

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"K" BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI,  
ACCOUNTANT MEMBER  
AND  
SHRI NARENDER KUMAR CHOUDHRY,  
JUDICIAL MEMBER**

**IT (TP) A No.3729/Mum/2016  
Assessment Year: 2011-12**

M/s.Pacific Internet India Pvt.  
Ltd., Unit-2, 1<sup>st</sup> Floor, Innovator  
Block, ITPL, Whitefield Road,  
Bangalore-560 066.

**Vs.** The DCIT,  
Circle-7(3)(1),  
Mumbai.

[**PAN:** AABCP 2053 Q]  
**(Appellant)**

**(Respondent)**

Appellant by	:	None
Respondent by	:	Shri Heera Ram Choudhary, Ld. Sr. DR
Date of Hearing	:	12.02.2024
Date of Pronouncement	:	20.02.2024

**ORDER**

**Per N.K. Choudhry (JM):**

This appeal has been preferred by the Assessee against the order dated 28.12.2015 impugned herein passed by the Dispute Resolution Panel-2, Mumbai, (in short "the Ld.DRP") u/s.144C(5) of the Income Tax Act, 1961 (in short "the Act") for the AY 2011-12.

**:: 2 ::**

**2.** Though notice of the date of hearing on dated 12.02.2024 was sent to the Assessee, however, the same could not be served and the same returned back by the postal authorities with the remarks 'company left' , which goes to show that the Assessee is not situated at the address mentioned in Form No.36 and even otherwise, Registry do not have any alternative address, hence, in the constrained circumstances, we are inclined to decide this appeal on the basis of orders passed by the authorities below and by hearing the Ld. DR who vehemently supported the assessment order.

**3.** In the instant case, the Assessee being engaged in the business of providing internet products and services, having following '4' Associated Enterprises (in short "AEs") during the AY under consideration.

1. M/s. Pacnet Internet (S) Ptc. Ltd.
2. M/s. Pacnet Internet (Hong Kong) Ltd;
3. M/s. Pacnet Global (Singapore) Pte. Ltd.
4. M/s. Pacnet Internet (A) Ply. Ltd,

**4.** The Assessee during AY 2011-12 which is under consideration, carried out certain transactions with its aforesaid AEs. Therefore, the case of the Assessee was referred to the Transfer Pricing Officer/Addl. CIT-II(2), Mumbai (in short "Ld. TPO") for transfer pricing scrutiny u/s.92CA(1) of the Act. The Ld. TPO vide order dated 21.01.2015 u/s.92CA(3) of the Act, made adjustment of Rs.1,47,38,676/- and Rs.6,42,747/- being determination of ALP on account of reimbursement / intra group services and purchase of router respectively. Accordingly, the TPO computed the total adjustment to the tune of Rs.1,53,81,423/-

.

:: 3 ::

5. In pursuance to the Ld. DRP order dated 21.01.2015 u/s.92CA(3) of the Act, the AO accordingly passed the draft assessment order dated 30.03.2015 u/s.144 of the Act, whereby, the AO made the addition/disallowance of **Rs.1,53,81,423/-** as per TP order and disallowance of **Rs.2,65,69,285/-** @ 15% of service cost of Rs.1,16,83,945/-, employees cost of Rs.68,64,147/-, operating cost of Rs.66,24,386/- and finance cost of Rs.13,96,807/-.

6. The Assessee being aggrieved against the draft assessment order preferred a petition u/s.144C of the Act before the Ld. DRP who vide order dated 28.12.2015 u/s.144C(5) of the Act, though rejected objections raised by the Assessee *qua* proposed addition/disallowance, however, **directed the AO to restrict the disallowance under the respective heads to the extent evidence not produced with regard to the disallowance.**

7. The AO vide assessment order dated 13.01.2016 u/s.144 r.w.s.144C (13) of the Act, while considering the directions of the Ld.DRP, not only affirmed the addition/disallowance of **Rs.1,53,81,423/-** on account of transfer pricing adjustment but also affirmed the addition/disallowance of **Rs.2,65,69,285/-** in entirety as proposed in the draft assessment order dated 30.03.2015, which goes to show that the AO has not followed the directions of the DRP in its true sense and therefore, we deem it appropriate to remand the instant case to the file of the AO to the extent of making the addition/disallowance of **Rs.2,65,69,285/-** only, with a direction to the AO to recompute the addition/disallowance of Rs.2,65,69,285/- as per order/direction dated 28.12.2015 of the Ld. DRP. The Assessee is also directed to produce the relevant evidence and bifurcation of evidence which is available and which is not available qua such disallowance.

**:: 4 ::**

**8.** In the result, appeal filed by the Assessee stands partly allowed for statistical purposes.

Order pronounced on the 20<sup>th</sup> day of February, 2024 in Mumbai.

**Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

TLN, Sr.PS (on Tour)

**Copy to:**

1. The Appellant
2. The Respondent
3. The CIT
4. The DR, ITAT, Mumbai
5. Guard File

**// True Copy //**

**By Order**

**Dy./Asst. Registrar, ITAT, Mumbai**