

आयकर अपीलीय अधिकरण 'डी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.461/Hyd/2017**
(निर्धारण वर्ष / **Assessment Year: 2012-13**)

Excellence Data Research Pvt. Ltd. 6 th Floor, New No.165, Old No.110, Menon Eternity Building, St. Mary's Road, Alwarpet, Chennai – 600 018.	बनाम / Vs.	ACIT-Circle-17(1) 9 th Floor, Signature Towers, Kondapur IT Towers, Hyderabad.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AABCE-4933-C		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri S.P. Chidambaram (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Dr. S. Palanikumar (CIT) –Ld. DR
सुनवाई की तारीख/ Date of Hearing	:	21-11-2022
घोषणा की तारीख / Date of Pronouncement	:	06-12-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2012-13 arises out of final assessment order dated 23-12-2016 passed by Ld. Assessing Officer (AO) u/s 143(3) r.w.s. 92CA(3) / 144C(13) of the Act pursuant to the directions of Ld. Dispute Resolution Panel-1, Bengaluru (DRP) u/s 144C(5) of the Act dated 31-10-2016. The assessee carried out certain international transactions with its Associated Enterprises (AE) which were subjected to determination of Arm's Length Price (ALP) before Ld. Transfer Pricing Officer-3,

Hyderabad (TPO) vide order dated 29-01-2016. Incorporating the proposed adjustment, draft assessment order was passed by Ld. AO on 16-03-2016 which was subjected to further objections before Ld. DRP. Subsequently, final assessment order was passed by Ld. AO pursuant to the directions of Ld. DRP confirming certain Transfer Pricing (TP) adjustments against which the assessee is in further appeal before us. The grounds raised by the assessee read as under:

1. That on the facts and circumstances of the case, the final assessment order dated 23 December 2016 (and received by the Appellant on 13 January 2017) passed by the Assistant Commissioner of Income-tax, Circle -17(1), Hyderabad under section 143(3) read with section 92CA(3) read with section 144C(5) of the Income-tax Act, 1961 ('Act'), pursuant to the directions dated 31 October 2016 by Dispute Resolution Panel, Bangalore ('DRP') under section 144C(5) of the Act is bad in law and void ab-initio.

Transfer Pricing

General

2. That on the facts and circumstances of the case and in law, the AO /DRP erred in confirming transfer pricing adjustment of Rs.3,95,28,604 comprising of:

- a. Rs. 2,94,23,050 on account of margin adjustment for Information Technology enabled Services ('ITeS') by the Appellant to its Associated Enterprises ('AEs'); and
- b. Rs. 1,01,05,554 for notional interest on outstanding receivables from its AEs.

3. That on the facts and circumstances of the case and in law, the 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 to the international transactions.

Selection of comparable companies

4. That on the facts and the circumstances of the case and in law, the AO/ DRP erred in accepting the following as comparable as selected by the TPO:

- a. Accentia Technologies Limited;
- b. Eclerx Services Limited;
- c. Infosys BPO Limited;
- d. TCS e-service Limited; and
- e) Crossdomain Solutions Private Limited.

Error in computation of margin of comparable companies

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

Rejection of comparable companies

7. That on the facts and circumstances of the case or in law, the AO/DRP erred in confirming the rejection of Crystal Voxx Limited as not comparable.

Adjustment should be restricted to the international transactions

8. That on the facts and circumstances of the case or in law, the AO/DRP has erred in making the adjustment by considering total revenue of the Company without appreciating that the transfer pricing adjustment should be restricted only to the value of international transactions with the AE.

Negative/working capital adjustment

9. That on the facts and circumstances of the case and in law, the AO/ DRP erred in making a negative working capital adjustment in the Appellant's case who is mainly a captive service provider, without taking into account the jurisdictional judicial precedents on the issue.

Use of Filters

10. That on facts and circumstances of the case and in law, the AO/DRP erred in upholding the use of different financial year end filter for rejection of comparable companies while undertaking the comparative analysis.

Rejection of use of multiple year data

11. That on facts and circumstances of the case and in law, the AO/DRP erred in rejecting the use of multiple year data and using data for FY 2011-12 only.

Adjustment for risk differences

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

Arm's length range of 5%

13. That the AO / TPO be directed to re-work the profit margins of the Appellant vis-a-vis the resultant comparable companies and to allow the benefit of + /- 5% range as provided in proviso to Section 92C(2) of the Act.

Notional Interest on receivables from AE

14. That on the facts and circumstances of the case and in law, the AO /DRP erred in confirming transfer pricing adjustment of Rs.1,01,05,554 on account of notional interest on receivables from its AEs.

15. That on the facts and circumstances of the case and in law, the AO/DRP erred in charging notional interest on outstanding receivables from its AEs, disregarding the fact that such outstanding receivables had arisen out of the service transaction and not a separate international transaction. Hence, outstanding receivables cannot be equated to 'capital financing' as provided for in the Explanation inserted vide amendment by Finance Act, 2012 to section 92B.

16. That on the facts and circumstances of the case and in law, the AO/ DRP erred in completely ignoring the Tribunal's order in the Appellant's own case for AY 2010-11 (facts being same in the AY under consideration) which held that notional interest should not be charged on outstanding receivables from AEs as outstanding receivables is not a separate international transaction and had arisen out of the service transaction, which had already been benchmarked under other provisions of section 92B of the Act.

17. Without prejudice, the Appellant submits that notional interest should not be charged on outstanding receivables where invoices are realized within reasonable period of time.

18. Without prejudice to the above grounds, the AO/ DRP erred in applying the rates applicable to the Indian Rupee denominated short-term deposits (prescribed by Reserve Bank of India) on the outstanding invoices of the Appellant.

19. Without prejudice to the above grounds, the adjustment on account of interest on receivables should be restricted by computing interest up to 31st March 2012 and not beyond that for the assessment year under appeal.

Corporate Tax

20. The learned AO erred in granting the set off of MAT credit to the extent of Rs.1,19,23,503 as against MAT credit eligible for set off of Rs.1,94,76,632 under section 115JAA of the Act from the current year's tax liability.

21. That the consequential effect should be given to the interest liability under section 234B of the Act.

22. The learned AO erred in initiating penalty proceedings under section 271(1)(c) of the Act.

Ground No. 1 is general in nature whereas ground nos. 21 & 22 are consequential in nature. For Ground No.20, it would be sufficient on our part to direct Ld. AO to grant MAT credit in accordance with law. In all the other grounds, the assessee is aggrieved by certain Transfer Pricing Adjustments.

2. The Ld. AR assailed the adjustments and relied on earlier orders of the Tribunal in assessee's own case. The Ld. CIT-DR controverted the arguments of Ld. AR and submitted that the facts of earlier years are distinguishable. The Ld. CIT-DR drew our attention to the detailed findings rendered by Ld. TPO with respect to each of the comparable entity. Regarding interest on overdue receivables, it was submitted that there was substantial outstanding and considerable delay in realization of the same which was nothing but capital financing transaction. Having heard rival submissions, our adjudication would be as under.

3. The assessee being resident corporate assessee is stated to be engaged in providing back-office IT support services. The assessee group is leading provider of specialist information and services for the academic, scientific, professional and commercial business communities. The assessee is wholly owned subsidiary of

Datamonitor Ltd., UK which is ultimately owned by Informa Pic., UK. For the purpose of benchmarking, the assessee has been classified as ITeS provider.

4. Proceedings before Ld. TPO and DRP

4.1 The assessee carried out various international transactions with its AEs which are in the nature of payment of royalty, provision for ITeS services, receivables, payables etc. The assessee benchmarked the same on aggregate basis using Transactional Net Margin Method (TNMM). The Ld. TPO, applying certain filters, disturbed the comparability matrix. After meeting assessee's arguments on comparable entities, Ld. TPO selected 10 comparable entities having mean Profit Level Indicator (PLI-OP/OC) of 24.96% which was further increased by negative working capital adjustment of 3.46% thereby yielding average PLI of 28.42% as against assessee's PLI of 21.29%. Applying the same to assessee's operating costs, Ld. TPO proposed an adjustment of Rs.310.80 Lacs in its order as under; -

No.	Description	Amount (Rs.)
1.	Arm's Length Margin	24.96%
2.	Less : WCA	-3.46%
3.	Adjusted Arm's Length Margin	28.42%
4.	Operating Cost	43,61,52,948
5.	Arm's Length Margin (%)	28.42%
6.	ALP @123.94% of OC	56,01,07,616
7.	Price Received	52,90,27,186
8.	Adjustment u/s 92CA	3,10,80,430

4.2 Another adjustment was proposed on overdue receivables. The assessee had outstanding receivables of Rs.3208.77 Lacs which were received late as against allowable credit period of 30

days. Accordingly, Ld. TPO computed ALP interest @14.75% on the same and proposed adjustment of Rs.433.85 Lacs.

4.3 Though the assessee raised various objections before Ld. DRP, however, it remained substantially unsuccessful. The only relief the assessee could get was with respect to ALP rate on outstanding receivables wherein Ld. TPO was directed to adopt short term fixed deposits rates. The Ld. DRP also held that the companies engaged in low-end ITeS (BPO) services could not be compared with the entities engaged in providing high-end services (KPO). However, the assessee was providing a mix of both of services to its AE and therefore, it would not be appropriate to select entities which were providing only low-end or high-end services. For proper comparability analysis, it would be appropriate to have mix of high as well as low-end service providing entities. The directions of Ld. DRP reduced the TP adjustment on margins to Rs.294.23 Lacs whereas TP adjustment on interest on overdue receivables was computed at Rs.101.05 Lacs. Thus, aggregate adjustment of Rs.395.28 Lacs was made in the final assessment order. Aggrieved, the assessee is in further appeal before us.

5. Our findings and Adjudication

The Ld. AR has advanced arguments with respect to comparable entities which are dealt with as under: -

(i) Accentia Technologies Ltd.

Before Ld. TPO, the assessee sought exclusion of this entity on the ground that it was functionally different since it was providing high-end software services which could not be compared to the functions

of the assessee. The Ld. TPO rejected this plea and selected this entity. The Ld. DRP confirmed the same.

Before us, the Ld. AR has submitted that this entity is not only functionally different but it is not comparable due to peculiar economic conditions, inorganic growth, presence of intangibles, occurrence of extraordinary events and also for the reason that its segmental information was not available.

We find that for all these reasons, this entity has been excluded by Tribunal in assessee's own case for AY 2009-10 (ITA No.159/Hyd/2014 dated 31.07.2014) as well as in AY 2010-11 (ITA No.310/Hyd/2015 dated 12.09.2016). In AY 2011-12, this entity was excluded by Ld. DRP which was contested by revenue without any success before Tribunal in ITA No.34/Hyd/2016 dated 25.04.2018. Therefore, respectfully following the consistent stand of Tribunal in earlier years, we direct Ld. AO / TPO to exclude this entity.

(ii) Eclerx Services Ltd.

The assessee sought exclusion of this entity on the ground that it was functionally different. This entity was into consulting, business analysis and solution testing. Further, this entity carried high risk and it had super normal profits during the year and therefore, could not be considered as comparable entity. However, rejecting the same, Ld. TPO included this entity. The Ld. DRP confirmed the same.

Before us, the Ld. AR has submitted that this entity is not only functionally different but it is not comparable due to super normal profits, inorganic growth, peculiar economic conditions etc. This entity has been excluded in earlier years.

We find that this entity has been excluded by Tribunal in assessee's own case for AY 2009-10 (ITA No.159/Hyd/2014 dated 31.07.2014) on the ground that this entity was involved in diverse nature of services and no segmental data was not available. In AY 2010-11, Ld. DRP excluded this entity. The Tribunal dismissed the revenue's plea on the ground that there was no change in activities of this entity in comparison to AY 2009-10. In AY 2011-12, this entity was excluded by Ld. DRP on functional differences and extra ordinary events. The action of Ld. DRP was confirmed by Tribunal. Therefore, respectfully following the consistent stand of Tribunal in earlier years, we direct Ld. AO / TPO to exclude this entity.

(iii) Infosys BPO Ltd.

The assessee sought exclusion of this entity on the ground that it had brand value which will tend to influence the pricing policy. The entity incurred substantial expenditure on brand building and advertisement and has a huge turnover. However, the same could not found favor with Ld. TPO. The Ld. DRP confirmed the same.

Before us, the Ld. AR seeks exclusion of this entity on functional differences, presence of brand, extraordinary events, extreme profit margins and high turnover.

We find that this entity has been excluded by Tribunal in AY 2009-10 for the reason that this entity had brand value, high turnover, huge asset base and accordingly, not comparable. In AY 2011-12, this entity has been excluded by Ld. DRP by relying upon the decision of Tribunal in AY 2009-10. The same was upheld by Tribunal. Accordingly, respectfully following the consistent stand of

Tribunal in earlier years, we direct Ld. AO / TPO to exclude this entity.

(iv) TCS eServe Ltd.

The assessee raised similar objections and submitted that it was engaged into KPO activities. The segmental information was not available and it had brand value and possessed intangibles. The entity had super normal profits and high turnover. However, rejecting the same, Ld. TPO included this entity. The Ld. DRP confirmed the same.

Before us, the Ld. AR has submitted that this entity is functionally different. This entity has presence of brand, having huge turnover, extreme profit margins and huge employee base.

We find that this entity has been excluded by Tribunal in AY 2010-11. In AY 2011-12, this entity has been excluded by Ld. DRP which has been confirmed by Tribunal. Therefore, considering the same, we direct Ld. AO / TPO to exclude this entity.

(v) Crossdomain Solutions Pvt. Ltd.

The assessee sought exclusion of this entity on the ground that it was providing back-office support services. It was also into software development and product development activities. All these pleas were rejected by Ld. TPO. The Ld. DRP confirmed the same.

Before us, the Ld. AR has submitted that this entity is functionally different and this entity does not appear in the search carried out by Ld. TPO. For the said reason as well as following consistent stand of Tribunal in AYs 2009-10 to 2011-12, we direct Ld. AO / TPO to exclude this entity.

(vi) Crystal Voxx Limited

The assessee sought inclusion of this entity on the ground that it appeared in the final list of comparables of TPO. This entity was functionally similar and satisfies all the filters applied by Ld. TPO. However, Ld. TPO held that it failed service income filter at entity level and had persistent losses at segmental level and therefore, not considered. The Ld. AR seeks inclusion of this entity.

Since this entity has failed service income filter at entity level and it is a persistent loss-making company, the same has rightly been rejected.

6. The Ld. AR advanced arguments and submitted that other grounds would become infructuous since the assessee's margins would be within the tolerance range of $\pm 5\%$ and no adjustments would be warranted. Considering the same, we direct Ld. TPO / AO to re-compute the transfer pricing adjustments after revising comparability matrix as above. In case the margins of the assessee vis-à-vis the resultant comparable entities are more, the benefit of tolerance range of $\pm 5\%$ as per proviso to Sec. 92C(2) would be considered. The corresponding grounds stands allowed. All the other connected grounds have been rendered infructuous.

7. Regarding interest on overdue receivables, Ld. AR has submitted that it has not charged any interest on outstanding receivables from non-AEs Further, the same could not be equated as capital financing as provided in Explanation inserted vide amendment by Finance Act, 2012 to Sec.92B. The Ld. AR has also referred to earlier decisions of Tribunal.

8. We find that the transaction of overdue receivable would be covered under capital financing as per Explanation as inserted by Finance Act, 2012 to Sec.92B. The same has to be benchmarked separately irrespective of the fact whether any interest has been charged by the assessee from non-AEs or not. The Ld. DRP has already noted that substantial receivables have been outstanding during this year. Accordingly, we direct Ld. TPO to consider ALP rate of LIBOR+3% for delayed remittance beyond allowable credit period. The assessee is directed to provide the requisite information and computation. The ground stand partly allowed. No other ground has been urged in the appeal.

9. The appeal stands partly allowed in terms of our above order.

Order pronounced on 06th December, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 06-12-2022
EDN/-

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

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF