

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH "B", BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND

SHRI A.K. GARODIA, ACCOUNTANT MEMBER

ITA(TP) No. 110/B/2015
(Assessment Year 2010 – 11)

M/s Centum Rakon India Private Limited, No. 44, KHB Industrial Area, Yelahanka New Township, Bangalore – 560064. PAN AADCC2533L	Vs	The ACIT, Circle 2 (1) (1), Bangalore
(Appellant)		(Respondent)

Assessee by	Shri S. Ramasubramanian, C. A.
Revenue by	Ms Neera Malhotra, CIT DR
Date of hearing	26/07/2016
Date of pronouncement	19/08/2016

ORDER

PER A. K. GARODIA, AM

This appeal is filed by the assessee and this is directed against the order dated 30.12.2014 for A. Y. 2010 – 11 passed by the A. O. as per the directions of DRP u/s 143 (3) r.w.s. 144C (13) of the I T Act 1961.

2. The grounds raised by the assessee are as under:-

“1.0 That the order of the learned lower authorities in so far it is prejudicial to the interests of the appellant is bad and erroneous in law and against the facts and circumstances of the case.

2.0 That the learned lower authorities erred in law and on facts in holding that an unfavourable ALP adjustment of

Rs. 10,19,93,6171- is required.

3.0 Comparables:

3.1 That the learned lower authorities erred in law and on facts in holding that Spectrum Infotech Pvt Ltd is a comparable entity even though the nature of the products manufactured by Mis. Spectrum Infotech Pvt Ltd is not known.

3.2 That the learned lower authorities erred in law and on facts in holding that the appellant has not furnished the details of related party transactions in respect of Ador Powertron Ltd, Centum Electronics Ltd and Incap Ltd and such a finding is perverse in law as being contrary to the materials and evidences on record. o

3.3 That the learned lower authorities ought to have held that Adore Powertron Ltd, Centum Electronics Ltd, Incap Ltd, Keltron Components Complex Ltd and Gujrat Poly-A vx Electronics Ltd are comparable entities.

3.4 That the learned lower authorities erred in law and on facts in holding that Keltron Components Complex Ltd and Gujrat Poly-A vx Electronics Ltd are not to be taken as comparable despite Hon'ble DRP rejecting the contention of the TPO in this regard.

3.5 That the learned lower authorities erred in law and on facts in holding that the appellant himself in his letter 18.12.2013 has accepted that these two companies failed the RPT filter and such a finding is without appreciating the context in which the letter dated 18.12.2013 was written.

3.6 That the learned lower authorities erred in law and on facts in not taking Exicom Tele-Systems Ltd as a comparable even though there is no dispute on this comparable and there are no directions from the Hon'ble DRP to the contrary.

3.7 That the learned lower authorities erred in law and on facts in holding that a single most favourable comparable alone is sufficient and it is not necessary to determine the ALP with reference to a number of transactions.

4.0 Determination of ALP

4.1 *That the learned lower authorities erred in law and on facts in not adopting the cash profits as PLI even though the method of providing depreciation by the appellant and the comparable entities are different and it is not possible to make adjustment for such differences.*

4.2 *That the learned lower authorities erred in law and on facts in determining the operating cost at Rs. 50,14,49,6821- without appreciating the fact that the appellant had entered into transactions with non-associated enterprises also.*

4.3 *The learned lower authorities ought to have held that any ALP adjustment should be made only with reference to international transactions and not with reference to all the transactions.*

4.4 *That the learned lower authorities erred in law and on facts in not making any working capital adjustment.*

4.5 *Without prejudice to Ground No. 4.4 the learned lower authorities ought to have taken the interest on working capital as a part of the operating cost in case of working capital adjustment is not made.*

4.6 *That the learned lower authorities erred in law and on facts in not including the foreign exchange gain, interest on margin money and miscellaneous income as a part of operating revenue while determining the ALP.*

Each of the above grounds is without prejudice to one another and the appellant craves leave of the Hon'ble Income Tax Appellate Tribunal, Bangalore to add, delete, amend or otherwise modify one or more of the above grounds either before or at the time of hearing of this appeal.

3. Learned AR of the assessee submitted that admittedly as per page 6 of the order of TPO, all three comparables as noted in Ground No. 3.2 i.e. 1) Ador Powertron Ltd., 2) Centum Electronics Ltd. and 3) Incap Ltd. were rejected on account of RPT filter and before DRP, it was contended by the assessee as noted by DRP on page 5 of its order that the RPT percentage of these companies is below 25% but the objection of the assessee was rejected by saying that no factual information in this regard was furnished. He submitted that this is not correct because these details were submitted before the TPO vide letter dated 18.12.2013, copy available on pages 530 to 538 of the paper book containing details of RPT transactions of these companies in the range of 0 3.61% to 6.36% and hence to be accepted as good comparable because RPT % is below 15%.

4. Regarding Ground No. 3.6, he submitted that there was no dispute before DRP about Exicom tele – Systems Ltd. and there is no direction of DRP to the effect that this company is not to be treated as a comparable but still, the A.O. has not considered this company as a comparable.

5. Regarding Spectom Infotech Pvt. Ltd. i.e. Ground No. 3.1, he submitted that Annual Report of this company is available on pages 474 to 501 of the paper book and in particular, our attention was drawn to page 500 and it was pointed out that this company's products

are said to be “Electronic Units” without any other description but the assessee company is engaged in manufacture and supply of Electronic products including frequency control products and resistor networks and therefore, this is not a good comparable. Finally, he submitted that since, three companies are to be included for the reason that these companies are satisfying RPT filter of 15%, the same have to be examined on other aspects such as functional comparability, the entire matter may be restored to AO/TPO for a fresh decision. Learned DR of the revenue supported the orders of the authorities below.

6. We have considered the rival submissions. We find that three companies were rejected by the TPO on the basis RPT filter but it is seen that as per page 538 of the paper book, these companies are satisfying RPT filter of 15% but there is no finding of TPO or DRP about actual RPT % of these companies. Hence, on this aspect, the matter has to be restored back to find out actual RPT % of these companies and if this assertion of the assessee is found correct that these companies are satisfying 15% RPT filter, then acceptability of these companies as good comparables is to be examined on other aspects such functional similarity etc. Similarly, regarding functional similarity or dissimilarity of Spectom Infotech Pvt. Ltd. i.e. Ground No. 3.1 also, we feel it proper to restore the matter back to the file of AO/TPO to examine afresh the functional similarity of this company and to pass a speaking and reasoned order on this aspect. We also feel it proper that when the

matter is going back to AO/TPO on these two aspects, then it will be not improper to restore the entire matter to the AO/TPO for fresh decision by way of a reasoned and speaking order after providing adequate opportunity of being heard to the assessee. We order accordingly. Therefore, no adjudication is called for in respect of other issues raised before us.

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

(Order was pronounced in the open court on the date mentioned on the caption page)

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member
Place: Bangalore
Dated: 19/08/2016
am*
Copy to :

Sd/-
(A.K. GARODIA)
Accountant Member

- 1.The Appellant
- 2.The Respondent.
- 3.Concerned CIT
- 4.The CIT(A)
5.D.R., I.T.A.T., Bangalore

AR, ITAT, Bangalore

1.	Date of Dictation
2.	Date on which the typed draft is placed before the dictating Member
3.	Date on which the approved draft comes to the Sr. P. S.
4	Date on which the order is placed before the dictating Member for pronouncement
5.	Date on which the order comes back to the Sr. P.S.
6.	Date of uploading the order on website
7.	If not uploaded, furnish the reason for doing so.....
8.	Date on which the file goes to the Bench Clerk
9.	Date on which order does for Xerox & endorsement
10.	Date on which the file goes to the Head Clerk.....
11	The date on which the file goes to the Assistant Registrar for signature on the order.....
12	The date on which the file goes to the dispatch section for dispatch of the Tribunal order.....
13	Date of dispatch of order.....