

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

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

ITA No.9078/Del/2019
Assessment Year: 2015-16

| | | |
|---|------------|---|
| CBRE South Asia (P) Ltd. Ground Floor, PTI Building, 4 Parliament Street, New Delhi-110005 PAN No.AAACC9308A | Vs. | ACIT Circle- 5 (2) New Delhi |
| (APPELLANT) | | (RESPONDENT) |

| | |
|---------------|---------------------------|
| Appellant by | Mr. Kshitij Bansal, CA |
| Respondent by | Sh.Rajesh Kumar, CIT (DR) |

| | |
|------------------------|------------|
| Date of hearing: | 05/03/2024 |
| Date of Pronouncement: | 08/03/2024 |

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 24.09.2019 framed u/s.143 (3) r.w.s. 144C of the Act.

2. The grievance of the assessee read as under :-

1. *That on the facts and circumstances of the case and in law, the order/directions passed by the Learned Assessing Officer ("Ld. AO)/Hon'ble Dispute Resolution Panel ("Hon'ble DRP")/ Learned Transfer Pricing Officer ("Ld. TPO") is bad in law and erroneous.*

2. Reference made by Ld. AO to the Ld. TPO

2.1 *On the facts and in the circumstances of the case and in law, the assessment proceedings are void- ab-initio considering the reference made by the Ld. AO to Ld. TPO is not in conformity with Instruction No. 3/2016 issued by the Central Board of Direct Taxes (CBDT).*

3 Grounds of Objections - Adjustment made under Facility Management Segment

On the facts and in the circumstances of the case and in law, Ld. AO/Hon'ble DRP/Ld. TPO erred in enhancing the returned income of the Appellant by Rs.35,39,903 under section 92CA read with section 144C of the Act. In doing so, the Ld. AO/Hon'ble DRP/Ld, TPO have grossly erred in:

3.1 *conducting a fresh economic analysis in an arbitrary manner without following any scientific basis and methodological process which is in contravention to the applicable law and Rules. In doing so, the Ld. TPO/Ld. AO have grossly erred in*

3.1.1 *disregarding the ALP as determined in the TP documentation maintained by the Appellant in terms of section 92D of the Act read with Rule 100 of the Income Tax Rules, 1962 ("Rules") without appreciating that none of the conditions set out in section 92C(3) of the Act are satisfied;*

3.1.2 *improper selection/rejection of companies as comparables and thereby disregarding the functional profile of the Appellant for the alleged segment;*

3.1.3 *not taking cognizance of correct margin computation of companies selected as comparable and proceeding to make adjustment by considering incorrect margins for computation of arm's length price;*

3.1.4 *rejecting comparable companies for not having current year data thereby failed to apply provisions of section 92C of the Act read with rule 10CA(2) of the Rules;*

3.1.5 *applying/not applying/incorrectly applying certain filters for accepting companies comparables; and*

3.1.6 *not providing the benefit of working capital adjustment to the Appellant disregarding difference in level of working capital assumed by the Appellant vis-à-vis comparable companies.*

Common ground

4.1 *That the Ld. AO erred in proposing to initiate penalty proceedings under section 271(1)(c) Act.*

That the above grounds and sub grounds of objections are without prejudice to each other.”

3. Briefly stated the facts of the case are that the assessee is an Indian company incorporated under the laws of India and is inter alia

engaged in providing facility management services ('FMS'). The business profile show that it under takes limited business risk under FMS segment which has been bench marked using TNMM as the most appropriate method at net profit margin of 2.46%.

4. During the year under consideration the assessee under took various international transactions under Real Estate Consultancy services facility management services and business support segment and IT services. The international transactions under the aforementioned segments were separately benchmarked using TNMM as MAM. The benchmarking show the following reasons :-

| SEGMENT | MARGIN OF THE ASSESSEE COMPANY |
|----------------------------------|---------------------------------------|
| Real Estate Consultancy Services | 16.66% |
| Facility Management Services | 2.46% |
| IT Services | 15% |
| Business Support Services | 15% |

5. The assessee in its FMS segment is rendering property facility management as well as project management services which interalia includes

(a) General operations and maintenance

- (b) Common area maintenance,
- (c) Building Commissioning and fit outs
- (d) Electrical and power back-up
- (e) Plumbing, carpentry and civil works
- (f) Preventive maintenance management,
- (g) Waste management consultancy etc.
- (h) Project management and development management consultancy etc.

6. The quarrel is for the exclusion of comparable BVG India Limited and inclusion of comparable Ashiana Maintenance Services Limited.

7. Representatives of both the sides were heard at length. Case records carefully perused and the relevant documentary evidences duly considered in the light of rule 18 (6) of ITAT Rules.

8. The Counsel has referred to various screen shot of business profile of BVG India Limited showing that is functionally dissimilar to the assessee. It is the say of the Counsel that BVG is engaged in providing consultancy response infrastructure and its revenue is from hospital and medical care which services have no remote connection with the profile of the assessee and FMS segment. It is engaged in solar procurement and construction manufacturing solar module manufacturing units and is awarded contract for

mechanized /automated housekeeping service of the Supreme Court of India and it fails the export filter applied by the TPO.

9. For the inclusion of Ashiana Maintenance Services Manufacturing the Counsel stated that the main operation of this company relates to maintenance of various building complexes similar to the FMS segment of the assessee. It is the say of the Counsel that the only reason for exclusion of this comparable is that it has revenue from Café sales

10. The DR had strongly supported the findings of the TPO.

11. In so far as exclusion of BVG India Limited is concerned most of the references made by the Counsel are screenshots from the web portal which appear to be tall claims made by the company in various fields. What is relevant is the financials which show the actual business done by comparable segment wise the key segmental reporting as under :-

Unless otherwise specified, all monetary values are in INR

| Enterprise's primary reportable segments [Axis] | Primary reportable segments 1 [Member] | | Primary reportable segments 2 [Member] | |
|--|--|--|---|--|
| | 01/04/2014 to 31/03/2015 | 01/04/2013 to 31/03/2014 | 01/04/2014 to 31/03/2015 | 01/04/2013 to 31/03/2014 |
| Disclosure of reportable segments [Abstract] | | | | |
| Disclosure of primary reportable segments [Abstract] | | | | |
| Disclosure of primary reportable segments [LineItems] | | | | |
| Nature of primary reportable segment | Facility Service | Facility Service | Facility Projects | Facility Projects |
| Revenue primary reportable segment | 895,44,83,458 | 718,35,61,658 | 39,72,02,627 | 56,56,50,190 |
| Total revenues from external customers and transactions with other reportable segments of same enterprise primary reportable segment | 895,44,83,458 | 718,35,61,658 | 39,72,02,627 | 56,56,50,190 |
| Segment result primary reportable segment | 138,61,55,040 | 114,33,00,776 | 5,70,16,308 | 8,41,87,442 |
| Assets primary reportable segment | 571,43,88,531 | 579,05,63,361 | 196,66,62,453 | 172,86,87,441 |
| Liabilities primary reportable segment | 321,38,68,323 | 521,19,97,330 | 126,88,57,907 | 31,40,19,075 |
| Cost incurred to acquire tangible and intangible assets primary reportable segment [Abstract] | | | | |
| Cost incurred to acquire tangible assets primary reportable segment | 13,07,31,185 | 40,08,40,874 | 45,66,604 | 8,78,366 |
| Total cost incurred to acquire tangible and intangible assets primary reportable segment | 13,07,31,185 | 40,08,40,874 | 45,66,604 | 8,78,366 |
| Depreciation and amortisation expense primary reportable segment | 12,63,07,422 | 10,76,41,553 | 0 | 58,98,345 |
| Description of types of products and services included in each reported segment primary reportable segment | Textual information (60) [See below] | The division is engaged in the business of mechanized housekeeping, transportation, labour supply, facility management, etc. | The division is engaged in the business of horticultural & landscaping contracts, plant relocation contracts etc. | The division is engaged in the business of horticultural & landscaping contracts, plant relocation contracts etc. |
| Description of composition of geography segments included in each reported segment primary reportable segment | The Company has no reportable geographical segment as its entire commercial operations are in India. | | The Company has no reportable geographical segment as its entire commercial operations are in India. | |

| Unless otherwise specified, all monetary values are in INR | | |
|--|--|---|
| Enterprise's primary reportable segments [Axis] | Primary reportable segments 3 [Member] | |
| | 01/04/2014 to 31/03/2015 | 01/04/2013 to 31/03/2014 |
| Disclosure of reportable segments [Abstract] | | |
| Disclosure of primary reportable segments [Abstract] | | |
| Disclosure of primary reportable segments [LineItems] | | |
| Nature of primary reportable segment | Engineering Projects | Engineering Projects |
| Revenue primary reportable segment | 200,01,96,421 | 87,88,30,046 |
| Total revenues from external customers and transactions with other reportable segments of same enterprise primary reportable segment | 200,01,96,421 | 87,88,30,046 |
| Segment result primary reportable segment | 42,02,47,095 | 19,85,32,422 |
| Assets primary reportable segment | 299,24,33,056 | 193,40,67,002 |
| Liabilities primary reportable segment | 142,13,93,357 | 46,67,84,380 |
| Cost incurred to acquire tangible and intangible assets primary reportable segment [Abstract] | | |
| Cost incurred to acquire tangible assets primary reportable segment | 20,670 | 0 |
| Total cost incurred to acquire tangible and intangible assets primary reportable segment | 20,670 | 0 |
| Depreciation and amortisation expense primary reportable segment | 2,82,13,761 | 0 |
| Description of types of products and services included in each reported segment primary reportable segment | The division is engaged in the business of rural electrification contracts. | The division is engaged in the business of rural electrification contracts. |
| Description of composition of geography segments included in each reported segment primary reportable segment | The Company has no reportable geographical segment as its entire commercial operations are in India. | |

| Unless otherwise specified, all monetary values are in INR | | |
|--|--|--------------------------------------|
| | 01/04/2014 to 31/03/2015 | 01/04/2013 to 31/03/2014 |
| | Disclosure of enterprise's reportable segments explanatory [TextBlock] | Textual information (61) [See below] |

Textual information (60)

12. It can be seen from the above that segment reports are available of this company and, therefore, the segment of facility services is comparable to the FMS segment of the assessee.

13. The contention that this comparables fail the export filter is not acceptable as the assessee itself has no revenue from export services in FMS segment.

14. Considering the financials of BVG India Limited we are of the considered view that this is a good comparable and has been rightly

included by the TPO which calls for no interference. The request for exclusion for this comparable is rejected.

15. In so far as inclusion of Ashiana Maintenance Services is concerned the financials of this company show that it has revenue from Café Sales and no segment reporting is available. Even if the revenue from Café Sales is not significant yet because of non availability of segment report this comparable cannot be considered as good comparable, the inclusion of this comparable is rejected.

16. In the result, the appeal by the assessee is dismissed.

Order pronounced in the open court on 08.03.2024.

Sd/-

(SAKTIJIT DEY)
VICE PRESIDENT

Sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:- .03.2024

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI