

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE**

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

IT(TP)A No.1893/Bang/2017
Assessment year : 2013-14

M/s. ACI Worldwide Solutions Pvt. Ltd., No.9, Salarpuria Cambridge Mall, Cambridge Road, Ulsoor, Bengaluru – 560 008. <b>PAN : AAACV 7566 R</b>	Vs.	Deputy Commissioner of Income-tax, Circle – 1(1)(2), Bengaluru.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri. P. C. Khincha, CA
Revenue by	:	Ms. Neera Malhotra, CIT-DR(ITAT)(Bengaluru)

Date of hearing	:	24.09.2019
Date of Pronouncement	:	27.09.2019

**ORDER**

***Per N. V. Vasudevan, Vice President:***

This is an appeal by the assessee against the final order dated 25.07.2017 passed by the DCIT, Circle - 1(1)(2), Bengaluru, under section 143(3) r.w.s. 144C of the Income Tax Act, 1961 (Act) for the Assessment Year 2013-14. The only issue that arises for consideration in this appeal by the assessee is with regard to the correctness of determination of Arms Length Price (ALP) of the international transaction for rendering software development services (SWD) by the assessee to its Associated Enterprises (AE) under the provisions of section 92 of the Act.

2. The assessee provides SWD services to its AE. For the services so rendered, the assessee received a sum of Rs.19,36,24,825/-. Besides the aforesaid international transaction, there were also other international transactions and those international transactions were considered by the Transfer Pricing Officer (TPO) to be at arms length. The operating profit to operating cost of the assessee in SWD services segment was arrived at by the assessee at 13%. The assessee, in its TP study, had chosen 5 comparable companies. The average mean of profit margin of those comparable companies was 12.52%. The assessee chose transaction net margin method (TNMM) as the most appropriate method for determination of the ALP. The assessee claimed that its profit margins were higher than that of the comparable companies and therefore the price received for the international transaction should be regarded as at arm's length. The TPO accepted 1 comparable company chosen by the assessee and on his own selected 6 other comparable companies and computed the adjustment on account of determination of ALP as follows:-

**Comparables Selected by TPO**

Sl.No.	Name of the Company	Operating Margin on Cost	Working Capital Adjusted Margin (OP/OC)
1	CG-VAK Software & Exports Limited (Segment)	20.54%	19.23%
2	I C R A Techno Analytics Ltd.	17.10%	12.25%
3	Larsen & Toubro Infotech Ltd.	26.06%	24.74%
4	Mindtree Ltd.(seg)	18.19%	16.59%
5	Persistent Systems Ltd.	28.27%	26.08%
6	R S Software (India) Ltd.	17.41%	17.59%
7	Tech Mahindra Ltd (Segmental)	18.72%	17.31%
	<b>Arithmetic Mean</b>	<b>20.90%</b>	<b>19.11%</b>

**Computation of arm's length price by the AO/TPO and the adjustment made:**

Arm's length mean margin	20.90%
Less: Working capital adjustment	1.78%
<b>Adjusted mean margin after working capital adjustment</b>	<b>19.12%</b>
Operating Cost (A)*	21,82,23,894
<b>Arm's length price - 119.12% of operating cost (B)</b>	<b>25,99,48,303</b>
Total Operating Revenue (C)	24,95,55,553
Short fall being Adjustment u/s 92CA (B - C)	1,03,92,750

3. The assessee filed objections before the DRP. The DRP rejected 3 out of the 7 comparable companies chosen by the assessee. After the order of the DRP, the computation of ALP stood revised as follows:-

Sl.No.	Name of the Company	Operating Margin on Cost	Working capital adjusted Operating Margin on Cost
1	CG-VAK Software & Exports Limited (Segment)	20.54%	19.23%
2	Larsen & Toubro Infotech Ltd.	26.06%	24.74%
3	Mindtree Ltd.(seg)	18.19%	16.59%
4	R S Software (India) Ltd.	17.41%	17.59%
	Arithmetic Mean	20.55%	19.54%

**Revised Computation of ALP as per OGE to DRP Directions:**

Arm's length mean margin	20.55%
Less: Working capital adjustment	1.01%
Adjusted mean margin after working capital adjustment	19.54%
Operating Cost (A)*	21,82,23,894
Revised Arm's length price - 119.54% of operating cost (B)	26,08,64,843
Total Operating Revenue (C)	24,95,55,553
Short fall being Adjustment as per DRP Direction (B - C)	1,13,09,290
Short fall being Adjustment as per TPO Order	1,03,92,750
Increase in TP addition	9,16,540

Therefore, in pursuant to DRP direction, the AO incorporated revised TP addition of Rs.1,13,09,290/- in the final assessment order and accordingly computed tax liability (Pg 9 of Appeal Papers).

4. The revised adjustment was incorporated by the AO in the final order of the assessment against which the assessee has filed the present appeal before the Tribunal.

5. Before the Tribunal, the learned Counsel for the assessee made a limited request of adjudication for exclusion of only one comparable company retained by the DRP and has also prayed that while working out the profit margin of the comparable companies, the TPO has excluded the provision for bad and doubtful debts as part of operating expenditure and doing so was incorrect.

6. As far the exclusion of 1 comparable company retained by the DRP is concerned, the company which the assessee seeks to exclude is L & T Infotech

Ltd. The learned Counsel for the assessee submitted that this company was functionally different and cannot be compared with the SWD services company such as the assessee and in this regard, he placed reliance on decision of the ITAT, Bangalore Bench in the case of M/s. Metric Stream Infotech India Vs. DCIT in IT(TP)A Nos.1418 and 2735/Bang/2017 for Assessment Year 2013-14, order dated 27.02.2019. In this decision, the Tribunal took a view following the decision of the ITAT Hyderabad Bench in the case of M/s. EPAM Systems India Pvt. Ltd., Vs. ACIT in ITA No.2122/Hyd/2017 for Assessment Year 2013-14 order dated 20.11.2017 that L & T Infotech Ltd., was into software products and software solutions and no segmental details were available and therefore profit margin in the SWD segment could not be compared with the assessee's profit margin. The learned DR pointed out that the Bangalore Bench of the Tribunal in the case of CGI Information Systems and Management Consultants Pvt. Ltd., Vs. DCIT (2019) 101 taxmann.com 294 (Bang. Trib.) has noticed that there were divergent views in the comparability of this company with a company providing SWD services and has remanded the matter to the TPO for fresh consideration with the following observations:

*“9. In respect of the applicability of this Tribunal order for exclusion of Larsen & Toubro Infotech Ltd, this has been submitted by ld. AR of assessee in the chart submitted before us that on page no. 698 of Annual Report paper book, this company has debited an amount of Rs. 27,10,89,274/- as cost of bought-out items for resale. But this fact was not brought to the notice of the Tribunal in the case of Advice America Software Development Center (P.) Ltd. (supra). It has also been submitted that on page no. 706 of Annual Report paper book, this has been reported that this company is engaged in sale of services to its related parties and this fact was also not brought to the notice of Tribunal in case of Advice America Software Development Center (P.) Ltd. (supra). When we examine paras 14 to 20 of this Tribunal order where there is discussion regarding inclusion/exclusion of Larsen & Toubro Infotech Ltd, we find that there is no discussion on these two aspects that this company is having significant amount of cost of bought-out items for resale and it is engaged in sale of services and products to its related parties and hence, in our considered opinion, this Tribunal order cannot be considered as a binding*

*precedence because this Tribunal order is silent on these two important aspects as to this aspect that this company is having sizeable amount of bought out items for resale and have related party transactions in respect of sales of services and products. We also find that in the case of remaining three Tribunal orders i.e. Microsoft Research Lab India Pvt. Ltd.'s case (supra), WM Global Technology Services (India) (P.) Ltd. (supra) and in the case of Tecnotree Convergence Pvt. Ltd. (supra), the matter was remanded to the TPO for fresh decision. Hence, we feel it proper that in the present case also, this issue should go back to the file of TPO for fresh decision after providing adequate opportunity of being heard to the assessee and while deciding the issue afresh, all the available Tribunal orders on this issue should be considered by the TPO in proper perspective.”*

7. We have considered the rival submissions and are of the view that in the light of the decision pointed out by the learned DR, the issue of comparability of this company should be sent back to the AO / TPO for fresh examination as was directed by the Tribunal in the case of CGI Information Systems and Management Consultants Pvt. Ltd., (supra). We hold and direct accordingly.

8. As far as the exclusion of provision of bad and doubtful debts from the operating cost of the comparable companies is concerned, the learned Counsel for the assessee brought to our notice that while considering the international transaction in the distribution segment, the TPO has himself considered provision for bad and doubtful debts as part of the operating expenditure and by the same logic he should have treated provision for bad and doubtful debts as part of the operating cost in the hands of the comparable companies also. As far as the software development segment of the assessee is concerned, there is no provision for bad and doubtful debts. The learned Counsel for the assessee filed before us copy of the decision of the Hon'ble Karnataka High Court in the case of Principal CIT Vs. Business Process Outsourcing India Pvt. Ltd., (2018) taxcorp (DT) 73195 (HC Karnataka) wherein in an appeal against the order of the Tribunal holding that provision for bad and doubtful debts should be considered as part of

the operating expenditure, the Hon'ble High Court confirmed the order of the Tribunal and dismissed the appeal of the Revenue as one not giving rise to any substantial question of law.

9. In the light of the aforesaid decision, we are of the view that provision for bad and doubtful debts should be treated as operating expense while computing the PLI OP/OC of the comparable companies which ultimately remains for comparison. We hold and direct accordingly.

10. All other grounds were not pressed for adjudication.

11. In the result, appeal of the assessee is partly allowed.

*Order pronounced in the open court on this 27<sup>th</sup> day of September, 2019.*

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

Sd/-  
**(N. V. VASUDEVAN)**  
**Vice President**

Bangalore.

Dated: 27<sup>th</sup> September, 2019.

/NS/\*

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|---------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT        | 4. CIT(A)     |
| 5. DR         | 6. Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.