

IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND  
SHRI LALIET KUMAR, JUDICIAL MEMBER

IT(TP)A No. 347/Bang/2015
Assessment Year :2010-11

The Assistant Commissioner of Income tax, Circle 2(1)(1), Bangalore.	Vs.	M/s. Broadcom Communication Technologies Pvt. Ltd., 4 <sup>th</sup> Floor, Campus 1A, RMZ Ecospace, Bellandur Village, VarthurHobli, Bangalore – 560 103.  <b>PAN: AACCB 8136B</b>
APPELLANT		RESPONDENT

IT(TP)A No. 501/Bang/2015
Assessment Year : 2010-11

M/s. Broadcom Communication Technologies Pvt. Ltd., 4 <sup>th</sup> Floor, Campus 1A, RMZ Ecospace, Bellandur Village, VarthurHobli, Bangalore – 560 103.  <b>PAN: AACCB 8136B</b>	Vs.	The Assistant Commissioner of Income tax, Circle 2(1)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Sharath Rao, CA
Revenue by	:	Shri BiswaranjanSasmal, CIT (DR)

Date of hearing	:	15.11.2017
Date of Pronouncement	:	17.11.2017

**ORDER**

*Per Shri A.K. Garodia, Accountant Member*

These are cross appeals filed by the revenue and assessee which are directed against the assessment order passed by the AO on 27.01.2015 u/s. 143(3) r.w.s. 144C of the I.T. Act, 1961 as per the directions of DRP.

2. The grounds raised by the assessee as per revised grounds of appeal are as under.

**“GENERAL**

*1. The assessment order dated January 27, 2015 passed by the learned Assessing Officer ("AO") pursuant to the directions passed by the Honorable Dispute Resolution Panel ("DRP") is not in accordance with the law and is contrary to the facts and circumstances of the present case and in any case in violation of the principle of equity and natural justice.*

**TRANSFER PRICING**

*1. The Honourable DRP and the learned AO erred in fact and in law in making an adjustment to the Arm's Length Price ("ALP") of the international transactions of the Appellant in the software development segment;*

*2. The Honourable DRP and the learned AO have erred in upholding the action of the Transfer Pricing Officer ("TPO") in rejecting the Transfer Pricing ("TP") documentation maintained and the detailed benchmarking analysis conducted by the Appellant;*

*3. The Honourable DRP has erred in law in upholding the action of the TPO in modifying the filters adopted by the Appellant and adopting additional filters for undertaking a new search and arriving at a fresh set of comparables;*

*4. The Honourable DRP and the learned AO have erred in upholding the action of the TPO in disregarding the multiple / prior year data considered by the Appellant in determining the ALP and adopting the financial data for a single year [i.e. the financial year ("FY") 2009-10] of the comparables;*

*5. The Honourable DRP has erred in upholding the action of the TPO in finalizing the TP order with the following companies as comparable to the Appellant without undertaking a proper Functions, Asset and Risk ("FAR") Analysis, despite such companies being functionally different to the Appellant and fail to meet the legally acceptable criteria for comparability:*

- **Larsen and Toubro Infotech Limited***
- **Tata Elxsi Limited***

*6. The Honourable DRP has erred in suo-moto rejecting the following companies as comparable to the Appellant, despite the same being considered as comparable by the TPO and not objected to by the Appellant:*

- **R S Software (India) Limited***
- **Persistent Systems and Solutions Limited***

*7. The Honourable DRP has erred in upholding the action of the TPO in rejecting the following companies selected by the Appellant despite*

*the same being functionally comparable to the Appellant and qualify the legally acceptable criteria for comparability:*

- ***Akshay Software Technologies Limited***
- ***LGS Global Limited***
- ***Quintegra Solutions Limited***
- ***Helios and Matheson Information Technology Limited***
- ***Silverline Technologies Limited***
- ***Sagarsoft India Private Limited***
- ***R Systems International Limited***

*8. The Honorable DRP has erred in upholding the Learned TPO/AOs action of wrongly computing the operating margin of the Appellant and comparable companies;*

*9. The Honorable DRP and the learned AO / TPO have erred in not granting the risk adjustment, as claimed by the Appellant;*

**OTHERS**

***10. The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds, at any time before or at the time of hearing of the appeal. Each of the above objections is independent and without prejudice to the other grounds preferred by the Appellant.”***

3. Similarly the grounds raised by the revenue 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 the expenditure incurred in foreign currency 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, whether the Hon'ble Dispute Resolution Panel can make adjustment 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.*

*5. On the facts and in the circumstances of the case, whether the Hon'ble Dispute Resolution Panel were 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 of money.*

*6. On the facts and in the circumstances of the case, the Hon'ble Dispute Resolution Panel erred by not upholding the approach of the TPO in its order.*

*7. The facts and in the circumstances of the case, whether the Hon'ble Dispute Resolution Panel is correct in excluding M/s ICRA Techno Analytics Ltd M/s Persistent Systems & Solutions Ltd, M/s Sasken Communications Technologies Ltd and M/s Persistent Systems Ltd while the comparables are qualifying all the qualitative and quantitative filters applied by the TPO.*

*8. On the facts and in the circumstances of the case, whether the Hon'ble Dispute Resolution Panel is correct in excluding INFOSY Ltd and Kals Information Systems Ltd. on the basis of decision in a different case for a different FY while the comparable is qualifying all the qualitative and quantitative filters applied by the TPO.*

*9. On the facts and in the circumstances of the case, whether the application of a new filter (Onsite Filter) is within the purview of Hon'ble Dispute Resolution Panel.*

*10. On the facts and in the circumstances of the case, whether the Hon'ble Dispute Resolution Panel is correct in applying the Onsite filter in Software Development segment in the case of M/s RS Software India Ltd.*

*11. On the facts and in the circumstances of the case, whether the Hon'ble Dispute Resolution Panel is correct in giving a direction which amounts to set aside an issue.*

*12. 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.*

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

4. At the very outset, it was pointed out by the bench that as per ground no. 10 of the appeal of the revenue, it is the grievance of the revenue that the DRP was not correct in applying onsite filter in software development segment in the case

of M/s. RS Software India Ltd. As per ground no. 9, this is the grievance of the revenue as to whether the application of new filter (Onsite filter) is within the purview of the DRP. The bench observed that this Tribunal is taking a consistent view that if a new filter is applied, it should be applied to all comparables and not to particular comparables on pick and choose basis and therefore, in that situation where new filter is applied, the matter has to go back to examine all comparables in the light of the new filter. In reply, it was submitted by Id. AR of assessee that regarding only one comparable i.e. M/s. RS Software India Ltd., the DRP has applied this new filter and excluded this comparable and the assessee as well as revenue both are in appeal against the exclusion of this comparable and therefore, this should be held that this filter is not applicable in the present case. The Id. DR of revenue supported the order of TPO and Draft assessment order.

5. We have considered the rival submissions. We find that as per para no. 3.5 of its order, it is noted by DRP that considering the fact that the objections are raised by the assessee in respect of higher margin comparables, it was found appropriate by them to examine other companies selected by TPO as comparable in regard to their comparability. Thereafter, it was noted that from the perusal of the annual reports, it is noticed that as per page no. 45 of annual reports in case of M/s. RS Software India Ltd., the expenses on foreign branches are incurred to the extent of Rs. 12.42 crores (82%) of total expenses of Rs. 15 crores debited in P & L account, which makes it clear that it is predominantly onsite software development company and therefore, it cannot be retained as comparable. The DRP directed the AO to exclude this company from the list of comparables. Before us, as per the revised grounds of appeal filed by the assessee as reproduced above, assessee is objecting to the exclusion of this comparable i.e. M/s. RS Software India Ltd. but there is no objection on this aspect in the grounds raised before us that onsite filter should not be applied. Onsite filter is very relevant and important filter in TP study and therefore, it cannot be said that onsite filter cannot be applied. Hence, we hold that in the facts of the present case, onsite filter has to be applied but since it was applied by the DRP to only one comparable, all the comparables should be examined in the light of this filter and thereafter, the list of comparables should

be finalized. We want to mention that in respect of those comparables which are passing through this filter i.e. onsite filter, the DRP should examine the applicability of all other relevant filters also and all other objections such as functional similarity / dissimilarity etc. also to decide about inclusion or exclusion of such comparables after providing adequate opportunity of being heard to both sides. Hence the entire TP matter is restored back to the file of DRP for fresh decision.

6. In addition to TP issue, one corporate tax issue is also raised by the revenue as per ground nos. 2 and 3 and this issue is regarding reducing the expenditure incurred in foreign currency both from export turnover as well as total turnover for the purpose of computing of deduction u/s. 10A of the I.T. Act. This issue is squarely covered in favour of the assessee by the judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Tata Elxsi Ltd. as reported in 349 ITR 98. It was held by Hon'ble Karnataka High Court in this case 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. Respectfully following this judgment of Hon'ble Karnataka High Court, we decline to interfere in the order of DRP on this issue. Hence ground nos. 2 and 3 of revenue's appeal are rejected.
7. In the result, the appeal filed by the assessee is allowed for statistical purposes whereas the appeal filed by the revenue is partly allowed for statistical purposes.

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

Sd/-  
(LALIET KUMAR)  
Judicial Member

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Bangalore,  
Dated, the 17<sup>th</sup> November, 2017.  
/MS/

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.