

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'I-2', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. KUL BHARAT, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.2664/Del/2017
(Assessment Year : 2011-12)

ACIT Circle – 26(1), New Delhi PAN : AABCV 9348 Q	Vs.	M/s. Verint Systems (India) Pvt. Ltd., Building No.8, Tower A, 2 nd DLF Cyber City Phase-II, Gurgaon
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Darpan Karaplani, Adv.
Revenue by	Shri M. Baranwal, Sr. D.R.

Date of hearing:	24.11.2021
Date of Pronouncement:	08.12.2021

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the Revenue is directed against the order dated 31.01.2017 of the Commissioner of Income Tax, (Appeals) - 19, New Delhi for Assessment Year 2011-12.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company which is stated to be primarily engaged in providing pre-sale and post-sale support services to its AEs and it provides marketing assistance and tertiary support to the sales team of the AEs by way of business consultants, solutions specialists and pre-sales engineers, post sales support services comprise of implementation assistance, training, consulting and maintenance of solutions to the end customers of the AEs in India and is also stated to be rendering on – call support services to the customers of Verint U.K. in U.S. and U.K. region. Assessee filed its return of income for A.Y. 2011-12 on 28.11.2011 declaring total income at Rs.3,56,11,147/-. The case was selected for scrutiny and notice under section 143(2) of the Income Tax Act was issued and served upon the assessee. On the basis of the documents and details furnished by the assessee, it was noticed that assessee had entered into International Transactions with its Associate Enterprises (AE). Accordingly reference was made to the TPO to determine the 'Arm's Length Price' (ALP) under section 92CA(3) of the Act and in respect to that 'International transactions' entered by the assessee. Thereafter, TPO vide order passed under section 92CA(3) of the Act dated 29.01.2015 proposed adjustment on 'International transactions' relating to provision of business/market support services of Rs.2,15,61,119/-. Thereafter, a draft assessment order was passed under section 144C of the Act which was served upon the assessee. AO noted that assessee did not avail the option of filing its objection with the DRP within 30 days of the receipt of

the draft assessment order. Accordingly, final assessment order was passed under section 143(3) read with section 144C of the Act vide order dated 26.05.2015 and the total income was determined at Rs.5,89,75,413/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 31.01.2017 in Appeal No.87/56/15-16 granted substantial relief to the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal and has raised the following grounds of appeal:

1. *“On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in not considering the comparable transactions of M/s Concept Communication Ltd selected by the TPO for calculating the Arm Length Price of International Transactions entered into by the assessee with its associates.*
2. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in not considering the comparable transactions of M/s Crystal Hues Ltd selected by the TPO for calculating the Arm Length Price of International Transactions entered into by the assessee with its associates.*
3. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in not considering the comparable transactions of M/s Cameo Corporate Services Ltd. selected by the TPO for calculating the Arm Length Price of International Transactions entered into by the assessee with its associates.*
4. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in not considering the comparable transactions of M/s Info Edge (India) Ltd selected by the TPO for calculating the Arm Length Price of International Transactions entered into by the assessee with its associates.*
5. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in not considering the comparable transactions of M/s M M T V Ltd. selected by the TPO for calculating the Arm Length Price of International Transactions entered into by the assessee with its associates.*

6. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in not considering the comparable transactions of M/s TSR Darashaw Limited selected by the TPO for calculating the Arm Length Price of International Transactions entered into by the assessee with its associates.*
7. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not considering the comparable transactions of M/s Quippo Valuers and Auctioneers Private Ltd. Selected by the TPO for calculating the Arm Length Price of International Transactions entered into by the assessee with its associates.*
8. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in not considering the comparable transactions of M/s Axis Integrated Systems Ltd selected by the TPO for calculating the Arm Length Price of International Transactions entered into by the assessee with its associates.*
9. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in not considering the comparable transactions of M/s C D S SL Ventures Ltd selected by the TPO for calculating the Arm Length Price of International Transactions entered into by the assessee with its associates.*
10. *The appellant craves, leave or reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*

4. Before us, at the outset, Ld. AR submitted that if Ground No.4 & 9 raised in the Revenue's appeal are decided in assessee's favour by upholding the order of CIT(A), then no adjustment to the total income of the assessee would be required and therefore the other grounds raised by the Revenue would be rendered academic. Learned DR did not controvert the aforesaid submissions made by Learned AR.

5. In view of the aforesaid facts, we first proceed to decide Ground No.4 & 9 of Revenue's appeal with respect to the directions of CIT(A) in excluding M/s. Info Edge (India) Ltd. as comparable transaction (Ground No.4) and exclusion of CDSL Ventures Ltd. as comparable transaction (Ground No.9).

We first proceed with Ground No.4

6. TPO had proposed the inclusion of M/s. Info Edge (India) Ltd. as a comparable company for determination of 'arm's length price'. Assessee objected to its inclusion as comparable company on the ground that it was not comparable due to difference in functions and on the ground that it had high turnover. The objections raised by the assessee for the inclusion of M/s. Info Edge (India) Ltd. as a comparable was not found acceptable to TPO as he was of the view that in market support industries, turnover does not play any significant role as far as the margins are concerned. The TPO was of the view that it was functionally similar to the assessee and further ones functionally is accepted, then companies can be compared irrespective of the turnover, size or scope of operation. The TPO thus considered M/s. Info Edge (India) Ltd. as a comparable company.

7. When the matter was carried before CIT(A), CIT(A) noted that the assessee was engaged in providing administrative/facilitation assistance, providing product support and training to dealers and

customers; assistance in relation to marketing/new business developments; communicating new business opportunity to AE; and providing assistance in negotiating the price of the products/terms of the contract with the customers as against the activity of M/s. Info Edge (India) Ltd. which was primarily in the business of internet based services where anybody could have access their websites on payment. CIT(A) after comparing the activities of the assessee of M/s. Info Edge (India) Ltd. has given a finding that the services rendered by M/s. Info Edge (India) Ltd. cannot be considered to be a comparable with the services provided by the assessee as there was complete mismatch between the nature of activities carried on by them and therefore he held Info Edge (India) Ltd. to be excluded for comparables. To arrive at the aforesaid conclusion, CIT(A) also relied on the decisions cited in his order. Aggrieved by the order of CIT(A) for its exclusion, Revenue is now before us.

8. Before us, Revenue pointed to the findings of TPO and supported the order of TPO and further submitted that TNMM Method has been used for determining the 'Arm's Length Price' and under TNMM Method broad comparability of the functions has to be seen and even in some functions are similar the company can be considered to be a comparable company. He thus supported the order of lower authorities. Learned AR on the other hand supported the order of CIT(A).

9. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to considering Info Edge (India) Ltd. as a comparable company. It is the assessee's contention that the functions performed by the assessee are different from the functions of Info Edge and therefore it cannot be said to be comparable to Info Edge (India) Ltd. for the purpose of 'Arm's Length Price'. We find that CIT(A) after considering the nature of services provided by the M/s. Info Edge (India) Ltd. has given a finding that its primarily in the business of internet services where anyone on payment basis can have access to their websites as against the activities of assessee which is stated to be engaged in providing the administrative/facilitation assistance, providing product support and training to dealers and customers; assistance in relation to marketing/new business developments; communicating new business opportunity to AE; and providing assistance in negotiating the price of the products/terms of the contract with the customers. CIT(A) after considering the nature of activities had thus given a finding that nature of activities carried between the assessee and M/s. Info Edge (India) Ltd. are completely different services and the two cannot be considered to be a comparables and he therefore directed its exclusion. Before us, no fallacy in the findings of CIT(A) has been pointed out by Revenue. In such a situation, we find no reason to interfere with the order of CIT(A) for directing its exclusion. **Thus the ground of Revenue is dismissed.**

10. **Ground No.9** is with respect to direction of CIT(A) in excluding CDSL Ventures Ltd. as a comparable.

11. CDSL Ventures Ltd. was considered to be a comparable company by the TPO and had included it in the list of comparables. Before TPO, assessee had objected to its inclusion as a comparable. Assessee had sought its exclusion for the reason that the activities performed by it was completely different than that of assessee. It was further submitted before TPO that it was a leading securities depository in the country and it was handling the work of 'customer profiling and Record keeping' for issuance of Know Your Client (KYC) acknowledgement to mutual fund investors. The contention of the assessee for its exclusion as comparable was rejected by TPO. TPO was of the view that CDSL Ventures can be used as comparable and accordingly it was considered as a comparable company for determining the 'Arm's Length Price'.

12. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) after considering the functions and the profile of the CDSL Ventures has given finding that the financial of the CDSL show that more than 80% of its income was by way of on-line data charges and it belongs to ITES segment and was therefore not comparable company. He thus directed its exclusion from being a comparable company.

13. Aggrieved by the order of CIT(A), Revenue is now in appeal before us.

14. Before us, Learned DR pointed to the findings of TPO and submitted that CIT(A) has erred in directing its exclusion from the list of comparable companies.

15. Learned AR on the other hand reiterated the submissions of lower authorities and supported the order of CIT(A).

16. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to the exclusion of CDSL Ventures as a comparable companies. CIT(A) after considering the business profile and the details, has given a finding that it belongs to ITES segment, more than 80% of its income is by way of on-line data charges and therefore, it cannot be considered as comparable companies to that of assessee. Before us, no fallacy in the findings of CIT(A) has been pointed out by Revenue. In such a situation, we find no reason to interfere with the order of CIT(A) and therefore upheld the order of CIT(A) for its exclusion as a comparable company.
Thus the ground of Revenue is dismissed.

17. Since we have decided the issue in Ground No.4 & 9 in assessee's favour and dismissed the Ground of Revenue, therefore

in view of the submissions of the Learned AR that the other grounds raised by the Revenue would be rendered academic, we do not proceed to dispose the other grounds raised by Revenue. **Thus the grounds of Revenue are dismissed.**

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

Order pronounced in the open court on 08.12.2021

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 08.12.2021
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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI