

आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, PUNE

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.535/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Asstt. Commissioner of Income Tax,  
Circle – 9, Pune

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. Faurecia Interior Systems  
India Pvt. Ltd.,  
Plot No. T-187, BG Block,  
Pimpri Industrial Area,  
Bhosari, Pune – 411026

PAN : AACCT0275F

.....प्रत्यर्थी / Respondent

प्रत्याक्षेप सं. / CO No.21/PUN/2018

निर्धारण वर्ष / Assessment Year : 2011-12

M/s. Faurecia Interior Systems  
India Pvt. Ltd.,  
Plot No. T-187, BG Block,  
Pimpri Industrial Area,  
Bhosari, Pune – 411026

PAN : AACCT0275F

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Asstt. Commissioner of Income Tax,  
Circle – 9, Pune

.....प्रत्यर्थी / Respondent

Assessee by : S/Shri Ajit Kumar Jain /  
Siddhesh Chaugule  
Revenue by : Shri T. Vijaya Bhaskar Reddy

सुनवाई की तारीख / Date of Hearing : 13-08-2020

घोषणा की तारीख / Date of Pronouncement : 18-08-2020

**आदेश / ORDER****PER S.S. VISWANETHRA RAVI, JM :**

The above said appeal and Cross Objection by the Revenue and assessee against the final assessment order dated 29-01-2016 passed by the AO (ACIT, Circle-9, Pune) u/s. 143(3) r.w.s. 144C(13) of the Act for assessment year 2011-12.

2. Since, the issues raised by both the parties are based on identical facts and with the consent of both the parties, we proceed to hear the appeal and Cross Objection together and to pass a consolidated order for the sake of convenience.

3. First, we shall take the appeal of Revenue in ITA No. 535/PUN/2016.

4. Ground Nos. 1 and 2 raised by the Revenue against direction of Dispute Resolution Panel (DRP) for inclusion of Coral Hub Limited as comparable in design engineering service segments of assessee.

5. The facts of the case are that the assessee entered into international transactions with its AE for Rs.58,58,86,146/- for design engineering services and adopted the TNMM as most appropriate method. The assessee in its TP study for the above said transaction selected 15 companies as comparables and shown OP/OC at 17.15%. The AO rejected Coral Hub Limited by stating it is not functionally comparable. The DRP in its order at page 23 vide para 7.31 held the functions of Coral Hub Limited and the assessee are similar and directed the AO to treat the same in the final set of comparables.

6. Before us, the ld. DR drew our attention to the Seventeenth Annual Report of Coral Hub Limited particularly at page 1822 of paper book and submitted the Coral Hub Limited digitization activity took a dip due to very unstable condition in Europe where most of the clients are based. The financial crisis over the past couple of years which is affecting Europe has weakened the financial strength of the publishers and cut in the budget by European Government especially for digitization of records has really put into a quagmire and look for alternative business models in the digitization field. At the same time converting and shifting from print media to digital media also going slow as publishers are very cautious about the digital readable hardware development in terms of technology and easy availability at affordable prices. The publishers are quiet happy with slow development and are doing nothing to speed it up. The trend to digitize back titles is going slower than expected last year. The Coral Hub Limited finds this as another opportunity to develop alternative business model especially in the space for content development for companies which desire to start app stores with hardware manufactures. The ld. DR argued that activities of Coral Hub Limited are lower does not require skills and it cannot be comparable be that of assessee and prayed to treat the same as non-comparable.

7. We find the DRP examined the issue of comparability of activities be that of Coral Hub Limited and found the same as comparable. The Contention of ld. AR is that the Coral Hub Limited is engaged in providing IT enabled services and drew our attention to the annual report of Coral Hub Limited for revenue recognition that the IT enabled services revenue is recognized on the basis of chargeable time or achievement of prescribed milestones for billing as provided in the contracts or as and when the

services are rendered. The company is primarily engaged in providing IT enabled services and the production and sale of such services cannot be expressed in any generic units. Further, he submitted that the TPO accepted Coral Hub Limited as comparable to the assessee for A.Y. 2010-11. We note that the DRP reproduced the comparable companies for A.Y. 2010-11 in its order at page 15 which clearly shows the Coral Hub Limited was taken as comparable. Further, we find in the annual report the entire income of Coral Hub Limited has been shown as income from IT enabled services. Therefore, we find no infirmity in the order of AO/DRP in accepting the Coral Hub Limited as comparable to the activities of assessee in the final list of comparables. Thus, ground Nos. 1 and 2 raised by the Revenue are dismissed.

8. Ground Nos. 3 and 4 raised by the Revenue against direction of DRP for inclusion of Cosmic Global Limited as comparable in design engineering service segments of assessee.

9. We find that the assessee contended that the Cosmic Global Limited is engaged in providing translation services and also engaged in providing other IT enabled services including BPO services. Further, the growth by tapping the IT enabled translation services and earned the optimum profit and is trying to expand the customer base by their specialization in translation services and also pursuing other IT enabled services such as BPO services and tries to establish a brand in the same field. Further, it was contended by the Id. AR that for A.Y. 2010-11 the same has been accepted by the TPO as comparable and for the present year the TPO by placing reliance in the case of Vodafone India Services Vs. DCIT [TS 95 ITAT 2013 (Mum) TP] which held that Cosmic Global Limited was mainly

engaged in translation business in addition to medical transcription, accounts BPO and consultancy and it is not in the nature of IT enabled services and thereby rejected Cosmic Global Limited as not functionally comparable to the assessee. Before the TPO, the assessee contended that by taking reference to CTBT Circular No. 890(E) dated 26-09-2000 and submitted that the CBDT explained the medical transcription is IT enabled services. The DRP considering the same in its order at page 23 vide para 7.34 held Cosmic Global Limited is functionally comparable with the assessee and directed the AO/TPO to include the same in the final set of comparables. We find the DRP reproduced the Circular issued by the CBDT which clearly shows that the CBDT explained 15 categories which fall under the IT enabled services products or services amongst which medical transcription is treated as IT enabled services. Therefore, we find no infirmity in the order of AO/DRP in inclusion of Cosmic Global Limited in the final set of comparables. Thus, ground Nos. 3 and 4 raised by the Revenue are dismissed.

10. Ground Nos. 5 and 6 raised by the Revenue are against the direction given by DRP to include Microgenetics Systems Limited in the final set of comparables.

11. The TPO held Microgenetics Systems Limited is not functionally comparable to assessee and rejected the same to be in the final set of comparables. It was contended the Microgenetics Systems Limited is engaged in the BPO services in health care sector and production expenses includes medical transcription charges. Further, it was submitted the plant and machinery as appearing in the annual report include computer software and hardware and submitted detailed note of assets owned by

Microgenetics Systems Limited to show assets relating to computer hardware and software serve as an aid in medical transcription services rendered by the company. The DRP examined break up of production expenses which forms Schedule F to profit and loss accounts and held the observation of TPO is factually incorrect that comprises mainly of salaries and medical transcription charges. Further, held that Microgenetics Systems Limited does not possess required computer hardware and software in rendering medical transcription services is incorrect and directed the AO/TPO to include Microgenetics Systems Limited in the final set of comparables.

12. The ld. DR submitted that the assessee company has shown income under the head medical transcription charges, whereas expenses are shown under the head production expenses. Though, the assessee is claiming income from medical transcription charges and no computer software or hardware is reflected in the details of fixed assets. He argued that without computer software and hardware the medical transcription cannot be undertaken and the details given by the assessee is incomplete and supported the discussion made by the TPO in its order at page 16. For medical transcription, training will be given by the Doctors and they are not at all engaged in medical transcription activity and the services of assessee are requires highly skilled personnel because it is engaged in designing. We note that the DRP having found the medical transcription services which represents IT enabled services treated the activities of Microgenetics Systems Limited is functionally similar to the assessee and directed the TPO to include Microgenetics Systems Limited as comparable in the final list of comparables. Thus, we find no infirmity in the order of

DRP/AO. Accordingly, ground Nos. 5 and 6 raised by the Revenue are dismissed.

13. Ground No. 7 is general in nature, hence, requires no adjudication.

14. In the result, the appeal of Revenue is dismissed.

**CO No. 21/PUN/2018**

15. Ground Nos. 1 and 2 raised by the assessee are general in nature, hence, require no adjudication.

16. In respect of Ground Nos. 3, 5, 8, 9, 10 and 11, the ld. AR submits that the assessee is not interested to prosecute the same and prayed to dismiss the same as not pressed. Accordingly, the Ground Nos. 3, 5, 8, 9, 10 and 11 raised by the assessee are dismissed as not pressed.

17. Ground No. 4 raised by the assessee challenging the action of AO/TPO/DRP in not rejecting the Eclerx Services Limited as comparable.

18. Heard both the parties and perused the material available on record. We note that the assessee is seeking rejection of Eclerx Services Limited. We note that the TPO in its order at pages 631 to 635 and the DRP at pages 45 to 49 of the paper book has included Eclerx Services Limited on the basis of that the assessee is a KPO as it is engaged into engineering design services and Eclerx Services Limited is also a KPO. The main contention of ld. AR is that Eclerx Services Limited is functionally not comparable to the assessee. We note that the Eclerx Services Limited is engaged in providing data analytics and processed outsourcing services

which is evident from the Director's Report and Management Discussion and Analysis sections of the Annual report at page 822 of the paper book.

19. We note that the Eclerx renders services to its clients with two market-focused units Financial Services (including trade processing support, reference data maintenance, contract risk review, marine and exposure management, expense management, accounting and finance and consulting service) and Sales and Marketing Support. Including Online Operations & Web Analytic, CRM & Business Intelligence, Data Management & Reporting, Competitor Benchmarking & Pricing, Quality & Compliance and business process consulting at pages 794 and 796 of the paper book. In the case of assessee is engaged in providing engineering design services i.e. CAD/CAE Modelling for group entities engaged in Auto-ancillary operation at page 661 of the paper book and it is clear that Eclerx is functionally dissimilar to the assessee and in our opinion, the Eclerx shall be excluded from comparable list.

20. Further, the ld. AR submitted that the Segmental data is not available and that Eclerx is evidently not comparable to the assessee and operates in altogether different business catering to a distinct industry, even if some part of the its functions were to be considered comparable to the assessee, it is noteworthy that Eclerx operates under single primary segment (i.e. Data Analytics and process outsourcing services) and did not report any segmental data and argued that Eclerx cannot be considered as a comparable to the assessee.

21. We find this Tribunal in the case of MACOM Technology Solutions (India) Private Limited Vs. DCIT in ITA No. 2831/PUN/2016 for A.Y. 2012-

13 vide order dated 09-05-2019 rejected Eclerx from comparable set based on functional dissimilarity. We find the present case is squarely similar to MACOM Technology Solutions (India) Private Limited (supra), wherein the assessee was engaged in similar design engineering services. For ready reference the relevant portion at para 16 is reproduced here-in-below:

*“16. We heard both the sides on this issue and perused the orders of the revenue authorities and the Paper Book filed before us. We also considered the judgemental laws placed before us. On hearing both the sides, we find the core issue for adjudication is that if company becomes a good comparable merely because the same is engaged in KPO activity like the assessee. We find, now it is decided at the level of the Hon’ble Delhi High Court that the similarity of functions/characteristic of services rendered by the assessee/comparables for identifying the good comparables assessee’s importance. It is an undisputed fact, in the present case, that the DRP/TPO/Assessing Officer are categorically explained that with the similarity in grouping of KPO companies, the assessee’s company is good enough for identifying a good comparable. This view is not approved by the various decisions cited by the Id. Counsel for the assessee before the Tribunal. We have already extracted the relevant portion from the judgements of the Hon’ble High Court as well as the orders of the Pune Bench of the Tribunal that for identifying a good comparable, one has to go into the characteristic of the functions rendered by the comparables. The assessee is undisputedly engaged in the business of designing and development of chip, integrated circuits and storage components and allied services for its holding company AMCC, USA, whereas (i) Eclerx Services Limited is engaged in “data analytic” and (ii) Genesys International Corporation Limited is engaged in “geographical information system services”. These functions are entirely different from that of the business of designing and development of chip, integrated circuits and storage components etc.”*

22. In the light of above, the Eclerx Services Limited is not comparable and the Assessing Officer/TPO is directed to exclude for the purpose of benchmarking of the international transactions. Accordingly, the order of Assessing Officer is set aside and ground No. 4 raised by the assessee is allowed.

23. Ground No. 7 raised by the assessee questioning the action of Assessing Officer in rejecting the R Systems International Limited in the comparable set on account of persistent loss making company.

24. Heard both the parties and perused the material available on record. We note that the TPO in its order at page 625 and the DRP at page 44 of the paper book has excluded R Systems International Limited on the basis

that it is persistent loss making for F.Ys. 2008-09, 2009-10 and 2010-11 in its BPO Services Segment. The DRP, while rejecting R Systems International Limited has stated that it is persistent loss making in case the foreign exchange is treated as non-operating income. We find the Annual report of R Systems clearly shows that the Business process outsourcing services segment is not into losses for the year ended 31-12-2008 at page 1181 of paper book and we note that the margin of R Systems International Limited considering foreign exchange as non-operating. The ld. DR submits that the R Systems Limited should not be accepted as a comparable because of different year ending. The ld. AR submits that this argument was being raised for the first time by revenue and should not be considered.

25. In the light of arguments of both the parties and discussion made by the lower authorities the issue revolves around consideration of foreign exchange gain as an item of operating income. We find that the assessee considered foreign exchange fluctuations in the operating income thereby shown positive profit margins for the F.Ys. 2008-09 and 2009-10. The DRP held the income in the nature of foreign exchange gains as it is not derived directly from the normal business operations which arises due to the fluctuations in the foreign exchange and is to be treated as non-operating income. If the foreign exchange gain is treated as non operating income that there is a loss for the BPO services segment for all A.Ys. 2009-10, 2010-11 and 2011-12. For definition of operating revenue is provided in clause (k) of Rule 10A of Income Tax Rules, 1962 which is reproduced here-in-below :

*“The revenue earned by the assessee in the previous year in relation to the international transaction during the course of its normal operations is operating revenue. Under sub-clause (ii) of clause (k) of Rule 10A provides exclusion of income arising on account of foreign currency fluctuations in operating revenue.*

26. In view of the above, there is no dispute that foreign exchange gain is treated as non operating revenue. The assessee is persistent loss making company. Therefore, we find no infirmity in the order of AO in excluding R Systems International Limited on account of persistent loss making company as comparable to the assessee and thus, ground No. 7 raised by the assessee is dismissed.

27. In the result, the Cross Objection raised by the assessee is partly allowed.

28. To sum up, the appeal by the Revenue is dismissed and Cross Objection raised by the assessee is partly allowed.

Order pronounced in the open court on 18<sup>th</sup> August, 2020.

Sd/-  
(Anil Chaturvedi)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 18<sup>th</sup> August, 2020

RK

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Dispute Resolution Panel-3, Mumbai
4. The Commissioner of Income Tax (TP), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "सी" बेंच,  
पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.  
//सत्यापित प्रति// True copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune