

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

IT(TP)A No. 212/Bang/2022
Assessment Year : 2017-18

M/s. Sabre Travel Technologies Pvt. Ltd., Unit # 1 & 2, Level # 2, Navigator building, International Tech Park, Sadarmangala, Pattandur Ag, Bangalore – 560 066. PAN: AAICS5777P	Vs.	The Deputy Commissioner of Income Tax, Circle 6 (1)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Ankur Pai, Advocate
Revenue by	:	Shri Sunil Kumar Singh, CIT-2

Date of Hearing	:	25-01-2023
Date of Pronouncement	:	02-02-2023

ORDER

PER ANIKESH BANERJEE, JUDICIAL MEMBER

The instant appeal of the assessee was filed against the order of the Ld.DCIT, Circle – 6 (1)(1), Bangalore {in brevity the AO} passed u/s. 143(3) r.w.s. 144C(13) r.w.s. 144B of the Income Tax Act, 1961 (in brevity the Act), order dated 31-01-2022.

2. The assessee has raised various grounds of appeal. However, the Ld.Counsel for the assessee (in brevity the AR) has pressed only the grounds 1.17, 1.18 and 1.19. The all other grounds are

kept open and without commenting on anything on merits on those grounds.

3. Tersely, we advert the facts of the case that the assessee is registered under Companies Act, 1956 and is a subsidiary of Sabre International B.V., a holding company which holds 95% equity share capital of the assessee. Assessee is engaged in providing software development and related services to its Associated Enterprises (AE). The functions, asset and risk analysis (FAR analysis) as per the TP study of the appellant, the following issues are agitated. For A.Y. 2017-18, the appellant received 327 crores from its AE in respect of software development service provided. The assessee characterised itself as the “contract service provider”. The appellant selected the Transaction in Net Margin Method (in short TNMM) as the MAM and computed its margin at 19.14% on opening cost. During hearing, the AR pointed out that assessee is a debt free company, so addition of interest by revenue is not warranted for. The AR also agitated that the working capital adjustment and exclusion of six comparable during the TP study. During hearing before lower authority all the issues were agitated before the DRP except the working capital adjustment. The Dispute Resolution Panel-2, Bengaluru (in short DRP) has suggested to uphold the order of the Transfer Pricing Officer (In short the TPO). Being aggrieved, the assessee filed appeal before us.

4. Ground no. 1.17 – Interest on outstanding receivables.

The assessee submits that the TPO had not provided the working of the adjustment determined in respect of interest on outstanding receivables. The assessee filed submission before the TPO vide

letter dated 08.01.2021& had provided the invoicewise details as were required by the TPO. A copy of the submission is annexed with the “Notes to Arguments” of the assessee in page no-17. The AR specifically mentioned in page no. 651 of the PB that the assessee is a debt free company. Therefore, the assessee does not bear any working capital risk as there are no working capital contingencies. Accordingly, no borrowed funds are used to pass on any presumed benefit to AE. The appellant also does not pay any interest to its customers or suppliers on delayed payments. Since, it is debt free company; no adjustment can be made towards notional interest on receivables.

The AR invited our attention in the order of the **DRP in page no. 28** para no. 13.14 which is extracted as below.

“13.14 It was similarly held in BT e-Sery (India) Pvt. Ltd. v. ITO, Ward- 5(2) 2017(60) ITR(Trib)618(Delhi) as follows: - 22...The argument that assessee is an interest free entity and does not pay any interest and therefore no interest shall be imputed in the outstanding invoices is also devoid of merit because it is not a case of allowance of interest expenditure in the hands of the assessee but an 'international transaction' to be benchmarked at arm's length. It is a case of determination of arm's length price of a transaction. Undoubtedly the receivable or any other debt arising during the course of the business is included in the definition of 'capital financing' as an 'international transaction' as per explanation 2 to section 92B of the Act w.e.f. 01.04.2002 inserted by the Finance Act 2012. Therefore, even the outstanding receivable partake the character of capital financing and consequently, overdue outstanding is an 'international transaction'. The natural corollary would be of imputing interest on such 'capital financing', if same is not charged at arm's length. Therefore, we reject the contention of the assessee that outstanding receivable is not an 'international transaction' and therefore, hence, according to us, interest on it requires to be imputed.”

4.1. The AR relied on the order of the Coordinate Bench of ITAT, Delhi in the case of **Bechtel India (P.) Ltd. vs. DCIT, (2016) 66 taxmann.com 6 (Delhi-Trib.)**. The relevant part is extracted as below.

“14. During the course of the proceedings before TPO, he observed that payments on account of sales to the AE, is realized after a significant time period. The ld.TPO ascertained that payment for invoices raised by the assessee has not been paid within the stipulated time as provided in the service agreement and accordingly treated the delayed payments as loan facility advanced to the AE’s. The ld.TPO charged 14.88% interest for the delayed period, beyond a period of 30 days. The ld. DRP upheld the adjustments made by the ld.TPO.

14.1. The ld.AR submitted that during the financial year, the assessee had entered into international transactions pertaining to provision of support services to its AE’s. In this regards, the details of the invoices raised and the payment received with dated were submitted before the TPO/DRP. The ld.AR has submitted that thought there was no credit period that was specified in the service agreement, however the assessee had agreed a credit period of 60 days with its AE’s. The ld.AR submits that it has sufficient cash balance to manage its cash flow requirements.

14.2. He further submitted that the assessee does not earn any interest on the current account maintained with the bank. Except for interest earned from fixed assets, the assessee has not earned any interest, on any advances paid to third parties. The ld.AR further submitted that being a captive undertaking, the assessee does not render similar services to any other concern. He submitted that, excess credit period arises, only when there is a standard credit period for the services sold at the same price to independent enterprises. He submitted that the cost of funds blocked in the credit period was inbuilt in the sale price.

14.3. The ld.AR relies on the judgment of Indo American Jewellery in ITA no. 5872/M/2009, wherein it has been held that the transaction of sale and lending are distinctly set out as per section 92 of the Act. The Tribunal further held that interest income is associated more with lending or borrowing of money and not with sale. The Tribunal further held while determining the ALP of sale transaction, all relevant aspects, including credit period allowed, are

taken into consideration and that interest aspect is embedded in the sale price. The Tribunal held that there can be no separate international transaction of interest, on outstanding receivables and that early of late realization of the sale proceeds is incidental to transaction of sale. The ld.AR also places his reliance on the Delhi Tribunal decision in the case of Kusum Healthcare Pvt.Ltd., reported in TS-129-ITAT-2015(Del)-TP.

14.4. The ld. DR relied on the orders of the authorities below.

15. From the submissions of both the parties we observe as under;

15.1. It is brought to our notice that the assessee is a debt free company. In such circumstances it is not justifiable to presume that, borrowed funds have been utilized to pass on the facility to its AE's. The revenue has also not brought on record that the assessee has been found paying interest to its creditors or suppliers on delayed payments.

16. In lieu of the discussions and the ratio laid down in the case of Kusum Healthcare Pvt. Ltd., we direct that no separate adjustment for interest on receivables are warranted in the hands of the assessee.

Ground no. 3 of the assessee's appeal is there by allowed."

4.2. The Ld.CIT.DR fully relied on the order of the revenue authorities and was not able to produce any contrary judgment against the submission of assessee.

4.3. We heard the rival submissions and perused the documents available on the record. The TPO during the study had not considered this issue in light that the assessee is a debt free company. So the adjustment of interest cannot be warranted in respect of the assessee. The assessee-company is not in other hand paying any interest to the creditor. Normally the assessee allowed credit to debtors for 60 days on the other hand they are enjoying the credit on same days against creditors. We find the issue was not properly adjudicated by the AO/TPO in the order. The DR had

not made any strong objection on this issue. We remand back this issue to the TPO for further adjudication in light of our observations above.

5. Ground nos. 1.18 -Grant of working capital adjustment

In the argument, the AR has taken both the grounds together. In Ground no. 1.18, the working capital adjustment was not agitated before any of the revenue authorities. First time the issue is agitated before the ITAT. The AR relied on the order of the Coordinate Bench in the case of **Huawei Technologies India Pvt. Ltd.(2019) 101 taxmann.com 313 (Bang)**.

5.1. In our considered view the trade terms of payment of debtor is 60 days. So, the price of goods should equate to the price for immediate payment plus 60 days of interest on immediate payment price. For making working capital adjustment is an attempt to adjust for the differences in time value of money between the tested party and potential comparable for which is the work out the adjustment on account of working capital adjustment. As the issue is first time agitated before the ITAT, we remit back the issue to the AO/TPO for further adjudication and to grant actual working capital adjustment after duly examining it. Accordingly, this ground is remitted back to the file of AO/TPO for reconsideration.

5.2. **Regarding adjudication of Ground no. 1.19 with regard to exclusion of comparables**, the assessee has filed a chart containing the argument of comparables sought to be excluded. The assessee is seeking exclusion of the following comparables from the final set.

a) Larsen & Toubro Infotech Ltd.

In argument the AR placed that the comparable company functionally dissimilar, no segmental details is submitted. Also there is presence of extra ordinary events, presence of intangibles item, presence of brand & R &D activities which are quite dissimilar with the assessee. The reliance is placed in the order of the Coordinate Bench of ITAT-Bangalore in case of **LG Soft India Pvt Ltd. AY 2015-16, IT(TP)A No. 2412/Bang/2019**. Accordingly, the Comparable company is excluded from TP study.

b) Persistent Systems Ltd.

In this comparable company is functionally dissimilar, fails RPT filter. Also, the comparable has R & D activity, presence of intangibles & incurs brand promotion expenses. In argument the AR relied on the order of the Coordinate Bench of ITAT-Bangalore, in the case of **Etisalat Software Solutions Pvt Ltd. AY 2017-18, IT(TP)A No. 240/Bang/2022**. We direct to exclude the comparable.

c) Tata Elxsi Ltd.

In argument the AR placed that this comparable is functionally dissimilar due to diversified activities, consisting of R&D activity & incurs brand promotion expenses. The relied was made on the order of the Coordinate Bench of ITAT-Bangalore, in the case of **Etisalat Software Solutions Pvt Ltd. AY 2017-18, IT(TP)A No. 240/Bang/2022**. We direct to exclude the comparable from TP study.

d) Nihilent Ltd.

In argument the AR placed that this comparable is functionally dissimilar due to diversified activities & has no segmental details. The AR relied on the order IT(TP)A No. 240/Bang/2022, AY 2017-18, *supra*. We direct to exclude the comparable from TP study.

e) Infosys Ltd.

In submission the assessee placed that this comparable-company functionally dissimilar, no segmental details, containing licensing of software products, presence of intangibles, presence of brand & continuing the R&D activities. The reliance is placed in the order of the Coordinate Bench of ITAT-Bangalore in case of **LG Soft India Pvt Ltd. AY 2015-16, IT(TP)A No. 2412/Bang/2019**. In our considered view, the comparable company, Infosys Ltd is excluded from TP study.

f) Cybage Software Pvt. Ltd.

In argument the AR placed that this comparable is functionally dissimilar due to diversified activities & has no segmental details. The AR relied on the order IT(TP)A No. 240/Bang/2022, AY 2017-18, *supra*.

We direct to exclude the comparable company, Cybage Software Pvt Ltd from TP study.

5.3. The assesseeis relying on the decision of the Coordinate Bench of ITAT, Bangalore in case of **Etisalat Software Solutions Pvt. Ltd. for A.Y. 2017-18 in IT(TP)A No. 240/Bang/2022, date of order 20.09.2022** wherein four companies 1) Persistent Systems Ltd., 2) TataElxsi Ltd., 3) Nihilent Technologies Ltd. and 4) Cybage Software Pvt. Ltd. has been excluded as being functionally different to software segment. In argument, the AR placed that all 5 companies are functionally dissimilar, and no segmental details was provided. The above-mentioned order of the Coordinate Bench of ITAT, Bangalore was duly applicable to assessee's case as the functions performed by the assessee are

similar to the assessee in that case. Further, the functions of the company sought to be excluded for A.Y. 2017-18 being similar to preceding A.Ys. 2016-17 and 2015-16. The AR relied on the order of ITAT Bangalore Bench in case of **LG Soft India Pvt. Ltd. vs. DCIT in IT(TP)A No. 266/Bang/2021**, date of pronouncement **28.07.2022** for A.Y. 2016-17.

5.4. In our considered view, we fully rely on the orders of the Coordinate Bench, and we have a similar view in relation to the assessee. Being so, following the above order of the Tribunal, this is applied in assessee's own case, we direct the AO/TPO to exclude these five companies from the list of comparable.

6. In the result, ground nos. 1.17 and 1.18 are allowed for statistical purposes. Ground no. 1.19 is allowed in favour of assessee.

7. In the result, the appeal of the assessee partly allowed for statistical purposes.

Order pronounced in the open court on 02nd February, 2023.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(ANIKESH BANERJEE)
Judicial Member

Bangalore,
Dated, the 02nd February, 2023.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore