

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'I' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.6727/Del/2019  
Assessment Year: 2015-16

Agilent Technologies (International) Private Ltd., Plot no. CP-11, Sector-8, IMT Manesar, Gurgaon	<b>Vs.</b>	DCIT, Circle-1(1), Gurgaon
<b>PAN :AADCA4115C</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. Rohit Tiwari, Advocate Ms. Tanya, Advocate
Respondent by	Sh. Rajesh Kumar, CIT (DR)

Date of hearing	22.03.2023
Date of pronouncement	16.06.2023

**ORDER**

**PER SAKTIJIT DEY, JM:**

The present appeal has been filed by the assessee challenging the final assessment order dated 20.06.2019 passed under section 143(3)/144C of the Income-tax Act, 1961 (for short 'the Act') pertaining to assessment year 2015-16, in pursuance to the directions of learned Dispute Resolution Panel (DRP).

2. At the time of hearing, learned counsel appearing for the assessee, on instructions, did not press ground nos. 1 and 2. Accordingly, these two grounds are dismissed as not pressed.

3. In ground no. 3, the assessee has challenged addition of Rs.75,50,956/- made on account of transfer pricing adjustment to the international transaction relating to provision of software development services to the overseas Associated Enterprises (AEs).

4. Before us, learned counsel for the assessee submitted that the dispute is only with regard to selection of following three comparables:

*1. Larsen & Toubro Infotech Ltd.*

*2. Infobeans Technologies Ltd.*

*3. Cybercom Datamatics Information Solution Ltd.*

5. Before we proceed to deal with the acceptability or otherwise of the aforesaid three comparables challenged by the assessee, it is necessary provide a brief factual backdrop on the issue. The assessee is a resident corporate entity engaged in the business of provision of Information Technology Enables Services (ITeS) and Software Development (IT) Services. However, presently, we are concerned with the transfer pricing adjustment made to the Arm's

Length Price (ALP) of the software development services segment. As stated, the assessee is engaged in development of modules as well as parts of modules of software being used by its overseas group in their products. The assessee also undertakes testing of the modules developed by it and maintenance support services, such as, bug fixing, carrying out maintenance support services on software used on products developed by group entities. In other words, the assessee is purely a captive service provider. Insofar as the software development segment is concerned, in the year under consideration, the assessee earned revenue of Rs.22,96,51,901/- from provision of services to the AEs. The assessee benchmarked the transaction by adopting Transactional Net Margin Method (TNMM) as the most appropriate method with Operating Profit (OP)/Operating Cost (OC) as the Profit Level Indicator (PLI).

6. For comparability purpose, the assessee selected eight companies as comparables. Since the margin shown by the assessee was in excess of the average margin of the comparables, the assessee claimed the transaction to be at arm's length. After examining the transfer pricing analysis of the assessee, the Transfer Pricing Officer (TPO), though, accepted that the most of the filters applied by the assessee are appropriate, however, he

introduced certain additional filters. Due to introduction of such filters, certain comparables selected by the assessee were found to be inappropriate, hence, excluded by the TPO. Out of eight comparables selected by the assessee, four were retained. Proceeding further, the TPO after carrying out a search in the database selected nine more comparables. Thus, the total comparables selected by the TPO were thirteen in number with median of 25.3%. Based on the average margin of the comparables, the TPO worked out the ALP of transaction with AE at Rs.25,69,92,052/- as against the price received by the assessee of Rs.23,54,84,637/- The resultant short fall of Rs.2,15,07,415/- was proposed as transfer pricing adjustment to the price shown by the assessee. The adjustment proposed by the TPO was incorporated in the draft assessment order. Against draft assessment order, assessee raised objections before learned DRP. After considering the submission of the assessee, learned DRP excluded certain comparables selected by the TPO. Due to partial relief granted by learned DRP, the TP adjustment proposed by the TPO got reduced to Rs.75,50,956/-.

7. Before us, learned counsel for the assessee submitted that Larson & Toubro Infotech Ltd. cannot be treated as comparable to

the assessee, as, as per the information available in the website and the Annual Report of the company, it is engaged in diversified activities, including cloud computing, infrastructure management, analytics & information management platforms etc. Whereas, the assessee is simply providing software development services to its AEs. Further, he submitted, it is a product company, as, it owns various proprietary software products developed in-house, such as, Unitrax, REDaxis, iCEOn, RapidAdopt. He submitted, the company, in addition to software development services, also provides software product services. However, segmental information is not available. Further, he submitted, the company, being a part of Larsen & Toubro group, enjoys benefits on account of ownership of marketing intangibles and intellectual property rights. He submitted, being a part of Larsen & Toubro, it also has substantial brand value. Finally, he submitted, in the year under consideration, the company has transferred its Product Engineering Services (PES) division to another group entity and has also acquired another company, a captive unit of OTIS Elevator Company, USA. Thus, he submitted, due to such transfer and acquisition, the profitability of the company has been impacted. Thus, he submitted, due to the

aforsaid reasons, it cannot be treated as comparable. In support, he relied upon the following decisions:

- i. *Broadcom India Pvt. Ltd. Vs. DCIT [IT(TP)A No.95/Bang./2014]*
- ii. *Cerner Healthcare Solutions P. Ltd. Vs. ITO [IT(TP)A No.69/Bang./2015]*
- iii. *PubMatic India Pvt. Ltd. Vs. ACIT, TS-281-ITAT-2018 (Bang)*
- iv. *Electronics for Imaging India Pvt. Ltd. Vs. DCIT [IT(TP)A No.212/Bang/2015]*
- v. *Invensys Development Centre India (P) Ltd. Vs. DCIT [2015] 56 taxmann.com 49 (Hyderabad – Trib.)*
- vi. *Cisco Systems (India) (P.) Ltd. Vs. DCIT [2014] 50 taxmann.com 280 (Bangalore – Trib.)*

8. The learned Departmental Representative submitted, the company cannot be said to be functionally dissimilar to the assessee as both are providing software development services. Drawing our attention to the Annual Report of the company placed in the paper-book, he submitted, the company has reported only one segment, i.e., Information Technology Service segment from which it has earned revenue. Therefore, there is no functional difference between the assessee and the comparable.

9. As regards assessee's contention regarding transfer and acquisition, learned Departmental Representative submitted that the assessee itself has transferred one of its division during the year. Thus, he submitted, unless the assessee brings specific

material to demonstrate that the transfer and acquisition has impacted the profitability, the company cannot be excluded.

10. We have considered rival submissions and perused the materials on record. Undisputedly, the assessee provides software development services to its AEs as a captive service provider. Whereas, Larsen & Toubro Infotech Ltd., as per the information available in the website as well as Annual Report, is in diversified activities. The company has also developed various products and created marketing intangibles. Further, being a part of the Larsen & Toubro group, it has substantial brand value. Considering these aspects, this company has been excluded from being treated as comparable in the decisions cited before us by learned counsel.

11. In view of the aforesaid, we hold that Larsen & Toubro Infotech Ltd. cannot be comparable to the assessee. Accordingly, it is rejected.

12. The next comparable objected by the assessee is Infobeans Technologies Ltd. Seeking exclusion of this company, learned counsel submitted, the company is functionally different as it is engaged in the manufacturing of IT products and services, software and hardware systems to enterprise and embedded

technologies. He submitted, the company is engaged in diversified activities of sale and advisory services in the nature of information/internet system and surveyors of information services. In this context, he drew our attention to the information contained in the Annual Report of the company. He submitted, as against the diversified activities of the comparable, the assessee is merely engaged in providing software development services. He submitted, the company is engaged in research and development activities and owns significant intangibles, which demonstrates that the company develops products. Whereas, segmental information is not available. Thus, he submitted, it cannot be treated as comparable. In support of such contention, learned counsel relied upon the following decisions:

- i. *SAS Research & Development India Pvt. Ltd. Vs. DCIT, ITA No.255/Pun/2021, dated 01.11.2022*
- ii. *EIT Services India Pvt. Ltd. Vs. ACIT, ITA No.2498/Bang/2019, dated 03.09.2021*
- iii. *Zynga Game Network India Pvt. Ltd, ITA No.2573/Bang/2019, Dated 23.03.2021.*

13. Learned Departmental Representative drew our attention to the Annual Report of the company placed in the paper-book and submitted, there is no functional difference between the assessee

and the company as it has only one segment of software development (IT) services.

14. We have considered rival submissions and perused the materials on record. On a perusal of the information contained in the Annual Report of the company placed in the paper-book, it is observed that the company is primarily engaged in providing software services (page 120 of the Annual Reports Compendium). The auditor's note also mentions that since it is a software service provider, it does not hold any physical stock. There is nothing either in the annual report or on record to demonstrate that the company is doing anything else, other than, providing software development services. Thus, prima face, this company appears to be functionally similar to the assessee.

15. Though, the Pune Bench of the Tribunal in case of SAS Research & Development India Pvt. Ltd. (supra), has rejected it as a comparable and the Bangalore Bench of the Tribunal has also expressed similar view in case of EIT Services India Pvt. Ltd. (supra), however, in many other decisions cited by learned counsel, this company has been found to be a comparable to a software development provider. In this context we may refer to the following decisions:

- i. *M/s. Nethawk Networks India Pvt. Ltd. Vs. ACIT, ITA No.173/Pun/2017, dated 17.06.2021*
  - ii. *Velocity Tech-SOL India Pvt. Ltd. Vs. ACIT, ITA No.1694/Pun/2018, Dated 30.05.2022.*
16. In view of the aforesaid, we hold that this company, being functionally similar to the assessee, is a comparable.

17. The last comparable objected by the assessee is Cybercom Datamatics Information Solutions Ltd. As regards this company, learned counsel for the assessee, drawing our attention to the Annual Report submitted that principal objects are as under:

- a) Act as consultants and advisors of information/internet systems;
- b) Surveyors of information services;
- c) Providing technical services; and
- d) Software Services

18. Whereas, he submitted, the assessee is engaged only in providing software development services. He submitted, though, the comparable is engaged in diversified activities, however, no segmental information is available. He submitted, considering the aforesaid fact, the Tribunal in case of Velocity Tech-Sol India Pvt. Ltd. (supra), has rejected this company as a comparable. He submitted, in case of Nethawk Networks India Pvt. Ltd. (supra), identical view was expressed by the Tribunal. He submitted, in case of Global Logic India Ltd. Vs. ACIT, ITA No.8726/Del/2019,

dated 29.06.2020, the Delhi Bench of the Tribunal has rejected this company as a comparable considering the fact that it is engaged in diversified activities. Thus, he submitted, the company cannot be treated as comparable.

19. Learned Departmental Representative strongly relied upon the observations of the TPO and learned DRP. Drawing our attention to the Annual Report of the company, learned Departmental Representative submitted, like the assessee, the company is also engaged in software development services. Therefore, it cannot be said that the company is functionally dissimilar to the assessee.

20. We have considered rival submissions and perused the materials on record. From the Annual Report of the comparable as well as other materials on record, it is observed that the company, in addition to software development services, is providing various other consultancy, advisory, technical and surveyor of information services. Whereas, segmental information relating to its activities are not available in the Annual Report. Considering the aforesaid factors, various Benches of the Tribunal, including Delhi Benches have excluded this company from being treated as comparables. Maintaining judicial

consistency, we hold that the company cannot be treated as comparable to the assessee. Accordingly, we direct the Assessing Officer to exclude this company as a comparable. This ground is partly allowed.

21. In ground no. 4, the assessee has challenged the adjustment of Rs.11,45,642/- proposed by the TPO on account of interest on outstanding receivables from the AEs.

22. We have heard the parties and perused the materials on record. In course of proceedings before him, the TPO found that the AE has not paid the invoice amount to the assessee within the credit period. Thus, he show-caused the assessee to explain, why proportionate interest should not be charged for delay in receiving the outstanding amount. Though, the assessee objected to the proposed action of the Assessing Officer, however, rejecting assessee's submission, the TPO computed interest at the rate of 4.329% in respect of receivables, which remained outstanding beyond the period of 60 days from the date of issue of invoice. Accordingly, he proposed the adjustment of Rs.11,45,642/-. The adjustment so proposed by the TPO was also upheld by learned DRP.

23. Having considered rival submissions, we find, while considering identical issue in assessee's own case in assessment years 2010-11, 2011-12, 2012-13, the Tribunal has deleted similar adjustments made by the TPO. Identical view was expressed by the Tribunal while deciding assessee's appeal for assessment year 2014-15 in ITA No. 4191/Del/2018 after following the decision of the Hon'ble Jurisdictional High Court in case of Kusum Healthcare Pvt.ltd. (ITA No.6814/2014). Thus, respectfully following the decisions of the Coordinate Bench and maintaining judicial consistency, we decide the issue in favour of the assessee by deleting the addition. This ground is allowed.

24. Ground no. 5, being premature at this stage and ground no. 6 being consequential in nature, do not require adjudication.

25. In the result, the appeal is partly allowed.

***Order pronounced in the open court on 16<sup>th</sup> June, 2023***

***Sd/-***  
**(DR. B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

***Sd/-***  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Dated: 16<sup>th</sup> June, 2023.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi