

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES : "B", BANGALORE**

**BEFORE SHRI A.K.GARODIA, ACCOUNTANT MEMBER
AND
SMT.BEENA PILLAI, JUDICIAL MEMBER**

**IT(TP)A No.744(Bang)/2017
(Assessment year : 2012-13)**

M/s Avnet India Pvt.Ltd.,
No.402, 4th Floor, RMZ Infinity Tower-B,
No.3, Old Madras Road,
Bangalore-560 016.

Appellant

Vs

The Income Tax Officer,
Circle-1(1)(4), BMTC Building,
Koramangala, 6th Block,
Bangalore

Respondent

**Appellant by : Shri Padamchand Khincha, CA
Revenue by : Ms.Neera Malhotra, CIT DR**

Date of hearing : 11-12-2019

Date of pronouncement : 13-12-2-019

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER :

Present appeal has been filed by assessee against final assessment order dated 27/01/17 passed by Ld.ITO, Ward 1 (1) (4), Bangalore for assessment year 2012-13.

2. Ld.AR submitted that revised grounds of appeal has been filed vide application dated 24/07/18, which needs to be addressed. He

submitted that assessee is engaged in business of providing marketing services to Avnet Asia PTE Ltd., which *inter-alia* involves in sourcing of customers for products of Avnet group Companies in 2 business segments being electronic marketing and technology services.

2.1 Ld.TPO has observed that assessee is 100% subsidiary of Avnet Holding LLC and that Avnet Group as per TP documentation, is one of the world's largest B2B distributors. Ld.TPO observed that following are the international transactions undertaken by assessee as reported in Form 3 CEB:

<i>Particulars</i>	<i>Amount in Rs.)</i>
<i>Purchase of trading material</i>	<i>4,99,58,613</i>
<i>Provision of marketing agency services</i>	<i>335,055,007</i>
<i>Reimbursement on account of Equant lease line charges</i>	<i>19,17,003</i>
<i>Recovery of expenses</i>	<i>67,71,169</i>

Only disputed segment by Ld.TPO was in respect of purchase of trading materials, which assessee had held to be at arms length by applying RPM as most appropriate method with the set of 4 comparables having average margin of 4.44% as against 2.05% of assessee itself.

2.2 Ld.TPO rejected the most appropriate method adopted by assessee and used TNMM, wherein 5 comparables were selected with an average margin of 4.40% (at net level) thereby computing the proposed adjustment at Rs. 93, 30, 487/-.

2.3 Ld.AR submitted that on objections being raised before DRP regarding the selection of most appropriate method by Ld.TPO, it was held as under:

“Having considered the submissions, we have perused the record to observe that the assessee has applied RPM for TP analysis purpose in its TP study and TPO in the TPO in the TP order examined this issue in para-6 of the order, has rejected the application of RPM as most appropriate method, saying that the huge loss of Rs.21,50,77,762/- at net level in the trading segment against the turnover of Rs.75,55,12,586/- makes the financials and the activity of the assessee (as claimed by it has a mere distributor/trader), doubtful, saying that the huge loss suggests that the assessee is performing many more functions beyond the realm of routine trader resulting in losses. TPO further said that his fact implies that the blow the line expensive have not been factored in the sale price of the goods sold in the trading segment. In case of normal distributor/trader the margins are built in to sale price to include costs plus markup covering all expenses and giving a reasonable profit margin.

Upon consideration of the facts and circumstances, we find that the assessee against the total trading turnover of Rs.75.55 Crores had incurred an expenditure of Rs.86.36 Crores (per TPO) with a loss of Rs.10.81 Crores which comes to 14.31% loss. However, out of the total cost, the cost of purchases is Rs.75.65 Crores which is nearly 6.59%. Considering the fact that the assessee is a mere reseller, who is

reselling the goods without any value addition, and also considering the very low percentage of purchases made from the AE(6.59%) in the total trading segment purchases, it is appropriate to apply RPM in this case.

Accordingly, we accept the objection of the assessee and direct the TPO to adopt RPM as the MAM”.

3. DRP however, upheld comparables selected by Ld.TPO for computing ALP using TNMM as most appropriate method. DRP also held the Forex loss as operating in nature by following view adopted by predecessors for assessment year 2011-12.

3.1 Ld.TPO/AO upon receipt of directions by DRP, computed arm's length price using RPM as most appropriate method and the 5 comparables selected by Ld.TPO.

4. Aggrieved by addition made by Ld.AO, assessee is in appeal before us now.

4.1 At the outset, both sides agree that, issue needs to be set-aside to Ld.TPO for re-determining arm's length price of the transaction by using RPM as most appropriate method and the comparables that are suitable to be used in this method.

4.2 Having upheld RPM to be most appropriate method, the comparability analysis has to be carried out in accordance to Rule 10B(4) of the Act, by using the relevant data. The comparables so selected is to be analyzed by determining the gross margin earned by distributor on resale products.

4.3 In our considered opinion, comparables selected by Ld.TPO upheld by DRP are not in trading segment. We therefore, direct

Ld.TPO to carry out fresh comparability analysis which includes companies in trading segment.

4.4 We shall also add that assessee shall not be denied the adjustment on account of foreign exchange fluctuations which has been already upheld by DRP by following decision of this *Tribunal* in case of *SAP labs India Pvt.Ltd vs ACIT* reported in *8 Taxmann.com 207*.

4.5 With above directions, we set-aside determination of ALP back to Ld.TPO, for deciding afresh. Needless to say that assessee shall be granted proper opportunity of representation as per law.

Accordingly, grounds raised by assessee stands allowed for statistical purposes.

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

Order pronounced in the open court on 13-12-2019.

Sd/-
(A.K.GARODIA)
ACCOUNTANT MEMBER

Dated: 13-12-2019

***am**

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
5. DR
6. ITO (TDS)
- 7.Guard File

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

By Order

Asstt.Registrar

