

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "K", MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER AND
MS KAVITHA RAJAGOPAL, HON'BLE JUDICIAL MEMBER**

ITA NO. 721/MUM/2022 (A.Y: 2014-15)

Juniper Networks India Private Limited Unit 103, Platina, 1 st Floor Plot No. C-59, G-Block Bandra Kurla Complex Bandra (E), Mumbai -400051 PAN: AAACJ8542K	v.	DCIT – Central Circle – 2(4) Pratishtha Bhavan Old CGO Annexe Maharishi Karve Road Mumbai - 400020
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Vijay Mehta & Shri Komal Mehta
Department Represented by	:	Shri Jasdeep Singh
Date of Conclusion of Hearing	:	10.05.2023
Date of Pronouncement	:	04.08.2023

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against the final Assessment Order and order of Learned Commissioner of Income Tax (Ld. DRP-1),

Mumbai -1 [hereinafter in short "Ld. DRP"] dated 25.01.2022 for the A.Y.2014-15 passed u/s. 144C(5) of Income-tax Act, 1961 (in short "Act").

2. Brief facts of the case are, assessee is a company which was incorporated in May 2000 and it is a wholly owned subsidiary of Juniper Networks International Inc., a US based company, which in turn is a wholly owned subsidiary of Juniper Networks Inc., USA. Assessee is engaged in the business of providing software development, IT Enabled Services and marketing support services to its AES. During the year under consideration, following international transactions were reported by the assessee in Form 3CEB as under: -

Nature of services	Amount (Rs.)	Margins OP/TC as per segmental given assessee [%]
Receipts from Software Development Services and Information Technology enabled services	11,75,21,88,443	17.50
Receipts from Marketing Support services	61,84,66,224	11.00
Purchase of fixed assets/ Stores and consumables	89,91,09,292	At cost
Interest paid on ECB Loan	1,71,51,363	At cost
Reimbursement of expenses	1,47,67,917	At cost
Contribution to employee stock option and purchase plan (ESPOP)	14,33,95,470	At cost
Recovery for stock option taxes for employees	30,61,78,439	At cost
ECB loan Borrowed	65,90,00,000	

3. At the time of hearing, Ld. AR of the assessee brought to the notice of the bench, letter dated 17.03.2023 in which assessee has submitted before the bench that the appeal is preferred by the assessee against the adjustments made by the Assessing Officer in the final Assessment Order. The transfer pricing adjustments have been made in connection with provision of Software Development Services (SDS), Information Technology Enabled Services (ITeS), mark-up on ESPP costs and Marketing Support Services (MSS) to its Associated Enterprises. With a view to resolve the transfer pricing dispute, one of the AE of the assessee i.e. Juniper Networks Inc. had filed a request with the Competent Authorities pursuant to Article 27 ('MAP') of the India United States Tax Treaty. The MAP Application was filed on 18.05.2022 for AY 2014-15.

4. The MAP request relates to transfer pricing adjustments to the income of the assessee with respect to transactions of SDS, ITeS and mark-up on ESPP costs between assessee and Juniper US during A.Y.2014-15. It was submitted that the Indian Competent Authority vide letter dated 16.02.2023, have informed that the Indian and US Competent Authorities have agreed to resolve the assessee's MAP application. Copy of the communication is enclosed to this letter.

5. Therefore, as per the above communication the international transactions covering SDS, ITes and Mark-up on ESPP cost are covered and will be resolved under MAP.

6. The issue relating to MSS is not covered under MAP and other corporate issues with the above reference, Ld. AR submitted that the grounds raised in Form-36, most of the grounds relating to issue involving MAP are not pressed before us. Accordingly, he submitted that ground No.1 is general, ground no. 2 along with sub-grounds are not pressed, Ground No. 3 sub clause 3.1, 3.2, 3.3, 3.4, 3.8, 3.9, 3.10 are not pressed. With regard to Ground No. 4 he submitted that it is consequential in nature. Therefore, assessee is pressing the Ground No. 3.5, 3.6 and 3.7 along with the additional ground raised vide letter dated 04.05.2023 and he also filed application for admission of the additional grounds, against this application Ld. DR objected for admission of the additional ground at this stage.

7. After considering the rival submissions, the relevant facts are already available on record and the Hon'ble Bombay High Court in its ruling in the case of PCIT *v.* Pfizer Limited (2019) 308 CTR (Bom) 389 wherein it was ruled in favour of the assessee to exclude companies which

were considered in transfer pricing study report of the assessee, accordingly, we preferred to proceed to admit the additional ground raised by the assessee. In the result, assessee is objecting to the inclusion of Axis Integrated System Limited and Killick Agencies and Marketing Limited in the final set off comparables by DRP/AO and at the same time objecting to exclusion of Spectrum Business Solutions Limited.

8. With regard to comparable Axis Integrated System Limited, Ld. AR submitted that TPO has included this comparable based on the directions of Ld. DRP in A.Y. 2013-14. Similarly, he brought to our notice Page No.57 of the Ld. DRP order in which assessee has submitted the objections before Ld. DRP and Ld. AR brought to our notice nature of the business and "FAR" analysis and reasons for rejection of the same to be considered as comparable, for the sake of clarity we are reproducing chart as under:-

Sr.No.	Name of the Company	Brief Nature of business	conclusion
1.	Axis Integrated System Limited	Failing the export to sales filter of 75% As per the note 25 in the financial statements the company does not have any export earnings and thus the said company fails the export turnover filter applied by the learned TPO. • Failing turnover filter One of the filters proposed to be applied by the TPO is Reject companies which having turnover of 10 times	The comparable company introduced by the learned TPO failed the filters adopted by the Learned TPO. • The functions performed by this company are not

Sr.No.	Name of the Company	Brief Nature of business	conclusion
		lower and 10 times higher of the turnover of the company. ● Functions/ Business: The has earned substantial income/revenue from liasoning activities. ● Website details: Company is engaged in the business of providing DGFT, Customs / Excise and service tax related services.	comparable to the assessee. Based on the aforesaid : assessee submits that this company should be rejected.

9. Similarly, he also brought to our notice Page No. 162 of the Paper Book-I which is the Coordinate Bench order for the A.Y. 2013-14 in which the Coordinate Bench has directed the Assessing Officer/TPO to exclude the Axis Integrated System Limited as comparable by observing that Axis Integrated System Limited was functionally not comparable with the marketing support services rendered by the assessee.

10. Further, he also brought to our notice Page No. 145 of the Paper Book – 1 which is the balance sheet of the Axis Integrated System Limited to demonstrate that it fails to export sales filter and submitted that the sales recorded is only 177296 and majority of the revenue is earned from liaison charges receipt. Therefore, this comparable is excluded based on this finding by the Coordinate Bench in A.Y. 2013-14. Further, he also brought to our notice Page No. 125 of the Paper Book – 1 which is the

financial statements for the A.Y. 2014-15 and even in A.Y. 2014-15 the Axis Integrated System Limited has earned majority of the revenue from liaison charges receipt. Therefore, he submitted that this company cannot be considered as comparable to the assessee.

11. With regard to Killick Agencies and Marketing Limited., Ld. AR brought to our notice Page No. 170 of the Paper Book – 2, which is the financial statements of the Killick Agencies and Marketing Limited and he brought to our notice Page No. 179 of the Paper Book wherein the revenue from operation has recorded as ₹.3,92,67,631/- and it has recorded employee benefit expenses of ₹.39,03,312/- on other expenses of ₹.2,70,00,568/- and he brought to our notice Schedule 16 of the other expenses which includes royalty payment which is equivalent to 30% and further, he brought to our notice Significant Accounting Policies and Notes to accounts in which it has declared that Company also offers after sales services, apart from this, Company is involved in exports of micro switches, engineering items, acoustics items & head-sets. Further, he brought to our notice this company has earned income from commission on installation and commissioning at the customers designated places. Therefore, the revenue includes commission income also, therefore this company is employing different business module and in this regard he

brought to our notice following cases in which this company is rejected as comparable by the different benches of the Tribunal.

- i. Salesforce.com India Private Limited v. DCIT [TS-140-ITAT-2021 (Bang)-TP] (24-03-2022).*
- ii. Sabre Travel Technologies Private Limited vs DCIT (2021) 130 Taxmann.com 217 (Mumbai - tribunal) (14-07-2021).*
- iii. Mavenir India Pvt. Ltd (earlier known as Comverse Network System India Pvt. Ltd.), vs DCIT 141 taxmann.com 160 (Delhi - Trib.) [17-05-2022]*
- iv. Arm Embedded Technologies Pvt. Ltd., vs DCIT 143 taxmann.com 403 (Bangalore - Trib.) [30-08-2022]*
- v. Citrix Systems India (P.) Ltd. vs DCIT 118 taxmann.com 588 (Bangalore - Trib.) [20-03-2020]*
- vi. Hyundai Rotem Company vs ACIT (International Taxation) 120 taxmann.com 466 (Delhi - Trib.) [02-03-2020]*
- vii. Electronics for Imaging India Pvt Ltd vs DCIT 70 taxmann.com 299 (Bangalore Trib.) [24-02-2016]*

12. With regard to inclusion of the comparable Spectrum Business Solutions Limited, Ld. AR brought to our notice Page No. 22 of the TPO order in which TPO has observed that this comparable is functionally not comparable and complete details for financial year 2013-14 are not available in TPSR. Further, he brought to our notice Page No. 62 of the Ld. DRP order wherein Ld. DRP has observed that the main areas of marketing function performed by the assessee include providing sales

support, improving brand awareness and marketing programmes. He submitted that assessee also provides post-sales support. Further, Ld. DRP observed that Spectrum Business Solutions Limited is an internet marketing company inter-alia engaged in admin support services like virtual assistant and research and management etc., it is also in the field of making marketing strategies and business plans etc., these functions are not comparable to the functions carried out by the assessee company.

13. Further, Ld. AR brought to our notice Page No. 1 of the Paper Book to demonstrate the functions carried out by the assessee in the area of sales and marketing services and submitted that based on the request from service Recipient's request from time to time, assessee shall provide Service Recipient with reports regarding the marketing of Products, including, but not limited to, market conditions, customers' attitudes toward Products, potential marketing efforts etc., Further, he brought to our notice Page No. 81 of the Paper Book which is the transfer pricing memorandum prepared by the assessee in which assessee has brought on recorded various marketing services carried on by the assessee and assessee has selected Spectrum Business Solutions Limited as a comparable company.

14. Further, he brought to our notice Page No. 416 of the Paper Book which is the Directors report of Spectrum Business Solutions Limited and he brought to our notice Page No. 424 in which Spectrum has declared revenue from operation which consist of sale of services and employee benefit expenses of ₹.7,24,56,223/- which is total employee benefit expenses. This shows that majority of the cost of employment is rendered towards business activities. In this regard he brought to our notice decision of the ITAT Delhi Bench in the case of Interncontinental Hotels group (India) Pvt. Ltd., v. DCIT in ITA.No. 4035/Del/20169 dated 14.10.2020 wherein the bench has directed to include this comparable by observing that similar functions being performed by both the companies.

15. Further, he brought to our notice Page No. 93 of the Paper Book which is the segmental profit and loss statement of the assessee company in which the segment financials are reported for MSS in which assessee has declared revenue of ₹.61,84,66,224/- and recorded employee cost expenses of ₹.37,78,61,725/- (61%). Therefore, he prayed that the cost structures are same to the Spectrum Business Solutions Limited hence this has to be included as comparable of the assessee company.

16. On the other hand, Ld. DR agreed that most of the grounds are covered by the MAP proceedings. With regard to submissions of the Ld.AR to exclude Axis Integrated System Limited as comparable he relied on the findings of the lower authorities which is a covered issue. With regard to Killick Agencies and Marketing Limited he brought to our notice Page No. 108 of the Paper Book wherein the functions of the company are reported by the assessee itself has considered for inclusion which are similar to the functions performed by the assessee. Therefore, now assessee cannot argue that this comparable should be excluded.

17. With regard to Spectrum Business Solutions Limited he brought to our notice Page No. 65 of the Ld. DRP order in which it is observed that this comparable is involving electronic marketing and agencies business, therefore it cannot be included as comparable.

18. Considered the rival submissions and material placed on record, we observe from the submissions that the Ground No. 1, 2, 3 (partial) are covered by "MAP" proceedings and Ground No. 4 is consequential in nature. Therefore, these grounds are dismissed as not pressed.

19. With regard to Axis Integrated System Limited (AISC) to be excluded as comparable, we observe that Coordinate Bench has considered this issue in A.Y. 2013-14 and found that this comparable cannot be properly comparable to be included as one of the comparable to the assessee company, for the sake of clarity it is reproduced below: -

6. We have heard the rival submissions and perused the material on record. We note that the Marketing Support Segment of the Appellant was engaged in providing sales and marketing services to the AES. According to the functional profile of the AISL, as per the extracts of its websites placed on record, AISL was engaged in providing services related to Directorate General of Foreign Trade, Customs/Excise & Service Tax related services, which are in the nature of the professional consultancy services as opposed to sales and marketing support services provided by the Appellant. Further, AISL was providing liaison services to large number of customers as opposed to the Marketing Support Segment of the Appellant which was providing support services only to its AEs. Further, AISL was also engaged in the business of trading in digital certificate. Since the nature of support services vary from business to business, the TPO erred in treating liaison services provided by AISL at par with the marketing and sales support services provided by the Appellant. On perusal findings regarding functional profile of AISL in the judgments relied upon by the Ld. Authorised Representative for the Appellant, it is clear that AISL was functionally not comparable with the marketing support services rendered by the Appellant. Therefore, we direct the Assessing Officer to exclude AISL from the list of comparables. Ground No. 2(b) raised by the Appellant is allowed. In view of the aforesaid and the submission made by the Learned Authorised Representative for the Appellant during the course of the hearing (recorded in paragraph 4 above), all the other grounds raised by the Appellant are disposed as being academic.”

20. With regard to Killick Agencies and Marketing Limited, we observe that this company is acting as agent for various foreign principals for sale of Dredgers, dredging equipment, Steerable Rudder Propellers, Maritime and aviation lighting, Acoustic communication equipment etc., and it also offers after sales services. Further, this company is involved in exports of micro switches, engineering items, acoustics items & head-sets. It has declared income which consist of commission and services income and it has not bifurcated the commission and other services income. Therefore, there is no segmental reporting of agency and other services. We also observe that it has recorded the royalty expenditure which is almost 30% of the income earned by them. We observe that Coordinate Bench in the case of Sabre Travel Technologies private limited v. DCIT (supra) in ITA.No. 7306/Mum/2017 dated 14.07.2021 has excluded this comparable with the following observations: -

"5.10.2. The Id. AR also submitted that these facts were duly brought on record before the Id. TPO and the Id. DRP. The Id. AR also drew our attention to the financial statements of the said comparable for the year ended 31/03/2013, wherein it was pointed out that the said company is having inventory and stock in trade in its balance sheet and hence, it could be safely concluded that it is not merely the service rendering company. We also find from the Annual report of the said comparable companies that the company is acting as agent for various foreign principals for sale of dredges, dredging equipment, steerable rudder, propellers, maritime and aviation lighting, acoustic communication equipment etc., The company also offers after sale services. Apart from this, the company is involved in

exports of micro switches, engineering items, acoustic items and head sets.

5.10.3. The Id. DR vehemently argued that this comparable company is engaged in providing marketing support services in ship building industry and hence, functionally comparable with that of the assessee. He also argued that assessee had submitted that exclusion of this comparable before the Id. DRP only due to high margins and not on functional dissimilarity and that the said aspect of functional dissimilarity cannot be argued before this tribunal for the first time. We find from page 16 of the order of the Id. DRP that assessee had specifically objected the functional dissimilarity of this comparable company with that of the assessee company. Hence, the argument advanced by the Ld. DR in this regard is dismissed. We also find that from the financials of the said comparable company that no segmental details are available in respect of income from services derived by the assessee. Hence there is no detail available as to what extent of service income derived by the said company out of rendering marketing supporting services, if any. Hence, based on functional dissimilarities and also in the absence of segmental details for marketing support services, if any, we hold that this comparable company deserves to be excluded from the list of comparables chosen by the Id. TPO and upheld by the Id. DRP for the purpose of determination of arms length margin”

21. Respectfully following the above said decisions, we direct the Assessing Officer/TPO to exclude Axis Integrated System Limited and Killick Agencies and Marketing Limited as comparable.

22. Coming to inclusion of Spectrum Business Solutions Limited as comparable, we observe that Spectrum Business Solutions Limited is an Internet marketing company inter-alia engaged in admin support services

like Virtual Assistant and research and management etc. Whereas the assessee services are as under: -

- *"During the year under consideration, the assessee had rendered certain marketing support services to its AEs i.e. Juniper Hong Kong and Juniper Netherlands. As per the agreement entered into between Juniper India and its AEs, for undertaking the said services Juniper India had earned a mark-up of 11 percent on its cost.*
- *Under this segment the assessee is involved in gathering market data, providing analysis of the competitive positions and identifying potential markets and customers where Juniper Hong Kong and Juniper Netherlands could make entry with its range of products. The assessee also identifies potential business opportunities and events to disseminate information regarding the AE's products and services. The significant portion of AES sales in India is carried out through distributors and channel partners.*
- *The role of assessee is limited to creation of demand in the Indian market and familiarizing the products to the customers. The main areas of marketing function performed by the assessee include providing sales support, improving brand awareness and marketing programmes. The assessee also provides post-sales support.*
- *The assets necessary for conducting the business are employed by the assessee, however, it does not own any intangibles. As regards the risk profile of the assessee, it remains the same as in the case of other international transactions of software development*

23. From the above it is clear that assessee is providing services by gathering market data, analysis of the competitive positions, identifying potential markets and customers for its AE's and it also identifies potential

business opportunities and events to disseminate information regarding its AE's products and services. The Assessee's role is limited to creation of demand in the Indian market and familiarizing the products to the customers. Basically assessee is dealing with the various marketing services to its AE's. All the assets necessary for conducting the business will be employable by the assessee and assessee does not own any intangibles. In our considered view, it is totally different from the internet marketing company which is engaging admin support services through virtual basis and also it has research and management etc., these are all the functions performed by the Spectrum Business Solutions Limited which is completely different from the services provided by the assessee. As discussed above, assessee does not own any intangible assets and all the marketing services involved are the informations gathered from the market data whereas the Spectrum Business Solutions Limited, it is performing research and management services and also employs virtual assistants which is mainly based on virtual software. Further, we observe from the financial statements of Spectrum Business Solutions Limited, the employee cost to the revenue is 88% whereas the ratio of assessee's business is only 61%. There is considerable variation in both the companies. Therefore, these two companies cannot be compared,

accordingly, we are not in agreement with the submissions of the Ld. AR and accordingly, we are not inclined to direct AO/TPO to include this as comparable. Accordingly, the ground raised by the assessee with regard to exclusion of comparable are allowed and with regard to inclusion of comparables are rejected. Accordingly, appeal filed by the assessee is partly allowed.

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

Order pronounced in the open court on 04th August, 2023.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai / Dated 04/08/2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum