

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

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

IT (TP) A No. 166/Bang/2015

Assessment year : 2010 – 11

The ITO Ward 3 (1) (2), Bangalore.	Vs.	M/s. Galax E Solutions India Pvt. Ltd., Unit No. 4, 8 th Floor, Innovator Block, ITPL, Whitefield Road, Bangalore – 560 066. PAN: AABCG9007F
APPELLANT		RESPONDENT

C.O. No. 99/Bang/2015
(in IT (TP) A No. 166/Bang/2015)

Assessment year : 2010 – 11

M/s. Galax E Solutions India Pvt. Ltd., Unit No. 4, 8 th Floor, Innovator Block, ITPL, Whitefield Road, Bangalore – 560 066. PAN: AABCG9007F	Vs.	The ITO Ward 3 (1) (2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri C. J. Brito, CA
Revenue by	:	Ms Neera Malhotra, CIT (DR)

Date of hearing	:	12.09.2017
Date of Pronouncement	:	13.10.2017

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the revenue and the Cross Objection is filed by the assessee and these are directed against the Assessment Order dated

24.12.2014 passed by the A.O. u/s 143 (3) r.w.s. 144C for Assessment Year 2010 – 11.

2. The grounds raised by the revenue in its appeal are as under:

“1. The directions of the Dispute Resolution Panel are opposed to law and facts of the case.

2. On the facts and in the circumstances of the case the Dispute Resolution Panel erred in law in directing the AO to exclude reimbursement of specific expenditure both from the export turnover as well as from total turnover for the purpose of computation of deduction u/s 10A, without appreciating the fact that the statute allows exclusion of such expenditure only from export turnover by way of specific definition of export turnover as envisaged by Sub-clause (4) of Explanation 2 below Sub-section (8) of Section 10A and the total turnover has not been defined in this Section.

3. On the facts and in the circumstances of the case the Dispute Resolution Panel erred in directing the AO to compute deduction u/s 10A in the above manner by placing reliance on the decision of Hon'ble High Court of Karnataka in the case of M/s Tata Elxsi Ltd., which has not become final since the same has not been accepted by the Department and SLPs are pending before the Hon'ble Supreme Court.

4. On the facts and in the circumstances of the case, the Dispute Resolution Panel erred in directing the TPO/AO to exclude the comparable M/s ICRA Techno Analytics Ltd., M/s Infosys Ltd., M/s Persistent System Ltd., M/s Persistent Systems & Solutions Ltd., without considering the facts discussed by the TPO for selection of the comparables in the case of assessee and without appreciating the fact that these are qualifying all the qualitative and quantitative filters applied by the TPO.

5. On the facts and in the circumstances of the case, the Dispute Resolution Panel erred in directing the TPO/AO to exclude the comparable Tata Elxsi Ltd., without appreciating the fact that the selection of comparables in a case depends on assessee specific FAR analysis and this is functionally comparable company which qualifies all the qualitative and quantitative filters applied by the TPO.

6. On the facts and in the circumstances of the case, the Dispute Resolution Panel erred in directing the TPO/AO to exclude the comparable M/s Thinksoft Global Services Ltd., by

applying new filter without appreciating the fact that the direction actually amounts to setting aside of the draft order, which is beyond the mandate given to DRP vide provisions by Section 144C(8).

7. On the facts and in the circumstances of the case, as per the directions of the Dispute Resolution Panel, whether working capital adjustment can be made on the basis of advance received from AEs in absence of debtors and inventory in the case of assessee for calculating the cost of working capital built in the profit margin.

8. On the facts and in the circumstances of the case the Dispute Resolution Panel is not justified in directing the TPO to adjust the profit margin of the assessee for the entire amount of advances received from AE on the ground that there is time value for money.

9. For these and other grounds that may be urged at the time of hearing, it is prayed that the directions of the Dispute Resolution Panel in so far as it relates to the above grounds may be reversed.

10. The appellant craves leave to add, alter, amend and / or delete any of the grounds mentioned above.”

3. The grounds raised by the assessee in its C. O. are as under:

“1. The Hon'ble Dispute Resolution Panel erred in law as well as on facts by rejecting the assessee's plea to consider the upper turnover filter applied at Rs.200 Crores by the assessee and there wrongly considering M/s. Larsen and Turbo Infotech Limited and M/s. Sasken Communication Technologies Limited as comparable to the business of the assessee company which has a turnover of Rs. 16 Crores only.

2. The Hon'ble Dispute Resolution Panel also erred in considering M/s. Kals Information's Systems Ltd as a comparable although it is functionally different from the assessee company. Further the assessee had clearly demonstrated that the segmental information of M/s. Kals Information's Systems Ltd relied upon by the TPO had inherent mistakes and hence could not be relied upon.

3. On the facts and circumstances of the case, the Hon'ble Dispute Resolution Panel, the learned Assessing Officer as well as learned Transfer Pricing Officer have erred in not

making proper adjustment for enterprise level and transaction level differences between the appellant and comparable companies by not allowing the risk adjustment to the assessee company.

4. For these and other grounds that may be urged at the time of hearing with the permission of the bench. The respondent craves leave to add, alter, amend and / or delete any of the grounds mentioned above."

4. It was agreed by both sides that the Ground No. 1 in the appeal of the revenue is general. Regarding Ground no. 2 & 3, both sides agreed that as per the judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Tata Elxi Ltd. as reported in 349 ITR 98 (Kar), it was held by Hon'ble Karnataka High Court that Total turnover is sum total of export turnover and domestic turnover and therefore, if an amount is reduced from export turnover, then total turnover also goes down by the same amount automatically. The directions of DRP to deduct telecommunication expenses from export turnover and total turnover both is in line with this judgment and therefore, we decline to interfere on this issue. Accordingly, Ground Nos. 2 & 3 of the appeal of the revenue are rejected.

5. Regarding the remaining grounds in the appeal of the revenue in respect of various T. P. issues, learned DR of the revenue supported the draft assessment order and the order of TPO and learned AR of the assessee supported the order of DRP. Learned DR of the revenue also submitted that DRP has applied a new filter i.e. Onsite Revenue filter to exclude Thinksoft Global Services Limited. She submitted that if a new filter is applied, it should be applied to all comparables and not a selected comparables on pick and choose basis.

6. We have considered the rival submissions. We find that on pages 23 & 24 of its order, DRP has applied Onsite Revenue filter to exclude Thinksoft Global Services Limited. This is true that if a filter is applied, it should be applied to all comparables because it may be that other comparables otherwise included may get excluded by applying a new filter and therefore, in that situation, either the new filter should not be applied or it should be applied to all comparables. Learned AR of the assessee did not make any request to leave this new filter and include Thinksoft Global Services Limited as a good comparable. Learned DR of the revenue also did not argue that this filter should not be applied. Her argument was this that this filter should be applied to all comparables. In this situation, we feel it proper to restore the entire T. P. matter to AO/TPO for a fresh decision after applying this filter to all comparables. Since, the major aspect of T. P. issue i.e. final selection of comparables is going back, we restore the remaining aspect of T. P. issue also i.e. Working Capital Adjustment also to AO/TPO for a fresh decision. Accordingly Ground Nos. 4 to 8 are allowed for statistical purposes. Ground Nos. 9 & 10 are general.
7. In the result, the appeal of the revenue is partly allowed for statistical purposes.
8. Regarding the C. O. of the assessee, it was submitted by the learned AR of the assessee that Ground Nos. 1 & 3 are not pressed and accordingly, these grounds are rejected as not pressed. He also submitted that Ground No. 4 is general.

9. Regarding Ground No. 2, it was submitted by the learned AR of the assessee that on pages 14 to 16 of the order of DRP, the issue was decided against the assessee on this basis that in the present year, there is no other activity of this comparable i.e. Kals Information System Ltd. Thereafter, he submitted that the relevant page of the Annual report of this company is available on page 271 of the paper book and from that, it is not coming out that there is no other activity. He also placed reliance on a tribunal order rendered in the case of Corner Healthcare Solutions P ltd. vs. ITO in ITA No. 44/bang/2015 dated 16.01.2017 for A. Y. 2010 – 11 and submitted that the relevant page is 551 & 552 and it was held in this case that this company is having inventory of Rs. 60,47,977/- as on 31.03.2010 and therefore, this company is in the business of software products also and hence, cannot be compared with a pure software development service provider. Learned DR of the revenue supported the order of DRP on this issue.
10. We have considered the rival submissions. We find that as per the balance Sheet of Kals Information System Ltd. available on page 265 of the paper book, there is inventory of Rs. 60,47,977/- as on 31.03.2010 but no schedule of inventory is available and therefore, it is not known as to whether, this inventory is of Application software product or something else. This aspect has not found attention of the coordinate bench in the case cited before us and therefore, we feel that the matter should go back to AO/TPO to find out from that company u/s 133 (6) about the details of inventory. Moreover, the T. P. issue involved in the appeal of revenue is being restored back to AO/TPO and therefore, this issue is also restored back for fresh decision.

11. In the result, the C. O. filed by the assessee is partly allowed for statistical purposes.
12. In the combined result, appeal of revenue and the Cross Objections of the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(LALIET KUMAR)
Judicial Member

Bangalore,
Dated, the 13th October, 2017.
/MS/

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

Copy to:

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

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.