

IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH : BANGALORE

BEFORE SHRI N.V VASUDEVAN, VICE PRESIDNET AND  
SHRI B.R BASKARAN, ACCOUNTANT MEMBER

ITA No.1231/Bang/2018

Assessment year : 2012-13

The Asst. Commissioner of Income-tax, Circle-4(1)(2), Bengaluru-560 095.	Vs.	M/s Moddys Analytics Knowledge Services (India) Pvt. Ltd., (formerly Known as Amba Research (India) Pvt. Ltd., Municipal Door No.135/1-2, Residency Road, Bengaluru-560 025.  PAN – AAECA 9391 H
APPELLANT		RESPONDENT

IT(TP)A No.1184/Bang/2018

Assessment year : 2012-13

M/s Moddys Analytics Knowledge Services (India) Pvt. Ltd., (formerly Known as Amba Research (India) Pvt. Ltd., Municipal Door No.135/1-2, Residency Road, Bengaluru-560 025.  PAN – AAECA 9391 H	Vs.	The Jt. Commissioner of Income-tax, Circle-1(1)(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Pradeep Kumar, CIT (DR)
Revenue by	:	Shri Chavali Narayan, C.A

Date of hearing	:	27.01.2020
Date of Pronouncement	:	14.02.2020

**ORDER**

**Per B.R Baskaran, Accountant Member**

These cross appeals are directed against the order passed by Id CIT(A)-1, Bengaluru for asst. year 2012-13.

2. At the time of hearing the Id AR submitted that the assessee is not pressing its appeals and in confirmation of the same he has made necessary endorsement in the grounds of appeal furnished by the assessee. Accordingly the appeal of the assessee is dismissed as not pressed.

2. The assessee is engaged in providing IT Enabled Services in investment Research Support to its parent company named Amba Holdings Inc. It carries on its business through 3 units viz., STPI Unit, SAZ Unit-1 and SAZ – Unit 2 and it operates under a cost + mark up billing arrangement. SEZ Unit-1 has claimed tax holiday benefit u/s 10AA of the Act.

4. The first issue urged by the Revenue relates to deletion of disallowance made by the AO u/s 10AA of the Act.

5. The facts relating to the same are that the assessee had claimed deduction u/s 10AA of the Act in respect of SEZ- Unit -1. The AO examined the manner of allocation of common expenses between the 3 units owned by the assessee. The AO was of the view that certain common expense have been booked under STPI unit where here no deduction u/s 10AA of the has been claimed, thereby

reducing the profits of non-10AA units (taxable units) and increase the profits of exempted unit, apparently, with the objective of claiming higher exemption. Accordingly he asked the assessee to furnish revised allocation of expenses by allocating common expenses between all the units in the same ratio as of the direct, identifiable costs of individual units. The assessee also furnished the workings as sought by the AO. The assessee had originally claimed deduction u/s 10AA of the Act at Rs.62,65,015/- and in view of the revised working the deduction u/s 10AA came down to Rs.3,00,789/-. Accordingly the AO restricted the deduction u/s 10AA to Rs.3,00,789/- and added the difference amount of Rs.59,64,226/- to the total income of the assessee.

6. Before Id CIT(A), the assessee submitted that all its units are operating under cost + model. If the assessee books more expenditure in a particular unit, it would correspondingly increase the Revenue, since the revenue is dependent upon the cost. On the contrary, if the expenses are booked at a lower level, then there will be corresponding reduction of revenue. The assessee further submitted that the usual method adopted for boosting the profit of the exempted units is by booking lesser expenses under the said unit. However under the Revenue model adopted by the assessee, if lesser expenses is booked under exempt unit, then there will be corresponding reduction in gross revenue and the same will not give any advantage to the assessee. Accordingly it was submitted that the assessee shall be in disadvantage position, if expenses are booked at lower level in exempted units. Accordingly it was

contended that the presumption entertained by the AO is not correct and hence the disallowance made by the AO should be deleted.

7. The Id CIT(A) was convinced with the submissions made by the assessee. For the sake of convenience the operative portion of the order passed by the Id CIT(A) on this issue are extracted below :-

*“Having considered the submissions,I have perused the Assessment record to find that the AU has examined this issue in para 6-6.6 on page 2-4 of the Asst order, wherein he has allocated the common charges based or the same ration as that of the direct costs allocated to the units. The AU has stated in the order that as most of the common expenses have been booked only in the STPI Unit and SEZ Unit - II (non-10AA units), it has resulted in skewed reorting of the individual unit's profits i.e., under-reporting of profits of the non-10AA units and escalated profits of the eligible unit (i.e., 10AA unit).*

*Whereas the appellant has challenged the same on the ground that the expenses were identifiable to particular units and accordingly, they were allocated to the units for which they pertain. If there was some method and way to connect them easily to the specific units, the same would have been done by the internal auditors in consultation with the managers. However, the same has not been apportioned and has been pooled as common expenses un-allocable, implies the otherwise. There is a*

*normal tendency to allocate fewer expenses to the exempt units with Section 10AA benefit to claim more deduction. However, the appellant has submitted that it operates on a cost plus mark-up arrangement wherein each unit's revenue is computed on a 'cost plus' basis i.e., the revenue of a unit (and the profit) increases as the cost base increases.*

*"It is submitted that, "it is imperative to mention here that even by charging the identified common expenses (namely key managerial remuneration, audit fee, donations etc) to the STPI Unit alone, the Appellant has not reduced its taxable income. In fact, the same has resulted in increasing the taxable income of the Appellant, keeping in view the operating model of the Appellant.*

*Had the Appellant apportioned the identified common expenses among all the units, it would have reduced the cost base of the STPI unit, thereby, resulting in reduced mark up and taxable profits for the STPI unit.*

*In view of the above, the reasons provided by the learned AO for making the adjustment does not stand correct in the present fact pattern of the Company given its cost plus mark-up operating model."*

*In the light of the above, I have considered the facts once again, to find that as per the agreed facts the appellant is following a cost plus model to arrive at the revenue from each unit which in turn decides the surplus/profit. As per the facts, the appellant is engaged in providing IT enabled services in investment research support to Amba Holdings Inc., its parent company, through its three units viz., STPI Unit, SEZ Unit - I & SEZ Unit - II which operate under a 'cost plus mark-up billing arrangement'. SEZ Unit - I of the Appellant claims tax holiday benefit under section 10AA of the Income Tax Act, 1961 ("the Act"). Accordingly, there is no need to avoid booking any expenses to the 10AA unit, in fact, if done so it would have resulted in excess claim of deduction U/S 10AA. Considering The same, I am of the view that there is no scope for making the disallowance here. Accordingly, the disallowance affected by the AG is deleted."*

8. Before us the ld DR reiterated the contentions made before ld CIT(A). The ld DR on the contrary supported order passed by the AO.

9. Having heard the rival submissions, we are of the view that the order passed by ld CIT(A) on this issue does not call for interference. Considering the Revenue model of cost + mark-up adopted by the assessee, as rightly pointed out by the assessee, it will not gain anything by under booking expenses in the exempt

unit, since the under-booking of expenses would result in corresponding reduction in Revenue also. In any case we noticed that the AO has asked the assessee to reallocate the common expenses only by entertaining surmises and conjectures and not based on any creditable defect noticed by him. Hence, we are of the view that there is no reason to interfere with the order passed by the 1d CIT(A) on this issue.

10. The next issue urged by the Revenue relates to transfer pricing issue.

11. The Revenue has raised following grounds in this regard.

*“1. Whether the CIT(A) was justified in fact and in law in seeking exact comparability, which searching for comparable companies of the assessee under TNMM whereas the requirement of law and international jurisprudence require seeking similar comparables companies?”*

*2. Whether while seeking the exact comparability as mentioned above the CIT(A) was right in fact and in law in imposing condition beyond law whereas the requirement of law is to acknowledge only those differences that are likely to materially affect the margin.*

*3. Whether the CIT(A) was justified in fact and law in not acknowledge that determination of ALP by carrying*

*out comparability analysis of the comparable companies is an art and not exact science as no two companies are exactly same.*

*4. Whether the CIT(A) was right in the facts and circumstances of the case and in law, in holding that few companies are functionally different from assessee when it satisfies all the qualitative and quantitative filters applied by the TPO. The CIT(A) has used a narrower functionality filter than TPO, but has not tested other comparables against the narrower functionality filter applied by it.*

*5. Whether the CIT(A), Bangalore, was right facts and in law in super imposing the decision of other benches of ITAT in the case of assessee to reject these comparables when selection of comparables in a case depends in transfer pricing on assessee specific FAR analysis.*

*6. Whether the CIT(A) was justified in fact and in law in deciding E-InfoChips, Tata Elxsi Limited, Sasken Cornmujjçatioii Technologies Ltd, Persistent Systems Ltd, an4jCRA..Techn9 Analytics ltd as functionally not comparable by demanding comparability standards that may itself defeat the purpose of law relating to determination of ALP under the Income Tax Act.*

*7. Whether in the facts and circumstances of the case and in law the CIT(A) was justified in imposing the decisions of its ITAT benches rendered in some case while ignoring other decisions of coordinate benches where opposite view has been taken in respect of turnover filter, which brings inconsistency in approach of CIT(A).*

*8. Whether the learned CIT(A) is correct in facts and circumstances of the case and in law in excluding M/s. Infosys Ltd. on the basis of Turn over Filter, while the comparable is qualifying all the qualitative and quantitative filters applied by the TPO.”*

12. The Id AR submitted that the grounds urged by the Revenue relate to software development services, while the assessee is engaged in the business of providing IT enabled services. Further the comparables directed to be excluded by the Id CIT(A) are the following :

- 1) Universal Print Systems Ltd., (“Universal Print”)
- 2) TCS E – Serve (“TCSE”)
- 3) BNR Udyog Ltd., (“BNR Udyog”)
- 4) Excel Infoways Ltd., (“Excel Infoways”)
- 5) E4e Healthcare Business Services Pvt. Ltd., (“e4e Healthcare”)
- 6) Infosys BPO Limited (“Infosys”)
- 7) Accentia technology Ltd., (“Accentia”)

- 8) Informed Technologies India Ltd., (“Informed Technologies”)
- 9) Jindal Intellicom Ltd., (“Jindal Intellicom”)

The Ld A.R submitted that, in the grounds of appeal the revenue has challenged following comparable companies which are related to the software development activities namely ;

- 1) E-InfoChips,
- 2) Tata Elxsi Ltd.,
- 3) Sasken Communication Technologies Ltd.,
- 4) Persistent Systems Ltd.,
- 5) ICRA Techno Analytics Ltd.,
- 6) Infosys Ltd.,

Accordingly the ld AR submitted that the grounds of appeal raised by the Revenue are liable to be rejected.

13. We have gone through the orders passed by ld CIT(A) and grounds taken by the Revenue. We find merit in the submissions made by the ld AR. Accordingly we reject the transfer pricing grounds urged by the Revenue holding that they do not emanate from the order passed by the ld CIT(A).

14. In the result, appeal of the Revenue and the appeal of the assessee are dismissed.

Order pronounced in the open court on **14<sup>th</sup> February, 2020.**

**Sd/-**  
**(N.V Vasudevan)**  
**Vice President**

**Sd/-**  
**(B.R Baskaran)**  
**Accountant Member**

Bangalore,  
Dated, 14<sup>th</sup> **February**, 2020.

/ 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  
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8. Date on which the file goes to the Bench Clerk  
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9. Date on which order goes for Xerox &  
endorsement.....
10. Date on which the file goes to the Head Clerk  
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11. The date on which the file goes to the Assistant  
Registrar for signature on the order  
.....
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dispatch of the Tribunal Order .....
13. Date of Despatch of Order.  
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