

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE
BEFORE SHRI. A. K. GARODIA, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

IT(TP)A 207/Bang/2015
Assessment Year : 2010 - 11

Deputy Commissioner of Income Tax, Circle - 3(1) (2), 5 th Floor, R. P. Bhavan, Nrupathunga Road, Bangalore.	Vs.	M/s. GE BE Pvt. Ltd., No. 60, Export Promotion Park, Whitefield, Bangalore - 560 066. PAN NO : AAACG6714A
APPELLANT		RESPONDENT

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IT(TP)A 280/Bang/2015
Assessment Year : 2010 - 11

M/s. GE BE Pvt. Ltd., No. 60, Export Promotion Park, Whitefield, Bangalore - 560 066. PAN NO : AAACG6714A	Vs.	Deputy Commissioner of Income Tax, Circle - 3(1) (2), 5 th Floor, R. P. Bhavan, Nrupathunga Road, Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Mr. Muzaffar Hussain, CIT - DR
Respondent by	:	Shri. Sachit Joilly & Shri. Aayush Nagapal, CA's

Date of Hearing	:	06-02-2020
Date of Pronouncement	:	14-02-2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present Cross Appeals have been filed by Assessee as well as Revenue against final assessment order dated 29.12.2014 under section 143 (3) r.w. 144 C of the Act by Ld. DCIT, Circle – 3 (1) (2), Bangalore for Assessment Year 2010 – 11.

2. It has been submitted that assessee is engaged in business of manufacturing, selling components of medical equipment and also engaged in providing engineering services to its affiliates worldwide. During the assessment proceedings Ld. AO observed that assessee had international transaction with its associated enterprises exceeding Rs. 15 Crores. Accordingly, reference under section 92 CA of the Act was made to Transfer Pricing Officer to determine the Arms' Length Price of international transactions.

3. Upon receipt of reference, Ld. TPO called upon assessee to file economic details of the transaction in Form 3 CEB. On receipt of notice, representative of assessee appeared before Ld. TPO and filed details as called for. Ld.TPO observed that, under manufacturing segment margin computed by assessee was same as TPO's margin, and therefore no adverse adjustment made. However, for engineering design service, Ld.TPO was not satisfied with search strategy carried out by assessee and rejected transfer price documentation.

4. Ld. AR submitted that, Ld. TPO along with showcause notice provided the list of 10 comparable with average margin of 30%, which is placed at page 15 of paper book. He submitted that in response to showcause notice, vide letter dated 25-01-2014

assessee alledged for not providing search strategy, key words used, filters applied and approach followed with respect to selection of new set of comparables before Ld. TPO. It was submitted by assessee in its reply and objected to the approach by Ld. TPO being improper, unreasonable and against principles of natural justice.

5. Ld. AR submitted that before DRP specific objection was raised on the action of Ld. TPO for not following due process of law vide objection no. 6 & 9. Ld. AR submitted that there is no reference to these objections in the order of DRP and has been summarily rejected at para 5 at page 5 by DRP.

6. Ld. AR submitted that action of authorities below are not justified and has caused irreparable damages to assessee. He thus submitted that order of Ld. AO deserves to be setaside for de novo assessment.

7. On the contrary Ld. CIT – DR supported orders of authorities below.

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

8. Admittedly, Ld. TPO has not provided with filters applied, approach followed and the key words used in selection of new set of comparables. Selection of comparable without any basis is against principle of injustice. In our view Ld. TPO failed to follow due process of law and did not grant fair opportunity to address comparability carried out by Ld. TPO; This, calls for setting aside the order of Ld. AO/TPO.

9. We are thus of considered opinion that Ld. TPO should carry out *de novo* assessment by according proper opportunity of being represented to assessee, in accordance with law.

10. Ld. AR further submitted that, there are additional grounds raised on corporate tax issue which are to be decided by Ld. AO in accordance with law and having regard to decisions of various *High Court* and of *Tribunal*.

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

Order pronounced in the open court on 14th February, 2020.

Sd/-
(A. K. GARODIA)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 14th February, 2020.
/MK/

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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.