



M/s Aranca (Mumbai) Pvt. Ltd.
Assessment Year-2011-12

आयकर अपीलीय अधिकरण “के” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“K” BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 1913/Mum/2016
(निर्धारण वर्ष / Assessment Year:2011-12)

DCIT-15(1)(1) Room No.517, 5 th floor Aaykar Bhavan, M.K. Road Mumbai-400 020	बनाम/ Vs.	M/s. Aranca (Mumbai) Pvt. Ltd. Unit No.201 & 301, 2 nd and 3 rd Floor B-Wing, Supreme Business Park Hiranandani Gardens, Powai Mumbai-400 076.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAECA-8402-D		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

C.O. No.152/Mum/2016

[Arising out of ITA No.1913/Mum/2016]
(निर्धारण वर्ष / Assessment Year:2011-12)

M/s. Aranca (Mumbai) Pvt. Ltd. Unit No.201 & 301, 2 nd and 3 rd Floor B-Wing, Supreme Business Park Hiranandani Gardens, Powai Mumbai-400 076.	बनाम/ Vs.	DCIT-15(1)(1) Room No.517, 5 th floor Aaykar Bhavan, M.K. Road Mumbai-400 020
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAECA 8402 D		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Shri Jayant Kumar –Ld. CIT DR
Assessee by	:	Shri Dhanesh Bafna / Ms. Hirali Desai-Ld. ARs

सुनवाई की तारीख/ Date of Hearing	:	16/07/2019
घोषणा की तारीख / Date of Pronouncement	:	30/07/2019



आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member): -

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as 'AY'] 2011-12 contest the final assessment order dated 30/01/2016 passed by Dy. Commissioner of Income-Tax -15(1)(1), Mumbai [AO] u/s 143 r.w.s. 144C(13) of the Income Tax Act, 1961 pursuant to the directions of Ld. Dispute Resolution Panel-I, Mumbai [DRP] u/s 144C(5) dated 23/12/2015. The grounds raised by revenue reads as under: -

1. Whether on the basis of the facts and circumstances of the case and in law, the Hon'ble DRP was correct in accepting four comparables namely E4e Healthcare Business Services Limited, Dion Global Solutions Limited and Omega Healthcare Management Services Pvt. Ltd, and Informed Technologies India Limited as a comparables without appreciating the fact that these companies are not similar to the functions performed by the assessee and it is not in accordance with the requirements of degree of comparability as required in Rule 10B(2) of the Income Tax Rules, 1962?
2. Whether on the basis of the facts and circumstances of the case and in law, the Hon'ble DRP erred in not directing to uphold the adjustment of Rs.77.09 lacs as admitted by the assessee itself, vide letter dated 06.07,2015 as Annexure-C, filed during remand proceedings before TPO, by mentioning in Transfer Pricing Study Report of UK entity itself that the transactions are not at ALP and adjustment of Rs.77.09 lacs is required to be made.

The assessee upon receipt of hearing notice, has filed cross-objections against the same on following grounds: -

The below mentioned grounds are without prejudice to the relief granted by the learned Assessing Officer ('AO') under directions issued by the Hon'ble Dispute Resolution Panel ('Hon'ble DRP') in relation to the transfer pricing adjustment made by the Transfer Pricing Officer ('TPO') on the international transaction of provision of investment/economic/business research services provided by the cross-objector / respondent to its associated enterprises ('AEs').

1. On the facts and in the circumstances of the case, the Hon'ble TPO erred in rejecting/disregarding the transfer pricing documentation and economic analysis by not appreciating the fact that the comparable companies selected by the Respondent in the transfer pricing documentation are comparable to the Respondent. It is therefore prayed that the transfer pricing documentation prepared by the Respondent be accepted.



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2. Further in the circumstances of the case and in law, the Hon'ble DRP erred in confirming the action of the Assessing Officer / Transfer Pricing Officer in selecting Accentia Technologies Limited ('Accentia') and Eclerx Services Limited ('Eclerx') as comparables for benchmarking the international transaction of provision of investment/economic/business research services provided by the cross-objector / Respondent to its AE without appreciating that the same are not comparable on the ground of functionality.

It is therefore prayed that Accentia and Eclerx be excluded from the final set of comparable companies, since they are functionally not comparable to the cross-objector / Respondent.

3. Without Prejudice to the above Grounds, on the facts and circumstances of the case and in law, the learned AO erred in not considering the fact that the TPO in the subsequent assessment year (i.e. Assessment Year 2012-13) has accepted AE as 'Tested Party' being the least complex entity thereby restricting the adjustment to difference between profits of the AEs and 1% of sales of AEs being bare minimum that could be allowed to be retained by the AEs. The profits of the AEs during the year are 0.26% for Aranca US and 0.13% for Aranca UK, which is less than 1% of sales as determined by the TPO in the subsequent year.

It is therefore prayed that the since the profits retained by the AEs are less than 1%, there cannot be any adjustment at all.

2.1 Facts in brief are that the assessee being resident corporate assessee stated to be engaged in providing solution in the areas of investment research, business research, valuation and advisory services and intellectual property research services was assessed u/s 143(3) r.w.s. 144C (13) on 30/01/2016 pursuant to the directions of Ld. DRP. The income of the assessee was determined at Rs.6.23 Lacs before set-off of losses / depreciation.

2.2 Certain international transactions carried out by assessee with its Associated Enterprises [AE] and as reported in Form No.3CEB were referred to Ld. Transfer Pricing Officer-1(1)(1), Mumbai [TPO] u/s 92CA (1) for determination of Arm's Length Price. The assessee had two wholly owned subsidiaries-one in USA & another in UK. The assessee earned



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service revenue of Rs.20.09 Crores from its AE and in its Transfer Pricing Study Report, benchmarked the transactions using Transactional Net Margin Method [TNMM] with Profit Level Indicator being Operating Profit / Operating Cost. It arrived at margin of 18.18% as against mean margin of 3.97% reflected by 15 entities. However, treating the functions of assessee as KPO, Ld. TPO rejected the search adopted by assessee using the key words as 'BPO / ITES'. Finding more fallacies / shortcoming in assessee's methodology, the comparable entities were rejected. In the final analysis, adopting 2 entities namely Accentia Technologies Ltd. & Eclerx Services Ltd. having mean margin of 43%, Ld. TPO revised assessee's margin to 16.60% and proposed TP adjustment of Rs.503.02 Lacs in its order u/s 92CA (3) dated 28/01/2015. Incorporating the same, draft assessment order was passed by Ld. AO on 16/03/2015 which was subjected to objections before Ld. DRP.

3.1 The assessee agitated the adjustment before Ld. DRP by way of elaborate written submissions, which has already been extracted in the order of Ld. DRP and therefore, not repeated here for the sake of brevity and to avoid duplication. The assessee has filed certain additional evidences during proceedings before Ld. TPO, which were remanded to Ld. TPO for enquiry & verification. During remand proceedings, the assessee carried out fresh benchmarking by treating overseas AEs as the tested party on the ground that AEs were the least complex entities. In the fresh benchmarking, the margins of USA AE were demonstrated to be less than the margins reflected by comparable entities and hence, no TP adjustment



was proposed. However, since the margins of UK AE were more in comparison to the comparable entity, the assessee computed TP adjustment of Rs.77.09 Lacs. However, Ld. TPO did not accept the fresh benchmarking in the remand proceedings as done by the assessee using overseas entity as Tested party.

3.2 The Ld. DRP, after due consideration, upheld the action of Ld. TPO in rejecting the first TP study since the benchmarking was not done considering assessee's function as KPO. The second benchmarking done by the assessee also could not find favor with Ld. DRP since it was, *inter-alia*, noted that the assessee did not follow any structured search procedures to identify the comparable and data used was not made available to Ld. TPO.

3.3 Proceeding further, although Ld. DRP upheld the action of Ld. TPO in selecting 2 comparable entities viz. Accentia Technologies Ltd. & Eclerx Services Ltd., however, at the same time, Ld. DRP agreed with assessee's submissions for inclusion of 4 entities namely (i) Dion Global Solutions Ltd. (ii) E4 Healthcare Business Services Ltd. (iii) Omega Healthcare Management Services Pvt. Ltd. & (iv) Informed Technologies India Ltd. Aggrieved by the inclusion of 4 entities, the revenue is in further appeal before us.

3.4 Before Ld. DRP, the assessee has alternatively argued that total TP adjustment could not exceed the total profits of the group which was worked out to be Rs.147.54 Lacs. The Ld. DRP, relying upon the decision of Delhi Tribunal in **HCL Technologies BPO Services Ltd. (ITA**



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No.3547/Del/2010) and various other decisions, concurred with the said submissions and directed Ld. TPO not to make any adjustment exceeding the total profits of the AEs.

The aforesaid directions of Ld. DRP has reduced the TP adjustment to *Nil* which is evident from final assessment order dated 30/01/2016.

Aggrieved, the revenue is in further appeal before us whereas the assessee has filed cross-objections against the same.

4. We have heard the rival submissions and perused relevant material on record. It is evident from revenue's ground that revenue is pitching for exclusion of 4 comparable entities as accepted by Ld. DRP. In Ground No.2, the revenue is pitching for upholding the adjustment of Rs.77.09 Lacs as proposed by the assessee in its subsequent TP study report using overseas AEs as the tested party. The assessee, in cross-objection, is pitching for exclusion of two comparable entities as introduced by Ld. TPO and as confirmed by Ld. DRP. In ground No.3, the assessee has contended that overseas entity has been adopted as tested party in AY 2012-13 and adjustment has been restricted to difference between profits of AEs and 1% of sales of AEs being bare minimum that could be allowed to be retained by the AEs and therefore, the same methodology may be adopted for the year under consideration also.

5. The Ld. Authorized Representative for Assessee [AR] has drawn our attention to the orders of Ld. TPO in subsequent years to submit that a particular methodology has been accepted by the assessee as well as revenue to work out the TP adjustment and therefore, the same



methodology should be applied in this year also, facts being *pari-materia* the same.

6. Upon due consideration, we find force in the arguments advanced by Ld. AR. The perusal of paras 10.3 & 10.4 of order of Ld. TPO for AY 2012-13, as placed on record, would reveal that revised margins of USA & UK AEs have been accepted to be 1.05% & 1.71% respectively and the assessee has agreed for TP adjustment of Rs.81 Lacs after considering 1% profit retention by its AEs being bare minimum that could be allowed to be retained by AEs as a risk free distributor. Similar methodology has been accepted by Ld. TPO for AY 2015-16 vide its order dated 31/10/2018 although with slight modification of minimum margin that could be retained by its AE. In AY 2015-16 the Ld. TPO, at para 6.8, has restricted the margins of assessee's AE to 0.5% of sales of the AEs. Therefore, keeping in view the rule of consistency and in view of the fact that this methodology has been accepted by the assessee as well as revenue, we direct Ld. TPO to adopt the same methodology for the year under consideration and work out TP adjustment by accepting AE's margin to be 0.5%, as adopted in the latest order. The assessee is directed to provide the working of the same. Ground No. 3 of cross-objections stands allowed for statistical purposes which makes other grounds of Assessee's cross-objections as well as revenue's appeal *infructuous*.

7. In result, the revenue's appeal stands dismissed whereas assessee's cross-objections stands partly allowed for statistical purposes in terms of our above order.



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Order pronounced in the open court on 30th July, 2019.

Sd/-
(Saktijit Dey)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 30/07/2019
Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.