

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

Before Shri A.K.Garodia, AM & Smt.Beena Pillai, JM

IT(TP)A No.424/Bang/2015 : Asst.Year 2010-2011

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| The Asst.Commissioner of Income-tax, Circle 4(1)(2) Bangalore. | Vs. | M/s.Metric Stream Infotech (India) Private Limited, Zed Square, No.92, Jyothi Nivas, College Road, 7 th Block, Koramangala Industrial Area, Bangalore – 560 034 PAN : AACCM4991K. |
| (Appellant) | | (Respondent) |

IT(TP)A No.383/Bang/2015 : Asst.Year 2010-2011

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| M/s.Metric Stream Infotech (India) Private Limited, Zed Square, No.92, Jyothi Nivas, College Road, 7 th Block, Koramangala Industrial Area, Bangalore – 560 034 | Vs. | The Asst.Commissioner of Income-tax, Circle 4(1)(2) Bangalore. |
| (Appellant) | | (Respondent) |

Revenue by : Sri.Muzaffar Hussain, CIT-DR
Assessee by : Sri.Padamchand Khincha, CA

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| Date of Hearing : 03.12.2020 | Date of Pronouncement : 07.02.2020 |
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ORDER

Per Smt.Beena Pillai, JM :

Present cross appeals has been filed by assessee as well as revenue against order dated 16/01/15 passed by Ld.ACIT Circle 4

2. Assessee is a company and filed its return of income for year under consideration on 09/05/11 declaring total income of Rs.92,09,880/-. It has been observed by authorities below that companies engaged in business of development of software and rendering related services. The return was processed under section 143 (1) of the act and the case was selected for scrutiny, consequentially notices under section 143 (2) and 142 (1) were

issued to assessee. In response to the statutory notices, representative of assessee filed requisite details as called for.

2.1.Ld.AO had observed that assessee had entered into international transaction with its associated enterprises exceeding sum of Rs. 15 crores and accordingly the case was referred to transfer pricing officer. Ld.TPO upon receipt of reference issued notice to assessee calling for economic details of international transaction in form 3 CEB. From the records filed, Ld.TPO observed that, assessee had following international transaction with its associated enterprises:

| Particulars | Amount received |
|---|------------------------|
| Software development | Rs.12,16,75,946/- |
| Sales and marketing services | Rs. 5,98,41,623/- |
| Reimbursement of Gratuity and interest cost | Rs. 13,09,272/- |

2.2. Only disputed segment by Ld.TPO was in respect of software development segment and sales and marketing services segment. It was observed that assessee used TNMM as most appropriate method and OP/OC as PLI. Assessee computed its margin under software development service segment at 8.02% and 5% for sales and marketing segment. Assessee used following 14 comparables under software development service segment with an average margin of 6.63% and under sales and marketing service segment assessee used following 7 comparables with average margin at 9.5%.

Software development Service Segment

| S.No. | Particulars | Margin |
|--------------|------------------------------------|---------------|
| 1. | Accel Transmatic Ltd | 17.89% |
| 2. | Akshay Software Technologies Ltd | 12.41% |
| 3. | CG-Vak Software and Exports Ltd | 5.47% |
| 4. | Compulink Systems Ltd | 2.67% |
| 5. | Goldstone Technologies Ltd | 6.36% |
| 6. | Indium Software (India) Ltd | (9.33%) |
| 7. | LGS Ltd | 20.61% |
| 8. | Quintengra Solutions Ltd | (0.62%) |
| 9. | R S Software (India) Ltd | 10.58% |
| 10. | Serviont Global Solutions Ltd | 13.51% |
| 11. | TVS Infotech Ltd | (13.55) |
| 12. | Think Software Global Services Ltd | 19.02% |
| 13. | Thirdware Solutions Ltd | 22.33% |
| 14. | VGL Softech Ltd | (14.54) |
| | Average Margin | 6.63% |

Sales & Marketing Service segment

| S.No. | Particulars | Margin |
|--------------|---|---------------|
| 1. | Amrit International Ltd | (1.07%) |
| 2. | ICRA Management Consulting Services Ltd | (3.46%) |
| 3. | ICC International Agencies Ltd | 19.50% |
| 4. | IDC (India) Ltd | 10.34% |
| 5. | Killick Agencies & Marketing Ltd | 29.48% |

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| 6. | Priya International Ltd | 26.41% |
| 7. | SK Consultants Ltd | (14.69%) |
| | Average Margin | 9.50% |

2.3. As margin of comparable was between range of +/- 5%, assessee held its transaction to be at arms length. Disagreeing with transfer pricing details filed by assessee, Ld.TPO shortlisted following comparables for purposes of determining arms length price of the transactions.

TPO's comparables under software development segment

| S.No. | Particulars | Margin |
|--------------|--------------------------------------|---------------|
| 1. | ICRA Technoanalytics Ltd (SEG) | 24.94% |
| 2. | Infosys Ltd | 44.98% |
| 3. | Kals Information Systems Ltd (SEG) | 34.41% |
| 4. | Larsen and Toubro Infotech Ltd | 19.33% |
| 5. | Mindtree Ltd (SEG) | 14.83% |
| 6. | Persistent systems and solutions Ltd | 15.38% |
| 7. | Persistent systems Ltd | 30.35% |
| 8. | R S Software (India) Ltd | 10.29% |
| 9. | Sasken Communication Technologies | 17.36% |
| 10. | Tata Elxsi Ltd | 20.93% |
| 11. | Think Software Global Services Ltd | 17.05% |
| | Average Margin | 22.71% |

TPO's comparables for sales and marketing segment

| S.No. | Particulars | Margin |
|--------------|--|---------------|
| 1. | Asian business exhibition and conferences Ltd | 58.64% |
| 2. | Cyber media research Ltd (earlier IDC India private limited) | 19.52% |
| 3. | HCCA business services private Ltd (earlier HSG business services private limited) | 19.11% |
| 4. | Hindustan Hosing company Ltd | 19.59% |
| 5. | ICC International agencies Ltd | 13.27% |
| 6. | Killick Agencies & Marketing Ltd | 16.77% |
| | Average Margin | 24.48 % |

2.3. Ld.TPO thus computed the shortfall in arms length price for both segments and proposed adjustment as under:

| Particulars | Adjustment proposed |
|--------------------------------------|----------------------------|
| Software development service segment | 1,65,61,434/- |
| Sales and marketing service segment | 1,11,00,553/- |

2.4. Against the proposed adjustment assessee raised objections before DRP challenging various filters applied by Ld.TPO.

DRP while adjudicating objections raised by assessee, excluded certain comparables under both segment for having turnover more than Rs. 200 crores.

2.5. Ld.AO while giving order effect to the directions of DRP made addition at Rs.2,54,77,812/-

Aggrieved by order passed by Ld. AO, assessee as well as revenue are in appeal before us now.

At the outset both sides agree that DRP has not dealt with comparables independently alleged by assessee before us and has merely excluded certain comparables on high turnover. Against exclusion of such comparables revenue is in appeal before us.

2.6. Ld. CIT DR submitted that exclusion of comparables on turnover basis has been done without analysing functional similarity/dissimilarity of comparables with that of assessee.

2.7. Ld.AR. Out of balance comparables post DRP direction, seeks exclusion/inclusion of certain comparables for functional dissimilarities/similarities. Ld.AR seeks exclusion of Killick agencies and marketing Ltd., under sales and marketing service segment.

2.8. At the outset, Ld.CIT-DR submitted that, exclusion/inclusion of comparables sought by assessee at this stage cannot be analysed, as this exercise has not been carried out by DRP. Also that before DRP as well as before this *Tribunal*. Assessee raised grounds only on filters, instead of specific grounds alleging exclusion/inclusion of comparables before DRP as well as before this *Tribunal*. He thus requested for these issues to be set-aside to DRP to consider the objections of assessee *qua* comparables.

2.9. We have perused submissions advanced by both sides in light of records placed before us.

As rightly pointed out by parties before us, DRP has not dealt with objections *qua* comparables and excluded certain comparables only on turnover filter. Before us assessee is seeking specific exclusion/inclusion of comparables under both segments. Killick agencies and marketing Ltd., neither objected before Ld.TPO, nor is specifically alleged for exclusion on functional dissimilarity before DRP, however Ld. A.R. argued for its exclusion before us.

2.10. Under such circumstances we deem it fit and proper to set aside this issue back to DRP with a direction to adjudicate/verify comparables *qua* filters finally selected by Ld.TPO recorded herein above individually. It is also been submitted by Ld.AR that, margin of certain comparable have been wrongly considered by Ld.TPO which needs correction. We direct DRP to consider all the objections afresh *qua* comparables. DRP is directed to analyse each comparables alleged by assessee for exclusion/inclusion on functional similarities/dissimilarity and to pass detailed order.

Accordingly grounds raised by assessee and revenue stands allowed for statistical purposes.

In the result appeal is filed by assessee as well as revenue stands allowed for statistical purposes.

Order pronounced on this 07th day of February, 2020.

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

Sd/-
(Smt.Beena Pillai)
JUDICIAL MEMBER

Bangalore ; Dated : 07th February, 2020.

Copy to :

1. The Appellant.
2. The Respondent.
3. The DRP-II, Bengaluru.
4. The CIT, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst. Registrar/ITAT, Bangalore

| | | Date | Initial | |
|-----|--|------------|---------|----------|
| 1. | Draft dictated on | 03.02.2020 | | Sr.PS |
| 2. | Draft placed before author | 03.02.2020 | | Sr.PS |
| 3. | Draft proposed & placed before the second member | | | JM/AM |
| 4. | Draft discussed/approved by Second Member. | | | JM/AM |
| 5. | Approved Draft comes to the Sr.PS/PS | | | Sr.PS/PS |
| 6. | Kept for pronouncement on | | | Sr.PS |
| 7. | File sent to the Bench Clerk | | | Sr.PS |
| 8. | Date on which file goes to the AR | | | |
| 9. | Date on which file goes to the Head Clerk. | | | |
| 10. | Date of dispatch of Order. | | | |
| 11. | Draft dictation sheets are attached | | | Sr.PS |