

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE**

**सुश्री सुषमा चावला, न्यायिक सदस्य, एवं श्री अनिल चतुर्वेदी, लेखा सदस्य, के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM**

आयकर अपील सं. / ITA No.1264/PUN/2015

निर्धारण वर्ष / Assessment Year : 2011-12

The Deputy Director of Income Tax
(International Taxation), Circle-2, Pune.

... अपीलार्थी / Appellant

बनाम / V/s.

M/s. Schlumberger India Technology
Centre Pvt. Ltd.,
(formerly known as Schlumberger
Global Support Centre Ltd.-India Branch)
Office No. 701, 7th Floor,
Bldg. No. 9, Commerzone,
Survey No.144/145,
Samrat Ashok Path,
Off Air Port Road, Yerwada,
Pune-411 006.

... प्रत्यर्थी / Respondent

PAN :AALCS2048C

आयकर अपील सं. / ITA No.1280/PUN/2015

निर्धारण वर्ष / Assessment Year : 2011-12

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... अपीलार्थी / Appellant

PAN :AALCS2048C

बनाम / V/s.

The Joint Director of Income Tax,
(International Taxation), Pune.

... प्रत्यर्थी / Respondent

Assessee by : Shri Rajeev Kumar, CIT
Revenue by : Shri Kamal Sawhney & Shri Sujit Thakar

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| सुनवाई की तारीख / Date of Hearing : 09.01.2018 | घोषणा की तारीख / Date of Pronouncement : 17.01.2018 |
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आदेश / ORDER

PER SUSHMA CHOWLA, JM

The cross appeals filed by the Revenue and assessee are against order of CIT (Appeals)-13, Pune dated 30.06.2015 relating to assessment year 2011-12 against order passed under section 143(3) r.w.s. 144C(3) of Income Tax Act, 1961 (in short the 'Act').

2. The cross appeals filed by the Revenue and the assessee were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. In ITA No.1264/PUN/2015, the Revenue has raised following grounds of appeal:

1. *Whether the CIT(A) was right in law and on facts in excluding functionally comparable companies only on the basis of turnover.*
2. *Whether the CIT(A) was right in law and on facts in excluding functionally comparable companies on the grounds of exceptional events affecting the profits when no such exceptional event took place during the year under consideration.*
3. *Did the DRP fall into error in not appreciating the term of rules 10B (2) of the Income Tax Rules, 1962 regarding functional comparability.*

4. In ITA No.1280/PUN/2015, the assessee has raised following grounds of appeal:

1. *On the facts and in circumstances of the case and in law, the learned Joint Director of income-tax (International Taxation), Pune ('Ld. AO') has erred in making transfer pricing addition to the Appellant's income and the learned Commissioner of Income-tax (Appeals)-13, Pune ['Ld. CIT(A)'] has erred in partially upholding/confirming some actions of the Ld. AO in this regard.*
2. *On the facts and circumstances of the case, and in law, erred in and the Ld. CIT(A) further erred in confirming the action of the Ld. AO of disregarding the benchmarking analysis and comparable companies selected by the Appellant based on the contemporaneous data in the transfer pricing study report maintained as per section 92D of the Act read with Rule 10D of the Income-tax Rules, 1962 ('the Rules') and thereby rejecting the transfer pricing documentation maintained by the Appellant.*
3. *On the facts and circumstances of the case, and in law, the Ld. AO erred in and the Ld. CIT(A) further erred in confirming the action of the Ld. AO of not providing reasons to show that the conditions mentioned in clauses (a) to (d) of Section 92C(3) of the Act were satisfied and not sharing the search strategy including the accept-reject matrices used before making an adjustment to the income of the Appellant.*
4. *On the facts and circumstances of the case, and in law, the Ld. AO erred in and the Ld. CIT(A) further erred in confirming the action of the Ld. AO of applying the following filters as well as modifying the filters applied in the transfer pricing documentation*
 - *Rejecting the turnover filter of Rs.0-25 Crores applied by the Appellant and selecting companies having turnover greater than Rs.1 Crore with no upper limit.*
 - *Rejecting the filter of export turnover being at least 25 per cent of total turnover and instead, applying a filter of export turnover being at least 75 percent of total turnover.*
5. *On the facts and circumstances of the case, and in law, the Ld. AO erred in and the Ld. CIT(A) further erred in confirming the action of the Ld. AO of rejecting a comparable company namely CG VAK Software & Exports Limited (BPO segment) alleging it to be a persistent loss maker and being predominantly engaged in software development.*
6. *On the facts and circumstances of the case, and in law, the Ld. AO erred in and the Ld. CIT(A) further erred in confirming the action of the Ld. AO of not reducing foreign exchange gain arising on account of business operations from operating costs by considering foreign exchange gain loss as non-operating while computing Profit Level Indicator ('PLI') of the Appellant and comparables.*
7. *On the facts and circumstances of the case, and in law, the Ld. AO erred in and the Ld. CIT(A) has further erred in confirming the action of Ld. AO of not allowing an adjustment for the difference between the level of risk borne by the comparables and the Appellant as well as other factors as mandated by the provisions of Rule 10B(1) (e) (iii) of the Rules.*
8. *On the facts and in the circumstances of the case, and in law, the Ld. AO has erred in and the Ld. CIT(A) has further erred in confirming the action of the Ld. AO of considering non- contemporaneous single year data for the margin computation of the comparables which was not available at the time of conducting the Transfer Pricing study; and disregarding*

contemporaneous multiple year data which was considered by the appellant in accordance with the provisions of Rule 10B (4) of the Rules.

9. *On the facts and circumstances of the case, and in law, the Ld. AO erred in and the Ld. CIT(A) has further erred in confirming the action of the Ld. AO of not allowing the appellant the benefit of 5% variation envisaged in the proviso to Section 92C(2) of the Act.*
10. *On the facts and circumstances of the case, and in law, the Ld. AO erred in and the Ld. CIT(A) has further erred in confirming the action of the Ld. AO of initiating penalty proceeding under Section 271(1)(c) of the Act and levying interest under Section 234 B of the Act.*

5. The learned Authorized Representative for the assessee pointed out that the only issue raised by the Revenue is against exclusion of functionally comparable companies only on the basis of turnover i.e. Infosys BPO. He further pointed out that the CIT(A) had directed the Assessing Officer / Transfer Pricing Officer (TPO) to exclude three concerns i.e. Infosys BPO, Accentia Technologies Ltd. and Eclerx Services Ltd. The Revenue is in appeal only against the concern on the basis of turnover which is Infosys BPO. He further stated that if the appeal of Revenue is dismissed, then the issues raised by the assessee in its appeal would become academic as the margins shown by the assessee would be within +/- 5% range of mean margins of balance comparables.

6. The learned Departmental Representative for the Revenue on the other hand, placed reliance on the order of Assessing Officer / TPO.

7. We have heard the rival contentions and perused the record. The assessee is wholly owned subsidiary of Schlumberger Oilfield Holding Ltd., British Virgin Island, which is engaged in providing technical support services i.e. engineering back office services to various group companies outside India. As per the transfer pricing document furnished for the year under consideration, the assessee had entered into international transactions with its associated enterprises totaling Rs.14,03,21,903/-. The assessee in the transfer pricing

study report had benchmarked the international transactions of provision of technical support services by using TNMM method and by applying PLI of opening profit to opening cost i.e. OP/OC. The net margin of assessee was 6.07%. The assessee had selected certain companies as comparable. However, the Assessing Officer finally selected nine concerns as comparable and show caused the assessee. The Assessing Officer also applied different filters and also applied the margins of instant assessment year. The assessee filed objections against various issues and also asked for economic adjustment while benchmarking international transactions of the assessee. The Assessing Officer after considering objections of assessee and after deliberating upon the issues finally selected nine concerns as comparables whose arithmetic mean margin worked out to 19.10%. The PLI after working capital adjustment was 18.94%. The Assessing Officer thus, made an adjustment of Rs.1,83,20,819/- in respect of international transactions undertaken with associated enterprises.

8. The CIT(A) on the other hand, accepted the case of assessee in respect of three concerns and directed their exclusion i.e. Infosys BPO, Accentia Technologies Ltd. and Eclerx Services Ltd. The first concern Infosys BPO was excluded because of its turnover. The second concern Accentia Technologies Ltd. was rejected because of being functionally not comparable. The concern Eclerx Services Ltd. was rejected being KPO company. Certain other concerns and adjustment, which the assessee wanted was not agreed to by the CIT(A).

9. Both the assessee and Revenue are in appeal against respective findings of the order of CIT(A).

10. First, we are taking up the appeal of Revenue, wherein vide ground of appeal No.1, the issue raised is against exclusion of functionally comparable

companies on the basis of turnover and second is on the ground that exceptional events affecting the profits. From the perusal of the order of CIT(A) and as mentioned hereinabove, the three concerns which were rejected by the CIT(A) were Infosys BPO on the basis of turnover, Accentia Technologies Ltd. being functionally not comparable and Exclerx Services Ltd. being KPO. The learned Authorized Representative for the assessee fairly pointed out that in case the appeal of Revenue is dismissed, then the grounds of appeal raised by the assessee would become academic. Accordingly, we proceed to decide the grounds of appeal raised by the Revenue in the first instance. It may be pointed out herein itself that the grounds of appeal raised by the Revenue are very cryptic and they do not even refer to the concern which has been excluded by the CIT(A); only talked about the concern being rejected on the basis of turnover or exceptional events. First of all, we have not been able to find any concern being rejected because of exceptional events. The only concern which falls in the issues raised by the Revenue is Infosys BPO, which has been rejected by the CIT(A) because of its turnover. The total value of international transactions of assessee was to the tune of Rs.14 crores. The TPO applied the filter of Rs.1 to Rs.200 crores in order to select comparable concerns. The turnover of Infosys BPO was Rs.1,129 crores, which first of all falls outside the range, which was selected by the TPO himself and secondly, it was much higher than the turnover of assessee. Accordingly, the margins of such concerns could not be compared with the margins of assessee in order to benchmark international transactions of assessee.

11. We find that the Hon'ble Bombay High Court in the case of CIT Vs. M/s. Pentair Water India Pvt. Ltd. in Income Tax Appeal No.18 of 2015, vide judgment dated 16.09.2015 had excluded Infosys BPO on account of its turnover. Applying the ratio laid down by the Hon'ble Bombay High Court, we

hold that the concern Infosys BPO is to be excluded from the final set of comparables because of its high turnover. The grounds of appeal raised by the Revenue are thus, dismissed.

12. Once the appeal of Revenue is dismissed, the grounds of appeal raised by the assessee in its appeal become academic in nature. Accordingly, we do not adjudicate the same.

13. In the result, appeal of Revenue is dismissed and appeal of assessee is disposed of as indicated above.

Order pronounced on this 17th day of January, 2018.

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 17th January, 2018

GCVSR

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-13, Pune
4. The CIT(IT/TP), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune