

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

**BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT  
AND  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No.4161/Del/2024  
(ASSESSMENT YEAR-2020-21)**

Software AG India Sales Private Limited No.1260, Mittal Tower, 14 <sup>th</sup> Floor, Mahatma Gandhi Road, S.O. Bangalore North, Bangalore, Karnataka -560 001	<b>Vs.</b>	DCIT, Circle -22(2) Delhi
<b>PAN: AABCI9992B</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

**S.A.No.385/Del/2024**

[Arising out of ITA No.4161/Del/2024]  
Assessment Year:2020-21

Software AG India Sales Private Limited No.1260, Mittal Tower, 14 <sup>th</sup> Floor, Mahatma Gandhi Road, S.O. Bangalore North, Bangalore, Karnataka -560 001	<b>Vs.</b>	DCIT, Circle -22(2) Delhi
<b>PAN: AABCI9992B</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri Nageshwar Rao, Adv. and Shri Parth, Adv.
Department by	Sh. Om Prakash, Sr. DR

Date of hearing	27.12.2024
Date of pronouncement	27.12.2024

## **ORDER**

### **PER AVDHESH KUMAR MISHRA, AM:**

When this Stay Application was called for hearing, the Ld. Counsel for the assessee took us through the grounds of appeal raised before DRP i.e. ground No.2. The Ld. Counsel for the assessee pointed out to the following ground No.2:-

*“The learned TPO/AO have erred, in law and in facts, by characterizing the software distribution activities performed by the Assessee as Software Development.”*

Ld. Counsel for the assessee pointed out from the DRP order wherein submissions of the assessee is recorded at page 3 & 4 of DRP which is quoted in italic and relevant portion is as under:-

*"It is pertinent to note that transactions in respect of software distribution and solutions, & maintenance services are interlinked as they are primarily related to sales of ARIS licenses in India. Since they are integrated and interrelated, the determination of ALP, with respect to the distribution and sales support activity, on an aggregate basis has been adopted by undertaking a benchmarking analysis for the primary international transaction i.e., Distribution activity. Accordingly, the Assessee has adopted a combined transaction approach for benchmarking the distribution and sales support activity/function.*

*In order to substantiate the 'Distributor' nature of the entity, the Assessee wishes to highlight that there are only 3 employees in total, employed in the organization. The sale of products happen through the distribution channels of the AEs. The software maintenance services, software support services, software training and other consultancy services are also contracted by the Assessee but performed by outsourcing to the AEs The role of the Assessee is to ensure products are sold regionally, in India, and after-sales services are performed for respective sale."*

Ld. Counsel for the assessee stated that assessee has specifically pointed out before DRP that is in the activity of distribution and not in the software development as re-characterized by DRP.

Further, he pointed out that there is no basis for this finding and he particularly referred to para 17 of DRP order which reads as under:-

*“17. Revenue of the assessee is from domestic transactions and international transactions. After TP study is rejected, it is contingent upon revenue to determine ALP of the international transactions. However, since accounts of the assessee are not reliable, therefore, ALP cannot be determined. For determination of ALP the basic accounts have to be reliable and correct. In absence of the same panel has no choice expect to determine the ALP at nil. In domestic segment also since expenses are not genuine and verifiable, no deduction on account of expenses can be allowable to the assessee.”*

He stated that the DRP has not given any basis for rejection of books of accounts and re characterisation of transaction and determining ALP accordingly. On this point, Ld. Counsel for the assessee stated that this appeal, in any case, has to be remanded back to the file of DRP. When this was put to Ld. SR. DR, he could not have confronted the above factual situation that DRP has not properly adjudicated the issue. As regards to balance issues, when confronted Ld. Counsel for the assessee stated that this is major issue and other issues also can be adjudicated afresh by DRP because the entire other issue are depending on main issues, i.e., re characterization of software development activity as against claimed by assessee as software distribution activity. When this was pointed out to Ld. DR whether we take up appeal itself, he agreed for the same and raised no objection setting aside the matter file to DRP.

3. We have heard the rival contention and gone through the facts of the case, we noted that the DRP has re-characterization the software distribution activity as adopted by assessee into software development activity. Actually, it seems that the assessee is engaged in the software distribution activity instead of software development activity. In any case on merits, we refraining ourselves from observing anything on merits of the case but it seems that the DRP has not given any basis while rejecting the assessee's transaction and adopting different ALP of the same. Hence, we, after consented by both parties, set aside this entire appeal back to the file of the DRP, and direct the DRP to re-decide the entire issues afresh after hearing the assessee. Accordingly, order of DRP and that of the AO is set aside and appeal of the assessee is remand to the file of the DRP.

4. Coming to the Stay Application of the assessee, as such the appeal of assessee is set aside to the DRP, the Stay Application has been dismissed as infructuous.

5. In the result, the appeal in ITA No.4161/Del/2024 is set aside to DRP and allowed for statistical purposes. Consequently, Stay Application is dismissed as in fructuous.

***Order pronounced in the open court on 27 December, 2024***

***Sd/-***  
**(MAHAVIR SINGH)**  
**VICE PRESIDENT**

***Sd/-***  
**(AVDRESH KUMAR MISHRA)**  
**ACCOUNTANT MEMBER**

Dated:27 December, 2024.

PK/Sps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi