

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI 'K' BENCH, MUMBAI**

[Coram: Pramod Kumar AM and Pawan Singh JM]

ITA No.1355/Mum/2013
Assessment Year: 2007-08

Dy. Commissioner of Income Tax - 2(1)**Appellant**
Mumbai.

Vs.

Deutsche Asset Management (Indi) Pvt. Ltd.**Respondent**
222, Kodak House,
Dr. D.N. Road,
Fort, Mumbai.
[PAN: AABCD 5226 D]

Appearances by:

N. Sathya Moorthy, for the appellant
Niraj Sheth, for the respondent

Date of concluding the hearing : January 6th, 2016
Date of pronouncing the order : February 29th, 2016

O R D E R

Per Pramod Kumar AM:

By way of this appeal, the Assessing Officer has challenged correctness of the order dated 17th December 2012, passed by the learned CIT(A) in the matter of assessment under section 143(3) r.w.s. 92CA(3) of the Income Tax Act, 1961 ('the Act' hereinafter) for the Assessment Year 2007-08.

2. Grievances raised by the appellant are as follows:-

"On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in allowing relief to the assessee to the extent impugned in the grounds enumerated below :

1. *The order of the CIT(A) is opposed to law and facts of the case.*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate that the cost allocation mechanism has not been explained by the assessee in respect of determination of arm's length value of cost of Rs.57,90,922/- allocated by the associate enterprise i.e. Deutsche Bank AG India Branch (DB India) for usage of its I.T. Infrastructure.*

3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the adjustment made to the Arm's Length price when the basis of allocation has not been established by the assessee during the assessment or appellate proceedings".*

4. *For these and other grounds that may be urged at the time of hearing, the decision of the CIT(A) may be set aside and that of the Assessing Officer restored."*

3. Briefly stated, the relevant material facts are like this. The assessee before us is engaged in the business of providing asset management services. During the course of this business, it has entered into a number of international transactions with its associated enterprises. One of these international transactions is payment of Rs.57,90,922/-, towards cost allocation for Informational Technology Infrastructure to its associated enterprises, namely Deutsche Bank AG India branch. The matter, inter alia, for ascertainment of arm's length price was referred to the Transfer Pricing Officer. In the absence of complete details but the nature of services and the method of allocating the costs, the Transfer Pricing Officer held the arm's length price to be 'nil'. However, when the matter travelled in appeal before the learned CIT(A), learned CIT(A) reversed the action of the Transfer Pricing Officer and concluded that the arm's length price of 'Cost Allocation for IT Infrastructure' was indeed Rs.57,90,922/- i.e. the price at which the transaction was entered into. His line of reasoning was as follows :-

"5.4 I have considered the facts of the case and submissions of the appellant as against the observations/findings of the AO/TPO in their order u/s. 143(3) r.w.s. 144C/92CA(3) of the I.T. Act. The submissions and contentions raised by the appellant as against their grounds of appeal are being discussed and decided as under :

- i. *It is the fact of the case that appellant has entered into an agreement with DB India who, provides the intercompany services to the appellant.*
- ii. *Further the appellant has submitted copy of agreement and invoice raised by the DB India to the TPO which is even mentioned by the TPO in his order.*
- iii. *It is further the submission of the appellant that it has submitted its Detailed submissions to the TPO on 9 September 2010.*
- iv. *Further the TPO for arriving at the NIL arm's length price of such services has only based his conclusion on the observation that the appellant has not been able to show as to what services were actually rendered by the AE for which payment has been made. In this regard it is mentioned that the services to be rendered would be clearly mentioned in the agreement and the cost allocation mechanism has been explained by the appellant and has been mentioned here in above at para 5.3.*
- v. *Further in the facts of the case such payments are made to the DB India which is taxed in India and as such the amount so paid in any case gets taxed in India.*
- vi. *Taking into account all the aforesaid facts and circumstances of the case and in view that the TPO has neither conducted any in depth analysis nor has positively arrived at that there was no services provided by the DB India to the appellant and accordingly the conclusion arrived at by the TPO is not found to be sustainable."*

4. The Assessing Officer is aggrieved of the relief so granted by the learned CIT(A) and is in appeal before us.

5. Having heard the rival contentions and having perused the material on record, we find ourselves to be in considered agreement with well reasoned conclusions arrived at by the learned CIT(A). The agreement, under which the aforesaid payment was made, though referred to was simply brushed aside by the Transfer Pricing Officer. A copy of the said agreement and cost allocation method was placed before us as well. In any event, the same arrangement has been accepted to be at arm's length price for the assessment years 2006-07, 2008-09, 2009-10, 2010-11 and 2011-12. Copies of order passed by the Transfer Pricing Officer for all these years were placed before us,

and we find that the same transaction is held to be at an arm's length in these assessment years. It is only for the present assessment year that the ALP adjustment has been made, even though admittedly there is no change in the facts and circumstances of the case or in the method of allocating costs. Such a deviation from consistently accepted position in the case, and that too without any distinguishing features vis-à-vis facts of the other assessment years, cannot meet any judicial approval.

6. In view of the above discussions, as also bearing in mind entirety of the case, we approve the conclusions arrived at by the learned CIT(A) and decline to interfere in the matter.

7. In the result, the appeal is dismissed. Pronounced in the open court today 29th day of February, 2016.

Sd/-

Pawan Singh
(Judicial Member)

Sd/-

Pramod Kumar
(Accountant Member)

Dated: the 29th day of February, 2016.

PBN/*

Copies to:	(1)	The appellant	(2)	The respondent
	(3)	CIT	(4)	CIT(A)
	(5)	DR	(6)	Guard File

By order

Dy./Assistant Registrar
Income Tax Appellate Tribunal
Mumbai Benches, Mumbai