IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'I': NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No3525/Del/2014
(Assessment Year: 2005-06)

ITA No.3447/Del/2014
(Assessment Year: 2006-07)

American Express Services India Ltd., Metropolitan Saket, 7th Floor, Office Block, District Centre, Saket, New Delhi – 110 017.	vs.	DCIT, Circle 1 (1), New Delhi.
(PAN : AABCT0555T)		
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Shri Nageshwar Rao, Advocate
Ms. Viyushti Rawat, Advocate
REVENUE BY : Shri Rajesh Kumar, CIT DR
Shri Manu Chaurasia, Sr. DR

Date of Hearing : 02.01.2024
Date of Order : 09.01.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

The aforesaid appeals filed by the assessee are directed against the respective orders of the Assessing Officer pursuant to the directions issued by the ld. DR for the respective assessment years.

2. Since the issues are common & connected and the appeals were heard together, these are being consolidated and disposed off by this common order.

3. Grounds of appeal taken by the assessee read as under :-

"ASSESSMENT YEAR 2005-06

1. The order passed by the Learned Additional Director of Income Tax, Transfer Pricing Officer- 1 (1), New Delhi ("the Learned TPO"), final assessment order passed by the Deputy Commissioner of Income Tax, Circle 1(1), New Delhi ("the learned AO") and the order passed by Hon'ble Commissioner of Income Tax (Appeals) - XX, New Delhi ("CIT(A)"), are bad in law and void- ab-initio.

2. The Hon'ble CIT(A) following the order of the learned TPO and AO has erred in law and on the facts of the case in determining the total income of the Appellant at INR 77,07,6401- as against the returned loss of INR 65,96,611/- and thereby made an upward adjustment of INR 1,43,04,251/-.

Transfer Pricing Grounds of Appeal

3. That on facts and circumstances of the case and in law, the Learned TPO/AO/CIT(A} have erred in rejecting certain companies and adding certain functionally dissimilar companies to the final set of alleged comparable companies on an ad-hoc basis, thereby resorting to cherry picking of comparable companies for benchmarking the International transaction pertaining to provision of marketing support services ("impugned transaction").

4. That on facts of the case and in law, the learned TPO/AO/CIT(A) have grossly erred by not making appropriate adjustments to account for differences in the working capital employed of the Appellant vis-a-vis the comparable companies and in the process also neglected the Indian transfer pricing regulations, OECD guidelines on transfer pricing and judicial precedence. Further, the CIT(A) has not provided any detailed analysis/findings on the disallowance of any working capital adjustment to the Appellant.

5. That on facts and circumstances of the case and in law, learned TPO/AO/CIT(A) ignored the principle of natural justice by arbitrarily rejecting the additional comparable companies identified by the Appellant after conducting a fresh search during the course of Transfer Pricing Assessment proceedings.

6. The learned CIT(A) has grossly erred in confirming addition made by TPO by disregarding the fact that only Capitaline database was used by TPO in conducting the search and widely used Prowess database was completely ignored.

7. That on facts and circumstances of the case and in law, the learned TPO/AO/CIT(A) have erred by applying inappropriate additional filters for selecting/rejecting companies as comparable to the Appellant for the impugned transaction. Some arbitrary filters adopted by the learned TPO are as follows:

a) Turnover filter of Rs. 1 crore as a comparability criteria to reject companies; and

b) Fee income greater than 90% of the operating revenue

8. That on facts and circumstances of the case and in law, the learned TPO/AO/CIT(A) have erred by selecting certain companies earning super normal profits as comparable to the Appellant for impugned transaction.

9. That on facts and circumstances of the case and in law, the learned TPO/AO/CIT(A) have erred in rejecting the economic analysis undertaken by the Appellant by conducting a fresh economic analysis for undertaking the impugned transaction to find new comparable companies.

10. That on facts and circumstances of the case and in law, the learned TPO/AO/CIT(A) have erred in not making appropriate adjustments to account for varying risk profiles of the Appellant vis-ell-vis the comparable companies and in the process also neglected the Indian transfer pricing regulations, OECD guidelines on transfer pricing and judicial precedence.

11. The learned CIT(A) has violated the principle of natural justice by:

a) not giving due cognizance to the detailed analysis and technical arguments submitted by the Appellant in its submissions before the learned CIT(A);

b) issuing an order without giving any detailed findings and merely upholding the order given by the Learned AO/TPO

12. That on facts and circumstances of the case and in law, the learned TPO/AO/CIT(A) have erred in using single year data of alleged comparable companies without considering the fact that the same was not available to the Appellant at the time of complying with the transfer pricing documentation requirements and disregarding the Appellant's claim for use of multiple year data for computing the arm's length price.

13. That on facts and circumstances of the case and in law, the learned AO/TPO/CIT(A) have erred by not considering that the adjustment to the arm's length price, if any, should be limited to the lower end of the 5

percent range as the Appellant has the right to exercise this option under the pre-amended second proviso to section 92C(2) of the Act.

14. That on facts and circumstances of the case and in law, the learned TPO/AO/CIT(A) have erred in appreciating the fact that there was no motive to shift profits outside India since the AEs are taxed at higher rates vis-a-vis the Appellant and accordingly re-computation of the ALP of the impugned transaction is not necessary.

15. That on facts and circumstances of the case and in law, the learned TPO/AO/CIT(A) have erred in confirming that TPO has discharged his statutory onus by establishing that the conditions specified in clause (a) to (d) of Section 92C(3) of the Act have been satisfied before disregarding the arm's length price determined by the Appellant and proceeding to determine the arm's length price.

Corporate Tax Grounds of Appeal

16. Disregard of cost of goodwill

That on facts and circumstances of the case and in law, the learned CIT(A) has erred in restricting the cost of goodwill to Rs NIL instead of Rs 80,000,000 on the basis that no goodwill exists in the business acquired.

17. Allowability of depreciation on goodwill

That on facts and circumstances of the case and in law, the learned CIT(A) has erred in not appreciating the fact that goodwill purchased for the purpose of business should be considered as "intangible assets' and accordingly, depreciation should be allowed as per section 32 of the Act.

18. That on facts and circumstances of the case and in law, the learned AO has erred in charging excess interest under section 234B of the Act. Also, the learned AO has erred on facts and in law in charging interest u/s 234B of the Act till the date of the order u/s 154/143(3) instead till the date of completion of assessment u/s 143(3) of the Act.

ASSESSMENT YEAR : 2006-07

1. The order passed by the Learned Additional Commissioner of Income Tax, Transfer Pricing Officer- 1 (1), New Delhi ("the Learned TPO"), draft and final assessment order passed by the Deputy Commissioner of Income Tax, Circle 1 (1), New Delhi ("the learned AO"), pursuant to the directions of the Dispute Resolution Panel - I ("the DRP"), are bad in law and void- ab-initio.

2. The learned AO following the order of the learned TPO and DRP has erred in law and on the facts of the case in determining the total income of the Appellant at INR 162,740,400/- as against the returned income of NIL therefore, to the extent of additions/disallowances made by

the learned AO, the order of the learned AO is bad in law and needs to be annulled.

Transfer pricing grounds of appeal

3.1 That on facts and circumstances of the case and in law, the learned AO/ TPO/ the DRP have erred in rejecting the economic analysis undertaken by the Appellant by conducting a fresh economic analysis for provision of marketing services ("impugned transaction") to find new comparable companies.

3.2 That on facts and circumstances of the case and in law, the learned AO/TPO and the DRP have erred in using single year data of alleged comparable companies without considering the fact that the same was not available to the Appellant at the time of complying with the transfer pricing documentation requirements and disregarding the Appellant's claim for use of multiple year data for computing the arm's length price.

3.3 That on facts and circumstances of the case and in law, the Learned AO/TPO/ the DRP have erred by applying inappropriate additional filters for selecting/rejecting companies as comparable to the Appellant for the impugned transaction.

3.4 That on facts and circumstances of the case and in law, the DRP and TPO/AO have erred in rejecting certain companies and adding certain companies to the final set of alleged comparable companies on an ad-hoc basis, thereby resorting to cherry picking of comparable companies for benchmarking the impugned transaction.

3.5 That on facts and circumstances of the case and in law, Learned AO/TPO/ the DRP ignored the principle of natural justice by rejecting the additional comparable companies identified by the Appellant during the course of transfer pricing assessment proceedings without giving due cognizance to the submissions made by the Appellant in this regard.

3.6 That on facts and circumstances of the case and in law, the learned AO/TPO/ the DRP have erred in making appropriate adjustments to account for varying risk profiles of the Appellant vis-a-vis the comparable companies and in the process also neglected the Indian transfer pricing regulations, OECD guidelines on transfer pricing and judicial precedence.

3.7 That on facts and circumstances of the case and in law, the learned AO/TPO/ the DRP have erred by not considering that the adjustment to the arm's length price, if any, should be limited to the lower end of the 5 percent range as the Appellant has the right to exercise this option under the pre-amended second proviso to section 92C(2) of the Act.

3.8 That on facts and circumstances of the case and in law, the learned AO/TPO/ the DRP have erred in not taking into cognizance the fact that the adoption of the arm's length price determined under the regulations would result in a 'decrease in overall tax incidence' in India in respect of the parties involved in the international transaction.

3.9 That on facts and circumstances of the case and in law, the learned AO/TPO/ the DRP have erred by selecting certain companies earning super normal profits as comparable to the Appellant for impugned transactions.

3.10 That on facts and circumstances of the case and in law, the learned AO/TPO/the DRP have erred in confirming that TPO has discharged his statutory onus by establishing that the conditions specified in clause (a) to (d) of Section 92C (3) of the Act have been satisfied before disregarding the arm's length price determined by the Appellant and proceeding to determine the arm's length price.

3.11 That on facts and circumstances of the case and in law, the Learned AO has erred in not meeting the preconditions for making reference to the Additional Director of Income Tax, Transfer Pricing Office - 1 (1) under Section 92CA(1) of the Act and in not providing an opportunity of being heard before referring the transfer pricing issues to the Learned TPO.

Corporate tax grounds of appeal

Disregard of acquisition cost of business database

4.1 That on the facts and circumstances of the case and in law, the DRP has erred in confirming and accordingly, the learned AO has erred in restricting the cost of acquired database to Rs 30,000,000 instead of Rs 120,000,000 as confirmed by the learned TPO for AY 2002-03.

4.2 That on facts and circumstances of the case and in law, the DRP and the learned AO has erred in not following the decision of ITA T, Mumbai in appellant's own case for AY 2002-03 which is binding on them.

Disallowance of depreciation on such database

5.1 That on facts and circumstances of the case and in law, the DRP has erred in confirming and accordingly, the learned AO has erred in disallowing the claim of the appellant for Rs. 9,492,188, being the amount of depreciation on the acquired business database under section 32 of the Act.

5.2 That on facts and circumstances of the case and in law, the DRP has erred in confirming and accordingly, the learned AO has erred in following the assessment orders passed by his predecessor for assessment years 2002-2003 to 2005-2006 that the acquired business database could not be regarded as plant and machinery.

5.3 That on facts and circumstances of the case and in law, the DRP has erred in confirming and accordingly the Learned AO has erred in not appreciating that the database falls under the head of "intangible asset" and accordingly, depreciation should be allowed on the same.

5.4 That on facts and circumstances of the case and in law, the DRP and learned AO has erred in not following the decision of Hon'ble IT AT, Mumbai in appellant's own case for AY 2002-03 which is binding on them.

Disregard of cost of goodwill

6. That on facts and circumstances of the case and in law, the DRP has erred in confirming and accordingly the learned AO has erred in restricting the cost of goodwill to Rs.NIL instead of Rs 80,000,000 on the basis that no goodwill exists in the business acquired.

Allowability of depreciation on goodwill

7. That on facts and circumstances of the case and in law, the learned AO has erred in not appreciating the fact that goodwill purchased for the purpose of business should be considered as "intangible assets" and accordingly, depreciation should be allowed as per section 32 of the Act.

8. That on facts and circumstances of the case and in law, the learned AO has erred in not applying the provisions of section 72 and 32(2) of the Act which mandates set off of brought forward business losses and unabsorbed depreciation against the income of the subject assessment year.

9. That on facts and circumstances of the case and in law, the learned AO has erred in charging excess interest under section 234B of the Act. Also, the learned AO has erred on facts and in law in charging interest u/s 234B of the Act till the date of the order u/s 254/143(3) instead till the date of completion of assessment u/s 143(3) of the Act.

10. That on facts and circumstances of the case and in law, the learned AO has erred in not allowing the credit of tax payments made by the appellant against the demand imposed vide assessment order dated July 26, 2010 passed u/s 143(3) of the Act.

11. That on facts and circumstances of the case and in law, the learned have grossly erred in initiating penalty proceedings under section 271 (1)(c) of the Act.

The above grounds of appeal are mutually exclusive & without prejudice to each other. The appellant prays for leave to add, alter, amend and 1 or modify any of the grounds of appeal at or before the hearing of the appeal."

4. Apropos transfer pricing issue : the assessee is incorporated on 31st August, 1999 under Companies Act, 1956 and is engaged in the business of buying and selling foreign currency and traveler cheques and is also

involved in the marketing and distribution of credit cards and personal loan products of American Express Bank Limited.

4.1 At the outset, ld. Counsel of the assessee prayed for admission of additional evidences and pleaded that the matter may be remanded to AO/TPO for fresh consideration. He submitted that in similar facts and circumstances in assessee's own case for AY 2004-05 in ITA No.3524/Del/2014 vide order dated 30.11.2023, the ITAT restored the matter on this issue to the authorities below. The submission of the ld. Counsel of the assessee read as under :-

> "During assessment years under consideration, Appellant had rendered services for marketing of credit cards and personal loans to Indian branches or foreign entity (i.e., AEB India) (kind reference is invited to internal para 3, page 2 of TPO's order for Ay 05-06 and para 3 on internal page 2 of TPO 's order for AY 06-07). In Transfer Pricing Study, Appellant erroneously considered comparable companies engaged in Financial & leasing services (Hire purchase and leasing services, Investment services, Other financial services, other consultancy) to benchmark the subject international transaction. Ld. TPO also committed the same error in these years instead of considering comparable companies engaged in providing Marketing support services. Facts of present 2 years are identical to facts of Assessment year 2004-05. which stands decided by order of this Hon 'ble Tribunal in ITA 3524/Del/204 vide order dated 30.11.2023 (Copy submitted during the course of hearing).
>
> 3. Though Transfer pricing officer rejected transfer pricing study and conducted an independent search process, the same incorrect approach of considering comparable companies relating to incorrect segment was adopted, for e.g., reference to para 8 on internal page 13 of TP order for Ay 2005-06 would show that TPO accepted 3 comparable companies selected by Appellant and proposed 4 additional comparable companies selected applying same incorrect approach/ criteria (kindly refer para 8 on internal page 15 and also para 2 on page 19 of the transfer pricing order for AY 05-06, similar error has been committed in A Y 06-07 as a reference to paras 8 and 11 of TP order on pages 15 and 20 respectively would show).

> 4. Common error committed by TPO as also appellant for assessment years 04-05 to 06-07 of benchmarking international transactions by wrong reference to 'financial & leasing services' segment was corrected by adopting correct segment of market support service with effect from Assessment year 2007-08 and all subsequent assessment years till assessment year 2019-2020 (Refer to Annexure 1-4 of Applications for admission of additional evidence filed in both years of AY 2005-06 and AY 2006-07).
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> 5. During hearing of present appeals, Appellant requested for consideration of additional evidence, benchmarking the transactions in question with reference to correct segment of market support services CMSS'), as accepted by TPO in all subsequent years. In support of such request Appellant relied on order of this Hon'ble Tribunal relating to A Y 2004-05 (supra). Ld. CIT(DR) raised the very same objections as already considered by coordinate bench in said order of A Y 2004-05. As identical facts and contentions were already considered by coordinate bench of this Hon 'ble Tribunal in relation to appeal for A Y 2004- 05 (Para 10 -13 011 page 15-16 of said order), Appellant prays that same may kindly be followed for present appeals as it would ensure that benchmarking is carried out in accordance with law and by considering correct facts."

5. Per contra, ld. DR for the Revenue opposed the admission of additional evidences.

6. Upon careful consideration, we find that in identical circumstances, the ITAT in assessee's own case in AY 2004-05 (supra) admitted the additional evidences and remanded the matter to TPO for fresh adjudication. ITAT in its order dated 30.11.2023 has held as under :-

> "6. We have considered the facts and circumstances canvassed before us for admitting the additional evidences. The first thing that comes up is that the ld. DR does not dispute that in the subsequent years after AY 2008-09, the TPO has changed the search of comparable companies from 'financial and leasing services' to companies engaged in 'providing business support services' and the consistent approach thereafter till AY 2019-20 is to examine the benchmarking done by the assessee on the basis of comparable companies engaged in providing business support services.
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> 7. Then ld. DR has tried to argue that segment of assessee has been financial services/ selling of financial products only but he could not cite that there was any change in the functional profile of the assessee from

AYs 2004-05 to 2007- 08 and onwards and that in present year comparables were rightly taken and subsequently rightly changed.

7.1 In this context we find that Section 92CA(3) rests obligation on TPO to determine the arm's length price in relation to the international transaction in accordance with sub-section (3) of section 92C. This exercise at one end is to accept or discredit the TPSR of the assessee on the other hand obliges the TPO to make an independent enquiry of his own on the question of determination of ALP. The point is that in present AY the TPO accepted the comparables of segment taken by assessee without questioning if the assessee was right in taking up comparable of segment financial services/ selling of financial products however in same set and scope of business activity and model when accepted in AY 2008-09 onwards the assessee's changed stand with comparables of different segment of 'business support services'. Thus the comparables of segment AY 2008-09 onwards are binding on the TPO and if those are accepted the whole TPSR becomes defective and that causes prejudice to both the parties. In any case, if additional evidence of fresh TPSR on new set of comparables is allowed, the TPO will still have a right to not consider the same and allege that in present AY the comparables of right segment were taken.

8. Now coming to the question of admissibility of additional evidence we are of the considered view that Rule 29, bars the right of parties to the appeal to produce additional evidence either oral or documentary. However, if the Tribunal requires any documents to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders, the additional evidence can be called for. Further the Rule 29 provides that for 'any other substantial cause' also the Tribunal can allow the additional evidences. The decision of the Delhi Bench 'F' in the case of UOP LIC v Additional Director of Income tax, International taxation, Circle 2(2) New Delhi (2007) 108 ITD 186 is relevant where in para 30 it is observed;

> "30. It is a settled position that production of additional evidence at the appellate stage is not a matter of right to litigating public and allowing of production of additional evidence is in the discretion of the Tribunal. The said discretion, however, is to be exercised judicially and not arbitrarily. As held by Hon'ble Madhya Pradesh High Court in the case of CIT V. Kum. Satya Setia (1983) 143 ITR 486, it is within the discretion of the appellate authority to allow production of additional evidence if the said authority requires any document to enable it to pass orders or for any other substantial cause. The Tribunal is the final fact finding body under the scheme of the Income Tax Act, 1961 and powers, therefore, have necessarily to be exercised by it for deciding the questions of fact. While exercising its powers, if the Tribunal is of the opinion that additional evidence is material in the interest of justice for deciding a particular issue, its discretion cannot be interfered with unless it has been exercised on non existing or imaginary grounds.."

9. Further more the powers of the Tribunal are restricted in a scope, under Rule 29, but, at the same time, these powers have to be read in consonance with section 254(1) of the Act which gives the Bench hearing the appeal, the power to pass 'such orders thereon as it thinks fit'. This makes the discretion and power of Tribunal under Rule 29 to be quiet wider and majestic than one available to CIT(A) under Rule 46A or even to appellate Civil Courts under Order 41 of Rule 27 of CPC.

10. So here in the case in hand the facts and circumstances establish that either both TPO and the assessee or the TPO only hand failed to take comparables of correct segment. Thus, there is force in the contention of the ld. counsel for the assessee that both the assessee and TPO were mistaken on facts of the functional profile of the assessee to consider comparables engaged in 'financial and leasing services' instead of 'business support services'. Hence at the end, before us, neither the assessee nor the Revenue can completely justify the comparables accepted by them.

11. Further, the assessee has sought indulgence of the Bench to allow the additional evidences of new set of comparables, but, the same require ITA verification as the whole exercise has to be done again by the TPO who has right to rebut the same. Thus, the question of admissibility of these evidences as to the assessee had opportunity to lead this evidence at the first instance or that the assessee has created this evidence subsequently is not of much consequences. The evidence is from the contemporary data of relevant AY only so there is no question of assessee taking advantage of subsequent facts or something created by assessee ex post facto. The nature of fresh set of comparables require a fresh look into all the issues, substantially and incidentally involved due to erroneously taking comparables of wrong segment by both the assessee and the TPO.

12. So the proposition of law as relied by Ld. DR are not applicable to the facts and circumstances before us as in none of the cases cited there was a question of fact involved that may be even the lower revenue authority had fallen in error to rely an incorrect set of evidences of the assessee. The question of delay in filing of additional evidence is not of any consequence unless a malafide is alleged and established, which is not the case here.

13. Thus, we are inclined to allow the application of the assessee. Accordingly, impugned final assessment order is set aside and the TPO is directed to accept the fresh evidence and report of the assessee for the purpose of Section 92C of the Act r.w. Rule 10B of the Income-tax Rules, 1962 and, after giving further opportunity of hearing to the assessee pass a fresh order. The assessee will be at liberty to raise further incidental issues afresh before the TPO/AO."

7. Respectfully following the precedent as above, we give similar directions and accept the assessee's plea. Accordingly, the impugned final

assessment order is set aside and the AO/TPO is directed to accept the fresh evidences and report of the assessee for the purpose of Section 92C of the Income-tax Act, 1961 (for short 'the Act') read with Rule 10B of the Income-tax Rules, 1962 and after giving further opportunity to the assessee pass fresh order. The assessee will be at liberty to raise further incidental issues afresh before the TPO/AO.

8. Apropos Corporate Grounds : We have heard both the parties and perused the records. The ld. Counsel of the assessee has summarized the submissions in this regard as under :-

> "Corporate Tax Grounds of Appeal 16 and 17 for A Y 05-06 & Grounds of Appeal 4.1 to 5.4 and Grounds of Appeal: 7-8 relating to A Y 06-07:
>
> 6. Corporate tax issues arising in both assessment years arise from same transaction of business acquisition on 1st September 2001. Kind attention is invited to decision of coordinate bench in ITA 4106/MUM/2007 relating to A Y 2002-03 placed at pages 1 to 6 of case law paper book/ compendium submitted during the hearing. We request that this decision needs to be read with order of Hon 'ble Tribunal in miscellaneous application and order in recalled matter placed at pages 7 to 13 of the said caselaw folder. Relevant facts are noted by Hon'ble Tribunal at para 5-6 on page 3 of aid caselaw paper book. 2 disputes arose in connection with such acquisition during 2001 - valuation and entitlement to depreciation on business data base & valuation and depreciation on goodwill. Discussion on database can be seen at paras 6 to 8 at pages 3 to 5 of caselaw paper book. For completion it may be noted that although at para 10 on page 5, Tribunal noted incorrectly about goodwill, by order in Miscellaneous application at page 9 of the said compendium, the conclusion has been withdrawn and vide order dated 29th October 2014 Hon'ble Tribunal decided the issue of goodwill also in favour of

the appellant (refer page 12 of case law folder). Following this decision of coordinate bench in A Y 02-03 this Hon "ble Tribunal decided in favour of the appellant in A Y 10-11 - kind attention is invited to para 28 and para 32 on pages 81 and 83 of the caselaw paper book. We request consideration of above and to kindly grant relief in terms of the grounds in respective years. For convenience following are placed in caselaw compendium:

(a) Order passed by Mumbai Tribunal in ITA 4106/MUM12007 dated 29.10.2014 for AY 2002-03 is at pages 1 to 6;

(b) ITAT order for A Y 2002-03(post MA) bearing ITA 4106/MUM/2017 dated 29.10.2014 can be found at pages 7 to 10;

(c) ITAT order in cross objection 202/Mum/2009 arising out of ITA 4106/Mum/2007 is at pages 11 to 13

(d) ITAT order for A Y 2010-11 bearing ITA 1982/DELl20 15 dated 21.10.2020: is at pages 64 to 83

7. Issue relating to valuation and depreciation of goodwill in A Y 06-07 is identical to that of A Y 2005-06. Issue of valuation and depreciation relating to database arises only in A Y 06- 07.

8. At the hearing of present appeals Ld. CIT(DR) contended that as transfer pricing issue relating to MSS are being remanded to Ld. AO/Ld. TPO for de novo consideration the issues relating to goodwill and database also may be remanded as Hon'ble Tribunal relied on Ld. TPO's upholding value while allowing relief to Appellant. In response appellant's authorised representative submitted that transaction of acquisition relates to 2001 only unlike MSS transactions, which arise in each of the years and acquisition transaction having been verified by Ld. TPO in 2001, any attempt to equate same with issues relating to MSS cannot justified in law. In years involved in present appeal i.e .. A Y 2005-06 and A Y 2006- 07 there was no acquisition transaction hence remand of corporate tax issues would be contrary to express provisions of law. It was prayed that Ld. DR's submission deserves to be rejected.

> 9. In A Y 06-07 as a consequence of adjudication of ground 4.1-7 abovementioned, the quantification of losses and depreciation of the Appellant will be impacted. We pray for appropriate directions to Ld. AO, for setting off brought forward losses and depreciation with the income of the Appellant. for the year under consideration. as per provisions of section 72 and section 32(2) of the Act, as prayed for, vide Ground No.8."

9. Upon careful consideration, we are inclined to agree with the ld. CIT DR that when the transfer pricing issue is being remitted in its entirety along with additional evidences, it will be appropriate that these issues are also remitted to AO/TPO. The AO/TPO shall consider the issues afresh after giving assessee proper opportunity of being heard.

10. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on this 9th day of January, 2024.

Sd/-	**sd/-**
(ANUBHAV SHARMA)	**(SHAMIM YAHYA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated the 9th day of January, 2024
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Copy forwarded to:

1.Appellant
2.Respondent
3.CIT
4.CIT (A).
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.