

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

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

IT(TP)A No.1564/Bang/2013
Assessment year : 2003-04

GE Intelligent Platforms Pvt. Ltd., (formerly M/s. GE Fanuc Systems Pvt. Ltd.), # 43, Velankani Tech Park, Building No.9, First Floor, Electronic City, Hosur Road, Bangalore – 560 100. PAN: AAACG 7573K	Vs.	The Assistant Commissioner of Income Tax, Circle 11(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sachit Jolly, Advocate
Respondent by	:	Smt. Padma Meenakshi, Jt. CIT(DR)(ITAT), Bengaluru

Date of hearing	:	11.12.2017
Date of Pronouncement	:	15.12.2017

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the assessee against the order of the CIT(Appeals) *inter alia* on the following grounds:-

“The grounds hereinafter taken by the Appellant are without prejudice to one another.

1. That the order passed by the learned Commissioner of Income Tax (Appeals) — IV, Bangalore [‘CIT (Appeals)’], to the extent prejudicial to the Appellant, is bad in law and liable to be quashed.

2. That the learned CIT (Appeals) erred in upholding the rejection of Transfer Pricing ('TP') documentation by the learned Transfer Pricing Officer ('TPO')/ Assessing Officer ('AO') and thereby erred in not appreciating that the Appellant had prepared the TP documentation bona fide and in good faith and conducted the comparable analysis based on the detailed Functional Asset and Risk ('FAR') analysis performed with due diligence and the data available at the time of conducting the comparability analysis.
3. That on facts and in the circumstances of the case, the learned CIT (Appeals) erred in disregarding the various submissions made by the Appellant against the order of the learned TPO / AO.
4. That on the facts and in the circumstances of the case, the learned CIT (Appeals) erred in upholding the transfer pricing adjustment of Rs. 2,17,60,002 in respect of the international transactions of the Appellant under Section 92CA of the Income Tax Act, 1961 (the 'Act').
5. That on the facts and in the circumstances of the case, the learned CIT (Appeals) erred in upholding the rejection of comparable companies.
6. That on facts and in the circumstances of the case, the learned CIT (Appeals) erred in not even considering the correction of errors in the computation of margins of the comparable companies as provided by the Appellant and further erred in not considering exclusion of non operating incomes and expenses while computing the margins of comparable companies.
7. That on facts and in the circumstances of the case, the learned CIT (Appeals) erred in accepting the Profit Level Indicator ("PLI") adopted by the TPO of Cash Profit/ Sales instead of Operating profit/ Sales.
8. That on facts and in the circumstances of the case, the learned CIT (Appeals) erred in upholding the adjustment of Rs.

2,17,60,002 and in upholding the TP adjustment even for the non associated enterprise transactions of the Appellant.

9. That on facts and in the circumstances of the case, the learned CIT (Appeals) erred in not providing the working capital adjustment.

10. The learned CIT (Appeals) erred in not considering the performance of the appellant in the subsequent years as a corroborative substantiation for the lower margins earned by it in the current year.

11. The learned CIT (Appeals) erred in upholding that the Appellant was not entitled to the benefit of proviso to section 92C(2) of the Act as the price charged by the Appellant was outside the +/- 5% range of the arithmetic mean of the comparable prices.

12. The learned CIT (Appeals) erred in upholding the charging of interest under section 234B, section 234C and section 234D of the Act.

13. That the Appellant craves leave to add to and / or alter, amend, rescind or modify the grounds taken hereinabove before or at the time of hearing of this appeal.”

2. During the course of hearing, the Id. Counsel for the assessee has invited our attention to the order of the CIT(Appeals) with the submission that the CIT(Appeals) has not applied his mind to the contentions of the assessee while declining the exclusion of certain comparables. He blindly approved the order of the TPO/AO. The Id. DR, though relied upon the order of the CIT(Appeals), but has candidly admitted that there is no proper adjudication of the issues raised before the CIT(Appeals).

3. Having carefully examined the order of the CIT(Appeals) in the light of the rival submissions, we find that the CIT(Appeals) did not adjudicate the contentions of the assessee for inclusion/exclusion of the comparables

by passing a reasoned order. He has simply approved the order of the TPO/AO. In the absence of proper adjudication by the CIT(Appeals), both the parties have agreed that the matter be sent back to him for adjudication of the issues after affording opportunity of being heard to the assessee by passing a reasoned order on all the disputed comparables and thereafter to determine the ALP. Accordingly, we set aside the order of the CIT(Appeals) and restore the matter to his file with a direction to readjudicate the issues raised before him by passing a reasoned order, after affording opportunity of being heard to the assessee.

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

Pronounced in the open court on this 15th day of December, 2017.

Sd/-
(INTURI RAMA RAO)
Accountant Member

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 15th December, 2017.
/ Desai Smurthy /

Copy to:

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

By order

Senior Private Secretary
ITAT, Bangalore.