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IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं / **ITA No.126/Hyd/2022**
(निर्धारण वर्ष / Assessment Year: 2017-18)

M/s. DASAN India Private Limited, Vijayawada. PAN:AAFCD9114J (Appellant)	Vs.	Dy. Commissioner of Income Tax, Circle-1(1), Tirupati. (Respondent)
निर्धारिती द्वारा / Assessee by:		Shri H Srinivasulu, Adv
राजस्व द्वारा / Revenue by:		Shri Kumar Pranav, CIT-DR
सुनवाई की तारीख / Date of hearing:		27/08/2024
घोषणा की तारीख / Pronouncement:		29/08/2024

आदेश / ORDER

PER MADHUSUDAN SAWDIA, A.M:

This appeal is filed by M/s. DASAN India Private Limited, Vijayawada ("the assessee") against the final assessment order of learned Assessing Officer ("Ld. AO") dated 17/02/2022 passed as per the directions of Dispute Resolution Panel, Bengaluru ("Ld. DRP"), for the A.Y. 2017-18, u/s 143(3) r.w.s. 144C(13) r.w.s.144B of the Income Tax Act, 1961 ("the Act").

2. Facts of the case are that the assessee is engaged in the business of trading of products in telecommunication and information technology sectors

which were imported from its Associated Enterprises (AEs). For the A.Y. 2017-18, the assessee filed the return of income on 30/11/2017, declaring loss of Rs. 9,95,903/-. In view of the international transaction of import of products from the AEs, determination of Arm's Length Price ("ALP") was referred to the learned Transfer Pricing Officer ("Ld. TPO"). The assessee had adopted Resale Price Method ("RPM") as Most Appropriate Method ("MAM") in the TP study report. Ld. TPO by order dated 29/12/2020, rejected RPM as MAM and adopting the Transaction Net Margin Method ("TNMM") as MAM, suggested upward adjustment of Rs. 1,09,47,033/- in respect of imported products. Accordingly, the Ld. AO passed the draft assessment order dated 01/04/2021. Aggrieved, assessee preferred objection before the Ld. DRP, and pursuant to the directions of the Ld. DRP dated 28/01/2022, Ld. AO finalised the assessment, determining the upward adjustment of Rs. 1,50,23,628/- on account of imported products. Hence, this appeal.

3. At the outset, Ld. AR submitted that the assessee is not disputing the adoption of TNMM as MAM by the Ld. TPO instead of RPM for calculation of ALP. However the assessee is disputing the inclusion of eight comparables, namely, ACL Mobile Ltd. ("ACL"), Arya Communication & Electronics Services Pvt. Ltd. ("Arya"), Cineom Broadcast India Ltd. ("Cineom"), Hughes Communications India Pvt. Ltd. ("Hughes"), HCL Comnet Systems & Services Ltd. ("HCL"), Uniinfo Telecom Services Ltd. ("Uniinfo"), Seven 3 Rockers Technologies Pvt Ltd. ("Seven-3") and S.K. Communications Pvt Ltd. ("S.K. Communications"), on the grounds of functional dissimilarity only. The Ld. AR submitted that the assessee was engaged

in the trading activities i.e. the assessee was importing the products from AEs and supplying the same products to the seller without any value addition. Hence the activities of the assessee was purely in the nature of trading. To justify their contention that the assessee was engaged purely in trading activity and there was no value addition to the product, the Ld. AR submitted before the bench, some purchases and sales invoices to demonstrate that the items purchased as per the purchase invoice and sold as per sales invoices are same. The Ld. AR further submitted that the main activities of the said eight comparables companies were in the nature of services. Therefore, he requested that, these comparables may be excluded from the list of comparables.

4. He also submitted that the assessee is praying for inclusion of one comparable, namely, Globe Mobility Private Limited("Globe"), which was excluded by the Revenue authorities.

5. The assessee also filed one additional ground of appeal which is as under:

"Ground No. 1 : erred in not appreciating that the appellant is in first year of operations and expecting the appellant to earn such high profits."

6. We have perused the additional ground of appeal of the assessee and gone through the records. There is no dispute about the facts that this is the first year of the business of the assessee. It is also a fact that the assessee is not in manufacturing or other complicated line of business structure, which involves a lot of exercise to get established in the market. To the contrary the assessee is in purely trading activity with a determined supplier as well as the buyer. Hence on

perusal of the facts of the case and the nature of the business of the assessee, we do not find any merits in the additional ground raised by assessee and therefore we dismiss the same. Accordingly the additional ground raised by assessee is dismissed.

7. Ld. DR, heavily placed reliance on the orders of the Revenue authorities and requested to upheld the order of the revenue authority. The Ld. DR further submitted that the assessee was not purely engaged in the activity of trading, but provided the installation services also to the buyer. Therefore the contention of the assessee that they were purely engaged in the activity of trading is not correct. Therefore he objected to exclude these eight company from the list of comparable.

8. We have gone through the record in the light of the submissions made on either side. Before going to examine the suitability of the entity as comparable, we have to first decide the nature of business of the assessee. As per the claim of the assessee, they were engaged purely in trading activities and no value addition had been made to the product before the same were supplied to the buyer. The assessee also contended that they did not perform any activity in the nature of services in pursuance of the supply of the product i.e. any installation etc. However the Ld. DR argued that the assessee had performed the installation services also. We have gone through the purchase and sales invoices submitted by the assessee corresponding to the supply of the products. The assessee has also furnished an affidavit dated 05/08/2022 to the effect that the company had not undertaken any functions pertaining to

installation/commissioning services. On the perusal of purchases invoices, sales invoices and the affidavit, we are of the considered opinion that the assessee was engaged in the nature of purely trading activity and was not involved in supply of any services.

9. With this fact on records, the suitability of the entities, namely, ACL, Hughes , HCL , Uniinfo and Seven-3 , to be compared with the assessee was considered, the revenue from trading activity of these companies are Rs. NIL, Rs.8310989/-, Rs.NIL, Rs.172257 and Rs.NIL/- respectively, the revenue from service activity of these companies are Rs.1465388544/-, Rs.1515273581, Rs.435276818, Rs.278593753 and Rs.194706733/- respectively and the total operational revenue of these companies are Rs.1465388544/-, Rs.1658055169, Rs.435276818, Rs.278766010 and Rs.194706733/- respectively. Hence the % of revenue from service activity with total operational revenue are 100%,91.39%,100%,99.94% and 100% respectively. Therefore most of the operational revenue of ACL, Hughes , HCL , Uniinfo and Seven-3 are from service activity, however in the case of the assessee the total revenue is from trading activity. Therefore we are of considered opinion that ACL, Hughes , HCL , Uniinfo and Seven-3 are functionally dissimilar and are not comparable to the assessee. Hence, we deem it just and proper to exclude these five companies from the list of comparable. Accordingly , we direct the Ld. AO to exclude these five companies from the list of comparable for the purpose of working of profit level indicator(“PLI”).

10. So far as, the suitability of the entity, namely, S.K.Communications, to be compared with the assessee was considered, the Ld. AR brought our attention to page no. 1946 of the P.B. and submitted that S.K.Communications is a subcontractor of TCIL for the work of “erecting communication towers, posting VSAT and antennas, laying cables, setting up computer hardware and installing computer softwares and power backups to run those systems”. The total receipt of the assessee from TCIL is Rs. 441,84,400/- (page no. 1942 of the P.B.), which is 87.03% of the total revenue from operation. Hence the major receipts of S.K.Communications are from sub-contract work, however in the case of the assessee the total revenue is from trading activity. Therefore we are of considered opinion that S.K.Communications is functionally dissimilar and is not comparable to the assessee. Hence, we deem it just and proper to exclude S.K.Communications from the list of comparable. Accordingly, we direct the Ld. AO to exclude S.K.Communications from the list of comparable for the purpose of working of profit level indicator (“PLI”).

11. So far as, the suitability of the entity, namely, Arya, to be compared with the assessee was considered, the Ld. AR submitted that Arya is engaged in trading, commission agent and rendering of services, and hence functionally dissimilar to the assessee. However as per page no. 1295 of the P.B. the receipt from trading, services and total revenue from operations of Arya are Rs. 1767362424/-, Rs.46251983/- and Rs. 1813614407/- respectively. Hence the receipt from the trading activity of Arya is 97.45% of the total revenue from operations, resulting only nominal receipt from services. As the major receipts

are from trading activity, the contention of the Ld. AR in this regards is not acceptable and there submission for exclusion of Arya from the list of comparable is dismissed.

12. So far as, the suitability of the entity, namely, Cineom, to be compared with the assessee was considered, the Ld. AR submitted that Cineom is also engaged in rendering of services, and hence functionally not comparable to the assessee . However as per page no. 1340 of the P.B. the receipt from trading, services, other receipts and total revenue from operations of Cineom are Rs. 525354754/-, Rs.82093312/-, Rs.27067035/- and Rs. 634515101/- respectively. Hence the receipt from the trading activity of Cineom is 82.80% of the total revenue from operations, resulting into only 17.20% from other activity. As the major receipts are from trading activity, the contention of the Ld. AR in this regards is not acceptable and there submission for exclusion of Cineom from the list of comparable is dismissed.

13. Coming to the issue relating to the inclusion of the entities, Globe, which was rejected by the revenue authority due the reason that, company data was not available. The Ld. AR submitted that, the annual report of Globe is now available on the public domain and contended that Globe should be considered as the comparable company as it is engaged in trading activity and passes all the filter applied by the Ld. TPO. Considering their submissions, we are of the considered opinion that, if the comparable is functionally same as that of tested party then same cannot be rejected. Hence we direct the Ld. AO to verify the comparability of Globe after providing an opportunity of being heard to the

assessee. Accordingly, we allow this ground of the assessee for statistical purpose.

14. In the result, appeal of the assessee is partly allowed for statistical purpose.

Pronounced in the open court on 29th Aug., 2024.

Sd/-

(K. NARAIMHA CHARY)
JUDICIAL MEMBER

Sd/-

(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Hyderabad.

Dated: 29.08.2024.

** Reddy gp*

Copy of the Order forwarded to :

1. M/s. Dasan India Pvt. Ltd., Sri Pothuri Towers, 4th Floor, D.No.40-1-140/3, M G Road, Labbipet, Vijhayawada-520010 Krishna District, A.P.
2. DCIT, Circle 1(1), Tirupati.

3. Pr. CIT, Tirupati.
4. DR, ITAT, Hyderabad.
5. Guard file.

BY ORDER,