

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH : BANGALORE

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

**IT (TP) A No.383/Bang/2017
(Assessment year : 2012 – 13)**

M/s. Citrix R & D India Pvt. Ltd.,
Prestige Dynasty, Ground Floor,
33/2, Ulsoor Road,
Bangalore – 560042.
PAN. AABCN3639C

Appellant

Vs

The ACIT, Circle 2 (1) (1),
Bangalore.

Respondent

**Assessee by : Shri Uma Shankar Gautam, Advocate
Revenue by : Shri C. H. Sundar Rao, CIT (DR)**

**Date of hearing : 09 – 01 – 2019
Date of pronouncement : 25 – 01 – 2019**

ORDER

PER A. K. GARODIA, A.M.:

This appeal is filed by the assessee which is directed against the assessment order dated 21.12.2016 for A. Y. 2012 – 13 u/s 143 (3) r.w.s 144C as per the directions of DRP.

2. This appeal was earlier decided by the tribunal as per order dated 06.04.2018. Thereafter, the assessee filed a M. P. contending that the issue regarding the assessee's request for exclusion of one comparable i.e. Persistent Systems Limited was not decided by the tribunal. In M. P. order in M. P. No. 164/Bang/2018 dated 20.07.2018, this tribunal order dated 06.04.2018 was recalled for the limited purpose to decide the issue about the request of the assessee for exclusion of one comparable i.e. Persistent Systems Limited.

3. Learned AR of the assessee placed reliance on the tribunal order rendered in the case of Electronics Arts Games (India) Pvt. Ltd. vs. ACIT in ITA No. 444/Hyd/2017 dated 28.04.2017, copy available on pages 2494 to 2508 of the paper book and in particular, our attention was drawn to Para Nos. 2.1 to 2.8 of this tribunal order and it was pointed out thin this case, at this comparable was excluded on this

basis that this company is dealing with the products also and this company uses intangible assets. As against this, learned DR of the revenue submitted that the annual report of this company is available on pages 90 to 256 of the paper book and in particular, our attention was drawn to page no. 227 of the paper book and he pointed out that this company has revenue from sale of software services only and there is no revenue earned from sale of a product. He also drawn our attention to page 244 of the paper book and pointed out that in Note No. 42 for earnings in Foreign Currency also, it is stated that such earning is from Sale of software, reimbursement of Expenses, Interest and others and there is no earning for sale of any product. He also pointed out that on page 210 is Notes Forming part of financial statements and as per Note 1 regarding nature of operations, it is stated that this company is predominantly engaged in Outsourced Software Product Development services. He also submitted that on page 206 is balance Sheet of this company and there is no Inventory. He also submitted that on page 216 is Identification of Segment and as per this also, there is only one segment i.e. Outsourced Software Product Development services. He submitted that in view of the Annual Report of this company, it cannot be said that this company has any product and therefore, instead of following any earlier tribunal order, the issue should be decided afresh keeping in mind the Annual Report of that company.

4. We have considered the rival submissions. We find that the issue regarding the exclusion of Persistent Systems Limited was decided by the tribunal as per Para 2.1 to 2.8 on pages 9 to 11 of this tribunal order available on pages 2502 to 2504 of the paper book. For ready reference, we reproduce these paras as under: _

“2. Persistent Systems Ltd.:

2.1 Objecting to the aforesaid company as comparable, the AR of the assessee submitted that this company has had extra ordinary events in the nature of merger in this year in the nature of acquisitions. It is submitted that this company is involved in development of products namely eMee & KLISMA for which significant R&D is also being incurred. It is submitted that this company is also involved IP-led business (software products). It is submitted that this company derives significant revenue from export of software services and products, for which no segmental is available and the company is also owning significant intangible assets. He submitted that in the following cases this company was rejected as comparable:

- 1. CIT vs. Intoto Software India Pvt. Ltd., IITTA No. 233 of 2014, High Court of Telengana and AP.*
- 2. Alcatel Lucent India Ltd. vs. DCIT, ITA No. 6856/Del/2015*

3. *Symantec Software and Services India Pvt. Ltd. vs. DCIT, ITA No. 614/Mds/2016*

2.2 *Ld. DR relied on the orders of revenue authorities and further submitted that it is observed by DRP, this company has not charged the R&D expenses to P&L a/c. She also submitted that “IP” led businesses are similar to software services and also similar to the business carried on by the assessee. She submitted that the presence of IP’s will not have any impact.*

2.3 *Considered the submissions of both the parties and perused the material facts on record. We find that the coordinate bench of ITAT Chennai Bench in the case of M/s Symantec Software and Services India Pvt. Ltd. (supra) held as under:*

“17.3 We have heard the rival submissions and perused and carefully considered the material on record. It is seen from the details on record that this company i.e. Persistent Systems Ltd. is engaged in product development and product design services while the assessee is a software development services provider. We find that, as submitted by the assessee, the segmental details are not given separately. Therefore, following the principle enunciated in the decision of the Mumbai Tribunal in the case of Telecordia Technologies India Pvt. Ltd., (supra) that in the absence of segmental details/information a company cannot be taken into account for comparability analysis, we hold that this company i.e. Persistent Systems Ltd. ought to be omitted from the set of comparables for the year under consideration. It is ordered accordingly.”

2.4 *In view of the above decision of the ITAT Chennai Bench and also AR of the assessee brought to our notice that this company Persistent Systems Ltd. operating with the help of IP solutions like eMee and KLISMA. The same was declared by the company in its significant event in the area of research and development in page 964 of the paper book. Further, she brought to our notice that this company has carried on research and development activities to support that she submitted the details of expenditure in capital and revenue, which are given in page 966 of the paper book.*

2.5 *Further, she brought to our notice that the company has taken a constant decision on investing in new IP solutions, which has given good rewards in many folds. Further, she brought to our notice that the company has engaged in providing outsourced software product development services and technology solutions to independent software vendors (ISV’s) and enterprises. It is submitted that this company derives significant portions of its revenue from export of software services and products.*

2.6 *Ld. AR brought to our notice that notes forming part of financial*

statements in relation to revenue recognition, the company has declared that revenue from licensing of product recognized on delivery of products. It shows that the company is dealing with the product also. Further, she brought to our notice that this company uses intangible assets (refer page 1047 of paper book).

2.7 In continuation of the above submissions, ld. AR also brought to our notice that this company has declared segmental report based geographical location of customers instead of industrial vertical segmentation i.e. based on services and product.

2.8. After considering the facts on record, in our view, this company i.e. Persistent Systems Ltd. cannot be a comparable company to the assessee company. Accordingly, this company is directed to be removed from the list of comparable companies.”

5. From these paras of this tribunal order as reproduced above, it is seen that apart from this submission of the assessee that this company is engaged in products also, this was also a submission that this company has had extra ordinary events in the nature of merger in this year in the nature of acquisitions. Various arguments of the learned DR of the revenue were duly noted by the tribunal in that case also i.e. Financial Statement in relation to revenue recognition etc. Considering the facts in its entirety, we find no reason or basis to disregard this tribunal order cited by the learned AR of the assessee as requested by the learned DR of the revenue. Hence, we follow this tribunal order and decide this issue in favour of the assessee

6. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(LALIET KUMAR)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 25th January, 2019.
/MS/

Copy to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.