

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI**  
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष  
**BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER**  
**AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A.No.336/Chny/2018  
(निर्धारण वर्ष / Assessment Year: 2013-14)

M/s. Cameron Manufacturing India Pvt. Ltd., Tidel Park, Vilankurichi Road, Civil Aerodrome Post, Coimbatore – 641 014.	Vs	The DCIT, Corporate Circle-1, Coimbatore.
PAN: AABCN2803J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri Arijit Chakravarty, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Shri M. Srinivasa Rao, CIT

सुनवाई की तारीख/Date of hearing	:	02.08.2018
घोषणा की तारीख/Date of Pronouncement	:	16.10.2018

**आदेश / ORDER**

**Per A. Mohan Alankamony, AM:-**

This appeal by the assessee is arising out of the directions issued by the Ld. Members of the DRP dated 27.09.2017 and the assessment order passed by the Ld.DCIT dated 28.11.2017 passed U/s. 143(3) r.w.s. 92CA & 144C(13) of the Act for the assessment year 2013-14.

2. The assessee has raised several grounds in its appeal however the issues argued before us are reproduced herein below for adjudication:

#### EDS Segment

- 1.1 The Ld.TPO has erred in treating M/s. Acropetal Technologies Limited as the comparable company while selecting the comparable in the EDS segment.
- 1.2 The Ld.TPO has erred by considering only the margin of the segment "Engineering Design Services" of M/s. Vama Industries Ltd., as the comparable.
- 1.3 The Ld.TPO has erred by considering only the margin of the segment "Engineering Design Services" of M/s. Tata Eixsi as the comparable.

#### ITeS Segment

- 2.1 The Ld.TPO has erred in treating M/s. Infosys BPO Limited as the comparable company when it is functionally dissimilar and having huge turnover.
- 2.2 The Ld.TPO has erred in treating M/s. MPS Limited as comparable company which is a high end service provider in a different line of business and hence not functionally comparable.

- 2.3 The Ld.TPO has erred in treating M/s. Hartron Communications as the comparable company which is functionally dissimilar.
- 2.4 The Ld.TPO has erred in not treating M/s. Caliber Point Business Solution as comparable company on the ground that the financial year of the company ends on a different date.

#### Assembly Segment

- 3.1 The Ld.TPO has erred in treating M/s. Cenlub Industries as comparable company when it is functionally dissimilar.
- 3.2 The Ld.TPO has erred in treating M/s. Dembla Valves Ltd., as comparable company when it is functionally dissimilar.
- 3.3 The Ld.TPO has erred in treating M/s. SE Electrical Ltd., as comparable company when it is functionally dissimilar.
- 4 The Ld.TPO had erred by not granting any adjustment towards working capital and risk differentiated between the Assessee Company and the comparable companies in all the segments.

3. The brief facts of the case are that the assessee is a private limited company providing services in the field of manufacturing and computer aided designing, filed its return of income for the assessment year 2013-14 on 30.11.2013 admitting total income of Rs.20,24,04,820/- under normal provisions and Rs.18,13,54,803/- as book profit U/s.115JB of the Act. The case was selected for scrutiny under CASS and notice U/s.143(2) of the Act was issued on 04.09.2014. Thereafter the case was referred to the Ld.TPO who passed order U/s. 92CA(3) of the Act on 25.10.2016 followed by draft assessment order on 02.12.2016. Subsequently the Ld. Members of the DRP issued directions on 27.09.2017 wherein they confirmed the order of the Ld.TPO who had computed the ALP of the assessee by making upward adjustments.

**4. Ground No. 1.1: M/s. Acropetal Technologies Ltd. as comparable company:-**

The Ld.AR submitted before us that the company M/s. Acropetal Technologies Ltd., had disclosed abnormal profits and therefore the same cannot be taken as comparable company. The Ld.AR also brought out the fluctuations of operating profit/operating

cost disclosed by the company for various financial years as follows FY 2010-11 - 26.37%, FY 2011-12 – 15.98%, FY 2012-13 – 57.66% & FY 2013-14 - 7.21%. It was therefore argued that M/s. Acropetal Technologies Ltd., cannot be taken as a comparable company. We find merit in the submission of the Ld.AR. In the Financial Year 2012-13 relevant to the Assessment year 2013-14, M/s. Acropetal Technologies has disclosed 57.66% as its margin which seems to be quite abnormal when compared with the margins in the preceding and succeeding financial years. Therefore as contented by the Ld.AR, we are of the considered view that M/s. Acropetal Technologies Ltd., cannot be accepted as a comparable company. Hence we hereby direct the Ld.TPO to compute the ALP of the assessee by excluding M/s. Acropetal Technologies Ltd., as comparable company. Since the Ld.AR has submitted before us that if M/s. Acropetal Technologies Ltd., is excluded then no further adjustments are required in the EDS segment, we restrain from adjudicating the issue with respect to Vama Industries and Tata Elxsi as comparable companies. Accordingly Ground No.1.1 to 1.3 cited in Para 2 herein above are disposed off in favour of the assessee.

**5. Ground No.2.1: M/s. Infosys BPO Limited as the comparable company:-**

The Ld.AR submitted before us that the export turnover of M/s. Infosys BPO Limited is quite high which is approx. Rs.1356 crores while as the export turnover of the assessee company is only around Rs.14.50 crores; hence M/s. Infosys BPO Limited cannot be taken as a comparable company with that of the assessee company. We find merit in the submission of the Ld.AR. When there is wide gap between the size and turnover of the company which is not dispute, they cannot be taken as comparable company. Hence we hereby direct the Ld.TPO to exclude M/s. Infosys BPO Limited as comparable company while computing the ALP in the ITeS Segment.

**6. Ground No.2.2: M/s. MPS Limited as comparable company**

The Ld.AR submitted before us that the Ld.TPO has treated M/s. MPS Limited as comparable company without addressing to the objections raised by the assessee and the Ld. Members of the DRP had simply endorsed the order of the Ld.TPO without examining the submissions of the assessee. The Ld.AR further submitted that M/s. MPS Limited is a high end service

provider in a different line of business and also fails the employee cost filter. It was therefore pleaded that M/s. MPS Limited may be excluded while computing the ALP in ITeS segment. On perusing the file, we find that the Ld.TPO has not examined the issue with respect to the inclusion of M/s. MPS Limited as comparable company. Therefore in the interest of justice we hereby remit back the matter to the file of Ld.TPO for de-nova consideration and to pass appropriate order in accordance with merit and law after duly examining and adjudicating the objections raised by the assessee.

**7. Ground No.2.3: M/s. Hartron Communications as the comparable company:-**

The Ld.AR submitted before us that M/s. Hartron Communications had diversified operations amongst which many relates to activities that are not similar to the activity of the assessee company. Further it was submitted that the company M/s. Hartron Communication's profit from BPO business both export and domestic for the current year is 18.43 crores while as for the previous year the profit was 3.81 crores which shows an increase of profit to the tune of 483.72%. Therefore in the relevant assessment year there was extraordinary operations and hence

cannot be taken as comparable company. Before us the facts presented by the Ld.AR could not be disputed by the Ld.DR. After considering the issue, we are of the view that when the company is functionally dissimilar and when in a particular year there is an extraordinary profit, then the company cannot be taken as a comparable company. In the case of M/s. Hartron Communication, it is apparent that the company has achieved extraordinary profits during the relevant assessment year and further it has diversified activities and therefore functionally dissimilar to that of the assessee company. Hence as pleaded by the Ld.AR, we are of the considered view that M/s. Hartron Communication cannot be accepted as a comparable company.

**8. Ground No.2.4: M/s. Caliber Point Business Solution as the comparable company:-**

The Ld.AR argued by stating that M/s. Caliber Point Business Solution is a functionally similar company and the financial data of the company can be extrapolated. Therefore though it is a company with different financial year, it can be treated as a comparable company. The Ld.AR further submitted that the Ld.TPO without examining these facts has excluded the company

as comparable company. Though we find the arguments of the Ld.AR justifiable, the manner in which such extrapolation of profit is worked out is not brought out before us. Therefore in the interest of justice, we hereby remit the matter back to the Ld.TPO for de-nova consideration.

**9. Ground No.3.1: M/s. Cenlub Industries as comparable company:-**

The Ld.AR submitted before us that the company is engaged in activities such as designing, engineering, manufacturing, supply, installation and erection of lubricating systems. Further the company had also undertaken research & development with respect to specific areas such as development of grease dispensing system for commercial vehicle and wind turbine. It was further submitted that the Ld.TPO himself had applied the functionality dissimilar filter in the case of M/s. Cenlub Industries and observed that under TNMM only broad functional comparability is required hence it was treated as comparable. Therefore it was argued that when the Ld.TPO himself had agreed that the company is functionally dissimilar then he ought not to have selected the company as comparable company. We find merit in the submission

of the Ld.AR. When there is a clear cut finding that the company is functionally dissimilar, the Ld.TPO ought to have restrained from accepting the company as a comparable company. Therefore we hereby direct the Ld.TPO to exclude M/s. Cenlub Industries as comparable company.

**10. Ground No.3.2: M/s. Dembla Valves Ltd., as comparable company:-**

The Ld.AR submitted before us that M/s. Dembla Valves Ltd., manufactures butterfly valves, ball valve, globe control valves which cater to industries in the field of oil, gas, petro-chem, power, steel etc. Further the focus of the company is to upgrade the existing products and develop new products so as to cater to the continuous increasing demand of the projects. It was further submitted that the TPO had himself applied the functionality dissimilar filter in the case of M/s. Dembla Valves Ltd., and observed that under TNMM only broad functional comparability is required hence it was treated as comparable. Therefore it was argued that when the Ld.TPO himself had agreed that the company is functionally dissimilar then he ought not to have selected the company as comparable company. We find merit in the submission

of the Ld.AR. When there is a clear cut finding that the company is functionally dissimilar, the Ld.TPO ought to have restrained from accepting the company as a comparable company. Therefore we hereby direct the Ld.TPO to exclude M/s. Dembla Valves Ltd., as comparable company.

**11. Ground No.3.3: M/s. SE Electricals Ltd., as comparable company:-**

The Ld.AR submitted before us that the company was manufacturing generators, transformers and panels used in wind turbine generators. Therefore the company is functionally dissimilar. It was further submitted that the TPO had himself applied the functionality dissimilar filter in the case of M/s. SE Electricals Ltd., and observed that under TNMM only broad functional comparability is required hence it was treated as comparable. Therefore it was argued that when the Ld.TPO himself had agreed that the company is functionally dissimilar then he ought not to have selected the company as comparable company. We find merit in the submission of the Ld.AR. When there is a clear cut finding that the company is functionally dissimilar, the Ld.TPO ought to have restrained from accepting the company as a

comparable company. Therefore we hereby direct the Ld.TPO to exclude M/s. SE Electricals Ltd., as comparable company.

**12.Ground No.4: Not granting any adjustment towards working capital and risk between the assessee company and comparable company:-**

The Ld.AR submitted before us that the Ld.Revenue Authorities have not taken into consideration with respect to adjustment towards working capital and risk between the assessee company and the comparable companies. It was further submitted that the adjustment towards working capital and risk ought to be taken in to consideration while arriving at the operating margin of the comparables. Reliance was placed in the following decisions:-

- (i) *Order of the Chennai Bench of the Tribunal in the case of M/s. R. Stahl Private Limited in ITA No.2745/Mds/2016 vide order dated 19.04.2017.*
- (ii) *Order of the Chennai Bench of the Tribunal in the case of M/s. Doowon Automotive Systems India Pvt. Ltd., in ITA No.692/Mds/2016 vide order dated 25.01.2017.*
- (iii) *Order of the Pune Bench of the Tribunal in the case of Demag Cranes & Components (India) Pvt. Ltd., in ITA No.120/PN/2011 vide order dated 04.01.2012.*
- (iv) *Order of the Chennai Bench of the Tribunal in the case of M/s. Shipnet Software Solutions India Pvt. Ltd., in ITA No.3404/Mds/2016 vide order dated 28.04.2017.*
- (v) *Order of the Bangalore Bench of the Tribunal in the case of M/s. Bearing Point Business Consulting (P) Ltd., in ITA No.1124/Bang/2011 vide order dated 21.12.2012 reported in [2013] 33 taxmann.com 92.*

Further with respect to risk adjustment the Ld.AR submitted that single customer risk is a risk in future and not an existing risk and therefore adjustment ought to be given. Reliance was placed in the following decisions:-

- (i) *Order of the Chennai Bench of the Tribunal in the case of M/s. KOB Medical Textiles Pvt. Ltd., in ITA No.855/Mds/2015 vide order dated 09.03.2017.*
- (ii) *Order of the Chennai Bench of the Tribunal in the case of M/s. Lason India Pvt. Ltd., in ITA No.1026/Mds/2014 vide order dated 27.05.2016.*
- (iii) *Order of the Delhi Bench of the Tribunal in the case of M/s. Sony India (P) Ltd., reported in [2008] 114 ITD 448 vide order dated 23.09.2008.*
- (iv) *Order of the Bangalore Bench of the Tribunal in the case of M/s. Supportsoft India Pvt. Ltd., in IT(TP)A No.1372/Bang/2011 & IT(TP)A No.20/Bang/2012 vide order dated 28.03.2017.*
- (v) *Order of the Bangalore Bench of the Tribunal in the case of M/s. Bearing Point Business Consulting (P) Ltd., in ITA No.1124/Bang/2011 vide order dated 21.12.2012 reported in [2013]33 taxmann.com 92.*
- (vi) *Order of the Bangalore Bench of the Tribunal in the case of M/s. Intellinet Technologies India (P) Ltd., in ITA No.1237/Bang/2010 vide order dated 30.03.2012 reported in [2012]22 taxmann.com 28.*

It was therefore pleaded that directions may be given to the Ld.Revenue Authorities to take into consideration the adjustment towards working capital and risk. The Ld.DR on the other hand relied on the orders of the Ld.Revenue Authorities.

12.1 We have heard the rival submissions and carefully perused the materials on record. With respect to working capital adjustment, the Ld.Revenue Authorities have relied in the decision in the case

M/s. Mobies India Ltd., in ITA No.211/Mds/2011 and further the Ld.Members of the DRP have relied in the observation of the Ld.TPO that the assessee has failed to demonstrate the requirements as per the ratio laid down in the case M/s. Mobies India Ltd. Further with respect to risk adjustment, the Ld.Members of the DRP relied on the observation of the Ld.TPO which is extracted herein below for reference:

*“11.5 TP study and the arguments of the assessee are examined. On examination, it is found that*

- a) The taxpayer bears ‘single customer risk’ as it is totally dependent on the AE for business.*
- b) The agreement with the AE does not guarantee sufficient volume of business nor period.*
- c) The AE is exposed to the market risk and any fluctuation in the business conditions of the AE affect the contractual terms between the AE and the taxpayer.*
- d) There are many captive service providers operating in the same environment as the taxpayer and still earning much better margins than independent risk bearing enterprises and vice versa.*
- e) There is no direct correlation between the margins earned and risks taken by the assessee and similar cost plus entities.*
- f) Many business studies have shown that the MNCs are actually distributing their risks by opening captive offshore centers.*
- g) The independent entrepreneur has to incur expenditure on marketing, etc., which is debited to the profit and loss account. But, it is always not necessary that these risks reflected in the marketing, sales promotion expenses will automatically be compensated by increase in sales or higher margins.*
- h) The risk profile of the comparables selected by the taxpayer, acceptable to the taxpayer and those selected by the TPO but not acceptable to the taxpayer is similar.*
- i) It may be true that higher risk expects a higher margin, but it is incorrect to say that higher risk actually gets the higher margin. Thus realization of risk is different from expected return based on*

- risk undertaken. The assessee is under mistaken impression that the two (i.e. the expected returns and the actual returns) are the same.*
- j) The taxpayer did not furnish any computation of the risk adjustment.*
  - k) The taxpayer's single customer risk and political/country risk more than offsets any other risk differential between the taxpayer and the comparable companies.*
  - l) Different comparable can have different risk profiles and different profit margins. The proviso to Sec.92C(2) of the Act provides for adopting arithmetical mean to the different prices. This provision neutralizes the effect of difference in the risk profile, if any between the tax payer and the comparables as realized risk may pull down the profitability below the risk free return.*
  - m) It is not sufficient to merely spell out risks, but, it has to be shown which risk was actually undertaken by the comparables and to what extent it affected the profitability. The taxpayer has not done so."*

In view of the same, the Ld.Members of the DRP had rejected the prayer of the assessee for granting working capital and risk adjustment. From the facts of the case, it appears that neither the assessee nor the Ld.AR had come out with any convincing materials to justify the claim made before the Ld.Revenue Authorities. However in the interest of justice, we are of the view that the objection raised by the Ld.AR is required to be reconsidered by the Revenue considering the intricacies of the business of the assessee. Hence we hereby remit the matter with respect to granting of working capital and risk adjustment back to the file of Ld.TPO for de-nova consideration, thereby affording one more opportunity to the assessee to present its case before the Ld.TPO on merits.

13. Further with respect to the most of the selection of comparable companies except in the EDS Segment we have held against the Revenue. In such circumstance we are of the considered view that the entire exercise with respect to selection of comparable companies other than in the EDS Segment needs to be reworked afresh in order to arrive at the appropriate result based on the appropriate comparable companies. Therefore we hereby remit back the matter with respect to selection of comparable companies other than in the EDS Segment to the file of Ld.TPO for de-nova consideration.

14. In the result appeal of the assessee is partly allowed for statistical purposes as indicated herein above.

Order pronounced on the 16<sup>th</sup> October, 2018 at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)  
( Duvvuru RL Reddy )  
न्यायिक सदस्य /Judicial Member  
चेन्नई/Chennai,  
दिनांक/Dated 16<sup>th</sup> October, 2018

Sd/-

(ए. मोहन अलंकामणी)  
( A. Mohan Alankamony )  
लेखा सदस्य / Accountant Member

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- |                        |                          |                              |
|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT     | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF             |