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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of Decision: 07.11.2017**

+ ITA 883/2017

PR. COMMISSIONER OF INCOME TAX-6..... Appellant
Through: Mr. Rahul Chaudhary, Sr.
Standing Counsel with Mr. Sanjay Kumar,
Jr. Standing Counsel for appellant.

versus

NETWORK PROGRAMS INDIA LTD. Respondent
Through: None.

CORAM:**HON'BLE MR. JUSTICE S. RAVINDRA BHAT****HON'BLE MR. JUSTICE SANJEEV SACHDEVA****S. RAVINDRA BHAT, J. (ORAL)**

1. The question urged by the Revenue, in its appeal under Section 260A of the Income Tax Act, 1961 (hereafter referred to as "the Act"), is with respect to the allocation key (the expenses towards manpower employed).

2. The assessee is a software development firm which was engaged *inter alia* in international transactions that called for benchmarking and Arm's Length Price (ALP) determination under Section 92CA of the Act. The TPO, for the relevant assessment year, took into account the comparables of 24 companies and without



rejecting the assessee's accounts, was of the opinion that the allocation key, required adjustment. The CIT(A) noticed the submissions of the parties and after examining the remand report which was called for, felt that the comparables used, were not in order because many of them were for a previous year. The CIT(A) thereafter reasoned as follows:-

“6.10 The submission made by the appellant as well as the method adopted by TPO are carefully considered. The TPO has clearly erred in changing the allocation key of the appellant. Software Development is mainly man power driven. Therefore, the allocation key, namely the man power employed, is most acceptable way of allocating expenses. Other expenses like depreciation and overheads were allocated based on turnover, travelling expenses were allocated on the actual basis. These allocation keys are not arbitrary and therefore cannot be rejected. The alternative allocation key, namely, man hours invested, suggested by the AR during the course of this proceeding need not be considered at this stage because it involves recasting of the segments once again. In view of this, the working of the PLL, namely operating profit on operating expenditure, is restored back. As per the TP report the segment pertain into AE has the following calculations:

Table -2

	Segment A Associated
<i>Particulars</i>	<i>2003-04</i>
<i>Income</i>	
<i>Sales</i>	<i>4,70,38,487</i>
<i>Total operating Income</i>	<i>4,70,38,487</i>



<i>Expenditure</i>	
<i>Direct Cost</i>	<i>1,24,70,184</i>
<i>Operating & Other expenses</i>	<i>2,72,01,110</i>
<i>Depreciation</i>	<i>30,18,267</i>
<i>Total operating Expenditure</i>	<i>4,26,89,563</i>
<i>Operating profit</i>	<i>43,48,924</i>
<i>Operating profit on total operating expenditure</i>	<i>10.19%</i>

6.11 The TPO, has taken the comparables with the financial data for the year 2002-03 instead of for the financial year 2003-04. He has not given any reason for not taking the contemporary data as per Rule 10B(4) of the Income Tax Rules, 1962. There are various judgments in support of taking the current year data. The position of law is well settled by the following decisions of the Hon'ble ITAT:

1. *Aztec Software and Technology Services Ltd. 294 ITR (AT) 32*
2. *Mentor Graphics Pvt. Ltd. 109 ITD 101*
3. *Customer Service India Pvt. Ltd. vs. ACIT 30 SOT 486*

3. The second question pertains to the addition of ₹12,04,270/- based upon the findings with respect to allocations of expenses. The excess expenses disallowed and the profit attributed on that score was ₹12,04,270/-. The assessee's appeal on this aspect was accepted by the CIT(A) which held as follows:-



“7.3 The issue is considered carefully. The AO did not rejected the books of accounts of the appellant. He has not given any finding regarding the reliability of the books of accounts maintained by the appellant.

7.4 There is no reason for the AO to make an addition on an estimation basis when the books of accounts of the appellant were not rejected. The AO has not analyzed the reason for loss suffered by the appellant. Therefore, in view of the submission of the appellant, it is clear that the appellant is incurring losses on account of business reasons and hence the arbitrarily estimated GP addition of Rs. 12,04,270/- is not sustainable. Appellant gets relief under this ground of appeal. (Relief given – Rs. 12,04,270/-)”

4. The above findings of the CIT(A) were upheld by the ITAT. The exercise in the opinion of the Court is merely factual. No substantial question of law arises. The appeal is therefore dismissed.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

NOVEMBER 07, 2017

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