

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI 'J' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Shri Rahul Chaudhary (JM)

I.T.A. No. 8377/Mum/2010 (A.Y. 2006-07)

Standard Chartered Finance Limited Standard Chartered Tower, 3 <sup>rd</sup> Floor 201 B/1, Western Express Highway Goregaon East, Mumbai-400 063.  PAN : AAACE4113F (Appellant)	Vs.	DCIT -1(3) Aayakar Bhavan M.K. Road Mumbai-400 020.  (Respondent)
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Assessee by	Ms. Chandni Shah & Shri Amol Mahajan
Department by	Shri Manoj Kumar & Shri Samuel Pitta
Date of Hearing	23.01.2023
Date of Pronouncement	25.01.2023

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 29.9.2010 passed by the Assessing Officer under section 143(3) read with section 144C of the Act in pursuance of direction given by learned Dispute Resolution Panel (DRP) for A.Y. 2006-07.

2. At the time of hearing, learned AR did not press additional grounds raised by the assessee by making necessary endorsement in the file. Accordingly all the additional grounds are dismissed as not pressed. The main grounds urged by the assessee relate to the following two issues :

- a) Transfer pricing adjustment of Rs. 2.44 crores
- b) Disallowance made under section 14A of the I.T. Act

3. The facts relating to the case are that the assessee herein is rendering back-end processing services to the Standard Chartered Bank, UK for

documentation support services. To determine the Arms length price of international transactions, the assessee followed TNMM method as most appropriate method and Operating profit by Operating cost (OP/OC) as the Profit level Indicator. The assessee was getting revenue at cost plus margin of 14% from its Associated Enterprise (AE).

4. The Learned AR submitted that the Transfer Pricing Officer (TPO) selected 13 comparable companies whose average margin was 24%. Accordingly the TPO made transfer pricing adjustment of Rs.3.57 crores. The Learned AR further submitted that learned Dispute Resolution Panel (DRP) excluded 2 comparable companies and affirmed the balance 11 comparable companies selected by learned TPO. After the order passed by learned DRP, the transfer pricing adjustment came to be reduced to Rs.2.45 crores. In the chart filed by the assessee, the 11 companies affirmed by learned DRP are stated as under :

S.No.	Name of the comparable company
1	Ace Software Exports Ltd.
2	Transworks Information Services Ltd.
3	Allsec Technologies Ltd.
4	Flextronics Software Systems Ltd. (Seg.)
5	R System International Ltd. (Seg.)
6	Cosmic Global Ltd.
7	Apex Knowledge Solutions Pvt. Ltd.
8	Spanco Limited (Seg.)
9	Maple e-Solutions Ltd. (Maple)
10	Datamatics Financial Services Ltd. (Seg.) (Datamatics)
11	Goldstone Infratech Ltd.(Seg.) (Earlier known as Goldstone Teleservices Ltd. (Seg.)

5. The Ld A.R submitted that the assessee seeks before the Tribunal for exclusion of following three comparable companies :

- a) Maple e-Solutions Ltd. (Maple)
- b) Datamatics Financial Services Ltd. (Seg.)
- c) Goldstone Infratech Ltd.(Seg.)

6. The Learned AR submitted that all these three companies have been found to be not good comparable companies for companies providing back-end processing services for the very same assessment year A.Y. 2006-07 by the Tribunal in the case of M/s. Deutsche Networking Services Private Limited Vs. DCIT (ITA No. 8972/Mum/2010). Accordingly, the learned AR prayed for exclusion of the above said three companies.

7. Learned DR, on the contrary, supported the order passed by learned DRP.

8. We have heard rival contentions and perused the record. We noticed that the Coordinate Bench in the case of M/s. Deutsche Networking Services Private Limited (supra) has held that the above said 3 companies are not good comparable companies for a company providing back-end processing services. For the sake of convenience we extract below the relevant portion of the order passed by the Tribunal in the above said case :-

“(IV). **GOLDSTONE INFOTECH LTD.** (Formerly known as: Goldstone Tele Services Ltd):-

15. The ld. A.R submitted that the TPO had rejected the comparables selected by the assessee by applying the export filter and had excluded the companies which had an export sale of less than 25%. The ld. A.R in order to fortify his aforesaid contention drew our attention to Page 4 of the order passed by the TPO wherein two comparable selected by the assessee viz. (i) M/s Ask Me Info Hubs Ltd.; and (ii) M/s CMC Ltd. were rejected by him for the reason that their respective export sales were less than 25% of the total sales. In the backdrop of the aforesaid facts, it was the contention of the ld. A.R that the revenue generated by the aforementioned company viz. M/s Goldstone Infratech Ltd. during the year under consideration from export of goods was only to the extent of Rs.4,24,510/- as against its total revenue receipts of Rs.30,89,44,530/-. It was thus submitted by the ld. A.R that the percentage of revenue from export of goods as against the total revenue receipts in the case of the aforesaid company viz. M/s Goldstone Teleservices Ltd. selected as a comparable by the TPO worked out only to the extent of 0.14%. The ld. A.R on the basis of his aforesaid contention submitted that from a perusal of the aforesaid facts it could safely be concluded that the export sales of the said company was substantially less than 25% of its total sales. It was further submitted by

the ld. A.R that even if it was to be assumed that the export of goods pertained to the BPO segment only, even then as the revenue of Rs.4,24,540/- generated from export of goods as against the total revenue of the BPO segment amounting to Rs.5,02,71,000/- would hardly work out to 0.84%. In the backdrop of his aforesaid contentions it was submitted by the ld. A.R that the said company was liable to be excluded from the list of comparables considering the export filter applied by the TPO. Per contra, the ld. D.R relied on the orders of the AO/TPO. It was submitted by him that the aforementioned company viz. M/s Goldstone Infratech Ltd. having been found to be functionally comparable was thus rightly selected by the TPO as a comparable for benchmarking the international transactions of the assessee with its AEs.

16. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record in context of the aforementioned company viz. M/s Goldstone Infratech Ltd. selected as a comparable by the TPO. We find from a perusal of „Schedule 14“ of the Profit and loss account of the aforementioned company for the year ended 31st March, 2006, that as against the total turnover of Rs.30,89,44,530/- the export turnover of the said company was only to the extent of Rs.2,29,721/-. We find that the TPO while analysing the comparables which were selected by the assessee had applied the export filter and rejected two of the comparables which were selected by the assessee viz. (i) M/s Ask Me Info Hubs Ltd; and (ii) M/s CMC Ltd., for the reason that their respective export sales were found to be less than 25% of their total sales. We are of the considered view that in the backdrop of the aforesaid fact that the export sales of the aforesaid company viz. M/s Goldstone Infotech Ltd. is found to be substantially less than 25% of its total sales, thus a different basis for selection of the same as a comparable by the TPO in disregard of the export filter which was applied by him while rejecting the comparables selected by the assessee company would not be permissible. We thus, being of the considered view that as the export turnover of the aforementioned company viz. M/s Goldstone Infratech Ltd. is found to be substantially less than 25% of its total sales, therefore, the same as per the export filter applied by the TPO for analysing the functional comparability of the comparables selected by the assessee could not have been taken as a comparable for benchmarking the international transactions of the assessee with its AE"s. On the basis of our aforesaid observations we direct the AO/TPO to exclude M/s Goldstone Infratech Ltd. from the final list of comparables.

**(V). MAPLE eSOLUTIONS LTD:**

17. The ld. A.R adverting to the functional comparability of the aforementioned company submitted, that it was during the under consideration engaged in sale of software and call centre services for which no separate segmental data was available. The ld. A.R further submitted that as the aforementioned company was functionally incomparable, hence on the said count itself the TPO in the assesses own

case for A.Y 2008-09 had rejected the same as a comparable, vide his order passed under Sec. 92CA(3). It was further submitted by the Id. A.R that the aforesaid company was also excluded by the CIT(A) from the list of the comparables while disposing off the appeal of the assessee for A.Y 2007-08. The Id. A.R submitted that as the director of the aforementioned company Ms. Sheetal Rastogi had allegedly played a major role in the 'London fraud' and had fled the country a month before RBG resources company was raided, thus it would be unsafe to take the results of the said company for comparison of the profitability of the assessee. The Id. A.R in order to substantiate his aforesaid contention drew our attention to the extract of the news article published in "The Guardian", dated 06.06.2008 (Page 1380-1383 of APB). On a perusal of the aforesaid extract of the news article it emerges that Ms. Sheetal Rastogi who is the director of the aforesaid company viz. Maple eSolutions Limited is alleged to have played a major role in the 'London fraud' and was on the run. The Id. A.R further submitted that in the backdrop of the aforesaid facts, the Tribunal while disposing off the appeal in the assessee's own case for A.Y 2005-06, taking cognizance of the fact that the members of the Rastogi Group owning the aforementioned company were under serious indictment, thus being of the view that it would be unsafe to take the results of the said company for benchmarking the international transactions of the assessee company, had excluded the said company from the list of the comparables. On the basis of the aforesaid submissions, it was the contention of the Id. A.R that the aforesaid company viz. M/s Maple eSolutions Limited be excluded from the final list of comparables. Per contra, the Id. D.R relied on the order of the AO/TPO and submitted that merely for the reason that the directors of the company had been indicted in certain criminal cases, the aforesaid company which was otherwise found to be functionally comparable could not be excluded from the final list of comparables. It was the contention of the Id. D.R that as the aforementioned company viz. M/s Maple eSolutions Ltd. was functionally comparable to the assessee, thus it was rightly selected by the TPO as comparable for benchmarking the international transactions of the assessee with its AE's.

18. We have heard the authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record in context of the issue pertaining to selection of the aforementioned company viz. M/s Maple eSolutions Ltd. as a comparable by the TPO. We find from a perusal of the order passed by the TPO under Sec. 92CA(3) in the case of the assessee for A.Y 2008-09 that the aforementioned company viz. M/s Maple eSolutions Ltd. was rejected as a comparable by him inter alia for the reason that no separate segmental data in respect of ITeS sector were available. Still further, the CIT(A) while disposing of the appeal of the assessee for A.Y 2007-08, taking cognizance of the fact that there was no change of facts during the year as in comparison to A.Y 2008-09, had thus directed that the said company be excluded from the final set of comparables. We have further perused the order passed by the Tribunal while disposing off the appeal in the assessee's own case for A.Y 2005-06

viz. M/s DBOI Global Services Pvt. Ltd. Vs. ACIT (ITA No. 812/Mum/2012, dated 24.08.2016). We find that the Tribunal in its aforesaid order while adjudicating on the selection of the aforesaid company viz. M/s Safron Global Ltd. as a comparable by the TPO, had therein observed that as the directors of the said company were found to be involved in fraudulent activity, hence, its financial results not being reliable due to fraud committed by the directors, thus could not be considered for comparability analysis. We find that as in the case before us it remains as a matter of fact that the director of the aforesaid company viz. Ms. Sheetal Rastogi is allegedly stated to be involved in a fraudulent activity, thus the veracity of the financial results of the said company would not inspire any confidence. We thus, finding ourselves to be in agreement with the view taken by the Tribunal in the assesses own case for A.Y 2005-06 that where financial results of a company are not reliable due to fraud committed by the directors, it should not be considered for comparability analysis, thus are of the considered view that it would not be proper to include the said company in the final list of comparables for benchmarking the international transactions of the assessee with its AEs. In the backdrop of our aforesaid observations, we direct the AO/TPO to exclude the aforementioned company viz. M/s Maple eSolutions Ltd. from the final list of comparables.

**(VI). DATAMATICS FINANCIAL SERVICES LTD:**

19. The ld. A.R adverting to the facts pertaining to the aforementioned company selected as a comparable by the TPO submitted, that the latter during the year under consideration viz. A.Y 2006-07 had significant Related Party Transactions (for short 'RPT') of more than 25%. It was submitted by the ld. A.R that on the very ground of 'RPT' of more than 25% the Tribunal in the case of Stream International Services Pvt. Ltd. Vs. ADIT (International Taxation)-7(2), Mumbai [ITA 8997/Mum/2010; dated 11.01.2013] for AY 2006-07, had excluded the aforementioned company from the final list of comparables. The ld. A.R in order to fortify his aforesaid contention took us through the order of the Tribunal at Page 1079 of the 'APB'. It was the contention of the ld. A.R that now when the TPO had applied the RPT filter while analysing the comparables selected by the assessee, therefore, in the backdrop of the fact that the aforementioned company viz. M/s Datamatics Financial Services Limited had a RPT of more than 25%, the same was liable to be excluded from the final list of comparables. Per contra, the ld. D.R relied on the orders passed by the A.O/TPO and submitted that no infirmity did emerge from selection of the aforementioned company which after necessary deliberations was found to be functionally comparable with the assessee.

20. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record in context of selection of the aforementioned company viz. M/s Datamatics Financial Services Limited as a comparable by the TPO for benchmarking the international transactions of the assessee with its AE's.

We find that the Tribunal in its order passed in the case of the M/s Stream International Services Ltd. Vs. ADIT (International Taxation)-7(2), Mumbai [ITA No. 8997/Mum/2010, dated 11.01.2017] for A.Y 2006-07, had observed that as the RPT of the aforementioned company viz. Datamatics Financial Services Limited was found to be more than 25%, hence the same was directed to be excluded from the final list of comparables. We find that the TPO in the case before us while carrying out comparability analysis of the comparables which were selected by the assessee in its TPSR had applied the RPT filter and excluded the companies where there were significant related party transactions. We are of the considered view that as observed by the Tribunal while disposing off the appeal in the case of Stream International Services Pvt. Ltd (supra) for A.Y 2006-07 that the related party transactions in the case of the aforesaid company viz. M/s Datamatics Financial Services Limited is found to be in excess of 25%, hence we are of the considered view that the said company could not have been selected as a comparable for benchmarking the international transactions of the assessee with its AEs. We thus, in terms of our aforesaid observations direct the AO/TPO to exclude the comparable viz. M/s Datamatics Financial Services Limited from the final list of comparables.”

Since facts are identical between both the cases, following the above said order of co-ordinate bench, we direct exclusion of Maple e-Solutions Ltd., Datamatics Financial Services Ltd. (Seg.) and Goldstone Infratech Ltd.(Seg.)

9. The next issue relates to the disallowance made under section 14A of the Act. During the year under consideration the assessee earned exempt dividend income of Rs. 9.88 lakhs. The assessee did not make any disallowance under section 14A of the Act. Hence, the Assessing Officer computed the disallowance by applying Rule 8D of the I.T. Rules and disallowed a sum of Rs. 4.03 lakhs. The Learned DRP confirmed the said addition.

10. The Learned AR submitted that the assessment year under consideration is A.Y. 2006-07 and it falls prior to introduction of Rule 8D of the I.T. Rules. Accordingly, the learned AR submitted that the Assessing Officer was wrong in applying provisions of Rule 8D for the year under consideration as it is contrary to the decision rendered by Hon'ble Bombay

High Court in the case of Godrej and Boyce Manufacturing Co. Ltd. Vs. DCIT (2017) 394 ITR 449, wherein it was held that Rule 8D will apply prospectively from A.Y. 2008-09 onwards. The said view of Hon'ble Bombay High Court has since been upheld by Hon'ble Supreme Court in the case of CIT Vs. Essar Teleholdings Ltd. (2018) 401 ITR 445.

10. The Learned DR, on the contrary, submitted that the assessee has earned exempt income and hence disallowance is required to be made under section 14A of the Act. He submitted that the disallowance of Rs.4.03 lakhs would meet the requirements of Sec. 14A of the Act.

11. In the rejoinder, the Ld A.R submitted that the assessee has received only dividend income from mutual funds and hence the disallowance of Rs.4.03 lakhs will be very much on the higher side.

12. We have heard the rival contentions on this issue and perused the record. We agree with the contention of learned AR that the provisions of Rule 8D cannot be applied during the year under consideration, i.e., AY 2006-07, as per decision rendered by Hon'ble Jurisdictional Bombay High Court and Hon'ble Supreme Court (referred supra). At the same time we also agree with the contention of learned DR that some disallowance is called for, since the assessee would not have earned exempt income without incurring some expenditure. We perused the balance sheet of the assessee and noticed that the assessee held mutual fund units of Grindlays Cash Fund to the tune of Rs. 4.59 crore as at the beginning of the year and it is stated that the dividend has been received from the said units. Further the said unit has also been sold during the year under consideration. Considering these activities carried on by the assessee in the investment portfolio, we are of the view that an adhoc disallowance of Rs. 30,000/- may be made under section 14A of the Act and, in our view, the same would meet the requirement of

section 14A of the Act. Accordingly, we direct the Assessing Officer to restrict the disallowance under section 14A of the Act to Rs. 30,000/-.

13. In the result, appeal filed by the assessee is partly allowed.  
Pronounced in the open court on 25.1.2023.

Sd/-  
(RAHUL CHAUDHARY)  
Judicial Member

Sd/-  
(B.R. BASAKARAN)  
Accountant Member

Mumbai; Dated : 25/01/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

PS