

THE INCOME TAX APPELLATE TRIBUNAL  
“J” Bench, Mumbai  
Before Shri Shamim Yahya (AM) & Shri Pawan Singh (JM)

I.T.A. No. 2113/Mum/2014 (Assessment Year 2009-10)  
I.T.A. No. 1829/Mum/2015 (Assessment Year 2010-11)

|   |     |  |
|---|-----|--|
| Star Den Media Services Pvt. Ltd.<br>Star House, Urmi Estate<br>95 Ganpatrao Kadam Marg, Lower Parel West<br>Mumbai-400 013.<br><br>PAN : AACCD7658Q<br>(Appellant) | Vs. | ACIT Range-11(1)<br>Aayakar Bhavan<br>M.K. Road<br>Mumbai-400 020.<br><br>(Respondent) |
|---|-----|--|

|                       |                                      |
|-----------------------|--------------------------------------|
| Assessee by           | Shri Porus Kaka & Shri Divesh Chawla |
| Department by         | Shri Vodhalraj Singh                 |
| Date of Hearing       | 26.11.2019                           |
| Date of Pronouncement | 05.02.2020                           |

ORDER

Per Shamim Yahya (AM) :-

These are appeals by the assessee against respective orders of the Assessing Officer passed by the Assessing Officer pursuant to direction of learned Dispute Resolution Panel (DRP) for A.Y. 2009-10 & 2010-11 respectively.

2. Since the issues are common and connected and appeals were heard together these are being consolidated and disposed of by this common order.

3. The common issue raised is that the Transfer Pricing Officer (TPO) erred in transfer pricing adjustment of Rs. 429,611,231/- for A.Y. 2009-10 and Rs. 2,88,54,506 for A.Y. 2010-11. Since the facts are identical we are referring to the facts and figures for A.Y. 2009-10.

4. Brief facts of the case are as under :-

The assessee, Star Den Media Services Pvt. Ltd. (hereinafter referred to as 'Star Den') is a joint venture (hereinafter referred to as 'JV') between Star India Pvt. Ltd. referred to as 'SIPL') and DEN Networks Limited (hereinafter referred to as 'DEN'). SIPL and DEN entered into the JV to leverage on the capabilities of both entities and to establish a platform for distributing television channels in India. The JV agreement was entered into with effect from January 2008. Star Den has obtained licenses to distribute television channels owned by its Associated Enterprises (hereinafter referred to as 'AEs') and by third parties. It is relevant to point out that this work had earlier been carried out by Star India Pvt. Ltd., till the end of the earlier financial year.

5. Details of International Transactions:-

The Assessee has reported the following international transactions in its Form 3CEB:-

| Sr.No. | Nature of transaction   | AE   | Value of transaction | Method used |
|--------|---|--|----------------------|-------------|
| 1.     | Obtaining license for distribution of channels  | Star Television Entertainment Limited (CSTEL')               | 2,297,915,891        | TNMM        |
|        |   | Star Asian Movies Ltd ('SAML')                               | 470,593,717          |             |
|        |   | Star International Movies Limited ('SIML')                   | 508,146,970          |             |
|        |   | Channel [V] Music Networks Limited Partnership ('Channel V') | 359,348,944          |             |
|        |   | Star Asia Region FZ LLC (CSAR')                              | 1,031,505,393        |             |
|        |   | Fox International Channels (US) Inc ('FIC')                  | 211,888,339          |             |
|        |   | NGC Network Asia LLC ('NGC Asia')                            | 371,263,251          |             |
| 2.     | Provision of services in relation to distribution of channels in Sri Lanka and Bangladesh | Asian Broadcasting, FZ-LLC ('AB')                            | 4,647,985            | TNMM        |

6. Determination of ALP :-

The Assessee has aggregated the international transaction relating to provision of services in relation to distribution of channels, with the transaction pertaining to obtaining license for distribution of channels for benchmarking purposes. The assessee, in its transfer pricing report, has documented that the two international transactions entered into by Star Den, are similar in nature with minor variations in the terms of their arrangement. The assessee claims that since the functions performed and the nature of efforts expended for both transactions are similar, the fact that an insignificant portion of Star Den's total revenue is generated from provision of services for distribution of channels in Sri Lanka and Bangladesh and given the similarity in the efforts involved and the commonality of the resources, it is practically not possible to identify the profit generated from the activities separately i.e. it is not possible to prepare segmented accounts for the two international transactions.

7. The assessee, accordingly, due to the similarity in the functions performed for international transactions, insignificant value and the inability to bifurcate the profit and loss account has aggregated and analyzed both the transactions under the main business activity of the Assessee i.e. obtaining license for distribution of channels for the purpose of benchmarking the ALP. Thus, the overall entity level TNMM approach is adopted to benchmark the international transactions by the Assessee and is found to be appropriate.

8. Based upon various functions and risks, the assessee claimed that it was engaged in the business of distribution of television channels. For the purpose of conducting its business, the Assessee has obtained the rights for distribution of various television channels from its AEs. In consideration, the Assessee has paid license fees to its AEs.

9. The search process was undertaken by the assessee for determining the comparable companies, wherein it was noted that distribution of channels in the entertainment industry was mostly within group companies and according

to the assessee there was no publicly available data to compare the pricing. The assessee then expanded the search process and it was observed that distribution of channels was akin to distribution of computer software as both required selling the content on a magnetic medium. Accordingly, the assessee considers companies engaged in distribution of computer software appropriate for benchmarking the international transactions entered into by it.

10. The assessee has adopted TNMM to be the most appropriate method to benchmark the transaction with OP/TR as the PLI and with the Assessee as the tested party. The assessee has an entity level PLI working of 0.74%. The weighted average of the comparable PLI was given.

11. The TPO was not satisfied with the comparable selected. He observed that the comparables selected by the assessee i.e. software distributors do not undertake functions which are similar to that of the assessee. The TPO rejected all the submissions and objections of the assessee and finally came to the following set of comparables :-

| Sr.No. | Name of company                               | Margin (in %)<br>F.Y. 2008-09 |
|--------|---|-------------------------------|
| 1      | Fame Motion Pictures Ltd./Shringar Films Ltd. | 6.28                          |
| 2      | National films Development Corporation Ltd.   | 20.17                         |
| 3      | Asian Films Production and Distribution Ltd.  | 8.07                          |
|        |   | 11.51                         |

12. In the light of the above, given that the assessee's margin of 4.62% is less than the arithmetic mean of 11.51% of the comparables and given that the same does not fall within plus and minus 5% safe limits, the transfer pricing adjustment was worked out.

13. The transfer pricing adjustment was also done, for A.Y. 2010-11 on similar facts. The TPO rejected the assessee's comparables. He referred to the order for A.Y. 2009-10. Out of the comparables selected for A.Y. 2009-10 he rejected the Turnover Asian Films Production and Distribution Ltd. by

observing that the turnover was below Rs. 1 crore. The TPO added Baba Arts Limited during the year. Based upon it he came to the following comparables :-

| Sr.No. | Name of company                               | Margin (in %) |
|--------|---|---------------|
| 1      | Fame Motion Pictures Ltd./Shringar Films Ltd. | -4.94         |
| 2      | National Film Development Corporation Ltd.    | 17.66         |
| 3      | Baba Arts Ltd.                                | 5.45          |
|        | Arithmetic Means                              | 6.06          |

Thereafter the transfer pricing adjustment was done at Rs. 2,88,54,506/-. The assessee's objection against the above transfer pricing adjustment was rejected by learned DRP.

14. Against this order the assessee has filed the appeal before the ITAT.

15. We have heard both the counsel and perused the records. Learned Senior Counsel Shri Porus Kaka submitted that the issue is squarely covered in favour of the assessee by the decision of Delhi ITAT in the case of Turner International India (P) Ltd. Vs. ACIT (95 taxmann.com 285) and decision of ITAT Mumbai in the case of ACIT Vs. NGC Network (India) Pvt. Ltd. (10 taxmann.com 140). Referring to the said decision of Turner International India P. Ltd. (supra), learned Counsel of the assessee submitted that in the said decision it was noted that the assessee was mainly engaged in the business of marketing and distribution of satellite channels of Cartoon Network, CNN, POGO, HBO etc. The Tribunal gave a finding that the satellite TV channels and cable network operators had significantly different operating models and provide earning model and such channels content owner companies should not be included for the purpose of comparability analysis for distribution segment. It was held that since the assessee company was mainly engaged in marketing and distribution of satellite channels of Cartoon Network, CNN, POGO, HBO etc., the company engaged in trading in computer packages and who were mainly software distribution company could be taken as good comparable. Learned counsel contended that as per the Tribunal order in

Turner International India Pvt. Ltd. (supra) following were the final comparables :-

- Empower Industries India Ltd.
- Sonata Information Technologies Ltd.
- Softcell Technologies Ltd.
- Trijal Industries Ltd.

16. Learned Counsel of the assessee submitted that the assessee's selection of software distributor as comparable should be accepted on the touchstone of above decisions. He submitted that the assessee's comparable for A.Y. 2009-10 included Sonata Information Technologies Ltd. and Fintech communications Ltd. For A.Y. 2010-11 it also included Empower Industries India Ltd. He submitted that all these have been found by the ITAT in Turner International India Pvt. Ltd. to be good comparable. Hence, learned counsel contended if the comparables approved by the ITAT in the case of Turner International India P. Ltd. are adopted the assessee margin would compare favorably within the safe harbour rules of plus and minus 5% and no adjustment would be called for.

17. Per contra, learned Departmental Representative relied upon the order of DRP.

18. We have carefully considered the submissions and perused the record. We find that the submissions of learned counsel that identical issue was decided in the case of Turner International India P. Ltd. (supra) by the ITAT Delhi Bench has sufficient cogency. The business activity of the assessee in that case was marketing and distribution of satellite TV channels. Akin to that the assessee in the present case is also involved in distribution of various Star as well as third party channels in India. In such circumstances, selection of comparables engaged in software distributor has been accepted by the ITAT. Accordingly, we accept the submission of learned counsel and direct the TPO to examine his submission that if the comparables finally accepted by the ITAT in the case of Turner International India P. Ltd. are taken into account and the comparables of the assessee are selected with reference to it the margin should

be accepted if they are plus and minus 5%. Needless to add assessee should be provided adequate opportunity.

19. In the result, assessee's appeals stand allowed as above.

Order has been pronounced in the Court on 5.2.2020.

Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 05/02/2020

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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