

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES : "B", BANGALORE**

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

**IT(TP)TA No.842(Bang)/2016 &  
IT(TP)A No.2020(Bang)/2017  
(Assessment Years : 2011-12 & 2013-14)**

M/s Trident Microsystems India Pvt.Ltd.,  
No.2924, Third Floor, 14<sup>th</sup> Cross,  
K.R.Road, BSK II Stage  
Bangalore-560 070  
PAN No.AADCN1384L

Appellant

**Vs**

The Deputy Commissioner of Income Tax,  
Circle-7(1)(1),  
Bangalore

Respondent

**Appellant by : Shri Suresh Muthukrishnan, CA  
Revenue by : Shri Muzaffar Hussain, CIT-DR**

**Date of hearing : 15-06-2020  
Date of pronouncement : 17-06-2020**

**ORDER**

**PER B.R.BASKARAN, AM:**

Both these appeals filed by the assessee are directed against the assessment orders passed by the AO u/s 143(3) r.w.s 144C(13) of the Act, pursuant to the directions issued by the ld.

Dispute Resolution Panel (DRP). Both these appeals were heard together and hence they are disposed of by this common order, for the sake of convenience.

2. The assessee is engaged in software research and development service and also provides sales, and market support services.

3. We shall first take up the appeal filed by the assessee for the assessment year 2011-12. The grounds of appeal urged by the assessee relates to TP adjustment made by the TPO/AO both in Software development segment and Marketing support services segment. In its TP study the assessee adopted TNMM method for software development segment. The turnover of the assessee in Software R & D segment was Rs.86.44 crores. Rejecting the TP study of the assessee, the TPO selected following nine comparable companies.

Sl. No.	Company Particulars
1	FCS Software Solutions Ltd.
2	ICRA techno analytics Ltd.
3	Infosys Ltd.
4	Larsen & Toubro Infotech Ltd.
5	Mindtree Ltd.
6	Persistent Systems & Solutions Ltd.
7	Persistent Systems Ltd.
8	Tata Elxsi Ltd.(Seg.)
9	Sasken Communicatins Technologies Ltd.

The average margin of the comparable companies worked out to 22.58% and after giving credit of working capital adjustment of 1.59% and the adjusted margin was worked out by the TPO at

20.98%. Accordingly, he proposed TP adjustment of Rs.976.85 lakhs in software development segment.

4. In the case of Marketing support services, The TPO selected three comparables and arrived at a mean margin of 18.25%. Accordingly the TPO proposed TP adjustment of Rs.13.90 lakhs in marketing support services segment.

5. In respect of TP adjustment made in Software R & D segment, the ld. DRP, following the decision rendered by the Bangalore Bench of the ITAT in the assessee's own case in IT(TP)A No.192(Bang)/2015 dated 26-06-2015 held that the turnover filter should be applied in respect of the comparable companies. Since the assessee company's turnover was Rs.86.44 crores, the Ld DRP held that the assessee company would fall under the category of "small sized firm". Accordingly it held that the companies having turnover of lower than 1.00 Crore and higher than 200 Crores should be excluded from comparability analysis. In respect of T.P adjustment made in respect of Marketing support services segment, the Ld DRP confirmed the order passed by TPO.

6. However, the AO while passing the final assessment order did not exclude the companies that would be hit by turnover filter referred above. The AO was of the view that the ld. DRP did not give any relief to the assessee. Accordingly, the AO sustained the addition of Rs.990 lakhs, i.e., aggregate amount of TP adjustment made in respect of both the segments.

7. The ld. AR submitted that the AO did not apply turnover filter while passing the final assessment order. He submitted that the companies which are having turnover of more than 200 Crores should be excluded as per the direction given by Ld DRP. He submitted that the following seven companies are liable to be excluded, since their turnover is more than 200 Crores.

Sl. No.	Company Particulars	Turnover
1	FCS Software Solutions Ltd.	379.68
2	Infosys Ltd.	25385.00
3	Larsen & Toubro Infotech Ltd.	2331.81
4	Mindtree Ltd.	878.30
5	Persistent Systems Ltd.	610.13
6	Tata Elxsi Ltd.(Seg)	358.20
7	Sasken Communications Technologi Ltd.	394.20

He submitted that, after excluding seven companies, there would remain only two comparable companies, viz., M/s ICRA Techno analytics Ltd. and M/s Persistent Systems & Solutions Ltd. He submitted that M/s ICRA Techno analytics Ltd has been directed to be excluded by the Co-ordinate Bench of the Tribunal in assessee's own case for the assessment year 2010-11 in IT(TP)A No.592(Bang)/2015. The company M/s Persistent Systems & Solutions Ltd was directed to be excluded by the co-ordinate Bench in the case of M/s Mann & Hummel Filter (P) Ltd Vs DCIT (2020) 113 Taxmann.com 76. Accordingly, the ld. AR submitted that all the nine companies selected by the TPO are liable to be excluded. Accordingly, he prayed that the TP study conducted by the assessee should be directed to be accepted by the AO.

8. The ld. DR, primarily supported the order passed by the AO. He submitted that the TP study of the assessee has already been rejected by the TPO and also by the ld. DRP. Hence the assessee cannot contend that the TP study should be accepted. The Ld DR further submitted that, if all the companies selected by the TPO are liable to be excluded as contended by the ld. AR, then it shall lead to a position of stalemate, since both T.P study of assessee and the TPO's order do not survive. Accordingly he submitted that, if the contentions of the assessee with respect to the comparables selected by TPO are accepted, then the entire matter should be restored to the file of the TPO for selection of fresh set of comparable companies for determining ALP of international transactions.

9. We have heard the rival contentions and perused the records. The TPO had selected nine comparable companies and all the nine companies are liable to be excluded applying turnover filter and also following orders passed by the co-ordinate benches. Under this situation, we are of the view that there is merit in the contentions of ld. DR. Undisputedly, the TP study conducted by the assessee has been rejected by the TPO as well as by the ld. DRP. All the companies selected by the TPO are liable to be excluded on the basis of turnover filter applied by the ld. DRP and the decision rendered by the Co-ordinate Benches referred above. Under these circumstances, since no comparable company would remain for determining the Arms Length Price of international transaction, we are of

the view the entire issue should be restored to the file of the AO/TPO for undertaking the exercise afresh by selecting fresh set of comparable companies in respect of software R & D segment. Accordingly we set aside the order passed by the AO/TPO on this issue and restore the same to his file for examining the issue afresh in the light of discussions made supra.

10. The net issue relates to TP adjustment in respect of market support service. The Ld A.R submitted that the TPO did not provide sufficient opportunity to the assessee to object to the comparable companies selected by him. Accordingly, we are of the view that this issue also needs to be set aside to the file of the AO/TPO. Accordingly, we set aside the order passed by AO on this issue and restore the same to the file of the AO/TPO.

11. We shall now take up the appeal filed by the assessee for the assessment year 2013-14. At the time of hearing, the ld. AR pressed ground no.4 which reads as under;

*“ Without prejudice to the above, the learned TPO while adopting the TNMM Method has erred in ignoring the operating margin as submitted by the appellant and computing the ALP on the entire operating costs incurred by the appellant failing to appreciate that the arm’s length price ought to be computed only for the international transactions*

*and not on the basis of costs incurred by the appellant.*

Accordingly, the remaining grounds are dismissed as not pressed.

12. The ld. AR submitted that the assessee has stopped operations during the year under consideration in the month of May. Hence, all its revenue generated during the year under consideration pertains to the first two months of the year, i.e., April and May months only. Accordingly, the assessee computed its operating margins by considering the operating cost of two months only, since it relates to the revenue generated in first two months of the year, even though the assessee was incurring expenses throughout the year. The TPO, however, has computed the operating margins by considering the expenditure of the whole year. The ld. AR submitted that, for the purpose of computing the operating margins of international transactions, the TPO should have adopted related operating costs only. The ld. AR submitted that the assessee has furnished month wise P&L account for the financial year 2012-13 and the operating margins arrived at by the assessee for first two months of the year was at arm's length, even considering the comparable companies selected by TPO. Accordingly, ld. AR submitted that, if the AO/TPO is directed to compute operating margin of first two months only, there is no requirement of adjudicating other grounds urged in respect of comparables.

13. We heard the ld. DR and perused the record. The PLI adopted by the assessee is operating profit by operating cost. The operating revenue has been generated by the assessee during the first two months namely April & May, 2004 only. So we find merit in the contentions of the assessee that the operating cost relating to the operating revenue generated by the assessee should alone be considered for computing operating margin for the purpose of determining Arm's length price of the international transactions. Considering the expenses incurred by the assessee in subsequent months, where no revenue was generated, would result in distorted picture.

14. Hence there is merit in the contentions of ld. AR that the expenditure incurred during the first two months should alone be considered for arriving at the profit, in view of the fact that the assessee has stopped the operations in the month of May. However, if it is found that any of the expenditure relating to the first two months has been accounted for by the assessee in any of the subsequent months, then the said expenditure should also be taken into account for determining the operating profit of the first two months.

15. Accordingly, for the reasons discussed above, we hold that the TPO was not justified in considering the operating results of the whole year for computing operating margins of the assessee. We notice that the workings furnished by the assessee for the first two months of the year have not been examined by the

AO/TPO and hence the same requires examination in the light of discussions made supra. Accordingly, we restore this issue to the file of the AO/TPO for determining the operating margins of first two months by considering the operating revenue and operating cost of the first two months only in accordance with the discussions made supra.

16. In the result, both the appeals of the assessee are treated as allowed for statistical purposes.

Order pronounced on 17-06-2020.

**Sd/-**  
**(N.V.VASUDEVAN)**  
**VICE-PRESIDENT**

**Sd/-**  
**(B.R.BASKARAN)**  
**ACCOUNTANT MEMBER**

Bangalore  
Dated : 17-06-2020  
\*am

Copy to :

1. The Assessee
2. The Revenue
3. The CIT concerned.
4. The CIT(A) concerned.
5. DR
6. GF

By order  
Asst. Registrar