

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'I-1' BENCH,  
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 806/DEL/2013  
[A.Y 2008-09]

Eigen Technical Services Pvt Ltd  
C-4/54. 1<sup>st</sup> Floor, Safdarjung Development  
Area, New Delhi

Vs.

The Dy. C.I.T  
Circle - 11(1)  
New Delhi

PAN : AAACL 9591 N  
[Appellant]

[Respondent]

Date of Hearing : 15.10.2018  
Date of Pronouncement : 22.10.2018

Assessee by : Shri Anubhav Rastogi, Sr. Adv  
Revenue by : Shri Sanjay I. Bara, CIT-DR

**ORDER**

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

With this appeal, the assessee has challenged the correctness of the assessment order dated 22.10.2012 framed u/s 143(3) r.w.s 144C of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'] pertaining to A.Y 2008-09.

2. The assessee has raised four substantive grounds of appeal with sub-grounds, but at the time of hearing, the ld. AR stated that he is inclined to press only Ground Nos. 2.7, 2.8, 2.9 and 3 and the same read as under:

"2.7 including high-profit making companies in the final comparables' set for benchmarking a normal risk bearing company such as the Appellant and not allowing the risk adjustment to the Appellant;

2.8 including certain companies that are not comparable to the Appellant in terms of functions performed, assets employed and risks assumed;

2.9 excluding certain companies on arbitrary/ frivolous grounds even though they are comparable to the Appellant in terms of functions performed, assets employed and risks assumed;

3. The Ld. AO, while following the directions of the Hon'ble DRP of treating gain/ loss on account of foreign exchange fluctuation as non-operating in nature, erred in not disclosing the computation of the revised adjustment in this regard to the Appellant."

3. The representatives of both the sides were heard at length. The case records carefully perused and with the assistance of the Id. Counsel, we have considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules. Judicial decisions relied upon were carefully perused.

4. Briefly stated, the facts of the case are that the appellant company is engaged in the business of I.T. Enables Services [ITES]. The scope of services are as under:

#### "SCOPE OF SERVICES

1. *Civil and Structural Detailing*

*Carry out following services in accordance with requirements of LOR.*

- *General Arrangement / Concrete out line drawings and IT enabled Re-bar detailing conforming to British & American standards for*
  - > *Multistoried RCC frames and Structures*
  - > *Slabs and Flat slabs*
  - > *Open foundations: Isolated, Combined and Raft Foundations*
  - > *Deep foundations: Well/ Caisson and Pile foundations*
  - > *Machine foundations*
  - > *Core walls for lift wells and staircase*
  - > *Staircases*

- > Retaining walls and diaphragm walls
- > Pre-cast concrete structures such as columns, staircase, wall panels etc.
  
- Layout drawings for Post Tensioning of slabs, beams and girders
  
- Detailed General Arrangement, Fabrication and checking of drawings conforming to British & American standards for Steel Structures such as
  - > Industrial Plants
  - > Chemical Plants
  - > Petro-chemical Plants
  - > Technological structures
  - > Pipe Racks
  
- General Arrangement, Re-bar detailing and fabrication drawings for Pre-fabricated & modular buildings
  
- Vector Conversion (digitization) of old archived drawings.
  
- 3-D Modelling of RCC/ Steel structures.

## 2. Quantity Surveying:

Cost planning and Quantity Surveying services for pre-contract, during construction and post contract scenarios for the following disciplines:

1. Civil and Structural
2. Architectural and Interiors
3. Electrical Services
4. Plumbing & Sanitary
5. HVAC
6. Mechanical Services
7. Fire fighting & Security
8. Building Automation
9. External Works and

### **3. INFORMATION TECHNOLOGY**

LORTS shall provide following services to LOR as per LOR requirement.

#### **1. Enterprise Business Applications**

- a. Client Server Application
- b. ERP
- c. SCM
- d. CRM

#### **2. Web Applications**

- a. Portals/ Vortals
  - i. B2B
  - ii. B2C
- b. Web site Design & Development
- c. E-governance

3. **Business Intelligence**
  - a. Data warehousing
  - b. Data mining
  - c. Document Management System
  - d. Specific Product Development
4. **Web hosting**
5. **Other Software Services**
  - a. Verification and validation
  - b. Re-engineering
    - i. Migration
    - ii. Conversion
    - iii. Porting
  - c. Process Consulting

#### 4. **FINANCE & ACCOUNTING**

1. Invoice processing
2. Asset Entry processing

#### 5. **MEP Services**

##### L Quantity Surveying/ Take-off Services

- This includes quantification for all trades like Electrical, HVAC, CHW, HWS, CWS Piping, Plumbing, Sanitary, Rain Water etc., Material take-offs, Bill preparation,

Procurement Packaging, Bill checking during construction and Trouble shooting.

2. 2D/3D/4D Modeling. Detailing & Drafting

This includes 2D Detailing & Drafting, 3D Modeling, 3D Fabrication Drawings and As fitted/ As-built drawings

3. Schematic Designing and Design Detailing Services

- Mechanical

Designing of Heating, Ventilation & Air Conditioning (HVAC) Systems, Plumbing, Sanitary & Rain Water Services, Fire Fighting, Water Services and Effluent Treatment etc. Plants including designing & selection of equipment, layouts, Plant room detailing & Sections etc.

Carrying out Design Calculations for Selection of Major Mechanical Equipment.

Electrical

Designing of Main Power Distribution System, Preparation of Schematics for Main Power Distribution, Preparation of Main Receiving Electrical Substation & Switchyards Layouts, Preparation of Technical Specifications & Tender Documents.

Carrying out Design Calculations for Selection of Major Electrical Equipment.

## 6. ARCHITECTURAL SERVICES

1. 2D/3D/4D Modeling. Detailing & Drafting
  - This includes 2D Detailing & Drafting, 3D Modeling, 3D Fabrication Drawings and As fitted/ As-built drawings.
2. Schematic Designing and Design Detailing Services"

5. The TPO, after considering the scope of the services of the appellant company mentioned hereinabove, was of the opinion that the characterisation as a routine service provider carrying normal risks is not appropriate and in fact, the prefix "IT enabled" to the engineering design segment is unnecessary. The TPO was of the firm belief that the appellant company is not a routine service provider in the IT-ITES sector. The TPO observed that the appellant is a specialised independent enterprise who is bearing the risk and, therefore, the margin of 15.25% is not a sufficient compensation.

Hence the TPO proposed the following comparables to be used :

Sl. No	Company	PBIT/Cost(%)
1.	Mahindra Consulting Engineers Ltd	28.96
2.	Alphageo [India] Ltd	41.58
3.	Stup Consultants Ltd	36.72

4.	Semac Ltd	49.65
5.	Mitcon Consultancy Services Ltd	41.21
6.	Kirloskar Consultants Ltd	21.29
7.	Computronics Fin	38
	Average	36.77

6. The assessee raised objections to the proposed comparables and after considering the objections of the assessee, the TPO used the following comparables in the final list of comparables:

	Operating Income	Operating Expense (Inclusive of FBT)	FBT	Net Operating Expenses	PBIT	PBIT/TC %
1	A	B	C	D = B-C	E = A-D	F = E/D*100
Alphageo India) Ltd.	81,69,63,064	58,23,96,767	10,21,420	58,13,75,347	23,55,87,717	40.52
Stup Consultants Pvt. Ltd.	1,00,39,44,173	73,69,73,408	40,00,000	73,29,73,408	27,09,70,765	36.97
Semac Ltd.	31,73,24,214	21,20,39,625		21,20,39,626	10,52,84,588	49.65
Kirloskar Consultant Ltd.	8,13,41,586	6,37,37,737	6,00,000	6,31,37,737	1,82,03,849	28.83
UB Engineering Ltd	2,652,472,065	2,479,010,978	3,529,044	2,475,481,934	131,915,677	7.15
		.....		<b>AVERAGE</b>		<b>31.98%</b>

7. After making adjustment on working capital, the TP adjustment was computed as under:

Operating cost of the assessee	A	312,376,712
ALP at a margin of 30.10%	$B = 130.10 * A$	406,402,102
Price received from AE (operating income)	C	346,741,455
Adjustment u/s 92CA	D+B-C	<b>59,660,647</b>

8. The assessee raised objections before the DRP, but without any success.

9. Before us, the Id. AR strongly contended for the exclusion of the following comparables:

- i) Mahindra Consulting Engineers Limited
- ii) Alphageo (India) Limited
- iii) STUP Consultants Private Limited
- iv) Semat Ltd
- v) Kirloskar Consultants Limited

10. In addition, the Id. AR pleaded for inclusion of the following comparables:

- i) KITCO Limited
- ii) M.N Dastur & Company (P) Ltd.
- iii) Consulting Engineers services (India) Private Limited
- iv) Development Consultants Private Limited

11. We will first address the issues relating to exclusion of the comparables.

- i) Mahindra Consulting Engineers Limited

12. As per Annual Report of this company, Exhibited at pages 288 to 317 of the paper book, the operations, as reported by the Director of the company read as under:

"During the year under review, your Company consolidated its presence in high growth areas of its operation. The profit before taxation after exceptional items for the year was Rs. 113.24 lakhs as compared to Rs. 47.48 lakhs for the previous year. Your Company has further strengthened its position in Infrastructure Sector by providing consultancy services in the areas of Special Economic Zones, Water Supply & Sewerage, Solid Waste Management, Urban infrastructure, Agri infrastructure, Social infrastructure, Ports & Harbour & Offshore Terminal, Industrial infrastructure, etc. Your

Company has received repeat orders from its existing clientele which affirms the goodwill of the Company. This would also serve as a base for the Company's sustained growth in the future.

The Company has also worked on innovative projects like Centre of excellence for Horticulture, Dedicated Offshore terminal for Coal Handling and is augmenting its efforts to consolidate its position as a front-runner in innovative projects. Your Company continues to receive orders from prestigious clients in different sectors indicating its versatile capability of providing consultancy services for Multi-disciplinary projects."

13. The main objection of the ld. counsel for the assessee is that this company is engaged in diversified services and is also engaged in providing technical consultancy services to horticulture projects etc whereas the appellant provides services to typical engineering projects such as power plants, etc

14. In our considered opinion, the appellant company itself is providing services in civil and structural, in accordance with the requirement of its AE, mainly related to construction activities. In our considered opinion, the functional profile of the appellant is not

different from the functional profile of Mahindra Consulting Engineers Limited. We do not find any merit in the contention of the Id. AR. This comparable has been rightly used by the TPO and, therefore, no interference is called for.

ii) Alphageo (India) Limited

15. In A.Y 2007-08, the coordinate bench in ITA No. 244/DEL/2012 has restored this issue relating to this company to the file of the Assessing Officer/TPO. The relevant finding of the coordinate bench reads as under:

“20. We have considered the rival arguments made by both the sides, perused the orders of the TPO/AO/DRP and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. So far ITA No.244/Del/2012 as adjustment of the arm's length price of the international transaction is concerned, the argument of the Id. counsel for the assessee is that the same is Nil if the five comparables are excluded from the final set of comparables. From the chart filed by the Id. counsel for the assessee, we find there is no observation of the DRP on the issue of the above five comparables. At the time of hearing, Id. counsel for the assessee filed a copy of the order of the Tribunal in the case of Flour Daniel India (P.) Ltd. (supra)

wherein the Tribunal at para 5.9 of the order has observed as under:-

"5.9 We have heard the rival submission and perused the relevant material on record including the paper book of the assessee. On perusal of the annual report of M/s Alphageo, we find that during the year under consideration the comparable company has shown income from seismic survey and other related services. On perusal of page 326 of the paper book, which is part of the annual report of M/s Alphageo, we find that the company was engaged in providing services of design and preplanning of 2-D and 3-D surveys, seismic data acquisition, seismic data interpretation, topographic surveys etc. as compared to the services of engineering design by the assessee. Thus, in our opinion, the comparable company was engaged in providing designs for survey as well as in conducting the surveys and data acquisition etc. Thus, we find that the assessee is engaged in providing only engineering design services whereas M/s Alphageo has provided many other engineering services. Further, the asset employed by M/s Alphageo is higher in terms of net fixed assets/sales ratio. In the case of the assessee, net fixed asset/sales ratio is 4.86%, whereas the same ratio in the case of M/s Alphageo is 220.55%. Thus, there is a very large difference in the asset intensity between the assessee and the comparable. Further, we also find that in view of the decision of the Tribunal in the case of Quark System Private Limited (supra), the assessee cannot be stopped from pointing out that M/s Alphageo had wrongly

been taken as comparable. In view of above facts and circumstances, we are of the opinion that M/s Alphageo need to be excluded from the set of comparables being functionally dissimilar and difference in intensity of asset employed. Accordingly, we direct the Assessing Officer to exclude M/s Alphageo from the set of comparables chosen for computing arm's length of the international transaction and compute the transfer pricing adjustment accordingly."

21. The Tribunal apart from holding that the above companies are functionally different has also given a finding about the net fixed assets/sales ratio and difference in the asset between the assessee and that of the comparable. We, therefore, restore the issue relating Alphageo India Ltd. to the file of the Assessing Officer/TPO with the direction to give an opportunity to the assessee to substantiate the above details and decide the inclusion/exclusion of the same in the light of the decision of the Tribunal."

16. Respectfully following the findings of the coordinate bench, we direct the Assessing Officer/TPO to decide as per directions given by the Tribunal [supra].

iii) STUP Consultants Private Limited

17. The functional profile of this company shows that this company is a full service project delivery consultancy company offering diversified services, such as, integrated planning, architectural engineering and project management services for power, transportation, telecommunication etc. The description of principal services provided by the company is civil engineering consultancy. The Id. AR contended that this company is providing services for engineering design software.

18. We do not agree with the contention of the Id. AR. The functional profile of this company is akin to that of the appellant company as both the companies are engaged in providing consultancy services in civil engineering. In our considered opinion, this company is a good comparable and has been rightly used by the TPO. Therefore, no interference is called for.

iv) Semat Ltd

19. It appears that the only reason claimed for exclusion of this company is non-availability of Annual report for F.Y. 2007-08. Though the TPO has referred to the Annual Report, but it pertains to F.Y.

2008-09. In our considered opinion, the TPO should have called for Annual Report for F.Y. 2007-08 and then should have decided whether this company is a good comparable or not. We, accordingly, restore this issue to the file of the Assessing Officer/TPO with the direction to call Annual Report of F.Y. 2007-08 and decide the issue afresh.

v) Kirloskar Consultants Limited

20. The Annual Report of this company is exhibited at pages 212 to 235 of the paper book. The operations of this company show that the company was under financial restructuring and after restructuring of Phase - 1, the result of the operations of this company showed a N.P. of 15.61% as against 6.93% in the immediately preceding F.Y. This increase in profit is attributed to the increased business and improved productivity. In our considered opinion, this company has undergone a thorough financial restructuring, which has to be considered as an extraordinary event and, therefore, the company needs to be excluded from the final set of comparables. We, accordingly, direct the Assessing Officer/TPO to exclude this company from the final list of comparables.

21. Coming to the inclusion of the comparables, we find that in so far as KITCO and M.M. Dastur & Company (P) Ltd. are concerned, the functional profiles of these companies are similar to those of the appellant. The reasons given for exclusion of these comparables by the TPO are in contradiction to the reasons given for inclusion of Mahindra Consulting Engineers Limited and Stub Consultants Pvt Ltd. Since we have confirmed the inclusion of Mahindra Consulting Engineers Limited and Stub Consultants Pvt Ltd., for similar reasons, we direct the Assessing Officer/TPO to include KITCO and M.M. Dastur & Company (P) Ltd. as good comparables in the final set of comparables.

22. In so far as request for inclusion of Consulting Engineers services (India) Private Limited and Development Consultants Private Limited are concerned, we find that these companies were accepted as good comparables by the DRP in subsequent A.Y i.e. 2009-10. However, since the Annual Reports of these companies are not available in the public domain, we direct the Assessing Officer/TPO to call for Annual Reports of these companies and decide the issue in line with the directions given by the DRP in the subsequent A.Y 2009-10. Accordingly, Ground Nos. 2.7 to 2.9 are partly allowed.

23. With Ground No. 3, the assessee has alleged that the Assessing Officer has not followed the directions of the DRP in toto.

24. A perusal of the directions of the DRP show that the DRP has directed to treat the gain/loss on account of forex fluctuation as non operating in nature but while following the directions of the DRP, the Assessing Officer has not disclosed the computation of revised adjustment in this regard. We, accordingly, direct the Assessing Officer to compute the revised adjustment as per directions of the DRP. Ground No. 3 is allowed for statistical purposes.

25. In the result, the appeal of the assessee in ITA No. 806/DEL/2013 is partly allowed for statistical purposes.

**The order is pronounced in the open court on 22.10.2018.**

**Sd/-**

**[SUCHITRA KAMBLE]  
JUDICIAL MEMBER**

**Sd/-**

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 22<sup>nd</sup> October, 2018

VL/

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2. Respondent
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4. CIT(A)
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