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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 266/2017**

PRINCIPAL COMMISSIONER OF  
INCOME TAX, DELHI – 2

..... Appellant

Through: Mr.Dileep Shivpuri, Sr. Standing  
Counsel with Mr.Sanjay Kumar, Advocate.

Versus

CPA GLOBAL SERVICES PRIVATE LIMITED ..... Respondent

Through: Mr.G.C.Srivastava, Advocate with  
Mr. Daksh S.Bhardwaj, Mr. Anubhav Jain,  
Advocates

**CORAM: JUSTICE S.MURALIDHAR  
JUSTICE CHANDER SHEKHAR**

**ORDER**  
**03.05.2017**

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**Dr. S. Muralidhar, J.:**

1. This is an appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (the Act) directed against an order dated 4<sup>th</sup> October, 2016 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No. 6814/Del/2015 for the Assessment Year ('AY') 2011-12.

2. The question sought to be urged by the Revenue concerns the validity of the direction issued by the ITAT in the impugned order to the Transfer Pricing Officer ('TPO') to exclude the reimbursement cost while calculating the operating cost for determining the Arm's Length Price ('ALP') of the international transaction involving the Assessee during the AY in question.

3. The Assessee is a wholly-owned subsidiary of CPA Mauritius Ltd. which

in turn is a subsidiary of CPA Jersey. It offers a comprehensive range of legal support services to its Associated Enterprises ('AEs') as well as to independent third party customers. During the AY in consideration, the Assessee earned a margin of 36.08% on cost.

4. The Assessee had undertaken the following international transactions during the AY in consideration:

(a) Provision of IT enabled services – TNMM was applied and the value of transaction was Rs. 120,569,328/-;

(b) Reimbursement of expenses to AEs – TNMM was used and the value of the transaction was Rs. 2,239,503/-;

(c) Reimbursement of expenses from AEs – CUP method was applied and the value of transaction was Rs. 138,837/-.

5. During the AY in consideration, the Assessee received from its AEs Rs. 13,67,95,724/- as 'cost recharge on account of spare capacity'. The Assessee did not route this amount to its profit and loss account as it was only a reimbursement. The stand of the TPO, on the other hand, was that the Assessee had not placed any evidence in support of the claim that the expenditure was towards maintenance of spare capacity at the instance of the AEs. The Dispute Resolution Panel ('DRP') held that the ALP of the receipts from the AEs should include all the costs and that the Assessee did not give sufficient reasons for excluding certain costs for the purposes of

computing the ALP.

6. An application for rectification was moved by the Assessee before the DRP under Section 154 of the Act but pending the said application, a draft assessment order was passed by the AO consistent with the decision of the DRP. The Assessee filed an appeal before the ITAT. The controversy before the ITAT concerned excluding from the operating cost, the cost that had been reimbursed by the AE.

7. It was demonstrated before the ITAT with reference to the agreement between the Assessee and the AE that there were two kinds of reimbursements. One was towards the cost of the service which had a mark-up and to that extent had been accounted for in working out the ALP in the transfer pricing study; the other was the reimbursement towards the cost of infrastructure on which there was no mark-up. It is this reimbursement towards the cost of infrastructure on which there was no mark-up that was sought to be excluded by the Assessee from the operating costs while working out the ALP.

8. In the impugned order in para 7, the ITAT notes as under:-

“7. We have heard the rival submissions and perused the relevant records. As far as the issue of reimbursement is considered, it is the submission of the assessee that these amounts were adjusted without any mark up. Having perused the relevant clauses of the agreement, we do find that this contention of the assessee is correct and there is no mark-up in the reimbursements. Even though these transactions are considered as international transactions for the purposes of transfer pricing, since there is no mark up on these reimbursements, it was the assessee’s

submission that these transactions are to be excluded for working out the operative margins. The assessee relied on the decision of the coordinate Hyderabad “B” Bench of the ITAT in *HSBC Electronic Data Processing India Ltd. v. ACIT* in ITA No.1624/Hyd./2010 for this proposition. After considering the rival submissions and following the principles laid down by the ITAT Delhi Branch in *DCIT Vs. Cheil Communications India P. Ltd. (2010 TII-60-ITAT-Del-TP)* by the Hyderabad Bench in *Four Soft Limited Vs. DCIT* in ITA No.1495/Hyd./2010 we are of the opinion that reimbursement costs should be excluded as they do not involve any functions to be performed so as to consider it for profitability purposes.”

9. Consequently, the ITAT directed the TPO to exclude the aforementioned reimbursement costs while working out the operating costs.

10. The central plank of the submission of Mr. Dileep Shivpuri, the learned Senior Standing Counsel for the Revenue is that the ITAT overlooked the binding precedent of this Court in *Commissioner of Income Tax-I v. Cushman and Wakefield (India) (P.) Ltd. (2014) 367 ITR 730 (Del)* where, in similar circumstances, this Court had agreed with the Revenue and remanded the matter to the TPO for re-determination of the transfer pricing adjustment.

11. This Court has examined carefully the aforementioned decision in *Commissioner of Income Tax-I v. Cushman and Wakefield (India) (P.) Ltd. (supra)*. The Court finds, to begin with, that the said case was an instance of reimbursement by the Indian entity i.e., the Assessee of the costs incurred by the AE whereas the situation in the present case is the converse. Secondly, and more importantly, in the said case there was no categorisation

of the reimbursement costs as cost of infrastructure and cost of services on which there was a mark-up. Ultimately, each case will have to turn on the peculiar facts considering the clauses of the agreement and the arrangement between the Indian entity and its AE. There can be no parallels drawn where the terms of the agreement would by themselves be different.

12. In the present case, as is evident from the passage extracted hereinbefore from the impugned order of the ITAT, after the examination of the agreement the ITAT came to a definite factual conclusion as regards reimbursement of the infrastructure costs of the Assessee by the AE without any mark up. Thus the decision has turned purely on facts.

13. Mr. Shivpuri then contended that the impugned order of the ITAT was perverse. When asked to point out if there is any pleading in the memorandum of appeal to the above effect, Mr. Shivpuri referred to Ground-D in which there is a general plea that the impugned order of the ITAT “is perverse and bad in law as it failed to consider the reasons provided for in the orders of Ld. TPO which were upheld by Ld. DRP while deciding the case.”

14. The ground of perversity ought not to be casually pleaded. It requires a detailed study of the entire record by the Appellant. It would have to plead with specificity in the memorandum of appeal in what manner there is perversity in the factual finding by the ITAT supported by the relevant document. There is neither such plea nor any reference to any particular document that can support such plea.

15. In the present case, for instance, the ITAT after examining the agreement between the Assessee and its AE has agreed with the Assessee that the reimbursement of the infrastructure cost has no mark-up. Unless there is a specific plea to the effect that the said factual finding is perverse, the Court cannot, at the instance of a general plea of perversity, entertain such a ground of appeal by the Revenue. In other words, such a plea must be made responsibly after studying the entire record of the case and averred with specificity in relation to the facts of the case. Also, it should be accompanied by a reference to the relevant document which formed part of the record of the case before the ITAT. The Revenue has done neither in the present appeal.

16. Consequently, the Court finds that no substantial question law arises from the impugned order of the ITAT. The appeal is, accordingly, dismissed.

**S.MURALIDHAR, J**

**CHANDER SHEKHAR, J**

**MAY 03, 2017**  
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