

**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 No.573/Bang/2015

Assessment year : 2010-11

M/s. Avnet India Pvt. Ltd., 402, 4 <sup>th</sup> Floor, RMZ Infinity Tower B, #3, Old Madras Road, Bengaluru-560016. <b>PAN : AACCA 0481 G</b>	Vs.	The Deputy Commissioner of Income Tax, Circle-1(1)(1), Bengaluru.
APPELLANT		RESPONDENT
Assessee by	:	Shri. Padam Chand Khincha, CA
Revenue by	:	Shri. Muzaffar Hussain, CIT (DR)(ITAT), Bengaluru
Date of hearing	:	13.02.2020
Date of Pronouncement	:	13 .03.2020

**ORDER**

**PER SHRI A.K.GARODIA, AM**

This appeal is filed by the assessee and the same is directed against the Assessment Order dated 23.01.2015 for Assessment Year 2010-11 under section 143(3) r.w.s. 144C of the Income Tax Act, 1961 as per the directions of DRP.

2. The grounds raised by the assessee in its appeal are as under:

1. *The Orders passed by learned Deputy Commissioner of Income Tax Circle-1(1)(1), Bangalore (hereinafter referred to as 'Assessing Officer'), learned Deputy Commissioner of Income Tax TP-IV, Bangalore (hereinafter referred to as 'Transfer Pricing Officer') and Honorable Dispute Resolution Panel (hereinafter referred to as 'DRP') are bad in law and liable to be quashed.*

2. *The learned Assessing Officer, learned Transfer Pricing Officer and Honorable DRP have erred in*

*a. Making transfer pricing adjustment of Rs. 1,24,17,053/-*

- b. *Passing the order without demonstrating that appellant had motive of tax evasion.*
- c. *Passing the orders without considering all the submissions and/or without appreciating properly the facts and circumstances of the case and the law applicable.*

GROUND ON COMPARABLES AND REJECTION OF TP ANALYSIS OF THE APPELLANT

3. *The learned Assessing Officer, learned Transfer Pricing Officer and Honorable DRP have erred in:*
- *Rejecting the Segmental results presented by the appellant on the basis of Gross Turnover, without appreciating the facts and submissions made before them;*
  - *Treating foreign exchange loss as operating expense in arriving at the Arm's Length margin (for Trading segment)*
  - *Rejecting the comparable companies arrived at by the appellant on unjustifiable grounds and introducing new set of comparable companies and disregarding the objections to these new comparable companies.*

GROUND RELATING TO TP ANALYSIS OF THE TPO:

4. *The learned Assessing Officer, learned Transfer Pricing Officer and Honorable DRP have erred in:*
- a. *Conducting a fresh transfer pricing analysis despite absence of any defects in the transfer pricing analysis submitted by the Appellant for its Trading Segment.*
  - b. *Adopting Segmental results as per audited Financial Statements to arrive at the Arm's Length margin of the appellant.*
  - c. *Applying the turnover filter of Rs. 1 crore to infinity, without appreciating that the appellant is small service provider having a turnover of Rs.129.84 crores.*
  - d. *Considering Foreign exchange loss to be normal expenditure & as operating expenses to arrive at the Arm's Length margin of the appellant.*

- e. *Adopting companies as comparables even though they are not comparable in respect of functions performed, risks assumed, assets utilized, size, etc.;*
- f. *Not making proper adjustment for enterprise level and transactional level differences between the appellant and the comparable companies, including the differences in functions performed, assets employed, risks undertaken and Working Capital employed;*
- g. *Not making any adjustments for qualitative and quantitative difference between the business of the assessee and those of the comparable companies;*
- h. *Not recognizing that the assessee was insulated from risks, as against comparables, which assume these risks and therefore have to be credited with a risk premium on this account; and*

*The appellant submits that each of the above grounds/ sub-grounds are independent and without prejudice to one another.*

*The appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing, of the appeal, so as to enable the Income-tax Appellate Tribunal to decide the appeal according to law.*

3. In the course of hearing, learned AR of the assessee submitted a copy of the Tribunal order in assessee's own case for A. Y. 2012 - 13 in IT(TP)A No.744/Bang/2017 dated 13.12.2019 and also submitted a copy of another Tribunal order in assessee's own case for Assessment Year 2011-12 in IT(TP)A Nos.196 and 215/Bang/2016 dated 29.11.2017. He submitted that in the Tribunal order for Assessment Year 2012-13, the Tribunal has held that RPM is the most appropriate method (MAM) and after holding so, it was further held that comparability analysis has to be carried out in accordance with Rule 10B(4) of the Income Tax Act, 1961 by using the relevant data and the comparables so selected is to be analyzed by determining the gross margin on resale products and after making these observations, the matter was restored back to the file of AO/TPO to carry out fresh comparability analysis which includes companies in trading segment. He submitted that in the present year also, the issue should be restored back to AO/TPO with similar directions.

4. As against this, the learned DR of the Revenue supported the order of AO and DRP. He also submitted that issue regarding MAM should also be left open if the matter is being restored back to the file of AO/TPO.

5. We have considered the rival submissions. First of all, we reproduce para No.4.6.1 of the Tribunal order in the assessee's own case for Assessment Year 2011-12. The same is as under:

*4.6.1 We have heard the rival contentions, perused and carefully considered the material on record. The assessee is engaged in trading activity. It is settled position by various judicial precedents that in case there is no value addition by the assessee, then RPM is the MAM to compute the ALP. We also find that in the case on hand, RPM has been accepted as the MAM by the DRP for the succeeding Assessment Year 2012-13. When the factual position remains the same, following the principles of consistency, RPM also ought to be adopted as the MAM for the year under consideration also, and we hold and direct accordingly. In this view of the matter, we set aside the orders of the authorities below on TP issues and restore these matters to the file of the TPO who is further directed to carry out a fresh comparability analysis for selecting comparable companies under RPM. Needless to add, the assessee shall be afforded adequate opportunity of being heard and to file details / submissions in this regard which shall be duly considered. Consequently, the assessee's grounds are allowed for statistical purposes.*

6. This Tribunal order is dated 29.11.2017 and another Tribunal order in assessee's own case for Assessment Year 2012-13 is dated 13.12.2019 and in that year also, the Tribunal held that RPM is MAM. No difference in facts could be pointed out by learned DR of the Revenue in the present year and in the these later two years i.e., 2011-12 and

2012-13 and hence, on this aspect of the matter also, we find no reason to take a different view or to leave this issue open. Hence, in the present year also, we hold that in the facts of the present case, RPM is MAM because we find that in Assessment Year 2012-13, even DRP held that RPM is MAM. Since the entire TP analysis was done by the AO/TPO on this basis that TNMM is MAM and when MAM itself is changed from TNMM to RPM, the whole TP analysis is to be redone by adopting RPM as MAM in place of TNMM as MAM and hence, as in later years, in the present year also, we restore the entire matter to the file of TPO and he is directed to carry out a fresh comparability analysis for selecting comparable companies under RPM and it is needless to say that the assessee shall be afforded adequate opportunity of being heard and to file details in this regard which shall be duly considered.

7. In the result, assessee's appeal is allowed for statistical purposes.

*Pronounced in the open court on the date mentioned on the caption page.*

**(BEENA PILLAI)**  
**Judicial Member**

**(A.K. GARODIA)**  
**Accountant Member**

Bangalore,

Dated: March, 2020.

/NS/\*

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|---------------|-------------------------|---------------|
| 1. Appellants | 2. Respondent           | 3. CIT        |
| 4. CIT(A)     | 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.