

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

BEFORE

**SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

आ.अपी.सं / **ITA No.251/Hyd/2021**
(निर्धारण वर्ष / Assessment Year: 2016-17)

Microsoft Global Services Centre (India) Private Limited, Hyderabad. PAN : AAECM2477L	Vs.	The Deputy Commissioner of Income Tax, Circle 5(1), Hyderabad.
अपीलार्थी / Assessee		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by:	Shri Nageswara Rao, Advocate.
राजस्व द्वारा/Revenue by:	Ms. N.Swapna, CIT-DR

सुनवाई की तारीख/Date of hearing: 26.03.2024
घोषणा की तारीख/Pronouncement on: 27.03.2024

ORDER

PER LALIET KUMAR, J.M.

This appeal is filed by the assessee aggrieved by the assessment order passed by the Commissioner of Income Tax (National Faceless Appeal Centre), Delhi dt.22.04.2021 invoking proceedings under section 143(3) r.w.s. 144C(13) r.w.s. 144B of the Income Tax Act, 1961 (in short, "the Act") for A.Y. 2016-17.

2. The brief facts of the case are that assessee is a company engaged in providing consulting services i.e., MCS services to third party customers of Microsoft Group entities. Assessee company filed its A.Y. 2016-17 declaring Rs. 95,86,46,580/-. Subsequently, the case was selected for scrutiny under CASS. Thereafter, notices under Sections 143(2) and 142(1) issued. In response, assessee has submitted the information called for through ITBA Portal from time to time. During the course of scrutiny, the case was referred to the TPO u/s 92CA of the Act for determination of Arm's Length Price. Thereafter, the TPO proposed transfer pricing adjustment of Rs. 95,16,40,000/-. On receipt of the order u/s 92CA(3) from the TPO, draft Assessment Order was completed on 25.12.2019 and the sum proposed by the TPO was added to the income of the assessee.

3. Aggrieved with such draft assessment order, assessee company filed objections with the Dispute Resolution Panel (DRP), who passed the order on 12.03.2021. On receipt of the same, the DCIT/ACIT-TP-2, Hyderabad passed the Order Giving Effect on 6/4/2021, adjusting the software development segment's TP by Rs.91.33 Crores. Thereafter, the application u/s 154 dt.20.02.2020 filed by the assessee was technically rejected, as the DRP's order already considered the total benefits granted to employees at Rs. 29,61,94,038/- and no rectification was sought by the assessee. The final adjustments as per the DRP's directions, totaled to Rs. 91,33,00,000/- for Software Development Services was added to the total income of the assessee and thereafter, passed the assessment order on 22.04.2021 u/s 143(3) r.w.s. 144C(13) r.w.s. 144B of the Act. Thereafter penalty proceedings under Section 271(1)(c) were

initiated separately due to reporting of inaccurate particulars of income.

4. Feeling aggrieved with final assessment order, assessee preferred appeal before us.

5. Before us, the ld. AR for the assessee has submitted that the assessee has approached to the designated authority for MAP resolution under Income Tax Rules and the authorities have resolved the issues pertaining to the subject assessment which has been finalized by the MAP Authority vide letter dt.20.07.2023. He has drawn our attention to the said letter, which is to the following effect :

480/04/2015-APA-I
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
Foreign Tax & Tax Research Division – I
APA- I Section

906B, 9th Floor, C Wing,
Hudco Vishala Building,
14, Bhikaji Cama Place,
New Delhi – 110066

Dated: 20th July, 2023

To

Microsoft Global Services Centre (India) Private Limited,
3rd to 6th Floors of Unit 1 and 2, 2nd Floors of Unit 1,
Salarpuria Sattva Knowledge City, Argus Building,
Parcel-2, Survey No. 83/1, Raidurg,
Panmaktha Village, Serilingampally, Hyderabad,
Ranga Reddy, Telangana – 500081

Madam/Sir,

Subject: Communication of resolution/closure of dispute under MAP with the U.S.A. in the case of Microsoft Corp (MAP applicant) and M/s Microsoft Global Service Centre (India) Private Limited, (PAN: AAECM2477L) for Assessment Year 2016-17 in accordance with rule 44G(6) of Income Tax Rules, 1962- reg.

Please refer to the subject cited above.

2 In accordance with rule 44G(6) of the Income Tax Rules, 1962 ('Rules'), I am directed to state that the Indian and USA Competent Authorities (CAs) have agreed to resolve the MAP in your case for AY 2016-17 for the transaction of 'provision of Software Development services' by **Microsoft Global Services Centre (India) Private Limited** to **Microsoft Corp**, by taking the Indian taxpayer as the tested party, TNMM as the most appropriate method and OP/OC as the PLI.

3 As per the MAP resolution agreed upon by the two CAs, the filed margins for the AY 2016-17 would be accepted. The detail of AIP and adjustment proposed in relation to US transactions is tabulated below.

TPO calculations


Indian Taxpayer	AY	SWD Services						
		Deter- mined Margin	TOTAL		US RELATED		NON-US RELATED	
			ALP	Adjustments	ALP	Adjustments	ALP	Adjustments
Microsoft Global Service Centre India Private Limited	2016- 17	25.69	71848,00,000	9133,00,000	70009,59,496	8899,31,008	1838,40,504	233,68,992

4. As per rule 44G(7) of the Rules, you are requested to communicate your acceptance or non-acceptance of the above resolution in writing to the Competent Authority in India. Further, the said acceptance shall be communicated **within thirty days of receipt of this communication under sub-rule(6) of rule 44G.**



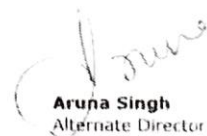
5. In case of acceptance of the above resolution, you are also requested to enclose with it the proof of withdrawal of appeal, if any, pending on the transaction that is the subject matter of this resolution, in accordance with sub-rule (8) of rule 44G. You may also email your response on the following email id: dcit.apa-1@gov.in.

6. Notwithstanding above, it may be noted that the MAP resolution would not result in income lower than the filed/returned income. Further, the applicability of the MAP resolution is subject to the condition that the ITAT has not passed its ruling for this assessment year.

Yours faithfully,


(Dr. Vijit Patel)
Under Secretary, APA-I
FT&TR-I, CBDT
Email: dcit.apa-1@gov.in

6. The Id. AR for the assessee has submitted that the addition made by the TPO were having two elements i.e., (i) US related and (ii) Non-US related TP adjustments. It was submitted that the addition with respect to US related assessment has been resolved under MAP and the issues with respect to Non-US related adjustments are not, as the same pertaining to domestic transactions. For that purposes, Id. AR has drawn our attention to page 516 of the paper book where the bifurcation of the Revenue has given as under :

Microsoft Global Services Center (India) Private Limited			
Statement of Profit and Loss for the Year Ended 31 March 2016			
Particulars	Note No	For the Year Ended 31 March 2016 Rs. In Millions	For the Year Ended 31 March 2015 Rs. In Millions
INCOME			
Revenue from Operations	16	6,271.02	6,152.16
Other Income	17	94.48	93.89
		6,365.50	6,246.05
EXPENSES			
Employee Benefits Expense	18	2,537.86	2,330.12
Depreciation and Amortisation Expense	10	125.93	215.33
Other Expenses	19	2,776.53	2,831.99
		5,440.32	5,377.44
Profit Before Tax		925.18	868.61
Tax Expense			
- Current Tax	31.1	324.61	341.00
- Deferred Tax	31.2	(1.34)	(47.20)
		323.27	293.80
Profit After Tax		601.91	574.81
Earnings Per Equity Share (of Rs. 10 each)	30		
- Basic (In Rs.)		17,766.99	16,967.06
- Diluted (In Rs.)		17,766.99	16,967.06
See accompanying notes forming part of the financial statements			
In terms of our report attached For Deloitte Haskins & Sells Chartered Accountants		For and on behalf of the Board of Directors	
			
Sriraman Parthasarathy Partner	Amit Sircar Managing Director	Aruna Singh Alternate Director	
Place : Chennai Date : 19 September 2016	Place : Hyderabad Date : 19 September 2016	Place : Hyderabad Date : 19 September 2016	

7. Further, ld. AR has drawn our attention to page 528 of the paper book where the Schedules 16 and 17 are reproduced.

Microsoft Global Services Center (India) Private Limited		
Notes forming part of the financial statements for the year ended 31 March 2016		
Particulars	For the Year Ended 31 March 2016 Rs. In Millions	For the Year Ended 31 March 2015 Rs. In Millions
16 Revenue from Operations		
Software Consultancy Services (Refer Notes 16.1 and 16.2)		
✓ - Export	6,111.03	5,978.80
✓ - Domestic	159.99	173.36
Total	6,271.02	6,152.16
Notes:		
16.1	Revenue earned from rendering Software Consultancy Services represents the services rendered by the Company and billed to the customers in accordance with the contractual terms. (Also Refer Note 28.2)	
16.2	Revenue from Operations include unbilled revenue of Rs. 255.54 Millions (Previous Year Rs. 247.49 Millions) representing the amount of services rendered as per contractual terms pending raising of invoices on the customers.	
Particulars	For the Year Ended 31 March 2016 Rs. In Millions	For the Year Ended 31 March 2015 Rs. In Millions
17 Other Income		
Interest Income on Bank Deposits	51.25	44.91
Advances Written back (Refer Notes 28.2 and 35)	42.75	
Provision for Doubtful Advances Written Back	-	0.11
Gain on Exchange Fluctuation (Net)	0.48	48.87
Total	94.48	93.89

8. On the basis of the above, it is submitted that since the issue with respect to domestic services referred by the assessee to the Indian entities which is clear from Page 536 of the paper book wherein in table 28.2, it was mentioned as under :

Microsoft Global Services Center (India) Private Limited
Notes forming part of the financial statements for the year ended 31 March 2016

28.2 Transactions with the Related Parties

Transaction	Related Party	2015-2016 Rs. In Millions	2014-2015 Rs. In Millions
Revenue			
Income From Operations	Microsoft Corporation, USA (Refer Note (a) below)	6,111.03	6,046.98
	Microsoft Corporation (India) Private Limited	159.99	105.18
Advances Written Back (Refer Note 35)	Microsoft Corporation, USA	42.75	-
Expenditure			
Rent and Utilities	Microsoft India (R&D) Private Limited	237.09	236.70
Remuneration	Mr. Amit Srivastava	65.65	55.09
Others			
TDS on Stock Awards	Microsoft Corporation, USA	72.38	64.80
Reimbursements Received	Microsoft Global Resources, GmbH	-	0.75
Proposed Dividend (excluding tax on dividend)	Microsoft Corporation, USA	669.84	500.01
Assets			
Trade Receivables	Microsoft Corporation, USA	578.51	324.19
	Microsoft Corporation (India) Private Limited	31.24	57.64
Unbilled Revenue	Microsoft Corporation, USA	251.71	239.63
	Microsoft Corporation (India) Private Limited	3.83	7.86
Contractually Reimbursable Expenses	Microsoft Global Resources, GmbH	5.67	0.85
Liabilities			
Advance from Customer	Microsoft Corporation, USA	-	42.75
Other Current Liabilities	Microsoft Corporation, USA	5.20	2.95
Proposed Dividend	Microsoft Corporation, USA	669.84	500.01

Notes:

(a) All collections in respect of transactions with overseas related parties are received from Microsoft Global Finance Limited, a Fellow Subsidiary, being a central finance hub of Microsoft Corporation, USA and its affiliates.

(b) Also Refer Notes 3.5 and 33.

9. On the basis of the above table, the Id.AR has submitted that the Revenue receipts from the operation of Indian company was Rs.159.99 million. Therefore, no Transfer Pricing Adjustment can be made in the hands of the assessee with respect to the said amount. The Id. AR had also drawn our attention to page 21 of the appeal memo wherein at page 21, the Assessing Officer has noted down in para 5 as under :

5. On receipt of the order of the DRP, DCIT/ACIT-TP-2, Hyderabad passed the Order Giving Effect on 6/4/2021. It is stated in the Order that, "The TP adjustment for software development segment in the case of the assessee is calculated at Rs. 91.33 Crores. The above shortfall of Rs. 91,33,00,000/- may be treated as adjusted Transfer Pricing adjustment in respect of Software Development Segment of the taxpayer's international transactions. Further, vide application u/s 154 dated 20-02-2020, the taxpayer has requested for exclusion of TDS payment made on stock awards. The application was technically rejected on the ground that the same will be considered while giving effect to the order of Hon'ble DRP. However, it is seen that Hon'ble DRP vide its

order under reference, (para 2.3.17) has categorically stated as under:

"The TPO has correctly assumed the total benefits granted to the employees of the assessee at Rs. 29,61,94,038 (22,38,17,006 + 7,23,77,032) and added to the total operating cost of the assessee"

In view of the above findings of Hon'ble DRP, the undersigned hereby confirms that there is no mistake which requires rectification. Hence, the concern of the taxpayer vide its petition u/s 154 is addressed accordingly. The final adjustments after giving effect to the DRP order are as under:

As per the directions of Hon'ble DRP , Adjustment towards Software Development Services is Rs. 91,33,00,000/- and therefore the Total adjustment is Rs. 91,33,00,000/-".

10. He has also drawn our attention to page 331 where the ALP was calculated after factoring into the domestic Revenue earned by the assessee. The sum and substance of the argument of the assessee is that since the MAP Resolution has already been arrived between the India and US entity, therefore, the adjustment made towards domestic transactions is not sustainable.

11. The assessee after MAP resolution has been modified the grounds of appeal and the modified grounds are as under :

"On the facts and circumstances of the case and in law, the Appellant respectfully craves leave to modify the grounds of appeal filed against the assessment order passed under section 143(3) r.w.s. 92CA(3) r.w.s. 144C(5) of the Income-tax Act, 1961 ('the Act') by Additional Joint / Deputy / Assistant Commissioner of Income Tax/ Income-tax Officer, National e-Assessment Centre, Delhi ("Ld. AO"), as provided below, each of the grounds is referred to separately, which may kindly be considered independent/ without prejudice of each other.

1 Final assessment order passed pursuant to directions of Ld. Dispute Resolution Panel (DRP) is bad in law.

2 Ld. AO has erred on facts and in law in determining the total income of Appellant at Rs. 1,87,19,46,580 as against a returned income of Rs. 95,86,46,580.

Part I -Transfer Pricing Matters

3 That on facts and in law, the Ld. DRP and Ld. TPO/AO erred by incorrectly computing transfer pricing adjustment on aggregate cost base of the Appellant without excluding the cost pertaining to Appellant's domestic operations. MGSI's domestic operations do not come under the ambit of Indian Transfer Pricing provisions and hence, the costs pertaining to the same should not be included while computing transfer pricing adjustments. This ground is without prejudice to the arguments of the Appellant against erroneous approach of Ld. DRP and Ld. TPO /AO.

Part II Corporate tax matters

4. That on the facts and in law, the Ld. AO was not justified and has erred in not considering claim of TDS credit of Rs. 5, 19,455 made by the Company during the assessment proceedings and not considering the directions of Ld. DRP in relation to grant of TDS credit.

5. That on the facts and in law, on disposal of this appeal material adjustment would be required in computing total income, tax, interest under section 234B of the Act. Necessary directions may please be given to the Ld. AO in this regard."

12. At the time of argument, the assessee has only restricted his above argument to the modified ground no.3 which is as under :

"3 That on facts and in law, the Ld. DRP and Ld. TPO/AO erred by incorrectly computing transfer pricing adjustment on aggregate cost base of the Appellant without excluding the cost pertaining to Appellant's domestic operations. MGSI's domestic operations do not come under the ambit of Indian Transfer Pricing provisions and hence, the costs pertaining to the same should not be included while computing transfer pricing adjustments. This ground is without prejudice to the arguments of the Appellant against erroneous approach of Ld. DRP and Ld. TPO /AO."

13. The assessee has no further argument with respect to other grounds.

14. On the other hand, ld.DR has submitted that the matter is required to be remanded back to the TPO for verification and passing the order in accordance with the law.

15. We have heard the rival submissions and perused the material on record. As clear from page 14 of the order passed by the Assessing Officer wherein the Assessing Officer has made the addition in para 5 which is to the following effect :

5. On receipt of the order of the DRP, DCIT/ACIT-TP-2, Hyderabad passed the Order Giving Effect on 6/4/2021. It is stated in the Order that," The TP adjustment for software development segment in the case of the assessee is calculated at Rs. 91.33 Crores. The above shortfall of Rs. 91,33,00,000/- may be treated as adjusted Transfer Pricing adjustment in respect of Software Development Segment of the taxpayer's international transactions. Further, vide application u/s 154 dated 20-02-2020, the taxpayer has requested for exclusion of TDS payment made on

stock awards. The application was technically rejected on the ground that the same will be considered while giving effect to the order of Hon'ble DRP. However, it is seen that Hon'ble DRP vide its order under reference, (para 2.3.17) has categorically stated as under:

"The TPO has correctly assumed the total benefits granted to the employees of the assessee at Rs. 29,61,94,038 (22,38,17,006 + 7,23,77,032) and added to the total operating cost of the assessee"

In view of the above findings of Hon'ble DRP, the undersigned hereby confirms that there is no mistake which requires rectification. Hence, the concern of the taxpayer vide its petition u/s 154 is addressed accordingly. The final adjustments after giving effect to the DRP order are as under:

As per the directions of Hon'ble DRP , Adjustment towards Software Development Services is Rs. 91,33,00,000/- and therefore the Total adjustment is Rs. 91,33,00,000/-".

16. However, if we read paragraph 5 (supra) along with the MAP ,pages 516, 528 and 536 of the paper book which are reproduced above, then it is clear that the assessee has transactions with US and domestic transactions. However, the law is fairly settled that the ALP should be determined in respect to the international transactions falling in Chapter X of the Income Tax Act. The determination of the TP adjustment for domestic transfer pricing is to be dealt in accordance with law.

16.1 In our view, the assessee would be entitled to relief if on verification the Assessing Officer / TPO found that the adjustment with respect to the Microsoft Global Services Centre (India) Private Limited were not warranted in accordance with law. For the above said purposes, we are in agreement with the submissions of the Id.DR that the matter may kindly be remanded back to the Assessing Officer / TPO with the above said direction. In view of the above, we remand the matter back to the TPO for denovo examination of the facts and decide whether the addition as made by the TPO with respect to the domestic services as mentioned hereinabove are sustainable in the eye of law. Accordingly, the appeal of the assessee is allowed for statistical purposes.

17. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 27th March, 2024.

Sd/- (R.K. PANDA) VICE PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 27th March, 2024.

TYNM/sps

Copy to:

S.No	Addresses
1	Microsoft Global Services Centre (India) Private Limited, Building – 1, Microsoft Campus, Gachibowli, Hyderabad – 500032.
2	The Deputy Commissioner of Income Tax, Circle 5(1), Hyderabad.
3	Dispute Resolution Panel (DRP), Bengaluru.
4	Director of Income Tax (IT & TP), Hyderabad.
5	Addl. Commissioner of Income Tax (Transfer Pricing), Hyderabad.
6.	Prl.CIT (Central), Hyderabad.
7	DR, ITAT Hyderabad Benches
8	Guard File

By Order