

**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. 498/DEL/2022 [A.Y. 2017-18]  
ITA No. 2257/DEL/2022 [A.Y. 2018-19]

M/s A.T. Kearney Ltd  
7<sup>th</sup> Floor, Tower - D,  
Global Business Park,  
Gurgaon, Haryana

Vs.

The A.C.I.T.  
Circle  
International Taxation(1)(1)  
New Delhi

PAN - AADCA 0861 H

(Applicant)

(Respondent)

Assessee By : Shri Ajay Vohra, Sr. Adv

Department By : Shri Rajesh Kumar, CIT-DR  
Shri Manish Kumar Dabas, Sr. DR

**Date of Hearing : 06.03.2024**

**Date of Pronouncement : 11.03.2024**

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

The above captioned two separate appeals by the assessee are preferred against two separate orders dated 28.02.2022 and 25.07.2022 pertaining to A.Ys. 2017-18 and 2018-19 respectively.

2. Since both the appeals were heard together and involve common issues, they are disposed of by this common order for the sake of convenience and brevity.

ITA No. 498/DEL/2022 [A.Y. 2017-18]

3. The grievances of the assessee read as under:

"On the facts, and in the circumstances of the case, and in law, the Appellant craves to prefer an appeal against order dated 28 February 2022 passed by Assistant Commissioner of Income Tax - 1(1)(1), International Tax, New Delhi (hereinafter referred to as the 'Ld. AO'), under Section 143(3) r.w.S 144C(13) of the Income-tax Act, 1961 ('the Act'), on the grounds as set out herein:

The following grounds are independent of, and without prejudice to, one another:

Transfer Pricing

Adjustment relating to international transaction pertaining to receipt of information technology enabled services and payment towards K-Net charges -INR 2,17,53,662

1. The Ld. AO [along with the Learned Transfer Pricing Officer (Ld. TPO')] under the directions of Hon'ble Dispute Resolution Panel ('DRP') on facts and in law, in determining the arm's length price for receipt of information technology enabled services and payment towards K- et charges and thereby making an adjustment of I R 2,17,53,662 to the taxable income of the Assessee. In doing so, having grossly erred in:

- 1.1. ignoring that the same methodology used in abovementioned international transactions i.e. Profit Split Method ('PSM') has been agreed for other covered transactions in Bilateral Advance Pricing Agreement ('APA') between the India and the USA for the relevant assessment year
- 1.2. proposing adjustment on alleged intra group services purely based on surmises and conjectures, without understanding the business model of the Assessee, thereby rejecting the arm's length nature of the international transactions
- 1.3. modifying the economic analysis carried out by the Assessee in the Transfer Pricing Documentation ('TP Documentation') and arbitrarily applying Comparable Uncontrolled Price ('CUP') method, without providing any information on comparable uncontrolled transactions wherein service provider charged NIL price for providing similar services, and

1.3.1. accepting the Profit Split Method with respect to the revenue received from network fees but rejecting the same PSM for the expenses incurred to earn the same profits

1.3.2. completely ignoring the judicial precedence in this regard in the Appellant's own case as well as in other taxpayers' case as upheld by the Hon'ble Tribunals.

1.3.3. ignoring the fact that the same transactions have been accepted to be at arm's length by the TPO himself for the immediately preceding year under the same approach, all other things remaining the same;

1.3.4. considering the services as shareholder services without any basis even though the Appellant provided various documentary evidence to show that such which were an integral part of the business

1.4. On the facts and circumstances of the case and in law, the Ld. TPO/ DRP erred in not appreciating the commercial expediency and business needs of the Appellant and completely ignoring all submissions made by the Appellant in this regard.

1.5. On the facts and circumstances of the case and in law, the Ld. TPO/ DRP erred in disregarding the fact that there was no base erosion by payment of such charges as alleged owing to the following:

1.5.1. all due taxes were deducted on payment made to AEs, the benefit of which has not even been provided to the Appellant.

1.5.2. the expense W.r.t Information technology amounting to INR 1,61,54,588 paid to a fellow subsidiary AT Kearney India Private Limited was considered as arm's length in the hands of the Indian entity

#### Corporate tax

2. On the facts and circumstances of the case and in law, the learned Assistant Commissioner of Income-tax, Circle 1(1)(1), International Taxation, Delhi ('the Ld. AO'), has erred in not permitting correction of claim regarding Foreign Tax Credit ('FTC') amounting to fNR 82,38,600 made during the assessment proceedings for A Y 2017- 18.
3. On the facts and circumstances of the case and in law, the Ld. AO has erred in not allowing complete credit of foreign taxes paid by appellant, by completely disregarding the decision of Karnataka High Court in the case of Wipro vs DCIT [20 IS] 62 taxmann.com 26 (Karnataka) and other judicial precedents placed

by the appellant on record on the ground that revenue's SLP against the decision of Kamataka High Court in the case of 'Wipro Limited' has been admitted and pending before Supreme Court for disposal.

4. On the facts and circumstances of the case and in law, the Ld. AO has erred in not accepting correction claim of appellant basis fact that the appellant's application admitted by the Hon'ble Authority for Advance Rulings (AAR), is pending for disposal on merits, as on the date of passing the final assessment order U/S 143(3) r.w.s. 144C(13) of the Act and that appellant's writ petition is pending before High Court adjudication for transfer of matter to Board of Advance Ruling.

Other grounds

5. On the facts and circumstances of the case, the Ld. AO erred in not allowing TDS credit of INR 18,78,0 IS, being TDS deducted on interest on income tax refund received during the year.
6. On the facts and circumstances of the case and in law, the Ld. AO has erred in initiating penalty proceedings under section 270A of the Act.
7. On the facts and circumstances of the case and in law, the Ld. AO has erred in computing interest u/s 234B and 234C of the Act.

*The Appellant craves leave to alter. amend. or withdraw all or any of the Grounds of Appeal herein or add any further grounds as may be considered necessary and to submit such statements.*

*documents and papers as may be considered necessary either before or during the appeal hearing. The Appellant prays for appropriate relief based on the said grounds of appeal and the facts and circumstances of the case."*

4. Briefly stated, the facts of the case are that the assessee is a company incorporated in United Kingdom and is engaged in the business of providing management consultancy services to its clients worldwide. It provides consultancy services in the manufacturing industry to diverse multinational enterprises.

5. A.T. Kearney Limited - India Branch Office is an Indian branch office of A.T. Kearney, UK. A.T. Kearney Group [ATK] operates on a global business model wherein leading practices, data, work products and client solutions are shared globally between all ATK affiliates. Further, ATK's resources are deployed globally based on availability and industry/technical skills to offer more services and take advantage of economies of scale. ATK entity, which sells the project, may rely on consulting staff employed by one or more of its foreign affiliates to form a global team and execute the project.

6. As each of the ATK affiliate provides valuable and unique contributions to the global network, a global profit split model [PSM] was implemented considering the highly integrated nature of ATK's operations.

7. International transactions are as under:

- (i) Receipt of network fee
- (ii) Receipt of management consultancy services
- (iii) Receipt of information technology enables services
- (iv) Receipt of K-net services

8. During the course of assessment proceedings, bilateral Advance Pricing Agreement [APA] between India and USA was agreed upon on 24.03.2022. The covered transactions are as under:

**"3.1. The international transactions between the Applicant and its AEs covered by this AP A (the "Covered Transactions") are as follows:**

**A. Payment of royalties for intangibles property (IP) licensing: ATK-US licenses trademarks and trade names. certain marketing intangibles. and its proprietary Knowledge**

Management System ("KMS") software platform to the A. T. Kearney Affiliates, including ATKBO; and

B. Network services transaction: A.T. Kearney affiliates provides network services to other A.T. Kearney affiliates that promote and strengthen the overall network. The network services include cross border services provided by country officers, attracting and retaining officers and talent across the global network by guaranteeing competitive compensation, guaranteeing a global presence, allowing for a flexible professional capacity pool, and supporting the creation and maintenance of global eminence. As A. T. Kearney Affiliates, both ATK-US and the Applicant can be either the net recipient or payer of the network services fee in any given tax year. Network services indirectly include contracted management consulting services as well as corporate and administrative services."

9. The term of the agreement is as under:

"The Agreement shall apply to consecutive five years commencing from previous year 2015-16 to previous year 2019-20 (relevant to assessment years 2016-17 to 2020-21) {hereinafter referred to as "APA Years"}.

The Agreement shall also apply to consecutive two years commencing from previous year 2013-14 to 2014-15 (relevant to assessment years 2014-15 and 2015- 6) {hereinafter referred to as "Rollback Years"}".

10. As the year under consideration is covered under the APA, the assessee filed its modified return of income which we have been told has been processed. Since the modified return of income is now available with the Assessing Officer, we deem it fit to restore the impugned order to the file of the Assessing Officer. The Assessing Officer is directed to consider the modified return of income in light of APA and decide the issue afresh after affording reasonable and adequate opportunity of being heard to the assessee. Accordingly, Ground No. 1 with all its sub-grounds is allowed for statistical purposes.

11. Ground Nos. 2, 3 and 4 relate to the corporate tax issues relating to the claim regarding Foreign Tax Credit [FTC].

12. The contention of the assessee is that the Assessing Officer has not allowed complete credit of foreign taxes paid by the assessee by completely disregarding the decision of the Hon'ble Karnataka High Court in the case of Wipro Limited 62 Taxmann.com 26.

13. Though the ld. DR vehemently stated that due to divergent views, this quarrel has been referred to the Special Bench of the Tribunal. But we find that the Hon'ble Jurisdiction High Court of Delhi in the case of HCL Comnet Systems And Services Ltd ITA 546/2022 order dated 23.11.2023 has decided the issue in favour of the assessee. The relevant findings of the Hon'ble Jurisdictional High Court read as under:

*"6. We have perused the lead judgment of the Karnataka High Court in the Wipro Ltd. case. The facts which obtained, therein, are pari materia with the instant appeal.*

*7. We are in respectful agreement with the view taken by the Karnataka High Court in Wipro Ltd. case. The other two judgments referred to hereinabove, only follow the decision in the Wipro Ltd. case.*

*8. Therefore, according to us, no substantial question of law arises, insofar as proposed questions 'C', 'D', and 'E' are concerned.*

*9. We are, however, informed by the counsel for the respondent/ assessee that an appeal has been preferred by the appellant/ revenue with the Supreme Court, against the judgment rendered by the Karnataka High Court in the Wipro Ltd. case.*

*10. We are also informed that the Special Leave Petition i.e., SLP No. 8381/2021, preferred by the appellant/revenue on 25.05.2021, was admitted on 14.12.2021.*

*10.1 Given this position, it is made clear that insofar as proposed questions 'C', 'D', and E are concerned, the appellant/revenue will have the liberty to approach the court for reviving the instant appeal, in case it were to succeed in the aforementioned matter pending adjudication in the Supreme Court.*

*11. The appeal is disposed of in the aforesaid terms."*

14. Respectfully following the decision of the Hon'ble Jurisdictional High Court [supra], Ground Nos. 2 to 4 are allowed as per the above directions.

15. Ground No. 5 relates to short credit of TDS.

16. Having heard the rival contentions, we are of the considered view that this issue needs verification and we direct the Assessing Officer to verify the details of TDS and allow credit as per provisions of law. Ground No. 5 is allowed for statistical purposes.

17. Ground No. 6 is premature.

18. Ground No. 7 relates to charging of interest u/s 234B and 234C of the Act.

19. Charging of interest is mandatory though interest u/s 234 C has to be charged on the returned income. We order accordingly.

20. As a result, the appeal of the assessee is allowed for statistical purposes.

ITA No. 2257/DEL/2022 [A.Y. 2018-19]

21. Grievances of the assessee read as under:

**"1. On the facts, and in the circumstances of the case, and in law, the Appellant craves to prefer an appeal against order dated 25 July 2022 passed by Assistant Commissioner of Income Tax - I (1)( I), International Tax, New Delhi (hereinafter referred to as the 'Ld. AO'), under Section 143(3) r.w.s 144C(13) of the Income-tax Act, 1961 ('the Act'), on the grounds as set out herein:**

The following grounds are independent of. and without prejudice to, one another:

1.1 On the facts and circumstances of the case and in law, the Ld. AO has erred in holding that the claim for Foreign Tax Credit ('FTC') has been raised first time during assessment i.e. not claimed in ITR and is a fresh claim and therefore rejecting the admission of same during assessment, relying on Supreme Court judgement in case of *Goetze -(India) Ltd. v CIT [2006] 157 Taxmann I*;

1.2 On the facts and circumstances of the case and in law, the Ld. AO has erred in not permitting correction of claim regarding FTC amounting to INR 2,36.04.786 made during the assessment proceedings for A Y 2018-19:

1.3 On the facts and circumstances of the case and in law. the Ld. AO has erred in not allowing claim of eligible foreign tax credit paid outside India to the appellant:

1.4 On the facts and circumstances of the case and in law, the Ld. AO has erred in not accepting correction of FTC claim of appellant, basis the fact that revenue's SLP against the ruling of . Hon'ble Karnataka High Court in the case of 'Wipro Limited' relied upon by appellant has been admitted and pending before Supreme Court for disposal.

1.5 On the facts and circumstances of the case and in law, the Ld. AO has erred in not accepting correction of FTC claim of appellant, basis the fact that the appellant's application admitted by the Hon'ble Authority for Advance Rulings (AAR), is pending for disposal on merits, as on the date of passing the final assessment order u/s 143(3) LW.S. 144C of the Act and that appellant's writ petition is pending before High Court for adjudication on transfer of matter to Board of Advance Rulings.

*The Appellant craves leave to alter, amend, or withdraw all or any of the grounds of appeal herein or add any further grounds as may be considered necessary and to submit such statements, documents and papers as may be considered necessary either before or during the appeal hearing. The Appellant prays for appropriate relief based on the said grounds of appeal and the facts and circumstances of the case."*

22. This issue has been decided by us hereinabove for A.Y 2017-18 [supra] qua Ground Nos. 2 to 4 of that appeal. For our detailed discussion therein, we order accordingly.

23. As a result, this appeal is allowed.

24. To sum up, in the result, the appeal of the assessee in ITA No. 498/DEL/2022 is allowed for statistical purpose and appeal in ITA No. 2257/DEL/2022 is allowed.

The order is pronounced in the open court on 11.03.2024.

**Sd/-**  
**[SAKTIJIT DEY]**  
**VICE PRESIDENT**

**Sd/-**  
**[N.K. BILLAIYA]**  
**ACCOUNTANT MEMBER**

Dated: 11<sup>th</sup> 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	