

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I', NEW DELHI**

Before Sh. Kul Bharat, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 2064/Del/2022 : Asstt. Year: 2018-19

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SA No. 299/Del/2022 : Asstt. Year: 2018-19

Willis Towers Watson India Pvt. Ltd., 2 nd Floor, Tower B, Unitech Business Park, South City-1, Sector-41, Gurgaon (APPELLANT)	Vs.	ACIT, Circle-3(1), New Delhi (RESPONDENT)
PAN No. AAACG2955K		

Assessee by : Sh. Nageswar Rao, Adv.

Revenue by : Sh. Rajesh Kumar, CIT DR

Date of Hearing: 22.06.2023

Date of Pronouncement: 11.09.2023
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal and Stay Application have been filed by the assessee against the order dated 29.07.2022 passed by the AO u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961.

2. The assessee has raised the following grounds of appeal:

"1. That on facts and in the circumstances of the case and in law, the learned AO grossly erred in passing the impugned order without appreciating the correct factual position and legal principles brought on record by the Appellant.

2. The Hon'ble DRP erred on the facts and law and violated the powers granted under section 144C(5) of the Act by not passing a speaking order in respect of adjustment pertaining to the international transaction of

provision of consultancy services (hereinafter referred to as "subject transaction") by the Appellant to its AES.

3. The Learned TPO erred in law by not complying with the direction of the Hon'ble DRP while passing the order giving effect to such directions thus the order so passed by the Learned TPO is void ab initio.

4. The learned AO/TPO and Hon'ble DRP have erred, in law and on facts and circumstances of the case, in confirming an upward adjustment of INR 6,91,26,651 to the total income of the Appellant in respect to the subject transaction entered into with its Associated enterprises ("AES").

5. The learned TPO erred in law and on facts and circumstance of the cases by not granting adequate opportunity of being heard to the Appellant, and thus, violated the principles of natural justice.

6. The learned AO/TPO and Hon'ble DRP have erred in not accepting the economic analysis undertaken by the Appellant in accordance with provisions of the Act read with Income Tax Rules, 1962 ("the Rules") and modifying the same for determination of arm's length price ("ALP") of the subject transaction to hold that the same is not at arm's length.

7. The learned AO/TPO and Hon'ble DRP have erred in law and on facts and circumstances of the case by arbitrarily rejecting other method selected by the Appellant in its TP documentation and not following the order of the jurisdictional Delhi Tribunal in Appellant's own case for AY 2011-12, AY 2013-14 and AY 2014- 15, which is binding on the learned TPO in the same factual matrix.

8. The learned AO/TPO and Hon'ble DRP have erred, in law and on facts and circumstances of the case, by applying a filter to reject certain comparable companies for having different accounting year (i.e. having accounting year other than March 31 or companies whose financial statements were for a period other than 12 months).

9. *The learned AO/TPO and Hon'ble DRP have erred, in law and on facts and circumstances of the case, by wrongfully rejecting certain similar companies from and adding certain dissimilar companies to the final set of comparable companies for benchmarking the subject transaction on an ad-hoc basis, thereby resorting to cherry picking of comparables for benchmarking the subject transaction.*

10. *The learned AO/TPO and Hon'ble DRP have erred, in law and on facts and circumstances of the case, by selecting certain companies (earning supernormal profits) as comparable to the Appellant to benchmark the subject transaction.*

11. *Without prejudice to other grounds, the learned AO/TPO inadvertently computed adjustment on the total cost of the Appellant instead of the cost incurred in relation to the subject transaction.*

11.1. *That on the facts and circumstances of the case and in law, the learned TPO/ AO have erred in completely disregarding the directions of Hon'ble DRP which directed the learned TPO to verify the contentions of the Appellant and pass a speaking order thereof.*

11.2 *That while passing the order giving effect to Hon'ble DRP's directions, the learned TPO rejected the contentions of the Appellant and inadvertently erred in not considering the order passed under section 92CA(3) of the Act wherein the learned TPO accepted the contentions of the Appellant.*

12. *The learned AO has erred in levying consequential interest under Section 234B of the Act of INR 1,31,22,594 as against interest of INR 8,32,398 computed in the return of income.*

13. *The learned AO has erred in levying interest under Section 234C of the Act of INR 7,31,887 as against interest of INR 7,00,594 computed in the return of income*

14 *That on the facts and circumstances of the case and in law, the Learned AO has erred in initiating penalty*

proceedings under section 274 read with section 270A of the Act.”

3. The instant case, order u/s 92CA(3) of the Income-tax Act, 1961, was passed on 29.07.2021 wherein a total adjustment of Rs. 6,91,26,651/- was proposed. The assessee filed objections before the Id. DRP, New Delhi, against the Draft Assessment order passed by the Assessing Officer. The Id. DRP had issued certain directions in the case. Therefore, after giving effect to the directions of the Id. DRP, the earlier adjustment of Rs.6,91,26,651/- as proposed by the TPO u/s 92CA (3) remained unchanged.

4. Subsequently, the assessee has preferred appeal before the ITAT. In the letter dated 11.04.2023, the assessee raised the issue before the ITAT that in the Order Giving Effect (OGE) given by the TPO in pursuance of directions of the Id. DRP, the TPO did not follow the DRP's directions.

5. The Id. DRP has given directions vide para no. 4.4.2 about the acceptance or otherwise of the ITAT's order. Being pertinent the relevant extract of the Id. DRP's directions is mentioned below:

"4.4.2. Considering the assessee's contention in respect of the subject method which has been accepted by the Hon'ble ITAT in assessee own case for the previous years; the TPO is directed to pass a speaking order on the status of acceptance or otherwise of the ITAT's order as cited at para 4.4.1 above. The objection is disposed of accordingly."

6. We find from the record vide letter dated 05.09.2019 of ACIT, Circile-4(1), Gurgaon addressed to PCIT, Gurgaon that the appeal for the A.Y. 2011-12 is not recommended owing to

low tax effect. The Id. DR contended that CUP is not acceptable as the most appropriate method and TNMM should be treated as the MAM.

7. With regard to the similar issue in A.Y. 2018-19 which is before us, we find that the Id. DR concurred with the order of the ITAT in the case of the assessee for the A.Y. 2011-12, A.Y. 2013-14 and A.Y. 2014-15 and held that the order is binding on the TPO in the same factual matrix. The Id. DR submitted that the facts of the instant year are totally different from the earlier years and even acceptance or non-acceptance of the earlier years ITAT's orders did not have any effect on the facts of the instant case.

8. The Id. DR reiterated that,

- (i) The assessee never submitted copies of invoices raised on AEs as well as unrelated entities.
- (ii) The assessee never furnished during the assessment proceedings the technical description of the services rendered to the AEs vs. non-AEs.
- (iii) The assessee never submitted any invoice by invoice comparison with AEs and third parties.

9. The Id. DR argued that based on the assessee's non-submission of documents/details, the TPO has made upward adjustments by rejecting the assessee's CUP method and adopted TNMM. The Id. DR argued that in earlier year, the assessee had established its case by submission of the invoices to AEs as well as non-AEs of the services rendered (as mentioned in the order of the Tribunal for AY 2011-12) and

established comparison of the same. But in the instant case for F.Y. 2017-18, the assessee has not submitted invoices raised even after multiple opportunities were given to the assessee. It was further argued that the assessee company has failed to provide the details of the independent contracts/functions/services rendered to different AEs and unrelated parties, hence, CUP method followed by the assessee was rejected by the TPO and instead TNMM was selected as Most Appropriate Method.

10. We find that the Id. DRP has already allowed the CUP as MAM in the A.Y. 2011-12, A.Y. 2013-14 and A.Y. 2014-15 and the TPO sought to undertake the comparison "invoice by invoice" with the third party located in the same "geographical location" while rejecting the CUP undertaken by the assessee however, these facts are of no relevance as long as the amount/rate charges for hours incurred by an individual for a project is uniform and the services were provided to its AE as well as to third party by same employee located in India. Reliance is being placed on the judgment of Hon'ble Supreme Court in the case of CIT, Delhi-II Vs. Cargill Foods India Ltd. in CC No. 19007/2016 dated 19.02.2016.

11. Since, the appeal of the assessee is decided in favour of the assessee, the Stay Application of the assessee is infructuous and hence dismissed. At the same time, we would like to keep on record that vide order sheet entry dated 20.01.2023 the revenue has already been directed by the Tribunal to refund the amounts collected. The revenue has replied vide letter dated 14.02.2023 that the DCIT/CPC, Bangalore has already been requested to follow up the same.

The same shall be brought to a logical conclusion and effectual implementation.

Order Pronounced in the Open Court on 11/09/2023.

Sd/-

(Kul Bharat)
Judicial Member

Dated: 11/09/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR