

आयकर अपीलिय अधिकरण, दिल्ली न्यायपीठ “आई-1”, नई दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH ‘I-1’, NEW DELHI**

सुश्री सुषमा चावला, उपाध्यक्ष एवं श्री प्रशांत महर्षि, लेखा सदस्य के समक्ष

BEFORE MS. SUSHMA CHOWLA, VP & SHRI PRASHANT MAHARISHI, AM

[THROUGH VIDEO CONFERENCING]

आयकर अपील सं. / ITA No.1277/Del/2017

निर्धारण वर्ष / Assessment Year 2012-13

Integreon (India) Pvt.Ltd.,
602, 6th Floor, IT Building-3,
Nesco IT Park, Nesco Complex,
Western Express Highway,
Goregaon (East),
Mumbai-400063.

PAN-AAACCG7235J

.....अपीलार्थी/ Appellant

vs

The DCIT,
Circle-10(2),
New Delhi-110002.

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Sh. Percy J.Pardiwala, Sr. Adv. &
Sh. Neeraj Seth, AR

प्रत्यर्थी की ओर से / Respondent by : Sh. Surendra Pal, CIT DR

सुनवाई की तारीख/ Date of Hearing : 17.08.2020	घोषणा की तारीख / Date of Pronouncement: 31.08.2020
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आदेश/ORDER

PER SUSHMA CHOWLA, VP

The present appeal filed by assessee is against order of Assessing Officer dated 18.01.2017 relating to assessment year 2012-13 against the order passed under section 143(3) r.w.s 144C(13) of the Income-tax Act, 1961 (in short ‘the Act’).

2. The assessee has raised following grounds of appeal:-

1.0. "Adjustment/addition of Rs. 23,600,763/- on account of provision of back office support services to Associated Enterprises ("AE") :

1.1 *The Hon'ble Dispute Resolution Panel (DRP)/Ld. Assessing Officer (AO)/Ld. Transfer Pricing Officer (TPO) have erred on the facts of the case and in law in making an upward adjustment of Rs. 23,600,763/- to the total income of the Appellant by holding that the international transaction relating to back office support services provided by the Appellant to its AE is not at arm's length.*

1.2 *The Hon'ble DRPI Ld. AOI Ld. TPO erred in facts of the case and in law in disregarding the benchmarking analysis and comparable companies selected by the Appellant based on the contemporaneous data in the transfer pricing study report maintained as per section 92D of the Income Tax Act, 1961 (the Act) read with Rule 10D of the Income-tax Rules, 1962 (the Rules). Further, the Ld. TPO, in the Appellant's own case, accepted the functional and economic analysis of the Appellant.*

1.3 *The Hon'ble DRPI Ld. AOI Ld. TPO erred in facts of the case in cherry picking companies having high operating margins without appreciating that such companies are functionally dissimilar to the Appellant.*

1.4 *The Ld. Assessing Officer/ Ld. TPO erred in using segmental data from an inappropriate business segment of a company in an inconsistent manner vis-a-vis the prior year. Further, the Ld. AO/ Ld. TPO erred in computation of operating margins of comparable companies which were accepted by the Ld. TPO in his own order.*

1.5 *The Hon'ble DRP/Ld. Assessing Officer/ Ld. TPO erred in facts of the case and in law by not allowing the use of multiple year data as prescribed under Rule 10B(4) of the Rules read with the OECD Transfer Pricing Guidelines for Multinational Enterprise and Tax Administrations, for determining the arm's length price of international transaction of the Appellant.*

2.0 General

2.1. *The Ld. AO erred in levying interest under Section 234B and 234C of the Act.*

2.2. *On the facts and circumstances of the case, and in law, the Ld. AO erred in initiating penalty proceedings under section 271(1)(c) of the Act.*

2.3. *The Appellant craves leave to add, alter, amend, substitute and/or modify in any manner whatsoever the foregoing grounds of appeal at or before the hearing of the appeal."*

3. The issue is raised against the transfer pricing adjustment made in the hands of the assessee.

4. Briefly in the facts of the case the assessee was engaged in the business of providing back office services to its Authorized Enterprises (in short "AE"). The assessee had entered into international transaction with its AE. The Assessing Officer made reference u/s 92CA(i) of the Act to determine the Arm's Length Price (in short "ALP") of the international transaction undertaken by the assessee. The assessee had shown its margin at 17.11%. The assessee had selected six companies as comparables in its TP Study Report, whose mean margin worked out to 13.63%. The said computation of the margins was on multiple year average. However, during the TP proceedings, the assessee re-computed the mean margins of the comparables using current year data, which worked to 17.4%. The TPO issued show cause notice to the assessee and in the final analysis selected 10 comparables for benchmarking the international transaction of the assessee. The mean margins of the comparables worked out to 26.05% and consequently, the TPO proposed an upward adjustment of Rs.23,600,763/-.

5. The assessee filed objections before the DRP which in turn upheld the TPO. Thereafter the Assessing Officer passed consequent assessment order, against which the assessee is in appeal before us.

6. The Ld.AR for the assessee pointed out that in case two concerns which are finally selected by the TPO are excluded from the list of comparables, then the mean margins of comparables would be within +/- 5% of margin shown

by the assessee. In this regard, he pointed out that two concerns which need to be excluded are TCS e-Serve Ltd. and Infosys BPO Ltd. The Ld.AR for the assessee further pointed out that TCS e-Serve Ltd. was selected in the preceding year also and the Tribunal vide its order in ITA No.1173/Del/2016 relating to Assessment Year 2011-12 had excluded the said concern because of both brand value and high turnover of the said entity. The Ld.AR for the assessee pointed out that even during the year under consideration, the turnover of the assessee was Rs.30.92 crores and the turnover of TCS e-Serve Ltd. was Rs.1578 crores. Similarly, he pointed out that similar was the case of Infosys BPO Ltd., as the said concern also had brand value and high turnover. The total turnover of Infosys BPO Ltd. for the year was Rs.1312 crores. The Ld.AR for the assessee further pointed out that all the other issues raised would become academic.

7. The Ld.DR for the Revenue placed reliance on the orders of the authorities below.

8. We have heard the rival contentions and perused the record. The assessee is subsidiary of Integreon Managed Solution (Mauritius) Ltd. which holds 99% share of the assessee company. The assessee provides Information Technology enabled Services (in short "ITeS") and is mainly engaged in research support for a broad array of business challenges, including competitive intelligence, customer experience and branding customer analytics, investment and due diligence, market entry and product launch. During the year, the assessee had provided services to G Rail Research LLC (G Rail, USA).

The assessee had selected Transactional Net Margin Method as the most appropriate method to benchmark its international transaction of providing ITeS services. The margins shown by the assessee were 17.11% which were compared with the mean margins of the comparables selected using current year data at 17.4%. However, the TPO rejected some of the comparables and also modified the filters and proposed Transfer Pricing adjustment of Rs.23,600,763/-. The said adjustment was upheld by the DRP and the Assessing Officer passed final assessment order. The Ld.AR for the assessee before us has pointed out that the limited issue which needs to be adjudicated is the final selection of comparables by the Assessing Officer/DRP/TPO. It was suggested by the Ld.AR for the assessee that in case 02 concerns i.e. TCS e-Serve Ltd. and Infosys BPO Ltd. are excluded from the final list of the comparables, then the margins shown by the assessee would be within +/-5% of mean margins of comparables shown by the assessee.

9. We find that the issue of exclusion of TCS e-Serve Ltd. from the final list of comparables on the ground of the said concern having both brand value and high turnover was agitated before the Tribunal (supra) in assessee's own case in Assessment Year 2011-12. The Tribunal in turn relied on the ratio laid down by the Delhi Bench of Tribunal in B.C. Management Services P.Ltd. 83 Taxmann.com 346. The relevant finding of the said case are reproduced by the Tribunal in para 14 and are being referred, but not being reproduced for the sake of brevity. It may further be pointed out that against the said order in

B.C. Management Services P.Ltd.(supra), the Revenue filed an appeal before the Hon'ble High Court and the question of law raised was as under:-

1. *“Whether the exclusion of four comparables i.e. e-Clerx Pvt.ltd., M/s ICRA Techno Analytics Ltd., M//s. TCS E-Serve Ltd. and M/s. Accentia Technologies Pvt.ltd., are sustainable and not erroneous?”*

10. The Hon'ble Jurisdictional High Court dismissed the appeal of the Revenue observing as under:-

"The third comparable that the AO/TPO excluded is TCS E-serve. The ITAT observed that though there is a close functional similarity between that entity and the assessee, however, there is a close connection between TCS E-serve and TA T A Consultancy Service Ltd. which was high brand value; that distinguished it and marked it out for exclusion. The ITAT recorded that the brand value associated with TCS Consultancy reflected impacted TCS E-serve profitability in a very positive manner. This inference too in the opinion of Court, cannot be termed as unreasonable. The rationale for exclusion IS therefore upheld."

11. The Hon'ble High Court thus was of the view that where TCS e-serve Ltd. has high brand value then it cannot be selected as comparable with a concern whose brand value is less. The Ld.DR for the Revenue stressed that the global entity of which the assessee is the subsidiary has high brand value. We find no merit in the stand of the Revenue in this regard. Even on the second issue of high turnover, the said concern i.e. TCS e-Serve Ltd. cannot be selected as comparable. The total turnover of the assessee during the year is Rs.30.92 crores. On the other hand, the turnover of the TCS e-Serve Ltd. is Rs.1578 crores. Accordingly we hold that the TCS e-Serve Ltd. is to be excluded from the final list of comparables. Similarly, Infosys BPO Ltd. which has both brand value and high turnover of Rs.1312 crores cannot be selected as a concern

comparable to the assessee whose total turnover is only Rs.31 crores (approx.).
Accordingly, we hold so.

12. In view of the our excluding the two concerns i.e. TCS e-Serve Ltd. and Infosys BPO Ltd. from the final list of comparables and as per the submissions of the assessee, no other grounds of appeal needs to be adjudicated as the margins shown by the assessee would be within +/-5% in the comparables, thus other grounds of appeal raised by the assessee are not taken up for adjudication.

13. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 31st August, 2020.

Sd/-

Sd/-

(PRASHANT MAHARISHI)
लेखासदस्य/ ACCOUNTANT MEMBER

(SUSHMA CHOWLA)
उपाध्यक्ष / VICE PRESIDENT

दिल्ली / दिनांक Dated : 31st August, 2020

Amit Kumar

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,दिल्ली/ DR, ITAT, Delhi
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति//True Copy//

सहायकरजिस्ट्रार, आयकर अपीलीय अधिकरण ,दिल्ली
Assistant Registrar, ITAT, Delhi