

IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B.R BASKARAN, ACCOUNTANT MEMBER

IT(TP)A No.116/Bang/2016
Assessment year : 2011-12

M/s Goodrich Aerospace Services Pvt. Ltd., #14/1, 15/1, Maruthi Industrial Estate, Phase-2, Hoodi Village, Whitefield Road, Bengaluru-560 048. PAN – AAACB 8857 H.	Vs.	The Dy. Commissioner of Income- tax, Circle-3(1)(2), Bengaluru.
APPELLANT		RESPONDENT

AND

IT(TP)A No.252/Bang/2016
Assessment year : 2011-12

The Dy. Commissioner of Income-tax, Circle-3(1)(2), Bengaluru.	Vs.	M/s Goodrich Aerospace Services Pvt. Ltd., #14/1, 15/1, Maruthi Industrial Estate, Phase-2, Hoodi Village, Whitefield Road, Bengaluru-560 048. PAN – AAACB 8857 H.
APPELLANT		RESPONDENT

Appellant by	:	Shri K.R Vasudevan, Advocate
Respondent by	:	Dr. Pradeep Kumar, CIT

Date of hearing	:	04.04.2019
Date of Pronouncement	:	24.04.2019

ORDER

Per N.V. Vasudevan, Vice President

These are cross-appeals by the assessee and Revenue against final order dated 28/12/2015 passed by DICT Circle-3(1)(2), Bengaluru u/s 143(3) r.w.s 144C of the Income-tax Act 1961 (the Act) in relation to asst. year 2010-11.

2. We shall first take up for consideration of ground No.4 of the grounds of appeal in the assessee's appeal which reads as follows:-

"4. The Hon'ble DRP erred in comparing the Appellant with functionally different comparable companies engaged in providing diverse IT enabled services in the nature of medical transcription, receivables management, data extraction, aggregation, electronic conversion of financial statements etc. without appreciating that the Appellant is engaged in providing low end contract engineering design services."

3. The Assessee is a company engaged in the business of manufacturing and export of aircraft safety and evacuation systems, assembly of aircraft lighting system, cargo systems, electrical power systems, primary and secondary control actuation system and offshore design services. The dispute in this appeal is with regard to determination of arms length price in respect of international transaction entered into by the assessee with its associated enterprise. In view of the provision of sec. 92 of the Act which lays down that income from an international transaction has to be determined having regard to arms length price. The AO made a reference for determination of arms length price in respect of an international transaction of rendering engineering design services by the

assessee to Goodrich Group Companies Worldwide. As per the agreement dated 1/1/2009 between Goodrich Corporation USA and the assessee, the assessee has to perform engineering and design services for Goodrich Corporation USA. Goodrich Corporation USA from time to time, assigns specified engineering and design projects to the assessee. The consideration received by the assessee for providing engineering design services was sum of Rs.89,78,79,938/-. The assessee adopted the Profit Level Indicator (PLI) as Operating Profit (OP) to Operating Cost (OC) which was 14.36% in the case of the assessee. The assessee had chosen in its TP study Transaction Net Margin Method (TNMM) method as the Most Appropriate Method (MAM) for determination of arms length price. The assessee has chosen in his TP study companies that were engaged in providing engineering design services. In the TP analysis the assessee had given the following description with regard to the services rendered by it to the group companies.

“Order the service segment, GASPL provides Services in the nature of engineering design services, to Goodrich Group companies worldwide.

Engineering design services: GASPL is engaged in the design and development of various products across the three segments namely Actuation and Landing Systems, Nacelles and Interior Systems, and Electronic Systems. These services include design and development of various parts aircraft, modelling, design, testing and simulation services.

4. The TPO in his show cause notice dated 24/11/2014 characterized the nature of the transaction between the assessee and its AE as Information Technology Enabled Services (ITES). Accordingly the TPO proceeded to determine the Arm's Length Price (ALP) of the international transaction of rendering engineering design services, which was

characterized by the TPO as ITES, treating the nature of service provided by the assessee as ITES.

5. In the objections by the assessee before the DRP against the draft order of assessment passed by the AO incorporating the directions of the TPO, assessee raised issue that it was not an ITES Company and, therefore, comparables chosen by the TPO on the assumption that it was an ITES company was erroneous and that comparables chosen by the assessee in its TP study on the basis that the nature of services rendered were engineering design services should be accepted

6. This aspect was dealt with by the DRP in the following manner.

“2.5 That the 'earned AO/learned TPO erred in disregarding the functional profile of the Assessee and in comparing the low end engineering design services provided by the Assessee with companies providing IT enabled services in the nature of medical transcription, receivables management, product development, translation services, data extraction, aggregation, electronic conversion of financial statements, validation and analysis, accounting and finance, research and analytics etc.

Having considered the submission, it is noticed by us that in the safe harbor rules for transfer pricing notified by the CBDT, "Knowledge processes outsourcing services" include engineering and design services; , therefore, we are of the view that the functions performed by the assessee are akin to KPO and therefore there is no infirmity in selecting the ITeS comparables. However, the objection in regard to specific companies have been discussed and decided in the subsequent paragraphs.”

7. Before us, the Id counsel for the assessee submitted that an identical issue had come up for consideration before this Tribunal in the case of M/s Flowserve India Controls Pvt. Ltd., Vs. DCIT TP 1277/Bang/2011 for asst. year 2007-08 dated 2/5/2018 and this Tribunal set aside the orders of the Revenue authorities with a direction to first decide on the characterization of the functions performed by the assessee. Following were the relevant observations of the Tribunal.

“We have carefully considered the submissions made and the material on record and are of the view that it was not correct to characterize the assessee as providing IIES. First of all, the TPO does not appear to be following a consistent position over the years. Further, in Assessment Year 2011-12, Revenue has also accepted the services rendered by this segment as 'Engineering & Design Services'. We also find that the characterization is not in tune with the functional analysis done in the TP Study as the IPO has not brought on record any evidence which might establish that the characterization has to be ITES only. In view of the unclear / unestablished factual position as emerges from an appreciation of the details on record, we deem it appropriate to remand the matter back to the file of the TPO and direct that the characterization of the assessee shall be done in accordance with law, after affording the assessee adequate opportunity of being heard and to make submissions and file details etc required which shall be duly considered.

Consequently, Grounds 2 to 5 and the additional ground (supra) are treated as allowed for statistical purposes.”

8. We find that the facts in the present appeal are identical to the facts as decided by the Tribunal. Following the aforesaid Ruling, we set aside the order of the AO on the issue of determination of ALP and remand the matter back to the file of the TPO with a direction to decide the characterization of the services performed by the assessee. In this regard,

the submission of the Id counsel for the assessee was that the CBDT Circular on which reliance was placed by the DRP do not applicable in this case. This aspect is also left open for consideration by the TPO in the set aside proceedings.

9. In view of the above aforesaid decision and ground No.4, the other issues raised by the assessee and the revenue in their respective appeals do not require any consideration at this stage.

10. In the result, the appeal by the assessee is treated as allowed for statistical purposes while the appeal by the Revenue is dismissed as not requiring consideration at this stage.

Order pronounced in the open court on **24th April, 2019.**

Sd/-

(**B.R Baskaran**)
Accountant Member

Sd/-

(**N.V. VASUDEVAN**)
Vice President

Bangalore,
Dated, **24th April, 2019.**
/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.