

**आयकर अपीलिय अधिकरण, कोलकाता पीठ “सी”, कोलकाता**

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA**

श्री राजपाल यादव, उपाध्यक्ष(कोलकाता क्षेत्र)एवंश्री राजेश कुमार, लेखा सदस्य के समक्ष  
[Before Shri RajpalYadav, Vice-President (KZ) & Shri Rajesh Kumar, Accountant Member]

**I.T.A. No. 257/Kol/2021**  
**Assessment Year: 2016-17**

Zacks Research Pvt. Ltd. (PAN: AAACZ 2220 J)	Vs.	ACIT, Circle-8(2), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	20.02.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	15.03.2023
For the Appellant/ निर्धारिती की ओर से	Shri AnujMussadi, A.R
For the Respondent/ राजस्व की ओर से	Shri G. HukughaSema, CIT

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeal)-22, Kolkata (hereinafter referred to as the Ld. CIT(A)”) dated 29.06.2021 for the AY 2016-17.

2. After perusing the various grounds of appeal, we find that the assessee has raised a legal issue in ground no. 7 to the effect that transfer pricing adjustment made iscontrary to the provisions of Section 92C(1) of the Act as the ALP of

transactions entered into by the assessee was within 3% range from arm's length price determined by the TPO.

3. Facts in brief are that the assessee filed return of income on 27.09.2016 declaring total income of Rs. 50,16,590/-. The case of the assessee was selected for scrutiny for two reasons namely i) to examine TP parameters and ii) whether the sale/receipts was correctly offered for tax. Since the assessee has entered into transactions as its AE, the matter was referred to TPO for determination of arm's length price in respect of said transactions. The DCIT, IT and TPO-2, Kolkata vide order dated 26.10.2019 passed u/s 92CA(3) of the Act determined arm's length price wherein arm's length price margin was recommended at 3.59% whereas the margin declared by the assessee was 2.29%. Accordingly, TPO recommended upward adjustment on account of TP in respect of international transactions with the AE to the tune of Rs. 21,29,779/-. Accordingly assessment was framed and the addition was made to the income of the assessee in the order passed u/s 143(3) read with Section 144C(3) of the Act dated 18.12.2019. Pertinent to state that there is no dispute as to the method of determination of arm's length price. The assessee has applied TNMM which has been accepted by the TPO. However the TPO rejected the seven comparables as stated in para 5.4 whereas the remaining comparables as per TPSR were accepted however the working capital adjustment margin of the comparables were rejected.

4. In the appellate proceedings, the Ld. CIT(A) affirmed the order of AO by holding that there is no infirmity or mistake in the TPO's order.

5. After hearing the rival contentions and perusing the material on record and also the provisions of Section 92C(2) of the Act, we observe that the variation in the arm's length price so determined by the TPO and price at which international transactions have been undertaken by the assessee does not exceed 3% of the latter. In that scenario, the price at which international transactions were entered into shall be deemed to be arm's length price. In the present case, arm's length margin proposed by the TPO is

3.59% whereas the margin as per TPSR is 2.29% meaning thereby that variation in the arm's length price as computed by the TPO and as calculated by the assessee as per TPSR is less than 3%. Therefore the price at which the international transactions were undertaken with its AE shall be considered to be at arm's length price. Accordingly we set aside the order of Ld. CIT(A) and direct the AO to delete the disallowance.

6. Since we have allowed the appeal of the assessee on legal issue, the other grounds are not being adjudicated. The appeal of the assessee is allowed.

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

Order is pronounced in the open court on 15<sup>th</sup> March, 2023

Sd/-  
 (RajpalYadav /राजपाल यादव)  
 Vice-President / उपाध्यक्ष

Sd/-  
 (Rajesh Kumar/राजेश कुमार)  
 Accountant Member/लेखा सदस्य

Dated: 15<sup>th</sup> March, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Zacks Research Pvt. Ltd., Tower II, 13<sup>th</sup> Floor, Millennium City IT Park, Plot-62, Block-DN, Sec-V, Salt Lake, Bidhannagar, Kolkata, North 24 Paragana-700091.
2. Respondent – ACIT, Circle-8(2), Kolkata
3. Ld. CIT(A)-22, Kolkata (Sent through e-mail)
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
 ITAT, Kolkata Benches, Kolkata