

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

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

IT(TP)A No.196/Bang/2017
Assessment year : 2012-13

M/s Nielsen Sports India Pvt. Ltd., (Formerly known as Repucom Media Analysis India Pvt. Ltd., 1 st Floor, Crescent 4, Prestige Shantiniketan, Whitefiled, Bengaluru-560 048. PAN – AAECR 0400 L	Vs.	The Asst. Commissioner of Income- tax, Circle-5(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sharath Rao, C.A
Respondent by	:	Shri Pradeep Kumar, CIT

Date of hearing	:	26.06.2019
Date of Pronouncement	:	28.06.2019

ORDER

Per B.R Baskaran, Accountant Member

The assess has filed this appeal challenging the assessment order passed by the AO for asst. year 2012-13 u/s 143(3) r.w.s 144C of the Act in pursuance of directions given by Id Dispute Resolution Panel (DRP). The issues contested in this appeal relate to TP adjustments made by the TPO and disallowance of bad debts claimed by the assessee.

2. At the time of hearing, the assessee did not press ground No.14 relating to disallowance of bad debts due to smallness of the amount. Accordingly the said ground is dismissed as not pressed.

3. Ground Nos.15 and 16 relates to interest charged u/s 234B and 234C of the Income-tax Act 1961 ('the Act'). Both are consequential in nature and hence they do not require any adjudication.

4. The other grounds relate to transfer pricing adjustment.

5. The assessee is a part of Communication group of companies. It is engaged in the business of rendering media analysis services to its associates enterprises. The communication group is associated with television and print media advertisements and accordingly involved in all types of marketing, advertisements, users ratings, print media user readership surveys and other things to make decision on the allocation of marketing levers, like branded contents and sponsorship etc.

6. The assessee has provided ITES activities to its Associated Enterprise. It has adopted TNMM as most appropriate method for bench marking the income received from its AE. The Profit level indicator (PLI) was taken as OP/OC. The assessee declared PLI of 20.14%. The TPO selected 10 comparables as given below:-

Sl. No.	Name of the Case	Operating Income	Operating Cost	OP/OC
1	Accentia Technologies Ltd.	126,38,02,000	112,89,16,000	11.75
2	Universal Print Systems Ltd.(Seg)(BPO)	6,17,67,000	3,87,49,000	52.46
3	Informed Technologies India Ltd.	1,96,36,431	1,82,45,770	6.08
4	Infosys B P O Ltd.	1316,75,11,974	962,91,06,964	36.30
5	Jindal Intellicom Ltd.	30,27,51,875	30,29,02,990	-0.05
6	Microgenetic Systems Ltd.	1,29,93,217	1,08,63,390	19.61
7	T C S E-Serve Ltd.	15,78,44,000	9,64,28,000	63.69
8	B N R Udyog Ltd.(Seg)(Medical Transcription)	1,47,04,000	97,87,000	50.61
9	Excel Infoways Ltd.(Seg)(IT/BVPO)	790,96,95,000	559,06,04,000	29.79
10	e4e Healthcare Services Pvt Limited	89,50,04,209	74,59,23,078	19.85
	Average PLI			28.11%

The average PLI of comparable companies worked out to 28.11%. The TPO gave reduction of 0.27% towards working capital adjustment and accordingly arrived at adjusted margin of 27.84%. Accordingly he made adjustment of 130.98 lakhs. The assessee field objections before Id DRP, which excluded 2 comparables viz., Accentia Technologies Ltd., and Informed Technologies India Ltd., and sustained remaining 8 comparables. The same resulted in reduction of T.P adjustment of Rs.166.27 lakhs and the AO passed the assessment order accordingly by making addition of 166.27 lakhs towards transfer pricing adjustment.

7. Before us, the Id AR sought exclusion of 2 companies viz., M/s Infosys BPO Ltd., and TCS-E-Serve Ltd., on the ground that the turnover of both these companies are more than 200 cores while the turnover of the assessee company was only 20.23 crores. By placing reliance rendered in the case of Northern Operating Services IT(TP)A No.101/Bang/2016, more particularly paragraph

18 of the order thereof, the ld AR submitted that high turnover companies cannot be compared with the low turnover companies.

8. The ld AR further submitted that the ld DRP has confirmed inclusion of Universal Print Systems Ltd., and BNR Udyog Ltd. The coordinate bench in the case of Mobility Infotech India Pvt. Ltd., (2018) 97 taxmann.com 2 has restored both these comparable companies to the file of AO/TPO for examining the same afresh by duly considering the contentions of the company.

9. The ld DR on the contrary supported the order passed by the AO.

10. We have heard the rival contentions on this issue and perused the record. Admittedly the turnover of the assessee company is 20.43 crores for the year under consideration. The turnover of Infosys BPO Ltd., for the year under consideration was 1312.41 crores and the turnover of TCS-E-Serve Ltd., was 1578.40 crores. The co-ordinate bench in the case of Northern Operating Services (Supra) has held that the decision rendered in the case of Genisys Integrating Systems in IT(TP)A No.1231/Bang/2010 is good law. In the case of Genisys Integrating Systems (supra) a guideline in the matter of turnover filter was suggested and the categorization of software companies in the Dun and Brad Street Study to be adopted as the method of classification by size. According to this study, 3 categories of firms are identified i.e small with turnover less than 200 cores, medium with turnover of 200 to 2000 crores and large with turnover greater than 2000 crores. Accordingly it

was held that small companies cannot be compared with large companies. Accordingly, the assessee herein being a small company cannot be compared with large companies. Accordingly we find merit in the contentions of the assessee and direct the AO to exclude both the companies on the basis of turnover criteria.

11. With respect to Universal Print Systems Ltd., and BNR Udyog Ltd., we noticed that the coordinate bench has restored both the comparables to the file of AO/TPO in the case of Mobility Infotech India Pvt. Ltd. (supra) to consider the objections of the assessee with regard to both the companies. With regard to Universal Print Systems Ltd (Seg. BPO), the assessee has contended in the above said case that it is functionally different and it fails on RPT filter also. With regard to BNR Udyog Ltd (Seg – Medical Transcription), the assessee has contended in the above said case that it is functionally different, fails on RPT filter and error in margin computation. Hence the co-ordinate bench has restored both the comparables in the case of Mobility Infotech India P Ltd to the file of AO/TPO and for that purpose, the co-ordinate bench has taken support of decisions rendered in the case of CGI Information Systems and Management Consultants (P) Ltd (2018)(94 taxmann.com 97 (Bang. Trib) and Indegene P Ltd (2017)(85 taxmann.com 60)(Bang.).

12. Since the facts are identical in the instant case also, following the decision rendered in the case of Mobility Infotech India P Ltd (supra), we restore both the comparables to the file of AO/TPO for

examining them afresh by duly considering the objections and explanations of the assessee.

13. In the result, the appeal filed by the assessee is treated as allowed for statistical purpose.

Order pronounced in the Open Court on **28th June, 2019.**

Sd/-
(N.V Vasudevan)
Vice President
Bangalore,
Dated, 28th June, 2019.
/vms /

Sd/-
(B.R Baskaran)
Accountant Member

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.

1. Date of Dictation
2. Date on which the typed draft is placed
before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
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4. Date on which the fair order is placed
before the dictating Member
5. Date on which the fair order comes back to the Sr.
P.S.
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12. The date on which the file goes to dispatch section for
dispatch of the Tribunal Order
13. Date of Despatch of Order.
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