

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.401/Mds/2017

निर्धारण वर्ष / Assessment Year : 2012-13

M/s Daimler Financial Services  
India Pvt. Ltd.,  
Unit 202, 2<sup>nd</sup> floor, Campus 3B,  
RMZ Millenia Business Park,  
143, Dr. MGR Road, Perungudi,  
Chennai - 600 096.

v. The Assistant Commissioner of  
Income Tax (OSD),  
Corporate Range – 1,  
Chennai - 600 034.

PAN : AADCD 6300 J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Nishant Thakkar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Smt. Ruby George, CIT

सुनवाई की तारीख/Date of Hearing : 07.11.2017

घोषणा की तारीख/Date of Pronouncement : 09.11.2017

### **आदेश /O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

This appeal of the assessee is directed against the order of assessment dated 20.12.2016 passed consequent to the direction issued by the Dispute Resolution Panel.

2. Shri Nishant Thakkar, the Ld.counsel for the assessee, submitted that the assessee-company is a wholly owned subsidiary

company of Daimler AG. According to the Ld. counsel, this is the first year of business. The Ld.counsel further clarified that the assessee is carrying on the business of non-banking finance company without accepting any deposit from public. The Ld.counsel further submitted that the assessee provided financial services for vehicles manufactured by Daimler India Commercial Vehicles Pvt. Ltd. and Mercedes-Benz India Pvt. Ltd. In respect of international transaction, the Transfer Pricing Officer made adjustment without considering the claim of the assessee with regard to adjustment of fixed cost and working capital. Even though as many as 23 grounds were raised before this Tribunal, the Ld.counsel has fairly submitted that the issue involved in this appeal is with regard to consideration of fixed cost and working capital while making transfer pricing adjustment.

3. Referring to the direction of DRP, the Ld.counsel for the assessee submitted that the DRP rejected the information filed by the assessee with regard to economic adjustment on the ground that the same was not filed earlier. According to the Ld. counsel, the object of transfer pricing adjustment under the scheme of Income-tax Act is to determine the arm's length price with regard to

transaction of the assessee with its Associated Enterprise outside the country. Therefore, according to the Ld. counsel, even the additional evidence or additional ground raised by the assessee needs to be considered after calling for remand report from the Assessing Officer. Merely because the assessee could not furnish certain information with regard to economic adjustment, according to the Ld. counsel, that cannot be a reason to reject the claim of the assessee with regard to fixed cost adjustment and working capital adjustment. Therefore, the Ld.counsel submitted that the matter may be remitted back to the file of the TPO to consider the claim of fixed cost adjustment and working capital adjustment on merit.

4. On the contrary, Smt. Ruby George, the Ld. Departmental Representative, submitted that the assessee had not provided any fixed cost information / details before the Transfer Pricing Officer. In the absence of any material, the TPO has not made any economic adjustment as claimed by the assessee. According to the Ld. D.R., the Transfer Pricing Officer adopted operating profit / operating cost at the margin and thereafter worked out the adjustment. Since the information regarding working capital adjustment was not furnished by the assessee even though it was available at the time of filing

objections before the DRP, according to the Ld. D.R., the DRP has rightly rejected the additional ground raised by the assessee.

5. We have considered the rival submissions on either side and perused the relevant material available on record. The work adjustment, namely, fixed cost adjustment and working capital adjustment, was admittedly claimed before the TPO and DRP. The TPO rejected the claim of the assessee on the ground that economic adjustment details were not provided by the assessee before the TPO. This Tribunal is of the considered opinion that when the assessee made claim with regard to economic adjustment such as fixed cost adjustment and working capital adjustment, the TPO and DRP have to consider the claim of the assessee on its merit. The information / details furnished by the assessee before the DRP cannot be rejected merely because the same was not filed at the initial stage. The fact remains that at the time of hearing of objections, the information was available before the Dispute Resolution Panel. Therefore, this Tribunal is of the considered opinion that the DRP ought to have considered the claim of the assessee on the basis of material / information furnished by the assessee. Since such an exercise was not done by the DRP, this

Tribunal is of the considered opinion that the matter needs to be reconsidered by the Transfer Pricing Officer. Accordingly, orders of the authorities below are set aside and the issue raised by the assessee with regard to fixed cost adjustment and working capital adjustment is remitted back to the file of the Assessing Officer. The Assessing Officer shall refer the matter to TPO with regard to fixed cost adjustment and working capital adjustment. The TPO shall consider the claim of the assessee on merit on the basis of the material that may be filed by the assessee.

6. It is open to the TPO to collect information from public domain. When the information was collected by the Transfer Pricing Officer, the same shall be furnished to the assessee. It is made clear that after the TPO's order, it is open to the assessee to file objection, if any, as per the provisions of Section 144C of the Income-tax Act, 1961 (in short 'the Act') before the Dispute Resolution Panel. If such an objection is filed by the assessee, the DRP shall dispose of the objection on its merit. It is further clarified that this Tribunal is not expressing any opinion on merit on the basis of material available on record.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 9<sup>th</sup> November, 2017 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 9<sup>th</sup> November, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. CIT(TP), Chennai
4. Principal CIT- 1, Chennai
5. DCIT, TP-1(2), Chennai
6. विभागीय प्रतिनिधि/DR
7. गार्ड फाईल/GF.