

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

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

आ.अपी.सं / ITA No. 104/Hyd/2016  
(निर्धारण वर्ष / Assessment Year: 2011-12)

The Asst. Commissioner of  
Income Tax,  
Circle-2(2),  
Hyderabad

Vs. GD Research Center Pvt. Ltd.,  
(formerly known as M/s. DMV  
Business and Market Research  
Pvt. Ltd.)  
Hyderabad  
[PAN No. AACCD4075B]

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

सी.ओ. / C.O. No. 15/Hyd/2016  
(Arising out of ITA No. 104/Hyd/2016)  
निर्धारण वर्ष / Assessment Year: 2011-12

GD Research Center Pvt. Ltd.,  
(formerly known as M/s. DMV  
Business and Market Research  
Pvt. Ltd.)  
Hyderabad  
[PAN No. AACCD4075B]

Vs. The Asst. Commissioner  
of Income Tax,  
Circle-2(2),  
Hyderabad

क्रॉस ऑब्जेक्टर / Cross-Objector

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Aliasgar Rampurwala and  
Shri Pratik, ARs

राजस्व द्वारा/Revenue by: Shri K. Madhusudan, CIT-DR

सुनवाई की तारीख/Date of hearing: 06/12/2023

घोषणा की तारीख/Pronouncement on: 18/12/2023

आदेश / ORDER

**PER K. NARASIMHA CHARY, J.M:**

Challenging the final assessment order dated 04/12/2015 passed consequent to the directions of Hon'ble Dispute Resolution Panel, Bengaluru ("DRP"), in the case of M/s. GD Research Center Pvt. Ltd., (formerly known as M/s. DMV Business and Market Research Pvt. Ltd.) ("the assessee") for the assessment year 2011-12, under section 143(3) r.w.s. 92CA(4) r.w.s. 144C(13) of the Income Tax Act, 1961 (for short "the Act") Revenue filed this appeal. Assessee filed Cross Objections against the same.

2. Brief facts of the case are that Global Data Ltd. (Associated Enterprise of Assessee) is a premium business information publication and marketing company based in UK. It provides premium business information (databases and reports) output in UK and globally. Assessee provides contract Information Technology enabled Services (ITeS) to its Associated Enterprises (AEs), which includes business support services, data creation, content development in relation to content search and analysis provided by the AE to the various business units within the group, under an agreement for provision of ITeS was entered into between the assessee and its AE.

3. During the previous year relevant to the assessment year 2011-12, the international transactions that took place between the assessee and its AE was the provision of ITeS services, which the assessee benchmarked by adopting Transactional Net Margin Method (TNMM) as the Most

Appropriate Method (MAM) and OP/OC as Profit Level Indicator (PLI). Assessee selected eight entities as comparables and worked out the margin at 16.88%. Learned Transfer Pricing Officer (learned TPO), however, found that the method of search process conducted by the assessee suffers from defect resulting in selection of inappropriate comparables and rejection of companies that are fit to be good comparables. Learned TPO, therefore, conducted fresh search and finally came out with a list of comparables, containing thirteen entities including the three entities accepted from the list of comparables selected by the assessee.

4. Learned TPO, accordingly, determined the margins of the comparables at 24.87% and proposed an upward adjustment to the tune of Rs. 2,79,60,009/- by way of draft assessment order dated 31/01/2015.

5. Assessee being aggrieved by such a draft assessment order, preferred objections before the learned DRP. Learned DRP found that that E-clerx Services Ltd., Acropetal Technologies Ltd., Infosys BPO Ltd. Jeevan Scientific Technologies Ltd., TCS EServe Ltd., e4e Healthcare Ltd., and Mastiff Tech Pvt Ltd. are not good comparables, and directed exclusion thereof from the list of comparables. Learned DRP sustained some comparables and suo moto excluded three other comparables.

6. Challenging the exclusion of comparables, Revenue preferred this appeal, whereas the assessee filed the Cross Objections, challenging the exclusion of Cosmic Globla Ltd., Informed Technologies India Ltd., Microgenetic Systems Ltd., e4e Healthcare Ltd., and Mastiff Tech Pvt Ltd., and inclusion of Accentia Technologies Ltd., and Cross Domain Ltd.

Learned counsel for the assessee submitted that if, on an examination of the comparability of the entities excluded by the learned DRP, E-clerx Services Ltd., Acropetal Technologies Ltd., Infosys BPO Ltd. and TCS EServe Ltd., are excluded, the margins of the assessee will be within tolerable limits and the discussion on the other comparables will only be academic.

7. In respect of the exclusion of comparables by the learned DRP on the basis of functional difference and also on the basis of high turnover and brand value, learned DR submitted that the assessee company operates in the area of ITeS; that from the information available on the website of the assessee, it can be clearly seen that the assessee is into services like market intelligence and caters to diversified segments through its AE; that the nature of activities of the assessee are also described by the learned TPO in FAR analysis in his order and such functions include building data models, forecasts and analytical tools; that the services rendered by the assessee are also described in schedule 2 of the agreement for services with AE; that these include market research, analysis and projections relating to all types of business information, collating and analyzing information regarding financial operations, collating and analyzing data etc., that all these are high end ITeS services which are classified as KPO services vide CBDT Notification No. 73/2013 as they fall under the category of business analytics, financial analytics and market research. Learned DR further argued that the learned DRP did not examine the services of the assessee in detail vis-a-vis other comparables and excluded five comparables on functional difference.

8. Learned DR further submitted that E-clerx Services Ltd., is also engaged in similar services as those rendered by the assessee which includes financial services and sales and marketing services, and that abnormal profits cannot be a criteria because in the averaging process, the effect is ironed out. Apart from this, there are no peculiar circumstances to exclude this entity. So also, in respect of TCS EServe Ltd., learned DR submitted that no comparable shall be excluded on the parameters like size, turnover, brand, high profits etc. without demonstrating the effect of such parameter on the PLI. In respect of Acropetal Technologies Ltd. contention of the learned DR is that there are no functional differences inasmuch as Acropetal Technologies Ltd. is also rendering services in infrastructure, BFSI, retail health and energy in which the assessee is also rendering services. With the exclusion of Infosys BPO, according to the learned DR, findings of learned DRP are not based on any quantitative considerations, but are based on vague conjectures.

9. Per contra, learned AR submitted that apart from the reasons recorded by the learned DRP, the functions of the assessee were assessed with reference to the functions of these four entities in assessee's own case for the earlier assessment years and on an analysis thereof, a Co-ordinate Bench of the Tribunal recorded that these four entities are not good comparables with the assessee and have to be excluded.

10. With reference to the findings of a Co-ordinate Bench of the Tribunal, in assessee's own case for the assessment years 2009-10 and 2010-11, in ITA Nos. 106/Hyd/2014 and 411/Hyd/2015, learned AR submitted that E-clerx Services Ltd., is not a good comparable in view of a

different functional profile of excellence data and the assessee is rendering comparatively low and ITeS services. With reference to the order for the assessment year 2010-11, he submitted that TCS EServe Ltd. is not comparable in view of the fact that apart from huge turnover, TCS EServe Ltd. owns and possesses brand value and intangibles as compared to the assessee, which does not own any such assets. He invited our attention to the order for the assessment year 2009-10 to submit that Infosys BPO Ltd. and Acropetal Technologies Ltd. were found not comparable because of un-comparable size of operations and huge turnover in case of Infosys BPO Ltd. and majority of the work done by the Acropetal Technologies Ltd. was by third party sub-contractors, low employee cost etc.

11. He also filed data relating to the employee cost to show that in all 792 employees are working with the assessee out of whom, 726 employees are drawing a salary of an average of Rs. 29,817/- only and this fact clinchingly establishes that such services cannot be categorized as expert services to be compared with the services rendered by the employees of the above four comparable companies. He also placed reliance on the decisions rendered by the Co-ordinate Bench of the Tribunal in the cases of Cadence Design Systems (I) P. Ltd., vs. ACIT [2018] 93 taxmann.com 227 (Delhi - Trib.) and JCIT vs. Steria India Pvt. Ltd., in ITA No. 512 & 511/Del/2016, dated 17/11/2020 for the assessment years 2011-12. In the case of Cadence Design Systems (I) P. Ltd., (supra) all these four comparables were considered and found to be unsuitable for comparison with an entity performing the functions as those of the assessee, whereas in the case of Steria India Pvt. Ltd., (supra), E-clerx Services Ltd., and TCS EServe Ltd. were considered.

12. For all these reasons, he submitted that since the functions of the assessee vis-à-vis the functions of these four entities were thoroughly considered by the Co-ordinate Bench of the Tribunal in assessee's own case, it is not open now for the Revenue to contend that the learned DRP did not consider the functions of the assessee properly.

13. We have gone through the record in the light of the submissions made on either side. It could be seen from the record that the assessee was formerly known as M/s. DMV Business & Market Research Pvt. Ltd. Vide schedule-2 to the agreement dated 01/01/2007, the assessee agreed to render the following services to its AE:

*“1.1. Market research, analysis and projection relating to all types of business information.*

*1.2. Gathering, collating, compiling, processing, and analyzing data and Information including conduct of studies and research.*

*1.3 Collating and analyzing information regarding financial operations and management business and commercial operations and projections financial status, creditworthiness, consumer responses and management of business of all kinds and descriptions by whatever name this may be called.*

*1.4. Collating and analyzing data including but not limited to market data, information and other inputs in relation to the financial services, financial money markets, investment services and other related activities.*

*1.5. Collating and analyzing management processing, analysis, development, accounting and business information and data.*

*1.6. Presentation of summarized data of any Company and industry.*

*2. Data delivery services*

*2.1. Technical and process assistance to facilitate delivery of products on Overseas Company's websites and other delivery channels.*

*3. IT and systems services*

3.1. *Designing, developing, producing, reproducing, supporting, maintaining and advising on computer software, systems and databases.*

3.2. *Managing and developing computer network services to facilitate electronic data interchange.*

4. *Administrative and other support services*

4.1. *Rendering and providing financial and related services of all kinds and description, billing services, processing services, business support services, data-base services, data entry business-marketing services, training and consultancy services.*

4.2. *Administering of client's sales ledgers.*

4.3. *Any other services as may be directed by the Overseas Company from time to time as may be permitted under Indian laws.*

5. *Data distribution services*

*The following data distribution services on further terms specific to such distribution services as are agreed between the parties from time to time, but for the avoidance of doubt no such services shall be provided until such further terms are agreed:*

5.1. *Marketing services relating to the products and services of the parties.*

5.2. *Distributing, selling, publishing, disseminating and providing access to information regarding financial operations and management, business and commercial operations and projections, financial status, credit-worthiness, consumer responses and management of businesses of all kinds and descriptions by whatever name this may be called.*

5.3. *Distributing, selling, publishing, disseminating and otherwise providing access to data including but not limited to market data, information and other inputs in relation to the financial services, financial money markets, investment services and other related activities."*

14. Learned TPO, in his order, however, captured the functions of the assessee as under:

*"Functions performed: Global Data Ltd incorporated in October 2006 is a premium business information publication and marketing*

*company based in the UK. Global Data provides premium business information (databases and reports) output in the UK and globally.”*

15. Basing on the above schedule, for the assessment year 2010-11, a Co-ordinate Bench of the Tribunal captured the functions performed by the assessee, as under:

*“There is no change in the functions performed by the assessee for the past few years.*

*..... M/s. DMV Business and Marketing Research Pvt. Ltd. is rendering back office data creation, content development and support services in relation to analysis, content search and projections for all types of business information. The group is a premium business information publication and marketing company based in the UK, providing its clients with unbiased expert analysis and in-depth forecasts for various industry sectors. The taxpayer provides business support services, data creation, content development in relation to content search and analysis to the various business units within the group. It also assists in building and developing software tools and systems to facilitate delivery of group companies report and database subscription services and to provide data processing and automatic support to populate the group’s subscription databases. The taxpayer is wholly owned subsidiary of Global Data Ltd., U.K.”*

16. It is not the case of the Revenue that there is any change in the business model of the assessee for the last few years. The record does not bear any material to show that the Revenue disputed the functions performed by the assessee as captured by the Co-ordinate Bench of the Tribunal in the earlier assessment years.

17. Basing on the above functional profile, a Co-ordinate Bench of the Tribunal in the earlier assessment years 2009-10 and 2010-11, decided the issue of comparability of the entities, namely, E-clerx Services Ltd., Acropetal Technologies Ltd., Infosys BPO Ltd. and TCS EServe Ltd., and held that the assessee is not at all comparable to those entities in view of the

functional dissimilarity. It is not the case of the Revenue that there is any change in the functional profile of those four entities from the earlier assessment years as discussed in the orders for the earlier assessment years, or that the Revenue challenged such factual finding of the Tribunal before any higher forum.

18. On a thorough discussion on these aspects, the Co-ordinate Benches of the Tribunal reached a factual conclusion about the non-comparability of the assessee with these four comparables. When the functions of the assessee and the comparable entities remain the same over all these years, we find it difficult to hold that what was non-comparable under identical circumstances would become comparable in this year. Such an exercise, we are afraid, would amount to sitting in appeal over the factual findings of the Co-ordinate Bench of the Tribunal which is impermissible for us to exercise. The identical nature of the functions over a period of time would lead to the inference that the comparability factor also remains the same.

19. For this reason, we are of the considered opinion that factual consistency demands respect for the view taken by a Co-ordinate Bench of the Tribunal for the earlier assessment years in assessee's own case and, therefore, while respectfully following the same, we direct the learned Assessing Officer/learned TPO to exclude E-clerx Services Ltd., Acropetal Technologies Ltd., Infosys BPO Ltd. and TCS EServe Ltd., from the list of comparables. Accordingly, the Grounds of appeal of Revenue are dismissed.

20. In view of the submission made by the learned AR that in case of exclusion of E-clerx Services Ltd., Acropetal Technologies Ltd., Infosys BPO Ltd. and TCS EServe Ltd., from the list of comparables, any consideration of other comparables challenged by the Revenue remains academic only, we do not propose to adjudicate the same, and, therefore, Cross Objection become infructuous and accordingly is dismissed.

21. To sum-up, appeal of the Revenue and Cross Objections of the assessee are dismissed.

Order pronounced in the open court on this the 18<sup>th</sup> day of December, 2023.

Sd/-  
**(RAMA KANTA PANDA)**  
**VICE PRESIDENT**

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Hyderabad,  
Dated: 18/12/2023

TNMM

Copy forwarded to:

1. The Asst. Commissioner of Income Tax, Circle-2(2), Hyderabad.
2. M/s. GD Research Center Pvt. Ltd., (formerly known as M/s. DMV Business and Market Research Pvt. Ltd.), 3<sup>rd</sup> Floor, MSR Block, Krishe Sapphire Building, H.No. 1-89/3/B/40 to 42/KS/305, Sy.No. 88, Madhapura Village, Serilingampally Mandal, 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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ASSISTANT REGISTRAR  
ITAT, HYDERABAD