

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

**BEFORE SHRI. B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

IT(TP)A No. 230/Bang/2021
Assessment Year : 2016-17

M/s. Black Knight India Solutions Pvt. Ltd., 6-3-1192-2-1, HTC Towers, Kundanbagh, Begumpet, Hyderabad, Telangana – 500 016. PAN: AACCL2956K	Vs.	The Assistant Commissioner of Income Tax, Circle – 1(1)(2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri S.P. Chidambaram, Advocate
Revenue by	:	Shri Sumer Singh Meena, CIT DR

Date of Hearing	:	26-04-2022
Date of Pronouncement	:	29-04-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of the final assessment order dated 30.03.2021 passed by the Ld.AO in National e-assessment for assessment year 2016-17 on following grounds of appeal:

“1. That on the facts and circumstances of the case, the final assessment order dated 30 March 2021 (and received by the Appellant on 30 March 2021) passed by the Additional / Joint / Deputy / Assistant Commissioner of Income Tax/ Income-tax Officer, National e-Assessment

Centre, Delhi u/s 144 r.w.s 144C(13) and 144C(13) read with sections 143(3A) & 143(3B) of the Income-tax Act, 1961 ('Act'), pursuant to the directions dated 5 February 2021 by Dispute Resolution Panel, Bangalore ('DRP') u/s 144C(5) of the Act and read with order dated 22 October 2019 issued by Transfer Pricing Officer ('TPO') u/s 92CA(3) of the Act, is bad in law and void ab-initio so far as it is prejudicial to the Appellant.

Transfer Pricing Adjustment

2. That on the facts and circumstances of the case and in law, the TPO/AO erred in making transfer pricing adjustment of Rs. 5,40,95,771 on account of provision of software development and support services by the Appellant to its Associated Enterprises ('AEs').

3. That on the facts and circumstances of the case and in law, the TPO/AO erred in not following the directions of the DRP which leads to deletion of transfer pricing adjustment of Rs. 5,40,95,771 while issuing the final assessment order u/s 144 r.w.s 144C(13) and 144C(13) read with sections 143(3A) & 143(3B) of the Act.

Rejection of TP Documentation and Cherry picking of comparables

4. That on the facts and circumstances of the case and in law, the TPO/AO/DRP erred in rejecting transfer pricing documentation maintained by the Appellant in accordance with the provisions of the Act read with the Income-tax Rules, 1962 ('Rules') and undertaking a fresh economic analysis during the course of assessment proceedings and thereby making an adjustment of Rs. 5,40,95,771 to the international transactions relating to provision of software development and support services.

5. That on the facts and circumstances of the case and in law, the TPO/AO/DRP erred in adopting a search strategy that amounts to cherry picking of companies.

Selection of incomparable companies

6. That on the facts and circumstances of the case and in law, the TPO/AO/DRP erred in confirming acceptance of following companies as comparables as selected by the TPO:

- a. Inteq Software Private Limited
- b. R S Software (India) Limited
- c. Larsen and Toubro Infotech Limited
- d. Nihilent Technologies Limited
- e. Persistent Systems Limited
- f. Infobeans Technologies Limited
- g. Aspire Systems (India) Private Limited
- h. Infosys Limited
- i. Thirdware Solution Limited

7. That on the facts and circumstances of the case and in law, the TPO/AO/DRP erred in accepting companies disregarding the comparability factors such as diversified activities, presence of intangibles, research and development activities, brand, scale of operations, extra-ordinary events, absence of segmental information etc.

8. That on the facts and circumstances of the case and in law, the TPO/AO/DRP erred in accepting Persistent Systems Limited and Aspire Systems (India) Private Limited without appreciating that it is failing related party transactions filter.

9. That on facts and circumstances of the case and in law, the TPO/AO/DRP erred in not applying upper limit for sales turnover filter.

Rejection of comparable companies

10. That on the facts and circumstances of the case and in law, the TPO/AO/DRP erred by not including following companies as comparables as requested by the Appellant on erroneous grounds.

a. TVS Infotech Limited

b. FCS Software Solutions Limited

c. Sasken Communication Technologies Limited

d. Maveric Systems Limited

e. DCIS DOT COM Solutions Pvt Ltd.

f. Akshay Software Technologies Ltd.

g. Evoke Technologies Pvt. Ltd.

h. Sagarsoft (India) Ltd.

i. (summation Technologies Pvt Ltd

j. Batchmaster.Software Private Limited

k. Ace Software Exports Limited

l. Synfosys Business Solutions Limited

m. Eluminous Technologies Pvt. Ltd.

11. That on the facts and circumstances of the case and in law, the TPO/AO/DRP erred by not appreciating that the comparables listed in ground 10 are functionally comparable and meets the filter adopted by the TPO and therefore should be included in the list of comparables.

12. That on the facts and circumstances of the case and in law, the TPO/AO/DRP erred by not accepting the search conducted by the Appellant during the assessment proceedings before the Ld. TPO without appreciating the fact that the same was submitted before the Ld. TPO/AO and DRP.

Incorrect margins of comparables

13. That on facts and circumstances of the case and in law, the TPO/AO erred by not following the directions of Hon'ble learned DRP with respect to correction of margins

of CG-VAK Software and Exports Limited and Cybage Software Private Limited based on the financial information available in the Annual Reports of such companies.

14. That on the facts and the circumstances of the case and in law, the TPO/AO/DRP erred in confirming the TPO's stand of treating the provision for bad and doubtful debts as non-operating expenses for the purpose of margin computation of comparable companies as selected by TPO.

Adjustment for risk differences

15. That on the facts and circumstances of the case and in law, the TPO/AO/DRP erred in disregarding the risk profile of the Appellant vis-à-vis comparable companies selected by the TPO and not allowing risk adjustment as per the provisions of Rule 10B(1)(e) of the Rules.

Working capital adjustment

16. That on the facts and circumstances of the case and in law, the TPO/AO/DRP erred in not granting working capital adjustment to the Appellant.

17. That on the facts and circumstances of the case and in law, the AO erred by calculating excess interest under section 234B of the Act.

18. That the consequential effect should be given to the liability of interest under section 234B and 234D.

19. The Appellant craves, to consider each of the above grounds of appeal without prejudice to each other and craves leave to add, alter, delete or modify all or any of the above grounds of appeal.”

2. Brief facts of the case are as under:

2.1 The assessee is engaged in providing software development and research, support and services. The return of income for the Assessment Year 2016-17 was filed by the assessee on 30.11.2016, declaring total income of Rs.11,90,45,910/-. Book profit was shown at Rs.11,68,31,084/- in the return. The case was selected for scrutiny through CASS and notice u/s. 143(2) of the Act, was issued and served on the assessee.

2.2 During the under consideration, the assessee had international transactions aggregating to Rs.77,72,22,589/-. The case is limited scrutiny on TP risk parameter, being one of the As the international transaction exceeded theRs.15 crores, the case

was referred to the Transfer Pricing Officer to determine the Arms' Length Price as per provisions of Section 92CA of the IT Act, 1961. The transfer pricing adjustment was proposed at Rs.5,40,95,771/-.

2.4. Against the draft assessment order, assessee preferred objections before the DRP.

The DRP passed order giving certain directions in respect of the issues raised by assessee against which the final assessment order was passed by the Ld.AO by making addition in the hands of the assessee at Rs.5,40,95,771/-.

Against the final assessment order, the assessee is in appeal before this *Tribunal*.

At the outset, the Ld.AR submitted that assessee wishes to contest only **Ground no. 13**.

3. Before us, the Ld.AR submitted that, the only grievance of the assessee was in respect of not computing the margin of the comparables i.e. CG-VAK Software and Exports Ltd. and Cybage Software Pvt. Ltd. as per the directions of the DRP.

4. The Ld.AR submitted that DRP directions in para 2.21.15 & 2.22.1 has not been carried out by the Ld.AO, while passing the final assessment order.

5. It is submitted that in the event, the margin as directed by the DRP is corrected of CG-VAK Software and Exports Ltd. and Cybage Software Pvt. Ltd., the assessee does not intend to contest any the other grounds for the year under consideration.

6. The Ld.DR did not object to the submissions made by the Ld.AR. We have perused the submissions advanced by both sides in the light of records placed before us.

7. It is noted that DRP directed the Ld.AO in respect of the comparables CG-VAK Software and Exports Ltd. and Cybage Software Pvt. Ltd. as under:

“2.21.3.....

2.21.5. *With regard to erroneous computation of Margin, the TPO is directed to verify the correctness of computation as the assessee claimed from the annual report data rather than data from database. Accordingly the plea is disposed off.*

.....

2.22.1. *The assessee submitted that there is error in the margin computation of this company. It has not specifically pointed out the error in the TPO's computation except stating that the TPO has not adopted the figures as per the annual report. We consider it appropriate to direct the TPO to verify and adopt the figures as per the annual report and accordingly their PLI margin may be computed.”*

7. The Ld.AO thus directed to compute the margin as per the DRP directions.

Accordingly, ground no. 13 raised by assessee stands allowed.

All other grounds at this stage becomes academic as per the submissions of the Ld.AR and is left open to be contested in an appropriate assessment year.

In the result, the appeal filed by assessee stands allowed on ground no. 13 only.

Order pronounced in open court on 29th April, 2022.

Sd/-
(B.R. BASKARAN)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 29th April, 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