

IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU BENCH 'A', BENGALURU

BEFORE SHRI. A. K. GARODIA, ACCOUNTANT MEMBER

AND

SHRI. LALIET KUMAR, JUDICIAL MEMBER

I.T(TP).A No.1171/Bang/2011
(Assessment Year : 2007-08)

M/s. IHS Global P. Ltd,
(formerly IHS Parts Management P. Ltd)
Tower -01, Mobius Block, 3rd floor, SJR i Park,
Opp Sathya Sai Hospital, Whitefield, EPIP Area,
Bengaluru 560 066 .. Appellant
PAN : AABCI4372D

v.

Deputy Commissioner of Income-tax,
Circle – 11(4), Bengaluru .. Respondent

Assessee by : Shri. Uma Shankar Gautam, Advocate
Revenue by : Shri. C. H. Sundar Rao, CIT –DR-I

Heard on : 16.01.2019
Pronounced on : 18.01.2019

ORDER

PER LALIET KUMAR, JUDICIAL MEMBER :

This is an appeal filed by the assessee against the order u/s.143(3) r.w.s. 144C of the IT Act, of the DCIT, Circle -11(4), Bengaluru, dated.30.09.2011, for the assessment year 2007-08, in pursuance to the directions of the DRP, dt.26.09.2011.

02. The assessee has raised the following grounds of appeal:

1. The learned AO in pursuance of the order of the learned TPO and the directions of the learned Panel erred on facts and law while including **Accentia Technologies Limited** as a comparable, whereas the same should have been excluded for the reasons of occurrence of extraordinary events during the year and functional dissimilarity. **[corresponding to ground no. 4.1]**
2. The learned AO in pursuance of the order of the learned TPO and the directions of the learned Panel erred on facts and law while including **Bodhtree Consulting Limited** as a comparable, whereas the same should have been excluded for the reasons of functional dissimilarity and occurrence of extraordinary events during the year. **[corresponding to ground no. 4.1]**
3. The learned AO in pursuance of the order of the learned TPO and the directions of the learned Panel erred on facts and law while including **Eclerx Services Limited** as a comparable, whereas the same should have been excluded for the reasons of existence of super-normal profits during the year. **[corresponding to ground no. 4.1]**
4. The learned AO in pursuance of the order of the learned TPO and the directions of the learned Panel erred on facts and law while including **HCL Comnet Systems & Services Limited** as a comparable, whereas the same should have been excluded for the reasons of functional dissimilarity **[corresponding to ground no. 4.1]**
5. The learned AO in pursuance of the order of the learned TPO and the directions of the learned Panel erred on facts and law while including **Informed Technologies India Limited** as a comparable, whereas the same should have been excluded for the reasons of abnormal growth of this company during the year. **[corresponding to ground no. 4.1]**
6. The learned AO in pursuance of the order of the learned TPO and the directions of the learned Panel erred on facts and law while including **Infosys BPO Ltd.** as a comparable, whereas the same should have been excluded for the reasons of brand value, substantial intangible and functionally dissimilar. **[corresponding to ground no. 4.1]**
7. The learned AO in pursuance of the order of the learned TPO and the directions of the learned Panel erred on facts and law while including **Iservices India Private Limited** as a comparable, whereas the same should have been excluded for the reasons of existence of super-normal profits during the year. **[corresponding to ground no. 4.1]**
8. The learned AO in pursuance of the order of the learned TPO and the directions of the learned Panel erred on facts and law while including **Mold-Tek Technologies Limited** as a comparable, whereas

the same should have been excluded for the reasons of existence of super-normal profits during the year and functionally dissimilarity. **[corresponding to ground no. 4.1]**

9. The learned AO in pursuance of the order of the learned TPO and the directions of the learned Panel erred on facts and law while including **Wipro Limited** as a comparable, whereas the same should have been excluded for the reasons of functional dissimilarity and existence significant intangibles. **[corresponding to ground no. 4.1]**
10. That the Ld. DRP erred in not applying the upper limit of the turnover filter for the following comparable companies, as selected by the TPO: **[corresponding to ground no. 4.1]**
 - Aditya Birla Minacs Worldwide Limited;
 - HCL Comnet Systems & Services Limited;
 - Infosys BPO Limited; and
 - Wipro Limited.
11. The Ld. DRP erred in levying interest under Section 234B and Section 234C of the Income Tax Act, 1961. **[corresponding to ground no. 8]**

03. IHS Parts Management P. Ltd was incorporated on October 3, 2005, under the Companies Act. 1956. IHS India is engaged in providing data sourcing services and building up databases for IHS, US. Its activities are predominantly related to the engineering and technical spheres. The activities carried out by IHS India are highly technology driven. IHS US is a global provider of critical technical information, decision support tools and related information based services to customers in the energy, defence, aerospace, construction, electronics and automotive industries. The information tools offered by IHS US provides its users quick access to a wide database that provides timely and relevant information and knowledge-based application tools. IHS-US maintains the most comprehensive databases and employs proprietary processes and technology to collect, manage and deliver a vast inventory of information.

Ownership structure of JHS Parts as on 31st March, 2007 is as follows: IHS Parts Management Inc., USA - 99.99% and IHS Parts Management. India Pvt.Ltd. - 00.01%

04. International Transactions (as mentioned in the 92 CE report)

The assessee entered into the following international transactions during the FY 2006-07 in its IT enabled services segment.

ITES support charges received	..	Rs.16,38,43,183/-
Cross charges by holding company For employee stock exchange	..	Rs. 83,11,050/-

The segmental detail for the IT Enabled services as per Taxpayer is as under.

Particulars	IT Enabled Services (Rs.)
Operating Revenues	16,38,43,183
Operating cost	14,08,76,642/-
Operating Profit(PBIT)	2,29,66,541/-
Operating profit to cost ratio	16.30%

Segmental analysis of the IT-Enabled services as per TPO by reducing forex loss :

Particulars	IT Enabled Services (Rs.)
Operating Revenues	16,38,43,183
Operating cost	13,95,26,808/-
Operating Profit(PBIT)	2,43,16,375/-
Operating profit to cost ratio	17.42%

05. The TPO after issuing the show cause notice and after considering the objection of the assessee, compared the price charged by the assessee from its AE with the independent comparables and thereafter had made a recommendation for adjustment u/s.92CA of Rs.14,08,76,642/-.

06. The TPO has treated 28 comparables as under, as good comparables after analysing the data base, annual reports and objection raised by the assessee :

1. Accentia Technologies Ltd (seg)
2. Aditya Birla Minacs Worldwide Ltd
3. Allsec Technologies Ltd
4. Apex Knowledge Solutions P. Ltd
5. Appollo Healthstreet Ltd
6. Asit C. Mehta Financial Services Ltd
7. Bodhtree Consulting Ltd (Seg)
8. Caliber Point Business Solutions Ltd
9. Cosmic Global Ltd

10. Datamatics Financial Services Ltd (Seg)
11. Eclerx Services Ltd
12. Flextronics Software Systems Ltd (seg)
13. Genesys International Corporation Ltd
14. HCL Commet Systems & Services Ltd (seg)
15. I C R A Techno Analytics Ltd (seg)
16. Informed Technologies India Ltd
17. Infosys BPO ltd
18. IServices India P. Ltd
19. Maple Esolutions Ltd
20. Mold –Tek Technologies Ltd (seg)
21. R Systems International Ltd (seg)
22. Spanco Ltd (seg)
23. Triton Corp Ltd
24. Vishal Information Technologies Ltd
25. Wipro Ltd (seg)
26. Nittany Outsourcing Services P. Ltd
27. Accurate Data Converters Ltd
28. Apex Advanced Technology P. Ltd

Feeling aggrieved by the order of the TPO, assessee filed objections before the DRP.

07. The DRP passed an order on 26.09.2011, giving part relief to the assessee, against which the assessee is in appeal before us.

08. At the outset, the Ld. AR submitted that the assessee had filed the revised grounds before the Tribunal and even as per the revised grounds; the assessee is not pressing ground nos.7 and 10. Hence we are left with effective ground nos.1 to 6, 8 and 9. Ground 11 is only consequential and needs no adjudication.

09. As per the grounds the assessee has sought exclusion of the following comparables :

1. Accentia Technologies Ltd,
2. Bodhtree Consulting Ltd,
3. Eclerx Services Ltd
4. HCL Comnet Systems & Services Ltd
5. Informed Technologies India Ltd,
6. Infosys BPO Ltd
7. Mold-Tek Technologies Ltd
8. Wipro Ltd

Now, we shall deal with each of the comparable, in the following paragraphs.

10. The Ld. AR has submitted that Accentia Technologies Ltd, (Medical Transcription segment), Bodhtree Consulting Ltd (Data cleansing Service segment), Eclerx Services Ltd, HCL Comnet Systems & Services Ltd, Informed Technologies, Infosys BPO Ltd, Mold-Tek Technologies Ltd and Wipro Ltd (BPO service segment) were considered by the Tribunal in the matter of AOL Online India P. Ltd v. DCIT [ITA.1036/Bang/2011 and also in the matter of Magma Design Automation India P. Ltd v. ACIT [ITA.1214/Bang/2011] and after considering the functional profile, extraordinary events etc., the Tribunal had excluded these companies from the list of comparables.

11. Per contra the Ld. DR had submitted that though the Tribunal had passed the order of exclusion of these companies, however in the matter of Tesco Hindustan Service Centre P. Ltd v. DCIT [ITA.1285/Bang/2011], Tribunal in respect to Bodhtree Consulting

Ltd as well as Informed Technologies Ltd, had remanded the matter back to the file of the AO / TPO to re-examine these comparables. For this purpose our attention was drawn to para 36 and 46 of the order of Tribunal in Tesco Hindustan Service Centre P. Ltd (supra).

12. We have heard the rival contentions and perused the record and the decisions cited before us. With respect to the other six companies, namely, (i) Accentia Technologies Ltd, (Medical Transcription segment), (ii) Eclerx Services Ltd, (iii) HCL Comnet Systems & Services Ltd, (iv) Mold-Tek Technologies Ltd, (v) Infosys BPO Ltd and (vi) Wipro Ltd (BPO service segment), since the Tribunal has already examined the comparability of these companies under similar set of facts, and the facts of the present case are similar to the facts and function in the case of Magma Design Automation India P. Ltd (supra), we find no reason to take a contrary view. Accordingly, following the orders of the Tribunal in AOL Online India P. Ltd v. DCIT [supra] and Magma Design Automation India P. Ltd [supra], we direct the TPO to exclude these six companies from the list of comparables.

13. With respect to Bodhtree Consulting Ltd we have considered the objection raised by the Revenue for sending this company back to the TPO. We find that with respect to Bodhtree Consulting, the Tribunal in the case of TESCO had mentioned that segmental data are not available and therefore the matter has been referred back to the file of TPO. However the Tribunal in the matter of Pole to Win

India P Ltd v. DCIT [IT(TP)A.1053/Bang/2011, dt.08.06.2016] for A. Y. 2007-08, has held as under :

8. Bodhtree Consultancy Ltd.

8.1 The learned Authorised Representative of the assessee submitted that this company is engaged in the business of development of software product and highly fluctuating margin, this company is also functionally dis-similar to the assessee as it is engaged in providing open and end-to-end web solution, software consultancy, design and development of solution by using latest technology. This company is also engaged in the development of software products. He has referred to the Annexure to the Directors Report and submitted that this company is following the method of revenue recognition from software development based on software developed and billed to client whereas the expenditure is recognized when it is incurred towards software development. Therefore, there is no match between the expenditure and the revenue from software development segment. Thus once this company is in the software development, the same cannot be compared with the assessee being ITES provided to its AEs.

8.2 On the other hand, the learned Departmental Representative has relied upon the orders of the authorities below and further submitted that the co-ordinate bench of this Tribunal in the case of Ariba Technologies India (P.) Ltd. (supra) found this company to be comparable.

8.3 We have considered the rival submissions and the relevant material on record. In case of Ariba Technologies India (P.) Ltd. (supra), the objections against this company was on the ground of extra-ordinary profit and therefore the Tribunal has no occasion to examine the functional comparability of this company except the ground raised by the assessee regarding extra-ordinary profit margin. The learned Authorised Representative of the assessee has referred to the Annexure to the Directors Report wherein segment-wise and product-wise performance has been reported as under :

"Segment-wise and product-wise performance

Bodhtree has only one segment, namely software development, being a software solutions company, it is engaged in providing open and end-to-end web solutions, software consultancy, design and development of solutions, using the latest technology.

Outlook

Given the steady growth in the niche areas like data cleansing and software development, and the new initiatives in the areas of e-publication and e-learning, the management has reason to be optimistic about the future growth.

Revenue Recognition

Revenue from software development is recognized based on software developed and billed to clients."

Thus it is clear that this company is having one segment namely software development under which this company is providing software solutions including open and end-to-end web solution, software consultancy, design and development of solution. Further, the company is also providing data cleansing and software development. These services are in the category of software development services and not in ITES. Accordingly, we are of the view that the software development segment cannot be compared with ITES segment and hence this company cannot be compared with the assessee's ITES segment. Accordingly, we direct the A.O./TPO to exclude this company from the list of comparables.

The Tribunal thereafter excluded the same from the list of comparables.

We are of the considered view that the Tribunal while adjudicating Bodhtree Consulting Ltd, in TESCO has not had the benefit of appreciating the decision of the coordinate bench in the matter of Pole to Win India P. Ltd (supra) and AOL Online India Ltd (supra) , wherein elaborate detailed discussions and examination of facts have taken place at the level of the Tribunal and hence the Tribunal excluded these comparables. In view of the above, we direct exclusion of Bodhtree Consulting Ltd.

14. With respect to Informed Technologies Ltd, we have considered the objection raised by the Revenue for sending them back to the TPO in the light of decision of Tribunal in the matter of TESCO(supra). We find that with respect to Informed Technologies Ltd, the Tribunal had mentioned that segmental data is not available and therefore the matter has been referred back to the file of TPO. However the Tribunal in the matter of Pole to Win India P Ltd v. DCIT [IT(TP)A.1053/Bang/2011, dt.08.06.2016] for A. Y. 2007-08, has held as under :

(xvi) Informed Technologies Ltd. : This company was selected by the TPO/A.O and the assessee did not contest the inclusion of this company either before the TPO/A.O or before the CIT (Appeals). However, the CIT (Appeals) excluded this company on RPT filter. We find that the RPT revenue of this company is 15.93%. Therefore this company fails RPT filter of 15% and accordingly, we upheld the exclusion of this company from the list of comparables.

We are of the considered view that the Tribunal while adjudicating *Informed Technologies* , did not have the benefit of appreciating the decision of the coordinate bench in the matter of Pole to Win India P. Ltd (supra), wherein elaborate detailed discussions and examination of facts have taken place at the level of the Tribunal and hence the Tribunal excluded these comparables. In view of the above, we direct exclusion of Informed Technologies Ltd.

15. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 18th day of January, 2019.

Sd/-

(A. K. GARODIA)

ACCOUNTANT MEMBER

Bengaluru

Dated : 18.01.2019

MCN*

Sd/-

(LALIET KUMAR)

JUDICIAL MEMBER

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By order

Assistant Registrar
Income Tax Appellate Tribunal,
Bangalore.