

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.PADMAHALI, ACCOUNTANT MEMBER

आयकर अपीलसं. / ITA No.181/PUN/2022
निर्धारणवर्ष / Assessment Year : 2017-18

Optiva India Technologies Pvt.Ltd., Building A, Flat – 1205, Kumar Surbhi, Opp. Saibaba Mandir, Parvati, Pune – 411009. PAN: AACCR 7002 A	Vs.	The DCIT, Circle-1, Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Darpan Kirpalani – AR
Revenue by	Shri Mohit Jain – CIT-DR
Date of hearing	17/08/2022
Date of pronouncement	07/10/2022

आदेश/ ORDER

Per S.S.Godara, JM:

This assessee's appeal for A.Y. 2017-18 arises against the National Faceless Assessment Centre, Delhi's assessment dated 30.01.2022, framed in furtherance to CIT(DRP-3), Mumbai-2's directions dated 07.12.2021, in TIN order no.ITBA/TPO/F/92CA3/2020-21/1029839432(1), involving proceedings under section 92CA(3) of the Income Tax Act(in short "the Act").

Heard both the parties. Case file perused.

2. Learned counsel states at the Bar at the outset itself that the assessee only presses for its ground nos.3.1 to 3.2 and 3.8 to 3.9 seeking to excluding M/s. E-Infochips Ltd., Cybage Software Pvt. Ltd., Exilant Technologies Pvt. Ltd. and E-Infochips Ltd., ; respectively from the array of comparables so far as correctness of arm's length price "ALP adjustment of Rs.9,04,85,400/-, in its software development and support services, is concerned. We thus restrict our instant adjudication to the limited extent of admissibility of the foregoing four comparables only.

3. We have given our thoughtful consideration to vehement rival submissions qua the instant limited issue and find force in the assessee's stand. It is noted during the course of hearing the first and foremost entity herein M/s.E-Infochips Ltd., had undergone an amalgamation as per honourable Gujarat high court's approved scheme dated 29.03.2016 w.e.f. 01.04.2015 involving M/s.Small Guard Systems and M/s.nGin Technologies Pvt. Ltd. That being the case, we hold that the foregoing extraordinary event of amalgamation renders M/s.E-Infochips Ltd., as not a valid comparable as already held in tribunals' co-ordinate bench's order in assessee's appeal itself in ITA No.194/PUN/2021 decided on 21.07.2022 for AY 2016-17. We thus adopt judicial consistency to exclude M/s. E-Infochips from the array of comparables.

4. The very factual position continuous regarding the latter three entities herein M/s.Cybage Software Pvt. Ltd., Exilant Technologies Pvt. Ltd., ad E-Infochips Ltd., wherein the learned co-ordinate bench has inter-alia concluded that they are engaged in other computer related activities than software services, property development and varied services and lack of availability of financials; respectively. We thus follow judicial consistency and direct exclusion of these remaining three companies from the list of comparables. Ordered accordingly. Necessary computation at the TPO's end shall follow as per law.

No other ground or arguments has been raised before us.

4. This assessee's appeal is allowed to the extent indicated in above terms.

Order pronounced in the open Court on 7th October, 2022.

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

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

पुणे / Pune; दिनांक / Dated : 7th Oct, 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.