

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'I-2' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 3192/DEL/2017
[A.Y 2011-12]

The Dy .C.I.T
Circle -3 (1)(2)
International Taxation
New Delhi

Vs. M/s Synopsys [India] Pvt Ltd
[Since Virage Logic International
India Branch Office now merged
with Synopsys [India] Pvt. Ltd
Basement & Ground Floor,
A - 36, Sector 64, Noida

PAN: AABCS 8847 D

(Applicant)

(Respondent)

Assessee By : Shri Anubhav Rastogi, Adv

Department By : Shri Nidhi Sharma, Sr. DR

Date of Hearing : 09.10.2019

Date of Pronouncement : 11.10.2019

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the Revenue is preferred against the order of the
Commissioner of Income Tax [Appeals] - 44, New Delhi dated
02.11.2016 pertaining to assessment year 2011-12.

2. The solitary grievance of the revenue is that the Id. CIT(A) erred in excluding Infosys Technologies Ltd from the final list of comparables.

3. Briefly stated, the facts of the case are that the assessee, previously known as Virage Logic International – India Office is operating in India with the permission of the RBI as 100% export oriented unit and is registered with Software Technology Park. The assessee specifically focuses on development of Electronic Design Automation, EDA in view of memory compiler, migration of memory compilers across technologies and foundries, design and development of next generation memory compilers, application of engineering and integration support, software engineering and support.

4. The international transactions during the year are as under:

Nature of Transaction	Value (in INR)	Method applied
Provision of software development services	20,38,69,045	TNMM
Recharges to Group Companies	19,92,113	CUP
Reimbursement of expenses	49,92,298	CUP

5. The arm's length price of the international transactions representing Software Development Services provided to the associated enterprises is determined by applying transactional net margin method as the most appropriate method being the operating profit to total cost ratio taken as the profit level indicator [PLI]. Accordingly, the assessee arrived at the PLI of the company at 7.03% on cost, whereas the average PLI of the comparables is arrived at 12.09%.

6. The TPO, while completing the transfer pricing assessment proceedings, took 18 comparables with average PLI of 24.54% as tabulated as under:

S. No.	Name of the company	Working Capital adjusted OP/OC (%)
1	Acropetal Technologies Ltd (Seg.)	34.91
2	Akshay Software Technologies Ltd.	2.79
3	Celstream Technologies Ltd.	15.69
4	E-Infochips Ltd.	55.57
5	Evoke Technologies Pvt. Ltd.	9.21
6	E-Zest Solutions Ltd.	36.31
7	<i>Infosys Limited</i>	43.07
8	Larsen and Toubro Infotech Ltd.	20.85
9	LGS Global Ltd.	12.73
10	Mindtree Ltd. (Seg)	10.29
11	Persistent Systems and Solutions Ltd.	21.95
12	Persistent Systems Ltd.	23.26
13	R S Software India Ltd.	17.22

14	Sankhya Infotech Ltd.	26.20
15	Sasken Communications Technologies Ltd.	25.73
16	Tata Elxsi Ltd.	10.35
17	Thirdware Solutions Ltd.	20.51
18	Wipro Technology Services Ltd.	54.52
	Average	24.54

7. Finally, the arm's length adjustment u/s 92CA of the Act was computed as under:

Particulars	Amount (INR)
<i>Total Cost</i>	<i>Rs. 19,04,78,532/-</i>
<i>Arm's length price at a margin of 24.5%</i>	<i>Rs. 23,72,21,963/-</i>
<i>Price received</i>	<i>Rs. 20,38,69,045/-</i>
<i>Proposed adjustment u/s 92CA</i>	<i>Rs. 3,33,52,918/-</i>

8. The assessee carried the matter before the ld. CIT(A) contesting the exclusion of comparables taken by the TPO.

9. Before the ld. CIT(A), it was vehemently argued that Infosys Technologies Ltd is a software giant company and has been excluded by the Hon'ble Delhi High Court in the case of Aginity India Technologies Pvt Ltd in ITA No. 1204/2011. Relying on the decision of the Hon'ble High Court of Delhi, the ld. CIT(A), inter alia, excluded Infosys Technologies Ltd from the final list of comparables.

10. The revenue is aggrieved by this.

11. Before us, the ld. DR strongly supported the findings of the Assessing Officer.

12. Per contra, the ld. counsel for the assessee brought to our notice the decision of the co-ordinate bench in assessee's own case for Assessment Year 2008-09 in ITA No.7043/DEL/2014.

13. We have carefully considered the orders of the authorities below. We find that the issue is squarely covered in favour of the assessee and against the revenue by the decision of the Hon'ble Jurisdictional High Court in the case of Aginity India Technologies Pvt Ltd [supra] which has been followed by the co-ordinate bench in assessee's own case in Assessment Year 2008-09. The relevant findings of the Tribunal read as under:

"8.1. The Hon'ble jurisdictional Delhi High Court dismissed the appeal of the Revenue. Learned Counsel for the ITA.No.7043/Del./2014 M/s. Virage Logic International India Branch Office, Noida, U.P. Assessee also filed copies of various decisions of ITAT, Delhi Bench referred to above, in which, also the Tribunal has excluded M/s. Infosys

Technology Ltd., from comparables. Considering the above discussion in the light of explanation and analysis provided by the assessee, which have not been controverted by the Revenue, we do not find any infirmity in the order of the Ld. CIT(A), in directing to exclude M/s. Infosys Technology Ltd., from comparables. There is no merit in the Departmental Appeal on Ground No.2. The same is accordingly dismissed.

14. As no distinguishing decision has been brought on record to our notice by the Revenue, respectfully following the decision of the co-ordinate bench, we decline to interfere with the findings of the ld. CIT(A). Ground raised by the Revenue is dismissed.

15. In the result, the appeal of the Revenue in ITA No. 3192/DEL/2017 is dismissed.

The order is pronounced in the open court on 11.10.2019.

Sd/-

**[SUCHITRA KAMBLE]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 11th October, 2019

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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