

आयकर अपीलीय अधिकरण , 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, CHENNAI

श्री एनगणेशन .एस.आर., न्यायिक सदस्य एवं श्री 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. 963/Chny/2015

निर्धारण वर्ष/Assessment Year : 2010-11

M/s. MPS Limited,
RR Tower IV Super A,
16/17 Thiruvika Industrial Estate,
Guindy,
Chennai – 600 032.

The Deputy Commissioner of Income
Tax,
Corporate Circle 4,
Nungambakkam,
Chennai – 600 034.

[PAN: AAACM 2423L]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Shri. Vikram Vijayaraghavan, Advocate

प्रत्यर्थीकीओरसे/Respondent by

: Shri. M. Srinivasa Rao, CIT

सुनवाईकीतारीख/Date of Hearing

: 04.01.2018

घोषणाकीतारीख/Date of Pronouncement

: 03.04.2018

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order passed by the DCIT (OSD) , Corporate Circle -4, Chennai dated 23.02.2015 in pursuance of the directions of the DRP , Chennai for ay 2010-11.

2. MPS Pvt. Ltd., the assessee, is a 100% subsidiary of Macmillan Publishers Limited, U.K. and owns 100% export oriented unit. It is operating predominantly in the DPO segment. It operated in a single business segment i.e., Outsourced Publishing Services and broadly classified into Information processing (Typesetting) and E-business. The assessee adopted internal TNMM for ALP determination with respect to services rendered to the AE. The TPO found that the internal segment was not comparable and chose external TNMM and hence made an upward adjustment in his TP study. Aggrieved, the assessee filed its objections before the DRP and the DRP disposed its objections giving part relief. Against the order passed by the DCIT in pursuance of the DRP directions, the assessee filed this appeal primarily challenging inclusion of certain comparables, exclusion of certain comparables chosen by it and against the disallowances made u/s. 14A.

3. The AR submitted that the operations of Cosmic Global Limited are more in the nature of outsourcing its activities to third parties and not of rendering ITeS services. The "Translation Charges" paid comprises of 40% of the translation income of INR.5,45,41,023 which represented outsourced activity. Therefore, Cosmic Global is functionally different and this aspect has not been adjudicated by the DRP. He submitted that this comparable was excluded as a comparable for ITeS companies in the following rulings owing to different functional profile and business model:

a. Xchanging Technology Services India (P) Ltd Vs DCIT [2015] 57 taxmann.com 437 - Delhi ITAT Confirmed by the High Court of Delhi in ITA No. 813/2015 on 20.10.2015;

b. Xchanging Technology Services India (P) Ltd Vs DCIT [2015] 60 taxmann.com 389 - Delhi ITAT - Confirmed by the High Court of Delhi in ITA No. 36/2016 on 19.01.2016

c. Rampgreen Solutions Pvt. Ltd. - [2015] 60 taxmann.com 355 (Delhi) - Delhi High Court

d. Parexel International (India) (P) Ltd [2014] 51 taxmann.com 238 - Hyderabad ITAT

e. Cummins Turbo Technologies Ltd. [2016] 68 taxmann.com 273 - Pune ITAT and hence pleaded to exclude the same .

3.1 On Fortune Infotech Limited, the AR submitted that this company was subject to Extraordinary events; 2 Consistently fails RPT filter; & 3. Develops and owns unique web based software for niche services.

(a) On Extraordinary event, the AR submitted that during the Fy 2009-10, Fortune had merged with other entities and also sold its entire investment in its wholly owned subsidiary 'Fortune Infotech USA, Inc. In this regard , the AR placed reliance in the following cases wherein this company has been rejected on the ground of extra ordinary events:

a. M/s. Symphony Marketing Solutions India Pvt. Ltd. (presently merged with Genpact India), (ITA No 1316/Bang/2012)

b. Capital IQ Information Systems India Pvt Ltd v DCIT [2013] 32 Taxman.com 21 (Hyd. Trib)

(b) On Use of unique software, the AR submitted that this company has developed and owns its unique web based software by which it provides niche services to its customers. Therefore, this company cannot be taken as comparable with ITES entities having little or no intangibles of their own and placed reliance on the following decisions:

- a. RR Donelley India Outsource Pvt Ltd s. DCIT (ITA No. 678/Chny/2015);
- b. 24/7 Customer.com Private Limited vs DCIT (ITA No. 227Bang/2010)
- c. Equant Solutions India Pvt Ltd vs DCIT (ITA No. 1202/Del/2015).

(c) On consistently failing RPT to sales filter, the AR submitted that this company derives its income mainly from its related parties and furnished a snapshot of the RPT to sales as under :

Year on year analysis of RPT ratio

Particulars	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
Sales (in INR)	37,07,24,095	21,43,70,565	9,74,95,149	11,56,11,146
Income from RPT (in INR)	37,07,24,095	11,90,93,313	2,39,72,792,	11,40,89,195
RPT/Sales (in %)	100.00%	55.55%	24.59%	98.68%

The AR submitted the impact on profits on account of merger as under:

Particulars	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
Operating Income (A)	37,07,24,095	21,43,70,565	9,74,95,149	11,56,11,146	12,43,12,692
Profit before taxes (B)	72,92,243	2,37,75,610	3,13,43,736	4,29,81,241	5,34,90,919
Operating margin (B/A)	1.97%	11.09%	32.15%	37.18%	43.03%

For the aforementioned reasons, the AR pleaded that Fortune Infotech Limited is not comparable to the business of the assessee.

3.2 In respect of Jeevan Scientific Technologies Limited, the AR submitted that the Segmental data has been considered incorrectly. He submitted that the learned TPO has erred in selecting only 'BPO Operations' as relating to IT enabled services, without appreciating that the company themselves have classified 'Enterprise Solutions' as IT enabled services. Hence, he submitted that for the computation of PLI , the entire IT enabled services as classified in the schedules to profit & loss account should be considered. In this regard , he placed reliance in the case of Amtel R&D India Private Limited vs. DCIT (ITA No. 812/Mad/2015).

4. Further , the AR submitted that the Learned TPO has rejected its comparables viz Caliber Point Business Solutions Limited & R Systems International Limited holding that these companies have adopted different financial period from the financial period of the assessee . In this regard, he relied on the following Tribunal decisions, wherein these companies were included as a comparables and the respective appellants were directed to furnish comparables data for TPO verification:

- a. Xchanging Technology Services Pvt. Ltd. in ITA No. 1222/Del/2015;
- b. Mercer Consulting (India) Pvt. Ltd in ITA No. 966/Del/2014;

5. Per contra, the DR submitted that the details furnished by the assessee were not neither before the TPO/AO nor before the DRP. The DR submitted that wherever information was furnished, the DRP has directed the TPO to examine and pass necessary orders. He invited our attention to the DRP's direction with regard to the comparable Jeevan Scientific Technologies Limited, wherein, the DRP directed the TPO to examine the segmental data and pass necessary orders. Thus, he supported the orders of the lower authorities.

6. We heard the rival submissions. Since the assessee has furnished the required particulars and relying on the decisions of Tribunal / High Court, we remit the issues in connection with the above comparables to the TPO/A O for a fresh examination. In respect of the comparables, Caliber Point Business Solutions Limited & R Systems International Limited, the assessee shall furnish comparables data for the verification of the TPO. The TPO shall decide as to whether the above comparables are to be included or to be excluded, as the case may be, in accordance with law, after affording adequate opportunity to the assessee. The assessee's corresponding grounds are treated as allowed for statistical purposes.

7. With regard to the disallowance made u/s. 14A, the AR submitted that, the DRP erred in confirming the disallowance made by AO at Rs.17,20,802 under section 14A as expenses incurred for earning the exempt dividend income. The assessee has not earned any dividend income during the year from its investments in subsidiary companies namely MPS Technologies Ltd and MPS Content Services INC., USA held during the said assessment year. The AO ought to have appreciated that the assessee had taken a business decision to invest in subsidiary companies and it did not make the investments with a view to earn exempt income. Therefore, notional attribution of expenses is unsustainable. The DRP and AO ought to have appreciated that the investments made by the assessee were purchased out of the surplus funds by self and no administrative overheads were attributable to the investments made in subsidiary companies. Without prejudice to the above, it is submitted that the dividend income, if any received from MPS Content Services Inc, USA is a taxable income and hence cannot be included in the computation of average investments. Without prejudice to the above, the AO ought not to have considered that the investments which did not yield dividend income during the previous year while computing the quantum of disallowance under Rule 8D(2)(ii) and (iii) of the Rules.

8. Per contra, the DR supported the order of the DRP. He invited our attention to the DRP order and submitted that the DRP relied on the

jurisdictional bench of ITAT, Chennai in the case of Southern Petro Chemical Industries vs DCIT 93 TTJ 161, which has approved the disallowance of proportionate management expenses while computing the dividend income. The Special Bench decision of ITAT in the case of Cheminvest Ltd. vs ITO [2009] 121 ITD 318 (Del) (SB). The AO has relied on the decision of the Delhi ITAT in the case of Escorts Ltd., vs ACIT 102 TTJ 522 etc.

9. We heard the rival submissions. Since, the assessee has not earned any dividend (exempt) income during the year, following the jurisdictional High Court decisions in the cases of Redington (India) Limited vs ACIT, Chennai [2017] 77 Taxmann.com 257 and CIT, Central(1), Chennai vs Chettinad Logistics Pvt. Ltd., [2017] 80 Taxmann.com 221, the addition made by the AO is deleted and the assessee's grounds in this regard is allowed.

10. In the result, the assessee's appeal is treated as allowed for statistical purposes.

Order pronounced on Tuesday, the 03rd 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: 03rd April, 2018

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त) अपील(/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF