

आयकर अपीलीय न्यायाधिकरण न्यायपीठ, मुंबई।
IN THE INCOME-TAX APPELLATE TRIBUNAL “K” BENCH,
MUMBAI
BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 3581/MUM/2015
(निर्धारण वर्ष / Assessment Year: 2009-10)

M/s. Nielsen (India) Private Limited (formerly known as ACNielsen ORG-MARG Private Limited) 6 th Floor, Block C, Godrej IT Park, 02, Godrej Business District, LBS Marg, Phirojshanagar, Vikhroli (W), Mumbai 400079	v/s. बनाम	Deputy Commissioner of Income Tax Range-6(1), Mumbai Aaykar Bhavan, Mumbai 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACM9279L		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

निर्धारिती की ओर से /Assessee by:	Shri Paras S. Savla
राजस्व की ओर से /Revenue by:	Ms. Neena Jeph, CIT DR

सुनवाई की तारीख / Date of Hearing	07.07.2025
घोषणा की तारीख/Date of Pronouncement	31.07.2025

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Commissioner of Income Tax, Appeals-57, Mumbai [Ld. CIT(A)], 31.05.2013 passed u/s. 250 of the Income Tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year 2009-10.

2. The assessee has raised the following grounds in these appeals.

“1 Transfer Pricing Adjustment

Payment of GSA charges-Rs. 181,401,210

1.1 The learned CIT(A) ought to have appreciated that the international transactions with Associated Enterprises ('AEs) are at arm's length and hence disallowance for Payment of General Service Agreement ('GSA') fees should be deleted.

1.2 The learned AO/ CIT(A) failed to appreciate that the existence of a inter group agreement, cost allocation report and maintenance of a contemporaneous documentation provide good supporting to demonstrate arm's length nature of the service charges.

1.3 The learned AO/ CIT(A) also failed to appreciate that the appellant has maintained all relevant documents, correspondence, back-up calculations including invoices/ debit notes to demonstrate that services were actually received and scientific allocation keys were used.

1.4 The learned AO/ CIT(A) failed to appreciate that the Service charges do not include any costs towards "Stewardship" or "Shareholder" activity.

1.5 The learned AO/ CIT(A) failed to appreciate the documents submitted by appellant evidencing the rendering of services by AE.

1.6 The learned AO/ CIT(A) ought to have accepted the Benchmarking exercise conducted by the appellant, appellant, using Transaction Net Margin Method ("TNMM") 1.6 as the most appropriate method.

Addition in case of Provision of BPO Services - Rs. 3,85,43,801

1.7 The learned AO/ CIT(A) failed to appreciate that the services provided are in the nature of BPO services and not in the nature of KPO services.

1.8 The learned AO/ CIT(A) failed to appreciate that the Provision of BPO Services by Appellant are adequately remunerated and hence the adjustment needs to be deleted.

1.9. The learned AO/CIT(A) ought to have considered the scientific benchmarking analysis of the appellant, using internal TNMM

1.10 The learned AO/ CIT(A) ought to have appreciated that the appellant's functional profile is of low risk service provider and not a high risk service provider.

1.11 The learned AO/ CIT(A) ought to have appreciated that transfer pricing is an anti-avoidance provision and in the present case both EUREKA and RRC divisions are registered STPI units and there is no intention of appellant to shift the profits.

Without prejudice to the appellant's contention that benchmarking analysis as per transfer pricing document needs to be considered:-

1.12 The learned AO/ CIT(A) ought to have appreciated that the comparables proposed are not functionally comparable to the appellant.

1.13 The learned AO/ CIT(A) should have considered the multiple year data of the comparable.

1.14 The learned AO's/ CIT(A)'s approach of allocating cost based on revenue is not justified.

1.15 The learned CIT(A) erred in not considering the additional external benchmarking submitted by the assessee during the course of the hearing. The learned CIT(A) also erred in not providing adequate reasoning for not considering the external benchmarking conducted by the assessee.

2. Direct Tax

Payment to Employees State Insurance Corporation of Rs. 5,507,803

2.1 The learned CIT(A) erred in confirming the disallowance made by the learned assessing officer (learned AO) with respect to the contribution made towards Employees State General Insurance Corporation (ESIC) amounting to Rs. 5,507,803 under section 43B of the Act.

2.2 Further, the learned CIT(A) erred in observing that the facts of the appellant's case for the year under consideration are similar to the facts of the appellant's own case for AY 2008-09.

Interest on TDS of Rs. 57,776

2.3 The learned CIT(A) erred in confirming the disallowance made by the learned AO on account of interest on TDS of Rs. 57,776 under section 40(a)(ii) of the Act

Provision for litigation of Rs. 4,191,863

2.4 The learned CIT(A) erred in confirming the disallowance made by the learned AO on account of provision for litigation of Rs. 4,191,863 on the alleged ground that the said provision is contingent in nature.

Buy Back of Shares amounting to Rs. 154,386,000

2.5 The learned CIT(A) erred in confirming learned AO's action of holding that the payment towards buyback of shares of Rs. 154,386,000 same ought to be treated as dividend under section 115-O of the Act. He erred in confirming the observation of the learned AO that the buyback of shares was a colourable device.

3. General

3.1. Each one of the above grounds of appeal is without prejudice to one another.

3.2. The appellant craves leave to add, alter or amend the grounds of appeal.”

3. At the outset, Ld. AR informed that the assessee has opted to settle the dispute under the Direct Tax Vivad Se Vishwas Scheme, 2024 (DTVSVS). Vide letter dated 03.03.2025, the assessee has placed on record, copies of declaration filed in Form 1 and Form 2 received from the income tax department. The assessee, therefore, seeks to withdraw the present appeal.

4. In view of the above facts, the appeal is dismissed as withdrawn.

Order pronounced in the open court on 31.07.2025.

Sd/-

ANIKESH BANERJEE

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 31.07.2025

दिव्या रमेश नांदगावकर/ स्टेनो

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

**सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,**

**सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण/
ITAT, Bench, Mumbai.**