

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I-1' NEW DELHI**

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A.No.5181/Del/2010
Assessment Year: 2006-07**

**Hewitt Associates (India) P. Ltd.,
710, Ansal Chambers-II.
6, Bhikaji Cama Place,
New Delhi.
PAN: AABCH1559D**

**vs DCIT (OSD),
New Delhi.**

(Appellant)

(Respondent)

Assessee by: Shri Atul Jain , Advocate
Department by: Shri Sanjay I. Bara, CIT- DR

Date of hearing: 31/7/2019
Date of order :02/8/2019

ORDER

PER K. NARASIMHA CHARY, J.M.

Challenging the order dated 21.9.2010 passed by the Assessing Officer (AO) pursuant to the directions of the Ld. Dispute Resolution Panel-2, New Delhi (DRP) on 30.8.2010, assessee preferred this appeal.

2. Briefly stated facts are that the assessee, Aon Consulting Private Limited (successor entity of Aon Services India private Limited formerly known as Hewitt Associates (India) Private Limited) is primarily engaged

in the business of rendering IT enabled services (ITeS) and software support services to its Associated Enterprises (AEs) for which it earns a cost plus mark-up. It also renders consulting and other related services to third party customers. For the Assessment Year 2006-07, they have filed their return of income on 18.11.2006 declaring a total income of Rs.12,10,41,067/- (book profit u/s 115JB being Rs.8,54,25,396/-) and claimed set off of brought forward losses. In view of certain international transactions entered into by the assessee, the determination of the arm's length price of such international transaction was referred to the TPO.

3. During the Financial Year 2006-07, the assessee had entered into international transactions related to ITeS of Rs.1,10,42,54,161/- and applied the Transactional net Margin Method (TNMM) and Operating profit/Total cost ('OP/TC' of 'NCP') as the profit level indicator. The assessee arrived at a set of 14 comparables with an average weighted margin of 11.72% (multiple year data). The assessee's own margin was worked out at 13.32%. Ld. TPO modified the search carried out by the assessee and rejected majority of assessee's comparables to arrive at the following comparable set and ALP:

S.No.	Comparable	NCP (%) (Single Year)
1	All Sec Technologies Ltd.	28.78
2	Mphasis BFL Limited (Segmental)	10.16
3	Spanco Limited (Segmental)	18.84
4	CSS Technology Ltd.	19.13
Arithmetic Mean		19.22

Particulars	Amount (Rs)
Operating Cost	97,77,84,211
NCP	19.22%
Margin	18,79,30,125
ALP	1,16,57,14,336
Price charged by assessee	1,10,42,54,161
Difference	6,14,60,175

4. In respect Software support services during the Finance Year 2005-06, the assessee had entered into international transactions related to software support services of Rs.1,34,76,40,092/- and used the TNMM and OP/TC as the profit level indicator. The assessee arrived at a set of 50 comparables with an average weighted average margin of 12.50% (multiple year data). The assessee's own margin was worked out at 15.63%. Ld. TPO modified the search carried out by the assessee and rejected majority of assessee's comparables to arrive at the following comparable set and arm's length price:

S.No.	Comparable	NCP (%) (Single Year)
1	Infosys Technologies Ltd.	38.74
2	Kals Information Systems Ltd.	37.78
3	Visualsoft Tech Ltd.	13.05
4	Wipro Ltd.	34.38
Arithmetic Mean		30.98

Particulars	Amount (Rs)
Operating Cost	1,16,70,04,102
NCP	30.98%
ALP	1,52,85,41,972
Price charged by assessee	1,34,76,40,092
Difference	18,09,01,880

5. Pursuant to the report of Id. TPO, Id. AO passed an order dated 24.11.2009 proposing the transfer pricing adjustment and also corporate tax adjustment of Rs.42,73,561/- comprising of disallowance of provision of doubtful debts to the tune of Rs.30,52,561/- and balance written off to the tune of Rs.12,21,000/-.
6. Assessee preferred appeal before the DRP and the Id. DRP confirmed the TP adjustment but granted relief in respect of the disallowances on account of balance written off.
7. Pursuant to the directions of the Id. DRP, Id.AO passed order dated 21.9.2010 making addition to the tune of Rs.24,23,62,055/- and provision for doubtful debts to the tune of Rs.30,52,561/- on account of TP adjustment and assessed the income of the assessee at Rs.36,64,55,680/-.
8. Aggrieved by the additions made in the order dated 21.9.2010 pursuant to the directions dated 30.8.2010 passed by the Id. DRP, assessee filed this appeal.
9. At the outset learned AR submitted that a MAP resolution has been arrived at between US Competent Authority (CA) and India CA vide order dated 21.12.2017; that the assessee accepted the same and withdrew its appeal in relation to the US transactions and what remains to be considered in this appeal are only the TP adjustments on non US related transactions, the disallowance of provision of doubtful debts and the disallowance of the brought forward loss/unabsorbed depreciation while computing the tax liability of the assessee.

10. Coming to the first issue of non allowance of the working capital adjustment to the assessee in respect of both the software ITeSsegments, learned AR submitted that for AY 2007-08, the same was allowed by the Id. DRP whereas for AY 2008-09, Id. TPO himself allowed as per the formula given in Annexure OECD Guidelines, 2010. For the year 2009-10, Id. CIT(A) allowed the working capital adjustment.

11. There is no denial by the Id. DR of allowing this working capital adjustment by the Id. DRP, Id. TPO and the Id. CIT(A) for the Asstt. Years 2007-08, 2008-09 and 2009-10 respectively. In view of the consistent view taken by the authorities for the subsequent years, it is not open for the revenue now to dispute the extension of the same to the assessee in respect of Asstt. Year 2006-07 also. The Id. DRP for the AY 2007-08 directed the AO/TPO to verify the material differences in the situation of comparables in the taxpayers and grant working capital adjustment on the basis of OECD formula and by taking 10.25% as the PLR. In the AY 2008-09, the rate of 12.50% adopted while computing the working capital adjustment. For the AY 2009/10, Id. CIT(A) directed to grant the working capital adjustment on the basis of OECD formula and taking the PLR as adopted by SBI for the FY 2008-09.

12. In these circumstances, we are of the considered opinion that the working capital adjustment in respect of both the segments cannot be denied for Asstt.2006-07 and, therefore, Id. AO/TPO is directed to grant the working capital adjustment based on the OECD formula and taking the PLR as adopted by the SBI for the FY 2005-06. Assessee is directed

to furnish sufficient data before the Id. TPO for application of such formula.

13. Turning to the grievance of the assessee against the TPO applying the turnover filter with the threshold of Rs.5 crores , the Id. AR argued that the turnover of the assessee in software support service is Rs.130 crores and it is Rs.110 crores in ITeS but Id. TPO accepted Rs.1 crore filter in respect of software but rejected the same in respect of ITeS and as a matter of fact where the turnover is higher, the TPO should have chosen the higher filter than applying the same to the segments where the turnover is less.

14. Ld. DR submits that by applying Rs.5 crore filter size of comparable is satisfactory and, therefore, when sufficient number of comparables are available, Id. TPO is justified in applying Rs.5 crore in respect of ITeS services. There is no denial of the fact that in respect of software segment, Id. TPO applied Rs.1 crore turnover filters but in respect of ITeS, he had applied Rs.5 Crore filter. In his order Id. TPO observed vide para 9.2 that on applying the qualitative filter, he felt it necessary that the companies having turnover less than Rs.5 crores should be rejected in view of the fact that the assessee company has a turnover of Rs.110 crores in this segment. This logic does not appear sound because Id. TPO did not act on the same logic in respect of the software segment where the turnover is Rs.134 crore but still applied Rs. 1 crore filters.

15. Further, there is no denial of the fact that in subsequent years, viz., 2007-08, 2008-09 and 2009-10, when the turnover of the assessee was Rs.139n crore, Rs.189 crores and Rs.204 crores respectively in ITeS Segment, Id. TPO applied Rs.1 crore filters only. It is, therefore, clear that there is inconsistency in the yardstick applied by the Id. TPO in respect of ITeS and software services for the AYs 2006-07 and in the ITeS segment alone for the asstt.years 2006-07 and for subsequent years. We, therefore, while taking clue from the consistent application of Rs.1 crore filters for the Asstt. Years 2007-08 to 2009-10 in respect of ITeS segment and for 2006-07 in respect of software segment, find it just and necessary to direct the Id. TPO to apply Rs.1 crore filters and to determine the ALP in respect of ITeS services.

16. The third issue argues before us was in respect of application of the wage filter between the range of 30% - 60%, Id. AR submitted that there is no cogent economic basis for Id. TPO to adopt such process and the reasons for applying the wage/sale ratio is to identify the companies in service industry in which generally the upper limit of wage/sale ratio will not be applied.

17. It is further submitted that the Id. TPO himself applied the wage/sale filter of 25% in the subsequent asstt. Years even though the wage/sale of comparable companies was more than 60% and thought it fit to apply the lower filter limit only. Id. AR brought to our notice for Asstt. Years 2007-08 and 2008-09, Id. TPO himself selected the comparables with wage/sale ratio of more than 60% and thereby removing the upper limit filter. Grievance of the assessee is that by

applying the wage/sales filter, 30 – 60%, the number of functionally comparable entities is restricted.

18. Per contra, Id. DR argued that it is not the question as to how many companies are selected and it is suffice if we have sufficient number of companies and even by application of the filter of 30 – 60% of wages, the TPO got sufficient number of companies for comparison and, therefore, the same require no interference.

19. On consideration of the facts pleaded before us, we are of the considered opinion that consistency is the hallmark of fairness and having adopted an approach of selecting the comparable companies with wage/sales ratio of more than 60% for AYs 2007-08, 2008-09, the onus to explain the justification for the upper limit filter of 60% for the AY 2006-07 rests on the revenue. As rightly contended by the Id. DR, it is the question of application of filter but not the resultant number of companies retrieved by application of the same. Consistency of approach is the required parameter and have due regard to the facts and circumstances involved in this matter, we direct the Id. TPO to remove the upper limit filter of 60% of wage/sales filter for determination of the ALP of the value of software support segment services.

20. In respect of the disallowance of provision of doubtful debts, Id. AR submitted that the assessee itself disallowed the said amount while computing the taxable/assessable income and further disallowance of the same by the Id. AO resulted in double taxation. It is a verifiable fact.

We, therefore, direct the Id. AO to verify and if the assessee disallowed the said amount of Rs.30,52,561/- in the computation of income, to consider the same and to withdraw the disallowance made again.

21. On the aspect of not granting to set off of brought forward business absorbed and unabsorbed depreciation, Id. AR submitted that while passing the draft assessment order and the final assessment order, Id. AO mentioned that set off of brought forward business loss/depreciation be allowed but while determining the tax payable in the order, the set off of brought forward loss and unabsorbed depreciation has not been allowed. In view of this submission, in respect of verifiable facts, we deem it just and proper to remand the issue to the file of the Id. AO to verify and allow the set off of brought forward losses/depreciation.

22. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 2nd August, 2019.

Sd/-
(PRAMOD KUMAR)
VICE PRESIDENT

sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 2nd August, 2019.
'VJ'

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Draft dictated	3107.2019
Draft placed before author	2.08.2019
Approved Draft comes to the Sr.PS/PS	
Order signed and pronounced on	
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	
Date of uploading on the website	