

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2549/Bang/2018
Assessment Year : 2009-10

M/s. IHS Global Private Limited (formerly known as IHS Parts Managements Private Limited), Plot No – 13, 14, 15, Tower 1 Mobius, SJR Park, Whitefield, EPIP Area, Bangalore – 560 066. PAN: AABCI4372D	Vs.	The Deputy Commissioner of Income Tax, Circle – 11 (4), Bangalore.
APPELLANT		RESPONDENT
Assessee by	:	Shri Umashankar Gautam, Advocate
Revenue by	:	Shri C.H. Sundar Rao, CIT (DR)
Date of hearing	:	26.09.2019
Date of Pronouncement	:	22.11.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A)-3, Bangalore dated 12.07.2018 for Assessment Year 2009-10.

2. The grounds raised by the assessee are as under.

“1. The Leaned CIT(A) has erred in law and facts by including Infosys BPO Ltd. as one of the comparable whereas the same should be excluded for the reasons of functionally dissimilarity.

2. The Leaned CIT(A) has erred in law and facts by including Aditya Birla Minacs Worldwide Ltd. as one of the comparable whereas the same should be excluded for the reasons of functionally dissimilarity.

3. The Leaned CIT(A) has erred in law and facts by including Accentia Technologies Ltd. as one of the comparable whereas the same should be excluded for the reasons of functionally dissimilarity.

4. The Leaned CIT(A) has erred in law and facts by including Informed Technologies India Ltd. as one of the comparable whereas the same should be excluded for the reasons of functionally dissimilarity.

5. The Leaned CIT(A) has erred in law and facts by including Cosmic Global Ltd. as one of the comparable whereas the same should be excluded for the reasons of functionally dissimilarity.

6. The Leaned CIT(A) has erred in law and facts by including Eclerx Services Ltd. as one of the comparable whereas the same should be

excluded for the reasons of functionally dissimilarity.

7. The Leaned CIT(A) has erred in law and facts by excluding R Systems International Ltd. as one of the comparable whereas the same should be included for the reasons of functionally similarity.

8. The Leaned CIT(A) has erred in law and facts by excluding Microgenetic Systems Ltd. as one of the comparable whereas the same should be included for the reasons of functionally similarity.

9. The Leaned CIT(A) has erred in law and facts by excluding Jeevan Scientific Technology Ltd. as one of the comparable whereas the same should be included for the reasons of functionally similarity.

10. The Leaned CIT(A) has erred in law and facts by excluding Axis IT &T Ltd. as one of the comparable whereas the same should be included for the reasons of functionally similarity.

11. That the Ld. CIT(A) erred in not treating the sub-contracting cost as pass through in nature.

12. That the Ld. CIT(A) erred in rejecting the working capital adjustment provided by the Ld. AO/TPO's.

13. The Ld. CIT (A) erred in levying interest under Section 234B, 234C and Section 234D of the Income Tax Act, 1961.”

3. In course of hearing before us, it was submitted by Id. AR of assessee that he wants to press only ground nos. 1, 3, 5 and 6 which are regarding assessee's request for exclusion of four comparables i.e. 1) Infosys BPO Ltd., 2) Accentia Technologies Ltd., 3) Cosmic Global Ltd. and 4) Eclerx Services Ltd. and the remaining grounds are not pressed. Hence, all other grounds except ground nos. 1, 3, 5 and 6 are rejected as not pressed. Regarding the assessee's request for exclusion of these four comparables, he pointed out that this issue was decided by Id. CIT(A) as per para no. 5 of his order in which it is held by him that the assessee has not taken any ground of appeal in relation to its request for exclusion of some comparables and no additional ground of appeal has been filed by the assessee and on this basis, he did not decide this issue. Thereafter he submitted that similar order was passed by Id. CIT(A) in assessee's own case for Assessment Year 2010-11 and the assessee filed the appeal before the Tribunal against that order of Id. CIT(A) in Assessment Year 2010-11 in ITA No. 1921/Bang/2018 dated 15.02.2019 of which he submitted a copy and pointed out that in that year, the Tribunal had restored the matter back to the file of TPO for fresh decision in respect of assessee's request for exclusion of five comparables viz.,

- 1) Accentia Technologies Ltd.
- 2) Acropetal Technologies Ltd. (Segment)
- 3) E-clerx Services Ltd.

4) ICRA Online Ltd. (Segment)

5) Infosys BPO Ltd.

He submitted that in the present year also, the order of Id. CIT(A) should be set aside and the matter should be restored back to the file of TPO for fresh decision. The Id. DR of revenue supported the order of Id. CIT(A).

4. We have considered the rival submissions. First of all, we reproduce para no. 5 from the order of Id. CIT(A) because in this para, the Id. CIT(A) has disposed of the issue regarding the assessee's request for exclusion of certain comparables. This para reads as under.

“5.0 During appellate proceedings the appellant has argued for exclusion of certain companies from the list of comparables and inclusion of certain companies in the list of comparables. However, it is noted that the appellant has not taken any ground of appeal in relation to the same. No additional ground of appeal has been filed by the appellant. The grounds of appeal relating to filters and the rejection of the TP study have already been dealt supra. So, as such in absence of any grounds of appeal, these arguments of the appellant for exclusion or inclusion of companies in the list of comparables do not deserve any consideration.”

5. We also reproduce para nos. 4 to 6 of the Tribunal order in assessee's own case for Assessment Year 2010-11. These paras are as under.

“4. Regarding the request of the assessee for exclusion of these five comparables, he submitted that this issue was decided by CIT (A) as per para no. 5 on page no. 7 of his order. He pointed out that in this para, it is stated by CIT (A) that the assessee has argued for exclusion of certain companies from the list of comparables and inclusion of certain companies in the list of comparables but the assessee has not taken any ground of appeal in relation to the same and on this basis, he has not adjudicated upon on this issue. He submitted that this is true that no specific ground was raised before CIT(A) in this regard but since, arguments were made before him in this regard, he should have decided this issue. Thereafter he drawn our attention to para 9.1 on page no. 8 of the order of TPO and pointed out that in this para, it is noted by the TPO that in reply to show cause notice dated 20.09.2013 issued by him, no submission / objection was received from the taxpayer nor the taxpayer requested for additional time for filing the submissions. In this regard, he submitted that submission was made before the TPO vide letter dated 16.01.2014 copy available on pages 121 to 196 of paper book and the same was furnished in the office of TPO at tapal on 17.01.2014 and the order of TPO is dated 29.01.2014 and hence, the matter should be restored back to the file of TPO for fresh decision after considering the written submissions because the same were not considered by the TPO. In reply, it was submitted by Id. DR of revenue that the letter dated 16.01.2014 available on pages 121

to 196 of paper book is addressed to DCIT(TP)-V, Bangalore although it is submitted at tapal of DCIT(TP)-IV. Since it is addressed to DCIT(TP)-V, the same might not have reached the TPO and therefore, the TPO correctly said in his order that no reply was filed by assessee.

5. We have considered the rival submissions. In view of this submission of Id. DR of revenue, it is seen that letter filed by the assessee on 17.01.2014 by addressing to DCIT(TP)-V might not have reached to the file of TPO because the TPO in the present case is DCIT(TP)-IV and not DCIT(TP)-V, Bangalore to whom the said letter was addressed by the assessee. But still this is true that the submissions were made by the assessee before the passing of the order by the TPO and although it could not reach to the file of TPO because of certain clerical mistakes on the part of the assessee, we feel it proper that in the interest of justice, the matter should go back to the file of TPO for fresh decision after considering the written submissions filed by the assessee on 17.01.2014 or any further submissions which the assessee may make in course of set aside proceedings. Hence, we set aside the order of CIT (A) and restore the matter back to the file of AO/TPO for fresh decision with regard to assessee's claim for exclusion of five comparables i.e.

- a) Accentia Technologies Ltd.*
- b) Acropetal Technologies Ltd. (Segment)*
- c) E-clerx Services Ltd.*
- d) ICRA Online Ltd. (Segment)*
- e) Infosys BPO Ltd.*

6. We want to make it clear that sufficient opportunities of hearing should be provided by the TPO to assessee."

6. We find that as per para no. 5 reproduced from the order of Id. CIT(A), it was held by Id. CIT(A) that the assessee's request for exclusion or inclusion of companies in the list of comparables do not deserve any consideration because as per Id. CIT(A), the assessee has although argued for exclusion of certain comparables and inclusion of certain comparables but the assessee has not taken any ground of appeal in relation to the same. In the light of these facts for the present year, when we examine the Tribunal order in assessee's own case for Assessment Year 2010-11 as reproduced above, we find that in that year also, it was held by Id. CIT(A) that the assessee has argued for exclusion of certain comparables and inclusion of certain comparables but the assessee has not taken any ground of appeal in relation to the same and on this basis, he has not adjudicated upon on this issue. Hence it is seen that the facts are identical in both the years. In that year, the TPO has also noted in its order that in reply to show cause notice issued by him, no submission / objection was received from the taxpayer although it was the claim of the assessee before

the Tribunal that the submissions has been made before the TPO vide letter dated 16.01.2014 and the copy of that was made available in the paper book as per which the same was furnished in the office of the TPO at tapal on 17.01.2014 and the order of the TPO was dated 29.01.2014. In view of these facts, it was observed by the Tribunal in that year that the submission made by the assessee before the TPO in that year might not have reached to the file of TPO because of certain clerical mistake on the part of the assessee. Under these facts, it was felt proper by the Tribunal in that year to restore the matter back to the file of TPO for fresh decision. In the present year, this is not the case of the assessee that the TPO has also not decided the issue after considering the submission of the assessee and hence, in the present year, we feel it proper to restore back the matter to the file of Id. CIT(A) for fresh decision after providing adequate opportunity of being heard to both sides. We order accordingly. These four grounds being ground nos. 1,3, 5 and 6 are allowed for statistical purposes. Ground nos. 2, 4 and 7 to 12 are rejected as not pressed. Ground no. 13 is consequential.

7. In the result, the appeal filed by the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 22nd November, 2019.
/MS/

Copy to:

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|---------------|------------------------|
| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.