

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

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER
I.T.A NO. 1058/Del/2016
(Assessment Year : 2011-12)**

Income Tax Officer, Ward – 25(3), C. R. Building, New Delhi. (APPELLANT)	Vs	M/s. Toluna India (P.) Ltd., (Formerly known as M/s. G. Reenfield Online (P) (Ltd.), First Floor, Unitech Trade Centre, Sushant Lok, Phase – I, Gurgaon, Haryana. (PAN : AACCG 0003 G) (RESPONDENT)
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Appellant by	Shri Rishabh Malhotra, Adv. Shri Anubhav Rastogi, Adv.
Respondent by	Ms. Nidhi Sharma, Sr. D.R

Date of Hearing	23.09.2019
Date of Pronouncement	25.11.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 30.12.2015 passed by Income Tax Officer, Ward – 25(3), New Delhi under section 143(3) of the Income Tax Act, 1961 for Assessment Year 2011-12.

2. The Grounds of appeal are as under:-

1. *“On the facts and in the circumstances of the case, the DRP-2 erred in directing AO to complete the assessment as per observations*

made by DRP in the order which resulting in reducing the addition to NIL in place of original recommended ALP of Rs.2,08,50,458/- for the International Transactions undertaken the assessee company with its associate/parent enterprises.

2. *“The Hon’ble DRP has erred in law and on facts in rejecting Infosys of Technologies Ltd. By placing misplaced reliance on the judgment of Hon’ble High Court of Delhi in the case of Aginty Technology Ltd.”*
3. *“The Hon’ble DRP has erred in law and on facts in carrying out arbitrary analysis while examining the filters by the TPO without verifying into the facts of the case”.*
4. *The Hon’ble DRP has erred in law and facts in carrying out arbitrary analysis while examining the functional differentiability of the comparables.”*
5. *On the facts and in the circumstances of the case, the DRP-II erred in directing TPO to exclude below mentioned companies from the final set of comparables:*
 - (i) *Acropetal Technologies Ltd.*
 - (ii) *E-Infochips Ltd.*
 - (iii) *E-zest Solutions Ltd*
 - (iv) *Infosys Ltd*
6. *“The appellant craves, leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal”*

3. The assessee-company is engaged in the business of survey programming, data processing, contract software, help desk, account management and project management. Return declaring income of Rs.20,44,920/- under the normal provisions of Act and Rs. 4,19,37,130/- under the provisions of Section 115JB was e-filed on 30.11.2011. The case was selected for scrutiny and statutory notice u/s 143(2) has issued and served on the assessee. Further, notice u/s 142(1) was also issued and in response, CA & AR of the assessee attended the proceeding from time to time details called for by the Assessing Officer was filed. Books of accounts were produced by the assessee company before the Assessing Officer. During the year under consideration, the assessee had undertaken international transactions with its associated enterprises. As the value of the international transactions was more

than Rs.15 crore, the international transactions entered into by the assessee with the associated enterprises were referred to the Transfer Pricing Officer for determining the Arm's Length Price on 28.01.2013. The Transfer Pricing Officer passed order u/s 92CA of the Income Tax Act dated 22.01.2015 wherein he made an adjustment of Rs. 2,08,50,458/- u/s 92CA arrived at after making cumulative adjustment to the case. In view of the above, addition of Rs. 2,08,50,458/- was made in the income of the assessee being difference between the Arm's Length Price and draft order u/s 144C of the I.T. Act which was passed on 03.03.2015. The Assessee filed objection before Dispute Resolution Panel (DRP) against the Draft Order. The DRP directions u/s 144C(5) on 05.11.2015 for which the order giving effect was issued by the Assessing Officer on 09.12.2015. The Assessing Officer after following the directions of the DRP as well as the order giving an effect dated 09.12.2015 passed assessment order dated 30.12.2015 thereby making nil adjustments to the margin of the assessee company by observing that as the margin of the assessee company is within the range of +/- 5% of the mean margin of the comparables the adjustment remains nil. Being aggrieved by the assessment order, the Revenue filed appeal before us.

4. The Ld. DR submitted that the DRP erred in directing Assessing Officer to complete the assessment as per the observations made by the DRP in the order which resulted in reducing the addition to Nil in place of original recommended ALP of Rs.2,08,50,458/- for the International transactions undertaken by the Assessee company with its associate enterprises. The Ld. DR further submitted that the DRP erred in rejecting Infosys Technology Limited as well as excluding other three comparable companies which are Acropetal Technologies Ltd., E-Infochips Limited and E-Zest Solutions Ltd. The Ld. DR submitted that these comparable companies passed the filters set out by the TPO himself, in the original orders and relied upon the order of

the Transfer Pricing Officer. The Ld. DR further submitted that all these comparables are functionally similar.

5. The Ld. AR submitted that the DRP has taken a proper cognizance of each and every comparable and thereafter has rightly directed to execute these comparables from the final set of comparables.

6. We have heard both the parties and perused all the relevant materials available on record. The DRP has given following directions as relates to comparables:

“DRP Directions:

The TPO has included the following comparables

	<i>Comparable</i>	TPO	Assessee	DRP
1.	<i>Acropetal Technologies Limited</i>	<i>Functionally comparable</i>	<i><u>Fails the employee cost to sales filter:</u> Employee cost incurred by Acropetal to the total operating cost is 13.74% which is less than 25% limit as adopted by the Ld. TPO. <u>Functionally dissimilar:</u></i>	<i>To be excluded in view of failing the TPO filter of employee cost.</i>
2.	<i>E-Infochips Limited</i>	<i>Functionally comparable</i>	<i>Fails the service revenue filter:</i> <i>E-Infochips fails Ld. TPO’s own filter of service revenue to total revenue less than 75% (Service revenue to total revenue is 74%). Functionally</i>	<i>To be excluded in view of failing the TPO filter of service revenue.</i>

			Different: E-Infochips is engaged in provision variety of IT services like Application Software, E-Commerce; Mobility; BI and Vissualisation; Firmware and System Software; Board Design; ASIC / SOC / FPGA Services; Mechanical and Industrial design; etc.	
3.	E-Zest Solutions Limited	Functionally comparable	Functionally Dissimilar : E- Zest is engaged in the provision of product engineering services / outsourced product development services; enterprise application development; IT services and technology expertise.	To be excluded in view of different functionality.
4.	Infosys Limited	Functionally comparable	Scale of operations: The turnover of Infosys for FY 2010-11 is INR 25,385 crores, Brand profits and significant intangible assets: Significant R & D expenses: Product Development:	To be excluded being the sectoral giant with economic advantage. The order of Delhi High Court in case of Agnity India ITA No.1204/2011 shall apply in this case.
5.	Persistent Systems Limited	Functionally comparable	Functionally Dissimilar : Persistent Systems	This is a good comparable in view of similar

			is engaged in rendering Outsourced Product Development services as against software development services	functionality. The high margins or high turnover are not valid factors and have been rejected by Hon'ble Delhi High Court in case of Chryscapital.
6.	Sasken Communication Technologies Limited	Functionally comparable	<u>Functionally Dissimilar</u> : Sasken engaged in providing services in relation to the applications in the telecommunications industry and is also engaged in providing software products.	This is good comparable in view of similar functionality. The high margins or high turnover are not valid factors and have been rejected by Hon'ble Delhi High Court in case of Chryscapital.
7.	Sankhya Infotech Limited	<u>Functionally comparable</u>	<u>Functionally Dissimilar</u> : Sankhya Infotech is a leading provider of simulation and training solutions. It helps corporate organizations and institutions with a robust end-end enterprise wide training solution. They provide targeted training solutions and consultancy services to meet the organizational objectives and business needs to	This is a good comparable in view of similar functionality and FAR. The high margins or high turnover are not valid factors and have been rejected by Hon'ble Delhi High Court in case of Chryscapital.

			<i>the Assessee.</i>	
8.	<i>Wipro Technology Services Limited</i>	<u><i>Functionally comparable</i></u>	<u>Turnover Filter:</u> <i>During the year, the turnover of WTS was approx. INR 346.87 Crores, which is over 10.37 times the turnover of the Assessee of INR 25.15 crores. <u>Abnormally volatile profit margin :</u> <u>Related Party Transactions</u></i>	<i>This is a good comparable in view of similar functionality. The high margins or high turnover are not valid factors and have been rejected by Hon'ble Delhi High Court in case of Chryscapital.</i>

3.7 including certain companies in the final set of comparables, which have a significantly high turnover as compared to the Assessee;”

During the hearing, the assessee also demonstrated that these comparable companies were functionally dissimilar as well as failed the various filters set out by the TPO himself. Therefore, the DRP is right in excluding these comparables. There is no need to interfere with the findings of the DRP. Therefore, appeal of the revenue is dismissed.

8. In result, the appeal of the revenue is dismissed.

Order pronounced in the Open Court on 25th day of November, 2019.

Sd/-

(R. K. PANDA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 25/11/2019
*Priti Yadav, Sr. PS **

Copy forwarded to:

1. Appellant

2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	22.11.2019
Date on which the typed draft is placed before the dictating Member	25.11.2019
Date on which the typed draft is placed before the Other Member	25.11.2019
Date on which the approved draft comes to the Sr. PS/PS	25.11.2019
Date on which the fair order is placed before the Dictating Member for pronouncement	25.11.2019
Date on which the fair order comes back to the Sr. PS/PS	25.11.2019
Date on which the final order is uploaded on the website of ITAT	25.11.2019
Date on which the file goes to the Bench Clerk	25.11.2019
Date on which the file goes to the Head Clerk	