

आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, PUNE

BEFORE SHRI S.S.GODARA, JM  
AND SHRI G.D. PADMAHSHALI, AM

आयकर अपील सं. / ITA No.162/PUN/2022 &  
C.O. No.22/PUN/2022  
निर्धारण वर्ष / Assessment Year : 2010-11

DCIT, Circle -1(1), Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. AGS Customer Services India P.Ltd.,  
Office No.103, P3 Pentagon Magarpatta City,  
Hadapsar,  
Pune – 411 013

PAN : AAHCA1940P

.....प्रत्यर्थी/Respondent/Cross-Objector

Assessee by : Shri Ajit Kumar Jain &  
Shri Siddhesh Chaugule  
Revenue by : Shri Piyush Kumar Singh Yadav

सुनवाई की तारीख / Date of Hearing : 30.08.2022  
घोषणा की तारीख / Date of Pronouncement : 16.09.2022

**आदेश / ORDER**

**PER S. S. GODARA, JM :**

1. This Revenue's appeal ITA No.162/PUN/2022 with assessee's cross objection CO No. 22/PUN/2022 for assessment year 2010-11, arise against CIT(A)-13 Pune's order dated 30.12.2021 passed in case no.PN/CIT(A)-13/DCIT, Cir-1(1), New Delhi/10012/2014-15/229, involving proceedings u/s. 143(3) r.w.s.144C of the Income Tax Act, 1961; in short "the Act".

Heard both the parties. Case files perused.

2. The Revenue's appeal ITA No. 162/PUN/2022 raises the following substantive grounds :-

- "1) The order of the Ld. CIT(A) is contrary to law and to the facts and circumstances of the case.*
- 2) The Ld. CIT(A) has erred in determining the ALP of international transaction related to Business Support Services in the light of terms and conditions of the Advance Pricing Agreement (APA) applicable to AY 2011-12 to AY 2015- 16, without appreciating that the terms and conditions set out in APA cannot be applied to the assessment year AY 2010-11 which is not a apart of APA.*
- 3) The Ld. CIT(A) has erred in determining the ALP of the international transaction related to provision of Business Support Services in the light of terms and conditions of the APA without appreciating that the terms and conditions of APA which is applicable to AY 2011-12 to AY 2015-16 cannot he applied to AY 2010-11 as it would amount to violating the provisions of sub-section(9A) to section 92CC which categorically restricts the application of APA only to 4 roll back years and not beyond.*
- 4) The appellant craves to add, amend, alter or delete any of the above ground of appeal during the course of appellate proceedings before the Hon'ble Tribunal."*

3. It is evident that the Revenue's sole legal ground herein challenges correctness of the CIT(A)'s action reversing assessment findings making Transfer Pricing adjustment(s) of Rs.3,51,21,912/- in assessee's back office

support services segment. The CIT(A)'s admittedly appears to have gone by the assessee's "advance pricing arrangement (APA)" dated 29.08.2016 with the CBDT adopting cost + 15% mark up to reverse the TPO's arm's length price computation coming to 20.75%. The Revenue's case is that the said agreed mark up is applicable from FYs 2011-12 to 2014-15 whereas we are in AY 2010-11 only.

4. The assessee has drawn strong support from the CIT(A)'s detailed discussion in para 2.6 onwards that the forgoing agreed mark up would indeed carry persuasive value for all collateral purposes.

5. We have given our thoughtful consideration to the forgoing rival pleadings and find forced in the Revenue's stand since an advance pricing agreement "APA" is applicable only for the specified time span not exceeding five consecutive previous years u/s.92CC(4) r.w. sub section (9A) of the Act. We make it clear that Chapter X in the Act is in the nature of a "SPECIAL PROVISION RELATING TO AVOIDANCE OF TAX" i.e. an anti avoidance measure introduced by the legislature. Hon'ble apex court's recent landmark decisions PCIT V/s Wipro Ltd. (2022) 140 taxmann.com 223, Commissioner V/s Dilip Kumar & Co. 2018 (9) SCC 1(SC) FB & CIT V/s. GM Knitting Industries (P) Ltd.(2015) 376 ITR 456 (SC) have settled the law that the relevant provisions in the Act ought to be put to stricter interpretation only. Faced with this situation, we reverse the CIT(A)'s findings in issue going against sec. 92CC(4) r.w.s.(9A) of the Act (supra) and direct him to re-decide

all of the assessee's grounds in the lower appeal afresh as per law. This Revenue's appeal ITA No. 162/Pun/2022 is allowed for statistical purposes.

6. The assessee's cross objection C.O. No. 22/Pun/2022 pleading therein that the CIT(A)'s ought to have decided all the relevant issues on merits; also follows the suit as the necessary corollary. Ordered accordingly.

7. To sum up, this Revenue's appeal ITA No. 162/Pun/2022 as well as assessee's Cross Objection C.O No. 22/Pun/2022 are allowed for statistical purposes in above terms. A copy of this common order be placed in the respective case files

Order pronounced in the Open Court on this 16<sup>th</sup> day of September, 2022.

**Sd/-**

**(G.D. PADMAHALI)**  
लेखा सदस्य/ **ACCOUNTANT MEMBER**

**Sd/-**

**(S.S. GODARA)**  
न्यायिक सदस्य/**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 16<sup>th</sup> September, 2022.

Ashwini

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A) -13, Pune
4. The CIT-1, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “सी” बेंच,  
पुणे / DR, ITAT, “C” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

S.No.	Details	Date	Initials
1	Draft dictated on	02.09.2022	
2	Draft placed before author	13.09.2022	
3	Draft proposed & placed before the Second Member		
4	Draft discussed/approved by Second Member		
5	Approved Draft comes to the Sr. PS/PS		
6	Kept for pronouncement on		
7	Date of uploading of Order		
8	File sent to Bench Clerk		
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R.		
11	Date of Dispatch of order		