

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

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER

IT(TP)A No.572/Bang/2015
Assessment year : 2010-11

M/s Trident Microsystems India Pvt. Ltd., #2924, Third Floor, 14 <sup>th</sup> Cross, K.R Road, BSK II Stage, Bengaluru-560 070.  PAN – AADCN 1348 L.	Vs.	The Dy. Commissioner of Income-tax Circle-5(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Suresh Muthukrishnan, C.A
Respondent by	:	Miss Neera Malhotra, CIT (DR)

Date of hearing	:	22.07.2019
Date of Pronouncement	:	.07.2019

**ORDER**

*Per B.R Baskaran, Accountant Member*

The appeal filed by the assessee is directed against the order passed by the AO u/s 143(3) r.w.s 144C(13) of the Act for asst. year 2009-10 in pursuance of directions given by 1d Dispute Resolution Panel.

2. Though the assessee has raised many grounds in the form of grounds of appeal, additional grounds of appeal and amended grounds of appeal, yet the 1d AR, at the time of hearing submitted that he is pressing ground No.3.7, 3.8, and 3.11 of amended

grounds of appeal and additional grounds of appeal, which relate to the following issues:-

(A) Exclusion of 2 comparable viz.,

1) ICRA Techno Analytics Ltd.,

2) M/s KALS Information Systems Ltd.,

(B) Inclusion of one comparable, viz.

M/s Gold Stone Technologies Ltd.

(C) Additional ground which relate to the mistake in adoption of segmental cost for the purpose of computing profits of the assessee.

3. The assessee company is engaged by M/s Trident Microsystems (Far East) Limited ("TMFE") and Trident Microsystems (Hongkong) Limited, ("TMKH") to provide software research and development (R&D) Services and sales and marketing support services, respectively. Both are associated enterprises of the assessee company. During the year, the assessee provided services to TMFE, in pursuance of agreement entered with it for provision of software R&D services. The assessee adopted TNMM method as most appropriate method and computed PLI by taking OP/OC which worked out to 8.1%. The TPO finally selected 11 comparables whose mean margin worked out to 22.71%. After giving deduction for working capital adjustment of 1.98%, the TPO determined the mean margin of comparables at 20.73%. Accordingly he proposed adjustment of 234.37 lakhs. The Id DRP rejected 6 comparables on the basis of turnover filter and confirmed 5 comparables.

4. It is pertinent to note that the Revenue had challenged the exclusion of 6 comparables by Id DRP by filing appeal before the Tribunal and the same has been dismissed by the coordinate bench, vide its order dated 29/6/2015 passed in IT(TP)A No.192/Bang/2015.

5. In the present appeal the assessee seeks exclusion of 2 comparables and inclusion of 1 comparable. The comparable companies sought to be excluded by the assessee are M/s ICRA Techno Analytics Ltd., and KALS Information Systems Ltd. The Id AR submitted that both the above said comparable companies have been held to be not good comparables for Software development segment by the coordinate bench in the case of M/s Applied Materials India Pvt. Ltd. in IT(TP)A No.180/Bang/2015 dated 28/2/2016. Accordingly he sought for exclusion of above said two comparables.

6. On the contrary, the Id DR submitted that the Id DRP has excluded certain comparables only on the basis of turnover criteria and it did not discuss anything on the functional difference.

7. We heard the rival contentions on this issue and perused the record. We noticed that the coordinate bench of Tribunal, in the case of Applied Material India Pvt. Ltd. (supra), has followed the decision rendered by another coordinate bench in the case of DCIT Vs. Electronics for Imaging Pvt. Ltd., (70 Taxmann.com 299 Bangalore). We noticed that the coordinate bench has held both the above companies are liable to be excluded for the year under

consideration. For the sake of convenience, we extract below relevant observations made in the order passed by co-ordinate bench in the case of Applied Material India Pvt. Ltd. (supra):-

*"5. We have considered the rival submissions and have gone through the material available on record and the Tribunal order on which reliance has been placed by the Id. AR of the assessee. For the sake of ready reference, we reproduce para-13 to 33 of this Tribunal order:-*

*"13. We shall deal with each comparable which has been disputed by the Revenue one by one as under:-*

***(1) ICRA Techno Analytics Ltd. (seg)***

*14. At the outset, we note that apart from having the related party revenue at 20.94% of the total revenue, this company was also found to be functionally not comparable with software development services segment of the assessee. The DRP has given its finding at pages 13 to 14 as under:-*

*"Having heard the contention, on perusal of the annual report, it is noticed by us that segmental information is available for two segments i.e., services and sales. However, it is evident from the annual report service segment comprises of software development, software consultancy, engineering services, web development, web hosting, etc. for which no segmental information is available and therefore, the objection of the assessee is found acceptable. Accordingly, Assessing Officer is directed to exclude the above company from the comparables."*

*15. We find that the facts recorded by the DRP in respect of business activity of this company are not in dispute. Therefore, when this company is*

*engaged in diversified activities of software development and consultancy, engineering services, web development & hosting and substantially diversified itself into domain of business analysis and business process outsourcing, then the same cannot be regarded as functionally comparable with that of the assessee who is rendering software development services to its AE.*

*16. In view of the above facts, we do not find any error or illegality in the findings of the DRP that this company is functionally not comparable with that of a pure software development service provider.)*

*2.....*

***(3)KALS Information Systems Ltd.***

*1. The assessee raised objections against this company on the ground that this company is engaged in the development of software and Further, this company consists of STPI unit and also having a training centre engaged in training of software professionals on online products. Thus, when this company is having revenue from software services as well as software product, the same cannot be considered as comparable with software development service providing company.*

*22. The DRP has directed the AO to exclude this company from the list of comparables by taking note of the fact that there were inventories in the books of accounts of this company which shows that this company is in the software product business. Further, by following the decision of this Tribunal in the case of Trilogy e- business Software India Ltd. v. DCIT, ITA No. 10541Ban g/20 11 dated 23.11.2012, this company was found to be not comparable with that of the assessee.*

*23. We have heard the Id. DR as well as Id. AR and considered the relevant material on record. The ld.*

*DR has not disputed the fact that comparability of this company has been examined by this Tribunal in a series of decisions including in the case of Trilogy e- business Software India Ltd. (supra). We further note that in the balance sheet of this company as on 31.3.2010, there are inventories of Rs.60,47,977. Therefore, when this company is in the business of software products, the same cannot be compared with a pure software development services provider. Accordingly, we do not find any error or illegality in the impugned findings of the DRP.'*

Accordingly, following the above said decision rendered by coordinate bench, we direct the AO to exclude both the comparables referred above.

8. The assessee has prayed for inclusion Gold Stone Technologies Ltd. The ld AR submitted that the TPO has excluded this company only for the reason that the forex earning to sales ratio was less than 75%. Inviting our attention to the copy of financials of M/s Gold Stone Technologies Ltd., the AR submitted that the export sales of the assessee is 20.75 crores out of the total earning of 24.04 crores and hence forex earning to sales is more than 75%. Accordingly he submitted that the reasoning given by the TPO for excluding this comparable companies is wrong. Accordingly he prayed for inclusion of this comparable.

9. On the contrary, the ld DR submitted that the TPO, in page 14 of its order has extracted information obtained from the website of the above said company, which elaborates the details relating to its operations. Based on the same, the TPO has observed that M/s

Gold Stone Technologies is an industry leader with products and Analytics Platforms. Further the Annual report of this company shows that it is engaged in ITes services. Accordingly the 1d DR submitted that the TPO has excluded this comparable, not only on the reasoning that the export earning is less than 75% but also for the reason that this is having product platform. Further it is seen that this company is engaged in providing ITes services providing solution such as software support, software maintenance, business process outsourcing etc. Accordingly, the 1d DR submitted that the ITES company cannot be considered as comparable company for software development company.

10. In the rejoinder, the 1d AR submitted that this company is engaged in software development work only which is evident from discussion made at page 9 of the annual report.

11. We heard the parties on this issue and perused the record. Since new facts are being brought before us, we are of the view that the eligibility of this company to be considered as a valid comparable requires examination at the end of AO/TPO. Accordingly we restore this issue to the file of the AO/TPO for examining it afresh after affording adequate opportunity of being heard to the assessee.

12. In the additional ground of appeal, the assessee has stated that the TPO has erred in adopting incorrect segmental cost for determining profits of "Software R&D Services".

13. We heard the parties on this issue and perused the record. We noticed that the TPO has made segmental analysis of “software R&D Division” and “Sales and Marketing Division”. While doing so, the TPO has apportioned “unallocated cost of 19 lakhs” between both the divisions. This has resulted in increase of cost relating to “Software R & D division. The case of the ld AR appears to be that the operating expenses relating to software R&D Division should alone be considered for arriving at the profit.

14. In our view, the TPO was justified in apportioning the unallocated cost between both the divisions for the purpose of arriving at segmental profits. Accordingly, we do not agree with the contentions of the assessee. Accordingly we reject this ground of the assessee.

15. In the result, the appeal of the assessee is treated as partly allowed.

Order pronounced in the Open Court on 26<sup>th</sup> July, 2019.

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**  
Bangalore,  
Dated, 26<sup>th</sup> July, 2019.

**Sd/-**  
**(B.R Baskaran)**  
**Accountant Member**

/ 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.

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  
.....
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. ....
6. Date of uploading the order on  
website.....
7. If not uploaded, furnish the reason for doing so  
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Dictation note enclosed .....
8. Date on which the file goes to the Bench Clerk  
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endorsement.....
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