

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'I-1', NEW DELHI**

**Before Sh. N. K. Saini, AM and Smt. Beena Pillai, JM**

**ITA No. 716/Del/2012 : Asstt. Year : 2006-07**

Colt Technology Services India Pvt. Ltd., 103, Ashoka Esate, Barakhamba Road, New Delhi-110001	Vs	Income Tax Officer, Ward-3(4), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AACCC3512G</b>		

**Assessee by : Sh. Atul Mittal, CA  
Revenue by : Sh. Neeraj Kumar, Sr. DR**

<b>Date of Hearing : 19.10.2016</b>	<b>Date of Pronouncement : 19.10.2016</b>
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**ORDER**

**Per N. K. Saini, AM:**

This is an appeal by the assessee against the order dated 30.11.2009 of the AO passed u/s 143(3) r.w.s. 144C of the Income Tax Act, 1961 (hereinafter referred to as the Act).

2. Following grounds have been raised in this appeal:

*“1. The order passed by the Learned Income Tax Officer, Ward 3(4), New Delhi / (hereinafter referred to as 'Ld. AO') under section 143(3) read with section 144C of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') is bad in law and on the facts and circumstances of the case.*

2. *The reference made by the Ld. AO to the Learned Additional Commissioner of Income Tax, TPO-I(I), New Delhi (hereinafter referred to as 'Ld. TPO') suffers from jurisdictional error as the Ld. AO has not recorded any reason on the basis of which he reached the conclusion that it was necessary or expedient to refer the matter to the Ld. TPO.*

3. *The Ld. AO / Ld. TPO and the Learned Dispute Resolution Panel (hereinafter referred to as 'Ld. DRP') have erred in law as well as facts of the case in not accepting the Arm's Length Price (hereinafter referred to as 'ALP') determined by the appellant.*

4. *The Ld. AO / Ld. TPO / Ld. DRP have acted arbitrarily and passed the order in a mechanical manner without application of mind and without understanding the intricacies of the international transactions undertaken by the appellant.*

5. *The Ld. AO / Ld. TPO / Ld. DRP have erred in not appreciating that none of the conditions set out in section 92C(3) of the Act are satisfied in the case of the appellant.*

6. *The Ld. AO / Ld. TPO / Ld. DRP have erred in ignoring the fact that the appellant is entitled to deduction under section 10A of the Act on its profits from provision of Information Technology Enabled Services (hereinafter referred to as 'ITES') and Contract Software Development (hereinafter referred to as 'CSD') Services to overseas associated enterprises and there is no untoward motive of the appellant to derive any tax advantage by manipulating*

*transfer prices of International Transaction undertaken by it with its associated enterprises.*

*7. The Ld. AO / Ld. TPO / Ld. DRP have erred in not allowing the appellant any adjustment on account of difference in functional risk profile between the appellant and the independent comparables.*

*8. The Ld. AO / Ld. TPO / Ld. DRP have erred in determining the ALP on the basis of data for Financial Year ("FY") 2005-06 only and ignoring the data for two prior financial years i.e. FY 2003-04 and FY 2004-05.*

*9. The Ld. AO / Ld. TPO / Ld. DRP have erred in rejecting the analysis conducted by the appellant and conducting a fresh comparability analysis for determining the ALP.*

*10. The Ld. AO / Ld. TPO / Ld. DRP have erred in adopting inappropriate quantitative filters while carrying out a fresh comparability analysis.*

*11. The Ld. AO / Ld. TPO / Ld. DRP have erred in applying only a lower turnover filter and thereby accepting companies having very high turnover (as compared to the appellant) as functionally comparables, and ignoring the fact that such companies derive huge profit due to economies of scale and thus, are not comparable to the appellant.*

*12. The Ld. AO / Ld. TPO / Ld. DRP have erred in rejecting certain companies selected by the appellant as comparables in terms of functions performed, assets employed and risks assumed, and in accepting*

*certain companies which are not comparable to the appellant for determination of ALP.*

*13. The Ld. AO / Ld. TPO / Ld. DRP have erred in arbitrarily rejecting one one comparable i.e. VJIL Consulting Ltd. without providing reasonable opportunity of being heard.*

*14. The Ld. AO / Ld. TPO / Ld. DRP have erred in accepting companies with exceptionally high operating margins as comparables on an arbitrary basis.*

*15. The Ld. AO / Ld. TPO / Ld. DRP have erred in rejecting companies with low profits / losses on an arbitrary basis.*

*16. The Ld. AO / Ld. TPO / Ld. DRP have erred in not allowing the appellant any adjustment on account of differences in working capital between the appellant and the comparables.*

*17. The Ld. AO / Ld. TPO / Ld. DRP have erred in not allowing the appellant the benefit of  $\pm 5\%$  as provided under the proviso to section 92C(2) of the Act, even if the difference in the value of ALP and international transaction is more than  $\pm 5\%$  of the ALP.*

*18. The Ld. AO / Ld. TPO / Ld. DRP have erred in taking an inconsistent stand by not applying the wages / sales ratio filter to the ITES segment (as applied in the CSD segment) and thereby adopting an inconsistent stand between the ITES and CSD segments and applying this filter selectively only to the CSD segment.*

*19. The Ld. AO / Ld. TPO / Ld. DRP have erred in ignoring the judicial pronouncements relied upon by the appellant.*

*20. The Ld. AO has erred in initiating penalty proceedings under section 271(1)(c) of the Act.*

*21. The above grounds of appeals are independent and without prejudice to one another.*

*22. The appellant craves leave to add / withdraw / amend any ground of appeal at the time of hearing.”*

3. During the course of hearing the ld. Counsel for the assessee moved an application for adjournment stating therein as under:

*“Honorable Members,*

*This is in reference to the above mentioned subject.*

*The captioned appeal has been fixed for hearing on October 19, 2016. In this regard, we under the instructions of and on behalf of our client, M/s Colt Technology Services India Pvt. Ltd. (‘the appellant’) would like to submit that the appellant has initiated MAP proceedings for the A.Y. 2009-10 which is currently pending. Therefore, we request the Hon’ble Members to kindly grant us an adjournment in the captioned appeal. In this regard, we enclose herewith a letter received from UK competent authority confirming the filing of MAP for the A.Y. 2009-10.*

*We request the Hon’ble Members to kindly grant us an adjournment.*

*Inconvenience caused is highly regretted.*

*Thanking you and assuring you of our full co-operation at all the times.”*

*Yours sincerely,  
For Luthra & Luthra  
Law Offices  
Sd/-  
Atul Mittal*

4. From the contents of the aforesaid application, it is clear that the assessee had already filed an application for MAP proceedings. We do not see any valid ground for granting the adjournment, therefore, the said application is rejected. During the course of hearing, the ld. Counsel for the assessee again stated that an adjournment at least for 6 months may be given as the MAP proceedings are pending.

5. In his rival submissions the ld. DR submitted that when the assessee had already approached for MAP proceedings, this appeal of the assessee becomes infructuous. Therefore, it is to be dismissed.

6. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the assessee has

furnished a copy of the letter from HM Revenue & Customs i.e. the delegated competent authority, stating therein as under:

***“MUTUAL AGREEMENT PROCEDURE (MAP) UK: INDIA  
UK/India Double Taxation Agreement: Article 27***

***UK taxpayer: Colt Technology Services Group Ltd  
Indian taxpayer: Colt Technology Services India  
Private Ltd***

***Years ended 31 December 2005 - 31 December 2014***

*Thank you for your letter of 22 May 2014 in which you have requested assistance under Article 27 of the UK/India Double Taxation Convention in respect of transfer pricing adjustments made by the Indian Revenue Service for the financial years 2004/5 - 2009/10. I have already accepted the applications for the three years ended 31 December 2007 and can accept the application for the years ended 31 December 2008 - 31 December 2010 as in date for UK domestic law and that it has been accepted by HMRC. I note the application includes the financial years 2011 to 2013 where assessments have not yet been issued. I shall treat the application for those years as made on a protective basis as India will not yet have assessed those years.*

*I shall write to the Indian Competent Authority for their position paper.”*

*Yours sincerely,  
Sd/-*

*Mike Hogan  
Delegated Competent Authority*

7. From the above letter, it is clear that the assessee had already approached the competent authority for mutual agreement procedure (MAP). Therefore, we deem it appropriate

to set aside this case back to the file of the AO to take the appropriate action after the outcome of the MAP proceedings. In case the application of the assessee is not accepted than the assessee will be at liberty to approach the ITAT for deciding the issues on merit after filing an application for recalling the order as per law.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

(Order Pronounced in the Court on 19/10/2016)

**Sd/-**  
**(Beena Pillai)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 19/10/2016**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**