

आयकरअपीलीयअधिकरण ,डी' न्यायपीठ,चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, CHENNAI**

श्री एनगणेशन .एस.आर., न्यायिक सदस्य एवंश्री एस जयरामन, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND**  
**SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं/.I.T.A. No. 2155/Chny/2011

निर्धारण वर्ष/Assessment Year : 2007-08

M/s. SCM Microsystems (India) Pvt. Ltd.,  
"Bhawan IT Park" 4<sup>th</sup> Floor,  
OkkiyamThoraipakkam,  
Chennai – 600 097.

The Assistant Commissioner of  
Income Tax,  
Company Circle VI(1)  
Chennai 600 034.

**[PAN: AABCS 3064Q]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Shri. Chidambaram, Advocate

प्रत्यर्थीकीओरसे/Respondent by

: Shri. SrinivasaRao. CIT

सुनवाईकीतारीख/Date of Hearing

: 05.01.2018

घोषणाकीतारीख/Date of Pronouncement

: 04.04.2018

**आदेश/ O R D E R**

**PER S. JAYARAMAN, ACCOUNTANT MEMBER:**

The assessee filed this appeal against the order passed by the ACIT, Company Circle VI(1), Chennai in pursuance of the directions of the DRP, Chennai dated 19.08.2011 for assessment year 2007-08.

2. M/s. SCM Micro Systems (India) Pvt. Ltd., the assessee, is a wholly owned subsidiary of SCM Micro Systems Group, UK Ltd. The ultimate holding

company is SCM Micro Systems Inc, USA. The assessee is engaged in prototype design, development and related support activities based on technical specifications and product idea obtained from affiliates. During the year, it has undertaken software development services. The assessee adopted TNMM as the most appropriate method to arrive its ALP, adopting OP/TOI as the PLI. Though the TPO agreed on the MAM of the assessee's TP study, however, rejected it on various grounds, picked up 28 comparables which included 3 of the assessee's comparables, arrived the PLI at 27.96% as against assessee's PLI at 14.7%. Consequently, the TPO made an upward adjustment of Rs. 1,09,28,305/-. While computing deduction u/s. 10B, the assessing officer reduced Rs. 9,65,410/- incurred towards VSNL lease line charges/internet charges from "export turnover". Aggrieved, the assessee filed its objections before the DRP and it did not succeed and hence filed this appeal.

3. The AR primarily challenged inclusion of certain comparables based on functional difference, certain filters, turnovers etc., with reference to assessee's activities. In this regard, he relied on the decision of the ITAT Bangalore in the case of Hewlett Pack and (India) Software Operation P. Ltd., [2016] 67 Taxmann.com 309 (Bangalore- Trib) in IT(TP) Appeal no. 1304 (Bang) of 2011, AY 2006-07 (Sic = 2007-08) dated 03.09.2016. The gist of

his submissions as to why the following comparables should be excluded is extracted, comparable wise, as under:

" 1. *AccelTransmatics Ltd (Segment) -*

*The company is engaged in the business of providing services in the form of ACCEL IT and ACCEL animation services for 2D and 3D animation and is functionally different from software development services provider*

*Fails RPT filter ( RPT = 1 0.56 cr, Turnover = 35.98 cr, RPT / Sales = 29.35%).*

2. *AvaniCimcon Technologies Ltd*

*Abnormally high margins = 52.59%, operating revenue increased by 63.03%, extraordinary year, as per Nasscom growth of software industry is 32%*

*The Company has developed a software product by name 'OXchange', and thus, the Company would have revenue from software product sales apart from rendering of software services and, therefore, is functionally different from the assessee.*

3. *Celestial Labs Ltd*

*The Company was basically/admittedly in clinical research and manufacture of bio-products and other products, and, thus, it could not be compared with company mainly in the business of providing software development services.*

4. *E-Zest Solutions Ltd*

*The Company is rendering product development services and high end technical services which come under the category of KPO services. Hence, the Company is not functionally comparable.*

5. *Flextronics Software Systems Ltd (Segment)*

*Functionally different and reliance was placed on Hewlett-Packard (India) Globalsoft (P) Ltd. vs OCIT - [20 IS] 63 taxmann.com 136 (Bang.) wherein on account of no proper segmental data was available for year ending 31 March 2007, the comparable was rejected .*

6. *Helios & Matheson Information Technology*

*The Company was engaged in sale of software products, which was quite distinct from the activity undertaken by the assessee in the IT Services segment and, thus the Company is not comparable.*

7. *Infosys Technologies Ltd*

*The company owns significant intangible and has huge revenues from software products and the break up of revenue from software services and software products is not available.*

8. *IshirInfotech Ltd*

*Fails employee cost filter - The Company is out-sourcing its work and therefore, has not satisfied the 25 per cent employee cost filter (3.96% employee cost on revenue).*

9. *KALS Infosystems Ltd (Seg)*

*The Company is engaged in the business of developing software products and also engaged in providing training. The information is not available in public domain.*

10. *Lucid Software Ltd*

*Fails employee cost filter – The company is out-sourcing its work and, therefore, has not satisfied the 25% employee cost filter .*

11. *MegasoftLld (Seg)*

*The Company operates into two segments namely, software development and software products. Hence, software development segment only to be considered while computing the margins of the company. - 23.11%*

12. *Persistent Systems Ltd*

*The Company operates into two segments namely, software product development and product design services. The segmental details regarding the same is not available in the financial statements.*

13. *Quintegra Solutions Ltd*

*The Company is engaged in the business of product engineering services. The company is also engaged in the Research & Development activities resulting in the creation of own intangibles and Intellectual Proprietary Rights (IPR) .*

14. *Tata Elxsi Ltd (Seg)*

*The Company is engaged in the development of niche product and development services namely product design services, innovative design engineering and visual computing labs.*

15. *Thirdware Solutions Ltd*

*The Company is engaged in the business of product development and earns revenue from sale of licenses and subscription. However the segmental Profit and loss account for software development services and product development are not given separately.*

16. *Wipro Ltd (Seg)*

*The company is engaged in the business of software development and product development services with no segmental information. The company also owns customer related and technology related intangibles. Also the company owns intellectual property in form of registered patents and several pending applications for grant of patents.”*

Per contra, the DR relied on the orders of the lower authorities.

4. We heard the rival submissions. We find from the order relied on by the AR, supra, that the issue involved in that company was in software development services segment and therefore the decisions relied on by the AR is applicable to the facts of this case, as it is also in the software development services. The Bangalore Tribunal after due analysis of each of the above comparables directed " exclusion of Avani Cimcon Technologies Ltd., Celestial Labs Ltd., E-Zest Solutions Ltd, Flextronics Software Systems Ltd (Seg), Helios & Matheson Information Technology Ltd, Infosys Technologies Ltd, Ishir Infotech Ltd, Kals Information Systems Ltd, Lucid Software Ltd, Persistent Systems Ltd, and Wipro Ltd (seg), from the list of comparables. Comparability of M/s. Tata Elxsi Ltd (seg), is remitted back to the TPO/AO for consideration afresh as per law. We also direct that Megasoft Ltd, shall be considered for inclusion only after segmentation of its results." Following the above decision, we direct that TPO/AO to comply accordingly. Corresponding grounds of appeal are treated as partly allowed.

5. The next issue is while computing deduction u/s. 10B, the assessing officer reduced Rs. 9,65,410/- incurred towards VSNL lease line charges/internet charges from "export turnover" alone and did not reduce from the total turnover. In this regard, though the assessee filed its objections before the DRP, the DRP did not adjudicate the matter specifically. The AR relying on the Special Bench decision of Chennai Tribunal in the case

of ITO vs Sak Soft Ltd, 313 ITR [AT] 353 Chennai SB, pleaded that the VSLN lease line charges/internet charges be excluded from the total turnover also.

6. We heard the rival submissions. On the facts and circumstances, this issue is remitted back to the AO for a fresh examination. The AO after affording adequate opportunity to the assessee shall apply the above decision, if the facts and circumstances are pari materia with the case of Sak Soft Ltd., supra. Corresponding grounds of appeal are treated as allowed for statistical purposes.

7. In the result, the assessee's appeal is partly allowed for statistical purposes.

Order pronounced on Wednesday, the 04<sup>th</sup> day of April, 2018 at Chennai.

**Sd/-**

(एन.आर.एस .गणेशन)

**(N.R.S. GANESAN)**

**न्यायिकसदस्य/Judicial Member**

**Sd/-**

(एसजयरामन)

**(S. JAYARAMAN)**

**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 04<sup>th</sup> April, 2018

**JPV**

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent

4. आयकरआयुक्त/CIT 5. विभागीयप्रतिनिधि/DR

3. आयकरआयुक्त) अपील(/CIT(A)

6. गार्डफाईल/GF