

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.233/Bang/2018

Assessment year : 2013-14

KBACE Technologies Pvt. Ltd., 6 <sup>th</sup> Floor, New No.165, Old No.110, Menon Eternity Building, St. Mary's Road, Alwarpet, Chennai-600 018.  PAN – AACCK 3468 K	Vs.	The Dy. Commissioner of Income-tax, Circle-4(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Nageswar Rao, Advocate
Respondent by	:	Shri Pradeep Kumar, CIT (DR)

Date of hearing	:	31.07.2019
Date of Pronouncement	:	20.09.2019

**ORDER**

*Per B.R Baskaran, Accountant Member*

The assessee has filed this appeal challenging the assessment order dated 11.10.2017 passed by the Assessing Officer u/s 143(3) r.w.s. 144C of the Act for assessment year 2013-14 pursuant to the directions given Ld Dispute Resolution Panel (DRP).

2. Though the assessee has raised many grounds, the Ld A.R restricted his arguments to the selection of comparable companies relating to the addition made on account of Transfer Pricing adjustment. Accordingly, we have restricted ourselves to the

selection of comparable companies. Accordingly, all other grounds are not adjudicated.

3. The facts relating to the above said issue are discussed in brief. The assessee herein is a wholly owned subsidiary of KBACE Technologies Inc., USA. It is engaged in the business of providing Software Development Services to KBACE, USA. During the year under consideration, the assessee has entered following international transactions with its Associated Enterprise (AE):-

Service Income	-	Rs.1619.69 lakhs
Deferred Receivables	-	Rs.1630.28 lakhs

The assessee adopted TNMM method as most appropriate method and the Profit Level Indicator (PLI) was taken as Operating Margin/Operating Cost. The PLI of the assessee was worked out to 14.16%. The arithmetic mean of PLI of comparable companies selected by the assessee worked out to 12.16%. Accordingly, the assessee submitted that its international transactions with AE were at arms length.

4. The TPO rejected the Transfer Pricing Study of the assessee by pointing out various types of deficiencies with regard to the companies selected by the assessee. The TPO selected his own set of comparable companies consisting of 7 companies as detailed below, whose average margin (OP/OC) worked out to 20.90%:-

1. C G-VAK Software & Exports Ltd	20.54%
2. ICRA Techno Analytics Ltd	17.10%
3. Larsen & Toubro Infotech Ltd	26.06%
4. Mindtree Ltd (Seg.)	18.19%
5. Persistent Systems Ltd (Seg)	28.27%

6. R.S Software (India) Ltd	17.41%
7. Tech Mahindra Ltd (Seg)	18.72%
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Average	20.90%
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The TPO allowed working capital adjustment of 0.57% and accordingly adjusted margin was arrived at 21.47%. Accordingly, the TPO proposed Transfer Pricing adjustment of Rs.96.62 lakhs.

5. The Ld DRP excluded one comparable company named ICRA Techno Analytics Ltd and confirmed the remaining six comparable companies selected by the TPO.

6. The Ld A.R submitted that the turnover of the assessee company is Rs.16.19 crores during the year under consideration. Accordingly it falls in the category of Rs.1 to 200 crores. He further submitted that the turnover of following comparable companies selected by TPO exceeds Rs.200 crores and accordingly submitted that these companies are required to be excluded on "turnover filter".

Name of company	Turnover
(a) Larsen & Toubro Infotech Ltd	- 3613.42 crores
(b) Mind Tree Limited	- 1640.80 crores
(c) Persistent Systems Ltd	- 996.50 crores
(d) R.S. Software India Ltd	- 293.22 crores
(e) Tech Mahindra Ltd	- 6001.90 crores

7. The Ld D.R also concurred with the view of Ld A.R that the above said five companies are required to be excluded on the

criteria of turnover filter. The Ld A.R submitted that an identical view has been taken by the co-ordinate bench in the case of Mobility Infotech India P Ltd (IT(TP)A No.2055/bang/2016). Accordingly, we direct the AO/TPO to exclude above cited five companies.

8. The Ld A.R submitted that the following three companies selected by the assessee in its T.P study has been wrongly rejected by the TPO:-

(a) Cogniti Technologies Ltd:- The TPO had rejected this company by holding that this company is engaged in the business of software testing services and hence functionally different. It is the submission of Ld A.R that this company has been accepted as comparable company by the TPO himself in AY 2014-15.

(b) Lucid Software Limited :- The TPO had rejected this company on the reasoning that no data is available in the database. The Ld A.R submitted that the data was furnished by the assessee.

(c) Sankhya Infotech Ltd :- The TPO had rejected this company on the reasoning that it fails in Forex filter, engaged in software product development and possesses significant intangible assets. Before us, the Ld A.R submitted that the TPO had rejected this company on the reasoning that this company is involved in software product development. He further submitted that this company was not involved in software product development activities during the year under consideration and it has derived its revenue from software services only.

9. We heard Ld D.R and perused the record. With regard to Cogniti Technologies Ltd and Lucid Software Ltd, we are of the view that they should be restored to the file of AO/TPO for examining them afresh in the light of new facts brought before us. Accordingly, we restore both the companies to the file of AO/TPO.

10. With regard to Sankhya Infotech Ltd, the claim put forth before us by the assessee is contradictory to the findings given by TPO. Hence we are of the view that this company also requires examination afresh. Accordingly, we restore this company also to the file of AO/TPO.

11. The Ld A.R prayed that the following three companies may also be taken as comparable companies.

- (a) Caliber Point Business Solutions Ltd (Seg)
- (b) CAT Technologies Ltd
- (c) Evoke Technologies P Ltd

He submitted that the assessee had prayed for inclusion of above said three companies before Ld DRP. However, Ld DRP rejected the prayer of the assessee on the reasoning that the claim to include these three companies was not made before TPO. The Ld A.R submitted that the purpose of T.P study was to determine the Arms Length Price of the international transactions and there is no bar under the Act that the assessee cannot make such claims before the appellate authorities.

12. We heard Ld D.R on this issue. We notice that the Special bench of Tribunal has held in the case of DCIT vs. Quark Systems P Ltd (42 DTR 414) that the non-comparable companies, even if it

was selected by the assessee in TP study, could be excluded, since there is no estoppels against law. There should not be any dispute that the ultimate purpose of the Transfer Pricing analysis is to determine the Arms Length Price of International transactions, which is sought to be proved by comparing the financials of comparable companies. In the instant case, the assessee has prayed for consideration of above said three companies before Ld DRP, i.e., during the course of assessment proceedings itself. Accordingly, we are of the view that consideration of above said companies would help to determine the ALP of the international transactions. Accordingly, we admit the claim of the assessee. However, since the above said three companies require examination at the end of AO/TPO, we restore these three companies to the file of AO/TPO for examining them.

13. Needless to mention that the assessee should be provided with adequate opportunity of being heard. After examining the contentions of the assessee, the tax authorities may take appropriate decision in accordance with law.

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

Order pronounced in the Open Court on **20<sup>th</sup> September, 2019.**

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

Bangalore,  
Dated, 20<sup>th</sup> September, 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 .....
8. Date on which the file goes to the Bench Clerk .....
9. Date on which order goes for Xerox & endorsement.....
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12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order .....