



IN THE INCOME TAX APPELLATE TRIBUNAL “ K”, BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM

&

SHRI PAWAN SINGH, JM

ITA No.6621/Mum/2017

(Assessment Year :2013-14)

M/s. Fractal Analytics Pvt.Ltd., Level 7, Silver Metropolis Western Express Highway Goregaon (E) Mumbai – 400 063	Vs.	ACIT- Circle 9(3)(2) Aayakar Bhawan Room No.418, 4 th Floor M.K.Road Mumbai – 400 020
PAN/GIR No.AAACF4502D		
Appellant)	..	Respondent)

Assessee by	Shri Ajit Kumar Jain Ms. Radhika J. Thakkar Shri Sidhesh Chaugule
Revenue by	Shri Saurabh Deshpande
Date of Hearing	03/04/2018
Date of Pronouncement	06/04/2018

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by assessee against the order of DRP-1(WZ),Mumbai dated 16/08/2017 for A.Y.2013-14 in the matter of order passed u/s.143(3) r.w.s. 144C(13) of the Income Tax Act, 1961.

2. Solitary issue of the assessee pertains to adjustment of Rs.4,17,66,175/- to the price charged in relation to the international transaction carried out by the assessee, after including Eclerx Services Ltd., as comparable.

3. At the outset, learned AR placed on record the order of the Tribunal in assessee's own case for the A.Y.2012-13 dated 21/09/2017, wherein

exactly the same issue was dealt by the Tribunal and decided in favour of the assessee, wherein Eclerx Services Ltd., was excluded from comparables, precise observation of Tribunal was as under:-

“8. We have heard both the Counsel and perused the records. Learned Counsel of the assessee submitted that he will confine his argument with regard to the transfer pricing adjustment to the selection of comparables.

9. In this regard, learned Counsel of the assessee confined his argument to the exclusion of M/s.Eclerx Services from the comparables. He submitted that detailed submission in this regard had been made to the authorities below (Paper Book page 65-70). However, authorities below have not countered the same. Learned Counsel submitted that assessee is engaged in providing analytical solution. As against this Eclerx Services is supporting its clients with two market-focused business units, viz., Financial Services and Sales and Marketing Support Services. The functions of Eclerx Services are diverse comprising of consulting, business analysis and solution testing which is dissimilar to that of the assessee. Furthermore, learned Counsel submitted that the segmental details of its operation are not available. That this company is having abnormal high profits. He further claimed that the said company had 4000 employees while assessee employs only 200 employees. In this regard learned Counsel placed following case laws:-

(i) Delhi High Court decision in the case [Pr.CIT v. Actis Global Services Private Limited \[ITA No.417/2016 order dated 05.08.2016\]](#)

(ii) Delhi High Court decision in the case of [Rampgreen Solutions Private Limited \[ITA No.102/2015 order dated 10.08.2015\]](#)

10. Accordingly learned Counsel submitted that because of absence of segmental data and the diverse nature of activity which Eclerx Services engaged into, it should not be included in the comparables.

11. Per contra, the learned Departmental Representative submitted that the functional analysis shows that the assessee is providing high end analytical solution. It is also a K.P.O. He submitted that the functions are broadly similar. The learned DR further submitted that high profit is not a ground for rejection.

12. Upon careful consideration, we note that assessee is engaged in providing analytical solutions to its AEs to lower the cost of customer acquisition, to improve brand performances, improve multi

dimensional reporting, understand consumer behavior, and many other analytical services. As against the above, we find that Eclerx Services is engaged into diverse range of activities which includes financial services and sales and marketing support services. Its functions primarily are consultancy, business analysis and solution testing. Thus, M/s.Eclerx Services is engaged into various functions and segments. Its segmental data are not available. In following case laws it has been held that the company should be rejected as comparable as its segmental data are not available:-

(i) M/s.Capital IQ Information Systems (India) Pvt. Ltd. v. ACIT [ITA No.124/Hyd/2014]

(ii) M/s.Excellence Data Research Pvt. Ltd v. ITO [ITA No.159/Hyd/2014]

13. Furthermore we note that in the case of Rampgreen Solutions Private Limited (supra) has held that although super profits could not be the only reason to exclude the comparable, however, Hon'ble High Court had expounded that in such circumstances it may be necessary to bear in mind the super normal profits in a certain cases indicated functional dissimilarity. That a wide deviation in the PLI amongst selected comparables could be indicative that the comparables selected are either materially dissimilar or the data used is not reliable. The Hon'ble High Court in the decision noted the findings of Special Bench of the Tribunal in the case of Maersk Global Centres (India) Pvt. Ltd. wherein it was noted that Eclerx Services is engaged in data analytical, data processing services, pricing analytics, bundling optimization, content operation, sales and marketing support, product data management, revenue management. Furthermore it is noted that Eclerx Services also offered financial services such as real-time capital markets, middle and back-office support, portfolio risk management services and various critical data management services.

14. The observation of the learned DRP that assessee and Eclerx Services are KPOs and hence comparable is also not sustainable. The Hon'ble Delhi High Court in the case of Actis Global Services Private Limited (supra) had held that even though both being KPOs two entities are not comparable if they were catering to different types of business.

15. From this it is amply clear that the said diverse activities are not comparable with the service of providing analytical solution rendered by the assessee. Moreover though some functions are similar, there are lot of other functions by M/s.Eclerx Services which are not done by the assessee. Hence, absence of segmental data make comparability not feasible. In these circumstances and in the facts and circumstances

discussed above considering the precedents as above, we are of the considered opinion that Eclerx Services is not comparable in this case to that of the assessee because of diverse nature of its functions. A large number of them are dissimilar to that of the assessee and the fact that proper segmental data are not available. Hence, holding that Eclerx Services cannot be taken as a comparable in this regard, we remit the issue to the TPO to make the computation afresh after excluding Eclerx Services as a comparable, and making further computation as per law.”

4. We have heard rival contentions and carefully gone through the order of the Tribunal. From the record we found that assessee is mainly engaged in delivery of analytical services related to market research. Assessee also provides services to its overseas affiliates based on customer contracts entered into by such overseas affiliates. During the year under consideration, the assessee has rendered advanced analytic services related to market research to its Associated Enterprise ('AE') i.e. Fractal USA amounting to Rs 62.44 Crs.

5. Summary of the economic analysis conducted by the assessee in the TP study report basis the FAR analysis submitted to the Id. TPO is as below:

Characterisation	Provision of Information Enabled Technology Services ('ITeS')
Tested party	Appellant
Most Appropriate Method ('MAM')	Transactional Net Margin Method ('TNMM')
Profit Level Indicator ('PLI')	Operating Profit / Operating Cost
Number of comparable companies selected for determination of ALP	6
Average NCP of comparable companies basis multiple year data	15.81%
NCP of Appellant	17.71%

6. As per the benchmarking analysis carried out by the assessee, since the NCP margin earned by the assessee was higher than the average NCP margin of the comparable companies, it was submitted that the international transactions of the assessee is at arm's length.

7. The TPO rejected the benchmarking analysis undertaken by the assessee simply by relying on AY 11-12 TPO's order and considered the assessee as a KPO service provider. Further, the TPO rejected the 6 companies selected by the assessee and handed over a set of 5 new companies as to why they should not be compared to the assessee namely, i) Acropetal Technologies Ltd, ii) E Clerx Services Ltd, iii) TCS E serve, iv) IRIS Business Services Ltd and v) Accentia Technologies Ltd

8. The TPO finally selected 4 companies with mean NCP of 23.85% out of the 5 companies proposed (Id. TPO rejected TCS e Serve based on high turnover), and made an adjustment to the transfer price of Rs.4.17 crores. Aggrieved by the draft order passed by the AO, the assessee filed an application before the Hon'ble Dispute Resolution Panel ('the DRP'). The DRP did not give any relief to the assessee on the objection raised on transfer pricing adjustment and directed the Id AO to pass the final order confirming the adjustment as made by the TPO of Rs. 4.17 crores.

9. After going through the order of the Tribunal in assessee's own case dated 21/09/2017, we have observed that the current appeal for AY 2013-14 is squarely covered by the order of Hon'ble Income tax appellate tribunal ('ITAT'), Mumbai for AY 2012-13 in the assessee's own case vide

ITA No. 1024/Mum/2017. The TPO in his order dated 29 January 2017 for the year under consideration has relied upon the TPO's order for AY 2011-12 and AY 2012-13 in assessee's own case and followed the same approach as previous years.

10. We observed that the Hon'ble ITAT for AY 2012-13 in assessee's own case vide ITA No. 1024/Mum/2017 has -rejected eClerx Services Ltd. due to absence of segmental data. In AY 2013-14 also the facts of eClerx Services Ltd. remain the same as the annual report does not have segmental data. Therefore, eClerx Services Ltd. should not be selected as a comparable company while computing ALP.

The final margin after rejection of eClerx Services Ltd. are as given below:

Sr. No.	Name of the Company	OP/TC Margin of AY 201 3-1 4
1.	IRIS Business Services Ltd.	27.07%
2.	Accentia Technologies Ltd.	13.90%
3.	Acropetal Technologies Ltd (Healthcare segment)	3.58%
	Arithmetic Mean	14.85%

Based on the above, we observe that the revised average OP/TC margin of the comparable companies after rejecting eClerx Services Ltd. is 14.85%. The OP/TC margin of the assessee's AE segment is 16.09% which is more than the comparable companies.

11. In view of the above we direct the AO/ TPO to delete the adjustment to the transaction of rendering of advance analytic service related to market research as made by the AO/ TPO by including Eclerx Services ltd.,

12. In the result appeal of the assessee is allowed in terms indicated hereinabove.

Order pronounced in the open court on this 06/04/2018

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 06/04/2018

Karuna Sr.PS

Copy of the Order forwarded to :

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

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai