

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

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

IT(TP)A No. 228/Bang/2020
Assessment Year : 2005-06

The Deputy Commissioner of Income Tax, Circle – 2 (1)(1), Bangalore.	Vs.	M/s. 24/7 Customer Pvt. Ltd., Embassy Golflinks Business Park, Challaghatta Village, Off Intermediate Ring Road, Varthur Hobli, Bangalore – 560 071. PAN: AAACZ1014A
APPELLANT		RESPONDENT

Assessee by	:	Shri Jeepan Nagpal & Mrs. Pallavi Sharma, CA
Revenue by	:	Dr. Manjunath Karkihalli, CIT DR

Date of Hearing	:	17-05-2022
Date of Pronouncement	:	30-06-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by the revenue against order dated 29/11/2019 passed by the Ld.CIT(A)-2, Bangalore for A.Y. 2005-06 on following grounds of appeal:

“Grounds of appeal & question of law:

a) The learned CIT(A) has erred in law and in fact seeking exact comparability under TNNM?

b) *The learned CIT(A) has erred in law in ignoring the parameters of analysis prescribed under Rule JOB, which are exhaustive and if so, whether it is legally permissible to bypass the same partially or by implication?*

c) *The learned CIT(A) has erred by directing to exclude certain comparables on application of turnover filter ignoring the jurisdictional ITAT's decision in this case of M/s Societe General Global Solution Centre (P) Ltd. Vs DCIT, Circle-12(3), Bangalore vide IT(TP) A No. 118 (Bang)201?*

d) *The learned CIT(A) has erred in fact and in law in not acknowledging that there is no direct relationship between brand value and the margin earned by the company. Brand may generate the revenue of the company but does not increase the profit margin.*

e) *In the facts and circumstances of the case, the learned CIT(A) has erred in ordering grant of Risk Adjustment when it is not possible to calculate in terms of numbers the differences in risk so that adjustment can be made.*

f) *In the facts and circumstances of the case, the learned CIT(A) has erred in not following the decision of the Hon'ble ITAT Bangalore bench in the case of M/s SAP Labs India (P.) Ltd. [2012] 17 taxmann.com 16 (Bang.) and M/s Meritor LVS India Pvt. Ltd. [2015] 64 taxmann. com 136 (Bangalore - Trib.) and also decision of the Hon'ble ITAT, Mumbai bench in the case of M/s. Symantec Software Solutions Pvt. Ltd. Vs ACIT (2011) 46 SOT 48 (Mumbai).*

g) *The learned CIT (A) has erred in granting adjustment on depreciation when the taxpayer 's profit margin even before the depreciation claim is not at arm's length.*

h) *The learned CIT (A) has erred in granting depreciation adjustment without considering three years data of the taxpayer and the comparable companies as the effect of charge in the rate of depreciation would be there for more than one year.”*

2. Brief facts of the case are as under:

2.1 The assessee, an Indian Company engaged in the business of providing call centre services exclusively to its Associated Enterprise (A.E.), 24/7 Customer.com Inc., USA (24/7 USA), filed

its return of income for Assessment Year 2004-05 on 22.11.2004 declaring a total loss of Rs. 40,84,968. The case was processed u/s. 143(1) of the Act and the case was taken up for scrutiny by issue of notice u/s. 143(2) of the Act. A reference u/s. 92CA(1) of the Act was made by the Ld.AO to the Ld.TPO in respect of the following international transactions entered into by the assessee with its A.Es.

Nature of International Transactions	Value Rs.
Call Centre Services	66,00,46,029
Import of Capital Equipment	45,43,167
Reimbursement of Expenses	1,78,60,545
Cross Charge of Expenses	33,56,693
Total	68,58,06,434

2.2 The Ld.TPO passed order u/s. 92C r.w.s. 92CA(1) of the Act dt. 15.12.2006 making an adjustment of Rs.15,23,42,536/- to the international transactions of the assessee, in respect to call centre services.

2.3 Pursuant to the order of the Ld.TPO, the Ld.AO passed order dated 04.12.2008 u/s 143(3) assessing the income of the assessee at Rs. 11,91,67,860/-.

2.4 While passing the assessment order Ld.AO did not allow set off of brought forward losses against the income eligible for deduction u/s 10A and set off of losses of non-10A units against the profits of 10A unit. The Assessing Officer also did not reduce the communication expenses and lease line expenditure from export turn over as well as total turnover.

2.5 The Ld.CIT(A) passed consolidated order dated 30.11.2009 for A.Y 2004-05 & 2005-06 and partly allowed the assessee's appeal. Following Table-2 summarizes the order of the CIT(A) at the time of first round of appellate proceedings-

S.No.	Issue before CIT(A)	Decision
i.	Set off of brought forward losses against income claimed as deduction u/s I OA	Allowed
ii.	Set off of losses of non-10A units against the profit of the s. 10A unit	Allowed
iii.	Reduction of telecommunication charges and lease line expenditure from 'export turnover' while computing deduction	Allowed
iv.	Transfer Pricing adjustment	Dismissed the assessee's appeal

2.6 Aggrieved by the said appellate order, both the revenue and the assessee filed cross appeals before this *Tribunal*.

2.7 Both the aforementioned appeal were decided vide separate orders passed by this *Tribunal*. In assessee's appeal, the *Hon'ble Tribunal* vide order dated 12.07.2017 remanded the matter back to the Ld.CIT(A) for fresh adjudication on transfer pricing issue. This *Tribunal* held that, the first appellate authority was duty bound to examine the FAR of the comparables and was also to provide the reasoning with respect to the inclusion of the comparables selected by the TPO. In the revenue's appeal on corporate ground, this *Tribunal* passed a consolidated order for A.Ys. 2004-05 & 2005-06 dismissing the appeals. Accordingly the order of Ld.CIT(A) was upheld.

2.8 The second round of litigation:

The only issue that was remanded by this *Tribunal* before CIT(A) was in respect of transfer pricing adjustment of Rs.11,82,53,633/- made by the Ld.TPO.

2.9 The Ld.CIT(A) has in effect allowed the appeal of the assessee vide order dated 29.11.2019.

2.10. Aggrieved by the impugned order of Ld.CIT(A), the revenue is in the present appeal before this *Tribunal*.

3. Both sides submitted that **Grounds a to d** raised by revenue is in respect of the comparables that stood excluded by applying turnover filter by the Ld.CIT(A).

4. **Grounds g to h** is in respect of granting adjustment on depreciation to the assessee. Admittedly, both these issues stands covered by the order of this *Tribunal* dated 17/02/2022 passed in assessee's own case for A.Y. 2004-05 in *IT(TP)A No. 2328/Bang/2019*.

5. The Ld.AR submitted that *Coordinate Bench of this Tribunal* decided the issue of granting adjustment on depreciation by observing as under:

"2. After hearing both the parties, we are of the opinion that the issue is covered by the decision of this Tribunal in the case of Outsource Partners International (P) Ltd. [2017] 87 taxmann.com 332 (Bang. Trib.) wherein it has been held that the depreciation adjustment is to be granted whereby the rates of depreciation is different vis-a-vis the comparable companies. Further as regards whether adjustment should be made in the hands of the tested party i.e., the assessee or the comparable companies, the Mumbai Tribunal decision in the case of Pangea3 & Legal Database Systems (P) Ltd. v. ITO, [2017] 79 taxmann.com 303 (Mum Trib.) held that where rates of depreciation were different in case of assessee and comparable companies, Rule 10B(1) permits an adjustment in the hands of the tested party also and depreciation adjustment has to be allowed."

Respectfully following the above view, we do not find any infirmity in the view taken by the Ld.CIT(A).

Accordingly grounds g-h raised by revenue stands dismissed.

6. Grounds a to d:

Aggrieved by the view taken by Ld.CIT(A) in respect of excluding comparables by applying turnover filter excluding certain comparables from the final list.

7. We note that the Ld.CIT(A) excluded following comparables for following reasons:

S.No.	Comparable	Reason for exclusion by Ld.CIT(A)
1.	Saffron Global Ltd.	The Ld.CIT(A) has excluded this comparable as its parent company was involved in fraudulent activity as has been observed by <i>Hon'ble Pune Tribunal</i> in respect of <i>Oceans Connect (I) (P) Ltd.</i> case and <i>Hon'ble Delhi Tribunal</i> in case of <i>CRM India (P) Ltd.</i>
2.	Vishal Information Technology Ltd.	The Ld.CIT(A) observed that this comparable is majorly into outsourcing most of its work and <i>Coordinate Bench of this Tribunal</i> in case of <i>Telelogic India (P.) Ltd. vs. ACIT</i> reported in <i>68 taxmann.com 165</i> has excluded this comparable.
3.	Cosmic Global Ltd. (formerly known as Tulsyan Technologies Ltd.)	The Ld.CIT(A) observed that this comparable is also majorly into outsourcing of its business activities to others as compared to assessee that carries out its activities on its own. The Ld.CIT(A) also drew support from the decision of <i>Hon'ble Mumbai Tribunal</i> in case of <i>ACIT vs. Maersk Global Service Center (India) (P) Ltd.</i> reported in <i>133 ITD 543 (Mum).</i>
4.	Wipro BPO Solutions Ltd.	This comparable is excluded by Ld.CIT(A) as it carries huge brand value which is not akin to captive service provider like

		assessee.
5.	Nucleous GIS Ltd. Netsoft &	This comparable is outsourcing major portion of its as observed by <i>Coordinate Bench of this Tribunal</i> in case of <i>DCIT vs. Genesis Integrating Systems (India) (P) Ltd.</i> reported in <i>66 taxmann.com 20</i> .
6.	Maple e Solutions Ltd.	The Ld.CIT(A) observed that this company is found to be involved in fraudulent activities as has been observed in case of <i>Global e-Business Operations Pvt. Ltd.</i> reported in <i>86 taxmann.com 197 (Bangalore)</i>

The Ld.DR could not controvert any of the above findings of the Ld.CIT(A) for exclusion of above comparables. We therefore not inclined to interfere with the view taken by Ld.CIT(A) and the same is upheld.

Accordingly grounds a to d raised by revenue stands dismissed.

8. **Grounds e to f** raised by revenue in respect of risk adjustment directed to be granted by the Ld.CIT(A).

8.1 We note that there is a detailed observation by the Ld.CIT(A) for granting risk adjustment to assessee. It is also noted that, no details were furnished by assessee in respect of risk, assumed by the comparable companies with that of the assessee that needs to be adjusted while computing the ALP. Principally we agree that the adjustment is to be computed in accordance with Rule 10D, however, the details are to be furnished by the assessee in respect of the comparables without which the risk cannot be computed. We therefore modify the directions of the Ld.CIT(A) by directing the assessee to provide all relevant information to the Ld.AO/TPO for

computing the risk undertaken by the comparables vis-à-vis that of the assessee for adjustment to be granted.

Accordingly, these grounds i.e. ground nos. e & f raised by revenue stands allowed for statistical purposes.

In the result, the appeal filed by the revenue stands partly allowed for statistical purposes.

Order pronounced in open court on 30th June, 2022.

Sd/-
(PADMAVATHY S)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 30th June, 2022.
/MS /

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

By order

Assistant Registrar,
ITAT, Bangalore