



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"J" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

ITA no.8192/Mum./2010  
(Assessment Year : 2006-07)

Travelex India Pvt. Ltd.  
B-Wing, 7<sup>th</sup> Floor, Eureka Tower  
Mindspace, Link Road, Malad (W)  
Mumbai 400 064  
PAN – AACCR4942B

..... Appellant

v/s

Dy. Commissioner of Income Tax  
Circle-3(3), Mumbai

..... Respondent

Assessee by : Shri Niraj Seth  
Revenue by : Shri Rakesh Ranjan

Date of Hearing – 14.03.2019

Date of Order – 05.04.2019

**ORDER**

Aforesaid appeal has been filed by the assessee challenging the assessment order dated 27<sup>th</sup> September 2010, passed under section 143(3) of the Income Tax Act, 1961 (for short "the Act") for the assessment year 2006-07, in pursuance to the direction of the Dispute Resolution Panel-II (DRP), Mumbai.

2. Ground no.1, being general in nature, does not require adjudication.

3. At the time of hearing of appeal, the learned Authorised Representative submitted that on the instructions of the assessee he does not want to press ground no.5. Hence, ground no.5 is dismissed as not pressed.

4. Ground no.6, being pre-mature at this stage, does not require adjudication.

5. In ground no.2, the assessee has challenged the addition made of ₹ 66,55,541, on account of transfer pricing adjustment.

6. Brief facts relating to this issue are, the assessee, an Indian company, is a wholly owned subsidiary of Travelex Plc, U.K. and is part of Travelex Group. The assessee provides Information Technology Enabled Services (ITES) to its overseas Associated Enterprise (AE). In its transfer pricing study, the assessee benchmarked the price charged for provision of ITES to the AEs by selecting Transactional Net Margin Method (TNMM) as the most appropriate method with operating profit/total cost (OP/TC) as the profit level indicator (PLI). By undertaking a search in the databases assessee selected 20 companies as comparables with arithmetic mean of 9.93%. Since, the margin shown by the assessee at 16.04% was higher than the mean margin of the comparable companies, the assessee claimed the price charged to the AE to be at arm's length. The Transfer Pricing Officer, however,

did not accept the claim of the assessee. After verifying the transfer pricing study report, the Transfer Pricing Officer observed that the search process adopted by the assessee to select comparables is not reliable. Therefore, rejecting the transfer pricing study report of the assessee and many of the comparables selected, the Transfer Pricing Officer undertook a fresh search in the databases to select comparables by using the data for financial year 2005-06. In this process, the Transfer Pricing Officer selected 13 comparables with arithmetic mean of 24% as against the margin shown by the assessee at 16.04%. This resulted in an upward adjustment of ₹ 66,55,541, to the price charged by the assessee to the AE. The adjustment to the arm's length price suggested by the Transfer Pricing Officer was considered for addition by the Assessing Officer in the draft assessment order.

7. Though, the assessee raised objections before the DRP against the transfer pricing adjustment, however, the DRP rejected the objections of the assessee.

8. In terms with the directions of the DRP, the Assessing Officer passed the impugned assessment order.

9. Before us, the learned Authorised Representative submitted, if two of the comparables selected by the Transfer Pricing Officer viz.,

Vishal Information Technologies Ltd. and Maple e solutions Ltd. are excluded, assessee's margin will be within  $\pm 5\%$  of the average margin of the rest of the comparables. Proceeding further, the learned Authorised Representative submitted, Vishal Information Technologies Ltd. cannot be considered as a comparable as the business model of the company is totally different from the assessee. He submitted, major portion of the work of the aforesaid company was outsourced to third parties which is evident from the low employee cost of the company. He submitted, compared to the low employee cost of Vishal Information Technology Ltd., assessee's employee cost is 58.02%. Thus, he submitted, this company cannot be treated as comparable. As regards Maple e-solutions Ltd., the learned Authorised Representative submitted, this company cannot be considered as a comparable to the assessee primarily due to the fact that the financial data of the company is unreliable. He submitted, different Benches of the Tribunal across India have rejected this company as a comparable due to the aforesaid reason. In support of his contention, learned Authorised Representative relied upon a number of decisions.

10. The learned Departmental Representative relied upon the observations of the DRP and the Transfer Pricing Officer.

11. We have considered rival submissions and perused material on record in the light of the decisions cited before us. Insofar as Vishal Information Technologies Ltd. is concerned, from the facts and material available on record, it is noticed that the business model of the company is totally different from the assessee, as, it does not undertake the work itself but outsources it to third party vendors. This fact is clearly discernible from the low employee cost of the company which is evident from the financial statements filed in the paperbook. Considering the aforesaid aspect, the Hon'ble Delhi High Court in Ramp Green Solutions Pvt. Ltd. v/s CIT, [2015] 377 ITR 533 (Del.), has held that this company cannot be treated as comparable to other companies. Similar view has been expressed in various other decisions of not only different High Courts but different Benches of the Tribunal as submitted in the legal paperbook filed before us. That being the case, following the consistent view expressed in the judicial precedents cited before us, we direct the Assessing Officer to exclude this company from the list of comparables.

12. As regards comparability of Maple e-solutions Ltd., it has now been well settled through various judicial precedents that this company cannot be treated as comparable due to unreliability of its financial data. In this context, we may refer to the following decisions:-

- i) CIT v/s Cummins Turbo Technologies Ltd., [2018] 91 taxmann.com 307 (Bom.);*
- ii) Stream International Services Pvt. Ltd. v/s ADIT, [2013] 31 TAXMANN.COM 227 (Mum.);*
- iii) Deutsche Networking Services Pvt. Ltd. v/s DCIT, ITA no.8972/Mum./2010, dated 14.09.2018;*
- iv) Franklin Templeton International Services India Pvt. Ltd. v/s DCIT, [2018] 89 taxmann.com 439 (Mum.);*
- v) Goldman Sachs Services Pvt. Ltd. v/s DCIT, [2015] 63 taxmann.com 9 (Bang.); and*
- vi) HSBC Electronic Data Processing India Ltd. v/s ACIT, [2013] 38 taxmann.com 141 (Hyd.).*

13. Therefore, following the consistent view expressed in the decisions referred to above regarding the comparability of this company, we direct the Assessing Officer to exclude Maple e-solutions Ltd. from the list of comparables. Considering the submissions of the learned Authorised Representative that upon exclusion of the aforesaid two companies, the margin of the assessee would be within  $\pm 5\%$  of the average margin of the rest of the comparables, we do not intend to examine the acceptability or otherwise of Datamatics Financial Services Ltd., Gold Stone Infratec Ltd., Asit C. Mehta Financial Services Ltd., as comparables to the assessee which is left open for adjudication, if arises, in any other assessment year in future. This ground is partly allowed.

14. In ground no.3, the assessee has challenged addition made of ₹ 4,38,499, on account of transfer pricing adjustment relating to interest paid on delayed settlement of traveler's cheques (TCs) and pre-paid cards (PPCs).

15. Brief facts are, as observed by the Transfer Pricing Officer, assessee in its ordinary course of money changing business pays interest to its AEs for delayed settlement of TCs and PPCs. It is stated that AEs charge interest at the same rate for late payment of settlement funds for TCs and PPCs which is used in TCs and PPCs contracts worldwide. To substantiate the aforesaid fact, the assessee submitted a letter from the AE confirming the rate of payment of interest worldwide. However, the Transfer Pricing Officer observed, when the assessee was called upon to furnish the rate of interest and its working, the assessee without furnishing the working stated that the rate of interest charged was 6.75% per annum. The Transfer Pricing Officer observed, as per a circular issued by the RBI, the external commercial borrowing (ECB) rate of interest for less than six months is LIBOR plus 50 basis points. Accordingly, he restricted the rate of interest to be paid to the AE at 5.50%. As a result, an adjustment of ₹ 4,38,499, was made to the arm's length price of the interest paid.

16. Though, the assessee challenged the aforesaid transfer pricing adjustment before the DRP, however, it was unsuccessful.

17. The learned Authorised Representative submitted, the assessee has computed interest on delayed payment to AEs at LIBOR plus 200 basis points. He submitted, in similar nature of transactions the chargeable interest rate varies between LIBOR plus 200 basis points to LIBOR plus 300 basis points. In support of such contention, learned Authorised Representative relied upon the following decisions:—

- i) *Tricom India Ltd. v/s ITO, ITA no.322/Mum./2014, dated 03.09.2014; and*
- ii) *M/s. Fire Star International Pvt. Ltd. v/s CIT, ITA no.488/Mum./2015, dated 31.07.2015.*

18. Thus, he submitted, the rate at which the assessee has paid interest to AEs is at arm's length. Further, the learned Authorised Representative submitted, RBI ECB rate of interest cannot be applied to the payments made by the assessee.

19. The learned Departmental Representative relied upon the observations of the DRP and the Transfer Pricing Officer.

20. We have considered rival submissions and perused material on record. As could be seen, the dispute is only with regard to the rate of interest. While the assessee has paid interest at LIBOR plus 200 basis points, the Transfer Pricing Officer has computed arm's length price of

interest at LIBOR plus 50 basis points. In our view, the computation of interest by the Transfer Pricing Officer on the basis of RBI ECB rate is flawed since the interest paid by the assessee are to AEs located in foreign countries. In view of the aforesaid, we hold that the interest paid by the assessee to the AEs is at arm's length. The decisions relied upon by the learned Authorised Representative also support this view. Accordingly, the addition made is deleted. Ground is allowed.

21. In ground no.4, the assessee has challenged the addition of ₹ 11,24,899.

22. Brief facts are, in the course of assessment proceedings, the Assessing Officer noticed that the assessee has claimed deduction for an amount of ₹ 11,24,899, on account of bad debt. After calling for necessary details and examining them, the Assessing Officer found that the amount in dispute is not in the nature of bad debt but an employee of the company had embezzled the said amount. The Assessing Officer observed, the assessee could not furnish copy of First Information Report (FIR) or any evidence to substantiate the claim of embezzlement. He observed, the assessee has only furnished a copy of internal note stating that the amount in dispute has to be written off as bad debt. He further observed, neither the internal note was signed by anyone nor bears any date. Therefore, alleging that the claim of the assessee is not proved through proper documentary

evidences, the Assessing Officer disallowed the deduction claimed. Though, the assessee challenged the aforesaid disallowance before the DRP, however, the addition was sustained.

23. The learned Authorised Representative reiterating the stand taken before the departmental authorities submitted, the fact of embezzlement by the employee has been clearly stated in the auditor's report. Further explaining, the learned Authorised Representative submitted, on investigation by the management it was found that one of the employee, Shri V.S. Praveen, had defalcated an amount of ₹ 15,24,228, from the assessee company. He submitted, this fact was also admitted by the concerned employee. The learned Authorised Representative submitted, though the company could recover an amount of ₹ 4,70,000 from the concerned employee, however, the balance amount of ₹ 10,53,996, could not be recovered from the concerned employee resulting in a loss to the company. He submitted, though the assessee had not lodged any FIR against the concerned employee, however, his services were terminated. The learned Authorised Representative submitted, though the assessee has wrongly claimed the deduction as bad debt, however, it has to be allowed as business loss.

24. The learned Departmental Representative relying upon the observations of the departmental authorities submitted that the

assessee has not furnished any evidence to prove that the amount in dispute was embezzled. He submitted, assessee initially claimed the amount as bad debt, whereas, subsequently he claimed it as business loss. Thus, he submitted, assessee's claim cannot be allowed.

25. We have considered rival submissions and perused material on record. As could be seen from the facts on record, assessee has claimed the deduction of ₹ 11,24,899, as bad debt. However, subsequently, it was explained to the Assessing Officer that the amount in dispute was actually embezzled by one of the employees of the company. It is noticed from Para-20 of the auditor's report and its annexure, a copy of which is at Page-490 of the paper book, along with with Annexure at Para-20, the auditors have specifically mentioned about the embezzlement of fund by the employee. Further, the internal note of the company at Page-494 of the paperbook also bears testimony to the fact of the embezzlement. Non-filing of FIR before the Police may be due to various reasons. Therefore, for that reason alone, assessee's claim that the amount in question was embezzled cannot be rejected. Having held so, it is seen from the auditor's report that out of the amount of ₹ 15,23,996, the company could recover an amount of ₹ 4,70,000, and the balance amount of ₹ 10,53,996, could not be recovered. Thus, the quantum of loss suffered by the assessee is ₹ 10,53,996 and not ₹ 11,24,899, as claimed by the

assessee. Further, though the loss incurred by the assessee on account of embezzlement may not be allowable as bad debt but certainly it has to be allowed as business loss. In view of the aforesaid, we direct the Assessing Officer to allow deduction for an amount of ₹ 10,53,996. Ground is partly allowed.

26. In the result, assessee's appeal is partly allowed.

Order pronounced in the open Court on 05.04.2019

**SD/-**  
**RAJESH KUMAR**  
**ACCOUNTANT MEMBER**

**SD/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 05.04.2019**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

(Sr. Private Secretary)  
ITAT, Mumbai