

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'D' BENCH, CHENNAI
श्री एसएस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री जगदीश, लेखा सदस्य के समक्ष ।
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri Jagadish, Accountant Member

आयकर अपील सं./I.T.A. No.976/Chny/2015
निर्धारण वर्ष/**Assessment Year: 2010-11**

M/s. iSoft Health Management India Private Limited, 4th Floor, Capital Towers, No. 180, Kodambakkam High Road, Nungambakkam, Chennai 600 034. Vs The Deputy Commissioner of Income Tax, Corporate Circle 2(2), Chennai 600 034.

[PAN: AALCS8600A]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri Vikram Vijayaragahavan, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri A. Sasikumar, CIT
सुनवाई की तारीख/ Date of hearing : 15.05.2024
घोषणा की तारीख /Date of Pronouncement : 31.05.2024

आदेश /ORDER

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

This appeal by the assessee is directed against the final assessment order dated 23.02.2015 passed by the Assessing Officer under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 ["Act" in short].

2. Ground Nos. 1 & 4.1 are general in nature and requires no adjudication.

3. Ground Nos. 3 and 4.4 are dismissed as not pressed.
4. Ground No. 2 raised by the assessee seeking directions to the Assessing Officer to consider inadvertent mistake in mentioning ₹.3.44 crores instead of ₹.4.20 crores of product development expenses amortization.
5. We note that in para 3 of the DRP's order, it was observed that the assessee debited in its profit and loss account a sum of ₹.3.44 crores as an amortization to the product development cost. The DRP directed the TPO to exclude said amount from the cost base while computing the profit margin of the assessee by holding that the said amount do not represent operating cost.
6. The Id. AR Shri Vikram Vijayaraghavan, Advocate drew out attention to page 179 of the paper book and submits that amortization of the product development expenses of ₹.4,20,23,593/- were shown in the profit and loss account, whereas, the DRP, by mistake mentioned as ₹.3.44 crores. On examination of the DRP's order in para 3.2, it was clearly directed the TPO to exclude an amount of ₹.3.44 crores as an amortization to the product development cost, which is contrary to the claim made by the assessee reflecting in profit and loss account in page

179 of the paper book. Therefore, taking into consideration the facts and circumstances of the case, we deem it proper to direct the Assessing Officer to give effect to an amount of ₹.4,20,23,593/- as against ₹.3.44 crores. Thus, ground No. 2 raised by the assessee is allowed.

7. Ground Nos. 4.2 & 4.3 raised by the assessee challenging the action of the DRP/TPO in not excluding companies of high return as comparables. The Id. AR drew our attention to ground No. 4.3 and submits that the assessee intends to contest for exclusion of five companies that (i) Infosys Limited, (ii) Larson & Toubro Infotech Limited., (iii) Mindtree Limited (Segment), (iv) Sasken Communication Technologies and (v) Tata Elxsi on account of huge turnover. We note that the TPO selected comparables, which are reproduced at para 8.4 of the TPO's order. The TPO show-caused the assessee why the said companies preferred as comparables in relation to the transaction as shown by the assessee. The assessee filed its objection, which were reproduced by the TPO in his order at para 9.2 of the said order. On perusal of the same, we note that the assessee objected to the inclusion of Infosys Limited, Larson & Toubro Infotech Limited, Mindtree Limited (Segment), Sasken Communication Technologies and Tata Elxsi, on the ground that the said companies has high turnover and cannot be

compared to small entity like assessee of having turnover of ₹.24 crores. The TPO did not accept the contention of the assessee and rejected the objection raised by the assessee. The DRP has not made any discussion with regard to exclusion of those companies having high turnover.

8. Before us, the Id. AR has reiterated the same objections raised before the TPO/DRP and drew our attention to para 9.2 of the TPO's order. At the outset, the Id. AR submits that the said five companies has brand value, huge turnover, premium price and diversified functions, etc. Further, the Id. AR drew our attention to the decision of the Hon'ble High Court of Bombay at Goa in the case of CIT v. Pentair Water India P. Ltd. in TCA No. 18 of 2015 dated 16.09.2015 and argued that the Hon'ble High Court of Bombay held that high turnover companies cannot be held to be comparables with low turnover companies. Further, he referred to the decision of the Hon'ble High Court of Madras in the case of CIT v. Visual Graphics Computing Services India Private Limited in TCA No. 414 of 2018 dated 19.08.2020 and submits that by following the decision of the Hon'ble High Court of Bombay (supra), it was held that higher turnover companies requires to be excluded out of final set of comparables. The relevant part of the order reproduced herein below for ready reference:

7. On perusal of the memorandum of grounds of appeal as well as the order of the Hon'ble Division Bench dated 03.04.2018, we find that this issue has not been agitated by the Revenue, insofar as the assessee's own case for the assessment year 2008-09. Therefore we confirm the finding of the Tribunal directing the exclusion of Infosys BPO Limited from the list of comparables. The conclusion arrived at by us is duly supported by the decision of the Hon'ble Division Bench of the Karnataka High Court in *PCIT Vs. Swiss Re Global Business Solutions India P. Ltd.* (2018) 96 taxmann.com 643 (kar.HC). The order impugned in the said appeal passed by the Tribunal noted that the Turnover of Infosys BPO Limited is Rs.649.56 Crores while the Turnover of the assessee Company therein was Rs.11 Crores, which is much more than 65 times of the said assessee's Turnover and therefore, the Court held that there is no illegality or infirmity in the order passed by the Commissioner of Income Tax (Appeals) ['CIT (A)' for brevity] excluding the said Company out of the comparables. The Court also take note of the decision of the High Court of Punjab and Haryana in the case of *Agilant Technologies (International) Pvt. Ltd Vs. ACIT 2015 SCC OnLine P&H 10135* and held that the Companies having turnover of more than 23 times of the assessee's turnover cannot be compared with the assessee. The decision of Bombay High Court in the case of *CIT vs. M/s.Pentair Water India Pvt. Ltd [(2016) 381 ITR 216]* was also taken note of in *PCIT Vs. Sanvih Info Group Private Limited (I.T. Appeal No.420 of 2019 (Del. HC) dated 16.05.2019*. The Court noted the discussion in *Chry Capital Investment Advisors India (P.) Ltd. Vs. Deputy Commissioner of Income Tax, [2015 376 ITR 183 (Del)]*, wherein it was stated that Infosys Technologies Ltd. cannot be compared with the respondent assessee (therein), as seen from the financial data and it should be excluded from the list of comparables for the reason that it was a giant Company in the area of development of software.

8. In *PCIT Vs. Symphony Marketing Solutions India Pvt. Ltd., [2020] 113 taxmann.com 77 (Delhi)*, it was held that where assessee was rendering ITES services to its AE as a captive service provider, a company having huge turnover and brand value assuming all risks leading to higher profits, could not be accepted as comparable. The Court noted the decision in the case of *CIT Vs. Pentari Water India (P) Ltd., (2016) 69 taxmann.com 180 (Bom)* and the decision of the High Court of Delhi in *CIT V. Agnity India Technologies (P.) Ltd., (2013) ITA 1204/2011 dated 10.07.2013*. Similar view was taken by the High Court of Karnataka in *Principal Commissioner of Income Tax V. M/s.Obopay Mobile Technology India Private Ltd., (I.T.A.No.586 of 2016) dated 23.07.2018*.

9. In *Commissioner of Income Tax-2, Pune vs. Principal Global Services (P.) Ltd. (2018) 95 taxmann.com 315 (Bombay)*, the Court dealt with the correctness of exclusion of Infosys BPO Limited by the Tribunal from the list of comparables to determine ALP and following the decisions in *Agnity India Technologies (P.) Ltd., (supra)* and *M/s.Pentair Water India Pvt. Ltd (supra)*, affirmed the order passed by the Tribunal. The above decisions will come to the aid and assistance of the assessee squarely to hold that the order passed by the Tribunal on the said issue is proper.

9. On careful reading of the above, we note that the Hon'ble High Court of Madras, by placing reliance of many decisions of different Hon'ble High Courts, held that the comparable companies having huge turnover cannot be compared to companies having low turnover. The Hon'ble High Court was pleased to refer the decision of the Hon'ble Delhi High Court in the case of Chry Capital Investment Advisors India (P.) Ltd. v. DCIT[(2015) 376 ITR 183 (Del)], wherein, it was held that Infosys Technologies Ltd. should be excluded from the list of comparables for the reason that it was a giant company in the area of development of software as seen from the financial data.

10. On examination of the materials supplied by the Id. AR in page 22 of the paper book, wherein, it is noted that sales shown by the Infosys Ltd. are at ₹.21,140 crores for the assessment year 2010-11, whereas, the turnover of the assessee is only ₹.24,76,10,776/- which is at page No. 179 of the paper book, which clearly shows that Infosys Ltd. is a giant company in terms of turnover as compared to the assessee. Therefore, Infosys Limited cannot be a comparable company and it is liable to be excluded from the list of comparables.

11. Likewise, the financial data of Larsen & Toubro Infotech Ltd. is at page 22 of the paper book, wherein, it is noted that the sales turnover of

the said company is ₹. 1,776 crores, which shows huge turnover than the assessee company, is also liable to be excluded from the list of comparables.

12. The financial data of Mindtree Ltd. (seg), Sasken Communication Technologies Ltd. and Tata Elxsi (seg) are at page Nos. 23 & 24 of the paper book, which clearly shows huge turnover as rightly pointed out by the Id. AR. Therefore, respectfully following the decision of the Hon'ble High Court of Madras in the case of Visual Graphics Computing Services India Private Limited (supra), we direct the TPO to exclude the said five companies from the final list of comparables in view of their huge turnover.

13. The Id. AR submits that the assessee is not interested to prosecute comparables of Persistent Systems & Solutions Limited, Persistent Systems Limited, R.S. Software (India) Limited and Thinksoft Global Services Limited. Accordingly, adjudication on the said comparable companies is not required and therefore dismissed as not pressed.

14. The Id. AR, by referring to ICRA Techno Analytics Ltd. (Seg.) argued that the said company cannot form part of list of comparables as it is functionally different from the assessee. He argued by referring to page

No. 97 and 114 of the paper book that no segmental reports are filed. He argued that ICRA Techno Analytics Ltd. is not only engaged in IT services, but also engaged in intelligence services and analytic solution. He submits that the financial data of the said ICRA Techno Analytics Ltd. refers to software development & consultancy, engineering services, web development & hosting and subsequently diversified itself into the domain of business analytics and business process outsourcing (BPO). He drew our attention to the decision of the Hon'ble High Court of Delhi in the case of PCIT v. B.C. Management Services Pvt. Ltd. in ITA No. 1064/2017 & Ors. Dated 28.11.2017 in page No. 123 of the paper book and submitted that the Hon'ble High court has held that the findings given by the ITAT are reasonable in excluding ICRA Techno Analytics Ltd. We find the financial data of ICRA Techno Analytics Ltd. at page No. 97 of the paper book and on perusal of the same, we find that the said company is focused on providing technology solution in the business intelligence and analytics space, which is different from assessee's function. The profit and loss account of the ICRA Techno Analytics Ltd. at page No. 107 of the paper book shows income from services is the major operation. Further, we note from the accounting policies and Note to account, that the said company is engaged in the software development and consultancy, engineering services, web development & hosting and

subsequently diversified itself into the domain of business analytics and business process outsourcing (BPO), therefore, the finding of which cannot be compared with that of assessee, wherein, the assessee primarily engaged in software development and maintenance in the health care domain, which is clearly stated at para 1.2 of the DRP's order. Therefore, the ICRA Techno Analytics Ltd. is liable to be excluded from the final list of comparables and we direct the same.

15. With regard to exclusion of Kals Information Systems Limited, the TPO, at page No. 8 of his order, held that Kals Information Systems Limited, is functionally similar to the assessee. We note that no specific findings are given by the DRP in this regard. The annual report is placed at page No. 40 of the paper book. The Id. AR submits that the functions of Kals Information Systems Limited are entirely different in the broad spectrum of insurance, finance and banking domain products. Further, we note from background of the company in Schedule No. 14 at page No. 60 of the paper book, that it is engaged in development of software and software products and a Training Centre engaged in training of software professionals on online coaching. The sales turnover shown in the profit and loss account at page No. 57 of the paper book at ₹.2,30,45,144/-, but, however, the said income arrived at sales services and training. The

breakup of segmental revenue is given at page No. 62 of the paper book, wherein, it is noted that revenue from application software is at ₹.2,16,92,935/- and the revenue from training is only at ₹.13,52,209/-. On perusal of the breakup, we note that Kals Information Systems Limited earned on training is very low as compared to the revenue from application software. The Id. AR placed on record the order of the Delhi ITAT in ITA No. 5809/Del/2011 dated 22.01.2015 in the case of Global Logic India Pvt. Ltd. v. ACIT and referring to page 19, argued that the Delhi Tribunal having not showing segmental report for the training activity, held that the Kals Information Systems Ltd. is not comparable. As discussed above, the Id. AR placed on record, the financials of Kals Information Systems Ltd. at page 40 of the paper book, wherein, we have already examined the same and held the breakup of sales, services and training are given at page 62 of the paper book and revenue from training is very low showing the major operation of the Kals Information Systems Ltd. is development of software and software products. Therefore, we find that the function of the said company is similar to the assessee's functions.

16. The Id. AR drew our attention to the order of the Delhi Benches of the ITAT in the case of Ut Starcom Inc. (India Branch) v. DDIT in ITA No. 5848/Del./2011 dated 23.12.2016, which is placed at page No. 70 of the

paper book. The Id. AR argued that the Delhi Benches of the ITAT held the functions of Kals Information Systems Limited is different from assessee therein and directed the TPO to exclude the same. No detail of Ut Starcom Inc. (India Branch) is brought on record to show that the functions of which are similar to that of assessee herein. On examination of functions of the Kals Information Systems Limited at page No. 60 and also the revenue operation as shown in the profit and loss account at page No. 57, we are of the view that the functions of the Kals Information Systems Limited are similar to the functions of the assessee. Therefore, Kals Information Systems Limited is a comparable company. Thus, the arguments of the Id. AR seeking exclusion of Kals Information Systems Limited are rejected. The Assessing Officer/TPO is directed to compute ALP accordingly. Thus, ground No. 4.3 raised by the assessee is partly allowed.

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

Order pronounced on 31st May, 2024 at Chennai.

Sd/-
(JAGADISH)
ACCOUNTANT MEMBER

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Chennai, Dated, 31.05.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.