

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'C' BENCHES :: PUNE

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER &
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA No.629/PUN/2022
(A.Y. 2018-19)

Katerra Technology Services LLP, Unit No.301 & 302, 3 rd Floor, Nextgen Avenue Building, Off Senapati Bapat Road, Shivajinagar, Bhamburda, TQ. Haveli, Pune. PAN: AARFK 3667 L	vs	ACIT, Circle-2, Pune.
Appellant/Assessee		Respondent / Revenue

Assessee by	:	Shri Ketan Ved, CA
Revenue by	:	Shri Anurag Shrivastava, CIT DR
Date of hearing	:	18/05/2023
Date of pronouncement	:	24/05/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the Assessee emanates from the findings of Id.DRP-3, Mumbai-2, dated 19.05.2022 for A.Y.2018-19 as per the following grounds of appeal:-

"The Ld. Assessing Officer ["AO"], Ld. Transfer Pricing Officer ["TPO"] and Hon'ble Dispute Resolution Panel CDRP") erred in law and in fact in assessing the total income of INR 1,71,54,680 as against returned income of INR 88,61,750 as computed by the Appellant in its return of income.

Transfer Pricing adjustment on account of the international transaction relating to Information Technology enabled Services ("ITeS") - INR 82,92,925

- 1. On the facts and circumstances of the case and in law, the order passed under section 143(3) r.w.s. 144C of the Income Tax Act, 1961 ("the Act") by the Ld.AO is erroneous and bad in law;*
- 2. The Ld. AO/TPO/ Hon'ble DRP has erred in upholding*

- transfer pricing addition of INR 82,92,925 on account of an adjustment to Arm's Length Price ("ALP") of the international transaction pertaining to ITeS by the Appellant to its associated enterprise CAE");*
3. *The Ld. AO/TPO/Hon'ble DRP has erred in disregarding the economic analysis carried out by the Appellant in the Transfer Pricing documentation ('TP documentation');*
 4. *The Ld. AO/TPO/Hon'ble DRP has erred in disregarding certain quantitative filters applied by the Appellant in the TP documentation and applying certain additional quantitative filters.*
 5. *The Ld. AO/TPO/Hon'ble DRP has erred in law by conducting a fresh search process and adding new set of comparable companies;*
 6. *The Ld. AO / TPO/ Hon'ble DRP has erred in law by including the following companies in the final list of comparables:*
 - a. *Maa Business Solutions Pvt. Ltd.;*
 - b. *Manipal Digital Systems Pvt. Ltd.;*
 - c. *CES Ltd.;*
 - d. *Vitae International Accounting Services Pvt. Ltd.;*
 - e. *Inteq BPO Services Pvt. Ltd.;*
 - f. *Domex e-Data Pvt. Ltd.;*
 7. *The Ld.AO/TPO/Hon'ble DRP has erred in law by excluding the following companies selected by the Appellant in its TP documentation from the final list of comparables:*
 - a. *Allsec Technologies Limited*
 - b. *Athena BPO Pvt. Ltd.;*
 - c. *Sundaram Business Services Ltd.;*
 - d. *Jindal Intellicom Ltd.;*
 - e. *R Systems International Ltd.;*
 8. *The Ld. AO/TPO/Hon'ble DRP has erred in not granting appropriate risk adjustments;*
 9. *The Ld. AO erred in of initiation of penalty proceedings u/s 270A of the Act;*
 10. *The Ld. AO erred in charging and computing interest under section 234B and 234C of the Act.*

The Appellant craves leave to add, alter, modify, and withdraw all or any of the above grounds of appeal at or before the time of hearing of the appeal.

For the above and any other grounds which may be raised at the time of hearing, it is prayed that necessary relief may be provided."

2. The relevant facts are as appearing in the TPO's order, Katterra India, a limited liability partnership firm, was incorporated under the

Limited Liability Partnership Act, 2008 on 06/01/2017. Katterra India is engaged in the business of Information Technology enabled Services (ITeS) in the field of architectural and interior designing. During the year under consideration, the assessee had entered into various international transactions with its associated enterprises (AEs) as reported in Form 3CEB. The disputed transaction in this case is the service income where the amount as per Form 3CEB has been shown at Rs. 8,35,21,641/-. Thereafter, the TPO determined the OP/OC per cent margin at 12.55% for the assessee. The TPO rejected the assessee's submission and selected comparables in the ITeS segment as appearing at page No.58 para 11 of his order and arrived at median (5th place) at 23.35%. The AO finally made a total adjustments of Rs.82,92,925/- on the international transaction relating to ITeS segment.

3. At the time of hearing, Id. counsel for the assessee explaining the scope of ITeS service performed by the assessee and submitted that the AE which is the US entity procures contract in relation to drawings etc. regarding architectural and interior designing. Some of these works are outsourced to the assessee before us. The assessee completes the work assigned to it by the AE, i.e. the drawings etc. for architectural and interior designing and sends it back to the AE i.e. the US entity and for this ITeS services, the assessee raises bills from AE which is the service income derived by the assessee, and for this year,

it was at Rs. 8,35,21,641/-. Therefore, this is the entire boundary of functions in the ITeS segment done by the assessee. Ld. counsel further submitted that out of the comparables selected by the TPO, they want exclusion of only one comparable i.e., Domex e-Data Pvt. Ltd. since, the said company is functional dissimilar as it is engaged in diversified services including software development, knowledge process outsource (KPO), business process outsource (BPO) and further that the segmental details were not available in the annual report. Therefore, the assessee prays in this case for exclusion of Domex e-Data Pvt. Ltd. and on such exclusion of the said company, the margin earned by the comparable companies will work out to be 6.10% as 35th percentile and 23.74% as 65th percentile with a median of 19.46%, accordingly, the margin of the assessee i.e., 11.23% falls within the comparable range and consequentially, there would be no transfer pricing adjustment and the other transfer pricing grounds of appeal raised in this appeal would become academic.

4. Before the TPO also, the assessee had contended for exclusion of this comparable for the following reasons:-

- i) Functional dissimilar (BPO & KPO services)
- ii) Segmental details not available; and,
- iii) Reservations in auditor's report on financial statement.

The TPO after considering the submissions of the assessee, observed that according to the annual report of Domex e-Data Pvt. Ltd., the principal business of the company is to provide e-commerce

which is hundred per cent of the total turnover of the company and since total turnover of the company is of ITeS in nature, hence, no segmental information was required and, accordingly, the contention of the assessee was not accepted and this company was retained in the final list of comparables. Therefore, the observation of the TPO that since the said company is deriving its revenue from e-commerce i.e. similar to the ITeS as performed by the assessee and, hence, both are functionally similar and thus the said company was retained in the final list of comparables.

5. Ld. DRP at page No.48 at para 14.2 had given their findings on this issue where they have upheld the findings of the TPO and had rejected the contention of the assessee. The Id.DRP had also expressed its view that as per the annual report of Domex e-Data Pvt. Ltd., since engaged in provision of services relating to e-commerce, therefore, it is in the nature of ITeS and hence, similar to that of the assessee.

6. We have heard the submissions of the parties and analyze the facts and circumstances in this case and have given considerable thought to these submissions made before the Bench.

6.1 Admittedly, the assessee is doing ITeS functions and as explained by the Id.counsel for the assessee, it is mainly doing drawings etc. for architectural and interior designing which is outsourced to it by the AE, i.e. the US entity and for the work done by

the assessee in India, receives service income from AE. In the ITeS segment, the TPO had included comparables and the assessee before us has submitted that out of these comparables, if Domex e-Data Pvt. Ltd. is excluded, then the assessee would fall within the comparable range and there would be no transfer pricing adjustment and the other grounds would therefore become academic. We observe from the annual report of Katterra India which is the Katterra Technology Services LLP that it is engaged in the business of ITeS in the field of architectural and interior designing. We have also observed from the functional analysis of Katterra India, the detailed functions performed by Katterra India vis-à-vis the AE i.e. Katterra Inc, the US entity. The services rendered by Katterra India in the ITeS segment comprises of the outsources work provided to it by the US entity and Katterra India performs such drawings etc. regarding interior designs and sends the same work done to the AE and the service income is charged by the assessee in lieu of services rendered to the AE. It is therefore, predominantly ITeS functions. We observe from the annual report of Domex e-Data Pvt. Ltd. that in the column of 'technology absorption' it is mentioned that this company has made efforts towards technology absorption meaning thereby, the software development activity is carried out with the usage of very high end software, hardware and the company always uses latest available technology in development of software. Further, in the column 'awards and recognition', it is mentioned that this company is a trusted company for the quality of

its products innovation and renovation of products that are based on strong consumer insights and ability to engage with consumers across the county. Therefore, it is evident that Domex e-Data Pvt. Ltd. is a company engaged in the various activities including software development activity using high end software, hardware and is also involved in products innovation and renovation, so these activities are absolutely dissimilar with ITeS functions performed by the assessee before us. This company i.e. Domex e-Data Pvt. Ltd., as per its annual report, is engaged in diversified activities including software development KPO & BPO services and, hence, its functionally dissimilar to the functions of ITeS carried out by the assessee. We observe that both the TPO and Id.DRP had held that since Domex e-Data Pvt. Ltd. is doing e-commerce activity, therefore it is similar to ITeS, hence, was held comparable with that of the assessee. However they have not dealt with or given their findings regarding various other functions performed by Domex e-Data Pvt. Ltd. namely software development KPO & BPO, product renovation etc. which are also evident in the annual report. We further find that for the same A.Y. 2018-19, Domex e-Data Pvt. Ltd. was excluded from the final list of comparables for benchmarking international transaction in ITeS segment.

6.2 In the case of *M/s. Altair Engineering India Pvt. Ltd. v. ACIT* [IT(TP) No.1025/Bang/2022, dated 09/01/2023], the coordinate Bench of ITAT, Bangalore at paras 34 & 35 has held as under:-

"34. *In so far as comparability of Domex e-Data Pvt. Ltd. is*

concerned, the argument was that this company is engaged in providing KPO and therefore cannot be compared with an ITeS such as the assessee. On this objection, the DRP again held that ITeS and KPO have to be regarded as one and the same. Learned counsel has pointed out that in the following decisions, Tribunal has taken the view that companies rendering KPO services cannot be as a comparable company with an ITeS company.

Transperfect Solutions India Pvt. Ltd. v. ACIT [TS-497-ITAT-2022 (PUN)-TP] AY 2016-17

Schlumberger India Technology Centre (P) Ltd. v. DCIT [TS-473-ITAT-2022(PUN)-TP] AY 2016-17

Credence Resource Management (P.) Ltd. v. ACIT [2022] 138 taxmann.com 543 (Pune – Trib.) for AY 2016-17

35. *In the light of the aforesaid decisions, we are of the view that Domex E-Data Pvt. Ltd., should be excluded from the list of comparable companies.*

In the aforesaid decision, the Tribunal has relied on another decision of Pune Bench in the case of *Schlumberger India Technology Centre (P) Ltd. v. DCIT [2022] 142 taxmann.com 243 (Pune – Trib.)* wherein again while benchmarking international transaction in the ITeS segment, Domex e-Data Pvt. Ltd. was excluded from the final set of comparables. In this decision, the Pune Tribunal relied on logical principle following from the decision in the case of *M/s. Tasty Bite Eatables Ltd. v. ACIT* in ITA No.1823/PUN/2018, dated 03/06/2021 of the Hon'ble Delhi High Court, wherein it has been held that if two companies performing ITeS, ought to be considered as comparable, then the specific business of the said two companies has to be analyzed and then decided upon whether they are at all comparable or not. Reverting to the facts of the present case, both the TPO and the Id. DRP have held that since Domex e-Data Pvt. Ltd. is doing

e-commerce activity, therefore, its functions are akin to the ITeS functions performed by the assessee, but the revenue authorities have not brought out specifically if Domex e-Data Pvt. Ltd. has to be retained while benchmarking international transaction in the ITeS segment, then what and how exactly the functions are similar with ITeS functions performed by the assessee. Further, we have also observed from the annual report that Domex e-Data Pvt. Ltd. is also into software development product renovation etc. and, therefore, this company is doing various activities and is different from the functions performed by the assessee before us. When the revenue authorities have not specifically examined and brought out why a particular company in the ITeS segment is specifically similar with that of the functions performed by the assessee and when the reason for inclusion of such comparable has not been analyzed with regard to the specific business, in such case, we are of the considered view in the given set of facts and circumstances and even considering the decision of coordinate benches, this company i.e. Domex e-Data Pvt. Ltd. is functionally dissimilar with that of the assessee company. We therefore, direct the AO/TPO to exclude Domex e-Data Pvt. Ltd. from the final set of comparables.

7. At the very outset, Id. counsel had submitted that if this company is excluded, then they would fall within the specified comparable range and, accordingly, other transfer pricing grounds shall become academic. Since on this issue, the assessee succeeds

and Domex e-Data Pvt. Ltd. is excluded while benchmarking of the ITeS segment from the final list of comparables in the case of the assessee, therefore, all other transfer pricing grounds raised in this appeal becomes academic. With these observations, the appeal of the assessee stands allowed.

8. In the result, appeal of the assessee is allowed.

Order pronounced in open Court on 24th May, 2023.

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

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 24th May, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
5. The DR, ITAT, "B" Bench Pune.
6. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.