

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA-TP No. 1553/Hyd/2019
(निर्धारण वर्ष / Assessment Year: 2015-16)

Satyam Venture
Engineering Services
Private Limited,
Secunderabad
[PAN No. AAFCS3287D]

Assistant Commissioner
Vs. of Income Tax,
Central Circle-3(2),
Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri C.S. Subrahmanyam, AR
राजस्व द्वारा/Revenue by: Ms. TH Vijaya Lakshmi, CIT-DR

सुनवाई की तारीख/Date of hearing: 11/09/2023
घोषणा की तारीख/Pronouncement on: 22/09/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the final assessment order dated 29/08/2019 passed consequent to the directions of Hon'ble Dispute Resolution Panel, Bengaluru ("DRP"), in the case of M/s. Satyam Venture Engineering Services Pvt. Ltd., ("the assessee") for the assessment year 2015-16, under

section 143(3) r.w.s. 144C of the Income Tax Act, 1961 (for short “the Act”) assessee filed this appeal.

2. Two issues need adjudication in this appeal. One is determination of the most appropriate method to benchmark the international transaction in respect of IT enabled Services (ITeS) and other one is related to the Transfer Pricing adjustment in respect of the interest on trade receivables. Briefly stated relevant facts are that the assessee is into the business of providing computer-aided design and computer aided engineering solutions to automotive parts using commercially available software tools like Catia V5, Unigraphics, Hypermesh, Nastran etc. During the relevant assessment year the assessee provided engineering services such as product design, to design and computer aided engineering simulation services to automotive industry across the Globe. Assessee reported international transaction in respect of ITeS stating that the assessee has been providing such services to both Associated Enterprises (AEs) and also non-Associated Enterprises (non-AEs), assessee used internal Transactional Net Margin Method (TNMM) by comparing the ratio of operating profit and operating cost of the AE segment with the non-AEs segment. On a perusal of the annual report and from the 3 CEB, learned Transfer Pricing Officer (TPO) found that there are trade receivables from the AE's.

3. Learned TPO held that the internal TNMM is not the most appropriate method for benchmarking the international transaction of ITeS, and by adopting the Profit Level Indicator (PLI) taken from the external comparables, made Transfer Pricing adjustment in respect of ITeS to the tune of Rs.6.4 crores. Learned TPO also computed the interest on

the delay of more than thirty days in respect of the trade receivables and made an adjustment to the tune of Rs. 1.03 crores. Draft assessment order was passed accordingly on 10/12/2018.

4. Aggrieved by such an action of the learned TPO, assessee filed objections before the learned DRP. By order dated 27/06/2019, the learned DRP upheld the approach of the learned TPO in rejecting the internal TNMM as the most appropriate method and benchmarking the transaction adopting external TNMM as the most appropriate method. So also in respect of the interest on trade receivables, learned DRP directed the learned TPO to adopt the SBI short term deposit rates for the corresponding period, as per the principle laid down by the Bangalore-ITAT in the case of M/s. Logix Micro Systems Ltd., in ITA No. 423/Bang/2019 by order dated 07/10/2010.

5. Assessee is therefore, before us in this appeal, contending that when the assessee is rendering ITeS services to both AE segment and non-AEs segment, the comparison of those segments affords very reliable results than adopting the PLI taken from the external comparables. Learned AR submitted that for the assessment year 2009-10, a similar issue had arisen in assessee's own case before the Tribunal in ITA No.1464 /Hyd/ 2014 and by order dated 29/12/2017, a Co-ordinate Bench of the Tribunal directed the learned AO/learned TPO to consider only the operating profit/operating cost of a transactions and also to consider internal TNMM where the services rendered by the assessee are similar both to the AEs and non-AEs.

6. In respect of the interest on the trade receivables, learned AR submitted that the assessee is a debt free entity, working capital adjustment is not given and also that the assessee has not been charging any interest to non-AEs. He, therefore, submitted that there cannot be any TP adjustment in respect of the interest on trade receivables. He, however, fairly submitted that in assessee's own case for the assessment year 2010-11 this issue came for consideration before the Tribunal in ITA No.362/Hyd/2021, and by order dated 28/06/2022, a Co-ordinate Bench of this Tribunal, by following the decision of the Tribunal in the case of Zeta Interactive Systems (India) Pvt. Ltd., vs. ITO in ITA No.1812/Hyd/2017, had taken a view that application of 6% interest rate on outstanding receivables at the yearend is proper.

7. Per contra, learned DRP submitted that there is no material on record to show that the view taken by a Co-ordinate Bench of the Tribunal in the case of assessee for the assessment years 2009-10 and 2010-11 was brought to the notice of the authorities below. She vehemently supported the view taken by the authorities below and submitted that the learned DRP is justified in affording the findings of the learned TPO on both the aspects.

8. We have gone through the record in the light of the submissions made on either side. On the aspect of adoption of the most appropriate method, in assessee's own case for the assessment year 2009-10, a Co-ordinate Bench of this Tribunal held that:-

"10. Having regard to the rival contentions and the material on record, we find that where the assessee has both the AE as well as non-AE transactions, the operating profit and operating cost relating to the AE transactions alone ought to be considered for arriving at

the ALP and thereafter the fixed cost attributable to both the transactions ought to be apportioned. When the TPO has adopted the TNMM as the most appropriate method and the assessee has rendered similar services to both the AEs and non- AEs, and the non-AE transaction satisfy the internal TNMM. The AO, therefore, ought to have considered them for arriving at the ALP. Therefore, we deem it fit and proper to remit this issue to the file of the AO with a direction to consider only the operating profit/operating cost of AE transactions and also to consider internal TNMM where the services rendered by the assessee are similar both to AEs and non-AEs. Accordingly, grounds of appeal Nos.3 to 3.4 are treated as allowed for statistical purposes.”

9. Neither the assessee nor the Revenue contend that there is any change in the functions performed, assets employed, and the risks assumed by the assessee from the same as in the assessment year 2009-10. Since the facts of this year are identical to the facts involved in the year 2009-10, while respectfully following the view taken by the Co-ordinate Bench for the assessment year 2009-10, where it this issue to the file of the learned AO/learned TPO with a direction to consider only the operating profit/operating cost of the transactions and also to consider internal TNMM where the services rendered by the assessee are similar to both AEs and non-AEs. Grounds relating to the issue are answered accordingly.

10. Coming to the second issue relating to the interest on the trade receivables, both the counsel admitted that in assessee's own case for the assessment year 2010-11 in ITA No. 362/Hyd/2021 by order dated 28/06/2022, a Co-ordinate Bench, following the view taken in the case of Zeta Interactive Systems (India) Pvt. Ltd., applied 6% interest rate on outstanding receivables at the end. As on the date, this issue stands undisturbed. In view of the fact that this issue is no longer res integra and

in assessee's own case, a view is taken that the interest on trade receivables is an international transaction, and has to be benchmarked separately and after considering the relevant factors pleaded by the assessee for such assessment year, took the view that 6% per annum is the appropriate rate of interest, we do not find any reason to deviate from this view or to distribute such view. Since no change of circumstances is brought to our notice, we follow the said view and direct the learned AO/learned TPO to consider interest rate on outstanding receivable at the year end @6% and recompute the transfer pricing adjustment. Grounds relating to this issue are answered accordingly.

11. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on this the 22nd day of September, 2023.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 22/09/2023

TNMM

Copy forwarded to:

1. M/s. Satyam Venture Engineering Services Private Limited,
1-8-301-306, 3rd Floor, Ashoka My Home Chambers, S.P. Road,
Secunderabad.
2. The Asst. Commissioner of Income Tax, Central Circle-3(2), Hyderabad.
3. The Dispute Resolution Panel (DRP), Bengaluru.
4. The Director of Income Tax (IT & TP), Hyderabad.
5. The Addl. Commissioner of Income Tax (Transfer Pricing), Hyderabad.
6. DR, ITAT, Hyderabad.
7. GUARD FILE

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