

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI  
BENCH 'I-2', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND SHRI KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.6753/Del/2017  
(Assessment Year : 2013-14)

Outotec India Pvt. Ltd., S-557, 3 <sup>rd</sup> Floor, School Block, Shakarpur, New Delhi – 110 092  PAN : AAACO 9433 A <b>(APPELLANT)</b>	Vs.	ACIT Special Range – 7, New Delhi  <b>(RESPONDENT)</b>
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Assessee by	Shri Rishabh Malhotra, Adv.
Revenue by	Shri M. Baranwal, Sr. D.R.

Date of hearing:	15.09.2021
Date of Pronouncement:	15.09.2021

**ORDER**

**PER ANIL CHATURVEDI, AM :**

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-38, Delhi dated 08.08.2017 for Assessment Years 2013-14.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a Pvt. Ltd. Company which is stated to be engaged in the business of providing engineering, designing and supervision of contracts and consultancy and marketing services. Assessee electronically filed its return of income for A.Y. 2013-14 on 29.11.2013 declaring total loss of Rs.39,07,43,190/-. The case was selected for scrutiny and notice u/s 143(2) of the Act dated 04.09.2014 and 142(1) of the Act dated 29.06.2015 along with questionnaire was issued fixing the case for 20.07.2015 was issued and served upon the assessee. In response to which assessee attended the proceedings from time to time and filed necessary details. AO thereafter passed order u/s 143(3)/92CA/144C(3) of the Act on 28.02.2017 determining the total loss at Rs.(-)33,15,87,050/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 08.08.2017 in Appeal No.120/2016-17 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal before us and has raised the following grounds of appeal:

- “1. *On the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) (CIT(A)) has grossly erred in not accepting the returned loss of the Appellant amounting to Rs. 39,07,43,190/- and in confirming the upward adjustment of Rs. 5,91,56,144/- computed by the learned Assessing Officer (Ld. AO) and learned Transfer Pricing Officer (Ld. TPO) in the assessment order passed under section 143(3) of the Income-tax Act, 1961 (‘the Act’).*
2. *The Ld. CIT(A) has failed to adhere to the principles of natural justice by asking the Appellant to file the original notice of demand when the same is not required as per Rule 45 of the Income Tax Rules, 1962 and thereon not granting sufficient time to the Appellant to provide the original notice*

*of demand, and thus the said adjustment should be considered null and void.*

3. *The Ld. AO/ Ld. TPO /Ld. CIT(A) erred in enhancing the income of the Appellant by Rs. 5,91,56,144/- holding that the international transaction of the Appellant pertaining to rendering of design engineering services does not satisfy the arm's length principle envisaged under the Act and in doing so, have grossly erred in:*

3.1 *disregarding the Transfer Pricing analysis submitted by the Appellant thereby conducting a fresh search of comparables considering inappropriate filters, without providing any specific and cogent finding as required under Section 92C(3) of the Act;*

3.2 *disregarding the certified segmental accounts provided by the Appellant as well as the accompanying back-up workings and erroneously re-computing the operating profit mark-up considering both the associated enterprise and non-associated enterprise segment;*

3.3 *including certain companies in the final set of comparables in gross violation of Rule 10B of the Income Tax Rules, 1962 which specifically provides for comparability based on functions performed, assets employed and risk assumed in an uncontrolled transaction;*

3.4 *making computational errors in the operating profit mark-ups of the comparable companies;*

3.5 *not granting working capital adjustment to account for the difference between the level of working capital invested by the Appellant and the comparable companies.*

*The above grounds are without prejudice to each other.*

*The Appellant craves leave to alter, amend or withdraw all or any of the grounds herein or add any further grounds as may be considered necessary either before or during the hearing."*

4. Before us, Learned AR at the outset submitted that CIT(A) has passed an *ex-parte* order and has not decided the issue on merits. He submitted that if given a chance, assessee undertakes to appear before the lower authorities and furnish all the required details to substantiate its case. He therefore, submitted that in

the interest of justice, assessee be granted one more opportunity to explain its case.

5. Learned DR on the other hand supported the order of the lower authorities and further submitted that assessee has not appeared before the lower authorities and therefore the casual approach of the assessee does not deserve a second innings.

6. We have heard the rival submissions and perused the material on record. The perusal of CIT(A) order reveals that CIT(A) has passed an *ex parte* order without deciding the issue on merits. Sub Section (6) of Section 250 of I. T. Act mandate the CIT(A) to state the points in dispute and thereafter assign the reasons in support of his conclusion. We are of the view that by dismissing the appeal without considering the issue on merits, Learned CIT(A) has failed to follow the mandate required in Sub Section (6) of Section 250 of the Act. Further it is also a well settled principle of natural justice that sufficient opportunity of hearing should be offered to the parties and no parties should be condemned unheard. Further before us, Learned AR has given an undertaking that given a chance, assessee will appear before the lower authorities and file the required details called for by them. In view of these facts, we are of the view that in the interest of justice, the assessee be granted one more opportunity. We therefore set aside the impugned order of CIT(A) dated 08.08.2017 and restore the issue to the file of CIT(A) for re-adjudication of the issues after granting sufficient opportunity of hearing to both the parties. Assessee is also directed to appear before CIT(A) and

promptly furnish the details called for by the authorities. In view of our decision to restore the issue back to CIT(A), we are not adjudicating on merits, the grounds raised by the assessee. **Thus the grounds of assessee are allowed for statistical purposes.**

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

**Order pronounced in the open court on 15.09.2021, immediately after conclusion of the hearing of the matter in virtual mode.**

**Sd/-**

**(KULDIP SINGH)  
JUDICIAL MEMBER**

*Date:- 15.09.2021*  
PY\*

**Sd/-**

**(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI