

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "C", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.591/PUN/2016  
निर्धारण वर्ष / Assessment Year : 2011-12

Tibco Software India Private Limited, 3 <sup>rd</sup> Floor, Binarius, Deepak Complex, National games road, Shastri Nagar, Yerwada, Pune – 06 PAN : AACCT6136F	Vs.	DCIT, Circle-7, Pune
Appellant		Respondent

आयकर अपील सं. / ITA No.627/PUN/2016  
निर्धारण वर्ष / Assessment Year : 2011-12

DCIT, Circle-7, Pune	Vs.	M/s.TIBCO Software India Private Limited, 3 <sup>rd</sup> Floor, Binarius, Deepak Complex, National games road, Shastri Nagar, Yerwada, Pune – 06 PAN : AACCT6136F
Appellant		Respondent

C.O.No.08/PUN/2018  
(Arising out of ITA No.627/PUN/2016)  
निर्धारण वर्ष / Assessment Year : 2011-12

Tibco Software India Private Limited, 3 <sup>rd</sup> Floor, Binarius, Deepak Complex, National games road, Shastri Nagar, Yerwada, Pune – 06 PAN : AACCT6136F	Vs.	DCIT, Circle-7, Pune
Cross Objector		Respondent

Appellant by  
Respondent by

Shri Rakesh Gupta  
Shri T. Vijaya Bhaskar Reddy

Date of hearing 19-11-2019  
Date of pronouncement 20-11-2019

आदेश / ORDER

PER R.S.SYAL, VP :

These two cross appeals – one by the assessee and the other by the Revenue along with one cross objection by the assessee arise out of the final assessment order dated 29-01-2016 passed by the Assessing Officer u/s.143(3) r.w.s.144C(13) of the Income-tax Act, 1961 (hereinafter called ‘the Act’) in relation to the assessment year 2011-12.

2. The Revenue’s appeal is time-barred by 09 days. The Revenue has filed an affidavit explaining the reasons which led to the late filing of the appeal. We are satisfied with such reasons. The delay is condoned and the appeal is admitted for hearing on merits.

3. The appeal by the Revenue and cross objection by the assessee rotate around the transfer pricing adjustment in respect of three sets of international transactions, namely, Software research and development segment, Support services segment and Marketing services segment.

4. Succinctly, the facts of the case are that the assessee is an Indian subsidiary of TIBCO, US. The assessee entered into Software Research and Development Services agreement with TIBCO, US, for providing Software Research and Development Services in accordance with the Design, Production orders, Plans, Process and Specifications and Production Schedules. The assessee filed its return declaring certain international transactions. The Assessing Officer (AO) made reference to the Transfer Pricing Officer (TPO) for determining the Arm's Length Price (ALP) of the international transactions. The TPO tinkered with certain comparables selected by the assessee in all the three segments and eventually proposed a total transfer pricing adjustment of Rs.6,70,03,680/- covering Software Development Services Segment, ITES Segment and Marketing Segment. The assessee approached the Dispute Resolution Panel (DRP), which gave certain directions on the inclusion/exclusion of certain comparables in all the three segments. As a result of such directions, total transfer pricing adjustment came to be deleted. That is how, the Revenue is mainly aggrieved by the directions given by the DRP on inclusion/exclusion on certain companies in the list of comparables in all the three segments. The assessee in its cross objection is also

aggrieved by certain issues concerning the transfer pricing adjustment.

5. We have heard the rival submissions and gone through the relevant material on record. At the outset, the Id. Counsel for the assessee submitted that even if all the grounds taken by the Department are accepted still there will not arise any transfer pricing adjustment because of the assessee's margin falling within the permissible range of the average margin of the comparable companies. The Id. AR filed a segment-wise computation on the basis of which it has been claimed that no transfer pricing addition is sustainable even if the Revenue's grounds are accepted. Such a submission made by the assessee in respect of all the three segments is reproduced as under:

<b>Software Development Services Segment</b>			
<i>Sr.No.</i>	<i>Name of company</i>	<i>Working Capital Adjusted OP/TC</i>	
		<i>As per TPO report dated 22 Jan 16</i>	<i>If Dept. Appeal allowed</i>
1	<i>Thinksoft Global Services Ltd.</i>	-3.24%	--
2	<i>Persistent Systems &amp; Solutions Ltd.</i>	20.52%	--
3	<i>Thirdware Solutions Ltd.</i>	-29.20%	-29.20%
4	<i>Acropetal Technologies Ltd. (IT segment)</i>	22.06%	22.06%
5	<i>E-Infochips Ltd.</i>	54.90%	54.90%
6	<i>Akshay Software Technologies Ltd.</i>	1.24%	1.24%
7	<i>Goldstone Technologies Ltd.</i>	-0.28%	-0.28%
8	<i>L.G. S. Global Ltd.</i>	10.76%	10.76%
9	<i>L&amp;T Infotech Ltd.</i>	17.95%	17.95%
10	<i>Persistent Systems Ltd.</i>	20.83%	20.83%

11	Sasken Communication Technologies Ltd. (Telecom Services Segment)	24.03%	24.03%
12	Mindtree Ltd. (IT Services)	10.40	10.40%
	Average	12.50%	13.27%
	TIBCO India PLI	12.87%	12.87%
	Conclusion	At ALP	At ALP +/-5%

+/-5% range computation	TC(A)	266,572,957
	ALP(B)	13.27%
	AL Revenue	301,944,523
	[C=A+(A*B)]	
	Revenue (D)	300,870,267
	5% higher (D*1.05)	315,913,780
	5% higher (D*0.95)	285,826,754

<b>Support Services Segment</b>			
Sr.No.	Name of company	Working Capital Adjusted OP/TC	
		As per TPO report dated 22 Jan 16	If Dept. Appeal allowed
1	Caliber Point	9.12%	9.12%
2	Microland Ltd. (ITeS segment)	8.50%	--
3	Accentia Technologies Ltd.	25.86%	25.86%
4	Informed Technologies India Ltd.	11.60%	11.60%
5	Jindal Intellicom pvt. Ltd.	13.79%	13.79%
6	Microgenetics Systems Ltd.	0.97%	0.97%

1	Eclerx Services Ltd.	NA	56.34%
2	Cosmic Global Ltd.	NA	10.82%
	Average	11.64%	18.36%
	TIBCO India PLI	16.18%	16.18%
	Conclusion	At ALP	At ALP +/-5%

+/-5% range computation	TC(A)	466,037,961
	ALP(B)	18.36%
	AL Revenue	551,589,215
	[C=A(A*B)]	
	Revenue (D)	541,426,337
	5% higher (D*1.05)	568,497,654
	5% higher (D*0.95)	514,355,020

<b>Marketing Support Services Segment</b>			
<i>Sr.No.</i>	<i>Name of company</i>	<i>Working Capital Adjusted OP/TC</i>	
		<i>As per TPO report dated 22 Jan 16</i>	<i>If Dept. Appeal Allowed</i>
1	<i>IDC (India) Ltd. (MSS Segment)</i>	9.88%	--
2	<i>Quadrant Communications Ltd.</i>	18.49%	18.49%
3	<i>Empire Industries Ltd. (Trading &amp; Indenting segment)</i>	22.63%	22.63%
4	<i>Entertainment Networks (India) Ltd. (Event Segment)</i>	1.35%	1.35%
5	<i>Priya International Ltd. (Indenting Segment)</i>	4.20%	4.20%
6	<i>Asian Business Exhibition &amp; Conferences Ltd.</i>	20.29%	20.29%
7	<i>ICC International Agencies Ltd. (Commission &amp; Service Activity Segment)</i>	36.76%	36.76%
	<i>Average</i>	16.23%	17.29%
	<i>TIBCO India PLI</i>	12.84%	12.84%
	<i>Conclusion</i>	<i>At ALP +/-5%</i>	<i>At ALP +/-5%</i>

<i>TC(A)</i>	44,731,847	44,731,847
<i>ALP(B)</i>	16.23%	17.29%
<i>AL Revenue [C=A+(A*B)]</i>	51,991,187	52,464,492
<i>Revenue (D)</i>	50,475,698	50,475,698
<i>5% higher (D*1.05)</i>	52,999,483	52,999,483
<i>5% higher (D*0.95)</i>	47,951,913	47,951,913

6. Per contra, the Id. DR submitted that the above calculation has been placed on record for the first time and hence the Bench should not rely on the same unless the same is confirmed by the AO/TPO. We agree with such a justifiable submission made on behalf of the Revenue. As such, the impugned order is set-aside and the matter is restored to the file of the AO/TPO for verifying the calculations as

reproduced above for ascertaining if the submission made on behalf of the assessee is correct. Needless to say, the assessee will be allowed a reasonable opportunity of hearing. In the otherwise scenario, the concerned authority will proceed as per law.

7. The only issue which is raised in the assessee's appeal is against denial of deduction on interest income of Rs.29,23,652/- u/s.10A of the Act.

8. We have heard the rival submissions and gone through the relevant material on record. The AO did not allow deduction u/s.10A in respect of the interest income. The ld. AR submitted that similar issue came up for consideration before the Tribunal for the immediately preceding assessment year. A copy of the order dated 31-01-2017 passed by the Tribunal in ITA No.276/PUN/2015 has been placed on record, as per which this issue has been restored with certain directions. The relevant discussion has been made on page 22 para 34 of the order. The ld. DR could not point out any distinguishing feature in the facts and relevant law in sofaras the preceding year vis-à-vis the instant year is concerned. Respectfully following the precedent, we set-aside the impugned order on this issue as well and remit the matter to the file of the AO for deciding

it afresh in accordance with the directions given by the Tribunal in its order for the preceding year.

9. In the result, the cross appeals as well as the cross objection are allowed for statistical purposes.

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

Sd/-  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.S.SYAL)**  
**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 20<sup>th</sup> November, 2019  
सतीश

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-13, Pune
4. The Pr.CIT-V, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे  
“सी” / DR ‘C’, ITAT, Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	19-11-2019	Sr.PS
2.	Draft placed before author	19-11-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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