

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'I-1' : NEW DELHI)**

**(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1751/Del./2015  
(Assessment Year : 2010-11)**

M/s Motherson Sumi Infotech & Designs Limited F-7, B-1, Mohan Cooperative Industrial Estate, Mothura Road New Delhi- 110044 <b>(PAN : AACCM3199B)</b>	Vs.	DCIT Circle-17(1), Room No. 317-B C.R.Building, I.P.Estate New Delhi-110002
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(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ravi Sharma, Sh. Anubhav Rastogi, Adv.

REVENUE BY : Shri Surendra Pal, CIT-DR

Date of Hearing : 25.08.2020

Date of Order : 31.08.2020

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER**

The Appellant, M/s. Motherson Sumi Infotech & Designs Limited (MIND) (hereinafter referred to as 'the Taxpayer') by filing the present appeal sought to set aside the impugned order dated 14.11.2014 passed by the Assessing Officer (AO) in consonance with the orders passed by the Id. DRP/TPO under

section 254/143 (3) read with section 144C of the Income-tax Act, 1961 (for short 'the Act') qua the assessment year 2010-11 on the grounds inter alia that :-

*“That on the facts and circumstances of the case, and in law;*

*1. The assessment order passed by the Learned Assessing Officer ('Ld. AO') pursuant to the directions of Learned Dispute Resolution Panel ('Ld. DRP') is bad in law and void ab-initio.*

*2. The Ld. AO (following the directions of the Ld. DRP), erred both on facts and in law in confirming the addition of Rs. 3,24,37,885/- to the income of the Appellant proposed by the Transfer Pricing Officer ('Ld. TPO') by holding that its international transactions pertaining to provision of software development services do not satisfy the arm's length principle envisaged under the Income-tax Act, 1961 ('the Act') and in doing so, the Ld. DRP and the Ld. AO has grossly erred in agreeing with and upholding the Ld. TPO's action of:*

*2.1 not appreciating that none of the conditions set out in section 920(3) of the Act are satisfied in the present case;*

*2.2 ignoring the fact that the appellant is entitled to tax holiday under section 10B of the Act on its profits and therefore would not have any untoward motive of deriving a tax advantage by manipulating transfer prices of its international transactions;*

*2.3 disregarding the arm's length price ('ALP'), as determined by the Appellant in the Transfer Pricing ('TP') documentation maintained by it in terms of section 92D of the Act read with Rule 10D of the Income-tax Rules, 1962 ('Rules') as well as fresh search; and in particular modifying/ rejecting the filters applied by the Appellant;*

*2.4 disregarding multiple year/ prior years' data as used by the Appellant in the TP documentation and holding that current year [i.e. Financial Year ('FT) 2009-10] data for comparable companies should be used;*

*2.5 rejecting comparability analysis undertaken by the Appellant in the TP documentation/ fresh search and conducting a fresh comparability analysis based on application of additional/ revised filters, or disregarding Appellant's filters in determining the ALP for the international transactions;*

*2.6 including companies having high margin / volatile operating profit margins in the final comparables' set for benchmarking a*

*low risk service provider such as the Appellant;*

*2.7 including certain companies in the final set of comparables that are not comparable to the Appellant in terms of functions performed, assets employed and risks assumed;*

*2.8 resorting to arbitrary rejection of low-profit/ loss making companies and companies with diminished revenues based on erroneous and inconsistent reasons;*

*2.9 excluding certain companies on arbitrary/ frivolous grounds even though they are comparable to the Appellant in terms of functions performed, assets employed and risks assumed;*

*2.10 by committing a number of factual /computational errors in selection/ rejection of proposed comparables and/ or in the operating profit margins of the comparables;*

*2.11 ignoring the business/ commercial reality that the Appellant undertakes limited business risks as against comparable companies that are full-fledged risk taking entrepreneurs, and by not allowing a risk adjustment to the Appellant on account of this fact;*

*2.12 by denying the benefit of a working capital adjustment while computing the ALP and thereby disregarding the law, international guidance and judicial precedents in this regard;*

*2.13 by making the TP addition to the entire value of transactions entered into by the Appellant in its export segment and not only to the value of international transactions entered into by the Appellant (i.e. proportionate adjustments) and ignoring established jurisprudence in this regard;*

*2.14 disregarding judicial pronouncements in India in undertaking the TP adjustment;*

*3. On a without prejudice basis to the other grounds, the Ld. AO / DRP has erred in facts and in law, in ignoring the alternative benchmarking analysis conducted by the Appellant considering Internal Comparable Uncontrolled Price ('CUP') method to determine the arm's length price of the software development services provided by the Appellant;*

*4. On a without prejudice basis to the other grounds, the Appellant craves to submit alternative benchmarking analysis considering Internal Transactional Net Margin Method ('TNMM') to determine the arm's length price of the software development services provided by the Appellant;*

*5. The Ld. DRP erred in disregarding the detailed arguments/ submissions put forth by the Appellant during the*

*course of the DRP/ assessment proceedings while passing its direction under section 144C of the Act;*

*6. The Ld. AO has grossly erred by proposing to compute interest under section 234A, 234B, 234C and 234D of the Act;*

*7. The Ld. AO has grossly erred in initiating penalty under section 271(l)(c) of the Act mechanically and without recording any satisfaction for its initiation.*

*The above grounds are without prejudice to each other.*

*The Appellant craves leave to alter, amend or withdraw all or any of the grounds herein or add any further grounds as may be considered necessary either before or during the hearing.”*

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : (M/s. Motherson Sumi Infotech & Designs Ltd. (MIND) Taxpayer is a Joint venture between Sumitomo Wiring Systems Ltd., Japan and Motherson Group, India. Taxpayer is into providing customized business solutions and software services to its Associated Enterprises (AE). Customised business solutions are provided in the areas of ERP, Bar-coding solutions, supply chain management (SCM), Business Intelligence, Workflow automation, Device Interface solutions and Network Management. MIND has been catering to manufacturing automotive, banking industries and the government sector.

3. During year under assessment, taxpayer entered into International Transaction with its associated enterprises (AE) reported in Form No. 3 CEB as under :-

<i>S. No.</i>	<i>International Transaction</i>	<i>Amount (In Rs.)</i>
<i>1.</i>	<i>Services rendered</i>	<i>28,25,40,187</i>
<i>2.</i>	<i>Services received</i>	<i>14,92,933</i>

3.	<i>Reimbursement paid</i>	<b>38,85,945</b>
4.	<i>Reimbursement received</i>	<b>3,44,606</b>
5.	<i>Payment of interest on loan</i>	<b>6,98,011</b>
	<b>Total</b>	<b>28,89,61,682</b>

4. Taxpayer in its Transfer Pricing (TP) study for benchmarking its international transaction qua Software Development Services (SDS) used transactional net margin method (TNMM) with Operating Profit (OP) / Total Cost (TC) as Profit Level Indicator (PLI) chosen 16 comparables and computed their margin at 13.18% as against taxpayer's own OP/TC margin of 12.99% and found its international transactions are at arm's length.

5. However, Ld. Transfer Pricing Officer (TPO) in its TP Analysis adopted fresh search by applying various quantitative and qualitative filters finally selected 19 comparables and computed their average at 24.40% and thereby proposed ALP adjustment of Rs. 3,24,37,885.

6. Taxpayer carried the matter before Ld. DRP by way of filing objections who has confirmed the proposed additions made by the TPO. Feeling aggrieved the taxpayer has come up before the Tribunal by way of filing the present appeal.

7. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and

orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

8. Undisputedly, TNMM with OP/TC as the Profit Level Indicator (PLI) as Most Appropriated Method (MAM) used by the taxpayer to benchmark its international transaction qua Software Development Services has been accepted by the Ld. TPO / DRP. Ld. TPO / DRP proposed / confirmed the adjustment of Rs. 3,24,37,885/- after applying TNMM with OP/TC as the most appropriated method chosen 19 comparables with average of 24.40%. Final comparables are as under :-

<i>Sl. No.</i>	<i>Name of the Company</i>	<i>OP/TC</i>
1.	<i>Akshay Software Technologies Ltd.</i>	<i>-1.07%</i>
2.	<i>CTIL Ltd.</i>	<i>18.11%</i>
3.	<i>E-infochips</i>	<i>71.38%</i>
4.	<i>Evoke Tech</i>	<i>18.56%</i>
5.	<i>E-zest Solutions</i>	<i>18.66%</i>
6.	<i>Infinite Data System Private Limited</i>	<i>88.25%</i>
7.	<i>Infosys Limited</i>	<i>45.47%</i>
8.	<i>Larsen &amp; Toubro Infotech Ltd.</i>	<i>19.06%</i>
9.	<i>Mindtree Ltd. (segment)</i>	<i>13.92%</i>
10.	<i>Persistent System Limited</i>	<i>29.02%</i>
11.	<i>Persistent Systems &amp; Solutions Ltd.</i>	<i>11.37%</i>
12.	<i>Quintegra Solutions Ltd.</i>	<i>-8.20%</i>
13.	<i>R S Software (India) Ltd.</i>	<i>10.18%</i>
14.	<i>Sasken Communication Technologies Ltd.</i>	<i>17.54%</i>
15.	<i>Sonata Software</i>	<i>35.87%</i>
16.	<i>Tata Elxsi (Segment)</i>	<i>20.29%</i>
17.	<i>Thinksoft Global Services Ltd.</i>	<i>17.35%</i>
18.	<i>Zylog Systems Limited</i>	<i>25.07%</i>
19.	<i>LGS Global Limited</i>	<i>12.78%</i>
	<b>AVERAGE</b>	<b>24.40%</b>

9. Consequently Ld. TPO computed the arm's length price of the International Transactions as under :-

<i>Operational Cost</i>	<i>28,43,98,071</i>
<i>Arm's Length Price at a Margin of 24.40%</i>	<i>35,37,91,200</i>
<i>Price Received</i>	<i>32,13,53,315</i>
<i>Proposed Adjustment u/s 92CA</i>	<i>3,24,37,885</i>

10. Ld. AR for the taxpayer challenging the impugned order passed by Ld. TPO / DRP contended that now the only dispute left to be decided is arbitrary selection of some comparables by TPO / DRP and has sought exclusion of 7 comparables namely *E-Infochips Bangalore Ltd. ; E-Zest Solutions Ltd. ; Infinite Data System Private Limited; Infosys Limited; Sasken Communication Technologies Ltd.; Sonata Software Ltd. and Zylog Systems Ltd.* We would discuss the suitability of aforesaid comparables vis-à-vis taxpayer, which a routine software development service provider working on cost plus model, one by one.

**E-infochips Bangalore Ltd.**

11. Taxpayer sought exclusion of E-infochips on grounds of functional dissimilarity and non-availability of its segmental financial.

12. Perusal of the annual report of E-infochips available at page 147 of the Annual Reports Compendium (ARC) shows that E-infochips is primarily engaged in Software Development and

I.T.enabled Services which is considered the only reportable business segment as per Accounting Standard-AS 17 'Segment Reporting' issued by mandatory Accounting Standards prescribed in Companies (Accounting Standard) Rules, 2006 and the relevant provisions of Companies Act, 1956. But segmental financials are not available. Since, taxpayer is a routine software development service provider working on cost plus model cannot be compared with E-infochips which is engaged in both software development and IT enabled services.

13. Coordinate Bench of Tribunal in case of Agilent Technologies (International (P.) Ltd. vs. Income Tax Officer, found E-infochips not a suitable comparable vis-à-vis routine software development service provider on ground of non-availability of segmental financials for both the segments.

14. So, in view of what has been discussed above, we are of the considered view that E-infochips is not a suitable comparables vis-à-vis taxpayer, hence, order to be excluded.

**E-Zest Solutions Ltd.**

15. Taxpayer sought exclusion of E-zest Solutions from the final set of comparable for benchmarking international transaction on grounds of functional dissimilarity as E-zest is a product Engineering and software development company and has been

excluded by the Tribunal in taxpayer's own case in AY 2007-08 and 2011-12.

16. Undisputedly there is no change in the business model and FAR of the taxpayer during the year under assessment since 2007-08. Perusal of annual report available at page 452 and 453 of annual Compendium report (ARC) shows that E-zest is a product engineering and software development company whereas taxpayer is a captive software development service provider to its AE.

17. Ld. DR for the revenue relied upon the order passed by the TPO and drew our attention towards para 10.6 and contended that TPO has examined FAR of the company and found it a suitable comparable. But, we are of the considered view that when functional dissimilarity are apparent between E-zest Solutions vis-à-vis taxpayer as discussed in the preceding para comprehensive exercise carried out by the Ld. TPO is a futile exercise.

18. Coordinate Bench of Tribunal in taxpayer's own case for AY 2011-12 excluded E-zest Solutions ltd. vide order dated 30.10.2019 passed in ITA No. 5801/Del/2011 on ground of its diversified activities without having any segmental information on record. In view of the matter, we order to exclude E-zest Solutions Ltd. from the final set of comparables.

**Infinite Data System Private Limited (Infinite)**

19. Taxpayer sought exclusion of Infinite Data System Pvt. Ltd. on ground of functional dissimilarity and non-availability of segmental financial. Perusal of the Annual report of Infinite Data System Pvt. Ltd. available at page 60 and 64 of the ARC paper book goes to prove that Infinite is primarily a service company engaged in technical consulting, design & development of software, maintenance, systems integration, implementation, testing and infrastructure management services, hence, it is not possible to give the quantitative details of sales and certain information as required under paragraphs 3, 4C and 4D of Part II of Schedule VI to the Companies Act, 1956". Since its segmental reporting shows that its revenue primarily come from technical support and infrastructure management services but no segmented data is available.

20. Suitability of Infinite as a comparable vis-à-vis routine Software Development service provider has been examined by the Tribunal in case of *Lime Labs (I) (P.) Ltd. vs. Income Tax Officer* and found the same not a suitable comparables in AY 2010-11 on ground of functional dissimilarity and on ground of super normal profit to the tune of 1496% by returning following finding :-

*“15. Furthermore, it is brought on record by the taxpayer that the profitability of Infinite is increased by 1496% as compared to the preceding year despite the fact that for computation of OP/OC, foreign exchange loss has been excluded from OC. So, we are of the considered view that super-normal profit to the tune of 1496% certainly affects OP/OC but, in this case, even foreign exchange loss has been excluded from the OC by the TPO and as such, it makes the Infinite not a valid comparable vis-à-vis the taxpayer. So, we are of the considered view that because of functional dissimilarity of Infinite vis-à-vis the taxpayer and earning super-normal profit by 1496% as compared to preceding years makes Infinite as invalid comparable. So, we direct the AO/TPO to exclude Infinite from the final set of comparables.”*

21. So, in view of what has been discussed above, we are of the considered view that Infinite is not a suitable comparable vis-à-vis taxpayer, hence, order to be excluded from the final set of comparables.

**Infosys Limited (Infosys)**

22. Taxpayer sought exclusion of Infosys as a comparable on the ground that Infosys deals in both product and services and that Infosys incurred huge research and development expenses and having huge brand value. It is brought on record by the Id. AR that Infosys has been excluded as a comparable by the Tribunal in Taxpayer's own case in AY 2007-08 and 2011-12. In AY 2011-12 Infosys was also excluded by Ld. DRP in assessee's own case.

23. Ld. DR for the revenue relied on order passed by TPO and drew our attention towards para 10.2 wherein he has discussed all the objections raised by the taxpayer regarding brand profits,

significant intangibles, product development sales and marketing expenses and significant R and D expenses.

24. We are of the considered view that Infosys as a comparable has been found to be not a suitable comparable having huge brand value and significant expenses on R & D vis-à-vis captive software development service provider in number of judgement. Coordinate Bench of Tribunal in assessee's own case in A.Y. 2007-08 and 2011-12 excluded Infosys by relying upon decision rendered by Hon'ble Delhi High Court in case of *Agnity India Technologies Pvt. Ltd. by the Hon;ble High Court of Delhi in ITA No. 1204/2011* by returning following findings :-

*“24. The Annual Report of this company is placed at pages 346 to 615 of the paper book. Infosys Technologies Limited has substantial intangible assets and is a giant company with a substantial brand value. Infosys owns products/IPR. The turnover of this company is approximately 700 times than the turnover of the appellant company and has substantial investment in intangibles. Being a giant company, this company has been excluded in the case of Agnity India Technologies Pvt Limited by the Hon'ble High Court of Delhi in ITA No. 1204/2011.”*

25. So, keeping in view the functionality and huge brand value and significant expenditure on R & D we find Infosys not a suitable comparable vis-à-vis taxpayer, hence, order to be excluded.

**Sonata Software Ltd.**

26. Taxpayer sought exclusion of Sonata on the ground that it fails TPO's related party (RPT) /sales filter of 25%. Since the RPT/sales of Sonnata is 59.35%, thus apparently fails TPOs filter of 25%, this comparable is remitted back to the Ld. TPO to decide afresh after providing opportunity of being heard to the taxpayer.

**Sasken Communication Technologies Ltd.**

27. Taxpayer sought exclusion of Sasken on ground of functional dissimilarity as well as on ground of extraordinary circumstances.

28. perusal of annual report at page 307 and 310 of the annual report compendium shows that "Sasken Communication Technologies Limited is a provider of telecommunication software services and solutions to network equipment manufacturers, mobile terminal vendors and semiconductor companies around the world. Sasken delivers end-to-end solutions that enable richer content delivery on next generation networks". Annual report also shows that Sasken has undertaken business restructuring during the year under assessment by making investment in the subsidiaries and joint ventures.

29. Since functional profile of Sasken is different vis-à-vis taxpayer and has went into business restructuring affecting profitability. It is not a suitable comparable.

30. In assessee's own case for AY 2007-08 and 2011-12, Sasken was order to be excluded as a comparable. In A.Y. 2011-12, Sasken has been ordered to be excluded by the Coordinate Bench of Tribunal in taxpayer's own case by returning following findings :-

*“21. On hearing the rival contentions, we are of the view that first step which has to be seen is functional comparability. The concerns are providing variety of services and application of service filter of 75% would come in the next rung of comparability. M/s Sasken Communication Technologies Limited was developing mobile enterprise applications and solutions across various mobile platforms including iOS, Android, Blackberry, RIM and Symbian platform; which are clearly mentioned in the annual report of the said concern. The assessee on the other hand was only providing Software Development Services to its AE. Hence the concern Sasken Communication Technologies Limited is not functionally comparables to the assessee and same needs to be excluded from the final list of comparable. Accordingly, we hold so.”*

31. So, in view of the discussion made in preceding para, we are of the considered view that Sasken is not a suitable comparable on ground of functional dissimilarity and business restructuring.

**Zylog Systems Ltd.**

32. Taxpayer sought to exclude Zylog on ground of functional dissimilarity as well as on ground of business restructuring. Perusal of annual report at page 433 shows that Zylog has income from software development services and products. Annual report at page 412 shows that “Zylog is making a software solution from concept to reality is a complex and arduous process. At ZSL. We continue to offer value to our customers and market place through value

added Research & Development, Product Engineering, and end-to-end Product Lifecycle Management (PLM) solutions from conceptualization, prototyping, development, integration with Enterprise applications, Migration, Porting, Performance Tuning, Application Upgrade, testing and maintenance”.

33. Suitability of Zylog has been examined by the Coordinate Bench of Tribunal in case of *Lime Lab (I) (P.) Ltd. vs. ITO , ITA No. 1703/Del/2015, AY 2010-11* and ordered to exclude Zylog on ground of extra ordinary event in FY 2009-10 by returning following findings :-

*“31. Perusal of the annual report available at page 457 goes to prove that Zylog has acquired directly M/s. Matrix Primus Partners Inc. USA, M/s. Algorithm Solutions Private Limited, India and acquired M/s. Brainhunters Inc., Canada, through our WOS Zylog Systems (Canada) Ltd., during the Financial years 2009-10 relevant for year under assessment in case of the tax payer.*

*32. Furthermore the Zylog has invested in acquiring this business an amount of Rs. 62,12,04,848/- and has adopted the policy of amortizing this amount over a period of 5 years. Thus, the company has amortized a sum of Rs. 10,72,97,170/- in the year under assessment. So the acquisition being an extraordinary event has certainly affected the profitability of the company and as such cannot be a valid comparable.”*

34. In view of what has been discussed above, we are of the considered view that Zylog is not a valid comparable vis-à-vis taxpayer hence, order to be excluded.

**Grant of working capital adjustment**

35. Ld. TPO / DRP have denied the benefit of working capital adjustment while computing the ALP on the ground that the assessee has not demonstrated that there is a difference in levels of working capital employed by the taxpayers vis-à-vis comparables. TP study referred to by the taxpayer for benchmarking its International Transaction shows that the complete detail has been provided to grant working capital adjustment. So, in view of the matter, we are of the considered view that the matter is required to be reconsidered by the TPO by providing opportunity of being heard to the assessee. Moreover working capital adjustment has been granted to the taxpayer in the earlier years and since then there is no change in the business model of the assessee. So, this issue is remitted back to the Ld. TPO.

36. In view of what has been discussed above, appeal filed by the taxpayer is allowed for statistical purpose.

**Order pronounced in open court on 31<sup>st</sup> August, 2020**

Sd/-  
(N.K.BILLAIYA)  
ACCOUNTANT MEMBER

Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER

**Dated: the 31<sup>st</sup> day of August, 2020**  
**\*Binita\***

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.

Date of dictation	28 .08.2020
Date on which the typed draft is placed before the dictating Member	31 .08.2020
Date on which the typed draft is placed before the Other Member	31.08.2020
Date on which the approved draft comes to the Sr. PS/PS	31.08.2020
Date on which the fair order is placed before the Dictating Member for pronouncement	31.08.2020
Date on which the fair order comes back to the Sr. PS/PS	31.08.2020
Date on which the final order is uploaded on the website of ITAT	.08.2020
Date on which the file goes to the Bench Clerk	.08.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	