of PB) acknowledges that the main growth area for the company was business of Container and Warehouses as under:

"During the year under report your company incurred major capital expenditure to an extent of Rs.790.222 lakhs. Apart from this, your company incurred major expenditure on an ongoing basis to maintain its container yard and warehouses and its operating fleet and equipments of Rs 231.81 lakhs. The above stated major initiative on facilities and its upgradation will have a positive factor on improving the customer satisfaction in the long run"

This highlights the nature of business primarily carried on by the M/s Sanco Trans wherein it is into a business of earning passive income. Revenue shown in P&L Account is as under (refer Pg. 216 and 223 of PB) :

"Operating earnings (Rs Lakhs)	2009	2008
Handling Charges earned	2307.15	1760.18
Equipment and fleet hire charges earned	1092.30	822.90
Agency and other charges earned	176.26	136.23
Warehousing charges earned	<u>2590.81</u>	<u>1577.05</u>
	<u>6166.52</u>	<u>4296.36"</u>

Handling charges earned is 37.41 % of total revenue and balance passive income i.e., hire charges earned and warehouse charged earned is 62.59%. There is no segmental accounts prepared (refer page 226, para 19 of PB). MIs Sanco Trans has

earned total operating revenue of Rs. 6166.52 lakh and total employee cost income is 583.14 lakhs which in ratio terms is 9.45%. This shows that this is not an employee-oriented company unlike the 'A'.

For above stated reasons Hon'ble ITAT in case of 'A' for A Y 2008-09 has rejected the use of Sanco Trans Limited as a comparable. {refer ITAT order dated 30th June 2021 in ITA No.5711/Del/2012 copy enclosed at pages 106-131, relevant at pages 127 to 129, para 5.3.2.0, 5.3.2.1 and 5.3.2.2}

C. Once the above facts regarding above alleged comparable companies are considered then they merit exclusion on following grounds which have been judicially upheld considering the functional profile of the 'A':

(i) 'A' is only providing support services whereas these companies are running Terminals, Container & Wagon Fleet (vis a via Container Corporation of India) and Container Freight Station (vis a vis M/s Sanco Trans) and providing such services as owner of these infrastructural set ups. {Refer JAS Forwarding Worldwide reported in (2020) 113 taxmann.com 390(Del) and Keehne + Nagel Pvt Limited reported in (2012) 49 SOT 592(Del)}

(ii) Handling charges earned in one of the sources of revenues for these 2 companies. They are engaged in diversified actives with other sources of income also. There are no segmental accounts prepared. For lack of segmental data - alleged comparable is to be rejected refer Saxo India Limited reported in 397 ITR 160(Del) and SEZ Gurgaon reported in 416 ITR 51(Del).

D. Once both the above comparable companies are excluded then the margins are within range {PLI of Tested Party is 3.91 % (refer page 132 of PB-1) and PLI of comparable company is 4.88% (refer page 24 pf PB-1) - the difference is within tolerance range (copy of computation is enclosed) hence no TP adjustment is required and therefore remaining issues in appeal become infructuous.

It is therefore submitted that M/s Container Corporation of India and M/s Sanco Trans may kindly be excluded from the list of comparable companies.”

11. Thus, from the above submissions, it transpires that ld. counsel of the assessee is restricting his arguments to exclusion of two of the comparables selected by the TPO on the ground that ITAT in assessee's own case has found the same to be not comparable to assessee and thereafter pleads for application of tolerance range of $\pm 5\%$.

12. Per contra ld. DR for the Revenue submitted that since there is only one comparable remaining and hence only one price the tolerance range of $\pm 5\%$ is not applicable as it is applicable only when there are more than one price and an arithmetic mean has been arrived at. Ld. DR submitted that he shall be submitting case law in this regard. However, till date, no such case law has been submitted.

13. In this regard, we may gainfully refer to the concerned provisions of the Act :-

“92C. (1) The arm's length price in relation to an international transaction or specified domestic transaction shall be determined by any of the following methods, being the most appropriate method, having regard to the nature of transaction or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors as the Board may prescribe, namely :—

- (a) comparable uncontrolled price method;
- (b) resale price method;
- (c) cost plus method;
- (d) profit split method;
- (e) transactional net margin method;
- (f) such other method as may be prescribed by the Board.

(2) The most appropriate method referred to in sub-section (1) shall be applied, for determination of arm's length price, in the manner as may be prescribed:

Provided that where more than one price is determined by the most appropriate method, the arm's length price shall be taken to be the arithmetical mean of such prices:

Provided further that if the variation between the arm's length price so determined and price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed such percentage not exceeding three per cent of the latter, as may be notified by the Central Government in the Official Gazette in this behalf, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price.”

14. A reading of the above clearly shows that the sanguine provision of the Act do not support the ld. DR interpretation that for application of tolerance range, there has to be a mean of more than one price.

15. The first proviso itself envisages that there can be only one price determined by most appropriate method. The second proviso mentions about application of tolerance range to the arm's length price so determined. So the reference to 'so determined' is with regard to first proviso and as already explained by first proviso contemplates that there can be only one price or more than one price. Hence, the objection of the ld. DR is rejected.

16. Accordingly, we remit the issue to the file of AO to reject the two comparables already found uncomparable by ITAT in assessee's own case

and thereafter make the computation as per law as discussed by us hereinabove.

17. Apropos corporate tax issue of bad debt. The taxpayer's claim of bad debt was disallowed with respect to related entities on the ground that sufficient proof of their becoming bad has not been established. We find that the law in this regard has already been settled by Hon'ble Supreme Court in the case of **TRF Ltd vs. CIT 323 ITR 397**. The AO is directed to follow the same.

18. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on this 30th day of August, 2022.

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 30th day of August, 2022
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.DRP
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
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