

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'I-1' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.666/Del/2017
Assessment Year: 2011-12

BBC World Service India Pvt. Ltd., 5 th Floor, Hindustan Times House, Kasturba Gandhi Marg, New Delhi	Vs.	DCIT, Circle-4(1), New Delhi
PAN :AADCB2298J		
(Appellant)		(Respondent)

Appellant by	Mr. Atul Jain, AR
Respondent by	Sh. Mrinal Kumar Das, Sr.DR

Date of hearing	06.12.2021
Date of pronouncement	23.12.2021

ORDER

PER SAKTIJIT DEY, JM:

This is an appeal by the assessee against order dated 05.12.2016 of learned Commissioner of Income Tax (Appeals)-19, New Delhi, for the assessment year 2011-12.

2. The dispute in the present appeal is confined to adjustment of an amount of Rs.40,65,409/- to the Arm's Length Price (ALP) of business support services.

3. Brief facts are, the assessee, a resident company, is a wholly owned subsidiary of British Broadcasting Corporation (BBC), a company incorporated in United Kingdom. As stated by the Assessing Officer, the assessee is primarily engaged in the business of producing programme content for radio and website under contractual agreement with the parent and other group companies. The primary source of revenue by the assessee is derived from its parent and other group companies. Of course, the assessee earned marginal sales income from direct sales of program to FM radio stations in India and outside India under a revenue sharing arrangement. The Assessing Officer having noticed that the assessee had entered into international transaction with its overseas associated enterprises (AE), made a reference to the Transfer Pricing Officer (TPO) to determine the ALP. After verifying the transfer pricing study report of the assessee, TPO noticed that the assessee has benchmarked the provision of programme content services to the AE by applying Comparable Uncontrolled Price (CUP) method. By applying as CUP, a similar transaction entered by another group company with a third party, the assessee claimed that the price charged is at arm's length. However, the TPO did not accept the economic

analysis of the assessee. He was of the view that the comparability under CUP method requires greater degree of similarity and preparation of TV programme, which was used as CUP, cannot be compared with the services provided by the assessee through medium of radio. Accordingly, he rejected the benchmarking of the assessee. Having done so, he adopted Transactional Net Margin Method (TNMM) as most appropriate method and after short-listing certain comparables, made an adjustment of Rs.1,27,16,499/- to the ALP.

4. Being aggrieved, the assessee contested the aforesaid adjustment by filing an appeal before learned Commissioner (Appeals). After considering the submission of the assessee in the context of the facts and material on record, learned Commissioner (Appeals) found that the activities rendering in preparing an entertainment programme on television is much more complex and varied as compared to voice based programme rendered by the assessee. He observed, when much more complex services are being remunerated at the margin of 10% in third party scenario, which was used as CUP by the assessee, the margin of 12.6% received by the assessee for similar services of a much simpler nature have to be considered to be at arm's length. Thus,

accepting assessee's benchmarking under CUP method, learned Commissioner (Appeals) reversed the adjustment proposed by the TPO.

5. Having done so, learned Commissioner (Appeals) found that the assessee was also rendering services in respect of business support. Whereas, only the actual cost relating to such services was reimbursed without any mark-up. Therefore, he called upon the assessee to explain, as to why business support services provided to the AE should not be treated as a separate segment and adequate mark-up be added in respect of the same. Therefore, the adjustment, if any, be enhanced to that extent. In response to the query raised by learned Commissioner (Appeals), the assessee submitted that by virtue of an amendment made to an earlier agreement, the assessee, with retrospective effect, is receiving mark-up of 12% on direct cost incurred for rendering programme services. Thus, he submitted, the amount received by the assessee from the AE also includes mark-up on the cost incurred. As per the working furnished before learned Commissioner (Appeals), the revised margin worked out to 12.6% as against 17% originally shown by the assessee. Learned Commissioner (Appeals), however, was not convinced with the

submission of the assessee. On verifying the invoice raised by the assessee on AE, he observed that the amount shown in the invoice is only in respect of production of programme. Therefore, the claim of the assessee that it also includes the mark-up of 12.6%, is incorrect. Being of the view that assessee had not received any remuneration for the provision of business support services to the AE, learned Commissioner (Appeals) referring to the agreement with the AE, computed mark-up of 12% on the business support cost of Rs.3,38,78,359/-. This resulted in an adjustment of Rs.40,65,409/-.

6. Reiterating the stand taken before learned Commissioner (Appeals), learned counsel for the assessee submitted, the assessee entered into inter-company agreement on 5th February, 2009 which was later amended on 13th March, 2011. Drawing our attention to the said agreement, he submitted, remuneration clause, as per Schedule 1 of the original agreement provided for a compensation of only cost plus 10% mark-up on the direct cost, whereas, business support cost was recovered on actuals. He submitted, as per amended agreement, a compensation of cost plus 12% mark-up was provided on the entire cost base. Thus, he submitted, for the entire services rendered, including business

support services, the assessee was compensated at cost plus 12% mark-up for the year under consideration. He submitted, without properly appreciating the facts on record, learned Commissioner (Appeals) has treated the business support services as a separate segment and added mark-up of 12%. Learned counsel submitted, the assessee is not rendering any separate business support services. He submitted, the expression “business support services” used in the agreement refers to the category of establishment expenses which was ancillary in nature to the core operating expenditure. In other words, he submitted, these are nothing but overhead expenditure incurred by the assessee and has been duly considered to be a part of the cost for computing the mark-up. Thus, he submitted, the assessee having already received a mark-up on the cost incurred, no further adjustment should be made.

7. The learned Departmental Representative strongly relied upon the observations of the first appellate authority.

8. We have considered rival submissions and perused the materials on record. Though, learned counsel for the assessee has submitted before us that the assessee has no separate segment called business support services, however, on perusal of Schedule

1 to the agreement, which defines service charges, it appears that the assessee has incurred two types of cost, one is direct cost for provision of services to BBC in relation with the production of broadcasting material with a mark-up of 12% w.e.f. 1st April, 2010. Direct cost includes, programme production expenses, salaries and wages of employees, accommodation, travel and conveyance, communication, research and expenses of similar nature which are directly attributable to production of broadcasting material. Whereas, the second category speaks of business support cost which includes, staff and other cost incurred on business support and HR staff plus all indirect cost including office rent, repair and maintenance, legal and professional expenses, rates and taxes, office expenses and other expenses. For the second category representing business support cost, mark-up of 10% was provided for the period of 1st April, 2008 to 31st March, 2009 and 12% for the period from 1st April, 2009 to 31st March, 2010. Thus, this Schedule of service charges certainly gives an impression that there are two types of cost incurred by the assessee, one, directly relatable to the production of broadcasting material and second, viz, the business support cost which covers all other expenses.

9. Before the first appellate authority as well as before us, it is the assertion of the assessee that the amount received from the AE towards the services provided also includes, mark-up received on business support cost. In this context, it is relevant to observe that the assessee has raised only one invoice on the AE towards the services rendered. On perusal of a copy of the said invoice dated 31st March, 2011 placed at page 9 of the paper-book, it is observed that the amount of Rs.17,01,50,768/- was raised by the assessee for programme production. It does not show the bifurcation of direct cost, business support cost and the mark-up. The assessee has also not furnished any working showing the bifurcation of invoice amount to demonstrate that it also includes mark-up of 12% on all types of cost, including business support cost.

10. Therefore, based on materials available on record, we are not in a position to render a conclusive finding that the invoice raised by the assessee on AE also includes mark-up of 12% on business support cost. Thus, in absence of complete details to substantiate the aforesaid claim, we are unable to accept assessee's claim at this stage. However, we are of the view that assessee's claim cannot also be outrightly rejected. In case, the assessee, through

a proper working and supporting evidence, establishes on record that all costs incurred by the assessee, whether direct or business support, has been remunerated with mark-up of 12%, no adjustment can be made. However, onus is entirely on the assessee to prove such fact. In view of the aforesaid, to provide an opportunity to the assessee to bring material on record in support of its claim that the invoice raised also includes mark-up of 12% on all types of cost, including business support cost, we restore the issue to the file of learned Commissioner (Appeals) for *de novo* adjudication after affording due opportunity of being heard to the assessee.

11. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 23rd December, 2021

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 23rd December, 2021.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi