



2025:DHC:8235-DB



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

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Date of Decision : 17.09.2025+ **ITA 306/2025****THE PR. COMMISSIONER OF INCOME TAX -1**

.....Appellant

Through: Mr. Ruchir Bhatia SSC with Mr.
Anant Mann JSC and Mr. Abhishek
Anand, Adv.

versus

FIS GLOBAL BUSINESS SOLUTIONS INDIA PVT. LTD.

.....Respondent

Through: Mr. Vishal Kalra, Mr. S. S. Tomar
and Mr. Anil Kumar, Adv.

CORAM:**HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MR. JUSTICE VINOD KUMAR****V. KAMESWAR RAO , J. (ORAL)****CM APPL. 50288/2025 (Delay)**

1. For the reasons stated in the application, the delay of 1090 days in re-filing the appeal is condoned.
2. The application stands disposed of.

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3. This appeal lays a challenge to an order 18.06.2020 passed by the



Income Tax Appellate Tribunal (ITAT), whereby it has decided four appeals, two filed by the Assessee/respondent and two filed by Revenue/Appellant. The relevant Assessment Year is 2010-11. All the four appeals have been filed by the parties herein challenging the composite impugned order dated 12.10.2018 passed by the Commissioner of Income Tax (Appeals)-43 [CIT(A)], New Delhi dismissing the appeals against the orders dated 30.04.2014 and 04.02.2016 passed by the Assessing Officer (AO) under Section 143(3) read with 144 C and order under Section 154 read with Section 143(3) of the Income Tax Act, 1961 (Act) respectively.

4. The appeal before the ITAT filed by the respondent/assessee was to set aside the impugned order 12.10.2018 of the CIT(A) challenging the orders passed by the Transfer Pricing Officer(TPO)/Assessing Officer qua the Assessment Year 2010-11. The grounds urged by the respondent/assessee before the ITAT have been noted at paragraph 2 of the impugned order. Similarly the grounds of appeal before the ITAT by the Revenue/appellant are at paragraph 3.

5. The respondent/assessee/ FIS Global Business Solutions India Private Limited (formerly eFunds International 'India Private Limited), was incorporated in July 1997 and operates as a software development centre for the group companies and a dedicated provider of Business Processing Outsourcing (BPO) services to its Associate Enterprises (AE). The assessee operates the following business division;-

I. Software Development Centre (SDC), Chennai : The



company has a software development centre located in Chennai which provides software product development and related support services to its AEs.

- II. Shared Services Centres (SSC), Gurgaon : The SSC is engaged in the provision of financial shared services and data entry services (FSS). This centre acts as a dedicated finance and accounts business process outsourcing centre for the customers of its associated enterprises.

6. It is noted by the ITAT that during the Assessment Year, the Assessee entered into International transaction with the AE in the following manner :

“6. During the year under assessment, the taxpayer entered into international transaction with its AE as under :-

S. No.	International Transaction	Amount (in Rs.)
1	Software Development Services	684,304,076
2	Business Process management and call centre services	1,579,457,268
3	Interest received (Loan with interest 6.25%)	41,392,674
4	Interest received (loan with interest 6.00%)	23,796,074

7. The Assessee in order to benchmark its international transactions qua the "Software Development Services" (SDS) adopted Transactional Net Margin Method (TNMM) with Operating Profit/Operating Cost (OP/OC) as Profit Level Indicator (PLI) as the Most Appropriate Method (MAM) and chose 11 comparables and computed average margin by using multiple years data at 13.94% as against its own margin of 15.64% and found its



transaction to be at arm's length. However, the TPO accepted the method of TNMM with OP/OC as PLI adopted by the assessee after applying various filters and after calling for objections of the assessee, finally selected 13 comparables with average of 27.55% and computed the margin of the taxpayer at 9.75% and consequently proposed adjustment at Rs.5,47,40,801/-.

8. It is noted that in order to benchmark the international transactions with regard to ITES, the assessee again applied TNMM with OP/OC as the PLI as MAM and chose 10 comparables and computed margin at 13.94% as against the assessee's own margin of 15.64% and found its transactions to be at arm's length. The TPO after applying various filters accepted the method of TNMM with OP/OC as PLI adopted by the assessee and chose 9 comparables with margin of 32.07% and computed the margin of the taxpayer at 18.57% and thereby proposed adjustment at Rs. 17,80,96,798/-.

9. The TPO also proposed an adjustment on account of interest to be received by the assessee on loan advanced to the AE at the rate of 14.88% per annum at Rs.7,85,01,217/-.

10. The matter was taken before the CIT (A), which partly allowed the same by excluding five comparables and thereby reduced the adjustment from Rs.17,80,96,798/- to Rs.14,93,29,567/- in the SDC segment. Further, in the ITES segment, it reduced the adjustment from Rs.54,74,08,012/- to Rs.4,04,57,154/- by rejecting two comparables and also deleted the addition of Rs.7,85,01,217/- and Rs.49,15,912/- on account of interest receivables and loans advanced to its AE and on account of foreign travel expenses.



11. Consequently, TPO/AO after giving effect to the order passed by the CIT (A) made the adjustment of Rs.14,93,29,567/- and Rs.4,04,57,154/-.

12. Feeling aggrieved by the order, the parties herein had filed cross appeals before the ITAT. It is noted that the assessee here had not pressed the grounds regarding transfer pricing adjustment made by the AO/TPO/CIT (A) and sought relief on the basis of Advance Pricing Agreement (AP Agreement) entered into with Central Board of Direct Taxes (CBDT) on 29.08.2016 for five consecutive years from FY 2014-15 to FY 2018-19 (referred to as 'APA years') and four consecutive years from FY 2010-11 to FY 2013-14 (referred to as 'Rollback years').

13. The contention of the assessee before the ITAT was that AO/TPO/CIT (A) has not taken cognisance of the fact that the taxpayer has entered into AP Agreement with the CBDT for identical international transactions thus has not applied the terms of the AP Agreement to international transactions with its AE despite the fact that there is no change in the Functions Performed, Assets Employed, and Risks Assumed (FAR) of the taxpayer in the relevant year vis-à-vis years covered under the AP Agreement.

14. We note that the ITAT took into consideration the Terms of Agreement covered under the AP Agreement transactions, including the arm's length price. The submission was that the AP Agreement is duly applicable to the international transactions entered into between the taxpayer and its AE during the year under assessment as there is no change in the FAR of the taxpayer during the year under assessment. Reference was made by the ITAT to the judgment of a Coordinate Bench of this Court in **PCIT v.**



Ameriprise India Pvt. Ltd. ITA No.206/2016, and Spencer Staurt (India) Pvt. Ltd. v. ACIT ITA Nos. 7117/Mum/2012, 1680/Mum/2014, 922/Mum/2015 and 1832/Mum/2016 and 31 India Pvt. Ltd. v. DCIT ITA No. 581/Mum/2015 both rendered by co-ordinate Benches of the ITAT.

15. We note that the representatives on behalf of the Revenue Department, did not dispute the fact that there is no change in the FAR of the taxpayer in the year under assessment vis-à-vis years covered under the AP Agreement. They did not also dispute the consolidated margin of 19.26% computed by the taxpayer as per the terms of the AP Agreement, extracted by the ITAT and had contended that since AP Agreement has been entered into between the taxpayer and the CBDT for specific years, the same cannot be applied to the years under assessment. It was also contended that Arm's Length Price rate agreed upon in the AP Agreement for earlier and subsequent years cannot overrule the statutory determination of Arm's Length Price made by the TPO as per the method prescribed under the law.

16. Suffice to state that the ITAT in paragraphs 22 to 27 stated as under :

“22. We are of the considered view that contention raised by the Id. DR is not tenable for the reason that when undisputedly there is no change in the FAR of the taxpayer in the year under assessment vis-a-vis years covered under APA and consolidated margin (OP/OC) computed as per APA at 19.26% is much more than the consolidated margin agreed upon between the taxpayer and the CBDT for the years covered under APA at 16.60% for both the segments, APA though not specifically applicable to the year under assessment, is having persuasive value to the dispute between the parties for other years.

23. Hon'ble Delhi High Court in the case of PCIT vs.



Ameriprise India Pvt. Ltd. (supra) held that when under the APA entered into between the taxpayer and the CBDT under section 92CC aforementioned cost plus pricing methodology has been implicitly accepted, the APA has persuasive value to the dispute in question for other years.

24. Coordinate Bench of the Tribunal in the case of 31 India Private Ltd. vs. DCIT (supra) also relied upon APA entered into between the taxpayer and the CBDT for the subsequent years and has held as under :

18 Whence, on similar functions and the transactions the Arm's length price has been agreed at 21% which if compared with the margin of 20% in this year, then same is not at variance, therefore, it can be held that the assessee's margin of 20% for the functions performed are at Arm's Length Price. Accordingly, we hold that upward adjustment of Rs.8,83,93,866/- is without any basis and is directed to be deleted.

25. Coordinate Bench of the Tribunal in another case tilted as Spencer Staurt (India) Pvt. Ltd vs. ACIT (supra) also decided the identical issue in favour of the taxpayer in the similar facts and circumstances by relying upon the APA which was for subsequent years by observing as under :-

“13, We have considered rival contentions and carefully gone through the orders of the authorities below, APA dated 30th August 2016, as well as the order passed by the Tribunal dated 01/06/2018 in case of assessee's AE. We found that APA has laid clown the application of most appropriate transfer pricing method and the arm's length price for these transactions. We also found that after having a great discussion, the Functions performed, assets employed and risk undertaken by the assessee and its associated enterprises was found to be reasonable. Accordingly, we allow assessee to withdraw these grounds for the A.Y. 2008-09 and 2009-10 in so far as these grounds are covered by the APA, the principle laid down in the APA for benchmarking analysis in respect of the international transactions being guidance value



since there is no change in the said assessment years in the nature of international transactions. We also direct the Department to pass an order giving effect u/s. 92 CD (5) of the Act in the A. Y. 2010-11 & 2011-12. Whereas for A. Y. 2008-09 and A. Y. 2009-10, we observe that the principles laid down in the APA for benchmarking/comparability analysis in respect of the international transaction shall have a guidance value since there is no change in the said Assessment Years in the nature of the international transactions, functional, Asset and Risk ('FAR') profile of the assessee and the AEs. We direct accordingly."

26. So, in view of what has been discussed above and following the orders (supra) passed by the coordinate Bench of the Tribunal, we are of the considered view that when in the APA entered into between the taxpayer and the CBDT though for the roll back years and subsequent years, application of most appropriate transfer pricing method and arm's length price of these transactions have already been agreed upon between the taxpayer and CBDT and there is no change in the FAR and nature of international transactions entered into during the year under consideration vis-a-vis earlier years and subsequent years, principle laid down in the APA for benchmarking the international transactions in question shall have a guidance value. More so these days, it is endeavour of the Union of India to stop avoidable litigations and this case falls in the category of cases where litigation can be minimized.

27. For the sake of repetition, it is brought on record by the taxpayers the consolidated margin (OP/OC) for the year under assessment as 19.26% as against ALP agreed upon between the parties to the appeal under APA at 16.60%. So, we are of the considered view that transfer pricing adjustment made by the AO/TPO/CIT(A) by applying Transfer Pricing principles is not sustainable, hence ordered to be deleted subject to the verification of computation of margin made by the taxpayer as per APA



referred in the preceding para no.20. Consequently, Ground No.5 & Ground No.4 of ITA Nos.422/De1/2019 & 423/De1/2019 raised by the taxpayer are determined in favour of the taxpayer and Ground No. 1 of ITA No.579/DEL/2019 & 3087/DEL/2019 raised by the Revenue are determined against the Revenue.”

17. We note from the above that the ITAT has also referred to the judgment of this Court in the case of ***PCIT Vs. Ameriprise India Pvt. Ltd., ITA 206/2016***, to hold that the AP Agreement entered into between the taxpayer and the CBDT under Section 92CC of the Act on 22.01.2016, where the ‘cost plus pricing methodology’ has been implicitly accepted, has persuasive value to the dispute in question for other years.

18. We also note that in the case of ***Pr. Commissioner of Income Tax-7, Delhi vs. Springer India Pvt. Ltd., ITA 451/2022*** decided on 15.03.2023, a Coordinate Bench of this Court has in paragraph 12 & 13 stated as under :

“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.”

19. In other words, in light of the decision of the Coordinate Bench of this Court in ***Springer India (supra)*** and the ITAT order, with which we concur the TPO ought to consider the FAR of the years in the AP Agreement for FAR of the year under scrutiny.

20. In view of the conclusion drawn by the ITAT, which we have reproduced above, no substantial question of law arises in this appeal. As the appeal is without merit, the same is dismissed.

V. KAMESWAR RAO, J

VINOD KUMAR, J

SEPTEMBER 17, 2025

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