

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' A '**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI A. K. GARODIA, ACCOUNTANT MEMBER**

I.T. (T.P.) A. No. 454/Bang/2015
(Assessment Year: 2010 – 11)

ACIT, Circle – 1 (1),
Mysuru.

.... Appellant.

Vs.

M/s. Software Paradigms Infotech Pvt. Ltd.,
No. 316 – 318, Spicity, Hebbal Industrial Area,
Mysuru – 570016

PAN : AALCS7583C

..... Respondent.

AND

I.T. (T.P.) A. No. 599/Bang/2015
(Assessment Year: 2010 – 11)

M/s. Software Paradigms Infotech Pvt. Ltd.,
No. 316 – 318, Spicity, Hebbal Industrial Area,
Mysuru – 570016

PAN : AALCS7583C

.... Appellant.

Vs.

ACIT, Circle – 1 (1),
Mysuru.

..... Respondent.

Assessee By : Shri G. S. Prasanth, C. A.
Revenue By : Ms. Neera Malhotra, CIT DR
Date of Hearing : 06.02.2020.
Date of Pronouncement : 20.02.2020.

O R D E R

Per A. K. Garodia, A.M. :

These are cross appeals filed by the revenue and the assessee and these are directed against the assessment order passed by the AO on 30.01.2015 as per the directions of DRP

2. At the outset, it was submitted by the learned Departmental Representative for Revenue submitted that in the appeal by the revenue, the tax effect pertaining to the amount disputed by the Revenue is less than the monetary limit of Rs.50 lakhs fixed by the CBDT in Circular No.17/2019, dt.08.08.2019, which is in supersession of its Circular No.03/2018 dt.11.07.2018 and Amendment dated 20.08.2018, in relation to filing of appeals before the Income Tax Appellate Tribunal. Taking into consideration the above, and also the fact that the CBDT Circular under reference applies retrospectively even to pending appeals, we hold that the above listed appeal filed by the Revenue is not maintainable and liable to be dismissed *in limine*.

3. In the result, Revenue's appeal is dismissed.

4. Now we take up the appeal filed by the assessee. Learned AR of the assessee submitted that in Software Development Segment, there are only five comparables after the order of DRP and he wants to press only for exclusion of two comparables out of those five comparables i.e. (1) ICRA Techno Analytics Limited and (2) Kals Information System Limited. He further submitted that in ITES Segment, there are only eight comparables after the order of DRP and he wants to press only for exclusion of two comparables out of those eight comparables i.e. (1) Accentia Technologies Limited and (2) ICRA Online Limited. He submitted that all remaining grounds and Additional Grounds are not pressed. Regarding his request for exclusion of two comparables in each of two segments noted above, he submitted that his arguments in this regard are contained in the chart filed by him and these issues can be decided by considering those

arguments in the chart. As per the chart, the learned AR of the assessee has placed reliance on the tribunal order rendered in the case of DCIT vs. Electronics for Imaging India Pvt. Ltd., 70 Taxman.com 299 copy on pages 1 to 20 of case law compilation and it is submitted that Para 14 to 16 and paras 21 to 23 of this tribunal order are relevant. In respect of request for exclusion of two comparables in ITES Segment, reliance is placed on the tribunal order rendered in the case of Amba Research (India) Pvt. Ltd., 67 taxman.com 342 copy on pages 81 to 85 of Case law Compilation and it is submitted that paras 12 & 13 of this tribunal order are relevant for exclusion of Accentia Technologies limited. Reliance was placed on another tribunal order rendered in the case of Outsource Partners International Pvt. Ltd., 79 taxman.com 74 copy on pages 138 to 151 of Case law Compilation and it is submitted that paras 1.3 of this tribunal order is relevant for exclusion of ICRA Online Limited.

5. Learned DR of the revenue filed written submissions in which it is submitted that in respect of assessee's request for exclusion of two comparables in Software Development Segment, the matter should be remanded and she placed reliance on the tribunal order rendered in the case of Radisys India (P) Ltd. Vs. ITO as reported in 73 Taxman .com 140 (Bang) for the same year. She submitted a copy of this tribunal order and pointed out that Para 24 & 27 of this tribunal order are relevant. Regarding ITES Segment, it is stated in written submissions filed by her that out of two comparables requested for exclusion, one comparable is a good comparable i.e. ICRA Online Limited and in this regard, she placed reliance on the tribunal order rendered in the case of ACIT vs. Mindteck

(India) Limited as reported in 86 Taxman.com 230 (Bang). She submitted a copy of this tribunal order also and pointed out that Para 17 & 18 of this tribunal order are relevant.

6. We have considered the rival submissions and except those grounds which are relevant for the request of the assessee for exclusion of two comparables in each of two segments as noted above, all remaining grounds and additional grounds are rejected as not pressed. Regarding the request of the assessee for exclusion of two comparables in each of two segments as noted above, we find that the issue stands covered by various tribunal orders cited by the learned AR of the assessee as noted above but before deciding this issue by following these tribunal orders, we examine the applicability of various tribunal orders cited by the learned DR of the revenue to find out that whether a case is made out by the learned DR of the revenue persuading this bench of the tribunal to disregard the tribunal orders cited by the learned AR of the assessee. The first tribunal order cited by the learned DR of the revenue is rendered in the case of Radisys India (P) Ltd. Vs. ITO (Supra). As per Para 24 of this tribunal order, the issue decided by the tribunal is about Kals Information System Ltd. And it was held that just for this reason that a company held inventories, it cannot be said that the company is in the nature of Software Product Company and the matter was restored to AO/TPO for fresh decision. Learned AR of the assessee has placed reliance on the tribunal order rendered in the case of DCIT vs. Electronics for Imaging India Pvt. Ltd. (Supra). As per Para 23 of this tribunal order, it is held after noting this that comparability of this company has been examined by this tribunal in

a series of decisions including the tribunal order in the case of Triology e business software India P. Ltd. Vs. DCIT, 140 UTD 540 and after considering these various tribunal orders, it was held that this company is in the business of Software products and the same cannot be compared with a pure software development services provider. Hence, it is seen that as per various tribunal orders, this is not a good comparable and as per the tribunal order cited by the learned DR of the revenue also, the matter is remanded only without any adverse finding. Therefore, in our considered opinion, no case is made out by the learned DR of the revenue to disregard various tribunal order and remand the matter to AO/TPO. Para 27 of this tribunal order cited by the learned DR of the revenue is regarding ICRA Techno Analytics and the tribunal held that this company is involved in Web Development which is generally considered as falling within ITES but the tribunal restored the matter to AO/TPO for proper analysis of its segmental results. In the present case, this comparable is selected by TPO/DRP for Software Development Segment and not ITES Segment and hence, this tribunal order cited by the learned DR of the revenue does not help the revenue. Moreover, in Para 14 to 16 of the tribunal order rendered in the case of DCIT vs. Electronics for Imaging India Pvt. Ltd. (Supra), it was held by the tribunal that 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 BPO and hence, it cannot be regarded as functionally comparable with an assessee rendering software development services to its AE. These

findings of the tribunal could not be distinguished by the learned DR of the revenue and therefore, we feel it proper to follow this tribunal order.

7. The second tribunal order cited by the learned DR of the revenue is rendered in the case of ACIT vs. Mindteck (India) (P) Ltd. (Supra). As per Para 18 of this tribunal order, the issue about ICRS Online limited for ITES Segment was decided and it was held that although the assessee has taken a ground that this comparable is functionally different but in course of argument, learned AR of the assessee could not demonstrate this fact. Learned AR of the assessee has placed reliance on the tribunal order rendered in the case of Outsource Partners International Pvt. Ltd. (Supra). In para 1.3 of the tribunal order, the tribunal has noted that as per information contained in the website reproduced by the tribunal in same para, ICRA is primarily engaged in KPO services and information services and technology solutions. In the tribunal order cited by the learned DR of the revenue, the decision is without considering the website and under these facts that in that case, learned AR of the assessee could not demonstrate the facts about functional dissimilarity but the case cited by the learned AR of the assessee, the facts are considered from website and this tribunal cited by the learned DR of the revenue does not help the revenue.

8. As per above discussion, we find that no case is made out by the learned DR of the revenue to disregard various tribunal orders cited by the learned AR of the assessee and no difference in facts is pointed out by her to argue that these tribunal orders are not covering the case of the assessee in the favour of the assessee regarding exclusion of two comparables in

each segment. Hence, respectfully following these tribunal orders cited by the learned AR of the assessee, we direct the AO/TPO to exclude these four comparables (Two in each segment) as noted above from the final list of comparables and then decide the issue of TP adjustment.

9. In the result, the appeal of the assessee is partly allowed for statistical purposes.

10. In the combined result, the appeal of the revenue is dismissed and the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(N. V. VASUDEVAN)
Vice President
Bangalore,

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Dated, the 20th February, 2020.

/MS/

Copy to:

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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.