

IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI

BEFORE SHRI VIKAS AWASTHY, JM AND SHRI PRASHANT MAHARISHI, AM

ITA No. 6780/Mum/2019

(Assessment Year 2012-13)

M/s Endemol India Pvt. Ltd. 1601, Grandeur Veera Desai Road Andheri, West, Mumbai-400 053	Vs.	The Asst. Commissioner of Income Tax, Central Circle 16(1), Mumbai-400 020
(Appellant)		(Respondent)
PAN No. AABCE5452G		

ITA No. 6819/Mum/2019

(Assessment Year 2012-13)

The Asst. Commissioner of Income Tax, Central Circle 16(1), Mumbai-400 020	Vs.	M/s Endemol India Pvt. Ltd. 1601, Grandeur Veera Desai Road Andheri, West, Mumbai-400 053
(Appellant)		(Respondent)

Appellant by	:	Shri Madhur Agrawal, AR
Respondent by	:	Shri Satya Pinisetty, DR

Date of hearing:	15.02.2022
Date of pronouncement :	18.2.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. These are the cross appeals filed by Endemol India Pvt. Ltd, Mumbai (Assessee / Appellant) and Asst. Commissioner of income-tax, Circle 16(1), Mumbai [The Ld Assessing Officer] against the order passed by the Commissioner of Income Tax (Appeals)-56, Mumbai [The



Id CIT (A)] dated 30th August, 2019 for Assessment Year 2012-13.

02. The learned Assessing Officer has raised the following grounds in ITA No.6819/Mum/2019:-

Revenue's ground

1. *On the facts and circumstances of the case and in law, the CIT(A) erred in holding that as ALP cannot be held at nil, "other method fail to survive" without appreciating the fact that the same was done by the TPO by giving a clear finding that no services were provided by the AE ?"*

2. *On the facts and circumstances of the case and in law, the CIT(A) erred in holding that "it cannot be said that no services were rendered" only on the basis of email exchanges between the assessee and the AEs without any cogent proof of service rendered by the AE'?"*

3. *On the facts and circumstances of the case and in law, the CIT(A) erred in accepting the emails as sufficient proof for service provision by the AE, without appreciating that the assessee has not provided any new proof and the emails had been perused by the TPO giving specific finding that there was no service provision?"*

4. *The appellant prays that the order of Ld. CIT(A) on the above grounds be set- aside and that of the assessing officer be restored."*

03. The assessee has raised the following grounds in ITA No. 6780/Mum/2019:-

"Assessee's ground

1. *On the facts and in the circumstances of the case and in law, the Learned Transfer Pricing Officer (TPO)/ the learned Assessing Officer (AO) and learned Commissioner of Income Tax (Appeals)-56 [CIT(A)] have erred in determining the total income of the Appellant at INR 8,42,07,306 as against the total income of INR 6,21,49,420/- returned by the Appellant.*

2. *On the facts and circumstances of the case and in law, the Learned CIT(A) has erred in directing the learned AO / learned TPO to compute adjustment if any under TNMM inspite of accepting TNMM as applied by the appellant as the most appropriate method.*

3. *On the facts and in the circumstances of the case and in law, the Learned CIT(A) ought to have deleted the adjustment made by the TPO on ad-hoc basis and without following any of the prescribed methods in light of the judicial rulings of the Hon'ble Bombay High Court.*

4. *The Appellant prays that the additions made by the learned TPO/ learned AO deleted and consequential relief be granted.*



04. The facts of the case shows that the assessee is a company engaged in the business of creating, producing and acquiring content for television broadcast and film production of various programmes. It is a part of Endemol Group , a global leader in television and audio visual entertainment industry. The group creates entertainment ideas which are offered for broadcast.
05. Assessee filed its return of income on 24.09.2012 at ₹6,21,49,420/-. The case of the assessee was picked up for scrutiny. As the assessee has entered into an several international transactions and amongst those one for availing supports services of ₹2,20,57,886/- from its associated enterprises (in short AE) and services which are in nature of general management, strategic operations, legal, tax, HR and other services. This international transaction was required to be examined and therefore, same was referred to the Transfer Pricing Officer (in short TPO) for determining of Arm's Length Price. The learned TPO noted that the impugned support services have been connected with four different other international transactions , so aggregated, benchmarked by adopting Transactional Net Margin method [TNMM] as most appropriate method [MAM]. It was stated that the same are at Arm's Length.
06. The learned Transfer Pricing Officer accepted the other transactions but looked at payment of support services of ₹2,20,57,886/-. He perused the agreement and held that

the agreement is non est as it does not mention the period and also date from which it is applicable. He also questioned the rendition of services, receipts of services, benefit of the services and held that these are shareholders activities as well as duplicate in nature. Though the assessee submitted the details of the emails based on which various services were required by the assessee as well as rendered by the group entity. The assessee also explained the benefit arising there from. The learned Transfer Pricing Officer rejecting them held that the assessee has failed to prove rendition test and also how the charges are determined and for what services. He further held that the services are in nature of shareholder services and duplicative in nature for which no charges are warranted. Accordingly, he determined the ALP of the above services at ₹ Nil by order passed under section 92CA (3) of the Act on 25th January, 2016.

07. Based on this, the learned Assessing Officer passed a draft assessment order on 29th February, 2016 determining the total income of the assessee at ₹8,42,07,310/-, where the above transfer pricing adjustments were made. As the assessee did not file any objection before the learned Dispute Resolution Panel, he passed a final order under section 143(3) of the Act on 30th March, 2016 at ₹8,42,07,310/-.
08. The assessee is aggrieved with the order of the learned Assessing Officer preferred the appeal before the learned



Commissioner of Income Tax (Appeals), who passed an order 31st August, 2019. He directed the learned Assessing Officer to accept the Transactional Net Margin Method (in short TNMM) and thereafter, to decide whether the TNMM selected as most appropriate method by the assessee requires any further adjustment or not. He perused the various email printouts and other documents. He also looked at submission before Ld TPO dated 13th January, 2016 which demonstrate about the nature of services and technical specification of services along with cost allocation. He held that the emails reveal the continuous exchange of information which proves that the services are rendered, there are reasonable proofs of availing the services which has benefitted the assessee. He also stated that cost allocation reveals that the services are valuable and not shareholders services. He further held that quantification of valuation of services shows that these are unique programme content. In the end, he held that in the facts and circumstances of the case Transactional Net Margin Method adopted by the assessee is the most appropriate method.

09. The learned Assessing Officer is aggrieved with the order of the learned CIT(A), where learned TPO is directed by him to adopt Transactional net Margin Method and where the CIT(A) has also held that services have been rendered on basis of emails as evidence. Greivance is also that Id CIT (A) and could not have remanded the matter back to the file of the Assessing Officer/ TPO.



010. The assessee is aggrieved for the reason that the CIT(A) should have deleted the addition and could not have remanded the matter back to the file of the Assessing Officer.
011. The learned Departmental Representative submitted that the CIT(A) does not have power to remand the matter back to the file of the learned Assessing Officer. She further submitted that merely on the basis of the emails it cannot be stated that the services were required to be rendered, rendered and resulted into benefit to the assessee. She, further referred to the nature of services and stated that these Intragroup services are merely shareholder services and duplicate in nature.
012. The learned Authorised Representative referred to the consequent order passed by the learned Assessing Officer pursuant to the order passed by the learned CIT(A) on 3rd January 2021, wherein he has granted the TP adjustment relief of ₹2,20,57,886/- to the assessee and accepted the return of income of ₹6,21,49,420/-. He also supported the order of the learned CIT(A), so far as the ALP determined by the TPO at ₹ nil was directed to be considered as to be benchmarked under TNMM method. He otherwise submitted that the assessee does not have any grievance, now, in view of the order dated 3rd January, 2021 of the learned Assessing Officer where the above TP adjustment considered under TNMM method has been deleted.



013. We have carefully considered the rival contentions and perused the orders of the lower authorities. The assessee has availed the intra group services of ₹2,20,57,886/- , aggregated with other International Transactions, are benchmarked by the assessee adopting Transactional End Margin Method as the most appropriate method. The learned TPO held that there is no proof of rendition of the services and therefore, no charges warranted by invoking the failure of rendition test, requisition test, benefit test and shareholder activity and duplicative test. The learned TPO were shown the Consultancy agreement where various services got mentioned and schedule of fees was cost of fee at the rate and mark up of 9%. For the purpose of proof of services, assessee produced various emails exchanges and also submitted a note of the benefit derived by the assessee. The assessee also submitted that these are not shareholder services or duplicated services and therefore there is a rendition of services which are valuable and which therefore are paid off. These evidences got rejected by the Id TPO. The Ld CIT(A) categorically held that these emails reveal continuous business exchange of activities mentioned in the agreement. The emails also show the various cost allocation which shows the reasonable proof of availing these services. The Id CIT(A) therefore held that there are definite programme content shared with the assessee. He further held that quantification of value of services is not possible considering uniqueness of programme content.



He therefore held that the CUP method is not suitable in absence of information considering the nature of the services availed. He also held that the Transactional net Margin Method is the most appropriate method. No doubt, the Id CIT(A) does not have power under section 251 of the Act for remanding the matter / setting aside the order. In fact in this case, he used power under section 153 of the Act for verification of the details. He directed the Assessing Officer to examine ALP of the above transaction accepting the Transactional net Margin Method. On the basis of the direction of the Id CIT(A) the learned TPO examined the same and deleted the adjustment made. The grievance of the learned Assessing Officer that merely on the basis of email exchange, the CIT(A) could not have said that services are rendered. We find that these emails were also produced before the TPO. However, the TPO has reached a conclusion that assessee has been in existence since long and has developed its own name, goodwill expertise and knowhow. Further, the group provided these services for which no cost can be earmarked. For each of the email he mentioned that these are shareholder activities and duplicate in nature. At paragraph No.4.8.1 onwards he has not stated that there is no rendition of the services. Therefore, the earlier finding of the TPO and subsequent finding of the TPO at paragraph No. 4.8 are contradictory. Even while examining the email he does not state that no services have been rendered but emails have been rejected stating that these



are shareholders activity or duplicative in nature. The learned CIT(A) examined the emails and gave categorical finding about the rendition of the services. This finding remains uncontroverted. Further, if the learned TPO was not satisfied with the contents of the email, he could have further probed the transaction with respect to various programme and its content. In view of this facts, we do not find any infirmity in the order of the learned CIT(A) in holding that the peculiar Intra group services are shown to have been rendered by the associate enterprises to the assessee. Therefore, he directed it to be benchmarked under TNMM method. In view of these ground Nos.1-4, the appeal of the learned Assessing Officer are dismissed.

014. Coming to the ground of the, we find that in view of the appeal effect order passed by the learned ACIT-16(1), Mumbai on 03.06.2021 all the grounds of the appeal of the assessee becomes infructuous.

015. Accordingly, we dismiss the appeal filed by both the parties and confirm the order of the learned Commissioner of Income Tax (Appeals).

016. In the result, both the appeals of assessee as well as Revenue are dismissed.

Order pronounced in the open court on 18.02.2022.

Sd/-
(VIKAS AWASTHY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 18.02.2022



Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai