

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES : "B", BANGALORE**

**BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER
AND**

SMT.BEENA PILLAI, JUDICIAL MEMBER

**ITA No.1095(Bang)/2012
(Assessment year : 2007-08)**

M/s Synopsis (India) Pvt.Ltd.,
RMZ Infinity Tower A, 4th & 5th Floor,
(Synopsis India)Municipal No.3, Old Madras Road,
Bangalore-560 016
PAN No.AABCS8847D

Appellant

Vs

The Addl. Commissioner of Income Tax,
Range-12,
Bangalore

Respondent

**ITA No.1274(Bang)/2012
(Assessment year : 2007-08)
(By Revenue)**

**Appellant by : Shri P.K.Prasad, Shri Uma Shankar, and
Shri Gautham, Advocates**

Revenue by : Miss Neera Malhotra, CIT

**Date of hearing : 17-09-2019
Date of pronouncement : 11-10-2019**

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER :

Present cross appeals have been recalled by order of this Tribunal dated 21/06/19 in MP No.259 and 260/Bang/2017. In Miscellaneous Petition filed by assessee it was pointed out that Tribunal while deciding the appeal vide order dated 10/03/2017. This Tribunal did not deal with two comparables being companies

i.e M/s Cimcom Technologies Ltd. and Flextronics Software Systems Ltd. on functional dissimilarities, as challenged by assessee therein.

2. This Tribunal vide order dated 21/06/19 passed in miscellaneous petition (supra) held that to the extent of two comparables (supra) alleged for exclusion, there is mistake apparent on record and accordingly recalled order dated 10/03/2017 only to decide **Ground No. 3(c)** in assessee's appeal and **Ground No.4** in departmental appeal.

2.2 Ld.CIT DR submitted that, this *Tribunal* while passing order dated 10/03/17 excluded two comparables (supra) by applying RPT filter of more than 15% which does not arise out of records.

2.3 Whereas Ld.AR submitted that revenue in Ground No. 4 of its appeal challenged application of RPT filter at more than 15%, vis-a-vis more than 25% applied by Ld. TPO. And that this *Tribunal* could not have applied RPT filter of more than 0% while considering comparability of these 2 comparables. It was thus submitted that these two comparables may be considered on functional similarities/dissimilarities for purposes of exclusion as alleged by assessee.

3. We have perused submissions advanced by both sides in the light of the records placed before us.

It is observed that Ld.TPO applied RPT filter of more than 25%, Ld. CIT (A) on appeal applied RPT filter of more than 15% and or an appeal by assessee as well as revenue before this *Tribunal* this *Tribunal* applied RPT filter of more than 0%. In our considered opinion fixing range of RPT filter *suo moto*, cannot be done, as the

same has not been considered by Ld.TPO. Also that RPT filter of more than 0% does not arise out of the records.

We are therefore considering the two comparables on FAR analysis with that of assessee.

4. Before we undertake the comparability analysis, it is *sinequa non* to understand the functions performed by assessee under this segment.

Functions:

Software Development:

Synopsys India broadly undertakes development of software relating to application development, product enhancement and maintenance of Synopsys USA's EDA tools. The various functions performed by/for Synopsys India & Synopsys USA in its development projects are illustrated as under;

Low level Design (LLD): Once the high level design is decided, it is translated into a LLD. The final design document gives the details of the architecture of the actual code and documents the testing methodology/plan to be used.

Coding: The design is then coded based upon the technology requirements of the software system during the coding stage. This involves writing the actual set of instructions which would help in performing the various functions/operations as required by Synopsys USA.

Quality Assurance/Testing: This is to ensure that the code meets the required standards. This involves ensuring that the deficiencies and defects are corrected. This is an ongoing process and exists at various levels of the software development lifecycle.

Documentation and localization: Most high end software systems require comprehensive documentation for them to be used effectively. Localization is a process of creating documentation in various languages as required by the customer to facilitate the usage of the software. These functions are carried out by Synopsys India to the extent of the coding carried out by it.

Post Implementation Support/Maintenance: Once the software is designed and developed, Synopsys India undertakes the post implementation support/maintenance of the software developed.

Assets

Any business requires assets for undertaking its operations. Synopsys USA is the owner or licensee, as the case may be, of rights, titles and interest in intellectual properties and Synopsys iNdia does not own any significant intangibles. Synopsys India uses the process, technical data software, quality standards etc. owned by the Synopsys USA for its provision of services.

Risks Assumed

Synopsys India carries out software development services for Synopsys USA for its captive utilization and therefore, works in a risk insulated environment. Synopsys USA on the other hand is the entrepreneur and bears a gamut of risks.

Synopsys USA competes principally on technology leadership, product quality and features, time to-results, post-sales support, interoperability with its own as well as other vendors products, price and payment terms. If it were to fail to compete, its business and financial results would be materially and adversely impacted.

Market risk: Synopsys India does not have any exposure to market risk as it renders software development services exclusively to Synopsys USA and is compensated irrespective of the success or failure of its activities. However, it may bear a secondary

consequential risk if the business of Synopsys USA were to be materially and adversely affected.

Product/Service risk: Synopsys India renders its software development services to Synopsys USA and hence does not bear any risk on account of any liability arising in terms of product or technology.

Technology risk: Synopsys India does not bear any risk in this regard because it operates as a captive service provider, that is remunerated on the basis of costs incurred by it plus an agreed mark-up.

Credit risk: Synopsys India is assured of its payment from Synopsys USA and hence, does not bear any risk of non-payment for the services provided.

Based on the functional profile, assets utilized and the risks borne, as documented in the above analysis, for transfer pricing purposes. It is possible to characterize Synopsys India as a captive contract service provider rendering software development services. Being a captive service provider, Synopsys India is risk insulated for the provision of software development services to Synopsys USA.

5. Based upon the above, we shall now analyse the comparability of following two comparables alleged by assessee for exclusion on functional dissimilarity:

1. Avani Cimcon Technologies Ltd.

This comparable has been included by learnt TPO which has been objected by assessee. It has been submitted that this company is functionally different from the assessee. Based on information available in company's website, it has been submitted that this company developed a software product by name "DXchange". It was also submitted that this company has revenue from software

product sales, apart from rendering of software services for which segmental information is not available. It has therefore been submitted that this company is functionally different from assessee. It was further submitted that Mumbai Bench of *Tribunal* in case of *Telcordia Technologies Pvt. Ltd. v. ACIT in ITA No.7821/Mum/2011* accepted assessee's contention that this company has revenue from software product and observed that in absence of segmental details, Avani Cincom cannot be considered as comparable to an assessee who was rendering captive software development services.

6. Ld.DR, on the other hand, relied on order of Ld.TPO.

7. We have considered submissions advanced by both sides and perused records placed before us.

It was submitted that this company has made unusually high profit during the financial year 06-07. It is observed that Operating revenues increased 63.03% which indicates that it was an extraordinary year for this company. Even growth of software industry for previous year as per NASSCOM was 32%. The growth rate of this company was double the industry average. In view of the above, it was argued that this company ought to have been rejected as a comparable.

7.1 It was observed by this *Tribunal* in case of *Telcordia Technologies Pvt. Ltd. v. ACIT(supra)* that margin of this company is 52.59% which represents abnormal circumstances and profits. Following figures were relied by Ld.AR, as observed by Co-ordinate

Bench of this *Tribunal* in case of *First Advantage Offshore Services Pvt.Ltd. Vs DCIT(supra):-*

| <i>Particulars</i> | <i>05-06</i> | <i>06-07</i> | <i>07-08</i> | <i>08-09</i> |
|--------------------------|--------------|--------------|--------------|--------------|
| <i>Operating Revenue</i> | 21761611 | 35477523 | 29342809 | 28039851 |
| <i>Operating Expns</i> | 16417661 | 23249646 | 23359186 | 31108949 |
| <i>Operating Profit</i> | 5343950 | 12227877 | 5983623 | (3069098) |
| <i>Operating Margin</i> | 32.55% | 52.59% | 25.62% | - 9.87% |

Based upon the above analysis, we are of considered opinion that this company cannot be considered functionally similar with that of assessee due to high margin as well as for the reason that this company has revenue from sale of software products for which segmental information is not available.

We, therefore, direct Ld.TPO to exclude this company from final list.

Flextronics Software Ltd.(Seg.)

This comparable has been selected by Ld.TPO in final list and objected by assessee due to non availability of reliable financial data for year under consideration.

He submitted that Ld.TPO obtained information u/s/ 133(6), which is contrary to annual report and therefore is not reliable It has been submitted that the annual report is for year ending 31.03.2007 for a period of nine months and Ld.TPO without reconciliation between annual report and information received u/s.133(6) considered in the final list. In support of, he placed

reliance on decision of Co-ordinate bench of this Tribunal in case of *Hewlett Packard (I) Ltd.Vs.DCIT* in *ITA No.1031/Bang/2011*.

8. On the contrary, Ld.DR supported the inclusion of this company in the list of comparables by the TPO.

9. We have heard the rival submissions and perused and carefully considered material on record.

It is seen from record that Ld.TPO included this company on the basis of statement made by the company in its reply to notice under section 133(6) of the Act.

It is observed that there is no segmental information in respect of this company in annual report. We are unable to understand how Ld.TPO made segmentation was done by Ld.TPO and reconciliation of annual report. In such a situation, we are of the opinion that Flextronics Software Solutions Ltd (seg) cannot not be considered as a proper comparable.

We therefore direct Ld.TPO to exclude this company from final list.

Accordingly we hold that two comparables alleged by assessee in ground 3(c) are functionally not comparable with that of assessee.

In the result we allow this ground raised by assessee

Ground No.4 in revenue's appeal now becomes academic in nature as we have held 2 comparables functionally not similar with that of assessee, accordingly the same is not adjudicated. Question as to if it is open for Ld.CIT (A) and this *Tribunal* to change the range of RPT filter as against what has been considered by Ld. TPO viz.

thus left open to be considered and argued in an appropriate instance.

Accordingly this ground raised by revenue is dismissed.

10. In the result grounds restored vide MP No.259 and 260/Bang/2017 are disposed off as indicated hereinabove.

Order pronounced in the open court on 11-10-2019.

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Dated: 11-10-2019

***am**

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
5. DR
6. ITO (TDS)
- 7.Guard File

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

By Order

Asst.Registrar