



ITA No.7025 /Mum/2012  
Pioneer Property Zone Services Ltd.  
Assessment Year :2008-09

**आयकर अपीलीय अधिकरण “जे” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“J” BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI MAHAVIR SINGH, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.7025/Mum/2012  
(निर्धारण वर्ष / Assessment Year:2008-09)

<b>Pioneer Property Zone Services Ltd.</b> A-401, Business Square Solitaire Corporate Park Chakala, Andheri (E) Mumbai-400 093.	<b>बनाम/ Vs.</b>	<b>DCIT-Range 8(2)</b> Mumbai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>AADCP-5181-D</b>		
(आपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Appellant by</b>	:	Shri Niraj Sheth- Ld. AR
<b>Respondent by</b>	:	Shri Rajneesh Yadav - Ld.DR

<b>सुनवाई की तारीख/ Date of Hearing</b>	:	16/09/2019
<b>घोषणा की तारीख / Date of Pronouncement</b>	:	07/11/2019

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member):-**

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2008-09 contest certain adjustments made by Ld. Assessing Officer [AO] in final assessment order dated 26/09/2012 passed u/s 143(3) r.w.s 144C(13) pursuant to the directions of Ld. Dispute Resolution Panel-II, Mumbai, [DRP] u/s 144C(5) dated 31/07/2012. The grounds raised by the assessee read as under: -



### **1. General Grounds**

1.1 On the facts and in the circumstances of the case, the learned Transfer Pricing Officer (TPO) and the learned Assessing Officer (AO) have erred in proposing and the Hon'ble Dispute Resolution Panel (DRP) has further erred in confirming the proposed addition to the Appellant's total income of Rs. 1,28,51,551 based on the provisions of Chapter X of the Income-tax Act, 1961 ('the Act').

### **2. Conditions specified under Section 92C(3)**

2.1 On the facts and in the circumstances of the case, the learned TPO and the AO have erred in proposing and the DRP has further erred in confirming the proposed addition on account of not stating any reasons to show that either of the conditions mentioned in clauses (a) to (d) of Section 92C(3) of the Act were satisfied before making an adjustment to the income of the Appellant.

### **3. Disallowance of consultancy charges paid to Associated Enterprise**

3.1 On the facts and in the circumstances of the case, the learned TPO and the AO have erred in proposing and the DRP has further erred in confirming the proposed addition on account of disregarding the contemporaneous documentation maintained by the Appellant as per Rule 10D of the Income-tax Rules, 1962 ('the Rules') and the various submissions made by the Appellant without assigning any cogent reasons thereof.

3.2 On the facts and in the circumstances of the case, the learned TPO and the AO have erred in proposing and the DRP has further erred in confirming the proposed addition vis-a-vis the consultancy charges paid to the Associated Enterprise citing the reasons of non-demonstration of necessity of payment, benefits accruing to the Appellant, costs incurred by the Associated Enterprise without appreciating the fact that the Appellant had aptly demonstrated the necessity of incurring such expenses, the benefits accruing to the Appellant, the quantification of the costs incurred by the AE thereof.

The Appellant prays that the adjustment in relation to transfer pricing matters made by the AO be deleted."

The income of the assessee under normal provisions was determined at Rs.63.70 Lacs after certain additions/disallowances as against returned loss of Rs.72.02 Lacs e-filed by the assessee on 30/09/2008. The assessee being resident corporate assessee was stated to be engaged in providing consultancy services in property /lease management.

2.1 Following international transactions stated to be carried out by the assessee with its Associated Enterprise (AE) situated at South Africa was referred u/s 92CA(1) to Ld. Transfer Pricing Officer-II(8), Mumbai for determination of Arm's Length Price [ALP]: -



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Transaction	Associated Enterprise	Amount of transaction in Rs.	Method Adopted
Payment of Consultancy Fee	Old Mutual Properties (Pty.) Ltd	90,95,964/-	TNMM
Reimbursement of Travel, Communication and other expenses	Old Mutual Properties (Pty.) Ltd.	37,55,587/-	CUP

With respect to payment of consultancy fees, the assessee, in its transfer pricing study report, selected its AE as the tested party and arrived at mean Profit level Indicator (PLI=OP/TC) of 8.35% reflected by 12 comparables as against 10% mark-up of tested party i.e. its AE. During the hearing, the assessee fortified its stand by furnishing NCP margin of 4 comparable entities which was stated to be higher than NCP margin of tested party. For reimbursement, the assessee used Comparable Uncontrolled Price (CUP) method and submitted that these were payment to third parties and accordingly, no Transfer pricing adjustment would be required.

2.2 However, Ld. TPO opined that the application of ALP principal would require to ascertain whether the charges paid by the assessee would reflect the same charges that would reasonably be expected to be exchanged between independent parties dealing at Arm's Length. Further, the expected benefit must be sufficiently direct and substantial which would justify the payment. If no benefit was provided, the consultancy fees could not be charged. Therefore, the recipient must prove that the services were rendered and further, the quantification thereof was commensurate with benefits derived therefrom. Unless it was shown that some tangible and direct benefit was derived from such payment, the payment of intra group services would be treated either as



nil or to the extent of actual benefit derived. Accordingly, the assessee was show-caused to demonstrate the fulfillment of these ingredients.

2.3 In defense, the assessee submitted that it was incorporated in the year 2005 and it was a new player in its business domain whereas its AE was a well-established player in the field of asset / property management in South African market. Therefore, it was felt necessary to utilize the resources available with its AE who could provide consultancy services to maintain the consistency in high standards set by the group. The attention was drawn to the fact that there was no duplication of services and no such services was being availed by the assessee from any other service provider.

2.4 However, Ld. TPO opined that the assessee could not furnish exact details of services provided by its AE and no evidence of rendering of such services was provided by the assessee. The assessee could not furnish the details of personnel who provided such services and also could not furnish the copy of the agreement and basis of arriving at the cost thereof. The assessee also could not furnish many other details which have already been enumerated in para 1.1 to 1.16 of the order of Ld. TPO. Finally, Ld. AO arrived at a conclusion that the assessee failed to prove the factum of rendering of services, benefits derived therefrom and justification of quantification of the fees. It was also observed that basis of pricing also could not be furnished. Further, its AE was rendering services to various parties and therefore, the assessee should have selected himself as tested party. Finally, the ALP of the stated transactions was determined at Nil and an adjustment of Rs.128.51 Lacs



was proposed against the same. The final observations of Ld. TPO were as follows: -

The assessee has stated that the information will be submitted in due course. However, even after 15 days time provided, no reply was furnished. The assessee has not furnished return of the income filed by AE in South Africa. In absence of these, it is not possible to verify what treatment has been given by the AE in its books of accounts.

After examining the documents furnished by the assessee, it becomes evident that the assessee has failed to furnish evidence to prove that the assessee has requested to the AE for providing any services. The assessee has also not demonstrated as to what services were rendered by the AE and received by the AE. The assessee has also not furnished any evidence to prove that these services were actually availed by the assessee. The assessee has also not proved that any benefit is derived by the assessee from consultancy service and reimbursement related to these services.

Further, the basis of pricing of the amount of such payment has not been explained. Even the cost to AE is not explained by the assessee on which markup has been calculate by the assessee.

The assessee has selected the foreign party as a tested party for making comparison. The foreign party is providing consultancy to many parties which is a complex function. Therefore, the assessee should have selected itself as a tested party. Hence, the TP Report furnished by the assessee is not accepted. But since, the entire amount of transaction is being disallowed in this case, this argument is not being taken forward. The TP study report prepared by the assessee is rejected as the very basic detail of the international transaction is not furnished by the assessee.

In the above circumstances, two independent parties would not be willing to pay at all for such services. Since, the assessee has not proved that the actual services are rendered with commensurate benefits and also not given the cost which is identifiable by way of actual expenditure by the AE, the Arm's length price is treated as NIL.

As discussed above, the ALP of the consultancy fee of Rs. 90,95,964/- and reimbursement of expense related to the services of Rs. 37,55,587/- (Total amount of Rs.1,28,51,551/-) is determined as NIL.

Accordingly, a total adjustment of **Rs.1,28,51,551/-** is made. It is clarified that the arm's length price determined is applicable for the AY 2008-09 only and not to subsequent years.

2.5 In the absence of any new material, the Ld. DRP confirmed the stand of Ld. TPO by observing as under: -

8. On perusal of the TPO's order, we find that the following details called for by the TPO were not furnished by the assessee:

- 1) Exact details of services provided by the AE.
- 2) Basic details of expenditure incurred by the AE for the consultancy services provided.
- 3) What benefits were derived by the assessee from the consultancy services?
- 4) Manner of providing consultancy services.
- 5) Details of designation, salaries and period of employment with the AE before the personnel were deputed to serve the taxpayer
- 6) Terms and conditions of the services of the agreements, if any
- 7) Period of stay in India with residential address during the stay.
- 8) No evidences of actual cost to AE were made available to the TPO with regard to the consultancy services.

9. The DRP has carefully considered assessee's contention in support of its objection filed against TPO's order. The DRP has also perused the written



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submissions made by the taxpayer, arguments put forth by the authorized representatives of the taxpayer and the order of the TPO/AO. The taxpayer is engaged in the business of providing consultancy and services in the property management and Lease management. During the relevant year the taxpayer has entered into the following international transactions:

- Payment of consultancy fee : Rs 90,95,964/-
- reimbursement of expense: Rs. 37,55,587/-

10. We are of the opinion that unless it is shown that tangible and direct benefit is derived by the payment or the payment made is commensurate with the benefit that is derived or expected to be derived, the arms length price for such payment would be either nil or to the extent it is shown that the benefit actually derived from such payment. Further, the taxpayer is required to substantiate the fact that the actual services are rendered with commensurate benefits and also gives the justification on the basis of actual expenditure by the AE. It is also to be seen whether two independent enterprises acting under the similar circumstances would be willing to pay for such kind of services.

11. In view of discussion made above and on the basis of factual and legal position, we observe that the AO/TPO has correctly determined the arm's-length price of the consultancy fee and reimbursement of expense as nil and the action of AO/TPO is upheld.

Accordingly, the said adjustment was incorporated while framing the final assessment order, against which the assessee is under further appeal before us.

3. We have carefully perused the arguments advanced by respective representative and gone through the material on record.

4. The prime argument of Ld.AR would revolve around the fact that since ALP of the transactions was determined at Nil without following any prescribed method, the proposed adjustment would be bad in law. It has also been submitted that various details were filed by the assessee before lower authorities which were not fully appreciated. Our attention has also been drawn to the fact that no such adjustments have been proposed by the revenue in any other assessment year. However, after going through the fact as enumerated by us in the preceding paragraphs, we find that the assessee remained unable to furnish proper evidences /



explanation against various queries raised by Ld. TPO. The copies of agreement / terms of arrangement and cost allocation keys was never furnished before Ld. TPO. The terms of agreement / arrangement, in our opinion, would be vital for proper appreciation of the factual matrix and establish the claim of the assessee. However, as noted by Ld. TPO, even the basic details could not be furnished. From the perusal of documents placed on page nos. 72 to 415 of the paper-book, we find that the assessee, *inter-alia*, furnished copies of invoices, invoice wise break up, per hour salary cost etc. to substantiate the factum of rendering of services. Further details were filed before Ld. DRP which are placed on page nos. 416 to 1099 of the paper-book. These details would include details of employees who rendered the services to the assessee, explanation for availing the stated services, evidences in the shape of reports and e-mail communications in support of rendering of services. All these documents lend certain credence to the argument of Ld. AR that the assessee had furnished various explanation / documentary evidences in support of the payment.

5. Keeping in view the entirety of facts and in view of the submissions made, we deem it fit to restore the matter back to the file of Ld. TPO / Ld. AO to adjudicate the issue of determination of ALP of the stated transactions *de-novo* with a direction to the assessee to furnish further evidences to substantiate its claim.

6. Accordingly, the appeal stands allowed for statistical purposes.



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*Order pronounced in the open court on 07/11/2019*

**Sd/-**

**(Mahavir Singh)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 07/11/2019  
Sr.PS, Jaisy Varghese

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**