

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH: BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

IT(TP)A No.3259/Bang/2018
Assessment Year: 2014-15

M/s. NI Systems (India) Pvt. Ltd. 81/1, 82/1, Salarpuria Softzone Wing B, 5 th Floor, Block A Outer Ring Road, Bellandur Varthur Hobli Bengaluru 560 037 PAN NO : AABCN1159K	Vs.	DCIT Circle-5(1)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Sri Ajith V., A.R.
Respondent by	:	Sri N. Senthil Kumar, D.R.

Date of Hearing	:	05.12.2024
Date of Pronouncement	:	18.12.2024

O R D E R

PER PRAKASH CHAND YADAV, JUDICIAL MEMBER:

Present appeal of the assessee is arising from the order of ld. AO dated 28.9.2018 and relates to assessment year 2014-15.

2. The assessee has raised 9 grounds of appeal, out of which ground nos.1 to 3 are general in nature. Ground No.4 has been settled by the assessee in the MAP proceedings, with competent authorities. Hence, the assessee has not pressed this ground. In ground No.5, the assessee is challenging that the comparable chosen for benchmarking the transactions with US entities may kindly be adopted in the non-US entities. Ground Nos.6 & 7 are also related to ground No.5. Ground Nos.8 & 9 are consequential.

2.1 Ground No.10 is the additional ground filed by the assessee after the arrival of MAP proceedings. In this ground, the assessee has basically contending that ALP arrived in MAP Resolution between the Indian & US competent authorities may kindly be applied as ALP for the non-US based Associated Enterprises (“AE”) of the assessee.

3. Brief facts of the case are that assessee is a subsidiary of US based company and engaged in the provision of contract software and hardware development services. The assessee has its AE in US as well as other parts of the world. For the impugned year, it has filed its return of income of Rs.4,60,74,010/-. Since international transactions were present, the case of the assessee has been referred to the TPO for determining the ALP with respect to the international transactions entered into by the assessee with its AE. Accordingly, the TPO made certain adjustments.

3.1. Aggrieved with the order of TPO, the assessee filed its objections before Id. Dispute Resolution Panel (“DRP”) on 25.1.2018.

3.2 The Id. DRP on 7.9.2018 issued directions to the TPO, partly allowing the objections of the assessee. It is pertinent to note here that the Id. DRP has reduced the TP adjustment in respect of provision of software and hardware development services from Rs.8,17,59,555/- to Rs.5,05,63,913/-. Similarly, the Id. DRP has provided relief with respect to the marketing support and distribution activities of the assessee. Thereafter on 3.12.2018, the assessee has filed an application with competent authority for invoking MAP resolution. The competent authority resolved the dispute under MAP vide its order dated 29.7.2024. Now, claim of the assessee is that the ALP arrived after the outcome of MAP proceedings for transaction with AEs based in US may kindly be applied to the international transactions entered into by the assessee with its non-US based AEs.

It is relevant to mention here that the percentage of the non-US based transaction is 64% and the percentage with US based entities is 36%.

4. Today when the matter was taken up for hearing, Id. Counsel for the assessee fairly pointed out that all the disputes emerging is the original ground number 5-7, have already been settled up to large extent under MAP and the only prayer of the assessee is that the ALP arrived in MAP proceedings may kindly be used for benchmarking the non-US based entity transactions of the assessee.

5. The Id. D.R. argued that the matter may kindly be restored to the file of TPO for examining afresh.

6. We have heard the rival submissions and perused the materials available on record. We observe that the assessee has entered into MAP proceedings vide application dated 3.12.2018 and has resolved the dispute up to large extent. For the sake of convenience, we hereby reproduce the tabulated form of the dispute involved and resolved with MAP as under:

International transactions	Total TP adjustment	Adjustment pertaining to US	Adjustment retained in India	Adjustment relieved in India	Total TP adjustment retained in India
(A)	(B)	(C)	(D)	(E) = (C)- (D)	(F)= (B)- (E)
Provision of contract software and hardware development services	50,563,913	50,563,913	3,782,266	46,781,647	3,782,266
Marketing support and distribution activity	31,195,672	11,389,231	5,882,487	5,506,744	25,688,928

6.1 Perusal of the above chart would show that the assessee has settled the dispute of both segment under MAP. In these facts we are

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of the view that the matter shall go back to the TPO for conducting a fresh TP study in the light of the adjustments accepted by the competent authority with US based entities.

7. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 18th Dec, 2024

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Prakash Chand Yadav)
Judicial Member

Bangalore,
Dated 18th Dec, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.