

IN THE INCOME TAX APPELLATE TRIBUNAL  
"K" BENCH, MUMBAI

SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No.7412/MUM/2017  
(ASSESSMENT YEAR: 2013-14)

Juniper Networks India Private Limited,  
Unit 103, Platina, 1<sup>st</sup> Floor,  
Plot No. C 59, G Block,  
Bandra Kurla Complex Road,  
Bandra (East), Mumbai - 400051  
[PAN: AAACJB542K]

..... Appellant  
Vs

The Deputy Commissioner of Income Tax,  
Circle – 2(4),  
Aayakar Bhawan, M.K. Road,  
Mumbai - 400020

..... Respondent

Appearances

For the Appellant/Assessee : Vijay Mehta  
For the Respondent/Department : Dr. Yogesh Kamat

Date of conclusion of hearing : 27.06.2022  
Date of pronouncement of order : 30.08.2022

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. The present appeal is directed against Assessment Order dated, 26.10.2017 passed under Section 143(3) read with Section 144C(13) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] for the Assessment Year 2013-14, as per directions issued by Dispute Resolution Panel-I, Mumbai (hereinafter referred to as 'the DRP') under Section 144C(5) of the Act.

2. Appellant has raised following grounds of appeal:

"1. *That the learned Assessing Officer (referred to as the 'learned AO) erred on facts and in law in completing assessment under section 143(3) read with section 144C of the Income-tax Act,*

1961 (the Act) at an income of INR 1,853,256,190/- as against returned income of INR 1,816,791,080/-.

2. Transfer pricing adjustment to the International transaction of Marketing Support services

*That the learned AO erred on facts and in law in making addition based on the directions of Hon'ble Dispute Resolution Panel (referred to as the 'DRP') to the income of the Appellant to the extent of INR 36,465,110/- on account of alleged difference in the arm's length price for international transaction in the nature of Marketing support services.*

*Below grounds are without prejudice to the above ground:*

*On the facts and in the circumstances of the case and in law, the learned AO based on the directions of the Hon'ble DRP has, in arriving at the arithmetic mean of the comparable companies to benchmark the international transaction of Marketing Support Services rendered by the Appellant, erred on the following grounds:*

- a. *In excluding Specturm Business Solution Limited" and "ICRA Management Consulting Services Limited from the set of comparable companies selected by the Appellant in its transfer pricing documentation maintained by it; and*
- b. *In selecting Axis Integrated Systems Limited and Asian Business Exhibitions and Conference Limited as comparable companies in the final set when in fact the said companies are not functionally comparable to the Appellant.*

*It is prayed that the learned AO/TPO to be directed not to exclude the comparable companies selected by the Appellant, in the absence of cogent reasons and also learned AO/TPO be directed to exclude incorrect comparable companies selected by the AO/TPO.*

- 2.1 *That the Hon'ble DRP erred in facts and in law in not directing the AO/TRO to apply export filter on the comparable companies selected by the TPO for the marketing support services transactions of the Appellant.*

*It is prayed that the learned AO/TPO be directed to apply the export filter by the learned TPO on the comparable companies selected by the learned TPO for the marketing support services transactions.*

- 2.2 *The learned AO/ TPO have erred on facts and in law by not making appropriate adjustments to the Profit Level Indicator (PLI) of comparable companies as required by Rule 10B(1)(e)(i) of the Rules, which has rendered the benchmarking exercise carried out by the learned TPO inconsistent with the requirement of law and hence, is liable to be rejected. The learned AO/TPO have also erred in not providing any working capital adjustments which was allowed by the Hon'ble DRP.*

*It is prayed that the learned AO and the learned TPO to allow working capital and risk adjustments in accordance with the provisions of Rule 10B(1)(e)(ii) of the income-tax Rules, 1962 (Rules) to the PLI of comparable companies selected by the TPO.*

3. *On the facts and in the circumstances of the case and in law, the learned AO has erred in levying interest under section 234A and 234B of the Act.*

*It is pleaded that the learned AO be directed to delete the interest levied under section 234A and 234B of the Act.*

4. *On the facts and in the circumstances of the case and in law, the learned AO has erred in initiating penalty proceedings under section 271(1)(c) of the Act.*

*It is pleaded that the learned AO be directed to be drop the penalty proceedings initiated under section 271(1)(c) of the Act*

*Each of the grounds of appeal referred above is separate, and may kindly be considered Independent of each other*

*The Appellant craves leave to add, alter, vary, omit, substitute or amend any or all of the above grounds of appeal, at any time before or at, the time of the appeal, so as to enable the Hon'ble Income-tax Appellate Tribunal to decide this appeal according to law."*

3. The relevant facts in brief are that Appellant filed returned which was selected for scrutiny. During assessment proceedings a reference was made to the Transfer Pricing Officer (TPO) for determination of Arm's Length Price (ALP) of the transactions entered into by Appellant with his Associated Enterprises (AEs). For the relevant assessment year, the Appellant, a wholly and subsidiary of Jupiner Network International LLC USA, was engaged in providing Software Development Services, Information Technology Enable Services and Marketing Support Services to Jupiner Group companies. In the present appeal the Appellant has challenged the Transfer Pricing Adjustment made by the Assessing Officer in relation to international transactions pertaining to Marketing Support Segment. For benchmarking international transactions with AEs pertaining to Marketing Support Segment, the Appellant had adopted Transactions Net Margin Method (TNMM) as the most appropriate method with weighted average Net Cost plus Mark Up as the Profit Level Indicator (PLI). The Appellant had selected 5 comparables. However, the TPO rejected all the 5 comparables and finalized the list of 3 comparables consisting of (i) BVG India Limited, (ii) Axis Integrated Systems Limited (AISL) and

(iii) Asian Business Exhibitions & Conferences Ltd. Before TPO, the Appellant objected to selection of AISL as a comparable, inter alia, on the ground that AISL was not functionally comparable with the Appellant-company. However, the TPO rejected the objections and proposed a transfer pricing adjustment of INR 7,26,48,720/- in respect of Marketing Support Services Segment taking Operating Profits/Operating Cost as the Profit Level Indicator vide order, dated 31.10.2016, passed under Section 92CA(3) of the Act. In the Draft Assessment Order, dated 15.12.2016, passed under Section 143(3) read with Section 144(1) of the Act, the Assessing Officer incorporated the aforesaid transfer pricing adjustments leading to the Appellant filing of objections before DRP which were rejected vide order, dated 07.09.2017, passed under Section 144C(5) of the Act, holding as under:

*“5.14.5 With reference to functional profile, it is seen that the company is a proper comparable, performing business support services to its clients. Hence, it is directed to be included in the list of comparables.”*

The Assessing Officer passed Final Assessment Order under Section 143(3) read with Section 144C(13) of the Act on 30.10.2017 against which the Appellant has filed the present Appeal challenging, inter alia, inclusion of AISL in the list of comparables by TPO.

4. The Ld. Authorised Representative for the Appellant appearing before us, placing reliance of Ground 2(b), advanced arguments for exclusion of AISL from the final set of comparables selected by TPO on the premise that the exclusion of AISL would render all the other grounds raised in the appeal academic as the margins computed by the TPO after excluding AISL from the final set of comparables would fall within the tolerance band requiring no transfer pricing

adjustment. He submitted that AISL was not functionally comparable with the Appellant and in this regard relied upon the findings on the Hon'ble Delhi High Court and Mumbai Bench of the Tribunal regarding the functional profile of AISL in the following judgment/decisions:

- *Arkay Logistic Ltd. v. DCIT : ITA No. 765/Mum/2018.*
- *Nokia India Pvt. Ltd. v. Addl. CIT : ITA No. 6502/Del/2017*
- *Bergen Engines India Pvt. Ltd. v. ACIT : ITA No. 7802/Del/2017*
- *DSM Nutritional Products India Pvt. Ltd. v. DCIT : ITA No. 6635/Mum/2018*
- *Asus India Pvt. Ltd. v. ACIT : ITA No. 7831/Mum/2019*
- *International Hotels Group (India) Pvt. Ltd. v. DCIT : ITA No. 4035/Del/2016*

5. The Ld. Departmental Representative submitted that AISL was functionally comparable with the Appellant-company and relied upon the order of TPO and DRP in this regard. He submitted that liaison service provided by AISL is in the nature of support service only and therefore, TPO was justified in selecting AISL as a comparable.
6. We have heard the rival submissions and perused the material on record. We note that the Marketing Support Segment of the Appellant was engaged in providing sales and marketing services to the AEs. According to the functional profile of the AISL, as per the extracts of its websites placed on record, AISL was engaged in providing services related to Directorate General of Foreign Trade, Customs/Excise & Service Tax related services, which are in the nature of the professional consultancy services as opposed to sales and marketing support services provided by the Appellant. Further, AISL was providing liaison services to large number of customers as opposed to the Marketing Support Segment of the Appellant which was providing support services only to its AEs. Further, AISL was

also engaged in the business of trading in digital certificate. Since the nature of support services vary from business to business, the TPO erred in treating liaison services provided by AISL at par with the marketing and sales support services provided by the Appellant. On perusal findings regarding functional profile of AISL in the judgments relied upon by the Ld. Authorised Representative for the Appellant, it is clear that AISL was functionally not comparable with the marketing support services rendered by the Appellant. Therefore, we direct the Assessing Officer to exclude AISL from the list of comparables. Ground No. 2(b) raised by the Appellant is allowed. In view of the aforesaid and the submission made by the Learned Authorised Representative for the Appellant during the course of the hearing (recorded in paragraph 4 above), all the other grounds raised by the Appellant are disposed as being academic.

7. In result, the appeal is partly allowed.
8. Order pronounced on 30.08.2022.

*Sd/-*

(B.R. Baskaran)  
Accountant Member

*Sd/-*

(Rahul Chaudhary)  
Judicial Member

मुंबई Mumbai; दिनांक Dated : 30.08.2022  
*Alindra, PS*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai