

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

Before Shri B.R. Baskaran (AM) & Smt. Kavitha Rajagopal (JM)

I.T.A. No. 2546/Mum/2014 (A.Y. 2007-08)

Standard Chartered Finance Limited 2 nd Floor, 90 Mahatma Gandhi Road Fort, Mumbai-400 001. PAN : AAACE4113F (Appellant)	Vs.	DCIT -1(3) Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri Dhanesh Bafna, Ms. Chandni Shah & Shri Amol Mahajan
Department by	Shri Sunil A. Umap
Date of Hearing	06.06.2023
Date of Pronouncement	16.06.2023

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 07.02.2014 passed by Ld CIT(A)-15, Mumbai and it relates to the assessment year 2007-08. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the transfer pricing adjustments made in respect of "Marketing & Distribution Services" and "Backend Processing Services".

2. The assessee herein is engaged in the business of providing marketing services in respect of financial products offered by Standard Chartered Bank and also providing back office transaction processing activities for the above said bank, India branches and others. The TPO made transfer pricing adjustment of Rs.38.71 crores in respect of Marketing services segment and Rs.3.06 crores in respect of bank end processing services. The above said additions were confirmed by Ld CIT(A). Hence the assessee is aggrieved.

3. We shall first take up the addition relating to transfer pricing adjustment made in Marketing services. The assessee was remunerated at Cost plus 15% margin by its AE for the above said services. Hence Operating Profit/Total cost was 15% for the assessee. The assessee selected TNM method as most appropriate method. The TPO noticed that the assessee has used multiple year date and computed weighted average mean of margins of comparable companies selected by the assessee. The TPO did not accept the same. He adopted current year data of the comparable companies, whose arithmetical mean worked out to 65.33% as detailed below:-

Sr.No.	Name of the company	Updated PLI for F.Y. 2006-07(%)
1	Birla Global Asset Finance Co. Ltd.	369%
2	IDC (India) Limited	15%
3	ING Vyasias Financial Services Ltd.	47%
4	ICRA Online Ltd. (Segmental)	-95%
5	CRISIL Limited**	52%
6	Wall Street Finance Limited	4%
	Arithmetical mean	65.33

Accordingly, the TPO made adjustment of Rs.38.71 crores in this segment, which was also confirmed by Ld CIT(A).

4. The Ld A.R submitted that though the assessee has sought exclusion of three comparable companies, yet exclusion of one company, viz., Birla Global Asset Finance Co Ltd would be sufficient, since its exclusion will make the international transactions of the assessee at arms length. He submitted that this company has started two new activities, viz., IPO financing activity and Corporate finance activity, i.e., it has started earning interest income from financing activities during the year under consideration. Accordingly, he submitted that this company's functionality has undergone a change in

this year, which would make this company as not comparable with the assessee. He further submitted that the TPO has committed an error in computing margin of this company @ 369%, while the financial statements of this company would show that its margin was 26.73% only. He submitted that the TPO treated "interest cost" as non-operating in nature and did not deduct the same from revenue while computing margin. He contended that this approach of the TPO is not correct, since the interest cost was related to its financing activity. Accordingly, he prayed for exclusion of this company and if not excluded then prayed for re-computation of profit margin.

5. The ld D.R, on the contrary, submitted that the assessee itself has selected this company as a comparable company in its TP study. Further, it cannot be said that the functions of this company is not comparable.

6. In the rejoinder, the Ld A.R submitted that the financing activity was started by this company only during the year under consideration. In the earlier years, it was very much comparable with the assessee company. Since the assessee had considered multiple year data, it selected this company as a comparable company. When single year data is considered, it cannot be considered as a comparable company, since its functions have undergone change in this year.

7. We heard rival contentions and perused the record. We have also gone through the financial statements of M/s Birla Global Finance Co Ltd and we notice that this company has started financing activities during the year under consideration. We noticed that the assessee is engaged in providing marketing support services only. Hence a company which is engaged in financing activities, in our view, cannot be said to be comparable with the assessee. Accordingly, we direct exclusion of this company. The alternative submission on the error in computation of margin need not be adjudicated, since the company itself is directed to be excluded. The assessee also sought

exclusion of M/s CRISIL Ltd and M/s ING Vysya Financial Services Ltd on account of high RPT. However, it was stated earlier that the exclusion of M/s Birla Global Finance Co Ltd would make its transactions at arms length. Hence we do not find it necessary to adjudicate upon above said two companies.

8. We shall now take up the transfer pricing adjustment made in respect of Backend processing support services. The TPO selected following 31 comparable companies:-

Sr.No.	Name of the Company	Margins
1	Ace Software Exports Ltd	-6.79
2	Ask Me Info Hubs Ltd.	5.67%
3	Cosmic Global Lid.	11.75%
4	Maple E Solutions Ltd.	34.32%
5	Transworks Information Services Ltd. (Aditya Biria Monies Worldwide Lid.)	12.44%
6	Triton Corp. Ltd.	32.36%
7	Galaxy Commercial Ltd.	14.36%
8	CMC Ltd (Seg)	31.92%
9	Datamatics Softworid Pvt. Ltd (Seg)	3.14%
10	National Securities depositaries (Seg)	29.17%
11	Accentia Technologies Limited	38.26
12	Allsec Technologies Limited	27.31
13	Apex Knowledge Solutions Limited	12.83
14	Apollo Healthstreet Limited	-13.55

15	Asit C Mehta Financial Services Limited	24.21
16	Bodhtree Consulting Ltd	29.58
17	Datamatics Financial Services Limited (Seg)	5.07
18	Eclerx Services Ltd	90.43
19	Flexuonics Software Systems Limited (Seg)	14.54
20	Genesys International Corporation Limited	13.35
22	ICRA Techno Analytics Limited (Seg)	12.24
23	informed Technologies Ltd.	35.56
24	Infosys B P O Limited	28.78
25	Iservices India Private Limited	50.27
26	Moldtek Technologies Ltd	113.49
27	R Systems International Limited (Seg)	20.18
28	Spanco I Jmited (Seg)	25.81
29	Triton Corp. Limited	34.93
30	Vishal information Technologies Ltd	51.19
31	Wipro Lid	29.70
	Average Mean	22.07

Accordingly, he made transfer pricing adjustment of Rs.3.06 crores, which was also confirmed by Ld CIT(A).

9. Before us, the assessee seeks exclusion of following eight companies:-
- (i) Mold-Tek Technologies Ltd (Seg.)
 - (ii) E-clerx Services Ltd
 - (iii) Accentia Technologies Ltd

- (iv) Vishal Information Technologies Ltd
- (v) Infosys BPO Ltd
- (vi) Wipro Ltd
- (vii) HCL Comnet Systems & Services Ltd
- (viii) I services India Pvt Ltd

10. The Ld A.R submitted that the companies listed in (i) to (vii) above, have been excluded by the co-ordinate bench in the case of WTW Global Delivery and Solutions India P Ltd (ITA No.691/Mum/2016 dated 29-08-2022). He submitted that the company M/s I Services India Pvt Ltd listed as item (viii) above has been excluded by the co-ordinate bench in the case of DBOI Global Services P Ltd (ITA No.2136/Mum/2012 dated 11-08-2021). He submitted that the reasoning given by the co-ordinate benches for exclusion of above said eight comparable companies would be applicable to the instant case also. Accordingly, he prayed for exclusion of above said eight companies.

11. The Ld D.R, on the contrary, relied upon the order passed by Ld CIT(A) on this issue.

12. We heard rival contentions on this issue and perused the record. We notice that the co-ordinate bench in the case of WTW Global Delivery and Solutions India P Ltd (supra) has directed exclusion of seven companies listed as (i) to (vii) in paragraph 9 above. The decision rendered by the co-ordinate bench is extracted below:-

(i) Accentia Technologies Ltd:-

The assessee submitted that this company is functionally different and the TPO himself has excluded this company in the assessee's own case in AY 2010-11. Further, the Tribunal has excluded this company in the assessee's own case in AY 2006-07 (ITA No.690/Mum/2016) and in AY 2008-09 (ITA No.6877/Mum/2012). The Ld A.R also relied upon the decision rendered by the Tribunal in the case of Stream International Services (ITA No.8290/Mum/2011 dated 10th October, 2014) in AY 2007-

08. Thus, we notice that this company has been held as not a good comparable in various years in the assessee's own case and in the hands of other assessee's also. Accordingly, we direct exclusion of this company.

(ii) Mold-Tek Technologies Ltd:-

The assessee submitted that this company is a KPO company and hence it is functionally different. Further, during the year under consideration, it has demerged its Plastics division into a separate listed entity, which is an extra ordinary event. The Tribunal has excluded this company in AY 2008-09 (ITA No.6877/Mum/2012) in the assessee's own case. The TPO himself has excluded this company in the assessee's own case in AY 2006-07. The Ld A.R also relied upon the decision rendered by the Tribunal in the case of Stream International Services (ITA No.8290/Mum/ 2011 dated 10th October, 2014) in AY 2007-08. Thus, we notice that this company has been held as not a good comparable in various years in the assessee's own case and in the hands of other assessee's also. Accordingly, we direct exclusion of this company.

(iii) E-clerx Services Ltd:-

The assessee submitted that is functionally different, as it is engaged in KPO activities. The Tribunal has excluded this company in AY 2008-09 (ITA No.6877/Mum/2012) and in AY 2010-11 (ITA No.1890/Mum/2015) in the assessee's own case. The Ld A.R also relied upon the decision rendered by the Tribunal in the case of Stream International Services (ITA No.8290/Mum/2011 dated 10th October, 2014) in AY 2007-08. Thus, we notice that this company has been held as not a good comparable in various years in the assessee's own case and in the hands of other assessee's also. Accordingly, we direct exclusion of this company.

(iv) Vishal Information Technologies Ltd:-

The assessee submitted that this company follows different business model, which is evidenced by the fact that this company's personnel cost works out 2.3% of the turnover. This company has been excluded by the Tribunal in the assessee's own case in AY 2005-06 (ITA No.1832/Mum/ 2016), in AY 2006-07 (ITA No.690/Mum/2016) and in AY 2008-09 (ITA No.6877/Mum/2012). The Ld A.R also relied upon the decision rendered by the Tribunal in the case of Stream International Services (ITA No.8290/ Mum/2011 dated 10th October, 2014) in AY 2007-08. Thus, we notice that this company has been held as not a good comparable in various years in the assessee's own case and in the hands of other assessee's also. Accordingly, we direct exclusion of this company.

(vii) Infosys BPO Ltd:-

The assessee submitted that this company belongs to "Infosys" group, which enjoys goodwill and brand value in the market. This company has been rejected in the assessee's own case by the Tribunal in AY 2010-11 (ITA No.1890/Mum/2015) and by Ld DRP in 2008-09. The Ld A.R submitted that this company has been held to be not a good

comparable in the case of Hinduja Global Solutions Ltd (ITA No.4933 & 4950/Mum/2012). Accordingly, we direct exclusion of this company.

(viii) **WIPRO Ltd:-**

The assessee submitted that this company is a leading market player and is possessing significant intangibles. This company has spent about 8.5% of its revenue towards R & D Activities. Further, this company has had 9 acquisition arrangements during this year. The Ld A.R also relied upon the decision rendered by the Tribunal in the case of Stream International Services (ITA No.8290/Mum/2011 dated 10th October, 2014) in AY 2007-08. Thus, we notice that this company has been held as not a good comparable in various years in the assessee's own case and in the hands of other assessee's also. Accordingly, we direct exclusion of this company.

(x) **HCL Comnet Sys & Ser Ltd:-**

The assessee submitted that this company is a unlisted company and it follows different accounting year, i.e., it ends its accounts on 30th June and not on 31st March. The Ld A.R submitted that the companies following different accounting year was excluded by the Tribunal in the case of American Express (India) P Ltd (ITA No.1674/Del/2015 dated 7th June 2017) relating to AY 2007-08. The Ld A.R also submitted that the Hon'ble Bombay High Court has also excluded this company in the case of CIT vs. PTC Software (I) Pvt Ltd (2017)(395 ITR 176)(Bom). Accordingly, we direct exclusion of this company."

13. The company M/s I services India P Ltd was excluded by the co-ordinate bench in the case of DBOI Global Services P Ltd (supra) with the following observations:-

I Services India Pvt Ltd

7.14 Assessee sought removal of this company due to functional dissimilarity, super normal profit and non availability of contemporaneous data in public domain. On a perusal of facts on record, we find that this company is engaged in providing remote data entry services to its clients in USA. Further, it has reported a profit margin of 50.27% for the year under consideration, which is exceptionally high in terms of industry norms. Due to the super normal profit earned by the company for the year under consideration, the Tribunal excluded it from being considered as a comparable in case of Pentair Water India P Ltd vs Addl CIT (supra), which is for the very same assessment year. Further, in case of Willis Processing Service India Pvt Ltd (supra), which is also for the very same assessment year, this company has been excluded due to non availability of contemporaneous data in public domain. Keeping in view the aforesaid decisions of the Tribunal, we exclude this company from the list of comparables.

14. Since the facts are identical, following the decisions rendered by the co-ordinate benches, we direct exclusion of 8 companies listed in paragraph 9 above.

15. Accordingly, we direct AO/TPO to re-compute arms length price of international transactions in both the segments under consideration.

16. The learned AR has stated that assessee has raised an additional ground challenging the levy of dividend distribution tax. He submitted that the assessee does not want to press the same. Accordingly the said ground is dismissed.

17. In the result, the appeal filed by the assessee is partly allowed.

Pronounced in the open court on 16.6.2023.

Sd/-
(KAVITHA RAJAGOPAL)
Judicial Member

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

Mumbai; Dated : 16/06/2023

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