

अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
'D' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 249/CHNY/2018

निर्धारण वर्ष /Assessment Year: 2013-14

**Atmel R&D India Pvt. Ltd.,**  
**(merged with Microchip**  
**Technology (India) Pvt.**  
**Ltd.,)**

No.51, Rajiv Gandhi Salai (Old  
Mahabalipuram Road),  
Sholinganallur,  
Chennai – 600 119.

**The ACIT,**  
v. Corporate Circle 1(1),  
Chennai

**PAN: AAGCA 2630K**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri Vikram Vijayaraghavan,  
Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri A. Sasikumar, CIT

सुनवाई की तारीख/Date of Hearing

: 10.07.2023

घोषणा की तारीख/Date of Pronouncement

: 12.07.2023

**आदेश /ORDER**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

This appeal by the assessee is arising out of the directions of the Dispute Resolution Panel-2, Bengaluru dated 27.09.2017. The assessment was framed by the ACIT (OSD), Corporate Range-1,

Chennai for the assessment year 2013-14 u/s.143(3) r.w.s. 144C(13) r.w.s.92CA of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 17.11.2017.

2. At the outset, the Id.counsel for the assessee Shri Vikram Vijayaraghavan stated that he has raised Ground Nos. 1 to 4 and sub-grounds of Ground Nos.1, 2 & 3 but he is only pressing three issues regarding the following:-

(i) He is pressing ground No.3.2 regarding working capital adjustment and the relevant ground reads as under:-

“3.2 Erred on facts and in law in rejecting the working capital adjustment computed by the Appellant, by arbitrarily stating that the Appellant has failed to demonstrate the difference in working capital employed by the Appellant and the comparables.

Further, erred in law and on facts in arbitrarily concluding that working capital adjustment need not be granted to the Appellant despite negative working capital in the Appellant's case, thereby contradicting the Ld.DRP's own admission (in Para 13.1 of the DRP Direction) that the working capital adjustment shall be allowed to the Appellant only in case of a negative working capital.”

(ii) As regards to erroneous rejection of comparables by the Transfer Pricing Officer (TPO) and Dispute Resolution Panel (DRP), the assessee want inclusion of the following two companies:-

1) Akshay Software Technologies Limited (CDS Segment)

and

## 2) R Systems International Limited (CDS Segment)

The Id.counsel stated that apart from above three issues, the assessee is withdrawing all the grounds and not pressing. Hence, we proceed to adjudicate these three issues only.

3. First, we will deal with the issue of working capital adjustment.

4. Briefly stated facts are that Atmel R & D India Private Limited, the assessee, is primarily engaged in the business of providing Contract Development Services and Sales Support Services to Atmel Group. Having regard to the functions performed, assets employed and risks assumed, assessee was remunerated for the services provided on the basis of cost plus arm's length mark-up for the financial year 2012-13. During the financial year 2012-13 relevant to assessment year 2013-14, assessee had earned revenue from Contract Development Segment amounting to Rs. 27,25,56,931/- and Sales Support Segment amounting to Rs.2,28,36,962/-. A copy of the Audited Financial Statements of the Company and the return of income filed with the tax department is also filed by assessee in its paper-book. The assessee has entered into a Service agreement with the respective entities within the Atmel Group for rendering of the aforesaid services and is compensated on a cost plus mark-

up basis for the same. Copy of the intercompany agreement is also enclosed in its paper-book. The TPO while dismissing the claim of adjustment of working capital submitted that comparables margin should be adjusted for working capital intensities but it should be relevant only in the event of assessee's working capital being negative. According to TPO, in the instant case, there can be no grievance for the assessee since its margins are not affected by negative working capital and hence, the assessee's claim was rejected by following the decision of Co-ordinate Bench of this Tribunal in ITAT 'C' Bench in ITA No.2112/Mds/2011 in the case of Mobis India Limited vs. DCIT, wherein the assessee had negative working capital and despite the same, the Tribunal held that "the assessee has not been able to justify the adjustments that were required to be made on account of negative working capital." Apart from this, the TPO has not discussed anything. The assessee moved to DRP.

4.1 The DRP also rejected the claim of assessee by repeating whatever finding given by the TPO verbatim and as under:-

"13.1 Panel: We have perused submissions shared by the assessee. This contention would be relevant only in the event of assessee's working capital being negative. Therefore in the instant case there can be no grievance for the assessee since its margins are not affected by negative working capital. Reliance is placed on the decision of the Honourable ITAT 'C' bench

Chennai in ITA No.2112/Mds/2011 (AY 2007-08) in the case of Mobis India Limited vs. DCIT. In this case the appellant had negative working capital. Despite this fact, the Honourable ITAT held that “the assessee has not been able to justify the adjustments that were required to be made on account of negative working capital.” Therefore the assessee’s claim is rejected.

Hence the above ground rejected.”

Aggrieved, now assessee is in appeal before the Tribunal.

5. Before us, the Id.counsel for the assessee argued that the TPO erred in not allowing economic adjustments for difference in working capital employed by assessee and its comparables. The assessee submitted that Atmel India in its Contract Development Segment (CDS) operates relatively with higher level of accounts payable than that of comparable companies. According to assessee, this results in Amtel India working capital percentage on operating cost turns out to be negative i.e., 9.71% and it filed a working chart from the financials as under:-

Working Capital	Contract Development Segment		
	Opening	Closing	Average
Trade Debtors	-	-	-
Advances to suppliers		2,150	2,150
Trade Creditors	1,88,76,402	2,12,62,013	2,00,69,208
Advances from customers	47,56,137	60,89,955	54,23,046
Working Capital	-2,36,32,539	-2,73,49,819	-2,54,90,104
Operating Cost (Assessee)			26,08,80,963
Working Capital / Cost (%)			-9.77%

According to assessee, since the assessee's working capital was negative, the TPO erred in not granting working capital adjustment as the TPO has factually erred in mentioning that in the instant case there is no grievance which is factually incorrect. The assessee gave working after analyzing the financials of comparables margin i.e., unadjusted and adjusted after working capital adjustment, which provides as under:-

Sl. No.	Company Name	TP order margins (1)	Working Capital Adjustment (2)	Working Capital Adjusted NCP (3)=(1)-(2)	Rectified margins (4)	Working Capital Adjustment (5)	Working Capital Adjusted NCP (6) = (4)-(5)
1	Thirdware Solutions Ltd	30.97%	3.69%	27.28%	30.92%	3.69%	27.24%
2	CG-VAK Software & Export Ltd	21.36%	2.65%	18.71%	15.21%	2.51%	12.70%
3	Goldstone technologies Ltd	15.32%	12.50%	2.82%	15.16%	12.48%	2.68%
4	ICRA Techno Analytics Ltd	17.09%	7.13%	9.96%	16.73%	7.11%	9.62%
5	Acropetal technologies ltd	18.55%	15.38%	3.17%	18.55%	15.38%	3.17%
6	Tata Elxsi Ltd	10.76%	2.43%	8.33%	10.76%	2.43%	8.33%
7	Cades Digitech Ltd	3.33%	4.03%	-0.70%	3.33%	4.03%	-0.70%
8	Vama Industries Ltd	37.06%	5.97%	31.09%	37.06%	5.94%	31.12%
<b>Arithmetic Mean</b>		<b>19.30%</b>	<b>6.72%</b>	<b>12.58%</b>	<b>18.47%</b>	<b>6.70%</b>	<b>11.77%</b>

In view of the above, the Id.counsel stated that the assessee should be given appropriate adjustment to be made to the comparable companies, to enhance the quality of the comparative analysis and for this, he relied on the decision of the Co-ordinate Bench of this Tribunal, Pune Bench in the case of Software AG (India) Pvt. Ltd., in

ITA No.1264/PN/2013, wherein the Tribunal following other orders held as under:-

“9. We find that similar issue of allowing working capital adjustment to the assessee has been held in favour of the assessee by series of decision on various Benches of the Tribunal including Pune Bench of Tribunal in DCIT Vs. Emptoris Technologies India Pvt. Ltd. in ITA No.1500/PN/2012 and Emptoris Technologies India Pvt. Ltd. Vs. DCIT in ITA No.1550/PN/2012, relating to assessment year 2007-08, order dated 08.07.2015. The CIT(A) on the other hand had placed reliance on the decision of Delhi Bench of Tribunal in Vedaris Technologies Pvt. Ltd. v ACIT (supra) and the OECD Guidelines. In view of the above, we find merit in the order of CIT(A) in directing the Assessing Officer to grant working capital adjustment to the assessee on the basis of average credit/debit period for the year and commercial rate of interest. In view thereof, we find no merit in the grounds of appeal raised by the Revenue and the same are dismissed.”

6. Contradicting the above arguments of the Id.counsel, the Id.CIT-DR argued that in case the assessee has positive working capital, assessee is not entitled for adjustment on account of negative working capital of the comparables because the assessee has not justified the adjustment that were required to be made on account of negative working capital. He further submitted that the contention of the assessee would be relevant only in the event of assessee's working capital being negative. Therefore in the instant case there can be no grievance for the assessee since its margin are not affected by negative working capital. The Id.CIT-DR relied on the decision of the Hon'ble ITAT 'C' bench Chennai in ITA No. 2112/Mds/2011 (A.Y. 2007-08) in the case of Mobis India Limited Vs

DCIT. In this case the assessee had negative working capital. Despite this fact, the Hon'ble ITAT held that the assessee has not been able to justify the adjustments that were required to be made on account negative working capital. He further stated that this ground of appeal of the assessee has been dealt with in detail by DRP in para 13.1 while rejecting assessee's appeal.

7. We have heard rival contentions and gone through facts and circumstances of the case. We are of the view that in the present case, in order to increase the comparability with the tested party and the comparables, adjustment of working capital is to be given. As far as negative working capital of the comparables, this issue has been settled by the Pune Bench of ITAT in the case of Software AG (India) Pvt. Ltd., *supra* and for this, even the OECD guidelines also confirmed the position. The OECD guidelines para 1.33 states as under:-

"Application of the arm's length principle is generally based on a comparison of the conditions in a controlled transaction with the conditions in transactions between independent enterprises. In order for such comparisons to be useful, the economically relevant characteristics of the situations being compared must be sufficiently comparable. To be comparable means that none of the differences (if any) between the situations being compared could materially affect the condition being examined in the methodology (e.g. price or margin), or that reasonably accurate adjustments can be made to eliminate the effect of any such differences. In determining the degree of comparability, including what

adjustments are necessary to establish it, an understanding of how independent enterprises evaluate potential transactions is required."

We have gone through the facts in the present case and noted that the Atmel India CDS segment operates with relatively favourable working capital position than that of comparable companies and as a result of this Atmel India working capital percentage on operating cost turns out to be negative i.e, -9.71%. We noted that this fact does not hamper from claiming of working capital adjustment as the Tribunal is consistently allowing this claim as held by Co-ordinate Bench of ITAT, Pune in the case of Software AG (India) Pvt. Ltd., *supra*. Hence, we direct the TPO to allow the claim of assessee accordingly. This issue of assessee's appeal is allowed.

8. Coming to the TPO rejecting Akshay Software Technologies Limited which is functionally comparable and basis of revenue also similar. For this, assessee has raised following Ground No.2.7:-

"2.7 Further, the Ld.TPO erred in rejecting Akshay Software Technologies Limited (CDS Segment) and Cyber Media Research Limited (SSS Segment) which are functionally comparable and ought to be accepted."

9. Brief facts related to this issue are that the assessee company is primarily engaged in the business of providing Contract Development Support services with respect to design, development

and testing of products relating to integrated circuit and semiconductor devices and related software development services. The assessee while carrying out TP research and prepared TP report included Akshay Software Technologies Ltd., has functionally comparable and accordingly, it was included by assessee as comparable in its TP report. The TPO rejected Akshay Software Technologies Ltd., for the reason that it is predominantly engaged onsite development. He stated the reasons that the company Akshay Software Technologies Ltd., is predominantly engaged in onsite development whereas the assessee company is engaged in offshore development. The TPO noted that the assessee has cited onsite expenditure indicating onsite functions as a reason to object to a company identified by TPO namely, Persistent Systems. According to TPO, this argument of the assessee is inconsistent and can only be seen as an attempt to reduce its tax liability. Hence, this comparable was rejected by TPO. Aggrieved, assessee raised objection before the DRP. The DRP also rejected the objection by observing in para 17.1 as under:-

“17.1 Panel: The reasons cited in the TP order is that company is predominantly engaged in onsite development. Whereas the assessee is engaged in offshore development. Further the assessee has cited onsite expenditure indicating onsite functions as a reason to object to a comparable identified by the TPO, namely, Persistent Systems. Hence this argument of the assessee is inconsistent and can only be seen as an attempt to reduce its tax liability. Hence this comparable is rejected.

Hence the above ground is rejected.”

Aggrieved, now assessee is in appeal before the Tribunal.

10. Now before us, the assessee contended that Akshay Software Technologies Ltd., is involved in providing computer software & services and it is involved in software development activities. It was contended and factually argued that Akshay Software Technologies Ltd., is involved in procurement, installation, implementation, support and maintenance of ERP products and services. The Id.counsel informed that all these services are classified as software services. He referred to the financials and statement that the same has been depicted patently in the Profit & Loss Account of the Annual Report. The Id.counsel also relied on the Delhi Tribunal decision in the case of Qualcomm India Pvt. Ltd., vs. ACIT in ITA No.5239/DEL/2010, wherein it is held that Akshay Software Technologies Ltd., is a comparable company and hence, should be selected. The Tribunal held as under:-

26. ....On perusal of profit and loss account of the Akshay Software, we find that schedule-12 of it shows break up of the sales of the company as Rs.4,97,88,191 towards exports of Software services, Rs.1,17,29,263/- towards domestic software services and Rs.6,30,000/- towards sale of product. Under these circumstances, we find substance in the contention of the Ld. A.R that Akshay Software should have been accepted as comparable to bench mark the international transaction of the assessee also because in the assessment year 2007-08, the Ld. T.P.O

himself has accepted the company as comparable. We accordingly direct the Ld. T.P.O to accept Akshay Software as comparable to determine the Arms Length Price of the assessee.

11. On the other hand, the Id.CIT-DR argued that Akshay Software Technologies Limited is predominantly engaged in onsite development whereas the assessee is engaged in offshore development. Further the assessee has cited onsite expenditure indicating onsite functions as a reason to object to a comparable identified by the TPO, namely, Persistent Systems. Hence, the assessee is inconsistent. He further submitted that this ground of appeal of the assessee has been dealt with in detail by DRP in para 17.1 while rejecting assessee's appeal.

12. We have heard rival contentions and gone through the facts and circumstances of the case. Before us, it was argued that Akshay Software Technologies Ltd., is involved in procurement, installation, implementation, support and maintenance of ERP products & services. It was also argued that Akshay Software Technologies Ltd., is financially comparable as it is engaged in providing computer software & services with the assessee company. Actually this fact needs to be verified whether the Akshay Software Technologies Ltd., is comparable with the functions of the assessee

or not. Hence, this issue needs to be referred back to the file of the TPO who will find out whether Akshay Software Technologies Ltd., is comparable to the assessee or not. The TPO will also consider the decision of ITAT, Delhi in the case of Qualcomm India Pvt. Ltd., *supra*. In term of the above, this issue is remitted back to the file of the TPO / AO and hence, this ground of assessee is allowed for statistical purposes.

13. The next comparable rejected by the TPO is R Systems International Ltd., and challenged by assessee.

14. Briefly stated facts are that R Systems International Ltd., has adopted statutory year ending on 31<sup>st</sup> December, 2012 as financial year as against the financial year ending for tax 31<sup>st</sup> March, 2013 in the present year. According to TPO use of different accounting year by any company, that company cannot be accepted as comparable as sufficient number of comparable companies with the same accounting period is available in public domain and there is no need to consider the comparables ending with different accounting year which leads to the deviation in the ALP. The assessee argued that contemporaneous data does not mean same financial year and covering the same period as the transaction. The use of different

accounting year does not impact the comparability parameters. But the TPO rejected that the issue of non-acceptability of different financial year ending companies has been discussed and hence, this comparable is rejected. Aggrieved, assessee preferred objections before the DRP. The DRP rejected the ground vide para 6.1 as under:-

“6.1 Panel : The arguments of the assessee cannot be accepted as sufficient number of comparable companies with same accounting period is available in public domain, there is no need to consider the comparables ending with different accounting year which leads to the deviation in the number reported.

Hence the above ground has been dismissed.”

Aggrieved, assessee came in appeal before us.

15. Now before us, the Id.counsel argued that the fact that the company R Systems International Ltd., has a statutory year ending on 31<sup>st</sup> December, 2012 as against financial year ending on 31<sup>st</sup> March, 2013 does not by itself render that company incomparable for the reason that the financial information is very much contemporaneous and falls within the permitted period as permitted by the Act. Additionally assessee's counsel argued that company conducting its business in any industry goes through a business cycle, wherein it begins as a start-up company and then matures to a grown up company. Thus, a mere difference of a few months between the tested party's financial closure and that of the

comparables will not have an impact on the comparison. The Id.counsel for the assessee also drew our attention to the provisions of Rule 10B(3) of the Income Tax Rules, which reads as under:-

An uncontrolled transaction shall be comparable to an international transaction if –

- (i) none of the differences, if any, between the transactions being compared, or between the enterprises entering into such transactions are likely to materially affect the price or cost charged or paid in, or the profit arising from, such transactions in the open market;
- or
- (ii) reasonably accurate adjustments can be made to eliminate the material effects of such differences.

It was argued that there would not be any difference between a company maintaining its books of accounts for December ending and a company maintaining its books of accounts for March ending. Further and alternatively it was argued that even though one is liable to establish that there was a difference by virtue of different fiscals, such difference would have to be adjusted by virtue of the above sub-rule. Hence, he argued that this matter can be referred back to the TPO to make suitable adjustment in term of Rule 10B(3) of the Rules.

16. On the other hand, the Id.CIT-DR argued that the argument of the assessee cannot be accepted as sufficient number of comparable companies with same accounting period is available in public

domain. He stated that the DRP has dealt this ground of appeal of the assessee in para 6.1 while rejecting assessee's appeal.

17. We have heard rival contentions and gone through facts and circumstances of the case. We noted that this does not make any difference whether a company is maintaining its books of accounts for the December ending or March ending. Only a suitable adjustment has to be made in view of different fiscals. Hence, we direct the TPO to take this company as comparable after making suitable adjustments. We direct the TPO / AO accordingly.

18. In the result, the appeal filed by the assessee is partly-allowed for statistical purposes.

Order pronounced in the open court on 12<sup>th</sup> July, 2023 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 12<sup>th</sup> July, 2023

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त /CIT

4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF.