

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

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

IT(TP)A No.2028/Bang/2017
Assessment year : 2013-14

Swiss Re Global Business Solutions India Private Ltd., [Formerly known as Swiss Re Shared Services (India) Pvt. Ltd.], Vaswani Centropolis, 2 nd to 6 th Floor, Langford Town, Bengaluru – 560 027. PAN: AAECs 8786L	Vs.	The Deputy Commissioner of Income Tax, Circle 6(1)(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Nageshwar Rao, Advocate
Respondent by	:	Shri Farhat Hussain Qureshi, Advocate

Date of hearing	:	31.01.2018
Date of Pronouncement	:	28.02.2018

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the assessee against the order of the AO passed consequent to the directions of the DRP *inter alia* on various grounds which are as under:-

“Based on the facts and circumstances of the case and in law, Swiss Re Global Business Solutions India Private Limited (hereinafter referred to as "Appellant"), respectfully craves leave to prefer an appeal against the appeal order passed by the learned Assessing Officer [hereinafter referred to as the "learned AO"]

under section 143(3) read with section 144C(13) of the Income-tax Act, 1961 ("the Act") on the following grounds:

That on the facts and circumstances of the case and in law:

1. The learned AO, based on directions of the Hon'ble DRP, erred in assessing the total income at INR 22,45,74,154 as against returned income of INR 16,53,88,150 computed by the Appellant;
2. The learned AO/ Transfer Pricing Officer ('TPO') erred in making an addition of INR 5,91,86,004 to the total income of the Appellant on account of adjustment in the arm's length price for provision of Information Technology Enabled Services ("ITeS") transaction entered by the Appellant with its associated enterprise;
3. The learned AO/ TPO erred, in law and in facts, by not accepting the economic analysis undertaken by the Appellant in accordance with the provisions of the Act read with the Rules, and conducting a fresh economic analysis for the determination of the ALP in connection with the impugned international transaction and holding that the Appellant's international transaction is not at arm's length;
4. The learned AO/ TPO erred, in law and in facts, by determining the arm's length margin/ price using only FY 2012-13 data which was not available to the Appellant at the time of complying with the transfer pricing documentation requirements;
5. The learned AO/TPO erred in rejecting certain comparable companies by applying the following quantitative and qualitative filters:
 - a) The learned AOI TPO erred, in law and in facts, by rejecting certain comparable companies identified by the Appellant for having different accounting year (i.e. companies having accounting year other than March 31 or companies whose financial statements were for a period other than 12 months);
 - b) The learned AO/ TPO erred, in law and in facts, by rejecting certain comparable companies identified by the Appellant

using employee cost greater than 25 of the total revenues as a comparability criterion;

- c) The learned AO/ TPO erred, in law and in facts, by using export sales less than 75 of total sales as a comparability criterion;
 - d) The learned AO/ TPO erred, in law and in facts, by applying only the lower turnover filter of less than INR 1 crore as a comparability criterion and not applying a higher threshold limit for turnover filter;
6. The learned AO/ TPO erred, in law and in facts, by exercising his powers under section 133(6) of the Act to obtain information which was not available in public domain and relying on the same for comparability purposes;
7. The learned AO/TPO erred, in law and in facts, by accepting/ rejecting companies based on unreasonable comparability criteria:
- a) The learned AO/TPO erred, by accepting certain additional comparable companies by conducting a fresh independent search during TP assessment proceedings which are functionally dissimilar;
 - b) The learned AO/TPO erred, by rejecting certain comparable companies selected by the Appellant in its TP documentation;
 - c) The learned AO/TPO erred, by rejecting certain comparable companies additionally proposed by the Appellant during TP assessment proceedings which are functionally similar;

Although some of the companies were chosen as comparables in the transfer pricing study, upon consideration of more details, some of these comparables in case found to be not comparable for different reasons, appellant craves leave to urge the same at the time of hearing.

8. The learned AO/ TPO erred, in law and in facts, by wrongly computing the operating margins of some of the comparable companies considered in the TP order;

9. The learned AO/ TPO erred, in law and in facts, by incorrectly computing the working capital adjustment benefit;

10. The learned AO/ TPO erred, in law and in facts, by not granting depreciation adjustments to account for differences in the rate of depreciation charged by the Appellant vis-a-vis the comparables;

11. The learned AO/ TPO erred, in law and in facts, by not making suitable adjustments on account of differences in the risk profile of the Appellant vis-a-vis the comparables, while conducting comparability analysis;

12. The learned AO has erred, in law and in facts, by levying interest of INR 1,12,11,146 under section 234B of the Income Tax Act, 1961;

13. The learned AO has erred, in law and in facts, in initiating penalty proceedings u/s 271(1)(c) of the Act.

The Appellant submits that each of the above grounds is independent and without prejudice to one another.

The Appellant craves leave to add, alter, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal, so as to enable the Hon'ble Tribunal to decide on the appeal in accordance with the law.”

2. During the course of hearing, the Id. Counsel for the assessee has filed an application for admission of additional grounds. The additional grounds raised through this application are also extracted hereunder:-

“The Appellant craves leave to raise the following additional grounds. The Hon'ble Tribunal would appreciate that these

grounds are to be read in conjunction with Grounds already taken up by the Appellant.

A. That the following companies cannot be considered as comparable to Appellant in law and fact on one or more grounds:

1. Acropetal Technologies Limited (segmental)
2. Hartron Communication Limited
3. Capgemini Business Services (India) Private Limited
4. Tech Mahindra Limited (consolidated segmental)
5. Infosys BPO Limited

B. The learned AO/ TPO erred, by rejecting the following comparable companies selected by the Appellant in its TP documentation even though the companies are functionally comparable to the Appellant:

1. Caliber Point Business Solutions Limited (segmental)
2. Informed Technologies India Limited

C. The learned AO/ TPO erred, by rejecting the following comparable companies additionally proposed to be included by the Appellant even though the companies are functionally comparable to the Appellant:

1. ACE BPO Services Private Limited
2. R Systems International Limited (segmental)

The Appellant craves leave to add, alter, amend, vary, omit, or substitute any of the aforesaid, at any time before or at the time of, hearing of the appeal, so as to enable the Hon'ble Tribunal to decide on appeal in accordance with the law.”

3. During the course of hearing, the Id. Counsel for the assessee has invited our attention to the order of the TPO that while selecting the comparables, the TPO has applied various filters for excluding the comparables taken in the TP study by the assessee, but he has not applied these filters uniformly to all the comparables either taken by the assessee or selected by himself. For example, he has excluded certain comparables whose ITes income is less than 75% of its total operating revenue without realizing that segmental information are available in the

annual report. The assessee has taken 5 comparables viz., (1) Caliber Point Business Solutions Ltd. (2) Cosmic Global Ltd. (3) e4e Healthcare Business Services P. Ltd. (4) Informed Technologies India Ltd. (5) Jindal Intellicom Ltd. The TPO has excluded (1) Caliber Point Business Solutions Ltd. (2) Cosmic Global Ltd. and (3) Informed Technologies India Ltd. by applying different filters. The TPO has selected of his own 9 more comparables and has taken 11 comparables for determining the arithmetic mean to compute the ALP of the international transactions. In the course of the hearing, the Id. Counsel for the assessee has also invited our attention to the order of the TPO with the submission that whatever filter was applied by the TPO for excluding the comparables taken by the assessee in the TP study, the same filter should be applied to the comparables taken up by the TPO himself. There cannot be an application of different filters for different comparables. This proposition was confronted to the Id. DR and these facts were not rebutted.

4. During the course of hearing, both the parties agreed that whatever filter the TPO wants to apply, it should be applied uniformly to all the comparables either taken by the assessee or selected by the TPO for computing the ALP. From a reading of the order of the TPO, it also appears that the filters were not uniformly applied to all the comparables. Under these circumstances, we are of the view that let the matter be remanded to the TPO to re-examine the comparables taken by the assessee in the TP study and also the comparables selected by the TPO by applying the same filters uniformly. Accordingly, we set aside the order of the AO and restore the matter to the AO/TPO to re-examine the comparables taken by the assessee in the TP study and the comparables originally selected by the TPO while determining the ALP and whatever filter the TPO wants to apply, it should be applied to all comparables uniformly while determining the ALP of the international transactions.

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

Pronounced in the open court on this 28th day of February, 2018.

Sd/-

(INTURI RAMA RAO)
Accountant Member

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 28th February, 2018.

/ 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.