IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I" DELHI

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
&
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

I.T.A. No.1801/DEL/2022
Assessment Year 2018-19

Humboldt Wedag India Pvt. Ltd., A-36, Mehtab House, Mohan Co-op Estate, Mathura Road, New Delhi.	Vs.	DCIT, Circle-10(1), Delhi.
TAN/PAN: AAACH7474G		
(Appellant)		(Respondent)

Appellant by:	Mr. Rajneesh Verma, AR		
Respondent by:	Shri Rajesh Kumar, CIT-DR		
Date of hearing:	31	10	2022
Date of pronouncement:	10	11	2022

O R D E R

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Assessee against the final order dated 15.07.2022 passed by the Assessing Officer for the Assessment Year 2018-19, in pursuance of direction given by the Dispute Resolution Panel-1 vide order dated 23.05.2022.

2. The grounds of appeal raised by the Assessee read as under:

"1. On the facts and in the circumstances of the case and in law, the Learned Dispute Resolution Panel ('Ld. DRP'), the Learned Transfer Pricing Officer ('Ld. TPO') and the Learned AO (collectively referred as "the Revenue") erred in making an adjustment of Rs. 76,64,791 to the total income of the appellant on account of the alleged difference in the arm's length price ('ALP') of its international related party transactions under the provisions of Section 92CA(4) of the Act.

2 On the facts and in the circumstances of the case and in law, the Revenue erred in not appreciating that the pricing of such services including the mark-up paid thereof has been accepted by the

Hon'ble ITAT and by the Revenue in the appellant's own case for the past years AY 2014-15, AY 2016-17 and AY 2017-18 and there being no change in the facts and circumstances of the case in AY 2018-19 vis-a-vis the aforesaid years. In doing so,

2.1 The Ld. DRP erred in issuing subjective directions which lacks valid and sufficient reasoning, thereby violating provisions of the Section 144C(8) of the Act

2.2 The Ld. AO/ Ld. TPO erred in sustaining the adjustment despite there being no appeal is being preferred before the Hon'ble High Court by the Revenue against the aforesaid orders of the Hon'ble ITAT and thereby violating provisions of the Section 144C(10) of the Act

2.3 On facts and in law and sans any change in facts and circumstances of the case vis-a- vis the aforementioned AYs, the Ld. Revenue grossly erred in not following the principle of consistency as laid by the Hon'ble Supreme Court of India in the case of On the facts and in the circumstances of the case and in law, the Revenue has grossly erred in disallowing the mark-up portion charged by the associated enterprises ("AEs") without providing any cogent reason thereof. In doing so, the Revenue erred in:

3.1 Disregarding the fact that based on the economic and commercial circumstances, no independent third party would agree to provide such services without keeping an arm's length profit element over and above cost of services.

3.2 Disregarding the comprehensive benchmarking analysis undertake^ by the appellant, without demonstrating the inadequacy or infirmity in the analysis so conducted by the appellant.

3.3 Disregarding the corroborative internal Comparable Uncontrolled Price (CUP) analysis furnished by the appellant in relation to availing of supervision services.

3.4 Adopting a contradictory view with respect to availing of supervision services while accepting similarly priced services that the appellant provided to its AEs.

4 On the facts and in the circumstances of the case and in law, the Revenue have erred in not allowing the benefit of (+/-) 3% as provided in the proviso to Section 92C(2) of the Act, while determining the arm's length price of the international transactions of the appellant.

5 On the facts and in the circumstances of the case and in law, the Revenue have erred in incorrectly considering the mark-up amount as Rs. 76,64,791 instead of actual mark-up of Rs. 30,99,427 paid by the appellant on such services. In doing so, the Revenue erred in disregarding all documentary evidence furnished by the appellant in support of calculation of correct mark-up amount.

6 On facts and in law, the Ld. DRP erred in passing a cryptic order and neither considering information furnished nor addressing any of the contentions raised by the appellant during the proceedings before the Revenue.

7 That, on the facts and circumstances of the case and in law, the Ld. AO erred in levying interest under Section 234B of the Act.

8 That, on the facts and circumstances of the case and in law, the Ld. AO erred in initiating penalty proceedings under Section 270A of the Act.

The above grounds are notwithstanding and without prejudice to each other. The objections embodied in the above grounds are mutually exclusive."

3. When the matter was called for hearing, the ld. counsel for the assessee submitted that the assessee is a wholly owned subsidiary of KHD Humboldt Wedag International AG, Cologne (KHD AG). The assessee (HW Int.) is engaged in providing services such as designing and engineering, project management, supply of technology and equipment as well as supervision of erection and commissioning of cement plants and related equipment. During the Assessment Year 2018-19, the assessee has undertaken certain international transactions with its Associated Enterprises (AEs). In lieu of the services availed by the assessee from its overseas AEs towards inspection of goods, supervision of commissioning, installation and erection of cement plant etc., the AE charges were fixed on cost plus certain markup of 4% basis. The Assessing Officer while making the assessment has disallowed the markup component while accepting the cost incurred by the AE.

3.1 In this factual background, the ld. counsel for the assessee submitted that similar services were availed with AEs right from Assessment Year 2007-08 upto Assessment Year 2017-18. Making reference to a tabular statement at page 16 of the paper book presented by way of synopsis to the Dispute Resolution Panel (DRP), it was pointed out that in Assessment Years 2007-08 to

2009-10, such arrangement was accepted by the Transfer Pricing Officer (TPO) himself. In other years, the arrangement was accepted by the DRP and in Assessment Years 2014-15 to 2017-18 the matter went upto ITAT which ruled in favour of the assessee.

4. The ld. DR for the Revenue could not rebut the aforesaid factual submissions.

5. In the light of the submissions made on behalf of the assessee, the issue is no longer *res integra*. The issue has been either endorsed by the Revenue itself or has been ruled in favour of the assessee by the Co-ordinate Bench in assessee's own case in Assessment Years 2014-15, 2016-17 and 2017-18. A reference is made in this regard to the decision of the Co-ordinate Bench in ITA No.349/Del/2020 order dated 27.04.2022 relevant to Assessment Year 2017-18 and ITA No.8119/Del/2018 order dated 18.08.2021 concerning Assessment Year 2014-15.

6. The issue towards Transfer Pricing Adjustment of Rs.76,64,791/- thus deserves to be accepted in favour of the assessee.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 10/11/2022.

Sd/- Sd/-

[NARENDER KUMAR CHOUDHRY]
JUDICIAL MEMBER

[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER

DATED: **/11/2022**

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