IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "I" : DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

ITA.No.1349/Del./2022
Assessment Year 2017-2018

GAP International Sourcing (India) Private Limited, Unit No.201, DLF South Court, District Centre, Saket, New Delhi. PIN 110 017 PAN AACCG3437E	vs.	The ACIT (OSD), Circle-10(1), C.R. Building, Delhi. PIN 110 002.
(Appellant)		(Respondent)

For Assessee :	Ms. Namisha Malik, C.A.
For Revenue :	Shri Rajesh Kumar, CIT-DR

Date of Hearing :	27.10.2022
Date of Pronouncement :	31.10.2022

ORDER

PER ANIL CHATURVEDI, A.M. :

This appeal filed by the Assessee is directed against the Order of the Ld. Assistant Commissioner of Income Tax (OSD), Delhi, dated 29.04.2022 in DIN And Order No. ITBA/AST/S/143(3)/2022-23/1042905311(1),

relating to the A.Y. 2017-2018 passed under section 143(3) read with Section 144C(13) of the I.T. Act, 1961.

2. Briefly stated facts of the case are that the assessee-company filed its return of income for the A.Y. 2017-2018 on 23.11.2017 declaring total income of Rs.25,07,27,900/-. The case was selected scrutiny and thereafter, notice under sections 142(1) and 143(2) of the I.T. Act, 1961 were issued and served upon the assessee. The A.O. noted that during the year under consideration assessee-company had entered into international transactions with its Associated Enterprise ["AE"]. The A.O. accordingly made a reference under section 92CA(1) to Transfer Pricing Officer ["TPO"] who vide order passed under section 92CA(3) of the I.T. Act, 1961 dated 28.01.2021 proposed an adjustment to the international transactions at Rs.8,24,84,790/- on account of advisory and sourcing support services provided by the assessee-company to its AEs. Thereafter, a draft assessment order was passed under section 144C of the I.T. Act, 1961 dated 10.09.2021 and the

total taxable income of the assessee-company was determined at Rs.33,33,89,440/-.

2.1. Aggrieved by the draft assessment order passed by the A.O, assessee carried the matter before the Disputes Resolution Panel-1 ["DRP"], New Delhi and the DRP vide order passed under section 144C(5) of the I.T. Act, 1961 dated 10.03.2022 directed the A.O. to complete the assessment as per the directions contained therein. Consequently, the assessment order was passed by the A.O. under section 143(3) read with section 144C(13) of the I.T. Act, 1961 dated 29.04.2022 determining the total taxable income of assessee-company at Rs.33,07,25,868/-.

3. Aggrieved by the assessment order passed by the A.O. pursuant to the directions of the DRP, the assessee is now in appeal before the Tribunal and has raised the following grounds :

1. *On facts and in law, the Learned Dispute Resolution Panel ("Ld. DRP") / Assistant Commissioner Of Income Tax (OSD), New Delhi ("Ld. AO") erred in computing the*

total income of the Appellant for Assessment Year ("AY") 2017-18 at INR 33,07,25,868 as against the returned income of INR 25,07,27,900 and accordingly, erred in in proposing an adjustment of INR 7,99,97,968 to the income of the Appellant during the relevant previous year.

Transfer Pricing Grounds

2. *The Ld. DRP / Ld. AO / Learned Deputy Commissioner of Income-Tax, Transfer Pricing Officer — 2(f)(1), New Delhi ("Ld. TPO") (following the directions of the Ld. DRP), erred on facts and in law by enhancing the income of the Appellant by INR 7,98,21,219 on account of transfer pricing adjustment by holding that the international transactions of the Appellant pertaining to provision of advisory & sourcing support services to its associated enterprise ("AE") do not satisfy the arm's length principle envisaged under the Act. In doing so, the Ld. DRP/Ld. AO/Ld. TPO have grossly erred in :*

2.1. Rejecting the functional, asset & risk ("FAR") analysis and economic analysis as undertaken in the TP documentation maintained by the Appellant in terms of section 92D of the Act read with Rule 10D of the Income-tax Rules, 1962 ("the Rules");

2.2. misconstruing the business profile of the Appellant engaged in sourcing support services and thereby comparing the services provided by the Appellant to that of a back-office support service provider;

2.3. erroneously excluding certain comparable companies on arbitrary/frivolous grounds; and

2.4. conducting a fresh comparability analysis and cherry picking a set of high margin companies engaged in diverse activities largely unrelated to the functions performed by the Appellant viz. IT services, technical consulting services.

3. That on the facts and circumstances of the case and in law, the Ld. TPO, while giving effect to the directions of the Dispute Resolution Panel ("Hon'ble DRP") in its order dated April 18, 2022, has accepted "DGM India Internet

Marketing Limited" to be functionally comparable company, however Ld. TPO has erroneously excluded "DGM India Internet Marketing Limited" in the final set of comparables for determining the arm's length margin range. In doing so, the Ld. TPO has erred in computing the arm's length range of the advisory & sourcing support services of 19.61% to 31.64% instead of 11.06% to 31.64%, thereby resulting in the TP adjustment of INR 7,98.21,219.

Corporate Tax Grounds

4. *That the Ld. AO erred in facts and law in proposing to disallow an amount of INR 1,76,749 by reducing the rate of depreciation on Routers from 60% to 15% treating them as "Plant & Machinery" as against "Computers", as claimed by the Appellant.*

5. *On facts and circumstances of the case and in law, while computing the total demand, the Ld. AO has erred by not giving credit of Dividend Distribution Tax amounting to INR 4,27,52,750 already paid by the*

Appellant during FY 2016-17, thereby resulting in demand on account of DDT liability amounting to INR 7,20,30,200 (inclusive of interest under section 115P).

6. *Without prejudice to the above, in the facts and circumstances of case and in law, the Ld. AO has erred in levying interest under Section 23 4B of the Act.*

7. *That the Ld. AO erred in proposing to initiate penalty proceedings under section 270(A) r.w.s 274 of the Act.*

That the above grounds of appeal are without prejudice to each other.

The Appellant craves leave to alter, amend or withdraw all or any objections herein or add any further grounds as may be considered necessary either before or during the hearing".

4. Before us, at the outset, the Learned Counsel for the Assessee submitted that in view of rectification order passed by TPO, the grounds of appeal nos.2, 3 and 5 have become infructuous and require no adjudication and grounds of appeal no.1 is general in nature, which needs no

adjudication. She submitted that the only ground which requires adjudication is ground of appeal no.4.

5. In view of the aforesaid submissions of Learned Counsel for the Assessee, **we dismiss the grounds of appeal nos.1, 2, 3 and 5.**

6. Brief facts of the case pertaining to ground of appeal no.4 are that during the course of assessment proceedings, the A.O. noticed that assessee-company had claimed depreciation at 60% on the Routers. The assessee-company was asked to explain the allowability of depreciation at 60%, to which, the assessee *inter alia,* submitted that it had incurred an amount of Rs.7,85,518/- towards purchase of Routers and had claimed the depreciation of Rs.2,35,665/- at 30% i.e., at half the rate of 60% as the same was put for use for less than 180 days. The submissions of assessee-company was not acceptable to A.O. as according to him, the Routers cannot be considered as part of computers. According to A.O. it is in the nature of plant and machinery and, therefore, assessee was entitled to depreciation at 15%. He accordingly worked-

out the excess depreciation to the extent of Rs.1,76,749/- and disallowed the same.

6.1. When the matter was carried before DRP, the DRP upheld the order passed by the A.O.

7. Aggrieved by the directions of DRP consequent to which the A.O. passed the order, the assessee-company is now in appeal before the Tribunal.

8. Before us, the Learned Counsel for the Assessee reiterated the submissions made before the lower authorities and further submitted that Router is part of a computer and, therefore, assessee is eligible for depreciation on it @ 60%. In support of her contentions, she submitted that the Coordinate Benches of the Mumbai Tribunal in the case of IBAHN India (P.) Ltd., vs., DCIT-1(3), Mumbai [2016] 66 taxmann.com 239 [Mumbai-Tribunal] and in the case of DCIT-2(1), Mumbai vs., Datacraft India Ltd., ITA.Nos.7462 & 754/Mum./2007 reported in [2010] 40 SOT 295 (Mum.) (Special Bench) has held that the Routers to be part of computer and, therefore, eligible for 60% depreciation. She

pointed to the copies of the aforesaid decisions placed at pages 7-45 of the paper book. She further submitted that an identical issue in assessee's own case was decided by the Coordinate Bench of Delhi Tribunal for the A.Ys. 2006-07 and 2007-08 in ITA.Nos.5147/Del./2011 and ITA.No.228/ Del./ 2012 order dated 18.09.2012. She pointed to the copy of the order which are placed at pages 188-238 of the paper book. She, therefore, submitted that in view of the aforesaid facts, the disallowance of depreciation made by A.O. was not warranted.

9. The Ld. D.R. on the other hand supported the orders of the lower authorities.

10. We have heard the Learned Representative of both the parties and perused the material available on record. The issue in the present ground is about the depreciation on Routers claimed by the assessee-company at 60%. From the careful perusal of the various decisions of Coordinate Benches of the Tribunal relied upon by the Learned Counsel for the Assessee, we find force in her submissions that it has been held that Routers are part of

the computer and computers are eligible for depreciation at 60%. The Special Bench of the Mumbai Tribunal in the case of Datacraft India Ltd., (supra) held that *CPU alone cannot be described as computer, routers and switches being input/ output devices, are integral part of computer and, hence, entitled to higher rate of depreciation at 60%.* Similar view has been taken by ITAT Mumbai Bench in the case of IBAHN India (P.) Ltd., (supra). We, therefore, respectfully following the reasonings given by the Special Bench of the Tribunal in its order in the case of Datacraft India Ltd., (supra) and IBAHN India (P.) Ltd., (supra) and in absence of any contrary binding decision brought to the notice of the Bench by the Ld. D.R. hold that assessee is eligible for depreciation on Routers at the rates prescribed for computers. We, accordingly, direct the A.O. to allow depreciation on Routers at 60%. Accordingly, **the ground of appeal no.4 of the assessee is allowed.**

11. In the result, **appeal of the Assessee is partly allowed.**

Order pronounced in the open Court on 31.10.2022.

Sd/-	Sd/-
(NARENDER KUMAR CHOUDHRY)	(ANIL CHATURVEDI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Delhi, Dated 31st October, 2022

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'I' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.