

IN THE INCOME TAX APPELLATE TRIBUNAL
“L” Bench, Mumbai
Before S/Shri B.R. Baskaran (AM) & Ralal Negi (JM)

I.T.A. No. 1166/Mum/2016
(Assessment Year 2011-12)

Cable Wireless (India) Limited Indian Branch 9 th Floor Tower B Global Technology Park Marathahalli Outer Ring Road Devarabeesanahalli Village Varthur Hobli Bangalore-560 103. (Appellant)	Vs.	DCIT(International Taxation) Range 2(1)(1) 1 st Floor Room No. 114 Scindia House N.M. Marg Mumbai-400 038. (Respondent)
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PAN No. AAACC6133F

Assessee by	Shri Ajit Kumar Jain & Ms. Radhika Thakkar
Department by	Shri J. Chauhan
Date of Hearing	10.5.2016
Date of Pronouncement	08.6.2016

ORDER

Per B.R. Baskaran, AM :-

The appeal filed by the assessee is directed against the order dated 21.12.2015 passed by the Assessing Officer u/s 144C(13) r.w.s. 143(3) in conformity with the directions given by the DRP. Following issues are urged in this appeal:-

- (a) Disallowance of 30% of “Common expenses” reimbursed by the assessee to its group concern.
- (b) Assessment of Rental and circuit charges incurred by the assessee on behalf of its group concern.

2. The facts relating to the above said issues are stated in brief. The assessee is a foreign company incorporated in United Kingdom. It has opened a branch office in India. It provides telecommunication networking services

which includes network design and management, project management and implementation, network management, providing lease circuit and trading of equipment and maintenance.

3. The first issue urged by the assessee relates to adhoc disallowance of 30% of expenses claimed by the assessee. The assessee had reimbursed a sum of Rs.1.59 crores to its sister concern named M/s Cable & Wireless Networks India Private Limited (CWNIPIL) and claimed the same as deduction. It was explained that the certain administrative functions pertaining to the assessee have been carried out by CWNIPIL and the expenses related to the same have been divided between the assessee and the above said company. The AO has observed that the assessee has not provided any rational basis of allocation of common expenses and accordingly disallowed the claim. Accordingly he disallowed 30% of the amount claimed by the assessee on adhoc basis. The Ld CIT(A) noticed that the assessee, in addition to the claim of reimbursement of common expenses, has also claimed a sum of Rs.30.21 crores. The DRP further observed that the assessee has not furnished financial statements of the group company in order to show that the same was not a loss making company. Accordingly, on a conspectus of the matter, the Ld DRP confirmed the disallowance.

4. The relevant observations made by Ld DRP in respect of this issue are extracted below:-

“3.3 We have seen the basis of allocations furnished. The basis of allocation is said to be number of employees of each company. Number of employees of the assessee company is 335 in April, 2010 and increased gradually to 430 in March, 2011. The expenses in question are the employee cost including salary leave encashment and gratuity of the employees of the group stated to be hired by another group company CWNIPIL and employee expenses are said to be allocated on the basis of number of employees in each company every month. Normally, in absence of any tangible material to the contrary, such basis of allocation of employee cost cannot be faulted.

3.4 However we find that total reimbursement of such cost is Rs.

1,59,16,201/- but the assessee has also debited similar expenses in Schedule 13 of the accounts Rs.30,21,73,000/-. It has not been explained if all the employees of group are on the pay-roll of another group company and employee how additional salary cost to exceeding Rs.30.22 Crores is debited in the accounts. The assessee has also not produced the copy of accounts of the group companies to show that the other group company is not a loss making company, and that no tax has been avoided by resorting to such reimbursement of expenses.

3.5 In any case is having its own pay roll of employees. Therefore, it is not explained, why additional employee cost has been reimbursed. Considering the facts in totality the disallowance made by the AO is hereby upheld and the objection is rejected.”

5. We have heard rival contentions on this issue. A careful perusal of the orders passed by the tax authorities would show that they have made the adhoc disallowance mainly for want of particulars, i.e., the details furnished by the assessee were not considered to be sufficient by them. There should not be any dispute that the initial onus to prove the claim rests upon the assessee. It is noticed that the assessee did not furnish the basis of allocation of expenses before the AO and hence he has made the adhoc disallowance. The basis of allocation was furnished by the assessee before the Ld DRP. However, the DRP has taken the view that the assessee has not substantiated the reimbursement, when the assessee itself has incurred a sum of Rs.30.21 crores towards employee cost. These observations show that the claim made by the assessee has not been properly explained by the assessee to the satisfaction of the tax authorities. Under these set of facts, in the interest of natural justice, we are of the view that the assessee should be provided with one more opportunity to explain the claim made by it. Accordingly, we restore this issue to the file of the DRP/AO for considering the same afresh.

6. The next issue relates to assessment of rental and circuit charges incurred by the assessee on behalf of its group company. The AO noticed that the assessee had received a sum of Rs.2.92 crores as reimbursement from two of its sister concerns named M/s Cable & Wireless UK and Cable & Wireless Worldwide Pte Ltd. According to the assessee, it paid rental and circuit

charges on behalf the above said group companies and the same was received back from them as reimbursements. Since these transactions do not pertain to the assessee, they were not routed through the Profit and loss account also. These transactions were disclosed in the Notes to the financial statements as related party transactions. The AO took the view that the assessee has procured Circuit services and in turn provided the communication facilities to its group concerns. Accordingly he took the view that the money received by the assessee as reimbursements should be assessed as Royalty/ Fee for technical services. The Ld DRP noticed that the telecom companies have raised invoices upon the assessee only. Accordingly, the DRP endorsed the view taken by the AO that the assessee has taken services of Telecom companies in India for providing Communication network called International Private Leased Circuit (IPLC) and the payments were received by it towards those services only. Accordingly, it upheld the order of the AO by placing reliance on the decision rendered by Hon'ble Madras High Court in the case of Varizon Communication Singapore Pte Ltd (361 ITR 575), wherein the Hon'ble Madras High Court has held that the payment made for IPLC charges is taxable as royalty. The Ld DRP also referred to the decision rendered by AAR in the case of M/s Cables & Wireless Network India Pvt Ltd. (315 ITR 72). For the sake of convenience, we extract below the relevant observations made by Ld DRP on this issue:-

4.1 We have considered the facts of the case and the submissions made. We have also seen the 3rd party invoices as furnished on sample basis. Invoices are from Tata Communications and raised on the assessee. Similar invoices from Reliance Communications are also furnished, and it has been explained that actual cost paid to Communications Services providers has been recovered. It is also argued that the transactions have already been examined by the TIO and no adjustment has been made. The assessee has argued that no services has been provided to the group companies and only the costs has been recovered on actual basis and therefore this cannot be re-characterize as Royalty/FTS and assessed in the hands of the assessee as income. The assessee has also placed/ reliance on WNS Global Services (UK) Ltd t2013i 32 taxman. Corn 54 (Bombay).

4.2 We have considered the facts of the case and the submission made. However, we find that the issue involved in this case is not cost reimbursement simplicitor as argued. It is a case where the assessee has taken the services of Telecom companies in India for communication network called international Private Leased Circuit (IPLC) and the payment received is JPLC charges. Therefore on facts, this case cannot be said to be covered by the Bombay High Court judgment in the case of WNS Global Services (UK) Limited cited by the assessee

4.3 On the facts of the case, we find that this case is covered by the Judgment of Madras High Court in this case of Varizon Communication Singapore Pte Limited [361 ITO 0575 (Mad.)]. Madras High Court in this case have held that payment made for IPLC charges is taxable as royalty as per Article-12 of Singapore Treaty. Madras High Court in the case have inter-alia also considered the AAR ruling in case of group company of the assessee M/s Cable & Wireless Network India Pvt. Limited (20069) [315 ITR 721, while arriving at the decision.

4.4 Respectfully following the order of Madras High Court in the case of Verizon Communication supra, the order of the AO is hereby upheld and the objections are rejected.

7. We heard the parties on this issue and perused the record. According to Ld A.R, there was a specific understanding between the assessee, its group concerns referred above and the Telecom companies that the Telecom companies shall raise their bills upon the assessee company, even though their services were utilized by the group concerns, referred above. Accordingly, the assessee has settled those bills on behalf of the group concerns and got reimbursement of the same. The Ld A.R submitted that the assessee is not required to avail circuit facilities in respect of services rendered by it and hence the observation made by the tax authorities that it has procured circuit facilities and then provided the services to its group concerns is wrong. When a specific query was put to Ld A.R as to whether there was any written document to support his claims, he submitted that he would file the same within two or three days.

8. However, we notice that the assessee has not furnished any document after the conclusion of hearing. The main contention of the assessee is that

there was a mere arrangement between the telecom companies and the assessee, as per which the bill for rent and circuit charges utilized by the group companies shall be raised upon the assessee. We notice that the above said services have been availed from Tata Telecom and Reliance Telecom, both are reputed public limited companies. Normally the bill shall be raised upon the person who has availed their services and if it is required to be raised upon any other person other than the person availing the services, then the telecom companies shall do it by getting necessary documents in that regard.

9. According to Ld A.R, the nature of services provided by the assessee does not require use of Circuit facilities provided by telecom companies. Accordingly he attempted to substantiate the claim of the assessee that it has acted as pipeline between the telecom companies and group companies. However, the orders passed by tax authorities do not bring out exact nature of services provided by the assessee and hence we are unable to appreciate the above said contentions of the assessee. However, we are of the view that the said contentions of the Ld A.R may require proper examination, as it may bring out the factual aspects relating to this issue. We notice that the factual aspects have not been brought on record by the tax authorities. Accordingly, we are of the view that this issue also requires fresh examination. Accordingly, we set aside the order of Ld CIT(A) and restore the issue to the file of AO/DRP for fresh examination. The assessee is also directed to furnish all the information and explanations that may be called for by the AO/DRP.

10. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order has been pronounced in the Open Court on 8.6.2016.

Sd/-
(RAMLAL NEGI)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 8/6/2016

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai

PS