

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAHUL CHAUDHARY, JM

ITA No. 7899/Mum/2010

(Assessment Year 2006-07)

Frost & Sullivan (I) P. Ltd.
Tower VI, IV Floor, Solitaire
Corporate Park, Chakala,
Andheri (E)
Mumbai-400 093

(Appellant)

Vs.

Dy. Commissioner of Income
Tax,
Central Circle 8(1),
Aaykar Bhavan
Mumbai-400 020

(Respondent)

PAN No. AAACF4252A

Assessee by : Shri Madhur Agrawal, AR
Revenue by : Shri Sumit Kumar, Sr. AR

Date of hearing: 20.07.2022
Date of pronouncement : 17/10/2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the assessee for A.Y. 2006-07 against the assessment order passed under Section 143(3) read with section 144C(13) of the Income-tax Act, 1961 (the Act) by the Dy. Commissioner of Income Tax, Circle 8(1), Mumbai (the learned Assessing Officer) raising following grounds of appeal: -

"Ground No. 1:

On the facts and in the circumstances of the case and in law, the Assessing Officer ('AO') grossly erred, based on the directions of Dispute Resolution Panel (DRP) under section 144C(5) of the Income-tax Act,

1961 (the Act). in making the upward transfer pricing adjustment to the extent of Rs. 2,79,30,148/- in respect of appellant's international transactions with associated enterprise ('AE') as well as appellant's transactions with Non-AEs. The appellant submits that no transfer pricing adjustment is warranted in its case and wishes to raise the following grounds of appeal, which are without prejudice to each other.

i. The DRP erred in upholding the TPO/AO's action of conducting a fresh search, which was without jurisdiction as it was undertaken without complying with the conditions prescribed in Section 92C(3) of the Act.

ii. The DRP/TPO/AO erred in not providing to the appellant the material and information pertaining to the entire search process and providing only certain limited information regarding the final set of the alleged comparables in the fresh search process carried out by the Ld. TPO thereby blatantly violating the principles of natural justice.

iii. The DRP/TPO/AO failed to appreciate that their directions/orders were erroneous, as

(a) adjustments for risk and functional differences between appellant and the alleged comparables newly selected by the TPO has not been granted.

(b) transfer pricing adjustment are made even with respect to appellant's

transactions with Non AE customers, which is not at all permissible.

(c) appellant's reliance on Comparable Uncontrolled Price (CUP) Method for determining the arm's length price in respect of the market analysis services provided by the CP division has been rejected on totally untenable grounds and the Transactional Net Margin Method (TNMM'), which is not the most appropriate method under the circumstances, has been adopted.

(d) the appellant's comparison has been made with entities having totally different functional and risks profile and in any event, such comparison is made without directing that adjustment for significant economic differences, including working capital adjustment, should be made.

(e) the transfer pricing adjustments have been made at the entity level without appreciating that such entity level adjustments have been made not only with respect to the appellant's international transactions with its AES, which were scrutinized and commented upon by the TPO (Le., the revenues of CP and GIC division) but also (1) with respect to the international transactions with the AE which were not commented

upon by him and therefore impliedly accepted by him (such as receipt of market analysis services, common corporate cost) and; (ii) with respect to the Non-AE transactions.

(f) heavy reliance has been placed on information gathered by the TPO under section 133(6) of the Act for the purposes of accepting / rejecting companies as comparable companies, which information is not in the public domain and which has not been fully made available to the appellant.

(g) multiple years' financial data has not been taken into account for computing the average operating profit margins of the allegedly comparable companies selected by the TPO, especially since use of multiple year financial data (i.e. financial data of relevant previous year and two years prior thereto) was justifiable as per the proviso to Rule 10B(4) of the Income-tax Rules, 1962 under the facts and circumstances of the appellant's case.

iv. (a) The DRP/TPO/AO failed to appreciate that the directions of DRP as well as the order of the AO based on DRP's directions are untenable in law as they do not allow the benefit of adjustment of $\pm 5\%$ as per proviso to section 92C(2) of the Act.

(b) The DRP/TPO/AO failed to appreciate that the directions of DRP as well as the order of the AO based on DRP's directions are erroneous as they do not compute the transfer pricing adjustment with reference to the lower end of \pm 5% arm's length range as provided in proviso to section 92C(2) of the Act.

v. The DRP/TPO/AO failed to appreciate that their orders are invalid because:

(a) They suffer from factually incorrect statements, observations and conclusions.

(b) The appellant's various submissions have not been taken into account.

(c) Binding decisions cited before them have not been followed.

The learned AO erred in initiating penalty proceedings under Section 271(1)(c) of the Act."

02. The fact shows that assessee is a company engaged in market research. It filed its return of income on 30th November, 2006 declaring total income of ₹3,06,15,180/-. The return of income was picked up for scrutiny.
03. As assessee has entered into international transaction as per Form no.3CEB , reference was made to the learned Transfer Pricing Officer for determination of Arms Length Price.
04. The assessee is a group company of Forst & Sullivan, USA, which is a world leader in providing strategic marketing

and technical information in the form of industrial reports. The assessee company operates through two divisions of [1] Consultancy Practice (CP) and [2] Global Innovation Centre (GIC). The Consulting Practice Division provides services to the customer and Global Innovation Centre operates as back office for the group providing business support and market analysis services. It was found that assessee has entered into an international transaction of rendering of market analysis and business support services of ₹21,12,98,516/-, rendering market services analysis of ₹ 1,43,06,643/- and receipt of market analysis services of ₹52,79,958/-. The assessee company has adopted Transactional Net Margin Method as the most appropriate method. It selected ten comparables and worked margin on the cost of these services at 11.74%. The learned Transfer Pricing Officer rejected all the ten comparables of the assessee and carried out a fresh search selecting 13 companies as comparables determining the margin of 24% as the Arms Length margin. The learned Transfer Pricing Officer proposed the adjustment of ₹4,19,06,880/- by passing an order under Section 92CA(3) of the Act on 20th October, 2009. Pursuant to that draft assessment order was passed by the learned Assessing Officer on 30th November, 2009, wherein over and above transfer pricing adjustment, made certain other additions (which are not part of the appeal before us) computed the total income at ₹8,35,34,980/-.

05. Assessee preferred objections before the Dispute Resolution Panel, [the Ld DRP] who passed its directions on 6th August, 2010, wherein certain comparables were directed to be included. Consequently, the assessment order was passed wherein the transfer pricing adjustment were retained upto ₹2,79,30,148/-. The total income was determined at ₹5,87,68,166/-. Therefore, assessee is aggrieved.
06. The learned Authorized Representative submitted that
- a. assessee has objected before the learned Dispute Resolution Panel that CP division and GIC division should be benchmarked separately.
 - b. For A.Y. 2010-11, the learned Dispute Resolution Panel has accepted the claim of the assessee for separate benchmarking.
 - c. For A.Y. 2011-12 onwards, the Transfer Pricing Officer himself has accepted the same and determined the Arms Length Price of international transaction of these two divisions separately.
 - d. issue arose in case of assessee for A.Y. 2009-10 before the co-ordinate Bench, wherein at paragraph no.9 and 10, the learned Assessing Officer and learned Transfer Pricing Officer were directed so.



Therefore only issue in this appeal is that whether Global Innovation centre division and Consulting practice division should be benchmarked separately or not.

07. The learned Departmental Representative supported the orders of the lower authorities.
08. We have carefully considered the rival contentions and perused the orders of the lower authorities. The only grievance in this appeal is that CP division and GIC division should be benchmarked separately. We find that identical issue arose in case of assessee in ITA Nos.1124 and 484/Mum/2014 for A.Y. 2009-10, wherein the co-ordinate Bench vide Para no.9 and 10 has dealt with this issue and directed the learned Assessing Officer / Transfer Pricing Officer to benchmark CP division and GIC division separately. The co-ordinate Bench also noted that for A.Y. 2010-11, the learned Dispute Resolution Panel accepted the above proposition and for A.Y. 2011-12 onwards. The learned Transfer Pricing Officer himself benchmarked this division separately. There is no dispute on this facts. Therefore, respectfully following the decision of the co-ordinate Bench in assessee's own case for A.Y. 2009-10, we direct the learned Assessing Officer / Transfer Pricing Officer to determine the Arms Length Price of international transaction in CP division and GIC division separately. Accordingly, we set aside the whole appeal back to the file of the learned Transfer Pricing Officer/ Assessing Officer accordingly.



09. As the benchmarking analysis is required to be done afresh, other ground are not required to be adjudicated and are left open.

010. For the above reasons, the appeal of the assessee is allowed for statistical purposes.

011. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 17/10/2022.

Sd/-
(RAHUL CHAUDHARY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 17/10/2022

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai