

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI I BENCH, NEW DELHI
[Coram: Pramod Kumar AM and C. M. Garg JM]**

I.T.A. No.: 3618/Del/2009
Assessment year: 2003-04

**Income Tax Officer
Ward 11(1), New Delhi**

.....Appellant

Vs.

EDAG Engineers & Design India Pvt Ltd
Sankalp, C 227 Ground floor, Westend Marg,
Paryavaran Complex, New Delhi 110 030
[PAN: AAACE6666K]

.....Respondent

Appearances by:

Peeyush Jain, for the appellant

G C Srivastava and Saurabh Srivastava for the respondent

Date of concluding the hearing : September 01, 2014

Date of pronouncing the order : October 13, 2014

O R D E R

Per Pramod Kumar:

1. By way of this appeal, the appellant Assessing Officer has challenged correctness of learned Commissioner (Appeals)'s order dated 26th June 2009, 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. Grievances raised by the Assessing Officer, which are somewhat interconnected and which we will take up together, are as follows:

1. The CIT(A) erred in holding that the amount of Rs 5,88,254 towards superannuation fund was extraordinary expenditure. This amount has been charged as a normal cost by the assessee to the profit and loss account, and nothing has been inferred by the auditors to the contrary.

2. The CIT(A) erred in holding that depreciation of Rs 8,21,628 on software was extra ordinary expenditure. This amount has been

charged as an allowable cost to the audited profit and loss account and nothing contrary has been inferred by the auditors in the tax audit report.

3. The CIT(A) erred in holding that the amount of forex gain by the assessee is an operating income. This is contrary to the finding of the assessee on page 24 of the TP report where it was held that such item of income to be non operating in nature. Such decision of the CIT(A) was based on calculation of operating margin in case of a comparable namely M/s Federal Technologies which was rejected by the CIT(A) himself for all purposes of comparability.

4. The CIT(A) has erred in making adjustment to the operating income of the assessee on the basis of a comparable which was rejected by the CIT(A) himself.

5. The CIT(A) erred in deciding that the operating profit margins of comparables should be calculated after considering bad debts, amortizations and provisions. There is nothing on record to show that these costs, in the cases of comparables, were operating in nature and the operating profit margin of the assessee does not include costs of this nature.

3. To adjudicate on this appeal, only a few material facts need to be taken note of. The assessee before us is a subsidiary of a German company by the name of EDAG Engineering & Designs AG, engaged in the business as an engineering expert in the automotive industry and is said to be one of the global leaders in offering 'closed process chain' services i.e. complete services for integrated development- including design and product development, template and prototype construction and from testing division to turnkey manufacturing facilities. The assessee is a captive unit for its German parent company and is engaged in the business of providing computer aided services, for engineering and design of automobile components, on project basis. During the relevant financial year, the assessee reported international transactions in respect of (1) CAD and development of automobiles parts and production equipment for Rs 4.82 crores; (2) Technical consultancy, sales commission and translation charges for Rs 1.81 crore; and (3) Loan for Rs 1.02 crores (interest of Rs 4.36 lakhs). To benchmark arm's length price of these transactions, the assessee used the TNMM method with OP/ Sales as the profit level indicator. So far as the dispute before us is concerned, the only relevant aspect is that in the

computation of operating profit, the assessee did not take into account superannuation contribution of Rs 5,88,254 as it pertained to an earlier year, and Rs 8,21,628 as it pertained to payment for software which was put to use in a later year. While foreign exchange gain was not included by the assessee as its operational income, the TPO, in making comparability adjustments in the comparables, excluded the foreign exchange losses even as he insisted that foreign exchange gains cannot be included in operational income. In any event, foreign exchange gain is inextricably linked to the revenue realization and, therefore, it cannot be considered in isolation with operational revenues. The TPO made adjustments, inter alia, in respect of these items and held that the expenses of Rs 5,85,254 towards superannuation contribution and depreciation on software to the tune of Rs 8,21,628 is to be taken into account for computation of operating income while forex gain is to be excluded for this purpose. Accordingly, the operating profit was recomputed, and, based on this recomputation, ALP adjustment was made. Aggrieved by the stand so taken by the Assessing Officer, assessee carried the matter in appeal before the CIT(A). Learned CIT(A) reversed the adjustments so made. Now the Assessing Officer is aggrieved 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. We find that there is a categorical finding by the CIT(A) that superannuation contribution of Rs 5,88,254 pertains to the assessment year 2000-01 and 2001-02. This finding remains uncontroverted. In this view of the matter, there cannot indeed be any rationale in taking into account this expenditure for computation of operating profits of the assessee for the current year. Similarly, there is a categorical finding that Catia software, in respect of which amount of Rs 8,21,628 was excluded, was not used for the purpose of any work in the relevant previous year and it was only subsequent year that this software was actually used. This finding also remains uncontroverted. Clearly, therefore, this expense cannot be included in the computation of operating profit for the current year. As regards forex gain, the relief granted by the

CIT(A) is only a natural corollary to the stand taken by the TPO to the effect that the forex losses are to be included in computation of operating income. When he does so, it cannot be open to him to take a stand that income from forex gain is to be treated as non operational income. In any event, forex gains cannot be considered in isolation of the revenues generated. It is in respect of such revenues that forex gains are received. As for the exclusion of bad debts, amortizations and provisions, in computation of the PLI of the comparables, we are unable to see any rationale in the same nor has it been justified before us. In view of these discussions, in our considered opinion, the stand taken by the CIT(A) does not merit any interference by us.

6. For the reasons set out above, as also bearing in mind entirety of the case, we approve the conclusions arrived at by the CIT(A) and decline to interfere in the matter.

7. In the result, the appeal is dismissed. Pronounced in the open court today on 13th day of October, 2014.

Sd/-
C M Garg
(Judicial Member)

Sd/-
Pramod Kumar
(Accountant Member)

New Delhi, 13th day of October 2014

Copies to : (1) The assessee (2) The Assessing Officer
(3) CIT (4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order etc

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