



ITA.No.314/Mum/2016
Your Lifestyle Private Limited
Assessment Year 2011-12

आयकरअपीलीयअधिकरण “के” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“K” BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।

BEFORE SHRI MAHAVIR SINGH, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपीलसं./I.T.A. No.314/Mum/2016
(निर्धारणवर्ष / Assessment Year: 2011-12)

Your Lifestyle Private Limited MHB-11/540 C/o.M/s Dholakia and Associates Sarvodaya CHSL, Service Road Kher Nagar, BKC, Bandra (E) Mumbai-400 051	बनाम/ Vs.	Deputy Commissioner of Income Tax-14(3)(1) Aaykar Bhavan M.K.Road Mumbai – 400 020
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AALCS-4223-P		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
Assessee by	:	Sushil U. Lakhani, Ld. AR
Revenue by	:	Saurabh Deshpande, Ld. DR

सुनवाईकीतारीख/ Date of Hearing	:	10/04/2018
घोषणाकीतारीख / Date of Pronouncement	:	13/04/2018

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by assessee for Assessment Year [A.Y] 2011-12 contest the *final assessment order* passed by Ld. Deputy Commissioner of Income Tax-Circle-14(3)(1), Mumbai [AO] u/s 143(3) *read with section 144C(13)* of the Income Tax Act, 1961 pursuant to the



directions of *Ld. Dispute Resolution Panel [DRP]*. The effective Grounds of Appeal as raised in the appeal reads as under:-

Ground NO.1:

Adoption of Entity-Level Benchmarking :-

The Learned AO & DRP have erred in law & in facts in rejecting audited Division-wise Profit and Loss statement and adopting Entity-Level benchmarking instead of benchmarking only the International Transactions.

Ground No.2:

Rejection of PLI adopted by the Assessee :-

The Learned AO & DRP have erred in law & in facts in rejecting the PLI i.e. Operating Profit & Operating Expenses.

Ground NO.3:

Incorrect Selection of Comparable: -

- (a) *The Learned AO & DRP have erred in law & in facts in selecting Accentia Technologies Ltd, informed Technologies India Ltd & e4e Healthcare Business Services Pvt Ltd as comparable though they are high-end service provider, hence functionally non-comparable to the Assessee; and*
- (b) *The Learned DRP has erred in law & in facts in selecting Accentia Technologies Ltd., and Infosys BPO ltd. (Subject to rectification) as comparable even though these comparable are having huge brand value and turnover as compared to the assessee.*

2. It is noted that the name of erstwhile assessee namely *Sanda Wellbeing Private Limited* has been changed to *Your Lifestyle Private Limited* with effect from 10/02/2014 vide *fresh certificate of incorporation, SRN No. B94353224* issued by *Ministry of Corporate Affairs*, a copy of which has been placed on record. The Appeal before us has been filed in the name of new entity and the same is in order. In this backdrop, we proceed to dispose-off the aforesaid appeal.

3.1 Facts in brief are that the assessee being *resident corporate assessee* was engaged in the business of *domestic sales of health care products* and rendering *Business Process Outsourcing [BPO] services*. Its BPO division was mainly engaged in rendering *call center services* in the nature of *tele-services* and *tele-marketing services* to customers situated in *UK* for its *Associated Enterprises [AE]* namely *Sanda*



Wellbeing Ltd (UK). BPO call centre business was being operated from two places viz. Mumbai and Goa.

3.2 The international transaction, being consideration received by assessee from its *AE* against *BPO services* aggregating to Rs.27.64 crores, as reported in *Form No. 3CEB* was referred u/s 92CA(1) for computation of *Arm Length Price [ALP]* to *Ld. Transfer Pricing Officer [TPO]* on 16/01/2014. In terms of the agreement with its *AE*, the said consideration was arrived at on the basis of *Seat cost per employee @300GBP*, Cost of Salary/incentive of permanent employee with *mark-up* of 12% and reimbursement of all direct expenses.

3.3 The assessee in his *Transfer Pricing [TP] Study* adopted *Cost Plus Method [CPM]* as the most appropriate method to benchmark the aforesaid international transactions. The *Profit Level Indicator [PLI]* selected for the comparables was the *Berry Ratio i.e. OP / VAE*, *OP* being *operating profit* & *VAE* being *Value Adding expenses*. After applying turnover filter, it selected one comparable namely *Jindal Intellicom Ltd.* with *PLI* of 13.91% as against 14.06% being reflected by the assessee from *BPO [UK] division* and hence, submitted that no adjustment *qua ALP* was required. The *Ld. TPO* while rejecting pricing mechanism computed entity level *PLI* of -3.33% as reflected by assessee as against mean *PLI* of 25.45% reflected by six comparables. The *Ld. TPO* rejected the segmental working submitted by the assessee for want of adequate details & justification for allocation of common expenditure. Finally, *ALP* of the transactions was worked out at Rs.35.73 crores as against Rs.27.64 crores being reflected by the assessee and accordingly, a net *TP adjustment of Rs.8.08 crores* was proposed by *Ld.*



TPO in his order dated 31/12/2014 which was incorporated in the *draft assessment order*.

3.4 Aggrieved, the assessee raised objections against the same with partial success before Ld. DRP vide directions dated 29/10/2015 where Ld. DRP while confirming the methodology of Ld. TPO, directed for exclusion of one comparable namely *E-clerix Limited*. Pursuant to the directions of Ld. DRP, final assessment order dated 23/11/2015 has been passed by Ld. AO wherein the assessee has been saddled with net *TP* adjustment of Rs.5.69 Crores. Aggrieved, the assessee is in further appeal before us.

4. The Ld. Authorized Representative for Assessee [AR] while drawing our attention to the documents placed in the *paper-book* submitted that *Ld. TPO* erred in rejecting audited segmental results submitted by the assessee and entity level adjustment was not justified on factual matrix. Our attention is drawn to the fact that complete segmental details were available on record which has completely been ignored by Ld. TPO as well as by Ld. DRP. The orders for succeeding years have also been placed on record to submit that the methodology as adopted by the assessee in the impugned AY has been accepted in succeeding years and therefore, the rejection of the same was not justified. The Ld. AR further submitted that *Berry Ratio* was well accepted *PLI* in terms of various judicial pronouncements and the same would result into similar results as arrived at by Ld. TPO. Our attention is drawn to several judicial pronouncements to support the submissions. *Per Contra*, Ld. DR submitted that segmental cost allocation was skewed in assessee's favour and reasonableness / justification of allocation



basis could not be demonstrated by the assessee. At the same time, Ld. DR submitted that factual matrix may be re-appreciated by the lower authorities.

5. Upon careful consideration and perusal of material on record, we find strength in the argument of Ld. AR that segmental results / details were available on record and the assessee had also given the basis of allocation of expenses. *Prima facie*, it is noted that the methodology adopted by the assessee in the impugned AY has been accepted by the revenue in succeeding years. We are of the opinion that the details submitted by the assessee have not been fully appreciated by the lower authorities. Hence, in the interest of justice and on factual matrix, we deem it fit to restore the matter back to the file of Ld. AO / TPO for reconsideration of segmental results reflected by the assessee and re-adjudicate the same as per law. The assessee, in turn, is directed to substantiate his stand in this regard.

6. Resultantly, the assessee's appeal stands allowed for statistical purposes.

Order pronounced in the open court on 13th April, 2018

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**



ITA.No.314/Mum/2016
Your Lifestyle Private Limited
Assessment Year 2011-12

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai**