

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BENGALURU BENCHES : "A", BENGALURU**

**BEFORE SHRI P.K.KEDIA, ACCOUNTANT MEMBER  
AND  
SMT.BEENA PILLAI, JUDICIAL MEMBER**

**IT(TP)A No.3086(Bang)/2018  
(Assessment year : 2014-15)**

M/s JDA Software Private Ltd.,  
Tower A, Mantri Comercio,  
Next to Sakra World Hospital,  
Outer Ring Road, Bellandur,  
Bangalore-560 103  
Pan No.AAACI7334Q

Appellant

**Vs**

The Deputy Commissioner of Income tax,  
Circle-4(1)(1), BMTC Building, 2<sup>nd</sup> Floor,  
Koramangala,  
Bangalore-560 095

Respondent

**Appellant by : Shri T. Suryanarayana, Advocate  
Revenue by : Ms. Neera Malhotra, CIT-DR**

**Date of hearing : 24-02-2020**

**Date of pronouncement : 26-02-2020**

**ORDER**

**PER PRADIP KUMAR KEDIA: AM**

The captioned appeal has been filed at the instance of the assessee against the final assessment order passed by Assessing officer dated 17-09-2018 in pursuance of the directions issued by the Dispute Resolution Panel (DRP) dated 30-07-2018 relating to assessment year 2014-15.

2. The substantive grounds of appeal raised by the assessee reproduced hereunder:

*The grounds stated hereunder are independent of, and without prejudice to, one another.*

*The Appellant submits as under:*

***1 Assessment and reference to Ld. Transfer Pricing Officer are bad in law***

*a) The final order issued by the Deputy Commissioner of Income-Tax, Circle 4(1)(1) ['DCIT' or 'Ld. AO'], is bad on facts and in law. The learned Ld. AO / learned Deputy Commissioner of Income-Tax (Transfer Pricing) — Circle 1(3)(2)[id. TPO'], erred in law and on facts in making an addition to the total income of the Appellant on account of adjustment to the arm's length price with respect to software development support and related services ('IT Services').*

*b) The Hon'ble Dispute Resolution Panel PDRP'1 grossly erred in law and on facts in not dealing with the objections raised by the Appellant in relation to functionality of companies selected by the TPO in the order issued under Section 92CA of the Act.*

*c) The AO / TPO erred in law and on facts as he failed to establish that the Appellant shifted profits outside India.*

***2 Determination of arm's length price / Erroneous data used by the Ld. TPO***

*a) The Ld. AO / Ld. TPO grossly erred on facts and in law in rejecting the filters and sea process adopted by the Appellant in the Transfer Pricing Study without considering the Appellant's facts. Further, the Ld. AO/ Ld. TPO also erred on facts and in law by conducting a fresh benchmarking analysis in respect of captive IT services provided by the Appellant and wrongly comparing the Appellant's activities with companies operating as full-fledged entrepreneurs without considering the differences in functions performed, assets employed and risks assumed by the Appellant vis-à-vis comparable companies. The Ld. Panel erred in upholding the actions of the Ld. AO/Ld. TPO.*

b) *The Ld. AO / Id. TPO erred in law in applying arbitrary filters as criterion for rejection of companies identified by the Appellant in the Transfer Pricing Study such as (i) companies whose data for financial year ('FY') 2013-14 was not available (ii) companies having related party transactions greater than 25% of the sales (iii) companies with different financial year ending (i.e., other than 31 March 2014) and (iv) companies having persistent losses. The Ld. Panel erred in upholding the actions of the Ld. AO/ Ld. TPO.*

c) *The Ld. AO / Ld. TPO erred in law in applying an arbitrary filter to reject companies having related party transactions greater than 25% of sales. Further, the Hon'ble DRP also erred in upholding the related party transaction filter of 25%, disregarding the Appellant's ground for application of the related party transaction filter at a threshold of 10% or 15% of sales. The Ld. Panel erred in upholding the actions of the Ld. AO/ Ld. TPO.*

d) *The Ld. AO / Ld. TPO / Hon'ble DRP erred on facts and in law in considering Infosys Limited, Larsen & Toubro Infotech Ltd., Mindtree Ltd., Persistent Systems Ltd., R S Software (India) Limited, Cigniti Technologies Limited, SQS India BFSI Limited and Thirdware Solutions Limited as comparable to the captive software development services function rendered by the Appellant. The Ld. Panel erred in upholding the actions of the I.d. AO/ Ld. TPO.*

e) *The Ld. AO/Ld. TPO also erred on facts and in law in arbitrarily rejecting companies with different year ending (i.e. other than 31 March 2014). The Ld. AO / Ld. TPO excluded R Systems International Ltd and Helios and Matheson Information Technology Ltd. selected by the Appellant by the applying the said filter. The Ld. Panel erred in upholding the actions of the Ld. AO/ Ld. TPO.*

f) *The Hon'ble DRP has erroneously directed to exclude Akshay Software Technologies Ltd., Sasken Communication Technologies Ltd., which are functionally comparable company to the Appellant. The Ld. Panel erred in upholding the actions of the Ld. AO/ Ld. TPO.*

g) *The Hon'ble DRP also erred on facts in not accepting all the contentions of the Appellant as regards erroneous markup*

*computation of certain companies identified as comparable by the Ld. TPO. The Ld. Panel erred in upholding the actions of the Ld AO/Ld. TPO.*

*h) The Hon'ble DRP also erred on facts in not accepting determination of arm's length price by the Ld. TPO in relation to the trade receivables. The Ld. Panel erred in upholding the actions of the Ld. AO/ Ld. TPO.*

***Erroneous data used by the Ld. AO / Ld. TPO***

*a) The AO / TPO has erred in law in using data, which was not contemporaneous and which was not available in the public domain at the time of conducting transfer pricing study by the Appellant. The Ld. Panel erred in upholding the actions of the Ld. AO/ Ld. TPO.*

*b) The AO / TPO erred in law and on facts in disregarding the application of multiple-year data while computing the margins of the comparable companies. The Ld. Panel erred in upholding the actions of the Ld. AO/ Ld. TPO.*

***4 Non-allowance of appropriate adjustments to the comparable companies, by the Ld. TPO***

*The Ld. AO/Ld. TPO erred in law and on facts in not allowing appropriate adjustments under Rule 10B to account for, inter alia, differences in (a) accounting practices, (b) marketing expenditure, (c) research and development expenditure, (d) risk profile between the Appellant and the comparable companies. The Ld. Panel erred in upholding the actions of the Ld. AO/ Ld. TPO.*

***5 Variation of 3% from the arithmetic mean***

*The Ld. AO/Ld. TPO erred in law in not granting the benefits of proviso to section 92C(2) of the Income Tax Act, 1961 ('Act') available to the Appellant. The Ld. Panel erred in upholding the actions of the Ld. AO/ Ld. TPO.*

***6 Disallowance under section 40(a)(i) of the Act in AY 2012-13***

*The Hon'ble DRP erred in law in not adjudicating the additional ground of objection filed by the Appellant in relation deduction*

*claimed for payments disallowed under section 40(a)(i) of the Act during AY 2012-13.*

**7 Short grant of credit in respect of advance**

*The Ld. AO has erred in granting short credit in respect of TDS to the extent of INR 12,998.*

**8 Interest under section 234B of the Act**

*The Ld. AO has erred in levying interest under section 234B of the Act of INR 88,732,424.*

**9 Initiation of penalty proceedings**

*The Ld. AO has erred in initiating penalty proceedings under Section 271(1)(c) of the Act.*

**10. Relief**

*a) The Appellant prays that directions be given to grant all such relief arising from the above grounds and also all relief consequential thereto.*

*b) The Appellant craves leave to add to or alter, by deletion, substitution or otherwise, the above grounds of appeal, at any time before or during the hearing of the appeal*

*c) The Appellant further prays that the adjustment in relation to Transfer Pricing matters made by the Ld. AO/Ld. TPO and upheld by the Hon'ble DRP be deleted.*

3. When the matter was called for hearing, the learned AR for the assessee adverted our attention to the application dated 08-01-2020 from the assessee whereby grounds of appeal relating to Transfer Pricing issues pursuant to signing of the Advance Pricing Agreement.(APA) was sought to be withdrawn.

4. Grounds of appeal No.1-5 are thus dismissed as withdrawn.

5. Ground no.6 concerns disallowance under S. 40 (a)(i) of the Act. In the course of hearing, it was pointed out on behalf of the assessee that certain expenses were

incurred towards payments made to a party M/s Hexaware which were covered within the ambit of S. 40(a)(i) of the Act, among other adjustments made by the AO. The amount so paid to Hexaware was thus disallowed by the AO in the assessment year 2012-13 on the ground that the company failed in its obligations to deduct appropriate tax on such payments before making remittance. The issue has been agitated before the appellate authority in the assessment year 2012-13 with regard to disallowance of payment made. However, it is claimed that on behalf of the assessee that it has ultimately deducted withholding tax and remitted applicable taxes on payment of Rs.101,93,575/- made to M/s Hexaware alongwith the interest attributable to delay in remittance of taxes to the government of India during the previous year relevant to assessment year 2014-15. It is thus contended on behalf of the assessee that in view of proviso to sec.40(a)(i) of the Act, the assessee would be entitled to deduction in the year of payment of tax on disallowances carried out in the earlier years. It was thus contended that where the assessee has deducted and paid tax in the previous year relating to assessment year 2014-15, the expenses disallowed in assessment year 2012-13 under the main provisions of sec.40(a)(i) of the Act is required to be allowed in the assessment year 2014-15 on actual payment basis.

6. It was further pointed out that the proceedings before the appropriate authority would be withdrawn for claim of tax in assessment year 2012-13 where the disallowance of payments made to M/s Hexaware carried out in assessment year 2012-13 is reversed in assessment year 2014-15 on payment basis. It was further pointed out that the DRP has erred in denying the benefit under proviso to sec.40(a)(i) as not appealable before it. It is thus contended on behalf of the assessee that the benefit of proviso to sec.40(a)(i) of the Act should be granted to the assessee having regard to the actual payments of withholding taxes during the previous year relevant to assessment year 2014-15 in question.

7. We have carefully considered the submissions made on the point and also perused the case records. We agree with the proposition made on behalf of the assessee on first principles for reversal of disallowance carried out u/s 40(a)(i) of the Act for the assessment year 2012-13 in the assessment year 2014-15 on actual payment of withholding taxes. The proviso to sec.40(a)(i) of the Act enables the AO to allow deduction of expenses in computing the income of the previous year in which withholding tax have been actually paid by the deductor. Hence, having adjudicated the issue of allowability of expenses claimed in the year of deduction in favour of the assessee on first principles, we however, consider it as just and expedient to restore the issue back to the file of the AO for verification of actual payments of TDS at applicable rates on made to M/s Hexaware as noted above. The AO is directed to allow the deduction of expenses on being satisfied that the tax has been deducted and paid during the previous year relating to assessment year 204-15 towards expenses in controversy. It shall be open to the assessee to support its claim before the AO in this regard with proof of payment of taxes in the light of aforesaid observations. The assessee shall also file an undertaking before the AO for withdrawal of claim in AY 2012-13 on its allowability on actual payment basis.

8. In the result, ground no.6 of the assessee is allowed for statistical purposes.

9. Ground no.7 alleging short grant of credit on taxes paid is also remitted back to the file of AO for verification and determination. Ground no.7 is therefore, allowed for statistical purposes.

9. Ground no.8 & 9 are consequential and does not call for any adjudication at our end.

10. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 26-02-2020.

Sd/-  
(BEENA PILLAI)  
JUDICIAL MEMBER  
Place: Bengaluru  
Dated: 26-02-2020

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

\*am

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
5. DR
- 6.Guard File

By Order

Asst.Registrar