

आयकर अपीलीय अधिकरण , 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, 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. 3205/Chny/2017

निर्धारण वर्ष/Assessment Year : 2013-14

Visual Graphics Computing Services
(India) Private Limited,
10th Floor, "Zenith",
Ascendas - International Tech Park,
CSIR, Taramani Link Road,
Chennai – 600 113.

Deputy Commissioner of Income Tax,
Vs. Corporate Circle 3(2),
Chennai – 600 034.

[PAN: AAACV 3342H]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

:

Shri. Nishant Thakkar, Advocate &
Ms. Jasmin A Malsadvala, Advocate

प्रत्यर्थीकीओरसे/Respondent by

:

Shri. M. Srinivasa Rao, CIT

सुनवाईकीतारीख/Date of Hearing

:

20.11.2018

घोषणाकीतारीख/Date of Pronouncement

:

01.01.2019

आदेश/ ORDER

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order passed by the DCIT, Corporate Circle 3(2), Chennai on the directions issued by the DRP-2, Bangalore u/s. 143(3) r.w. 144C in F.No. 273/DRP-2-BNG/2016-17 dated 22.09.2017 for assessment year 2013-14.

2. Visual Graphics Computing Services India Private Limited (VGCS'), the assessee, incorporated on 16 June 1997, is a wholly owned subsidiary of McKinsey USA. It is a captive service provider rendering Information Technology enabled services to the McKinsey Group companies. VGCS operates from its units located at Chennai and Trivandrum. Its services to McKinsey Group can be broadly classified as follows;

- Visual Aid Services (preparing power point presentations)
- Global Finance and Accounting Services (finance and accounting services)

McKinsey Group: McKinsey & Company, Inc ('McKinsey USA') is a global management consultancy firm that focuses on solving issues of concern to senior management. They assist clients in advising solutions for their problems which could range from major strategic to operational issues. VGCS is a part of McKinsey Group. Its equity share capital is held by McKinsey USA and McKinsey international Inc. Accordingly, McKinsey Group entities shall constitute VGCS'S AE by virtue of common control and capital.

3. On the draft order passed by the TPO-3(2), Chennai u/s. 92CA(iii) dated 31.10.2016, wherein, he proposed for an upward adjustment to the tune of Rs. 5,87,58,239/-, the assessee filed its objections before the

DRP. The Hon'ble DRP vide F.No. 273/DRP-2-Bang/16-17 dated 22.09.2017 has given its directions. Thereafter, the AO passed the impugned order against which the assessee filed this appeal. Though, the assessee has taken various grounds of appeal, the Ld. AR submitted that the adjudication of the following issues would meet the ends of justice and accordingly he canvassed the following issues which are dealt as under.

4. The first issue is rejection of comparables viz., R Systems International Limited and Caliber Business Point Solutions on the basis that these companies followed the different financial year ending and in the case of comparable Infosys BPO Ltd., has significantly high turnover compared to the assessee. The AR submitted that in its own case, the issue of comparables following different accounting year came up in assessment year 2010-11. This Hon'ble ITAT in ITA No. 971/Mds/2015 dated 28.12.2017, following the coordinate bench decision in the case of R R Donnelley India Outsources (P) Ltd vs DCIT (2016) 75 Taxmann.com 306 (Chennai Trib) held that:

"6. We have heard the rival submissions and perused the material on record. In this case, there is no dispute that RSIL is functional comparability to the assessee's case. However, the accounting year adopted by the RSIL is different from the assessee's accounting year. RSIL is adopted 1st January to 31st December as accounting year as against the accounting year adopted by the assessee as 1st April and 31st March. However, data for the financial year could be compiled from the audited accounts of RSIL. Hence, the assessee is directed to furnish data for the financial year 2009-10

(1st April and 31st March) to the TPO, who after due verification shall consider the same as comparable to the assessee's case so as to determine the ALP. This view of ours is fortified by the decision of the Tribunal in the following cases :

(i) Xchanging Technology Services Pvt. Ltd. in ITA No.1222/Del/2015 dated 8.9.2015

(ii) Mercer Consulting (India) Pvt. Ltd. in IA No.966/Del/2014 dated 6.6.2014

(iii) Ameriprise India Pvt. Ltd. v. ACIT in ITA No.2010/Del/2014 dated 14.8.2015

(iv) M/s. Maersk Global Service Centres (India) Pvt. Ltd. v. DCIT in ITA No.2594/Mum/2014 dated 16.1.2015

(v) Aegis Ltd. v. ACT in ITA No.1213/Mum/2014 dated 27.7.2015

Accordingly, this ground is allowed''.

and remitted back the issue to the AO on similar directions.”

4.1. With regard to the comparable Infosys BPO Ltd., the Ld. AR submitted that the turnover of the assessee is 136 crores, while the turnover of Infosys BPO Ltd., is at 1831 crores which is 13.46 times higher than the assessee and submitted that in its own case this issue came before this tribunal in assessment year 2008-09. The ITAT in its order in ITA No. 2340/Mds/2012 dated 10.02.2017 held that the turnover of M/s. Infosys BPO Ltd., in assessment year 2008-09 was 850 crores, while the assessee's turnover was 64.27 crores which was more than 10 times that of assessee. It further held that M/s. Infosys BPO Ltd was operating at a different level and could not have been compared with the assessee. Therefore, the Hon'ble tribunal directed the AO to exclude M/s. Infosys BPO Ltd. from the list of comparables. Against this order, the Revenue filed an appeal before the Jurisdictional High Court in TCA No. 137/2018. Inviting our attention to the portion of substantial

question of law raised for the decision of the Hon'ble High Court u/s. 260(a) in the Memorandum of Appeal u/s. 260 of the Income Tax Act, 1961 in TCA No. 137/2018, the Ld. AR submitted that vide ground number 4 the Revenue raised the following question:

"4. Whether the Tribunal was right in not considering that no correlation exist between turnover and profits?"

Further, inviting our attention to the substantial question of law admitted by the Jurisdictional High Court in the case of TCA No. 137/2018 dated 03.04.2018 communicated on 10.04.2018, he submitted that the question raised by the Revenue is not found place in the substantial question of law framed by the Hon'ble Jurisdictional High Court and hence he submitted that this issue is either accepted by the Revenue or the Jurisdictional High Court did not accept such plea of the Revenue. Thus, this issue attained finality and hence M/s. Infosys BPO Ltd should not be treated as comparable with the assessee.

5. We heard the rival submissions and find merit in the submissions made by the Ld. AR, supra. Following the coordinate bench decision, supra, the issue on the comparable R Systems International Ltd and Caliber Business Point Solutions Ltd., are remitted back to the AO, on similar directions issued by this tribunal, Supra. On the above facts and circumstances, we direct the AO to exclude M/s. Infosys BPO Ltd. from the list of comparables.

6. The next issues as canvassed by the Ld. AR are that the Ld. TPO/AO/Hon'ble DRP erred in not making suitable adjustments to account for difference in the working capital position of the assessee vis-a-vis the comparable companies and not making suitable adjustment to account for difference in the risk profile of the assessee vis-a-vis the comparable companies.

6.1. In this regard, the Ld. AR invited out attention to this tribunal decision in its own case for assessment year 2010-11 & 2012-13 in ITA Nos. 971/Mds/2015 dated 28.12.2017 and ITA No. 2340/Mds/2012 dated 10.02.2017 for assessment year 2008-09, wherein, these issues are remitted back.

7. We heard the rival contentions and gone through the orders relied on by the Ld. AR. Since, both the issues in the assessee's case are remitted back to the AO in the earlier years, these issues are remitted back on the same lines and directions to the AO/TPO.

8. The next issue canvassed by the Ld. AR is with regard to the disallowance made u/s. 14A r.w.r. 8D. In this regard, the Ld. AR submitted that the assessee has not earned any exempt income and as per jurisdictional High Court decisions in the cases of Redington (India) Ltd vs ACIT (392 ITR 633) (Mad) and CIT vs Chettinad Logistics Pvt. Ltd., (248 Taxman 55) (Mad), no disallowance could be made 14A r.w.r. 8D.

9. We heard the rival submissions. Since, the facts are not clear from the assessment order or from the order of the DRP as to whether the assessee has admitted any exempt income or not, this issue is remitted back to the AO for a fresh examination. The assessee shall lay relevant materials in support of its contentions before the AO and comply with the requirements of the AO in accordance with law. The AO shall afford adequate opportunity to the assessee and decide the matter in accordance with law. Since, the Ld. AR has not pressed all other grounds, all other grounds are treated as dismissed.

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

Order pronounced on Tuesday, the 01st day of January, 2019 at Chennai.

Sd/- (एन.आर.एस .गणेशन) (N.R.S. GANESAN) न्यायिकसदस्य/Judicial Member	Sd/- (एसजयरामन) (S. JAYARAMAN) लेखासदस्य/Accountant Member
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चेन्नई/Chennai,

दिनांक/Dated: 01st January, 2019

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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