

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

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT, AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No. 1818/DEL/2013 [A.Y. 2007-08]

M/s Spectris Technologies [P] Ltd
202, Anarkali Complex.
Jhandewalan Extn, New Delhi

Vs.

The Dy.C.I.T.
Circle - 9(1)
New Delhi

PAN - AAGCS 6654 R

(Applicant)

(Respondent)

Assessee By : Shri Tarandeep Singh, Adv
Shri Sandeep Yadav, Adv

Department By : Shri Manish Kumar Dabas, Sr. DR

Date of Hearing : 04.03.2024

Date of Pronouncement : 07.03.2024

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 20, New Delhi dated 31.01.2013 pertaining to A.Y. 2007-08.

2. The grievances of the assessee read as under:

"1. That having regard to the facts and circumstances of the case, Ld.CIT(A) has erred in law and on facts in upholding the action of Ld. AO. in determining the ALP of international transactions of the appellant at Rs.11,85,928301- and thereby making an addition of 1,80,70,738/- on account of alleged difference in ALP, on the basis of order of Ld.TPO *uls* 92CA (3), more so when the same was beyond jurisdiction of the A.O and was made by recording incorrect facts and findings.

1. That having regard to the facts and circumstances of the case, the Ld.CIT(A) has erred in holding that the reference made to the transfer pricing officer *uls* 92CA(3) by Ld.A.O. is in conformity with law and facts of the case.
2. That having regard to the facts and circumstances of the case, Ld.CIT(A) has erred in upholding the action of the Ld. TPO in rejecting the appellant's TP analysis and applying TNMM at the enterprise level by rejecting the segmental accounts of the appellant and holding them to be not trustworthy.
4. That having regard to the facts and circumstances of the case, Ld.CIT(A) has erred in holding that the same set of comparables as used by the appellant for its AMC segment should be used for determining the ALP of the international transactions based on entity level financials of the appellant.

5. That having regard to facts & circumstances of the case, Ld. CIT(A) has erred in law and on facts in passing the impugned order contrary to law and facts and without providing adequate opportunity of hearing and without considering the principles of natural justice.
 6. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”
3. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules. Judicial decisions relied upon duly considered.
4. The assessee is an Indian company having its registered office in New Delhi. The assessee is a supplier of equipment and products relating to material analysis. The assessee also provides installation and commissioning services and after sales support services to its clients in India.
5. The following transactions between the assessee and its Associated Enterprise [AE] have been identified to be international transactions:

(1) **Provision of Administrative and Agency Services**

The assessee provides administrative and marketing support services to four of its AEs - namely:

- (i) NCD Infrared Engineering Ltd - UK,
- (ii) Red Lions Controls Inc - USA,
- (iii) Servomex Group - UK and
- (iv) Ircon Inc - Us

For providing such services, the assessee receives fees on cost plus mark-up basis and mark-up basis is 6% on cost in case of Servomex Group and 10% on cost in case of other AEs. The assessee also provides Agency services to Spectris Singapore for selling the equipment and spare parts in India, Nepal and Sri Lanka. For providing such services, Spectris India receives commission @ 7% on Free On Board [FOB] value of the main equipment and 20% commission on FOB value of the spare parts.

(2) **Purchase of Spare parts and equipment from Spectris PTE Ltd**

During the year, the assessee has purchased spare parts and equipment from its AE Spectris PTE Ltd for resale in India. Such resale can be divided into two categories:

- (i) Category 1 - Purchase for normal sales
- (ii) Category 2 - Purchase against confirmed order

(3) **Payment for automation charges to PANalytical BV Netherlands**

(4) **Payment for training charges to Spectris - UK**

6. Bench marking analysis of the assessee can be understood from the following :

"For international transactions relating to 'Provision of Marketing and Administrative Support Services', 'Provision of Agency services'. 'Purchase against confirmed order', 'Payment for Automation charges' and ' Payment for training charges'., assessee has used TNMM and PLI of OP/OC. The results of the tested party were calculated at 35.06% as against results of comparables using three years data at 22.48%. For the international transaction relating to 'Purchase for normal sales', assessee has used Resale Price Method (RP) with PLI of gross margin/selling price. The tested party margin of the assessee has been calculated at 22.18% as against 8.02% of the comparables.

7. Before us, the ld. counsel for the assessee vehemently stated that the TPO/CIT(A)/Assessing Officer has misunderstood the facts in true perspective while doing FAR analysis of the assessee.

8. The quarrel revolves around the following observations of the TPO confirmed by the ld. CIT(A):

"5.2 The FAR analysis of the assessee revealed that the 'Provision of AMC services' was inextricably linked to other functions being performed by the assessee, i.e, Purchase of equipment, Provision of marketing and administrative support services, Provision of agency services, purchase of spare parts and equipments and other related activities. However, it was found that the assessee had artificially segmented its accounts into two segments viz. AE and non AE segments for Transfer Pricing purposes. This has been carried out so as to show profitability in the AE related services and losses in the AMC business"

"3.The assessee, Spectris India utilizes tangible assets for carrying out the above functions. However, with respect to intangible assets, it is stated that Spectris India uses the intangibles provided by the AE. It is also stated that the assessee performs after- sales services for the AE and carries out sales of spares parts on behalf of the AE. From the functions performed, assets utilized and risks assumed, FAR analysis of the assessee, it is clear that the provision of AMC Services are

inextricably linked to other functions with respect to purchase of equipment and provision of other support services to the AE. The assessee, being a 95% subsidiary of its parent is importing spare parts and equipments relating to precision instrumentation and controls and is engaged in reselling and providing after sales services, sales of spare parts and AMC services with respect to above equipments imported from its AE. The assessee is also engaged in provision of ancillary support services such as administrative and agency services and marketing support to its AE. It is also important to mention that all technical input with respect to provision of services is provided by the AE. The AE is in fact the owner of all Intangibles which are required by the assessee to carry out its operations in India. From the above facts it also emerges that the provision of AMC services is part and parcel of the after-sales support function and provision of agency support function performed by the assessee.

4. In view of above analysis, it is proposed to aggregate the income and expenditure with respect to AE and non AE segments which have been artificially created for transfer pricing purposes to show profitability in the AE related services and losses in the C business wherein the AMC business is clearly and inextricably linked to the main business of the assessee."

9. The ld. counsel for the assessee further objected to the observations of the TPO that no basis for allocation of expenses relating to income streams between two segments have been furnished

by the assessee and also pointed out that the TPO has grossly erred in analyzing the assets utilized and risks assumed by the assessee while considering the FAR analysis of the assessee.

10. We have given thoughtful consideration to the TP study report of the assessee, purchase of spare parts for normal business, AMC. We find that Research and Development are undertaken by the AE of the assessee. All the equipments and spare parts supplied to the assessee by its AE are manufactured by its group companies. The assessee is responsible for all functions relating to inventory management and the assessee enters into a contract with the customers for providing AMC services and accordingly, it is responsible for delivery of services to the customer.

11. Regarding sale of spare parts and equipments, the assessee is responsible for making sale of spare parts and equipment imported by it from its AE. Sale of spare parts under AMC business can be broadly categorized into three types:

- (i) Over the counter sale wherein the customer has not taken any AMC and he purchases only spare parts or equipment from the assessee.

(ii) Sale to AMC customer wherein the customer has taken AMC from the assessee.

(iii) Replacement under AMC wherein the customer has taken AMC from the assessee and spare part required to be replaced is covered under AMC

12. For contracts entered into between the assessee and its customers, the assessee is responsible for delivery of equipment and spare parts and services and, accordingly, it is also responsible for invoicing and collection of charges relating to it. The assessee deploys necessary assets for performing its business. It does not own any manufacturing facilities, research and development facilities or other significant assets for this activity. Employees of the assessee possess technical knowledge especially those who are involved in providing AMC services.

13. However, under provision of Agency and Marketing support services, R & D are undertaken by the AE of the assessee. All the spare parts and equipment supplied to the assessee are manufactured by its AE. The AE of the assessee is responsible for maintaining the requisite

inventory levels of all the spare parts and equipment. The assessee does not employ any specific assets, tangible asset for providing agency and administrative services to its AEs or intangible including human resources and does not bear any inventory risk. The assessee does not bear any credit risk.

14. Based on the facts mentioned in the TP Study Report, it can be safely concluded that the assessee's business can be divided into two business segments:

- (i) AMC service provider, and
- (ii) Agency and marketing support service provider.

15. During the course of TP assessment proceedings, the assessee has explained that for the purpose of TP analysis, it has divided its revenue and expenditure broadly into two segments based on functional, asset and risk analysis and providing AMC services including sale of goods. The assessee has also given basis of allocation/apportionment of revenue and expenses which is as under:

Annexure 1: Detailed Segmental Analysis of Spectris India

In Rs.

Particulars	AMC Business	Agency & Marketing Support Services	Comman	Abnormal	Total
Income from Operations					
Sales	18,367,552	20,640,782			39,008,334
Commission		23,781,560			23,781,560
AMC Sales	2,924,663				2,924,663
AMC Service Income	12,414,503				12,414,503
Installation Services	3,938,190				3,938,190
Services Income (BU)	853,415	17,086,869			17,940,284
Other Income					
Interest Received				180,454	180,454
Provision W/B				1,457,699	1,457,699
Profit on sale of FA					-
Gain on Forx		514,558			514,558
Total Revenue	38,498,323	62,023,769		1,638,153	102,160,245
Expenses					
Cost of Good Sold	18,272,030	20,077,250			38,349,280
Administrative , Personnel & Selling Exp					
Salaries, Wages and Bonus	7,093,562	9,401,832	1,665,702		18,161,096
Contribution to provident and other funds	873,474	1,157,705	205,108		2,236,287
Staff welfare	114,587	151,874	26,907		293,368
Rent	2,115,590	1,859,855	534,160		4,509,605
Insurance	144,295	126,853	36,433		307,581
Travelling & Conveyance	7,258,545	7,365,937	3,435,237		18,059,719
Legal & Professional	714,907		1,436,530		2,151,437
Seminar & Traiing	1,028,509	232,340			1,260,849
Printing & stationery			531,025		531,025
Communication	2,261,215	2,997,022	530,976		5,789,213
Rates & Taxes			205,336		205,336
Provision of Doubtful debts	322,359				322,359
Provision for inventory obsolescence	1,441,805				1,441,805
Repair			663,479		663,479
Commission		1,940,420			1,940,420
Bank Charges			168,341		168,341
Loss on sale of FA				20,858	20,858
Electricity	151,696	133,359	38,301		323,357
Provision for advances	323,715				323,715
Advacne w/O					-
Provision for Warranty	328,884	516,020			844,904
Mis Expe					2,745,708
Advertisement		175,616			
Short Collection	1,367				
Tender Form		45,232			
Enetrainment			397,373		
Sales Promotion			1,310,701		
General Exp			367		
Contractor Charges	565,042				
Outward Freight	250,010				
Sub contract Expenses	902,698				902,698
Depreciation					
Office Equipment	188,428	125,619	52,341		366,388

Leased Motor Vehicles	80,273	53,515	22,298		15
Computers and Computers Peripherals	414,736	276,491	115,204		80
Leasehold improvement	485,202	323,468	134,778		94
Furniture & Fixtures	50,022	33,348	13,895		9
Goodwill				12,679,436	12,67
Non Compete Fee				804,444	80
Impairment Loss on Goodwill					
Interest Charges				15,254	1
Allocation of Common Expenses	6,914,696	4,609,797			
Total Expenditure	52,297,648	51,603,552	11,524,494	13,519,992	117,42
Net Profit	(13,799,325)	10,420,217		(11,881,839)	(15,26

Annexure 6: Basis of allocation/ apportionment of revenue and expenditure in two segments

Particulars	AMC Business	Agency & Marketing Support Services	Common	Abnormal
Income from Operations				
Sales	Actual	Actual		
Commission		Actual		
AMC Sales	Actual			
AMC Service Income	Actual			
Installation Services	Actual			
Services Income (BU)	Actual	Actual		
Other Income				
Interest Received				Actual
Provision W/B				Actual
Profit on sale of FA				
Gain on Forx		Actual		
Total Revenue	Sum	Sum		Sum
Expenses				
Cost of Good Sold	Actual	Actual		
Administrative , Personnel & Selling Exp				
Salaries, Wages and Bonus	Salary cost of AMC team	Salary cost of agency and marketing support team	Salary cost of administration and finance and other common team	
Contribution to provident and other funds	Allocation of expenditure based on Salary cost			
Staff welfare	Apportionment Based on Salaries, Wages & Bonus	Apportionment Based on Salaries, Wages & Bonus	Apportionment Based on Salaries, Wages & Bonus	
Rent	Apportionment based on Team strength	Apportionment based on Team strength	Apportionment based on Team strength	
Insurance	Apportionment Based on Salaries, Wages & Bonus	Apportionment Based on Salaries, Wages & Bonus	Apportionment Based on Salaries, Wages & Bonus	
Travelling & Conveyance	Allocation based on actual expenditure	Allocation based on actual expenditure	Allocation based on actual expenditure	
Legal & Professional	Allocation based on actual expenditure		Allocation based on actual expenditure	
Seminar & Training	Allocation based on actual expenditure	Allocation based on actual expenditure		
Printing & stationery			Common Expenditure	
Communication	Apportionment Based on Salaries, Wages & Bonus	Apportionment Based on Salaries, Wages & Bonus	Apportionment Based on Salaries, Wages & Bonus	
Rates & Taxes			Common Expenditure	
Provision of Doubtful debts	Allocation based on actual expenditure			
Provision for inventory obsolescence	Allocation based on actual expenditure			
Repair			Common Expenditure	
Commission		Allocation based on actual expenditure		
Bank Charges			Common Expenditure	
Loss on sale of FA				Abnormal Expenditure
Electricity	Apportionment Based on Salaries, Wages & Bonus	Apportionment Based on Salaries, Wages & Bonus	Apportionment Based on Salaries, Wages & Bonus	
Provision for advances	Allocation based on actual expenditure			
Advacne w/O				
Provision for Warranty	Allocation based on actual expenditure	Allocation based on actual expenditure		
Mis Expe				
Advertisement		Allocation based on actual expenditure		
Short Collection	Allocation based on actual expenditure			
Tender Form		Allocation based on actual expenditure		
Entertainment			Common Expenditure	
Sales Promotion			Common Expenditure	
General Exp			Common Expenditure	
Contractor Charges	Allocation based on actual expenditure			

Particulars	AMC Business	Agency & Marketing Support Services	Common	Abnormal
Outward Freight	Allocation based on actual expenditure			
Sub contract Expenses	Allocation based on actual expenditure			
Depreciation				
Office Equipment	Apportionment based on Team strength	Apportionment based on Team strength	Apportionment based on Team strength	
Leased Motor Vehicles	Apportionment based on Team strength	Apportionment based on Team strength	Apportionment based on Team strength	
Computers and Computers Peripherals	Apportionment based on Team strength	Apportionment based on Team strength	Apportionment based on Team strength	
Leasehold improvement	Apportionment based on Team strength	Apportionment based on Team strength	Apportionment based on Team strength	
Furniture & Fixtures	Apportionment based on Team strength	Apportionment based on Team strength	Apportionment based on Team strength	
Goodwill				Abnormal Expenditure
Non Compete Fee				Abnormal Expenditure
Impairment Loss on Goddwill				
Interest Charges				Abnormal Expenditure
Allocation of Common Expenses	Apportionment based on Team strength	Apportionment based on Team strength		
Total Expenditure	Sum	Sum	Sum	Sum

16. From the above charts, it can be seen that the assessee has allocated common expenses and has also given basis of apportionment. We find that the Id. CIT(A) has put a doubt on whether segmental accounts are to be accepted and the only reason given by the authorities, as we understand from the respective orders, is that it is not audited.

17. Merely because segmental accounts are not audited cannot make them untrustworthy without pointing out any specific defect/error/fallacy in them. Observations of the Id. CIT(A) that non compete fee and good will has not been allocated is not accepted as the TPO himself has not allocated these expenses.

18. As mentioned elsewhere, the assessee has not only provided segmental account but has also allocated expenses and has given basis of allocation. Considering the facts of the case in totality, we do not find any merit in the stand taken by the TPO/Assessing Officer as confirmed by the Id. CIT(A). We, accordingly, direct the Assessing Officer to delete the impugned adjustment.

19. In the result, the appeal of the assessee in ITA No. 1818/DEL/2013 is allowed.

The order is pronounced in the open court on 07.03.2024.

Sd/-

[SAKTIJIT DEY]
VICE PRESIDENT

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 07TH MARCH, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. 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	