

आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL "C"
BENCH, PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND SHRI G.D.PADMASHALI, ACCOUNTANT MEMBER

आयकर अपीलसं. / ITA No.162/PUN/2017

निर्धारणवर्ष / Assessment Year : 2010-11

M/s.Oceans Connect India Pvt. Ltd., Commerzone, 501, 5 th Floor, Building No.6, Yerawada, Pune – 411006. PAN: AAGCS 0318 E	Vs .	The DCIT-1(2), Pune.
Appellant/ Assessee		Respondent /Revenue

आयकर अपीलसं. / ITA No.1721/PUN/2017

निर्धारणवर्ष / Assessment Year : 2011-12

Oceans Connect India Pvt. Ltd., Office No.9, House No.106, D-1, CTS No.530, Near Bhaji Market, Mundhwa (Gaothan), Pune – 411036. PAN: AAGCS 0318 E	Vs .	The Income Tax Officer, Ward-3(5), Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Prakash K.Jotwani & Shri Sandeep Sathia – AR's
Revenue by	Shri Piyush Kumar Singh Yadav - DR
Date of hearing	01/09/2022
Date of pronouncement	28/09/2022

आदेश/ ORDER

Per S.S.Godara, JM:

These assessee's twin cross appeals for AYs 2010-11 and 2011-12 arise from the CIT(A)-13, Pune's separate orders, dated 10.10.2016 and 06.02.2017 passed in case no. PN/CIT(A)-13/DCIT, Cir-1(2),Pune/460/2015-16/378 and PN/CIT(A)-13/Ward-3(5),

Pune/144/2016-17/597 in proceedings u/s 143(3) r.w.s 144C(1) and u/s 143(3) r.w.s 144C(3) of the Income Tax Act, 1961 [in short “the Act”], respectively.

Heard both the parties. Case files perused.

2. We proceed assessment year wise for the sake of convenience and brevity. Coming to the assessee's first and foremost appeal in ITA No.162/PUN/2017 for AY 2010-11, it emerges at the outset that it's endeavour before us is to seek exclusion of five entities M/s Accentia Technologies Ltd., BNR Udyog Ltd., Caliber Business Point, Cosmic Global Ltd. and Informed Technologies Ltd., from the array of comparables taken by the learned lower authorities whilst making arms length price “ALP” adjustment in Information Technology Enabled Services “ITeS”, leading to transfer pricing adjustment of Rs.2,06,90,628/- in issue. It is made clear that the assessee's volume of transactions with its overseas associate enterprise “AE” M/s.Ocean Connect UK Ltd. amounted to Rs.16,73,55,893/- declared at cost + 12% mark-up after adopting the transactional net margin method ‘TNMM’. We, keep in mind the fact that our instant adjudication as per assessee's pleadings is restricted to admissibility of the foregoing five entities as valid comparables, we refrain ourselves from touching upon all the remaining aspects for the sake of convenience and brevity.

3. We next note that M/s.Accentia Technologies Ltd. is not only involved in medical transcriptions & software sales as against the assessee's segment of "ITES" but also it had undergone an extraordinary event of amalgamation involving M/s.Accentia Info Serve Ltd. w.e.f 01.04.2008 as held in the tribunals co-ordinate benches order in M/s GE India Business Services Private Ltd., involving ITA No.6906/DEL/2014 [A.Y. 2010-11]. That being the case, we hold that this first and foremost entity M/s.Accentia Technologies Ltd., is not a valid comparable since having undergone amalgamation as an extraordinary event. The same is directed to be excluded.

4. The very course of action follows for the next three comparable entities M/s. BNR Udyog Ltd., Caliber Business Point and Cosmic Global Ltd. since engaged in medical transcription [first and last] and healthcare(second case) thereby deriving revenue of Rs.1.09/-, 71/- and 5.72/- [in crores], respectively as against the assessee's "ITeS" segment on captive basis only. This tribunals co-ordinate bench's decisions in M/s.Venntura (Inida) Pvt. Ltd. in ITA No.1788/PUN/2014 (Pune) and GE India Business Services Pvt. Ltd., (supra) hold that such medical transcription and healthcare services performing entities do not form valid comparables in ITeS

segment. We accordingly direct exclusion of all three entities since not satisfying "FAR" analysis.

5. Lastly comes the fifth entity M/s.Informed Technologies Ltd., which is found to be engaged in knowledge processing outsourcing "KPO" business as held in ITA No.7674/MUM/2012 Capital Net Pvt Ltd. Vs. DCIT dated 15.01.2019. Hon'ble delhi high court's decision in Rampgreen Solutions Pvt. Ltd., Vs. CIT in ITA 102/2015 dated 10.08.2015 has settled the instant issue that such a KPO does not form a valid comparable in the instant segment. We thus direct the learned AO/TPO to exclude M/s.Informed Technologies Ltd. as well as from the array of comparables. Necessary computation shall follow as per law.

No other ground has been pressed before us.

6. This assessee first and foremost appeal ITA No.162/PUN/2017 is accepted in above terms.

7. We now advert to the assessee's latter appeal ITA No.1721/PUN/20174 for A.Y. 2011-12. Both the learned representatives are ad-idem during the course of hearing that the assessee only seeks to exclude four entities from the array of comparables i.e. M/s.Accentia Technologies Ltd., Caliber Business Point, Informed Technologies Ltd., and E4E Healthcare Business

Solution out of which the former three already stand adjudicated against the department in A.Y. 2010-11 hereinabove(supra). The very factual position continues for the last entity M/s.E4E Healthcare Business Solutions stated to be engaged in healthcare services. We make it clear that the very segment of healthcare services stands excluded in A.Y. 2010-11 (supra). Coupled with this, the Revenue could hardly dispute that it has derived income from healthcare services only to the tune of Rs.61 crores falling in a different segment than ITeS before us. We thus follow preceding reasoning herein as well to exclude this last entity M/s.E4E Healthcare Business Solutions. We further deem it appropriate before parting that all the foregoing functionally dissimilar entities' financials also do not support the Revenue's arguments. The assessee's instant latter appeal in ITA No.1721/PUN/2017 is also allowed to the extent indicated hereinabove.

No other ground has been pressed before us.

8. These assessee's twin appeals are allowed in above terms. A copy of this common order be placed in respective case files.

Order pronounced in the open Court on 28th September, 2022.

Sd/-
(G.D.PADMASHALI)
ACCOUNTANT MEMBER

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 28th Sep, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "सी" बेंच,
पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.