

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A", HYDERABAD

BEFORE  
SHRI RAMA KANTA PANDA, VICE PRESIDENT  
&  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA-TP No. 295/Hyd/2023  
(निर्धारण वर्ष / Assessment Year: 2012-13)

Commvault Systems (India)  
Private Limited,  
Hyderabad  
[PAN No. AACCC3708L]

अपीलार्थी / Appellant

Vs. The Deputy Commissioner  
of Income Tax,  
Circle-1(1),  
Hyderabad

प्रत्यर्थी / Respondent

निर्धारिती द्वारा / Assessee by: Shri D. Prabhakar Reddy, AR  
राजस्व द्वारा / Revenue by: Shri K.E.Sunil Babu, CIT-DR

सुनवाई की तारीख/Date of hearing: 11/07/2023  
घोषणा की तारीख/Pronouncement on: 27/07/2023

आदेश / ORDER

**PER K. NARASIMHA CHARY, JM:**

Aggrieved by the final assessment order dated 30/03/2023 passed consequent to the directions of Hon'ble Dispute Resolution Panel, Bengaluru ("DRP"), in the case of Commvault Systems (India) Private Limited ("the assessee") for the assessment year 2012-13, under section 143(3) r.w.s. 254 r.w.s. 144B of the Income Tax Act, 1961 (for short "the Act") assessee filed this appeal.

2. Briefly stated relevant facts are that the assessee is engaged in the business of Software Development Services & Unified Data Storage

Solutions, e-filed its original return of income for the assessment year 2012-13 on 11/10/2012 admitting total income of Rs. 2,43,86,576/- under normal provisions after setting off of the brought forward losses of Rs. 1,26,86,715/- and Rs. 3,46,41,182/- under the provisions of section 115JB of the Act. During the course of assessment proceedings, it was observed that the assessee has entered into international transactions with its Associated Enterprises (AE) during the year. Hence, in accordance with the provisions of section 92CA of the Act, the case of assessee was referred to Transfer Pricing Officer (TPO) for determination of Arms Length Price (ALP) and the learned TPO by order dated 30/01/2016, made an adjustment of Rs. 1,73,05,026/-. Assessee filed objections before the DRP.

3. Learned DRP noticed that for the earlier assessment year 2011-12, transfer pricing adjustment of Rs. 1,54,47,842/- was added to the returned income and determined the income as Rs. 27,61,172/-. Learned DRP, therefore, thought it fit to not to allow the returned losses and added the same to the income of the assessee, which had the effect of enhancing the addition.

4. Aggrieved thereby, assessee preferred appeal before the Tribunal and the Tribunal by order dated 04/09/2020 in ITA No. 160/Hyd/2017, remanding the issue to the file of learned Assessing Officer/learned TPO to conduct a fresh TP analysis by treating the disputed transaction as a distribution agreement.

5. Pursuant there to learned Assessing Officer/learned TPO by order dated 29/01/2022, considered the transaction as distribution transaction as directed by ITAT and adopted Transactional Net Margin Method (TNMM) as the Most Appropriate Method (MAM) for benchmarking such a transaction and proposed adjustment.

6. Aggrieved thereby, assessee again filed objections before the learned DRP, who upheld such a finding of the learned Assessing

Officer/learned TPO by order dated 20/03/2023. Pursuant thereto, learned Assessing Officer passed order dated 30/03/2023, adding the TP adjustment of Rs. 1,76,77,784/-. Hence, the assessee is in appeal before us.

7. Hence the assessee is before us in this appeal, contending that when once the ITAT concluded in the first round of litigation that the business of the assessee is merely that of a pure distributor, then it is, but natural to conclude that the Resale Price Method (RPM) is the most appropriate method but the authorities below failed to appreciate the fact that the assessee got the goods it sold in the Indian market were provided to the assessee by the parent company at free of cost and the assessee was earning the maximum gross margin after incurring certain expenditure. Assessee further contended that in such situation, TNMM cannot be the most appropriate method.

8. Per contra, it is the contention of the learned DR that since the assessee is given the goods by the parent company at free of cost, it cannot be said that the assessee purchased the products from the AE for resale in the Indian market. Learned DR further submitted that RPM is applicable in case where the product is purchased from AE and resold to a third party by reducing the resale price by an appropriate gross margin thereon. Such margin would be the amount which the reseller would like to cover the cost of sales and other charges and such adjusted margin should be compared to a comparable un-controlled resale transaction. Sum and substance of the argument on behalf of the Revenue is that when there is no purchase, there cannot be any resale and for that simple reason, RPM is not an appropriate method. According to the learned DR, under the agreement, the assessee is receiving the goods for free of cost, incurring certain expenditure and distributing the goods for a particular price and all this constitutes a service under the agreement and there is no profit element or the margin involved here. Learned DR, therefore, submits that

unless there is a purchase price and margin, the ALP of the margin cannot be determined by taking into consideration the costs stated by the assessee.

9. Learned DR read out the relevant observation of the Co-ordinate Bench of this Tribunal and submitted that the Co-ordinate Bench of this Tribunal observed that as per 10B(1)(b) of the Act, RPM could be applied where the property or service purchased from AE are resold to an unrelated enterprise. He, therefore, submits that the Co-ordinate Bench of this Tribunal recorded its findings on the premise that there was purchase of products from the AE and then such products were resold to an unrelated enterprise, which is not the case on hand.

10. In reply, learned AR submitted that against the directions of the learned DRP for the assessment year 2011-12 analysing the similar transactions under the very same agreement held that RPM is the most appropriate method to benchmark the transaction and determine the ALP thereof carried the matter in appeal and by order dated 18/04/2023, Co-ordinate Bench of the Tribunal restored to the file of the learned Assessing Officer/learned TPO to adopt the RPM as MAM and to look at the facts from that angle. He submitted that if the view taken by a Co-ordinate Bench of the Tribunal in assessee's own case for the assessment year 2011-12 is followed, the matter needs to be restored to the file of the learned Assessing Officer/learned TPO to adopt the RPM as MAM and to look at the facts from that angle.

11. We have gone through the record in the light of the submissions made on either side. A copy of the order dated 18/04/2023 in ITA No. 282/Hyd/2022, for the assessment year 2011-12 in assessee's own case, is furnished before us and the same part of the record. In the said appeal also, the assessee challenged the findings of the learned DRP stating that the learned DRP committed error in not appreciating the fact that the transfer pricing regulations cannot be applied to the distribution activity

or service provided when no payment was made to the AE towards software licenses and also in rejecting the RPM as the most appropriate method and selecting TNMM in its place for determination of ALP for distribution activity.

12. On a perusal of the order dated 18/04/2023 in ITA No. 282/Hyd/2022, for the assessment year 2011-12 in assessee's own case (supra), a Co-ordinate Bench of the Tribunal dealt with this issue in detail and restored the issue to the file of the learned Assessing Officer/learned TPO to consider the RPM as the MAM and take a view on the necessity of any adjustment towards ALP for distribution function, after hearing the assessee. In view of the above, the issue needs to be re-considered in view of the request of the learned AR. To maintain consistency, we deem it just and proper to follow the decision of the Co-ordinate Bench of the Tribunal and restore the issue to the file of learned Assessing Officer/learned TPO to consider the RPM as the MAM and take a view on the necessity of any adjustment towards ALP for distribution function, after hearing the assessee. Grounds are accordingly treated as allowed for statistical purposes.

13. In the result, appeal of assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on this the 27<sup>th</sup> day of July, 2023.

Sd/-  
**(RAMA KANTA PANDA)**  
**VICE PRESIDENT**

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Hyderabad,  
Dated: 27/07/2023

TNMM

Copy forwarded to:

1. M/s. Commvault Systems (India) Private Limited, 10<sup>th</sup> Floor, (Level-12), Atria, The V Park, Plot No. 17, Hitech City Road, Software Units Layout, Madhapur, Hyderabad.
2. The Deputy Commissioner of Income Tax, Circle-1(1), Hyderabad.
3. The Dispute Resolution Panel (DRP), Bengaluru.
4. The Director of Income Tax (IT & TP), Hyderabad.
5. The Addl. Commissioner of Income Tax (Transfer Pricing), Hyderabad.
6. DR, ITAT, Hyderabad.
7. GUARD FILE

TRUE COPY

ASSISTANT REGISTRAR  
ITAT, HYDERABAD