

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस.आर. रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **630/CHNY/2023**

निर्धारण वर्ष/Assessment Year: 2016-17

&

C.O No.28/CHNY/2023

[in I.T.A. No.630/CHNY/2023]

The Income Tax Officer,
Corporate Ward 2(1),
Chennai – 600 034.

Encore IT Solutions Pvt.
Ltd.,
HTC Towers,
No.41 GST Road, Guindy,
Chennai – 600 032.

(अपीलार्थी/Appellant)

PAN: AAACE 8044K
(प्रत्यर्थी/Respondent/Cross Objector)

राजस्व की ओर से /Revenue by

: ShriG. Suresh, JCIT

निर्धारिती की ओर से/Assessee by

: Shri Vikram Vijayaraghavan, Advocate

सुनवाई की तारीख/Date of Hearing

: 11.07.2024

घोषणा की तारीख/Date of Pronouncement

: 11.07.2024

आदेश / O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the Revenue and cross objection by the assessee are arising out of the order of the Commissioner of Income Tax (Appeals), Chennai in ITA No.543/CIT(A)-16/2019-20 dated 20.03.2023. The assessment was framed by the Asst. Commissioner of Income Tax, Circle-2(1), Chennai for the assessment year 2016-

17 u/s.143(3) of the Income Tax Act (hereinafter the 'Act') vide order dated 18.12.2019.

2. At the outset, it is pointed out by the Registry that this appeal is time barred by 1186 days as Revenue in its Form 36 has pointed out that the date of order is 18.12.2019 and date of communication or service of order is 20.12.2019. But, when it was pointed out, the Id. Senior DR pointed out that the date of order is 20.03.2023 and this order was received in the office of PCIT on 28.03.2023, as the date is mentioned and the appeal before Tribunal was filed on 19.05.2023. It means that this is within time and there is no delay.

3. Coming to the issue on merits raised by Revenue as regards to the order of CIT(A) deleting the TP adjustment of Rs.2,50,08,077/- towards the value of international transaction. For this, the Revenue has raised the following effective ground nos. 2 to 5:-

2. The Ld. CIT(A) erred in holding that upper turnover filter of 200 crores has to be adopted while selecting the comparable set of companies, for the purpose of bench marking under TNMM Method.

3. The Ld. CIT(A) erred in not considering the decisions of the Hon'ble ITAT, Mumbai and ITAT, Delhi in the cases of M/s Capgemini and M/s. S T Micro Electronics Put. Ltd.

4. The Ld. CIT(A) erred in holding that the comparable companies emerged from the search process conducted by the TPO are functionally dissimilar to the assessee company.

5. The Ld.CIT(A) erred in holding that the net margin earned by the assessee company from the international transaction involving provision of software staffing support services to its holding company viz. Encore US is at arm's Length from the Indian TP perspective.

4. Brief facts are that the assessee is a private limited company incorporated in India and 100% wholly owned subsidiary of Encore Software Services Inc., USA. The assessee is engaged in the business of rendering software staffing services to the parent company's clients. The parent company is not a big company with big clientele, rather a small entity that serves a few small and mid-size clients in the US. The clients are all situated in USA. The assessee do not have the ability to acquire clients on its own, neither the ability to ascertain the service requirements of clients but wholly dependent on such skills of the parent company. The parent company is bound by tax laws in USA and the individual status within the USA where it conducts its businesses. The parent company ascertains the skill and nature of IT solution requirements and accordingly, delivers services with its clients. The assessee filed its return of income for the relevant assessment year 2017-18 and subsequently, assessee's case was selected for scrutiny assessment for limited scrutiny under CASS and accordingly, notice u/s.143(2) of the Act was issued and served on assessee. The assessee's case was selected for limited scrutiny for the reason to verify "large

aggregate value of total employee cost in comparison to aggregate value of international transaction as per books of accounts.” Accordingly, assessee’s case was referred by the AO to TPO for determining the Arms Length Price with reference to all the transactions reported in Form No.3CEB filed along with the return of income for the assessment year 2016-17. The TPO determined the Arms Length Price of the International transactions entered into by the assessee vide letter dated 31.10.2019 u/s.92CA of the Act and computed ALP at Rs.2,50,08,077/- as under:-

“9. In the light of the discussions, the Arm’s Length Price of the International Transactions is determined as under:

ALP Calculation:

Value of Transaction with AE = Rs.16,46,22,188

Margin of the assessee company = 5.39%

Median of the list of Comparable Company = 21.4%

If

<i>Cost</i>	<i>Markup (%)</i>	<i>Sales (%)</i>
<i>100</i>	<i>5.39</i>	<i>105.39</i>
<i>100</i>	<i>21.4</i>	<i>121.4</i>

ALP of the transaction = Rs.16,46,22,188 x 121.4 /105.39 = Rs.18,96,30,265/-

Since the margin of the assessee company do not fall within range of the comparable margin, an adjustment of Rs.2,50,08,077/- is made to the value of the international transaction.”

4.1 Consequently, the AO passed the draft assessment order u/s.144C of the Act dated 06.11.2019 and made TP adjustment as

proposed by the TPO of Rs.2,50,08,077/-. Consequent to draft assessment order, as no objection was filed by the assessee before DRP, final assessment order was passed by the AO u/s.143(3) r.w.s. 92CA(3) of the Act dated 18.12.2019 and TP adjustment was retained at Rs.2,50,08,077/-. Aggrieved, assessee came in appeal before the CIT(A).

5. The CIT(A) after going through the submissions of the assessee deleted the TP adjustment by observing in paras 8.1 & 8.2 as under:-

“8.1 For all the reasons mentioned in the instant order, basis of the above table, the net margin earned by the appellant at 5.39% from the international transaction involving provision of software staffing support services to its holding company viz ENCORE US is reasonable and the same is at arm’s length from Indian TP perspective considering the functional profile of the appellant company.

8.2 Thus, the AO/TPO is directed to delete the TP adjustment to the extent of Rs.2,50,08,077/-.

Aggrieved, Revenue came in appeal before the Tribunal.

6. We have heard rival contentions and gone through facts and circumstances of the case. We have perused the case records including the TPO’s order, assessment order and the order of CIT(A). We have also perused the paper-book filed by assessee including the replies filed before TPO and CIT(A). The sole issue before us for

adjudication in this Revenue appeal, whether the TPO's adoption of certain companies as comparable to the assessee's company is correct or the assessee adopted certain companies as comparable companies is correct. The companies adopted by assessee giving details of net sales, sales to total income, operating profit, operating margin, PBT, net worth, operating profit to total income, RPT to sales are as under:-

<i>Company Long Name</i>	<i>Year End</i>	<i>Net Sales</i>	<i>Sales to Total Income (x)</i>	<i>Operating Profit</i>	<i>Operating Profit Margin (%)</i>	<i>PBT</i>	<i>Net-worth</i>	<i>Operating Profit to Total</i>	<i>RPT to Sales (%)</i>
<i>Ram Info Ltd</i>	<i>201603</i>	<i>22.69</i>	<i>0.94</i>	<i>1.38</i>	<i>6.08</i>	<i>0.98</i>	<i>8.3</i>	<i>6.38</i>	<i>4.2</i>
<i>ACS Technologies Ltd</i>	<i>201603</i>	<i>29.95</i>	<i>0.98</i>	<i>0.96</i>	<i>3.21</i>	<i>0.52</i>	<i>1.12</i>	<i>3.3</i>	<i>0</i>
<i>APITCO Ltd.</i>	<i>201603</i>	<i>18.13</i>	<i>0.98</i>	<i>0.64</i>	<i>3.53</i>	<i>0.93</i>	<i>23.18</i>	<i>3.64</i>	<i>-</i>
<i>R A S Infotech Ltd</i>	<i>201603</i>	<i>16.54</i>	<i>0.89</i>	<i>0.17</i>	<i>1.03</i>	<i>2.11</i>	<i>8.13</i>	<i>1.03</i>	<i>3.08</i>
<i>Sofidel Systems Pvt Ltd</i>	<i>201603</i>	<i>17.43</i>	<i>0.98</i>	<i>0.35</i>	<i>2.01</i>	<i>0.25</i>	<i>2.85</i>	<i>2.03</i>	<i>15.4</i>
<i>Batchmaster Software Pvt Ltd</i>	<i>201603</i>	<i>22.57</i>	<i>1</i>	<i>0.74</i>	<i>3.28</i>	<i>0.19</i>	<i>0.89</i>	<i>3.31</i>	<i>2.34</i>
<i>True Sparrow Systems Pvt Ltd</i>	<i>201603</i>	<i>15.78</i>	<i>0.96</i>	<i>0.54</i>	<i>3.42</i>	<i>0.36</i>	<i>17.47</i>	<i>3.38</i>	<i>-</i>
<i>IFS Solutions India Pvt Ltd</i>	<i>201603</i>	<i>23.07</i>	<i>0.97</i>	<i>1.02</i>	<i>4.42</i>	<i>1.58</i>	<i>14.38</i>	<i>4.6</i>	<i>-</i>
<i>Handygo Technologies Pvt Ltd</i>	<i>201603</i>	<i>20.83</i>	<i>0.96</i>	<i>1.07</i>	<i>5.14</i>	<i>0.19</i>	<i>10.87</i>	<i>5.26</i>	<i>27.82</i>
<i>Health Asyst Pvt Ltd</i>	<i>201603</i>	<i>29.47</i>	<i>0.94</i>	<i>1.13</i>	<i>3.83</i>	<i>2.54</i>	<i>43.17</i>	<i>3.94</i>	<i>-</i>
<i>Mantra Softech (I) Pvt Ltd</i>	<i>201603</i>	<i>29.85</i>	<i>0.92</i>	<i>1.37</i>	<i>4.59</i>	<i>0.39</i>	<i>3.01</i>	<i>4.74</i>	<i>-</i>
<i>MFX Infotech Pvt Ltd</i>	<i>201603</i>	<i>20.66</i>	<i>1</i>	<i>0.65</i>	<i>3.15</i>	<i>0.07</i>	<i>1.62</i>	<i>3.23</i>	<i>-</i>

The assessee as well as the Revenue admitted that the assessee's turnover in this year is Rs.17 crore and it was almost from Rs.15 to

20 crore range from last five years. The assessee's essential function is software staffing services. Admittedly, the comparable selected by Revenue i.e., TPO are as under, which includes reasons for its non-comparability with that of the assessee and the relevant chart reads as under:-

<i>S.No.</i>	<i>Name of the Company (Given by the Department as Comparable)</i>	<i>Operating Margin</i>	<i>Reason for its non comparability with that of Encore (being a software development company – not only specific product – with turnover of around Rs.17 Crores in 2016)</i>
1	<i>Cigntit Technologies Ltd.</i>	<i>19.25%</i>	<i>Turnover more than Rs.280 Crores</i>
2	<i>Larsen & Turbo Infotech Ltd.</i>	<i>21.98%</i>	<i>Turnover of about Rs.6000 Crores. Not comparable</i>
3	<i>Mindtree Ltd</i>	<i>19.86%</i>	<i>Software product – Turnover about Rs.4600 Crores. Hence not comparable</i>
4	<i>Tata Elxsi Ltd.</i>	<i>24.51%</i>	<i>Product design and development – Turnover of Rs.1075 Crores</i>

From the above comparable charts, it is clear that the companies selected by TPO are not only functionally dissimilar to the functions performed by the assessee company but it is almost incomparable in term of turnover filter also, because these companies selected by TPO is having turnover ranging from Rs.1000 crores to 6000 crores whereas assessee's turnover is only Rs.17 crore. Hence, in our view, the CIT(A) has rightly adopted assessee's filters and directed the AO to delete the TP adjustment to the extent of Rs.2,50,08,077/-. We

find no infirmity in the order of CIT(A) in view of above reasons.
Hence, this issue of Revenue's appeal is dismissed.

7. Coming to cross objection of the assessee in C.O. No.28/CHNY/2023, since we have adjudicated the issue of Revenue's appeal on merits in favour of assessee, the cross objection raised by the assessee on jurisdictional issue has become academic and does not require any adjudication. Hence, the same is dismissed as academic.

8. In the result, both the appeal filed by the Revenue and the cross objection filed by the assessee are dismissed.

Order pronounced in the open court at the time of hearing on 11th July, 2024 at Chennai.

Sd/-
(एस. आर. रघुनाथा)
(S.R. RAGHUNATHA)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 11th July, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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