

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI A.K. GARODIA, ACCOUNTANT MEMBER

IT(TP)A No.234/Bang/2012

Assessment year : 2005-06

Infor (Bangalore) Pvt. Ltd., [Earlier Softbrands India Pvt. Ltd.], Prestige Obelisk, Level 9, Kasturba Road, Bangalore – 560 001. PAN: AAFCS 9041K	Vs.	The Assistant Commissioner of Income Tax, Circle 12(3), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Cherian K. Baby, CA
Respondent by	:	Shri A.R. V. Sreenivasan, Jt. CIT(DR)

Date of hearing	:	05.07.2016
Date of Pronouncement	:	29.07.2016

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is filed by the against the order of the CIT(Appeals)-IV, Bangalore dated 20.12.2011 for the assessment year 2005-06 *inter alia* on the following concise grounds:-

“Your appellant is engaged in the business of software development, software consultancy and information technology enabled services from Software Technology Parks Units set up in

Bangalore and Noida. The present appeal is preferred against the Order of the Assessing Officer to the extent upheld by the learned CIT(A)-IV, Bangalore.

The following grounds are without prejudice to each other.

Ground I - Transfer Pricing Adjustment of Rs. 79,53,501/-

1. The AO and TPO has grievously erred in making, and the CIT(A) in upholding, the transfer pricing adjustment of Rs. 79,53,501/- to the prices charged by your appellant.
2. The TP proceedings were conducted and order passed by the Addl. Director of Income Tax, who is not an authorized person to conduct such proceedings and pass necessary order as per the explanation to sec.92CA of the Income Tax Act, 1961, which contemplates a Joint / Deputy / Assistant Commissioner as TPO.
3. The TPO has erred in rejecting the Cost Plus Method as the most appropriate method for determining Arm's Length Price ('ALP') and wrongly adopting Transaction Net Margin Method instead.
4. The TPO has erred in the application of certain filters, viz. turnover filter, and have selected as comparable, companies whose business and operations have nothing in common to that of your appellant.
5. The TPO has erred in not making any adjustments for the differences in the functions and risks which are not undertaken by your appellant but undertaken by the comparable companies, considering the fact that your appellant does not undertake any marketing or research and development activities in respect of transactions with AEs.
6. The TPO has erred in not considering the return on investment of your appellant which, being 43.23%, is sufficient to enthruse any prudent businessman to carry on business and therefore justifies the price received.
7. The TPO has erred in not considering and allowing the range of +/- 5% of the ALP computed.

8. The TPO has erred in not considering the fact that the margins earned by the Associated Enterprises (AEs') are lower than the margins earned by your appellant which clearly indicates that the AEs are charged at ALP.

GROUND II - Miscellaneous

1. Your appellant craves leave to add, amend, alter, vary and/ or withdraw any or all of the above grounds of appeal.
 2. For these and other grounds that may be adduced at the time of hearing, it may be directed that the order of the AO as upheld by the learned CIT(A) be modified to the extent appealed against.”
2. During the course of hearing, the Id. counsel for the assessee has invited our attention that the CIT(Appeals) has decided the appeal without service of notice of hearing upon the assessee. The Id. counsel for the assessee, however, contended that the impugned issues are covered by the orders of the Tribunal.
3. *Per contra*, the Id .DR has contended that the CIT(Appeals) has afforded various opportunities to the assessee, but none appeared on behalf of the assessee.
4. Having carefully examined the order of the CIT(Appeals), we find that the CIT(Appeals) has not given a specific finding with regard to service of notice of hearing upon the assessee. He has disposed of the appeal *ex parte*. In the light of these facts, we are of the view that though the issues may be covered by the orders of the Tribunal, but there should be some finding of the CIT(Appeals) on the controversy raised. We accordingly set

aside the order of the CIT(Appeals) and restore the matter to his file with a direction to adjudicate the issues afresh in the light of the orders of the Tribunal, after affording opportunity of being heard to the assessee.

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

Pronounced in the open court on this 29th day of July, 2016.

Sd/-

(A.K. GARODIA)
Accountant Member

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 29th July, 2016.

/D S/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.