

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**ITA No.1763/Del./2022
(ASSESSMENT YEAR : 2017-18)**

GBT India Private Limited,
G – 21, Ground Floor,
Salcon Rasvilas, Plot No.D-1,
Saket District Centre,
Delhi – 110 017.

vs. ACIT, OSD,
Delhi.

(PAN : AAFCG5409D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Himanshu S. Sinha, Advocate
Shri Bhuwan Dhoopar, Advocate
Shri Parash Bishwal, Advocate

REVENUE BY : Shri Jitender Kumar, CIT DR

Date of Hearing : 06.06.2023

Date of Order : 14.07.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is arising out of the order of Assessing Officer passed pursuant to the directions of Dispute Resolution Panel (DRP) for the assessment year 2017-18.

2. The grounds of appeal taken by the assessee read as under :-

“1. That, on the facts and circumstances of the case and in law, the Ld. AO erred in assessing the total income of the Appellant for

the relevant A Y at Rs.28,18,68,060/- as against the returned income of Rs.11,00,28,920/-.

2. That, on the facts and circumstances of the case and in law, the Hon'ble Dispute Resolution Panel ("DRP") I Ld. AO 1 Ld. Transfer Pricing Officer ("TPO") erred in making a transfer pricing adjustment of Rs.8,92,28,190/- in respect of international transactions entered by the Appellant alleging the same to be not at arm's length in terms of the provisions of Section 92C of the Act read with Rule 10D of the Income Tax Rules, 1962 ("Rules").

3. That, on the facts and circumstances of the case and in law, Hon'ble DRP/ Ld. AO erred in making an addition of Rs.9,43,45,109/- on account of disallowance of depreciation on goodwill amounting to Rs.6,15,36,299, disallowance of bad debts written off amounting to Rs.2,10,43,511 and disallowance under Section 43B amounting to Rs.31,140 during the relevant A Y.

4. That, on facts and circumstances of the case and in law, the Hon'ble DRP erred in sustaining the addition on account of disallowance of depreciation on goodwill only on the condition that order of this Hon'ble Tribunal in Appellant's own case for A Y 2015-16 has been challenged before the High Court.

5. That, on facts and circumstances of the case and in law and without prejudice to ground number 4, the Ld. AO grossly erred in sustaining the adjustment/ additions sans an appeal filed against the order of this Hon'ble Tribunal in Appellant's own case for AY 2015-16 before the Hon'ble Delhi High Court.

GROUND AGAINST TRANSFER PRICING ADJUSTMENT

6. That, on facts and circumstances of the case and in law, the Hon'ble DRPI Ld./ AO/ Ld. TPO grossly erred in not following the settled principles of judicial propriety by not appreciating that the transfer pricing adjustment qua the Forward Transition Support Service Charges is squarely covered in favour of the Appellant by the order of this Hon'ble Tribunal in Appellant's own case for the preceding A Ys 2015-16 and 2016-17.

7. That, on facts and circumstances of the case and in law and sans any change in facts and circumstances of the case vis-a-vis the preceding AYs 2015-16 and 2016-17, the Hon'ble DRPI Ld./ AOI Ld. TPO grossly erred in not following the principle of consistency as laid by the Hon'ble Supreme Court of India in the case of Radhasaomi Satsang v. CIT [1992J 193 ITR 321 (SC).

8. That, on the facts and circumstances of the case and in law, the Hon'ble DRP/ Ld. AO/ Ld. TPO erred in determining the Arm's Length Price ("ALP") of Forward Transition Support Service Charges at NIL by rejecting the Transactional Net Margin Method ("TNMM") applied by the Appellant and applying Comparable Uncontrolled Price method ("CUP") and making an upward adjustment of Rs.8,92,28,190/-.

9. That, on the facts and circumstances of the case and in law, the Hon'ble DRP/Ld. AO/ Ld. TPO erred in inappropriately categorizing the services to be in the nature of stewardship activities and suspecting the credibility of the services without appreciating the evidences and documents filed by the Appellant to demonstrate the nature of services availed by the Appellant from its Associated Enterprise and, thereby, determining the ALP to be NIL.

10. That, on the facts and circumstances of the case and in law, the Hon'ble DRP/Ld. AO/ Ld. TPO exceeded its jurisdiction by applying the cost benefit analysis in determining the ALP of Forward Transition Support Service Charges and also erred in not following the binding precedent laid down by the jurisdictional High Court in the case of CIT v. EKL Appliances [2012J 345 ITR 241 (Delhi), wherein it has been held that TPO has no power to disallow an expenditure merely on the ground that it was not prudent for the Appellant to have incurred the same.

11. That, on the facts and circumstances of the case and in law, the Hon'ble DRP/Ld. AO/ Ld. TPO erred in disregarding the fact that the disallowance of such costs would have a corresponding negative impact on the Appellant's taxable income and resultant profits which is against the intent of the provisions of Chapter X of the Act.

GROUND AGAINST CORPORATE TAX ADDITIONS

12. That, on facts and circumstances of the case and in law, the Hon'ble DRP/ Ld. AO/ Ld. TPO grossly erred in not following the settled principles of judicial propriety by not appreciating that the issue of disallowance of depreciation on goodwill is squarely covered in favour of the Appellant by the order of this Hon'ble Tribunal in Appellant's own case for the preceding AYs 2015-16 and 2016-17.

13. That, on facts and circumstances of the case and in law and sans any change in facts and circumstances of the case vis-a-vis the

preceding AYs, the Hon'ble DRP/ Ld. AO/ Ld. TPO grossly erred in not following the principle of consistency as laid by the Hon'ble Supreme Court of India in the case of Radhasaomi Satsang v. CIT [1992] 193 ITR 321 (SC).

14. That, on the facts and circumstances of the case and in law, the Hon'ble DRP/Ld. AO erred in disallowing the depreciation of Rs.6,15,36,299/- claimed by the Appellant on the cost of goodwill capitalized in the books of account, arising as a result of acquisition of Corporate Travel division of American Express India Pvt Ltd ("AEIPL") by the Appellant by way of a slump sale during FY 2014-15.

15. That, on the facts and circumstances of the case and in law, the Hon'ble DRP/Ld. AO failed to appreciate that (i) goodwill was not self-generated but was acquired/purchased by the Appellant in the course of acquisition of Corporate Travel division of AEIPL and (ii) determination of value of goodwill is not arbitrary and was based on the valuation reports obtained from independent valuers.

16. That, on the facts and circumstances of the case and in law, the Hon'ble DRP/Ld. AO failed to appreciate that it is bound by the decision of the Hon'ble Supreme Court in the case of CIT v. Smifs Securities Ltd [2012] 348 ITR 203 (SC) wherein it was held that any amount paid in excess of the 'net assets' acquired, shall constitute goodwill which is eligible for depreciation.

17. That, on the facts and circumstances of the case and in law, the Hon'ble DRP/Ld. AO erred in disallowing the expenditure claimed by the Appellant on account of bad debts of Rs.2,10,43,511 written off during the A Y under consideration.

18. That, on facts and circumstances of the case and in law, the Hon'ble DRP/ Ld. AO/ Ld. TPO grossly erred in not following the settled principles of judicial propriety by not appreciating that the issue of disallowance of bad debts written off is squarely covered in favour of the Appellant by the order of this Hon'ble Tribunal in Appellant's own case for the preceding AYs 2015-16 and 2016-17.

19. That, on facts and circumstances of the case and in law and sans any change in facts and circumstances of the case vis-a-vis the preceding AYs 2015-16 and 2016-17, the Hon'ble DRP/ Ld. AO/ Ld. TPO grossly erred in not following the principle of consistency as laid by the Hon'ble Supreme Court of India in the case of Radhasaomi Satsang v. CIT [1992] 193 ITR 321 (SC).

20. That, on the facts and circumstances of the case and in law, the Hon'ble DRP/Ld. AO erred in not appreciating that the Appellant had satisfied the twin conditions for allowance of deduction for bad debts contained in Section 36(1)(vii) read with Section 36(2) of the Act, which are that the (a) bad debts have been written off as irrecoverable in the books of accounts and (b) bad debts written off were offered to tax as income by the Appellant for earlier A Y s.

21. That, on the facts and circumstances of the case and in law, the Hon'ble DRP/Ld. AO failed to appreciate that it was bound by the decision of the decision of the Hon'ble Supreme Court in the case of TRF Lid v. CIT [2010J 323 ITR 397 (SC) wherein it was held that an expense deduction in relation to the bad debts written off during the A Y has to be allowed.

OTHER GROUNDS

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

23. That, on the facts and circumstances of the case and in law, the Ld. AO erred in initiating penalty proceedings under Section 271 (1)(c) of the Act.

Each of the above grounds are independent and without prejudice to the other grounds of appeal preferred by the Appellant.”

3. At the outset, in this case, Id. Counsel of the assessee submitted that he shall not be pressing ground no.5 above, accordingly the same is dismissed as not pressed.

4. Various grounds raised by the assessee however, effectively three issues are involved i.e.

- (i) Transfer pricing adjustment made on account of transaction support services of Rs.8,92,28,190/- on account of intra-group services paid to AE;
- (ii) Disallowance of depreciation on goodwill of Rs.6,15,36,299/-; and

(iii) Disallowance of bad debts written off of Rs.2,10,43,511/-.

5. Briefly stated, the facts of the case are that the assessee is a wholly owned subsidiary of GBT III BV, Netherlands and is engaged in the business of arranging travel for domestic customers within and outside India by facilitating services entailing booking of air tickets, accommodation, cab, conference rooms, catering services, management of corporate events, public relation services etc. The holding company GBT III BV is a joint venture between American Express Company, USA (Amex, in short) and Certares LP effective from 01.07.2014, with each group holding 50% share in it. Prior to 01.07.2014, Global Business Travel (GBT), was the corporate travel segment of Amex.

6. In March 2014, as per an agreement entered into between Amex and GBT III BV, Amex spun off its travel business segment and transferred GBT assets, operations, employees and shares of certain Amex affiliates to GBT III BV. Pursuant to a business transfer agreement between American Express India Pvt Ltd (*AEIPL*) and the assessee, corporate travel business division of *AEIPL* was transferred to the assessee vide a slump sale on a going concern basis effective from 01.06.2014. In lieu of the same, the appellant had paid a consideration of Rs 45,48,85,303/- to *AEIPL*.

7. At the outset, in this case, Id. Counsel of the assessee submitted that all the three issues involved are duly covered in favour of the

assessee by the decision of ITAT in its own case for AYs 2015-16 & 2016-17. Ld. Counsel of the assessee summarized his submissions as under :-

S.No.	Grounds	Submissions
1.	Transfer Pricing adjustment made on account of transition support services (Rs.8,92,28,190) (Ground No.2)	<p>This issue is covered in favour of the Appellant by the decision of this Hon'ble Tribunal in Appellant's own case for preceding 2 years (A Y 2015-16 and 2016-17).</p> <p>The Hon'ble Tribunal deleted the entire adjustment made by the Ld. TPO on account of intra group services by giving detailed reasons and finding. Relevant extracts of the Tribunal's order dated January 31, 2020 for A Y 2015-16 are reproduced below:</p> <p>"17. In our considered opinion, the lower authorities erred in questioning the need and benefit arrived by the assessee from payment in respect of availing of services from its AE. All that is required to be seen is as to whether there was actual rendition of services or not. We have carefully gone through the emails and invoices placed in the paper book vis a vis TSA Agreement. In our considered opinion, these documentary evidences clearly show the rendition of services by the AE to the</p>

		<p>appellant company. Moreover, the TPO himself has accepted the fees received by the assessee from rendering these services. We fail to understand why the payments have been subjected to different treatments.</p> <p>19. Considering the facts of the case in totality in light of the judicial decisions referred to hereinabove, we do not find any merit in the TP adjustment of Rs.33,10,68,560/-. The Assessing Officer/TPO is, accordingly, directed to delete the same. Grounds relating to TP adjustments with all its sub grounds are allowed.</p> <p>(Please refer pages 978-989 of the PB)</p> <p>Relying on this decision, this Hon'ble Tribunal decided this issue in favour of the Appellant in A Y 2016-17 as well (please refer pages 998, 1001 and 1018 of the PB)</p> <p>It is pertinent to note that in this year as in preceding two years, evidence of similar nature was submitted to demonstrate the receipt of services.</p>
2.	Disallowance of depreciation on Goodwill	This issue is covered in favour of the Appellant by the decision of this Hon'ble Tribunal in

	<p>(Rs.6,15,36,299) (Ground No.3 and 6)</p>	<p>Appellant's own case for preceding 2 years (A Y 2015-16 and 2016-17). The Hon'ble Tribunal deleted the addition made on account of depreciation on goodwill by giving detailed reasons and finding. Relevant extracts of the Tribunal's order dated January 31, 2020 for A Y 2015-16 are reproduced below:</p> <p>"31. In so far as the depreciation of good will is concerned, this issue is by now well settled by the decision of the Hon'ble Supreme Court in the case of Smifs Securities Ltd 348 ITR 203 wherein the Hon'ble Apex Court has held that good will acquired on amalgamation [being the difference between cost of assets and consideration paid} is a capital right and thus eligible for depreciation u/s 32 of the Act.</p> <p>32. Considering the facts of the case in totality, in the light of decision of the Hon'ble Supreme Court [supra}, we direct the Assessing Officer to allow claim of depreciation. This ground is, accordingly, allowed."</p> <p>(please refer 991-993 of the PB)</p> <p>Relying on this decision, this Hon'ble Tribunal decided this</p>
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		issue in favour of the Appellant in A Y 2016-17 as well (please refer pages 998,1001 and 1018 of the PB).
3.	Disallowance of bad debts written off (Rs.2,10,43,511/-) (Ground No.4 and 6)	<p>This issue is covered in favour of the Appellant by the decision of this Hon'ble Tribunal in Appellant's own case for preceding 2 years (A Y 2015-16 and 2016-17) The Hon'ble Tribunal deleted the addition made on account of disallowance of bad debts written off by giving detailed reasons and finding. Relevant extracts of the Tribunal's order dated January 31, 2020 for A Y 2015-16 are reproduced below:</p> <p>"37. In our considered opinion, the assessee has successfully discharged its onus and has fulfilled the conditions laid down U/S 36 of the Act. We, therefore, do not find any reason why the write off of bad debts should not be allowed. We, accordingly, direct the Assessing Officer to allow the claim of bad debts"</p> <p>(Please refer pages 993-995 of the PB)</p> <p>Relying on this decision, this Hon'ble Tribunal decided this issue in favour of the Appellant in AY 2016-17 as well (Please refer pages 998, 1001 and 1018 of the PB).</p>

8. Per contra, ld. DR for the Revenue could not dispute the proposition that the aforesaid issues have been decided by ITAT in assessee's own case in favour of the assessee in the preceding two years.

9. In the light of the undisputed fact that no difference of facts has been pointed out in earlier two years and issues are duly covered by the orders of ITAT. We do not find a reason to deviate from the abovesaid ITAT orders. Accordingly, respectfully following the precedents as above, we direct that the issues be decided in favour of the assessee as in the earlier two assessment years.

10. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on this 14TH day of July, 2023.

**SD/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER**

**SD/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 14TH day of July, 2023
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.DRP
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**