

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

**BEFORE SHRI S.S.GODARA, JM
AND SHRI G.D. PADMAHSHALI, AM**

आयकर अपील सं. / ITA No.743/PUN/2017
निर्धारण वर्ष / Assessment Year : 2012-13

Eaton Technologies Private Ltd.,
(Erstwhile Eaton Industries P.Ltd.,
Cluster C, Wing 1, EON Free Zone,
Plot No.1, Survey No.77,
MIDC Kharadi Knowledge Park,
Pune – 411 014.

PAN : AAACE6351P

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle -8, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Vishal Karla
Revenue by : Shri Prashant Gadekar

सुनवाई की तारीख / Date of Hearing : 26.08.2022
घोषणा की तारीख / Date of Pronouncement : 16.09.2022

आदेश / ORDER

PER S. S. GODARA, JM :

1. This assessee’s appeal for assessment year 2012-13 arises against the DCIT, Cir-8, Pune’s assessment dated 20.01.2017 framed in furtherance to the Dispute Resolution Panel -3 Mumbai (DRP)’s directions dated 21.11.2016 in Objection No.51, in proceedings u/s.143(3) r.w.s. 144C(1) of the Income Tax Act, 1961; in short "the Act".

Heard both the parties. Case file perused.

2. It emerges during the course of hearing that the assessee's sole substantive grounds raised herein challenges correctness of transfer pricing arm's length price "ALP" adjustment of Rs. 1,17,03,917/- pertaining to corresponding segment of information technology enabled services "ITeS" provided to its overseas associate enterprises "AE"s in the relevant previous year.

3. Learned Counsel stated at the outset that the assessee first of all presses for its objections / ground no.3 seeking exclusion of M/s. Excel Infosys Ltd., and M/s. Universal Print Systems Ltd., from the array of comparable entities taken at the TPO's behest. We thus proceed to adjudicate this comparability issue of the forgoing twin entities at the first instance.

4. We wish to reiterate here that the assessee's segment admittedly is business support / ITeS so far as the impugned assessment year is concerned. We advert to the former entity herein M/s. Excel Infosys Ltd and prima facie note that it undertakes diverse range of activities i.e. telecom fulfillment inbound services, financial services, technical support, web development and health care services. Learned lower authorities in their respective findings hold that this entity could indeed be taken as a comparable since the most appropriate method "MAM" herein is TNMM i.e. the transactional net margin method only which requires broader than segmental similarity in nature. We note in this factual backdrop that the

tribunal's co-ordinate bench order in BT e-Serve (India) Pvt. LTd. V/s ITO in ITA No. 6690/Del/2016 for AY 2012-13 itself holds this former entity M/s. Excel Infosys Ltd., as not a varied comparable on account of its volatile margins. The very position stands reiterated in Emerson Climate Technologies India Pvt. LTd. V/s DCIT ITA No. 2432 OF 2017 (Pune) and Baxter India P. Ltd. V/s ACIT ITA No. 6158/Del/2016. We take cue therefrom to conclude that the learned lower authorities ought to have excluded the instant former entity from the array of comparables. Ordered accordingly.

5. Next comes the latter entity M/s. Universal Print Systems which has been already held as not a valid comparable in ITeS segment in assessee's case itself ITA No. 1002/PUN/2017 in AY 2012-13 dated 12.09.2019 (pages 107 to 134 in paper book) since lacking functional similarity. We thus adopt the very course of action herein as well and direct the learned Transfer Pricing Officer "TPO" to frame his afresh computation as per law.

6. Mr. Karla further submits in light of the assessee's remaining substantive grounds that the impugned assessment has not been framed as per the DRP's directions regarding computation of correct profit margins of the relevant comparables, working capital adjustment, standard tolerance margin of $\pm 5\%$ etc. And also that once we have accepted the assessee's submissions regarding exclusion of forgoing twin entities, it does not wish to press for the remaining grounds at this stage. Faced with this situation, we direct the learned lower authorities to frame the consequential afresh

computation as per law in three effective opportunities. All other substantive grounds stands treated as consequential in nature in above terms.

7. This assessee's appeal is allowed in above terms.

Order pronounced in the Open Court on this 16th day of September, 2022.

Sd/-

(G.D. PADMAHALI)
लेखा सदस्य/ **ACCOUNTANT MEMBER**

Sd/-

(S.S. GODARA)
न्यायिक सदस्य/**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 16th September, 2022.

Ashwini

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The DRP -3, Mumbai
4. The CIT-3, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "सी" बेंच,
पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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

S.No.	Details	Date	Initials
1	Draft dictated on	02.09.2022	
2	Draft placed before author	13.09.2022	
3	Draft proposed & placed before the Second Member		
4	Draft discussed/approved by Second Member		
5	Approved Draft comes to the Sr. PS/PS		
6	Kept for pronouncement on		
7	Date of uploading of Order		
8	File sent to Bench Clerk		
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R.		
11	Date of Dispatch of order		