

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'H' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.1320/Mum/2021  
(Assessment Year :2016-17)**

Ingram Micro India SSC Private Limited Unit No.202, Second Floor, Akruti Corporate Park, LBS Marg Next to GE Gardens Kanjurmarg Mumbai-400078 <b>PAN No.AADCI0894A</b>	Vs.	Deputy Commissioner of Income Tax, Range 14(1)(1), Mumbai
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Ajit R. Jain a/w Siddesh Chaugule
Revenue by	Shri K.C. Selvamani
<b>Date of Hearing</b>	<b>22/01/2024</b>
<b>Date of Pronouncement</b>	<b>29/01/2024</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the Assessee, Ingram Micro India SSC Private Limited, against final assessment order passed by the Ld. Deputy Commissioner of Income Tax Circle 14(1)(1), Mumbai ("Ld. AO") under section 143(3) read with section 144C(13) read with section 144B of the Income Tax Act, 1961 ("the Act") for

Assessment Years 2016-17 pursuant to the directions issued by Dispute Resolution Panel, Mumbai (“DRP”).

2. The Assessee company was incorporated in the year 2012 and it is engaged in providing information technology support services to its associated enterprises. The return of income of the assessee was filed on 30/11/2016 declaring a total income of INR 5,30,84,850/-. The assessment was concluded at an income of INR 7,35,99,720/- after making an adjustment on account of transfer pricing to the extent of INR 2,05,14,870/- on transaction of information technology support services.

3. During the course of hearing before us, the Ld. Counsel for the assessee, Shri Ajit Kumar Jain mentioned that he is pressing only grounds number 2(g) which pertains to inclusion of certain companies by the TPO which are not functionally comparable. Therefore, we are not elaborating on any other issue. The facts pertaining to the ground 2(g) as culled out from the records are narrated below. Other grounds raised are dismissed as not pressed.

4. The assessee is a captive service provider in the field of IT Support Services. The services as mentioned by the Ld. TPO in Para 6.1 of his order include business requirement gathering, business solution design, software design, software development/ implementation/support services, project management, software QA, software support services, technical documentation etc. During the year under

consideration the assessee has provided IT Support Services to the extent of INR 38,42,36,166/- to its associated enterprises. As mentioned by the Ld. TPO in his order, the assessee has earned a markup of 15% on the cost. The assessee has used Transactional Net Margin Method (TNMM) as the most appropriate method to benchmark its international transaction with OP/OC as the PLI. The assessee has selected 6 comparables with a median of 12%. Ld. TPO rejected 4 companies out of 6 and accepted only 2 companies viz. (i) CG CAK Software & Exports Limited and (ii) RS Software India Ltd. Further Ld. TPO added 2 new companies viz. (i) Manipal Digital Systems Pvt. Ltd. and (ii) Syntel Solutions India Pvt. Ltd. Thus, the TPO used 4 companies as comparable with a mean of 28.90%. An adjustment of INR 4,64,42,458/- was proposed by the TPO in Transfer Pricing Order dated 30<sup>th</sup>October 2019.

5. The assessee approached the Ld. DRP. It was pointed out before the Ld. DRP that 2 new companies introduced by the Ld. TPO viz. (i) Manipal Digital Systems Pvt. Ltd. and (ii) Syntel Solutions India Pvt. Ltd. are not comparable and therefore there would be only 2 comparables selected by the assessee viz. (i) CG CAK Software & Exports Limited and (ii) RS Software India Ltd. left for the purpose of comparability. Before the Ld. DRP the assessee furnished additional evidence and a new set of comparables was proposed in addition to the 2 comparables of the assessee. Ld. DRP sought remand report from the Ld. TPO and the same is tabulated at page number 38-39 of the directions issued by the Ld. DRP. In the remand

report the TPO picked up 5 new companies out of the accept reject matrix of the assessee submitted along with remand report. Finally, the Ld. DRP issued the directions to exclude some of the companies.

6. Ld. AR, during the course of hearing before us submitted the Order Giving Effect dated 16/04/2021 issued by the Ld. TPO. On perusal of the OGE it is noticed that pursuant to the directions of the Ld. DRP, the Ld. TPO/Ld. AO has used the following companies as the final comparables-

Sr. No.	Name of the Company	Selected by	Margin
1	Evoke Technologies P. Ltd	Assessee in fresh search	4.30
2	CG VAK Software & Exports Ltd.	Assessee in TPSR	10.41
3	Harbinger System Pvt. Ltd	Assessee in fresh search	12.90
4	Rheal Software Pvt. Ltd	Assessee in fresh search	15.29
5	RS Software India Ltd.	Assessee in TPSR	21.14
6	Nihilent Ltd.	TPO out of Assessee's fresh search	25.59
7	Infobeans Technologies Ltd.	TPO out of Assessee's fresh search	33.42

8	Thirdware Solutions Ltd.	TPO out of Assessee's fresh search	39.90
9	CybercomDatamatics Information Solutions Ltd.	TPO out of Assessee's fresh search	84.37
	35 <sup>th</sup> percentile		15.29
	Median		21.14
	65 <sup>th</sup> percentile		25.59

7. On the basis of above-mentioned list of comparable the Ld. TPO/AO recomputed the adjustment at INR 2,05,14,870 using the median of 21.14% as the arm's length margin. Final assessment order was passed by Ld. AO/NeAC on 29<sup>th</sup> April 2021 making an adjustment of INR 2,05,14,870 and determining the total income at INR 7,35,99,720/-.

8. Before us the Ld. AR pointed out that the assessee is aggrieved by the inclusion of 4 comparables cherry picked and included by the Ld. TPO. The 4 companies are listed below:

S. No.	Name of the company	Margin
1	Nihilent Ltd.	25.59
2	Infobeans Technologies Ltd.	33.42
3	Thirdware Solutions Ltd.	39.90
4	CybercomDatamatics Information Solutions Ltd.	84.37

9. Ld. AR, during the course of hearing, furnished a chart pointing out the reasons and arguments for rejection of the above-mentioned 4 companies. The arguments of the assessee are summarized below:

### **9.1 Nihilent Limited.**

It is submitted that this company is engaged in diversified and dissimilar activities and no segmental accounts are available. Reference is made to Page no. 2394 & 2497 of the Factual Paper book to demonstrate that Nihilent deals in Enterprise transformation and change management, Digital transformation services and Enterprise IT services. Further reference is made to Page no. 2377 of the Factual Paper book to demonstrate that the description of product/ service category is 'Other professional, technical and business services and there is no segmental reporting made in the annual report. Thus, it is argued by the Ld. AR that this company is not comparable to the assessee and ought to be excluded.

### **9.2 Infobeans Technologies Ltd.**

It is submitted that this company is engaged in diversified and dissimilar activities and no segmental accounts are available. Reference is made to Page No.2533 of the Factual Paper book to demonstrate that Inforbeans is engaged into Business IT services (CAD) application development and maintenance, Big Data, UX and UI, Automation engineering services, Including product engineering and lifestyle solutions

and business process management. Further the Functions are divided into four verticals viz. storage and virtualization, media and publishing, HR and Payroll; and e-commerce. Further reference has been made to Page No. 2566 of the Factual Paper book to demonstrate that Infobeans provides services in the nature of: software engineering services primarily in Custom Application Development (CAM), enterprise mobility and Big Data Analytics (BDA). Reference has also been made to page 2576 to show that there are no segmental accounts drawn.

### **9.3 Thirdware Solutions Ltd.**

It is argued that this company is engaged in diversified dissimilar activities and there is a lack of segmental accounts. Reference has been made to Page No. 2791 of Factual Paperbook to demonstrate that company is engaged in the business of Software development and Consultancy services. Further reference has been made to Page No. 2802/ 2803 of Factual Paperbook to show that the company is engaged in the business of Software development, implementation and support services. Reference is also made to Page No. 2829 of Factual Paperbook to show that company is engaged in the business of the sale of the license and subscription for software application and the company is also engaged in the business of sale of licenses (purchasing licenses and clearing them), subscription and training. Further reference is made to Page No. 2825/2803 of Factual Paperbook to show that Thirdware does not maintain segmental information in

respect of profitability reported from business activities in the sale of licenses and subscription & training services.

#### **9.4 CybercomDatamatics Information Solutions Ltd.**

It is argued that this company is diversified and dissimilar activities and there is a lack of segmental data. Reference is made by the Ld. AR to Page 2838 of Factual Paperbook to show that as per the Annual report of Cybercom, functions predominantly performed by the company for telecom and other industries and acts as consultant and advisory on information/ internet system and surveyors of information system. It also carries the business development, testing, implementation, migration of application, marketing and manufacturing of IT products and services, software and hardware system and embedded technologies. It is argued that this goes to prove that the said comparable is into diversified activities, high end services provider in the information technology sector for which segmental data is not available. Reference is also made to Page 2847 of Factual Paperbook to highlight that the company does not prepare a segmental account, stating that principal business of the company is providing technical and software services, however, as mentioned above, the functions are vastly different than that of assessee.

10. On the basis of the above submissions Ld. AR argued that since these 4 companies are functionally different these

companies ought to be excluded. Ld. DR on the other hand vehemently argued and relied up on the order of the lower authorities.

11. We have considered the arguments of both the parties and given our thoughtful consideration to the documents on record. Regarding the first company **Nihilent Limited**, we find that, this company deals in **Enterprise transformation and change management, Digital transformation services and Enterprise IT services**. We also observe that there is no segmental reporting made in the annual report. It is seen that the assessee is engaged in business requirement gathering, business solution design, software design, software development/implementation/support services, project management, software QA, software support services, technical documentation etc. We are of the opinion that the services provided by the assessee company are routine services whereas Nihilent Limited is providing services which are in the area of transformation of the enterprises and change management which are quite different from the services provided by the assessee. Thus, we are of the opinion that Nihilent Limited cannot be used as a comparable to the assessee. We direct the Ld. TPO/AO to exclude this company from the set of comparables.

12. During the course of hearing before us, we raised a query to the Ld. AR that in case we decide on the first comparable viz. Nihilent Limited in favor of the assessee, what would be the outcome. Ld. AR fairly submitted that the whole

adjustment would get deleted even if only Nihilent Limited is excluded. However, Ld. AR vehemently submitted that all the 4 companies are not comparable and should be decided by the bench. We are of the opinion that since the entire adjustment is getting deleted by exclusion of only one comparable – Nihilent Limited, we need not deal with the other 3 companies argued by the Ld. AR. However, we make it clear that the discussion on other 3 companies has become academic and therefore we are not deciding on those companies. On the request of the Ld. AR, we reiterate that the assessee has not accepted the other 3 companies as comparable and has right to argue these companies in other years as not comparable. We order accordingly.

**13. Accordingly appeal of the assessee is partly allowed.**

Order pronounced on 29<sup>th</sup> Jan, 2024.

**Sd/-**  
**(GAGAN GOYAL)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Mumbai; Dated 29/01/2024  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**