

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "बी" पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", 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.372/PUN/2016  
निर्धारण वर्ष / Assessment Year : 2011-12

The Income Tax Officer,  
Ward 1(2), Pune

.... अपीलार्थी/Appellant

Vs.

Billion Hands Technologies Pvt. Ltd.,  
30/38-1, New Ajanta Avenue,  
Paud Road, Kothrud,  
Pune – 411038

.... प्रत्यर्थी / Respondent

PAN: AADCB6992L

अपीलार्थी की ओर से / Appellant by : Shri Mukesh Jha  
प्रत्यर्थी की ओर से / Respondent by : None

सुनवाई की तारीख / <b>Date of Hearing : 19.04.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement: 27.04.2018</b>
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

The appeal filed by the Revenue is against order of CIT(A)-13, Pune, dated 31.12.2015 relating to assessment year 2011-12 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The Revenue has raised the following grounds of appeal:-

- 1) *On the facts and in the circumstances of the case, the learned Commissioner of Income tax (Appeals) erred in directing the Assessing Officer to exclude Infosys Ltd., Sasken Communication Technologies Ltd. and Sonata Software Ltd. from the list of comparable companies without appreciating the fact that there is no relationship between the turnover / size & profit margins in case of service industries.*
- 2) *On the facts and in the circumstances of the case, the learned Commissioner of Income tax (Appeals) erred in not appreciating the fact that the Assessing Officer has considered all the potential companies irrespective of its turnover level.*
- 3) *On the facts and in the circumstances of the case, the learned Commissioner of Income tax (Appeals) erred in ignoring the decision of Hon. Mumbai ITAT in the case of Symantic Software Services Pvt. Ltd. (ITA No.7894/M/2010) wherein it was held that there is no direct relationship between the turnover and profit margins in case of service industries.*

3. Despite service of notice, none appeared on behalf of assessee nor any application was filed for adjournment. However, we find that the issue is squarely covered by earlier order of Pune Bench of Tribunal and we proceed to decide the present appeal after hearing the learned Departmental Representative for the Revenue.

4. The only issue raised by the Revenue against the order of CIT(A) is against its directions of excluding Infosys Ltd., Sasken Communication Technologies Ltd. and Sonata Software Ltd. on the basis of turnover filter.

5. Briefly, in the facts of the case, the assessee was captive service provider to its associated enterprises in Netherlands and was assuming business, financial and currency risks. The Assessing Officer noted that the assessee was providing software development services of ₹ 4,52,34,996/- to its associated enterprises. The assessee had selected TNMM method to be most appropriate method with PLI of operating profit / operating cost, which was determined at 14.18%. The assessee had as per TP study report selected

certain concerns as comparable whose OP/OC worked out to the ratio of 14.20% as against 14.18% of PLI of assessee and the transaction was held to be at arm's length. The Assessing Officer was of the view that the assessee had followed cherry picking up approach for selection of comparable concerns and he was of the view that other concerns which were comparable to the assessee has not been selected without any basis. The Assessing Officer show caused the assessee in this regard. The assessee pleaded that the companies with turnover exceeding ₹ 200 crores should not be considered as comparable companies and submitted that the concerns Infosys Ltd., Sasken Communication Technologies Ltd. and Sonata Software Ltd. should be removed from final set of comparables. However, rejecting the plea of assessee, the Assessing Officer drew up list of final set of comparables including the above three concerns and the arithmetic mean of margins of comparables worked out to 26.91%. Since the assessee had earned OP/OC margin of 14.18%, the Assessing Officer made an adjustment of ₹ 50,42,385/-.

6. The assessee filed appeal before the CIT(A) alleging that the Assessing Officer had failed to apply the turnover filter and hence, selected the concerns which had high turnover and were also big in size. The CIT(A) was of the view that the turnover may not be the factor in service industry but he accepted the plea of assessee that size of the company makes difference in undertaking risk. He thus, held that as against assessee's turnover of ₹ 4.52 crores, turnover of Infosys Technologies Ltd. was ₹ 25,385 crores, of Sonata Software Ltd. was ₹ 250.36 crores and of Sasken Communication Technologies Ltd. was ₹ 394.20 crores. He held that the said three concerns were bigger than assessee company and they had to be excluded from final list of comparables.

7. The Revenue is in appeal against the order of CIT(A).

8. On perusal of record and after hearing the learned Departmental Representative for the Revenue, we find no merit in the grounds of appeal raised by the Revenue in this regard. In the first instance, while benchmarking international transactions undertaken by the assessee, endeavour should be made to compare results of assessee company with concerns which are similarly placed and endeavour should be made to compare like with like. In this regard, turnover filter needs to be applied for making selection of comparable companies. The Tribunal in different cases have held the application of turnover filter of ₹ 1 crore to ₹ 200 crores.

9. Another aspect to be kept in mind is the nature of business undertaken by other concerns, where the concerns like Infosys Technologies Ltd. has turnover of ₹ 25,385 crores, which is 56.16 times bigger than the turnover of assessee and where Infosys Technologies Ltd. has patents, then such a concern cannot be selected as comparable to a concern having turnover of only ₹ 4.52 crores operating in service industry. The assessee was providing software services to its associated enterprises, the total turnover was ₹ 4.52 crores and to such a concern, Infosys Technologies Ltd. cannot be held to be comparable. Similarly, Sonata Software Ltd. having turnover of ₹ 250.36 crores and Sasken Communication Technologies Ltd. of ₹ 394.20 crores fall beyond the filter of ₹ 1 crore to ₹ 200 crores and were bigger companies and had to be excluded from final list of comparables. Accordingly, upholding the order of

CIT(A), we find no merit in the grounds of appeal raised by the Revenue.  
Hence, the same are dismissed.

10. In the result, appeal of Revenue is dismissed.

Order pronounced on this 27<sup>th</sup> day of April, 2018.

<b>Sd/-</b> <b>(ANIL CHATURVEDI)</b>	<b>Sd/-</b> <b>(SUSHMA CHOWLA)</b>
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 27<sup>th</sup> April, 2018.  
GCVSR

**आदेश की प्रतिलिपि अद्येषित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-13, Pune;
4. The Pr.CIT-I, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR  
'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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