

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

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

IT(TP)A No.464/Bang/2016
Assessment Year : 2011-12

M/s. Aptean India Pvt. Ltd., (formerly M/s. Consona CRM Software Services India Pvt. Ltd.), Level-5, (8 th Floor), Golden Heights, No. 1/2, 59 th C Cross, 4 th M Block, Rajajinagar, Bangalore -560 010. PAN: AADCC 6528R	Vs.	The Assistant Commissioner of Income Tax, Circle – 1 (1)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri G.S. Prashanth, CA
Revenue by	:	Shri R.K. Jha, CIT (DR)

Date of hearing	:	14.02.2018
Date of Pronouncement	:	23.02.2018

ORDER

Per Shri A.K. Garodia, Accountant Member;

This appeal is filed by the assessee which is directed against the assessment order dated 18.01.2016 passed u/s. 143(3) r.w.s. 144C of the IT Act as per the directions of the DRP.

2. The grounds raised by the assessee are as under.

“1. The orders of the TPO / DRP / Assessing Officer in so far as they are against the appellant, are opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the appellant's case.

2. The appellant denies itself to be assessed on a total income of Rs. 3,25,57,536/- as against income of Rs.2,39,83,500 /- declared by the appellant.

3. a) The order of the assessment is bad in law as the mandatory conditions to invoke the jurisdiction under section 92CA of the Act did not exist, or having not been complied with and consequently the order of the assessing officer is bad in law for want of requisite

jurisdiction.

b) The assessing officer erred in not providing the copy of the approval granted by the Commissioner which is in violation of the settled principles of natural justice and thus the order of assessment needs to be set aside.

4. The addition of Rs. 85,74,036/- being adjustment under section 92CA of the Act made by the assessing officer is bad in law and thus the addition made needs to be deleted on the facts and circumstances of the case.

5. The TPO, DRP and the AO erred in rejecting the comparables selected by the appellant without giving any cogent reasons.

6. a) The TPO and the AO erred in selecting comparable companies with turnover more than 10 times that of the appellant resulting in an illogical comparison of financial data.

b) Without prejudice, the TPO and AO ought to have applied the turnover filter of Rs.1 crore to Rs.200 crore under the facts of the case. Reliance is placed on the decision of the Hon'ble Bangalore Tribunal in appellant's group company case for the assessment year 2009-10 reported in 52 taxmann.com 407.

7. a) The authorities below erred in considering Persistent Systems and Solutions Ltd. as comparable on the facts of the case. Without prejudice hold that the comparable needs to be rejected even based on the principles of consistency.

b) The DRP and the AO erred in rejecting Evoke Technologies as a comparable on the facts of the case.

8. a) The TPO, DRP and the AO failed to appreciate that the appellant being a captive service provider runs a 'single customer risk'.

b) The TPO, DRP and the AO further erred in not appreciating that the appellant renders services only to their parent company and thus suitable risk adjustment needs to be made in case of the appellant under the facts and circumstances of the case.

9. The TPO, DRP and the Assessing Officer erred in not granting the benefit of the proviso to section 92C(2) of the Act which is mandatory under the scheme of the Act.

10. The TPO, DRP and the AO failed to understand the spirit and intent of Rule 10B(1)(e)(ii) as per which even if one of the comparables selected by the appellant satisfies the computation mechanism for determination of the ALP, the determination of ALP by using arithmetic mean of different comparables is not warranted under the facts and circumstances of the case.

11. The appellant denies itself liable to be levied to interest under sections 234B and 234C of the Act and further the computation of interest under sections 234B and 234C was not provided to the appellant as regard to the rate, period and method of calculation of interest under the facts and circumstances of the case.

12. The appellant craves leave to add, alter, delete, and modify any of the grounds which are urged above.

13. For the above and such other grounds as may be urged at the time of hearing, the appellant prays your Honour to consider the facts and circumstances of the case and justice be rendered.”

3. At the very outset, it was submitted by Id. AR of assessee that some additional grounds were raised before the DRP which were not decided by DRP. In support of his contention, the Id. AR of assessee submitted an affidavit of Shri Prashanth K L, CA in which it is stated that on the date of hearing i.e. on 07.12.2015, some additional grounds were filed before the DRP and the same were not adjudicated by DRP. It is also stated in the affidavit that he has inspected the records on 19.12.2017 and ascertained that the additional grounds filed are part of the records of the DRP and the DRP has also confirmed the filing of additional grounds by way of noting in the order sheet. At this juncture, a query was raised by the bench from the Id. DR of revenue and he was asked as to whether the additional grounds raised by the assessee before the DRP were decided by the DRP or not. The Id. DR of revenue submitted that these grounds are not decided by DRP and therefore, the matter may be restored back to the file of DRP for deciding the additional grounds raised before the DRP.
4. We have considered the rival submissions. First of all, we reproduce the affidavit of Shri Prashanth K L, CA filed before us on 14.02.2018. The same is as under.

“I Prashanth K L , Chartered Accountant, Partner of M/s. Guru & Jana, having office at No. 41, Patalamma Temple Street, Basavanagudi, Near South End Circle, Bengaluru - 560004, do hereby solemnly declare and affirm on oath as follows:

1. That, I was the authorised representative of the assessee, M/s. Aptean India Private Limited for the assessment year 2011-12 had represented the assessee before the Dispute Resolution

Panel (DRP).

2. That on the date of hearing i.e. on 07.12.2015, I had filed additional grounds before the learned DRP.

3. That the learned DRP has not adjudicated the additional grounds filed by me.

4. That I had inspected the records on 19.12.2017 and ascertained that the additional grounds filed are part of the records of the DRP.

5. That the DRP has also confirmed the filing of additional grounds by way of noting in the order sheet.

6. That the additional grounds were not adjudicated by the learned DRP and thus I plead before the Hon'ble Bench that the matter in dispute should be sent back for re-adjudication in the interest of equity and justice.

7. That, I reiterate that the additional grounds filed were not adjudicated by the DRP and therefore I plead before the Hon'ble Bench that justice be rendered.

8. That, I state that whatever stated above in paras 1 to 7 is true and correct to the best of my knowledge and belief.

9. That the signature affixed below is that of mine.

THIS AFFIDAVIT IS EXECUTED ON THIS 05th DAY OF FEBRUARY 2018, AT BENGALURU

5. We also reproduce the additional grounds raised before the DRP, copy of which was filed before us by the learned AR of the assessee.

“PRAYER FOR ADMITTING ADDITIONAL GROUNDS OF OBJECTIONS

The assessee begs to submit the under mentioned additional grounds of objections which were not urged specifically in the original grounds of objections filed at the time of institution of objections. These grounds do not involve any investigation of any facts otherwise on the record of the department and are also pure questions of law, which goes into the very root of the matter of jurisdiction and validity of the proceedings and therefore, it is prayed that the additional grounds may kindly be admitted and disposed off on merits for the advancement of substantial cause of justice. Reliance is placed on the decision of the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. Vs. CIT reported in 229 ITR 383.

1. *The Transfer Pricing Officer [TPO] and the Assessing Officer [AO] erred in rejecting the use of multiple year data while arriving at appropriate comparables on the facts of the case.*
2. *The TPO and the AO erred in rejecting the use of data of companies whose financial years ended on a date other than 31st March while arriving at appropriate comparables on the facts of the case.*
3. a) *The TPO & the AO erred in rejecting the companies that have export sales less than 75% of the sales from software development services under the facts of the case.*

b) *The proposal to apply a 75% threshold for export income is against all known canons of computation of ALP and by itself is unsustainable in law and thus the orders of the authorities below need to be set-aside in the interest of equity and justice.*
4. a) *The TPO & the AO erred in rejecting the companies that have sales from Software Development Services less than 75% of the total operating income.*

b) *The proposal to apply a 75% threshold for service income is against all known canons of computation of ALP and by itself is unsustainable in law and thus the orders of the authorities below need to be set-aside in the interest of equity and justice.*
5. *The TPO failed to appreciate that the assessee has a 'single customer risk' and he erred in not providing any risk adjustment under the facts of the case.*
6. *The TPO and the AO erred in rejecting the comparables applied by the assessee although such comparables were appropriate for comparison under the facts and circumstances of the case.*
7. *The draft order of the assessing officer is bad in law as the mandatory conditions to invoke the jurisdiction under section 92CA of the Act did not exist, or having not been complied with and consequently the order of the assessing officer is bad in law for want of requisite jurisdiction.*
8. *The TPO and the Assessing Officer failed to understand the spirit and intent of Rule 10B(1)(e)(ii) of the Rules as per which even if one of the comparables selected by the assessee satisfies the computation mechanism for determination of the ALP, the determination of ALP by using arithmetic mean of different comparables is not warranted.*
9. *The copy of the approval granted by the Commissioner was not provided which is in violation of the settled principles of natural justice and thus the draft order of assessment needs to be set aside.*

10. The orders of the TPO and assessing officer in so far as it is against the assessee is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the assessee's case.

11. The assessee craves leave to add, alter, delete or substitute any of the grounds urged above.

12. In view of the above and other grounds that may be urged at the time of the hearing, the assessee prays that the objections be considered in the interest of equity and justice.”

6. We have considered the rival submissions. In view of this factual position that some additional grounds were raised by the assessee before the DRP and the same were not decided by DRP, we feel it proper to restore the entire matter back to the file of DRP for fresh decision with the direction that the DRP should decide the additional grounds also along with main grounds raised by the assessee. The DRP should decide all grounds by way of a speaking and reasoned order after providing adequate opportunity of being heard to both sides. In view of this decision, no adjudication is called for regarding the various issues on merit raised by the assessee before us.
7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

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

Sd/-
(LALIT KUMAR)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 23rd February, 2018.
/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.