

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>IT(TP)A No. 902/Bang/2016</b>
<b>Assessment Year : 2011-12</b>

M/s. Talisma Corporation Pvt. Ltd., Ground Floor, "Phoenix"- Magnificia, Vijanapura, Mahadevapura Ward, Old Madras Road, Dooravaninagar, Bangalore – 560 016. PAN: AABCT1052F	<b>Vs.</b>	The Deputy Commissioner of Income Tax, Circle 7 (1)(1), Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

**&  
IT(TP)A No. 458/Bang/2017  
(By Assessee)  
(Assessment Year : 2012-13)**

Assessee by	:	Shri K.R. Vasudevan, Advocate
Revenue by	:	Shri Manjunath Karkihalli, CIT-DR

Date of Hearing	:	15-02-2022
Date of Pronouncement	:	15-02-2022

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeals filed by assessee against the final assessment orders dated 27.01.2016 for A.Y. 2011-12 and 26.12.2016 for A.Y. 2012-13 by Ld.DCIT, Circle – 7(1)(1), Bangalore.

**2. Brief facts of the case are as under:**

At the outset, the Ld.AR submitted that the main issue in these two appeals is regarding the characterisation carried out by the Ld.TPO of the assessee's business.

The assessee is a manufacturer of software products, it owns and develop IP of the software product by the name CRM software. The assessee also sells this software product in America and in Asia-pacific region. The Ld.AR submitted that in the TP study by assessee for the assessment years under consideration, assessee has been characterised as manufacturer of software products, based on the functional analysis.

**3.** It is submitted that the Ld.TPO for A.Y. 2011-12 accepted the activity of assessee to be a manufacturer of software products, however, characterised the business of assessee as software development service provider. The Ld.TPO then applied the filters applicable to SWD service provider bench mark the transaction by applying comparables who are in the software development services.

**3.1** The Ld.AR further submitted that for A.Y. 2012-13, the ITO, held that the business of assessee involves three segments viz.,

- i) software development service segment,
- ii) software product segment and
- iii) software distribution segment.

The Ld.AR thus opposed the different characterisation by the same TPO for identical activity carried on by the assessee in both the years under consideration.

**4.** She thus submitted that the Ld.TPO characterised assessee differently in both the years. At this juncture, she brought to our attention the characterisation carried out by the Ld.TPO for A.Y. 2010-11, wherein no adjustment was made u/s. 92CA to the arms length price determined by the taxpayer in respect of the identical international transactions entered into with the associated enterprises.

It is submitted by the Ld.AR that the DRP even after noting business of assessee upheld the characterisation of receipts from sale of software products by the Ld.TPO, no decision has been rendered in respect of the same.

**5.** She thus submitted that the transfer pricing issues may be remanded in order to appreciate the functions performed by assessee in right perspective.

The Ld.CIT DR did not particularly object to the issue being remanded for *de novo* verification.

We have perused the submissions advanced by both sides in the light of records placed before us.

**6.** Admittedly, for both the years under consideration, assessee has been noted to be manufacturer of software product. It is an admitted fact that assessee owns the development of IP of software product being CRM software. Assessee entered into agreement with its AE for being an exclusive distributor for its software product in North America, for which the AE shall pay to assessee a licence fee equal to 30% of gross revenue. This receipt by assessee has been shown as royalty income by assessee. Apart from this, the assessee sells this software directly to third party customers in Asia-pacific region. It is noted that assessee also provides software support services for the CRM software product sold to both AE as well as non-AE.

Thus the segments of income generated by assessee are :

- 1) income from licence fee
- 2) payment of licence fee
- 3) income from software services.

**7.** It has been submitted that for A.Y. 2010-11, assessee was identically characterised in the TP study which has not been disturbed by the transfer pricing officer therein. Subsequently, assessee has

been characterised in different ways in the subsequent assessment years which needs to be verified at the end of Ld.TPO.

In the interest of justice and to remain consistent in the approach of characterisation of assessee's business module, we remand the transfer pricing issues to the Ld.AO/TPO for *de novo* verification. Assessee is directed to file complete details regarding FAR analysis before the authorities in order to substantiate its arguments regarding the characterisation in the TP study.

The Ld.TPO is directed to analyse the details so filed by assessee and to consider the international transactions in accordance with various principles laid down by this *Tribunal* as well as various *High Courts* on this issue. Needless to say that proper opportunity of being heard is to be granted to assessee.

**8.** The Ld.AR further submitted that assessee has raised additional grounds for A.Y. 2011-12 vide letter dated 25.11.2019. The additional grounds raised reads as under:

**Additional grounds of appeal:**

*"Based on the facts and circumstances of the case, M/s. Talisma Corporation Private Limited ("the Appellant"), respectfully submits the following additional grounds of appeal for admission before Your Honours:*

**21. Disallowance of provision for audit fee:**

*a) The Learned Assessing Officer (Ld. AO) erred in disallowing the provision for audit fees on account of non-deduction of tax at source in AY 2010-11.*

*b) Further, the Ld.AO ought to have observed that liability towards audit fee had not crystalized during AY 2010-11 and hence no taxes was ought to be deducted at source on such provisions.*

*c) Notwithstanding the above, the Ld. AO ought to have allowed the provision as deductible expenditure on reversal of such provision in AY 2011-12.*

*d) The Ld. AO ought to have observed that the provision was disallowed in AY 2010-11 and the Appellant had*

*reversed such provisions in subsequent assessment year (i.e., AY 2011-12) and thereby the Ld.AO ought to have allowed the provision on its reversal.*

*The said grounds are independent and without prejudice to the other grounds of appeal preferred by the Appellant.*

*The Appellant craves leave to add, alter, vary, omit, substitute or amend the above ground of appeal, at any time before or at, the time of hearing, of the appeal, so as to enable the Honorable Income Tax Appellate Tribunal to decide this appeal according to law.*

*The Appellant does not have a Managing Director and hence these additional grounds of appeal are signed by the Director of the Company in accordance with the provisions of the Act.”*

The Ld.DR did not object for the additional ground being admitted.

**9.** We note that the additional ground is directly connected with the main issue of disallowance and no new facts needs to be investigated for adjudicating the same.

**9.1** Considering the submissions and respectfully following the decisions of *Hon'ble Supreme Court* in case of *National Thermal Power Co. Ltd. Vs. CIT* reported in (1998) 229 ITR 383 and *Jute Corporation of India Ltd. Vs. CIT* reported in 187 ITR 688, we are admitting the additional ground raised by the assessee. Accordingly, we admit the additional ground raised by assessee. The Ld.AR in respect of the additional ground raised, submitted that during the year under consideration, the provision made towards Audit fees was reversed in the subsequent year and that the disallowance is uncalled for.

The Ld.CIT.DR submitted that this issue needs to be verified in detail. We have perused the submissions advanced by both sides in the light of records placed before us.

**10.** It is a claim of assessee that assessee was disallowed the provision towards audit fee in A.Y. 2010-11 and the same has been reversed in

A.Y. 2011-12 which deserves to be allowed. It is also submitted that disallowance of the provisions would amount to double taxation.

In the interest of justice, we direct the Ld.AO to verify the details filed by the assessee and to consider the claim in accordance with law.

**Accordingly, this additional ground raised by assessee stands allowed for statistical purposes.**

**In the result, the appeals for both the years under consideration filed by assessee stands allowed for statistical purposes.**

Order pronounced in the open court on 15<sup>th</sup> February, 2022.

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 15<sup>th</sup> February, 2022.  
/MS /

**Copy to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore