

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

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

IT(TP)A No.375/Bang/2015
Assessment year : 2010-11

The Dy. Commissioner of Income-tax, Circle-6(1)(1), Bengaluru.	Vs.	M/s Sling Media Pvt. Ltd., 14/3, 4 th Floor, Rastrothana Bhavan, (Opp. RBI), Nrupathunga Road, Bengaluru-560 001. PAN – AACCD 0297 R
APPELLANT		RESPONDENT

CO No.125/Bang/2015
Assessment year : 2010-11

M/s Sling Media Pvt. Ltd., 14/3, 4 th Floor, Rastrothana Bhavan, (Opp. RBI), Nrupathunga Road, Bengaluru-560 001. PAN – AACCD 0297 R	Vs.	The Dy. Commissioner of Income-tax, Circle-6(1)(1), Bengaluru
APPELLANT		RESPONDENT

IT(TP)A No.504/Bang/2015
Assessment year : 2010-11

M/s Sling Media Pvt. Ltd., 14/3, 4 th Floor, Rastrothana Bhavan, (Opp. RBI), Nrupathunga Road, Bengaluru-560 001. PAN – AACCD 0297 R	Vs.	The Dy. Commissioner of Income-tax, Circle-6(1)(1), Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Ms. Neera Malhotra. CIT (DR)
Respondent by	:	Shri Padamchand Khincha, C.A

Date of hearing	:	14.1.2020
Date of Pronouncement	:	21.1.2020

ORDER

Per B.R Baskaran, Accountant Member :

The cross appeals filed by the parties and the cross objection filed by the assessee are directed against the order passed by the AO for asst. year 2010-11 in pursuance of directions issued by Id Dispute Resolution Panel (DRP).

2. At the time of hearing, the Id DR furnished Working sheet computing tax effect involved on the issues contested by the Revenue and submitted that the tax effect involved is only Rs.16.56 lakhs. Accordingly she submitted that the Revenue will not press its appeal, as the tax effect is less than Rs.50.00 lakhs.

3. The Id AR submitted that the cross-objection filed by the assessee was in pursuance of appeal filed by the Revenue. Since the Revenue appeal is not being pressed, the Id AR submitted he will not press cross-objection also.

4. In view of the above, appeal of the Revenue and cross-objection filed by the assessee are dismissed as not pressed.

5. In respect of the appeal filed by the assessee, the Id AR advanced his arguments on the following two issues only.

a) Prayer for exclusion of 2 companies named 1) M/s ICRA Techno Analytics 2) KALS Information.

b) Request for giving correct amount of deduction towards working capital adjustment.

6. We heard the parties and perused the record. The assessee is engaged in providing software development services to its associated enterprises. It is a captive service provider. The assessee adopted operating profit/operating cost (OP/OC) as Profit Level Indicator and applied TNMM method as most appropriate method. Rejecting the transfer pricing study conducted by the assessee, the TPO selected 11 companies as comparables. However the ld DRP excluded 6 companies and retained 5 comparable companies. In the present appeal the assessee seeks exclusion of following two companies.

- 1) ICRA Techno Analytics Ltd.,
- 2) KALS Information Systems Ltd.

7. The ld AR submitted that both the above said companies were held to be not good comparables for captive Software service providers in the decision rendered by the coordinate bench in the case of M/s Electronics for imaging Pvt. Ltd., Vs. DCIT in IT(TP)A No.212/Bang/2015 dated 24/2/2016. Accordingly the ld AR prayed for exclusion of both the above companies.

8. The ld DR, on the contrary, placed her reliance on the decision rendered by another coordinate bench in the case of M/s

Radisys India Pvt. Ltd., Vs. ITO (2016) 73 Taxmann.com 140, wherein the Tribunal has restored both the above said companies to the file of AO/TPO for examining them afresh. Accordingly the ld DR prayed that the both the companies may be resorted to the file of the AO/TPO for examining them afresh.

9. In the rejoinder, the ld AR submitted that the decision rendered by the Tribunal in the case of M/s Electronics for Imaging India Pvt. Ltd. is later one, i.e., it was rendered subsequent to the decision of M/s Radisys India Pvt. Ltd. He further submitted that there are many other decisions rendered subsequently by the coordinate benches, wherein both the above said companies have been held to be not good comparables to a captive service provider. He invited our attention to the following decisions in this regard:-

(a) M/s Broadcom India Research P Ltd vs. ACIT (IT(TP)A No.348/Bang/2015 dated 13-07-2016).

(b) M/s Applied Materials India P Ltd (IT(TP)A No.180 (Bang) 2015 dated 26.08.2016)

10. We heard both the parties on this issue and perused the record. The decision in the case of Radisys India (P) Ltd was rendered on 04-09-2015. Admittedly the decision was rendered by the coordinate bench in the case of Electronics for Imaging India Pvt. Ltd., on 24.02.2016 and the same is later one. Further there are many other decisions wherein the decision rendered on the above said two companies are identical with the view expressed in

the case of Electronics for Imaging India P Ltd. Accordingly we prefer to follow the decision rendered in the case of M/s Electronics for Imaging India Pvt. Ltd.(supra). In the above said case both the companies under consideration have been held to be not good comparables. For the sake of convenience, we extract below the relevant observations made by the coordinate bench in the case of Electronics for Imaging India Pvt. Ltd. (Supra).

“13. We shall deal with each comparable which has been disputed by the Revenue one by one as under:-

(1) 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, this 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.

(2)

(3) KALS Information Systems Ltd.

21. The assessee raised objections against this company on the ground that this company is engaged in the development of software and software products. Further, this company consists of STPI unit and also having a training centre engaged in training of software professionals on online products. Thus, when this company is having revenue from

software services as well as software product, the same cannot be considered as comparable with software development service providing company.

22. The DRP has directed the AO to exclude this company from the list of comparables by taking note of the fact that there were inventories in the books of accounts of this company which shows that this company is in the software product business. Further, by following the decision of this Tribunal in the case of Trilogy e-business Software India Ltd. v. DCIT, ITA No.1054/Bang/2011 dated 23.11.2012, this company was found to be not comparable with that of the assessee.

23. We have heard the Id. DR as well as Id. AR and considered the relevant material on record. The Id. DR has not disputed the fact that comparability of this company has been examined by this Tribunal in a series of decisions including in the case of Trilogy e-business Software India Ltd. (supra). 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.

11. Accordingly following the above said decision, we direct the AO to exclude both the companies referred above.

13. The next issue contested by the assessee relates to working capital adjustment granted by the TPO. The ld AR submitted that the TPO has given working capital adjustment restricting the same to 1.98% as against the amount computed by the assessee. He submitted that the co-ordinate bench in the case of Cerner Health Care Pvt. Ltd., in IT(TP)A No.44/Bang/2015 dated 16/1/2017 has held that the AO/TPO has to allow working capital adjustment on actual basis without restricting the same.

13. We heard ld DR on this issue and perused the record. We notice that the coordinate bench in the case of Cerner Health Care Pvt. Ltd., has observed as under in an identical issue :-

“15. The next issue is that the AR submitted that the TPO has restricted the working capital adjustment to 1.98% and relied on the decision of this Tribunal in Moong Controls India P Ltd., ITA 551/Bang/2015 ay 2010 dt. 27.11.2015, wherein this Tribunal directed the TPO to allow actual adjustment towards the differences in the working capital position between the assessee and the entrepreneurial companies selected as comparable. We direct the TPO to follow this decision. To this extent, the assessee’s appeal ground is allowed.”

14. We noticed the coordinate bench has restored the matter to the file of the AO/TPO to follow the decision in the case of Moong Controls India Pvt. Ltd., (Supra). Accordingly we restore this issue to the file of AO/TPO with the similar directions.

15. In the result, the appeal filed by the assessee is treated as allowed. The appeal of the Revenue and the Cross-objection filed by the assessee are dismissed.

Order pronounced in the Open Court on **21st January, 2019.**

Sd/-
(Beena Pillai)
Judicial Member
Bangalore,
Dated, 21st January, 2019.

Sd/-
(B.R Baskaran)
Accountant Member

/ 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
.....
8. Date on which the file goes to the Bench Clerk
.....
Dictation note enclosed
9. Date on which order goes for Xerox &
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
13. Date of Despatch of Order.
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14. Dictation note enclosed
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