

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 2126/MUM/2015
(Assessment Year 2009-10)

Munich Re India Service Pvt. Ltd.
302, Peninsula Tower, Peninsula
Corporate Park, Ganpat Kadam Vs.
Marg, Lower Marg

(Appellant)

ACIT CIR 6 (3)
R.No. 522,
Aaykar Bhavan,
M.K.Road,
Mumbai- 400 020

(Respondent)

PAN No. AADCM8044N

Assessee by : None
Revenue by : Shri. Samuel Pitta

Date of hearing: 02.11.2022
Date of pronouncement: 02.11.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the Munich Re India Services Private Limited (Appellant) for A.Y. 2009-10 against the order of the CIT(A) 57, Mumbai dated 20.01.2015. Assessee has raised following grounds of appeal:

"1. On the facts and in the circumstances of the case and an law, the Commissioner of income Tax (Appeals)-57, Mumbai (CIT(A)) has erred in partly upholding the order passed by the Assessing Officer



(AO) resulting into revised assessed income of the appellant at INR 567,44,867 as against the 'returned income' amounting to INR 2,92,68,370 and therefore, to the extent of INR 274,70342/- additions/disallowances made by the CIT(A), the order is bad in law and needs to be annulled.

2. Transfer Pricing Adjustment: INR 2,72,02,647/-

On the facts and in the circumstances of the case and in the law, the learned CIT(A) erred in confirming the adjustment of INR 2,72,02,647/- made by the Assessing Officer by virtue of re-computation of arm's length price of international transactions vide his impugned order dated January 20, 2015 after giving a partial relief for the comparables considered by the AO.

3 Erred in rejection of Transfer Pricing Documentation maintained under Rule 10D of the Income Tax Rules, 1962 ("the rules").

The Ld CIT(A) cited in confirming the action of the Ld TPO for rejection of comparable companies identified by the Appellant based on methodical search strategy as maintained under Rule 10D of the Rules, thereby violating the provisions of Rule 108(2) of the Rules.

4 . Violation of provisions of Rule 10 B2) and Rule 10 B(3) and arbitrary rejection of comparables selected by the Appellant



4.1. *On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding / confirming the action of the TPO in conducting the benchmarking analysis de novo disregarding the fact that the companies were functionally not comparable to the Appellant.*

4.2. *On the facts in circumstances of the case and in law, the Ld TPO as well as the CIT(A) further erred in not appreciating that the above action is contrary to the provisions of Rule 10B(2) & 10B(3) of the Rules*

5. Erred in applying arbitrary search filter.

On the facts and the circumstances of the case and in law, the Ld. CIT(A) erred in upholding/confirming the action of the TPO for the application of arbitrary filters for selection/rejection of companies;

6. Cherry picking of functionally dissimilar companies by the Ld. TPO/Ld CIT(A)

On the facts and in the circumstances of the case and in law, the LA CIT(A) erred in upholding/conforming the action of the TPO by cherry picking the comparables about understanding the functions performed, assets employed and risks assumed by the assessee vis-à-vis the comparables selected by Ld TPO.

7. Working Capital Adjustment not granted

On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding/confirming the action of the TPO by not granting the working capital adjustment as mandated in Rule 10B(3) of the Rules.

8. Risk Adjustment not granted

The Ld. CIT(A) further erred in upholding/confirming the action of the TPO by not granting any risk adjustment to the appellant thereby violating the provisions of Rule 10B(3) of the Rules, stating that the appellant is not a risk carrier and hence and to not granting the risk adjustment.

9. Use of Multiple Year Data

The Ld CIT(A) further erred in upholding / confirming the action of the TPO wherein the TPO wrongly disregarded the multiple year analysis undertaken by the appellant accordance with Rule 10B(4) of the Rules for computing margins of comparable companies.

10. Requisite conditions under Section 92C(3) - Not Satisfied

On the facts and as the circumstances of the case and in law, the learned TPO erred and the Ld. CIT(A) further erred in violating the provisions of Section 92C(3) of the Act by failing to only any reasons or conditions mentioned in clause (a) to (d) there are not satisfied by the appellant for determining the arm's length price.

11. The Ld CIT(A) erred in confirming to the Ld. TPO's action of not relooking at the comparables from a fresh perspective

The Ld. CIT(A) has erred in confirming to the actions of the Ld. TPO, wherein he mechanically relied upon the DRP directions given for AY 2008-09 and the search carried on for the previous years, without considering the comparable companies from an independent perspective.

12. Erred in not sharing the search process for the selected comparable companies

The Ld. CIT(A) erred in confirming the action of the TPO for not sharing the search process undertaken for the selected comparable companies.

13. Erred in considering incorrect margin for a comparable company.

The Ld. CIT(A) erred in confirming the action of the Ld. TPO in considering the incorrect margin computed of a comparable company (i.e. Maple eSolutions Limited)

14 The Ld CIT(A) erred in confirming the action of AO in disallowing the amount of lease charges

The Learned CFT (A) has erred in confirming the action of AO in disallowing the amount of

lease charges of INR 2,73,850/- paid by the appellant on account of purchase of car on lease.

Without prejudice to the above ground, the learned CIT(A) ought to have allowed depreciation as per the provisions of Income tax Act, 1961 in case the amount paid on lease charges is considered to be in the nature of capital asset.

15. Erred in initiating interest proceeding

The Ld. CIT(A) erred in confirming action of Ld AO wherein it was proposed to initiate interest and penalty u/s 234B and 234C of the Act, in his assessment order. The adjustment was merely on account of difference of opinion, besides, the Appellant has not defaulted in complying with the procedural requirements.

16 Erred in initiating penalty proceedings

The Ld. CIT(A) erred in confirming action of Ld. AO wherein it was proposed to innate penalty s/s 271(1)(c) of the Act, in his assessment order, in the absence of concealment of income or fishing of inaccurate particulars on part of the Appellant. The adjustment was merely on account of difference of opinion, besides, the Appellant has neither defaulted in complying with the procedural requirements nor understated the income fraudulently.”

02. This appeal was fixed for hearing several times. However, on the last occasion, a letter dated 28/4/2021 was found in the file which was received in the registry on 21.06.2021 requesting withdrawal of the appeal pursuant to Vivad Se Vishawas Act,



2020. However, even after this letter the registry fixed this appeal for hearing on almost 10 occasions. If the assessee would like to withdraw the appeal in view of the Vivad Se Viswas Act, same would have been disposed off immediately.

03. As we found this letter tagged in the appeal filed wherein the assessee submits that it has filed a declaration on 31st March, 2020 and Form No. 3 is already issued to the assessee on 28th January, 2021. Therefore, assessee would like to withdraw the above appeal.
04. In view of this, the appeal of the assessee is treated as withdrawn and hence, dismissed with a liberty that if a dispute is not settled under the abovementioned Act, the assessee may file an application for recall of this order.
05. In the result, appeal of the assessee is dismissed as withdrawn.

Order pronounced in the open court on 02.11.2022.

Sd/-
(SADEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 02.11.2022

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,



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