

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "A", BANGALORE**

**Before Shri Chandra Poojari, AM & Shri George George K, JM**

IT(TP)A No.1150/Bang/2015: Asst.Year 2010-2011

IT(TP)A No.316/Bang/2016: Asst.Year 2011-2012

M/s.CAE India Private Limited Survey No.26-27, Bandaramanahalli Village, Anneshwara Panchayat, Kasaba Hobli Bangalore - 562 110. <b>PAN : AAECM3338G.</b>	v.	The Dy.Commissioner of Income-tax, Circle 2(1)(1) Bangalore.
(Appellant)		(Respondent)

IT(TP)A No.585/Kol/2015: Asst.Year 2010-2011

IT(TP)A No.310/Bang/2016: Asst.Year 2011-2012

The Dy.Commissioner of Income- tax, Circle 2(1)(1) Bangalore. / Circle 2(1) Kolkata.	v.	M/s.CAE India Private Limited Survey No.26-27, Bandaramanahalli Village, Anneshwara Panchayat, Kasaba Hobli Bangalore - 562 110.
(Appellant)		(Respondent)

CO No.31/Kol/2015: Asst.Year 2010-2011

M/s.CAE India Private Limited Survey No.26-27, Bandaramanahalli Village, Anneshwara Panchayat, Kasaba Hobli Bangalore - 562 110.	v.	The Dy.Commissioner of Income-tax, Circle 2(1) Kolkata.
(Cross Objector)		(Respondent)

Appellant by : Sri. Sumeet Khurana, CA  
Revenue by : Sri.Rajendra Kumar Mishra, CIT-DR

<b>Date of Hearing : 30.08.2021</b>	<b>Date of Pronouncement : 30.08.2021</b>
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## **ORDER**

### **Per Bench :**

These are cross appeals by the assessee and Revenue. These appeals are directed against the final assessment orders passed u/s 143(3) r.w.s. 144C of the I.T.Act. The relevant assessment years are 2010-2011 and 2011-2012. The assessee has also preferred a Cross Objection for assessment year 2010-2011.

2. The grounds raised in these appeals cross objections, are as follows:-

### **IT(TP)A No.1150/Bang/2015** **(Assessee's appeal for Asst.Year 2010-2011)**

*“1. That the learned ("Ld.") Assessing Officer ("AO") and the Ld. Dispute Resolution Panel ("DRP") erred in upholding the approach of the Ld. Additional Director of Income Tax & Transfer Pricing Officer - II, Kolkata ("Transfer Pricing Officer" or "TPO") with respect to the international transactions in relation to payment for corporate management services and reimbursement of expenses of the respondent.*

*2. The Ld. DRP erred both in facts and law in confirming the action of the Ld. AO / Ld. TPO of making an adjustment to the transfer price of the Appellant in relation to transaction of corporate management services and reimbursement of expenses, holding that the international transactions does not satisfy the arm's length principle envisaged under the Income-tax Act, 1961. In doing so, the Ld. DRP grossly erred in.*

*2.1. Holding that corporate management services and reimbursement of expenses is in the nature of stewardship activities.*

*2.2. Disregarding the genuineness of the arrangement of the Appellant with its Associated Enterprise ("AE") despite furnishing a legal and contractually binding agreement with respect to transactions.*

*2.3. Upholding the conclusion that no commercial or economic benefits have been received by the Appellant disregarding the*

*collective evidences provided by the Appellant to establish the benefit received from services provided by the AE.*

*2-4. Not considering the information/ documents/ clarification provided to satisfy benefit test for the transactions in appeal and erred in computing the arm's length value of the said transaction to be NIL.*

*3. That on the facts and in the circumstances of the case the Ld. AO is not justified in disallowing reimbursement made to CAE Simulation Technologies Private Limited amounting to Rs.11,40,279/-, thereby ignoring the directions issued by the Hon'ble DRP to delete the additions made towards reimbursements.*

*The above grounds are independent of, and without prejudice to, each other and that the appellant craves leave to add, alter, amend, modify or withdraw the grounds of appeal or produce further documents before or at the time of hearing of this appeal."*

**IT(TP)A No.316/Bang/2016**  
**(Assessee's appeal for Asst.Year 2011-2012)**

*"1. That the order of the learned Deputy Commissioner of Income-tax, Circle - 2(1)(1), Bangalore ("Assessing Officer" or "AO") pursuant to the direction of the learned Dispute Resolution Panel ("DRP") to the extent prejudicial to the Appellant, is bad in law and liable to be quashed.*

*2. The learned AO and the learned DRP erred both in facts and law in upholding the approach of the learned Joint Commissioner of Income-tax, Transfer Pricing, Kolkata ("Transfer Pricing Officer" or "TPO") of making an adjustment to the transfer price of the Appellant to the tune of INR 12,736,297 in relation to transaction of corporate management services and reimbursement of expenses, holding that the international transactions does not satisfy the arm's length principle envisaged under the Act. In doing so, the Ld. DRP grossly erred in:*

*2.1. Holding that corporate management services and reimbursement of expenses is in the nature of stewardship activities.*

*2.2. Disregarding the genuineness of the arrangement of the Appellant with its Associated Enterprise ("AE") despite furnishing a legal and contractually binding agreement with respect to transactions.*

*2.3. Upholding the conclusion that no commercial or economic benefits have been received by the Appellant disregarding the collective evidences provided by the Appellant to establish the benefit received from services provided by the AE.*

*2-4. Not considering the information/ documents/ clarification provided to satisfy benefit test for the transactions in appeal and erred in computing the arm's length value of the said*

transaction to be NIL.

3. That the learned AO and the learned DRP erred in upholding the approach of the learned TPO of re-characterising the functions of CAE India from overall project management services comprising of installation, up-gradation and assembling and execution of different projects related to simulators as enunciated in the transfer pricing ("TP") documentation to a software development service provider. In doing so, the Ld. DRP grossly erred in

3.1. Disregarding application of multiple year / prior year data as used by the Appellant in the TP documentation and holding that current year (i.e. Financial Year 2010-11) data for companies should be used for comparability.

3.2. Upholding the approach of the learned TPO of rejection of comparability analysis undertaken in the TP documentation by the Appellant and in conducting a fresh comparability analysis.

3.3. Upholding the rejection of companies similar to the Appellant while performing the comparability analysis.

3-4. Upholding the approach of learned TPO of not allowing the use of financial projections for arriving at the arm's length price as submitted by the Appellant.

3.5. Upholding the approach of the learned TPO of computing the operating mark-up of the Appellant by excluding provision written back and liabilities written back considering them as non-operating in nature.

4. That the learned AO erred in disallowing the expenses of Rs. 17,26,480/- u/s 40(a)(ia) and such disallowance is bad in law and in fact.

*The above grounds are independent of, and without prejudice to, each other and that the appellant craves leave to add, alter, amend, modify or withdraw the grounds of appeal or produce further documents before or at the time of hearing of this Appeal."*

**IT(TP)A No.585/Kol/2015**  
**(Revenue's appeal for Asst. Year 2010-2011)**

“1. Whether on the basis of facts and in law, Ld. ORP, Kolkata have erred in holding that the international transaction pertaining to reimbursement and project expenses made by the assessee to its associated enterprise CAE, Canada are at Arm's length;

2. Whether on the basis of facts and in law, Ld. ORP, Kolkata have erred in holding that the international

*transaction pertaining to reimbursement , and project expenses to its associated enterprise CAE, Canada are at Arm's length on the basis of an overall entity level analysis for all the international transactions of the assessee under the transactional Net Margin Method as the Most Appropriate Method;*

3. *Whether on the basis of facts and in law, Ld. ORP, Kolkata have erred in not considering that the international transaction pertaining to payment made by the assessee to its associated enterprise reimbursement and project expenses to its associated enterprise CAE, Canada are of the nature of stewardship activity as held by Hon'ble supreme Court of India in the case of M/s. OIT (International Taxation), Mumbai Vs. Morgan Stanley & Co. Inc;*

*The appellant craves leave to amend, modify or alter any grounds of appeal during the course of hearing of this case.”*

**IT(TP)A No.310/Bang/2016**  
**(Revenue's appeal for Asst.Year 2011-2012)**

“1. *Whether the Hon'ble DRP erred in fact in rejecting the company as a comparable on the grounds that it is functionally different when the primary source of income of the comparable is from provision of software development services.*

2. *Whether while seeking the exact comparability the DRP was right in fact and in law in imposing condition beyond law whereas the requirement of law is to acknowledge only those differences that are likely to materially affect the margin.*

3. *Whether the Hon'ble DRP is correct in law & fact in disregarding the position of law that there could be differences between the enterprises compared under the TNMM method that are not likely to materially affect the price or cost charged or the profits accruing to such enterprises.*

4. *Whether the Hon'ble DRP has erred on fact in deleting M/s E-infochips as a comparable on the ground that it fails the filter of service income less than 75% of the sales, when the said company has service income being 100% of the sales.*

5. *Whether the Hon'ble DRP is correct in applying "onsite revenue filter" without appreciating the fact that the function carried out is "Software Development" irrespective of whether onsite or offshore.*

6. *Whether the Hon'ble DRP is correct in excluding M/s L& T Infotech Ltd., on the ground that they have significant onsite*

*revenue without appreciating the fact that onsite development of software entails more cost 'and thereby results in lower profit margins.*

7. *Whether the Hon'ble DRP is correct in holding that expenses on secondment of employee is not Stewardship in nature, when the TPO has brought on record facts to show that the employee Mr. Mehrnaz Hached was working in India to take care of the interests of the Canadian parent Company.*

8. *Whether the Hon'ble DRP is correct in holding that the payment towards project and contract expenses are at arm's length in the absence of proper evidence to show that the said expenses during the relevant financial year have added any economic/commercial value to enhance, the commercial position of the assessee and such expenses were necessary to complete the contract entered into by the assessee."*

**CO No.31/Kol/2015 (By assessee for A.Y.2010-2011)**

*"The grounds mentioned herein are independent and without prejudice to one another.*

*On the facts and in the circumstances of the case and in law and without prejudice to the grounds of appeal to be filed by the Respondent:*

1. *That the learned ('Ld.') Assessing Officer ("AO") and the Ld. Dispute Resolution Panel ("DRP") erred in upholding the approach of the Ld. Additional Director of Income Tax & Transfer Pricing Officer - II Kolkata ("Transfer Pricing Officer" or "TPO")with respect to the international transactions in relation to payment for corporate management services and reimbursement of expenses of the respondent.*

2. *The Ld. DRP erred both in facts and law in confirming the action of the learned AO and the learned TPO of making an adjustment to the transfer price of the Appellant in relation to transaction of corporate management services and reimbursement of expenses, holding that the international transactions in appeal does not satisfy the arm's length principle envisaged under the Income-tax Act, 1961. In doing so, the Ld. DRP grossly erred on the following:*

2.1. *Holding corporate management services and reimbursement of expenses towards stewardship activities.*

2.2. *Disregarding the genuineness of the arrangement of the Appellant with its associated enterprise despite furnishing a legal and contractually binding agreement with respect to transactions.*

2.3. Upholding the conclusion that no commercial or economic benefits have been received by the Appellant disregarding the collective evidences provided by the Appellant to establish the benefit received.

2.4. Not considering the information/ documents/ clarification provided to satisfy benefit test for the transactions in appeal and erred in computing the arm's length value of the said transaction to be NIL.

3. The Ld. DRP and Ld. AO / Ld. TPO erred in failing to appreciate that once the payment for project expenses is established to be at arm's length under Transactional Net Margin Method ('TNMM'), there no further requirement of a separate analysis.

4. That the Appellant erred in mentioning that the international transaction relating to reimbursement of expenses was established to be at arm's length by considering TNMM as the most appropriate method.

*That the Respondent craves leave to add to and/or to alter, amend, rescind, modify the grounds herein above or produce further documents before or at the time of hearing of this Appeal.”*

3. The assessee has also raised an additional ground in both the appeals, which reads as follow:-

*“On the facts and in the circumstances of the case and in law:*

*Transfer Pricing related*

*1A. The impugned order u/s 92CA(3) of the learned Transfer Pricing Officer has been passed beyond the time limit provide under section 92CA(3A), therefore, bad in law and liable to the quashed.”*

We shall first adjudicate the additional ground raised by the assessee.

4. At the time of hearing before the Tribunal, the learned AR submitted that the additional ground is raised for the first time before the Tribunal as it was inadvertently not raised before the Income Tax Authorities. The learned AR, thus,

prayed that the additional ground may be admitted in view of the judgment of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383 (SC).

5. The learned Departmental Representative did not raise any serious objection for admitting the additional ground.

6. After hearing both the parties and perusing the material on record, we are of the view that this additional ground raised by the assessee will go to the root of the matter. Hence, we admit the additional ground raised by the assessee, which would not require any fresh investigation into facts of the case, by following the dictum laid down by the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. v. CIT (supra). This additional ground is raised for the first time before the Tribunal and the Income Tax Authorities did not have any occasion to examine the merits of the additional ground. Accordingly, we remit the issue raised in the additional ground to the files of the DRP, for fresh adjudication in accordance with law.

7. Since we have remitted the issue raised in the additional ground to the files of the DRP, which will go to the root of the matter, we are refrained from adjudicating the grounds raised in the assessee's appeals.

8. In view of the above, the cross objection filed by the assessee and the Department's appeals have become infructuous and are dismissed as such.



9. In the result, the appeals filed by the assessee are allowed for statistical purposes and the appeals filed by the Revenue and the cross objections filed by the assessee are dismissed.

Order pronounced on this 30<sup>th</sup> day of August, 2021.

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Chandra Poojari)**  
**ACCOUNTANT MEMBER**

Bangalore; Dated : 30<sup>th</sup> August, 2021.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The DRP, Kolkata
4. The DIT (International Taxation)
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore