

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "I": NEW DELHI**

**BEFORE  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 1663/Del/2021  
Asstt. Year: 2016-17

Egis International S.A. T-305, TF, Tirupati Plaza, Sector-11 (MLU), Pocket 4, Plot No. 11 Dwarka, New Delhi – 110 075. PAN AABCB7760L (Appellant)	Vs.	ACIT Circle-1nt. Tax 1(2)(2) New Delhi.  (Respondent)
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Assessee by:	Shri Nageswar Rao, Advocate Shri Akshay Uppal, Advocate
Department by:	Shri Manu Chaurasia, Sr. DR
Date of Hearing:	17.07.2023
Date of pronouncement:	03.08.2023

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the assessee is directed against the order dated 15.09.2021 of the Ld. Commissioner of Income Tax (Appeals) –42, Delhi (**"CIT(A)"**) pertaining to Assessment Year (**"AY"**) 2016-17.

2. The assessee has raised the following grounds:-

**"General Ground**

1. *That the Learned Commissioner of Income-tax (Appeal) (Ld. CIT (AY) has grossly erred on facts and in law in passing the impugned order on an ex-parte basis without providing adequate opportunity of being heard to the Appellant. To this extent, the order passed is against the principles of natural justice and liable to be quashed.*

**Transfer Pricing Grounds**

2. *The Learned Assessing Officer (Ld AO) (along with the Learned Transfer Pricing Officer (Ld TPO)-under reference from the Ld AO) and Ld. CIT(A) has erred on facts and in law in making an addition of INR 2,28,49,247/- to the returned income of the Appellant.*

**A. Provision of 'Technical Services' and 'Availing of Sub-Consultancy Services'**

3. *The Ld AO/Ld TPO/Ld CIT(A) erred on facts and in law in modifying/ amending the quantitative filter, with a prejudiced intention of making an addition to the returned income of the Appellant, for rejection of comparable companies and to disregard the transfer pricing documentation.*
4. *The Ld AO/ Ld TPO/ Ld CIT(A) erred on facts and in law in not appreciating that none of the conditions set out in section 92C(3) of the Act are satisfied in the present case. While doing so, the Ld AO/ Ld TPO/ Ld CIT(A) grossly erred in not acknowledging that:*
- *even after rejection of 2 comparable companies identified in the Transfer Pricing Report (viz. Anand Projects Limited and Wapcos Ltd.), the Comparable Set has 6 Companies and therefore, there was no requirement to undertake a fresh search to identify the arm's length margin.*
5. *The Ld AO/Ld TPO/ Ld CIT(A) erred on facts in excluding following companies as comparables, without appreciating that in cognizance of Rule 10B(2)(b), the functional, assets and risk profile of these companies are comparable with that of the Appellant.*
- *Anand Projects Limited, and*
  - *Wapcos Ltd.*
6. *The Ld AO/ Ld TPO/ Ld CIT(A) erred on facts in excluding following as comparables, without appreciating the fact these companies faced peculiar economic circumstances and thereby ignoring the Rule 10B(2)(b) of the Rules:*
- *Holtec Consulting Pvt. Ltd.:*
  - *Archohm Consultants Pvt. Ltd.;*
  - *Kitco Ltd,; and*
  - *S S Infrastructure Devp. Consultants Lid.*
7. *The Le AO/Ld. TPO/ Ld CIT(A) grossly erred on facts and in law by not computing the quant of transfer pricing addition on the value of international transaction, which stood at INR 27,29.08,356.*
8. *The Ld. AO/Ld. TPO/ Ld CIT(A) grossly erred on facts and in law by not appreciating the peculiar nature of transaction with associated enterprises viz. EINTL- EI JV (PRAMC) and EINTL- AARVEE-EI JV, which are Special Purpose Vehicle (Association of Persons (AOPs) and has no functional asset or risk profile. While doing so, the Ld AO/Ld. TPO/ Ld CIT(A) grossly erred in not acknowledging that:*
- a. *These AOPs are taxed at same rate of tax as the Appellant and there was no profit shifting motive*

- b. *These AOPs are incorporated as per mandate of the Govt's Projects and have been assessed to meet the arm's length standard by the Ld TPO for same assessment year*
- 9. *The Ld AO/ Ld TPO/ Ld CIT(A) erred on facts and in law by not allowing a risk adjustment and working capital adjustment to the Appellant, thereby contravening the Rule 10B(1)(e)(iii)*
- 10. *The Ld AO/Ld TPO/Ld CIT(A) erred on facts and in law in ignoring the fact that all the associated enterprises filed their 'return of income' in India and offered to tax their taxable income in India.*

**B. Interest on receivables**

- 11. *The Ld AO/Ld TPO/ Ld CIT(A) erred on the facts and law by imputing interest on the outstanding receivables without appreciating the fact that outstanding receivable is not a separate international transaction and resulting from primary international transactions*
- 12. *The Ld AO/ Ld TPO/ Ld CIT(A) erred in on the facts and law by treating "Outstanding receivables" as notional loan while ignoring the fact that Appellant is purely debt free entity and utilizing its own funds and did not carry any interest cost on its funds*
- 13. *The Ld AO/ Ld TPO/Ld CIT(A) erred on the facts by not allowing working capital adjustment to the Appellant and which takes care impact of outstanding receivables/ payables*
- 14. *The Ld AO/ Ld TPO/ Ld CIT(A) erred on the facts by applying SBI rate for imputing interest on outstanding receivables whereas the Appellant primarily transact in foreign currency with the AES.*
- 15. *The Ld AO/ Ld TPO/ Ld CIT(A) grossly erred on facts and in law in not acknowledging the application/ availability of Comparable Uncontrolled Price Method for benchmarking the alleged International transaction "outstanding receivables".*
- 16. *The Ld AO/Ld TPO/ Ld CIT(A) grossly erred on facts and in law by not appreciating the peculiar nature of transaction with associated enterprises viz EINTL EI JV (PRAMC) and EINTL AARVEE-EI JV, which are Special Purpose Vehicle? Association of Persons (AOPs) and has no functional asset or risk profile. While doing so, the Ld AO/ Ld TPO/ Ld CIT(A) grossly erred in not acknowledging that*
  - a. *These AOPs are taxed at same rate of tax as the Appellant and there was no profit shifting motive.*
  - b. *These AOPs are incorporated as per mandate of the Govt's Projects and have been assessed to meet the arm's length standard by the Le TPO for same assessment year,*
- 17. *The Ld AO/ Ld TPO/ Ld CIT(A) grossly erred on facts and in law by computing the quantum of addition for full year, without determining the actual outstanding period in receipt of these receivables. While doing so, the Ld AO! Ld TPO/ Le CIT(A) grossly erred in not providing relief of 60 days, which is a routine credit period in the industry*

**Consequential Grounds**

- 18. *The Ld AO/ Ld TPO erred on facts and in law in initiating penalty proceedings u/s 271(1)(c) of the Act*
- 19. *The Ld AO/ Ld TPO erred on facts and in law in levying interest under section 234B and 234C of the Act."*

3. Briefly stated the assessee is a foreign company incorporated in India. Its principal business is to provide technical consultancy services to its associate enterprises as well as unrelated third party. For AY 2016-17, it filed its return on 30.11.2016 declaring income of Rs. 1,66,37,026/-. The case was selected for scrutiny under CASS. Statutory notices were served online upon the assessee which were responded to. The assessee offered its income in India on net basis.

4. During the year, the assessee entered into the following international transactions:-

S. No.	Type of international transaction	Method selected		Total value of transaction (Rs.)
		MAM	PLI	
1.	Provision of Technical services	TNMN	OP/OR	3,06,01,583
2.	Availing of Sub-Consultancy Services	TNMM	OP/OR	24.05.58,400
3.	Payment Of Rent & Maintenance Charges	CUP	-	873980
4.	Payment Of Finance & Administration Charges	CUP	-	17.48,423
5.	Bank Guarantee	Other Method	-	-
6.	Reimbursement of Expenses	TNMM	OP/OC	4,09,39,634

5. The Ld. Assessing Officer (**“AO”**) referred the case to Ld. Transfer Pricing Officer (**“TPO”**) who passed an order on 28.10.2019 under section 92CA(3) of the Income Tax Act, 1961 (**the “Act”**) proposing the cumulative adjustment of Rs. 2,28,49,247/-. Accordingly, the Ld. AO served upon the assessee a draft assessment order requiring the assessee to submit its response under section 144C(2) of the Act. The assessee neither filed any objections before Hon’ble DRP nor submitted any reply to the Ld. AO within the stipulated period. The Ld. AO therefore proceeded to pass the final order and completed the assessment on 17.02.2020 under section 143(3) r.w. section 144C(3) of the Act on total income of Rs. 3,94,86,270/- including

therein cumulative adjustment of Rs. 2,28,49,247/- under section 92CA of the Act.

6. The assessee carried the matter in appeal before the Ld. CIT(A). The appeal was filed late with petition to condone the delay due to Covid-19. The Ld. CIT(A) condoned the delay. However, despite various opportunities given, the assessee did not attend the appeal proceedings nor filed any written submission before the Ld. CIT(A). He therefore passed ex-parte order confirming the adjustment made by the Ld. TPO and consequent addition made by the Ld. AO.

7. Aggrieved thereby, the assessee is in appeal before the Tribunal challenging the adjustment made by the Ld. TPO and resultant addition to its income and all the grounds relate thereto.

8. The Ld. AR submitted that non-compliance of notice(s) issued by the Ld. CIT(A) happened due to the fact that the employee handling the matter had left the company. An affidavit sworn by Mr. Sunil Kumar Wasan, an authorised signatory of the assessee company on 06.04.2023 has been filed before us which is kept on record. He has deposed therein that the hearing notices issued by the Ld. CIT(A) were not received by the assessee in its office; that the e-mail address to which notices were sent belonged to Mr. Gaurav Sharma who had left the company w.e.f. 27.08.2021 and notices, if any, sent to his e-mail did not reach the concerned officials of the assessee; that non-compliance was not deliberate. The Ld. AR further submitted that the appeal has not been decided on merits by the Ld. CIT(A). He therefore, urged that the matter may be sent back to Ld. CIT(A) for rehearing and disposal.

9. The Ld. DR vehemently opposed and submitted a bunch of notices issued by the office of the Ld. CIT(A) and pointed out that the notices have been served electronically to the e-filing account of the assessee.

10. We have given our careful thought to the submission of the parties and perused the record. It is obvious that the Ld. CIT(A) has not passed ex-parte order on merits of the case. An affidavit sworn by the authorised signatory of the company has been brought on record by the assessee deposing therein that notice(s) sent to the email of the employee who left the company did not reach the concerned officials of the assessee and that non-compliance was not deliberate. We are therefore of the view that in the interest of justice and fair play, it would be expedient to restore the matter back to the file of the Ld. CIT(A) for denovo adjudication on merits after allowing reasonable opportunity of hearing to both the parties. We order accordingly.

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

**Order pronounced in the open court on 3<sup>rd</sup> August, 2023.**

**sd/-  
(M. BALAGANESH)  
ACCOUNTANT MEMBER**

**sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

Dated: 03/08/2023

***Veena***

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	

Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	