

आयकर अपीलीय अधिकरण
IN THE INCOME TAX APPELLATE TRIBUNAL

मुंबई पीठ "जे "
MUMBAI BENCH "J", MUMBAI
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आअसं. 1029/मुं/2015 (नि. व.2010-11)
ITA NO.1029/MUM/2015(A.Y.2010-11)

Victaulic India Private Limited,
Unit 202/205, Sagar Tech Plaza,
Andheri Kurla Road, Saki Naka,
Andheri (East), Mumbai 400 072
PAN:AACCV4716D

..... अपीलार्थी /Appellant

बनाम Vs.

DCIT,CIR.3(3),
Room No.609, 6th Floor,
Aaykar Bhavan, M.K.Road,
MUMBAI -400 020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Kirit Dedhia

प्रतिवादी द्वारा/Respondent by : Shri Uodal Raj Singh

सुनवाई की तिथि/ Date of hearing : 13/02/2020

घोषणा की तिथि/ Date of pronouncement : 20/03/2020

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-15, Mumbai (in short 'the CIT(A)') dated 05/11/2014 for assessment year 2010-11.

2. Shri Kirit Dedhia, appearing on behalf of the assessee narrating facts of the case submitted that the assessee company is engaged in providing Computer Aided Draft and Design services (CAD Services) and business support services to its overseas Associated Enterprises i.e Victaulic, USA and Euro- Victaulic BVBA, Belgium. The assessee is a captive service provider. During the period relevant to assessment year under appeal, the assessee entered into following international transactions.

Sr.No.	Name of the Associated Enterprises	Nature of Services	Value of transaction in India Rupees (INR)
1.	Victaulic, USA	CAD Services	2,98,76,689
2.	Euro-Victaulic BVBA, Belgium	CAD Services	84,71,979
3.	Euro-Victaulic BVBA, Belgium	Business support services	16,,92,594
		Total	4,00,41,262

The assessee applied TNNM as most appropriate method to bench mark its international transactions. The same was accepted by the Assessing Officer. The assessee selected ten companies as comparables with average arithmetic mean of 13.62%. The Assessing Officer rejected all the comparable companies selected by the assessee and introduced fresh set of nine comparables with Arithmetic Mean of 28.582%. The assessee objected to the comparables selected by the Assessing Officer as majority of the comparables were functionally different. The Id. Authorized Representative for the assessee

submitted that neither the Assessing Officer nor the CIT(A) considered the objections raised by the assessee qua selection of fresh comparables. The Assessing Officer made adjustment of Rs.23,91,635/- in respect of international transactions relating to provision of CAD Services. The CIT(A) upheld the same. The Id. Authorized Representative for the assessee referred to the submissions filed by the assessee before the Assessing Officer at pages 98 to 104 of the paper book against selection of comparables. The Id. Authorized Representative for the assessee pointed that same set of objections were also filed before the CIT(A). The CIT(A) in the impugned order has not dealt with the objections of the assessee and has upheld the assessment order in a mechanical manner.

3. On the other hand, Uodal Raj Singh, representing the Department vehemently defended the impugned order. The Id. Departmental Representative submitted that the objections filed by the assessee against selection of comparables were considered by the CIT(A) and the objections of the assessee were rejected. The Id. Departmental Representative submitted that order of CIT(A) is fair and reasonable and thus should be upheld.

4. We have heard the submissions made by rival sides and have perused the orders of authorities below. The primary grouse of the assessee in the present appeal is against selection of comparables. The assessee in his TP study report selected ten comparables. During assessment proceedings the Assessing Officer rejected all the comparables selected by the assessee and introduced final set of nine comparables as under:-

S.No.	Name of the Company	NCP 2009-10(%)
1.	Accentia Technologies Ltd.	43.62
2.	Acro Petal Technologies Ltd.	27.52
3.	Aditya Birla Minacs Worldwide Ltd.	3.85
4.	Coral Hub Ltd	40.11
5.	Cosmic Global Ltd	16.59
6.	eClerx Services Limited	42.14
7.	Informed Technologies India Ltd	24.96
8.	Infosys B P O Ltd.	31.60
9.	Mold-tek Technologies Ltd.	26.85
	Arithmetic Mean	28.58222

5. Ostensibly, the assessee objected to inclusion of the above comparables vide his submissions dated 11/02/2013 (Page 98 of the Paper Book). An examination of the said submissions by the assessee reveal that the assessee had filed detailed objections giving reasons for excluding the comparables selected by the Assessing Officer. Majority of the comparables are being objected to by the assessee being functionally different. A perusal of the impugned order shows that the CIT(A) has merely extracted the table from the assessment order dealing with selection of comparables and has not applied his mind as an appellate authority independently dealing with objections of the assessee against inclusion of comparables. The FIRST APPELLATE AUTHORITY ought to have considered objections of the assessee on comparables selected by Assessing Officer and thereafter pass speaking order accepting/rejecting the same, as the case may be. Taking into consideration, entirety of facts we deem it appropriate to restore this appeal back to the file of CIT(A) for passing a speaking order after considering the objections of

assessee against selection of comparables after affording reasonable opportunity of hearing to the assessee, in accordance with law.

6. In the result, appeal by the assessee is allowed for statistical purpose.

Order pronounced in the open court on Friday the 20th day of March, 2020.

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 20/03/2020

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)

ITAT, Mumbai