

IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH : BANGALORE

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER

IT(TP)A No.2500/Bang/2017

Assessment year: 2010-11

M/s Yokogawa IA Technologies India Pvt. Ltd., Umiya Business Bay, Tower-1, 6 <sup>th</sup> Floor, Outer Ring Road, Marathahalli, Bengaluru-560 037.  PAN – AAACY 2823 L	Vs.	The Dy. Commissioner of Income-tax Circle-7(1)(2), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Padam Chand Khincha, C.A
Respondent by	:	Shri Pradeep Kumar, CIT (DR)

Date of hearing	:	01.08.2019
Date of Pronouncement	:	.10.2019

**ORDER**

*Per B.R. Baskaran, Accountant Member*

The assessee has filed this appeal challenging the assessment order passed by the AO u/s 143(3) r.w.s. 144C(13) of the Act for assessment year 2010-11 in pursuance of directions given by Ld Dispute Resolution Panel (DRP).

2. Though the assessee has raised several grounds, at the time of hearing, the Ld A.R restricted his arguments on the Transfer Pricing adjustment of Rs.1,08,58,381/-.

3. The assessee is a 100% export oriented unit set up under the Software Technology Park of India Scheme framed by Government of India. The assessee is providing Software Development services to its Associated Enterprises (AE). Thus it is a captive service provider. During the year under consideration, the assessee has entered into following international transactions:-

a. Income from Software development		
Services	-	Rs.13,93,05,662
b. Software license fee received	-	Rs. 22,13,911
c. Purchase of Fixed Assets	-	Rs. 7,07,266
d. Reimbursement of Expenses	-	Rs. 2,15,85,030

The international transactions listed as (b) to (d) have been accepted to be at arms length. The T.P adjustment was made in respect of item (a) only.

4. The assessee adopted TNMM as most appropriate method and the Profit Level Indicator (PLI) was taken as Operating Profit/Operating Cost (OP/OC). The assessee selected 14 comparable companies, whose average margin was 6.63%. Accordingly, the assessee submitted that its international transactions are at arms length.

5. The TPO, however, selected following eleven comparable companies: -

Sl.No.	Name of the Company	Adjusted Margin on Cost
1	I C R A Techno Analytics Ltd.(seg)	24.94%
2	Infosys Ltd	44.98%
3	Kals Information Systems Ltd.(seg)	34.41%
4	Larsen & Toubro Infotech Ltd.	19.33%
5	Mindtree Ltd.(seg)	14.83%
6	Persistent Systems & Solutions Ltd.	15.38%
7	Persistent Systems Ltd.	30.35%
8	R S Software (India) Ltd.	10.29%
9	Sasken Communication Technologies	17.36%
10	Tata Elxsi (seg)	20.93%
11	Thinksoft Global Services Ltd.	17.05%
	Arithmetic Mean	22.71%

The average margin of the above said eleven companies was 22.71%. Even though, the TPO did not give credit towards “Working capital adjustment” in the original order, yet he gave credit of 1.98% in the rectification order passed u/s 154 of the Act. Accordingly the TPO proposed Transfer pricing adjustment of Rs.1,08,58,381/-.

9. The Ld DRP confirmed all the comparable companies selected by the TPO.

10. The Ld A.R submitted that the turnover of the assessee company for the year under consideration was Rs.13.97 crores only. Hence the assessee company falls under the category of 1 – 200 crores category. The co-ordinate bench of Tribunal has held in the case of Autodesk India (P) Ltd vs. DCIT (2018)(96 taxmann.com 263)(Bang.) that high turnover was also a relevant criteria for excluding comparable companies. The Tribunal referred to the decision rendered by another co-ordinate bench in the case of Genesis Integrating Systems (India) Pvt Ltd vs. DCIT (ITA No.1231/Bang/2010), wherein the grouping of companies following

Dun and Bradstreet's analysis was held to be proper. The co-ordinate bench also examined the contrary decisions rendered by other benches of Tribunal (including the decision rendered by Mumbai bench of Tribunal in the case of Willis Processing Services (I) (P) Ltd (2013)(57 SOT 339), which was relied on by Ld. DRP) and held them to be per-incurium as they ignored the decision rendered in the case of Genesis Integrating Systems (India) Pvt. Ltd. Finally, the Tribunal held in the case of Autodesk India (P) Ltd (supra) that the application of turnover filter as per the ratio laid down in the case of Genesys Integrating Systems (India) Pvt. Ltd (supra) was justified.

11. The Ld A.R submitted that the assessee falls under the category of a company having turnover between 1 to 200 crores. Accordingly, it should be compared with the companies having turnover within the above said range. He submitted that the following comparable companies selected by the TPO are required to be excluded, as the turnover of these companies do not fall under the category of 1 to 200 crores:-

(a) Infosys Ltd	-	21,140 crores
(b) Larsen & Toubro Infotech Ltd	-	1,776.76 crores
(c) Mindtree Ltd	-	698.02 crores
(d) Persistent Systems Ltd	-	504.41 crores
(e) Sasken Communication Technologies		401.50 crores
(f) Tata Elxsi (seg)	-	336.94 crores

The Ld A.R further submitted that the following companies are functionally not comparable and hence they should also be excluded:-

(11) ICRA Techno Analytics ltd (seg)

(12) Kals Information Systems Ltd

The Ld A.R further submitted that all the above said eight comparable companies have been excluded in the case of DCIT vs. M/s Electronics for Imaging India P Ltd (IT(TP)A No.212/Bang/2015 – AY 2010-11).

12. On the contrary, the Ld D.R supported the order passed by the assessing officer.

13. We have noticed that the turnover of the assessee herein for the year under consideration was Rs.13.97 crores and hence it falls under the category of 1 – 200 crores as per Dun and Bradstreet's analysis. Hence the assessee should be compared with the companies having turnover in the above said range as per the decision rendered by the co-ordinate bench in the case of Genesis Integrating Systems India P Ltd (supra). Since the turnover of following companies are more than 200 crores, they are liable to be excluded under turnover filter:-

(a) Infosys Ltd	- 21,140 crores
(b) Larsen & Toubro Infotech Ltd	- 1,776.76 crores
(c) Mindtree Ltd	- 698.02 crores
(d) Persistent Systems Ltd	- 504.41 crores
(e) Sasken Communication Technologies	- 401.50 crores
(f) Tata Elxsi (seg)	- 336.94 crores

Accordingly, we direct the AO/TPO to exclude above said companies.

14. In the case of Electronics for Imaging India P Ltd (supra), the following companies have been excluded for the reasons that they are not functionally comparable. The observations made by the Tribunal in the above said case are extracted below:-

(a) ICRA Techno Analytics Ltd (seg.):-

14. At the outset, we note that apart from having the related party revenue at 20.94% of the total revenue, the company was also found to be functionally not comparable with software development services segment of the assessee. The DRP has given its finding at pages 13 to 14 as under:-

“Having heard the contention, on perusal of the annual report, it is noticed by us that the segmental information is available for two segments, i.e., services and sales. However it is evident from the annual report that the service segment comprises of software development, software consultancy, engineering services, web development, web hosting etc., for which no segmental information is available and therefore, the objection of the assessee is found acceptable. Accordingly, Assessing Officer is directed to exclude the above company from the comparables.”

15. We find that the facts recorded by the DRP in respect of business activity of this company are not in dispute. Therefore, when this company is engaged in diversified activities of software development and consultancy, engineering services, web development & hosting and substantially diversified itself into domain

of business analysis and business process outsourcing then the same cannot be regarded as functionally comparable with that of the assessee who is rendering software development services to its AE.

16. In view of the above facts, we do not find any error or illegality in the findings of the DRP that this company is functionally not comparable with that of a pure software development service provider.”

(b) KALS INFORMATION SYSTEMS LTD (Seg.)

23. We have heard Ld D.R as well as Ld A.R and considered the relevant material on record. The Ld DR has not disputed the fact that comparability of this company has been examined by this Tribunal in a series of decision including in the case of Triology e-business Software India Ltd (ITA No.1054/Bang/2011 dated 23.11.2012). We further note that in the balance sheet of this company as on 31.3.2010, there are inventories of Rs.60,47,977. Therefore, when this company is in the business of software products, the same cannot be compared with a pure software development services provider. Accordingly, we do not find any error or illegality in the impugned findings of the DRP.

Accordingly, following the decision of the co-ordinate bench rendered in the case of Electronics for Imaging India P Ltd (supra), we direct the AO/TPO to exclude above said two companies also.

15. The Ld A.R submitted that the Ld DRP had directed the AO, vide paragraph 6.4 of its order, to consider foreign exchange fluctuation in respect of the assessee as well as the comparables as operating in nature while determining the ALP in the case of the assessee. He submitted that the AO has not followed the above said directions. Accordingly he prayed that the AO may be directed to follow the directions given by the Ld DRP on the above matter. We find merit in the prayer of the assessee and accordingly direct the AO to compute margins by taking foreign exchange fluctuations gains/loss as part of operating income both in the case of the assessee and comparable companies.

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

Order pronounced in the Open Court on **25<sup>th</sup> October, 2019.**

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

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

Bangalore,  
Dated, 25<sup>th</sup> October, 2019.

/ 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  
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Dictation note enclosed .....
8. Date on which the file goes to the Bench Clerk  
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endorsement.....
10. Date on which the file goes to the Head Clerk  
.....
11. The date on which the file goes to the Assistant  
Registrar for signature on the order  
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12. The date on which the file goes to dispatch section for  
dispatch of the Tribunal Order .....