

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

**[Coram: Pramod Kumar (Accountant Member)  
and C. M. Garg (Judicial Member)]**

I.T.A. No.: 962/Del/12  
Assessment year 2003-04

**Deputy Commissioner of Income Tax  
Circle 1(1), New Delhi**

.....**Appellant**

**Vs.**

**Alcatel India Limited**  
*(now known as Alcatel Lucent India Pvt Ltd)*  
1<sup>st</sup> floor, 5 Sikandara Road, New Delhi 110001  
[PAN: AACCA8667N]

.....**Respondent**

**Appearances by:**

**Yogesh Kumar Verma, for the appellant**  
**Himanshu Shekhar Sinha, for the respondent**

**O R D E R**

**Per Pramod Kumar:**

1. This appeal is directed against the order dated 26<sup>th</sup> December 2011, passed by the learned CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act, 1961 (*hereinafter referred to as 'the Act'*), for the assessment year 2003-04.

2. Grievance raised by the Assessing Officer is as follows:

**That the learned CIT(A) has erred in concluding that the international transactions entered into by the assessee are at arm's length and in deleting the addition of Rs 19,32,00,000 made by the AO on account of transfer pricing adjustments.**

3. To adjudicate on this appeal, only a few material facts need to be taken note of. The assessee is a wholly owned subsidiary of Alactel France and is engaged in the business of manufacturing and distribution of telecom equipment and rendering of services. During the relevant financial period, the assessee had entered into various international transactions with its AEs. The assessee's business is in various segments, namely (a) manufacturing, (b) trading, (c) software, (d) technical services, (e) info gathering, (f) marketing, and (g) others. While (a),(c),(d),(e),(f) segments were doing business only with AEs, and segment (g) was doing business with non AEs, i.e. independent enterprises, in segment (b), i.e. trading, the assessee was doing business with the AEs as well as non AEs. In the course of proceedings before the TPO, the transfer pricing approach of the assessee, so far as manufacturing segment wherein the assessee had used CUP and TNMM, and trading segment, where the assessee had employed RPM, was rejected. The TPO adopted the TNMM in respect of these segments. It is not really necessary to refer to the reasons of rejecting the methods of ascertaining the ALP, as employed by the assessee, as there is no dispute now on that aspect of the matter. The issue in dispute is with regard to the profitability of the non AE segments. In the course of applying the TNMM and preparation of segregated results for manufacturing and trading activity, the TPO reduced the components relatable to entire segment (c),(d),(e) and (f) from overall profits. What was thus left out was profits of segment (a), profits of segment (b) and profits of segment (g) on which PLI as per the TNMM was applied. The assessee was aggrieved of this computation inasmuch as while segment (a) consisted of all intra AE transactions, segment (b) partly contained the transactions with non AEs, even on which TNMM was applied, and segment (g) which only had transactions with non AEs on which also the TNMM was applied. The contention of the assessee was that TNMM cannot be applied in respect of transactions with non AEs. In appeal, the CIT(A) has accepted this contention and restricted the TNMM application only in respect of the international transactions with the AEs. Its on this basis that the impugned relief of Rs 19,32,00,000 has been given. The Assessing Officer is not satisfied and is in appeal before us.

4. We have heard the rival contentions, perused the material on record and duly considered factual matrix of the case as also the applicable legal position.

5. In principle, the issue is no longer *res integra*. It is well settled legal position that the ALP adjustments can only be made in respect of international transactions with the AEs and cannot extend to the transactions with non AEs. There are large number decisions of the coordinate benches, including in the case of Alstom Projects India Ltd Vs ACIT [26 ITR (Trib) 322], holding so. In the case of CIT Vs Stratex Networks India Pvt Ltd (354 ITR 304), Hon'ble jurisdictional High Court has also accepted this position. Learned Departmental Representative, even as vehemently relying upon the stand of the TPO, does not dispute this legal position but he contends that the factual elements embedded in this contention, at least on computation aspect, need to be verified by the TPO. That is only arithmetical part giving effect to this principle. We see no harm in this exercise.

6. In view of the above discussions, we deem it fit and proper to uphold the stand of the CIT(A) in principle but remit the matter for the limited purposes of verifying the computation of excluding transactions with non- AEs in calculating the ALP required to be made under the TNMM method. To this extent, the matter is restored to the file of the TPO.

7. In the result, the appeal is allowed for statistical purposes in the terms indicated above. Pronounced in the open court today on 25<sup>th</sup> day of November, 2014.

Sd/xx

**C M Garg**  
(Judicial Member)

Sd/xx

**Pramod Kumar**  
(Accountant Member)

***New Delhi, 25<sup>th</sup> day of November 2014***

*Copies to :*

<i>(1)</i>	<i>The assessee</i>	<i>(2)</i>	<i>The Assessing Officer</i>
<i>(3)</i>	<i>CIT</i>	<i>(4)</i>	<i>CIT(A)</i>
<i>(5)</i>	<i>Departmental Representative</i>		
<i>(6)</i>	<i>Guard File</i>		

*By order etc*

*Assistant Registrar  
Income Tax Appellate Tribunal  
actDelhi benches, New Delhi*