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

% *Date of decision: 15.03.2023*

+ **ITA 451/2022**

**PR. COMMISSIONER OF INCOME TAX-7, DELHI ..... Appellant**

Through: Mr Puneet Rai, Sr. Standing Counsel  
with Mr Ashvini Kumar & Ms  
Madhavi Shukla, Jr. Standing  
Counsel.

versus

**SPRINGER INDIA PVT. LTD. .... Respondent**

Through: Mr Himanshu S. Sinha & Mr Bhuwan  
Dhoopar, Advs.

**CORAM:**

**HON'BLE MR JUSTICE RAJIV SHAKDHER**

**HON'BLE MS JUSTICE TARA VITASTA GANJU**

**[Physical Hearing/Hybrid Hearing (as per request)]**

**RAJIV SHAKDHER, J.: (ORAL)**

1. This appeal is directed against order dated 28.08.2020 passed by the Income Tax Appellate Tribunal [in short, “the Tribunal”] concerning Assessment Year (AY) 2012-13.
2. The Tribunal passed the impugned order pursuant to a remand direction issued by this court in an appeal preferred by the respondent/assessee, which was numbered as ITA 1148/2017. This court *via* judgment dated 15.12.2017, as noted above, remanded the matter to the Tribunal.
3. To be noted, the Tribunal, in the first instance, had remanded the matter to the Transfer Pricing Officer (TPO), as to whether the “other method” would be the most appropriate method, as was contended by the respondent/assessee.

3.1 It is in this backdrop that the aforementioned impugned order came to be passed by the Tribunal.

4. It is important to bear in mind that the provision for Advance Pricing Agreement (APA) came to be inserted in the statute, with effect from AY 2013-14.

5. There is no dispute about the fact that the Central Board of Direct Taxes (CBDT) and the respondent/assessee had executed the APA on 06.08.2019.

5.1. The APA covers the period spanning between 2013-14 and 2021-22. We are also told (and concerning which, there is no dispute) the APA covers eighteen (18) transactions.

5.2. Out of the eighteen (18) transactions, was agreed that sixteen (16) transactions will be benchmarked by using the other method while the remaining two (2) transactions will be benchmarked by using Transaction Net Margin Method (TNMM) and Resale Price Method.

6. It is in this context that the appellant/revenue has approached this court by way of the instant appeal.

7. The argument advanced by Mr Puneet Rai, senior standing counsel, who appears on behalf of the appellant/revenue, is that the Tribunal has erred in law in directing that APA should form the basis for benchmarking, having regard to the fact that APA was brought onto the statute only in AY 2013-14.

8. In other words, insofar as the AY in issue is concerned, APA could not have been used as the basis for benchmarking.

9. On the other hand, Mr Himanshu Sinha, learned counsel, who appears on behalf of the respondent/assessee, says that before APA was brought onto

the statute, for the AY in issue, the assessee had benchmarked the transactions by using the other method.

9.1 Mr Sinha says that this is because the leeway to use the other method for benchmarking was brought onto the statute only in AY 2012-13.

9.2 Mr Sinha also clarifies (which is something that was not disputed) that for several years prior to the AY 2012-13, the respondent/assessee had been using TNMM for benchmarking its transactions.

9.3 Mr Sinha goes on to state that, all that the Tribunal has directed in the instant case, is to apply the principles which stand encapsulated in an agreement executed between the respondent/assessee and the CBDT.

9.4. It is Mr Sinha's submission that the respondent/assessee is, in a sense, a receptacle for data base which is used by entities located all over the world and therefore, the common cost and revenue need to be allocated to these entities, which are its subsidiaries and affiliates and number more than a hundred (100).

9.5. It is, therefore, Mr Sinha's submission that it makes perfect sense to benchmark the transactions, keeping in mind the principles captured in the APA, with the caveat put in place by the Tribunal, which is that the TPO needs to verify as to whether the Functions, Assets and Risks (FAR) is the same.

10. We have heard the learned counsel for the parties and have perused the record.

11. According to us, the approach adopted by the Tribunal is wholesome. A perusal of the impugned order shows that the Tribunal was conscious of the fact that the assessee could enter into the APA with CBDT only from AY 2013-14.

11.1 Thus, having regard to this limiting factor and given the complexity of the transaction which the respondent/assessee is involved in, the Tribunal thought it fit that the APA could be used to benchmark the transactions even for the AY in issue.

11.2 As correctly pointed out by Mr Sinha, this direction is ring-fenced with the caveat that the TPO will have to determine as to whether the FAR in the given AY is the same as those which are covered in the APA.

12. We may also note that the Tribunal has cited several judgments of various Benches of the Tribunal in adopting this approach. For the sake of convenience, the operative directions issued by the Tribunal which are contained in paragraph 17 and 18 of the impugned order, are set forth hereafter:

*“17. In light of the above, we find that the Tribunal, in a series of decisions, have consistently held that even if the year under dispute is not covered by APA, if the FAR is same, APA should be adopted for international transactions for the year under dispute. This view has been taken in the following cases:*

- 1. Honeywell Automation India Ltd 101 Taxmann.com 6 [Pune]*
- 2. Abicor Binzel Automation India Ltd  
ITA 2253 to 2255/Pune12014*
- 3. Bundy India ITA No. 7201 Ahd12017*
- 4. Celtic Technologies 109 Taxmann.com 334*
- 5. Ranbaxy Laboratories 68 ITR 322 [Delhi]*
- 6. Tieto I.T. Services ITA 1398/Pune12015*

*18. Accordingly, we direct TPO to consider the FAR of the year under consideration with FAR of the years in APA. The assessee is directed to produce all necessary documents in compliance with APA and the Assessing Officer/TPO is directed to decided the issue in light of APA in respect of international transactions in dispute in the present appeal and adopt the same methodology which has been directed to be adopted in the APA.”*

13. Given the foregoing, we are of the view that no error has been

committed by the Tribunal concerning either in the application of law or on facts.

14. According to us, no substantial question of law arises for our consideration.

15. The appeal is, accordingly, closed.

16. Parties will act based on the digitally signed copy of the order.

**RAJIV SHAKDHER, J**

**TARA VITASTA GANJU, J**

**MARCH 15, 2023/r**

*Click here to check corrigendum, if any*