

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE**

Before Shri George George K, JM and Shri B.R.Baskaran, AM

IT(TP)A No.279/Bang/2016 : Asst.Year 2011-2012

M/s.Arctern Consulting Private Limited, 49/8, 2 nd Floor, 60 Feet Road, Near Jyothi Nivas College, Koranmangala Industrial Layout Bangalore. PAN : AAECA9113F.	v.	The Asst.Commissioner of Income-tax, Circle 1(1)(1) Bangalore.
(Appellant)		(Respondent)

Appellant by : Smt.Tanmayee Rajkumar, Advocate
Respondent by : Sri.Sumer Singh Meena, CIT(OSD)-DR

Date of Hearing : 27.10.2021	Date of Pronouncement : 28.10.2021
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ORDER

Per George George K, JM

This appeal at the instance of the assessee is directed against final assessment order dated 17.12.2015 passed u/s 143(3) r.w.s. 144C of the I.T.Act. The relevant assessment year is 2011-2012.

2. The brief facts of the case are as follows:

The assessee is a company engaged in providing contract software development (SWD) services and Information Technology Enabled (ITE) services to its Associate Enterprises (AEs). For the assessment year 2011-2012, the assessee had filed return of income on 30.11.2011 declaring loss of Rs.92,43,787. Later, revised return on 08.02.2012 declaring loss of Rs.44,54,773. The assessment was selected for scrutiny by issuance of notice u/s 143(2) of the I.T.Act.

During the course of assessment proceedings, the matter was referred to the Transfer Pricing Officer (TPO) for determination of Arm's Length Price (ALP) of various international transactions undertaken by the assessee with its AEs. The TPO passed an order u/s 92CA of the I.T.Act (order dated 22.01.2015). In the said order passed by the TPO, the ALP adjustment was made in respect of provision for ITE services undertaken by the assessee with its AEs. The adjustment made u/s 92CA of the I.T.Act by the TPO was a sum of Rs.71,91,973. Pursuant to the TPO's order, draft assessment order was passed on 13.03.2015 incorporating the aforesaid TP adjustment.

3. Aggrieved by the draft assessment order, the assessee filed objections before the Dispute Resolution Panel (DRP). The DRP vide its directions dated 19.11.2015 partly allowed the objections raised by the assessee. Pursuant to the DRP's directions, the A.O. passed final assessment order dated 17.12.2015 in which the TP adjustment was re-worked out at Rs.57,73,715 and deleted the corporate tax adjustment.

4. Aggrieved by the final order dated 17.12.2015, the assessee has filed this appeal before the Tribunal. The learned Counsel for the assessee at the time of hearing limited her submissions to two issues, namely, (i) ICRA Online Limited (Segment) should be excluded from the final list of comparables, (ii) E4E Healthcare Business Services Private Limited should be included in the final list of comparables. The submissions of the assessee insofar as exclusion of ICRA

Online Limited (Ground No.1.2 in the additional ground of appeal), reads as follows:-

“In this ground, the Appellant is seeking the exclusion of ICRA Online Ltd. from the list of comparables. It is submitted that ICRA Online Ltd. is engaged in outsourced services, information services and software products and services. The company provides services to clients in the areas of data extraction, aggregation, electronic conversion of financial statement, validation and analysis, accounting and finance research and analytics. ICRA Online Ltd. is a wholly owned subsidiary of ICRA Ltd., a leading credit rating agency.

ICRA Online has two strategic lines of business

*Knowledge Process Outsourcing; and
Information Services and Technology Solutions*

The TPO accepted the "outsourced segment" i.e., the KPO segment of the company as being comparable to the Appellant although the same is different from the routine BPO services rendered by the Appellant. As stated above, the KPO segment of the Company is mainly engaged in providing services such as financial and analytical services, support to clients in the areas of data extraction, aggregation, electronic conversion of financial statement, validation and analysis, accounting and finance research and analytics. Also, the research and analytics functions of the company involve highly skilled manpower and tools which would therefore classify the services provided as high-end services whereas the Appellant provides low end IT enabled services. The website of the company itself mentions that the company leverages on the knowledge and expertise of other ICRA group companies due to which it has an edge over other ITES companies. Therefore, ICRA Online Ltd. cannot be held to be comparable to the Assessee.

Further, it is submitted that ICRA Online Ltd. has related party transaction of 29.33% which exceeds the filter of 25% applied by the TPO himself. Detailed submissions made before the TPO are available at page 527 and before the DRP are available at pages 684-686,689-690,691,704 and 1657-1661 of the paper book.

Reliance is placed on assessee's own case for the assessment year 2010-11 reported in [2017J 86 taxmann.com 108 (Bangalore - Trib.) wherein, ICRA Online Ltd has been excluded from the final list of com parables by this Hon'ble

Tribunal.

Reliance is also placed on the decision of this Hon'ble Tribunal in Aspect Technology Centre (India) (P.) Ltd. v. Income Tax Officer [2020J 118 taxmann.com 460 (Bangalore - Trib.) at paras 24-26], where, in similar circumstances and for the same assessment year, this Hon'ble Tribunal remanded this company for verification of its comparability.

Without prejudice and in any event there exists certain error in computation of the margin of the company.”

4.1 The submission of the assessee for inclusion of E4E Healthcare Business Services Private Limited in comparable list, reads as follows :-

“The DRP directed exclusion of the company for the reasons that (a) the company had entered into forward contracts, which affected the margins of the company (b) there was inconsistency in accounting policy adopted by the company with respect to bad debts (DRP directions at pages 777-778 of the paper book). It is submitted that the DRP erred in holding that the forward contracts entered into by the company and the accounting with respect to bad debts have an impact on the margin of the company. Such a conclusion is without any basis and the exclusion of the company is thus ad hoc and arbitrary. The mere fact that a provision for bad and doubtful debts is created in one year and there is no such provision in another year or the fact that the bad debts written off in one year is more than what is written off in another year do not demonstrate inconsistency in accounting.

It is submitted that e4e Healthcare Business Services Pvt. Ltd. has consistently been accepted both by Assessee and the Revenue as being comparable to the ITeS segment Tribunal in the cases of similar assessees for various AYs.

It is submitted that the said company was included in the list of com parables in assessee's own case for the assessment year 2012-13 (order dated 15.10.2019 in IT(TP)A No. 352/bang/2017) wherein the company was retained in the final list of com parables. The Appellant also places reliance on the decision of this Hon'ble Tribunal in Finastra Software Solutions (India) (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle (4) (1) (2) [(2018) 93 taxmann.com 460 (Bangalore -

Trib.)), where, in similar circumstances and for the same assessment year, this company was retained in the final list of comparables.”

4.2 It was further submitted that if ICRA Online Limited is excluded from comparable list and e4e Healthcare Business Services Private Limited is included in the comparable list, the arithmetical margin of working capital adjustment rectified margin of the above comparables would fall below the assessee's NCP margin of provision for ITeS services. Consequently, the international transaction of provision for ITeS services by the assessee to its AE for the relevant assessment year can be concluded as being at arm's length.

5. The learned Departmental Representative relied on the orders of AO / TPO and the DRP.

6. We have heard rival submissions and perused the material on record. Insofar as the assessee's submission of exclusion of ICRA Online Limited is concerned, we notice that ITAT in Aspect Technology Centre (India) (P.) Ltd. v. ITO (2020) 118 taxmann.com 398 (Bangalore-Tribunal), Finastra Software Solutions (India) (P.) Ltd. v. ACIT (2018) 93 taxmann.com 460 (Bangalore-Tribunal) and Zyme Solutions Pvt.Ltd. v. ACIT in IT(TP)A No.85/Bang/2016 (order dated 28.04.2017), on identical facts and for the same assessment year, had remanded this company for verification of its functionally comparability and whether it satisfy the RPT filter. The relevant finding of the ITAT in case of Zyme Solutions Pvt. Ltd. (supra), reads as follows:-

ICRA Online Ltd. (seg)

23. *The assessee has submitted that this company is functionally different since it is engaged in providing information services, software services and KPO services and the company has substantial RPT at 24.77%. The assessee has also drawn our attention to the orders passed by the coordinate bench in the case of 24/7 Customer.com Pvt. Ltd., in ITA No.227/Bang/2010 and Logica Pvt. Ltd., in IT(TP)A No.1129/Bang/2011. The assessee has also submitted that this company fails on export turnover filter of 75%.*

24. *On the other hand, if we look into the reply given by assessee in response to show cause notice, we notice that the basic objection of the assessee was ICRA Online Ltd. is providing information services and Technology Solution and caters to the financial service sector. It was also mentioned that outsourcing service segment is mainly engaged in providing KPO services and hence rejected in functional analysis. The outsourcing service segment was KPO activity in nature and it is not what the assessee is into.*

25. *On the other hand, the TPO controverted the said study and information at 24/7 Cutomer.com Pvt. Ltd. and has mentioned that ICRA Online Ltd., company has reported 3 segments i.e information services and outsourcing services and software services and only outsourcing was taking into consideration.*

26. *While dealing with Accentia Technologies Ltd., the Bench has observed the work agreement that the assessee is having its AE is not readily available by way of contract and, therefore, the TPO has only relied upon the submission made by the assessee during the course of proceedings. In our view, it is necessary for the TPO to look into the scope of work which the assessee is rendering to its AE and the TPO should be in a position to categorically comment whether services rendered by the assessee are comparable with that of the ICRA Online Ltd. In view thereof, we deem it appropriate to remand the matter to the file of the TPO to examine this aspect. It may be relevant to point out that though the assessee has raised objection on failure of the comparable of Acropetal Technologies on RPT filter and on export turnover filter. We are not dealing with this issue as the said issue has not been raised and challenged before the TPO. We may note that the assessee has submitted that the company is required to be rejected as it fails on RPT filter being 22.77%. We direct the TPO to verify the RPT of ICRA Online Ltd. (seg) and if the RPT was found to be 22.77% or more than 15% than TPO is directed to excluded it.”*

6.1 Following the above order of ITAT, we set aside the order of AO / TPO in this regard and direct the AO / TPO to consider afresh the comparability of ICRA Online Limited with

the assessee on the lines indicated in the order in the case of M/s.Zyme Solutions Pvt. Ltd. (supra).

6.2 Insofar as the assessee's plea for inclusion of e4e Healthcare Business Services Private Limited is concerned, we notice that ITAT in the case of Finastra Software (India)(P.) Ltd. v. ACIT reported in 93 taxmann.com 460 (Bangalore Tribunal) on identical facts and for the same assessment year has retained this company in the final list of comparables. It is to be mentioned that for assessment year 2012-2013, in assessee's own case, the said company was retained in the list of comparables (order of ITAT dated 15.10.2019). Further, in this assessment year, as against the DRP's direction to exclude e4e Healthcare Business Services Private Limited from the list of comparables, the revenue also had filed appeal before the ITAT, however, the revenue's appeal was withdrawn on account of low tax effect. In view of the aforesaid reasoning, we direct the AO / TPO to include e4e Healthcare Business Services Private Limited in the list of comparables. It is ordered accordingly.

6.3 It was submitted that if ICRA Online Limited is excluded from the comparable list and e4e Healthcare Business Services Private Limited is included in the comparable list, the arithmetical mean of working capital adjusted rectified margins of the above comparables would fall below the assessee's NCP margin for provision of ITE services. Consequently, the international transaction of provision of ITE services by the assessee to its AE in financial year 2010-

2011 can be concluded as being at arm's length. Therefore, the other grounds of assessee are left open and not adjudicated. It is ordered accordingly.

7. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 28th day of October, 2021.

Sd/-
(B.R.Baskaran)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 28th October, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The DRP-1, Bengaluru.
4. The Pr.CIT-1, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore