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

\+ ITA 125/2022

ALCATEL LUCENT INDIA LTD .....Appellant

Through: Mr. Deepak Chopra, Mr. Ankul Goyal, Mr. Adwitya Grover, Advs.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX-1 .....Respondent

Through: Mr. Indruj Singh Rai, SSC with Mr. Sanjeev Menon, Mr. Rahul Singh, Mr. Anmol Jagga, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **01.08.2024**

1. This appeal is directed against the order of the **Income Tax Appellate Tribunal**[1] dated 16 August 2021 and raises the following questions of law for our consideration: -

> "I. Whether the Tribunal erred in not appreciating that in terms of the Rule 10B(1)(e) of Income-tax Rules, 1962 while applying the TNMM method and determining the relevant cost base no TP addition can be made without such cost base being effected?
>
> II. Whether the Tribunal erred in remanding the matter back to the DRP without appreciating that the genuineness of the transaction was not in question before the TPO or DRP and as such the remand on the premise for producing invoices was wholly erroneous?
>
> III. Whether the Tribunal erred in not appreciating that when the international transaction of purchase of capital good was already

[1] Tribunal

benchmarked in the CSD segment no occasion arose to benchmark it separately?

IV. Whether the order of the Tribunal is erroneous and perverse in as much as the Tribunal erred in not appreciating that no income accrued to the Appellant from the international transaction of purchase of capital goods and thus there was no occasion for determining arm's length price of the said transaction in terms of section 92(1) of the Income-tax Act, 1961?

V. Whether the order of the Tribunal is erroneous and perverse in as much as the Tribunal erred in remanding an issue which has been held to be revenue neutral by the co-ordinate benches of the tribunal without distinguishing such decisions?

VI. Whether the Tribunal violated the principles of 'judicial discipline' by not following the order passed by co-ordinate benches of Tribunal on the issue of benchmarking the transaction of purchase of capital goods from AEs?

VII. Whether the Order of Hon'ble ITAT is perverse in the facts and circumstances of the case?"

2. Before us, Mr. Chopra, learned counsel appearing for the appellant has principally pressed question no. I to III. We note that while dealing with the aspects emanating from the aforesaid, the Tribunal took note of the contention which was addressed on behalf of the appellant and observed in Para 6 as follows: -

"6. From the above, the following points emerged,

- The Assessing Officer made adjustment by denying the 8% markup charged by the AE on the supply of capital goods and disallowed the depreciation also to that extent.
- The assessee contested that the purchase of capital goods cannot be benchmarked separately. The main argument was the depreciation do form a component of operating cost and hence cannot be given separate treatment.
- It was argued that the ALP of the international transaction pertaining to purchase of capital goods from AE has been determined along with other transaction covered CSD segment of the assessee under combined transaction approach.

- The ld. DRP held that the assessee failed to produce evidences to substantiate the purchases and no evidences have been filed before the Panel or before the TPO.
- The assessee at ground nos. 3.1 & 3.2 submitted that adequate opportunity has not been given before finalizing the order by the TPO."

3. As would be manifest from the principal contentions which were urged before the Tribunal, it was the consistent stand of the appellants that since the purchase of capital goods had already been taken into consideration while benchmarking the transactions pertaining to the CSD Segment as a whole, there was no occasion for any separate benchmarking exercise being undertaken. It was also pointed out to us from the Transfer Pricing Report that the depreciation of fixed assets as well as payments made to the group employees formed part of the cost base and had been duly benchmarked.

4. The Tribunal, however, sought to rest its opinion on the decision rendered by a Coordinate Bench in **Honda Motorcycle & Scooters India Pvt. Ltd. vs. ACIT**[2] and where the following observations were made: -

> "A bare reading of section 92C(1) brings out that: (i) the ALP is required to be determined of '*an*' international transaction; and (ii) the ALP of such an international transaction is to be determined by applying the most appropriate method out of the prescribed methods which, *inter alia*, include CUP and TNMM. The first ingredient is that the ALP should be determined in relation to *an* international transaction. It is discernible from the definition of international transaction given in section 92B that it refers to 'a transaction' between two or more associated enterprises. The term 'transaction' has been defined in section 92F(v) and also in rule 10A(*d*). <u>The rule defines the term 'transaction' to include: 'a number of closely linked transactions. 'Thus, where the transactions are not closely linked, then their ALP should be determined separately for each international transaction</u> and such

[2] 2015 SCC OnLine ITAT 2996

determination of ALP for 'an' international transaction as per section 92C(1) is done as per the most appropriate method, being one of the methods given in the provision. To put it simply, each international transaction is viewed separately and independent of other international transactions for determining its ALP by using one of the given methods, which is the most appropriate method having regard to the nature of transaction or class of transaction or functions performed, etc. It is impermissible to combine all the international transactions for determining their ALP in a unified manner when such transactions are diverse in nature".

5. However, and as is manifest from the principles which were enunciated in that decision, the Tribunal in *Honda Motorcycle* was principally concerned with transactions which were not closely linked. It was in the aforesaid context that the aforenoted observations had come to be rendered.

6. The Tribunal ultimately came to the following conclusion: -

> "8. Since, the assessee has been denied proper opportunity, the TPO and the ld. DRP did not have the benefit of examining the purchase of capital goods, the issue of allowability or not of the markup of 8% charged by the AE has not been determined as per the approved methods, we hereby deem it fit to remand the matter to the file of the ld. DRP to determine the ALP as per the approved methods after giving an opportunity to the assessee to make their submissions. The assessee is also hereby directed of the ld. DRP in furnishing the complete details and substantiating their case."

7. We note that it was never the case of the assessee that it had been denied an opportunity either by the **Transfer Pricing Officer**[3] or the **Dispute Resolution Panel**[4]. Bearing in mind the disclosures which were contained in the Transfer Pricing Report and the consistent stand which was taken by the appellant in respect of the purchase of capital goods and depreciation having already been factored in, in our consideration opinion, there was no justification for the matter being remitted to the DRP.

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[3] TPO
[4] DRP

8. We, accordingly, allow the instant appeal and set aside the order of the Tribunal insofar as Ground Nos. 3 to 3.9 of the appeal before the Tribunal are concerned. The matter shall consequently stand placed before the Tribunal for consideration afresh.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 01, 2024/neha