

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH: BANGALORE**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

IT(TP)A No. 349/Bang/2019
Assessment Year: 2010-11

M/s. LSI India Research & Development Private Limited (in the case of erstwhile Broadcom Communications Technologies Private Limited, since merged) S1, Wipro Electronic City Special Economic Zone Doddathogur Village Begur Hobli Electronic City, Bangalore-560 100 PAN NO : AACCB8136B	Vs.	Deputy Commissioner of Income-tax, Circle 4(1)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Sharath Rao, A.R.
Respondent by	:	Shri Muzaffar Hussain, D.R.

Date of Hearing	:	12.03.2020
Date of Pronouncement	:	17.03.2020

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The appeal of the assessee is directed against the assessment order dated 28.12.2018 passed by the assessing officer for

assessment year 2010-11 in pursuance of directions given by Ld Dispute Resolution Panel (DRP).

2. This is second round of proceedings. In the first round, the Tribunal had restored certain issues to the DRP and accordingly, the impugned assessment order came to be passed.

3. Though the assessee has raised several grounds, the Ld A.R pressed Ground No.4 only before us and in this regard, he has also made necessary endorsement in the Grounds of Appeal. In ground no.4, the assessee is seeking exclusion of four comparable companies.

4. The Ld A.R submitted that the assessee is providing captive Software Development services to its AE. The turnover of the assessee for the year under consideration was Rs.31.09 crores. The assessee has adopted TNMM method as most appropriate method and the Profit Level Indicator (PLI) adopted by the assessee was Operating Profit/Operating Cost (OP/OC). The PLI of the assessee was 11.86%. In the present appeal, the assessee seeks exclusion of following comparable companies:-

- (a) Larsen & Toubro Infotech Ltd
- (b) Persistent Systems Ltd
- (c) Infosys Ltd
- (d) ICRA Techno Analytics Ltd.

5. The Ld A.R submitted that the three companies, viz., Larsen & Toubro Infotech Ltd, Persistent Systems Ltd and Infosys Ltd are required to be excluded on Turnover filter, as their turnover is more than ten times of the assessee's turnover. In support of this proposition, he placed his reliance on the decision rendered by the co-ordinate bench of Tribunal in the case of KBACE Technologies P Ltd (ITA No.3198/Bang/2018 dated 29-01-2020).

6. In respect of ICRA Techno Analytics Ltd, the Ld A.R submitted that the Ld DRP has excluded this company in the first round of proceedings. Accordingly he submitted that the Ld DRP should not have taken different view in the second round. He submitted that the DRP has taken the view that this company has received substantial income from provision of services and the revenue from sales is negligible. However, the fact remains that this company is providing multiple types of services which comprises of software development, software consultancy, engineering services, web development, web hosting etc., and no segmental information is available in respect of each of the segment. Hence the co-ordinate bench has held, in the case of DCIT vs. Electronics for Imaging India (P) Ltd (2016)(70 taxmann.com 299)(Bang.) that this company as not comparable for a captive software development service provider.

7. On the contrary, the Ld D.R submitted that Turnover filter cannot be a relevant criteria to reject a company as not comparable and it was so held by the co-ordinate bench in the case of Societe Generale Global Solution Centre P Ltd vs. DCIT (2012)(53 SOT 159)(20 taxmann.com 715). Accordingly he submitted that the turnover filter should not be applied.

8. We heard rival contentions and perused the record. With regard to the application of turnover filter, the Ld A.R placed his reliance on the decision rendered by the co-ordinate bench in the case of KBACE Technologies Pvt Ltd (supra), wherein the co-ordinate bench has held as under:-

“7. As far as inclusion of 5 companies listed above which are part of the final comparable companies chosen by the TPO are

concerned, we find that the turnover of these companies is 10 times greater than the turnover ITA No.3189/Bang/2018 of the assessee which is only a sum of Rs.18,79,48,280. The turnover of Infosys Ltd. is Rs.44,431 crores, that of L&T Infotech Ltd. is Rs.4,644 crores, Mindtree Ltd. 3032 crores, Persistent Systems Ltd. 1084 crores & Thirdware Solutions Ltd. 207 crores. It has been held by the Hon'ble Karnataka High Court in the case of [Acusys Software \(I\) P. Ltd. v. ITO](#) in ITA No.223/2017, judgment dated 14.8.2018 that if the turnover of the comparable company is less or more than 10 times the turnover of assessee, then it cannot be considered as a comparable company. In the light of the aforesaid decision of the Hon'ble High Court, we are of the view that the aforesaid 5 companies should be excluded from the list of comparable companies. We hold and direct accordingly.”

The Ld D.R has placed his reliance on the decision rendered by another co-ordinate bench in the case of Societe Generale Global Solution Centre P Ltd (supra), wherein another co-ordinate bench had expressed the view that the turnover filter is not to be applied in respect of companies providing services. However, in the case of KBACE Technologies P Ltd, the co-ordinate bench has followed the binding decision rendered by Hon'ble Karnataka High Court in the case of Acusys Software (I) P Ltd, (supra) wherein it was held that if the turnover of the comparable company is less or more than 10 times the turnover of assessee, then the same cannot be considered as a comparable company. In the instant case, the turnover of the companies sought to be excluded is given below:-

- (a) Larsen & Toubro Infotech Ltd - 1,777 crores
- (b) Persistent Systems Ltd - 504 crores
- (c) Infosys Ltd - 21,140 crores.

We have noticed earlier that the turnover of the assessee herein was Rs.31.09 crores. Since the turnover of the above said three companies is more than ten times of the assessee's turnover, following the decision of Hon'ble Karnataka High Court referred above, we direct the AO/TPO to exclude the above said three companies.

9. With regard to the ICRA Techno Analytics Ltd., we notice that the Ld DRP had excluded the same during the first round of proceedings. We further notice that the co-ordinate bench has excluded this company in the case of Electronics for Imaging India P Ltd (supra) with the following observations:-

“13. We shall deal with each comparable which has been disputed by the Revenue one by one as under:-

(1) *ICRA Techno Analytics Ltd. (seg)*

14. At the outset, we note that apart from having the related party revenue at 20.94% of the total revenue, this company was also found to be functionally not comparable with software development services segment of the assessee. The DRP has given its finding at pages 13 to 14 as under:—

"Having heard the contention, on perusal of the annual report, it is noticed by us that the segmental information is available for two segments i.e., services and sales. However, it is evident from the annual report that the service segment comprises of software development, software consultancy, engineering services, web development, web hosting, etc. for which no segmental information is available and therefore, the objection of the assessee is found acceptable. Accordingly, Assessing Officer is directed to exclude the above company from the comparables."

15. We find that the facts recorded by the DRP in respect of business activity of this company are not in dispute. Therefore, when 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 business process outsourcing, then the same cannot be regarded as functionally comparable with that of the assessee who is rendering software development services to its AE.

16. In view of the above facts, we do not find any error or illegality in the findings of the DRP that this company is functionally not comparable with that of a pure software development service provider.”

Accordingly, following the decision rendered by the co-ordinate bench, we direct exclusion of ICRA Techno Analytics Ltd.

10. In the result, the appeal of the assessee is partly allowed.
Order pronounced in the open court on 17.03.2020.

Sd/-
(Beena Pillai)
Judicial Member

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

Bangalore,
Dated 17th March, 2020.
VG/SPS

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.