

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

IT (TP) A No.2/Chny/2019
निर्धारण वर्ष/Assessment Year: 2014-15

M/s.Mando Automotive- India Pvt. Ltd., Plot No.S1A, S5, SIPCOT Industrial Park, Vengadu Village, Pillaipakkam Post, Sriperumbudur Taluk, Kancheepuram-602 105. [PAN:AAECM 8625 J]	v.	The ACIT, Corporate Circle-4(1), Chennai.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri Vikaram Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri A. Sasikumar, CIT
सुनवाईकीतारीख/Date of Hearing	:	13.06.2024
घोषणाकीतारीख /Date of Pronouncement	:	10.07.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee company against the order of the AO dated 31.10.2018 passed u/s.143(3) r.w.s.144C(5) r.w.s.92CA(3) of the Income Tax Act, 1961 (hereinafter in short 'the Act') pursuant to the Dispute Resolution Panel (hereinafter in short 'DRP') order dated 19.09.2018.



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2. At the outset, the Ld.AR of the assessee submitted that in the year under consideration, the Transfer Pricing Officer (hereinafter in short 'TPO') made TP adjustment amounting to Rs.1,06,37,66,707/- which involves international transactions entered into by the assessee company M/s. Mando Automotive India Pvt. Ltd., (hereinafter in short 'M/s.Mando') with its related Korean & non-Korean entities. Subsequently, according to the Ld.AR, the assessee company had filed an application invoking Mutual Agreement Proceedings (hereinafter in short 'MAP') provisions under Article 25 of the India Korea Double Taxation Avoidance Agreement in respect of the international transactions under taken by the company with its AEs in Korea. According to the Ld.AR, in respect of these international transactions, the Competent Authorities (hereinafter in short 'CA') of both the countries viz. India & Korea have agreed to resolve the case/dispute under MAP which facts were intimated to assessee by letter dated 13.05.2022 (the MAP resolution F.No.MAP/1380509, Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, Foreign Tax & Tax Research Division). And vide this letter the resolution of dispute under MAP with Korea in the case of M/s.Mando Corporation and Mando Automotive India Pvt. Ltd., for previous AYs 2012-13 & 2013-14 in accordance with Rule 44G(6) of the Income Tax Rules, 1962 (hereinafter in short 'Rules') was communicated to assessee. It was brought to our notice that as per the said communication, pursuant



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to the MAP (supra) the CA of the both countries have agreed to resolve the issue for FYs 2012-13 & 2013-14 (and we are concerned with FY 2013-14 i.e. relevant AY 2014-15). It would be gainful to reproduce Para No.3 as under:

3. As per the MAP resolution agreed upon by the two CAs, the computation of MAP relief and the retained TP adjustment are as follows:

(INR)

Previous Year	TPO Initial Tax Assessment	Adjustment Sustained	Adjustment Withdrawn
2012-13	148,984,783	148,984,783	-
2013-14	1,063,766,707	372,467,380	1691,299,327

In addition, the NTS, Korea will grant a correlative relief of KRW 3,051,208,369 for the fiscal year 2012 and KRW 6,611,295,991 for the fiscal year 2013.

(The agreement reached between the CBDT and the NTS would not serve as precedent for any other assessment year of this taxpayer.)

3. According to the Ld.AR, the assessee as per Rule 44G(6) of the Rules communicated assessee's acceptance of the resolution in writing to the CA in India and consequently, the AO has given effect to the order dated 29.06.2022 by holding as under:

Adjustments made towards international transactions with Korean AE's		Adjustment not covered under MAP	Total transfer pricing adjustment after MAP resolution	Relief
TPO	As per agreement			
95,50,73,779	26,37,74,45	10,86,92,928	37,24,67,380	69,12,99,327

4. There was a relief provided to the assessee as per MAP resolution, an order giving effect passed on 29.06.2022 and assessed income modified accordingly:

Assessed Income as per order dt. 03.09.2019	Rs. 75,34,96,920/-
Less: Relief given as per MAP resolution	Rs. 69,12,99,327/-
Assessed Income as per order dt. 29.06.2022	Rs. 6,21,97,593/-

4. And as required by the statute, pursuant to the receipt of the MAP resolution, the assessee filed letter before this Tribunal withdrawing the



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appeal related to the issues that was subject matter of the aforesaid resolution arrived at under MAP i.e. in respect of TP adjustments pertaining to Korean AEs in accordance with Rule 44G(8) of the Rules. Therefore, adjustment made by the TPO/AO, withdrawn as per MAP was to the tune of Rs.69,12,99,327/- which works out to 89.78% of the total adjustment; and as noted supra, the AO has given effect to the MAP resolution. In the light of the aforesaid circumstances/developments, the Ld.AR brought to our notice that the assessee had filed an additional grounds of appeal on 01.03.2023 to consider similar methodology adopted in MAP resolution [in respect of Korea transactions] be applied for Non-Korea transactions of INR 10,86,92,928 as well, considering the similarity in nature of functions performed, asset employed and risk assumed by the Assessee for both Korea and Non-Korea transactions; and the fact that more than 90% of the international transactions (Korea transactions) are resolved under MAP proceedings and non-Korea transactions being 10% which are in the similar nature. For easy reference, the chart below gives a bird's eye view of the TP issue which survives as under:

Mando India's international transactions with	Transaction adjusted as per TP order (AE cost)	% to total	Position in MAP resolution
Korea AEs	3,787,735,853	89.78%	Covered in MAP
Non-Korea AES	431.066.281	10.22%	Not covered in MAP
	4,218,802,134	100%	



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5. For such a proposition (as raised in additional grounds supra), the Ld.AR cited the decision of this Tribunal in the case of Grundfoss Pumps India Pvt Ltd (IT(TP)A No.92/Chny/2019-AY 2015-16) and Bangalore Tribunal in case of Amazon Development Centre (India) Pvt. Ltd. (IT(TP)A No.76/Bang/2014- AY 2008-09) wherein such relief has been granted to Non-MAP transactions which are similar in nature to the transaction covered in MAP.

6. Per contra, the Ld.CIT-DR submitted that the MAP resolution is arrived at between two countries by CA empowered to do so and the resolution arrived at by the CA are specifically for the assessee's and for AY's specific and therefore, the same cannot be used for TP adjustment in the case of other AEs who were situated in other countries.

7. We have heard both the parties and perused the material available on record. After the MAP resolution as discussed supra, we note from the chart that 89.78% of the total adjustment made by the TPO is covered by the MAP resolution (supra). The balance international transactions with non-Korean AEs worked out to Rs.43,10,66,281/- which is only 10.22% of the total adjustment made by the TPO. Therefore, the plea of the assessee is that similar methodology adopted for Korean transactions under MAP resolution may be made for the balance international transactions with non-Korean AEs, since there is a similarity in nature of



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functions performed, asset employed and risk assumed by the assessee, for both Korean and non-Korean transactions; and being of similar nature, the same approach may be carried out by the TPO/AO while computing the ALP. In order to buttress such contention, the Ld.AR has cited two decisions of this Tribunal as well as Bangalore Tribunal, wherein, the Tribunal held as under:

Grundfos Pumps India Private Limited Vs DCIT (IT(TP)A No.92/Chny/2019-AY 2015-16):

4.5 Upon careful consideration of factual matrix, it could be seen that the assessee has paid aggregate administrative fees of Rs. 1003.58 Lacs to Danish Entity as well as Singapore Entity. The substantial fees of Rs.884.44 Lacs has been paid to Danish entity which has been settled under MAP @50% adjustment. The fees paid to Singapore entity is Rs. 119.14 Lacs and the nature of the services is the same. Therefore, in our considered opinion, the same approach, as settled in MAP for Danish entity would be applicable for the fees paid to Singapore entity also. Therefore, we direct Ld. AO to restrict the adjustment to the extent of 50% of Rs. 119.14 Lacs and re-compute the income of the assessee. We order so. The appeal stands partly allowed.

Amazon Development Centre (India) Pvt Ltd Vs ITO (IT(TP)A No.76/Bang/2014-AY 2008-09):

4.5.2 We have carefully perused and considered the arguments urged by both sides and the material on record. We observe that the CBDT letter in F. No 480/10/2011-FTD-1 dt. 28.10.2015 has been issued in the case on hand in respect of the resolution of MAP proceedings for Assessment Years 2007-08 to 2009-10 on behalf of the Foreign Tax & Tax Research Division-I APA-1, CBDT, New Delhi wherein it has been confirmed that for Assessment Year 2008-09, for USA transactions under the ITES Segment. the margin has been determined at 18.82% as against a margin of 24.47% determined by the TPO. It has been further clarified by way of 'Note' in the said letter that apportionment between US and non-US ALP and Transfer Pricing Adjustment has been carried out by the APA-1 section of FT and TR Division of CBDT on the basis of 'US' and 'non-US revenue. It is further noted that in the annual accounts of the assessee, no distinction has been made between "US" and non-US transactions. Similarly, in the orders passed by the authorities below also no distinction has ever been made between US' and 'non-US" transactions. Even before us, no distinction in facts or nature of transactions has been brought on record. In these factual circumstances of the case on hand, in our considered view, whatever margin has been determined for 92.86% of the transactions, the same should be determined / applied for the remaining 7.14% transactions as well.

4.5.3 This proposition finds support in the decisions of the ITAT, Mumbai Bench in the case of JP Morgan Services Pvt. Ltd. (supra) which has been followed by the co-ordinate bench of this Tribunal in the case of CGI Information System Management



Consultants Pvt. Ltd. (supra). In this regard, the relevant portion at para 3.6 of the order in the case of JP Morgan Services Pvt. Ltd. is extracted hereunder-

3.6 We have gone through the arguments made by both the sides and also the material placed before us for our consideration. It is noted that letter dated 9th April 2015 in Fno. 480/13/2010-FTD-1 has been issued in the case of the assessee company under MAP proceedings for A.Y.2006-07 to 2010-111 by the DCIT (OSD), APA-I on behalf of the Foreign Tax and Tax Research Division -1, Central Board of Direct Taxes, New Delhi wherein it has been confirmed that for A.Y.2006-07, for US related transactions, the margin has been determined at 14.38% as against margin of 21.58%, as was determined by the Transfer pricing officer (TPO). It has been further clarified by way of note in the said letter that apportionment between 'US' and 'non-US' ALP and TP adjustment had been margined out by the APA section (of FT and TR Division) on the basis of 'US' and 'non-US' revenue. It is further noted from the perusal of the annual accounts of the assessee company that aggregate turnover has been shown at Rs. 47,30,521/-, and no distinction has been made between the 'US' and 'non-US' transactions, Similarly in the orders passed by the lower authorities also no such distinction as ever been made by any of the authorities. Under these circumstances, in our considered view, whatever margin has been determined for the 96% of the transactions, same margin should be determined for the remaining 4% transactions as well. It is worth noting that, even before us, no distinction in facts or nature of transactions has been brought out on record.

Therefore, in our considerate view, mark-up of 14.38% should be determined for the remaining 4% transactions pertaining to 'non-US entities as well. The assessee gets part relief accordingly."

Following the above decision of the ITAT, Mumbai Bench, in the case of JP Morgan Services Pvt. Ltd. (supra), we hold that the margin adopted for US transactions, in ITES Segment, as was decided in the MAP Resolution, shall be adopted for non-US transactions as well. The TPO/A.O. is directed accordingly.

8. After considering the totality of the facts as well as judicial precedents cited (supra), we are inclined to set aside the issue regarding adjustment made by the TPO in respect of international transactions of the assessee with non-Korean AEs (not covered by the MAP) which is restored back to the file of the TPO for consideration as to whether the international transactions of the assessee with non-Korean AEs are similar in the nature as contented by the assessee and if it is found to be correct, then the TPO may consider the same treatment be given to the transaction as adopted by MAP (supra) in the case of Korean AE's. And



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the TPO after giving proper opportunity to assessee pass order on the limited issue in accordance to law.

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

Order pronounced on the 10th day of July, 2024, in Chennai.

Sd/-
(अमिताभ शुक्ला)
(AMITABH SHUKLA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 10th July, 2024.

TLN, Sr.PS

आदेश की प्रतिलिपि ँ ग्रेषित/**Copy to:**

1. ँ पीलर्ी/Appellant
2. प्रत्यर्ी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF