

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH : BANGALORE**

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

MP Nos.194 & 195/Bang/2023 [in IT(TP)A Nos. 238/Bang/2021 & 262/Bang/2022]
Assessment years : 2016-17 & 2017-18

AMD India Private Limited, BMTc Building, 80 Feet Road, 6 <sup>th</sup> Block, Near KHB Games Village, Koramangala, Bangalore – 560 095. <b>PAN: AABCC 3447R</b>	Vs.	The Assistant Commissioner of Income Tax, Circle 1(1)(1), Bangalore.
APPLICANT		RESPONDENT

Appellant by	:	Shri Padamchand Khincha, CA
Respondent by	:	Shri V. Parithivel, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	11.06.2024
Date of Pronouncement	:	03.09.2024

**ORDER**

*Per Laxmi Prasad Sahu, Accountant Member*

Present miscellaneous petitions are filed by the assessee against the orders passed by this Tribunal 26.6.2023 seeking certain rectifications.

**MP No.194/Bang/2023 (AY 2016-17)**

2. **Issue No. 1** – Para 6 of the miscellaneous petition is in respect of exclusion of Majestic Research Services & Solutions Ltd. The Ld.AR submitted that before this Tribunal, in ground no. 14(iii), assessee had sought exclusion of Ugam Solutions Pvt. Ltd., Majestic Research Services & Solutions Ltd. and Scarecrow Communications Ltd. He submitted that this Tribunal has dealt with the comparables sought for exclusion in paras 20-20.7 at pages 54-55 of the impugned order. The Ld.AR submitted that this Tribunal had accepted the exclusion of Ugam Solutions Pvt. Ltd. by remanding the same to the Ld.AO for fresh consideration and Scarecrow Communications Ltd. was directed to be excluded due to certain significant accounting policies that was observed in the annual reports of this comparable. Insofar as Majestic Research Services & Solutions Ltd., this Tribunal upheld this company to be retained. He submitted that this Tribunal considered the observations of the DRP in respect of this comparables without considering the arguments raised by the assessee that this company is into rendering creative assistance work for advertisements through market research area which is akin to AMP. The Ld.AR submitted that this Tribunal retained this comparable for the reason that it was originally selected by the assessee which was accepted by the TPO as has been observed in para 20.4 of the impugned order.

3. The Ld.AR placing reliance on the decision of Special Bench of Hon'ble Chandigarh Bench of this Tribunal in case of DCIT vs. Quark

Systems Pvt. Ltd. reported in (2010) 38 SOT 307 in support of the contention that assessee is not barred from raising exclusion of a comparable company which had earlier been accepted by it. The Ld.AR also relied upon the decision of Epson India Pvt. Ltd. vs. DCIT in IT(TP)A No. 206/Bang/2021 wherein the Coordinate Bench of this Tribunal had excluded this comparable on the basis of functionality which has been referred to by this Tribunal in the impugned order in para 20.1. He thus prayed that there is mistake apparent on record for not considering the decisions of Hon'ble Special Bench of Chandigarh Bench of this Tribunal.

4. On the contrary, the Ld.DR relied on the orders passed by this Tribunal.

5. We have perused the submissions advanced by both sides in the light of records placed before us.

6. The assessee had sought for exclusion of Majestic Research Services & Solutions Ltd. in the ground along with other two comparables. It is noted that the assessee in the TP study has included the Majestic Research Services & Solutions Ltd. which was accepted by the Ld.TPO as a comparable. However, in the order passed u/s. 92CA, we note that the assessee vide submissions dated 03/10/2019 placed at page 443 of the paper book Vol. I had objected for inclusion of Majestic Research Services & Solutions Ltd. to be functionally different, fails related party filter, presence of intangibles, erroneous margin computation and fails upper turnover filter. The Id. TPO

rejected the objections and held that this company is in business services and consultancy and held that it is a comparable. Against the above, the assessee filed objections before the DRP on three points i.e., functionally different, peculiar economic circumstances or exceptional year of operation and margin computation to which the Id. DRP have adjudicated the objections vide their order from para 2.9.11 to 2.9.11.5. Against the directions by the DRP the assessee raised objections in the appeal which is clear from para no.27 of page 12 & 13 of the written synopsis. The assessee has raised objections before the Tribunal only that the company is functionally different and the company has abnormal and peculiar growth as its revenue increased by 102% during AY 2016-17. In subsequent years, the revenue of the Company has reduced dramatically to almost Nil. The findings of the Id. DRP has been incorporated in the order and the Tribunal observed that there was no infirmity in the findings of Id. DRP. Further it was noted that there was another ground that the company's revenue drastically reduced for the following assessment years, which was not considered for adjudication of current assessment year, because in the transfer pricing study the preceding two assessment years data are considered. On going through the paper book I filed by the assessee at page No. 1133 to 1137 the assessee has raised objections on three issues which are dealt by the Id. DRP. We note that the entire objections raised by the assessee before the TPO/AO noted above has not been raised either before the Id. DRP and before the ITAT.

7. We noted that there is no embargo on a tax payer from pointed out that a comparable had wrongly been taken in the TP study and Hon'ble Chandigarh Special Bench in case of DCIT vs. Quark Systems Pvt. Ltd. (supra) had addressed such issues, where the assessee had on similar facts had raised a comparable by way of additional ground before the Hon'ble Tribunal seeking exclusion of a comparable that was earlier been accepted by the assessee in the TP study. The Hon'ble Special Bench of Chandigarh Tribunal had observed that such is a fit case to remit the matter to the file of Ld.AO/TPO for considering the claim of taxpayer. But in the case on hand, the assessee raised objections before the TPO/AO on the points noted above. Before the DRP the assessee has taken three objections which has been duly dealt by the DRP. The assessee has raised objections before the ITAT as per written synopsis placed on record which has been dealt in the order confirming the order of the Id. DRP. Therefore, the judgment in the case of Quart Systems Pvt. Ltd. (supra) will not apply. Further, the assessee has relied on the judgment of Epson India Pvt. Ltd. v. DCIT in IT(TP)A No.206/Bang/2021 is also not applicable because the comparable company (Majestic Research Services & Solutions Ltd.) passes the entire filters applied by both the parties. Therefore there is no mistake apparent on the face of the record. Accordingly, the issue raised in para 6-11 of MP stands rejected.

8. **Issue no. 2** is regarding the objections of this Tribunal in respect of ground no. 18 at para 23.5 relating to notional interest on trade

receivables. The Ld.AR submitted that this Tribunal has directed the TPO to calculate the notional interest at 6 months LIBOR + 300 basis points beyond the credit period. It is submitted by the Ld.AR that the contention of the assessee is that no separate bench marking of outstanding receivables is required to be done as in TNMM while computing the margin, it subsumes receivables. The Ld.AR further submitted that this aspect has not been considered and adjudicated though argued. It is further submitted by the Ld.AR that this Tribunal has also not adjudicated as to what would be a reasonable credit period to be provided for computing the notional interest on outstanding receivables. He thus prayed that non-processing of the above two issues has amounted to a mistake apparent on record, factually.

9. On the contrary, the Ld.DR relied on the orders passed by Tribunal.

10. We have perused the submissions advanced by both sides in the light of records placed before us. We note that paras 23.5 deals with computing of notional interest on trade receivables at pages 53-55 of the order. The Tribunal considered the issue in para 23.5 wherein it is held that the notional interest on receivable is an international transaction, therefore this argument of the assessee is rejected. There is no apparent mistake on this issue.

11. In respect of the credit period, the Tribunal in para 23.5 of the order directed the TPO to calculate notional interest at 6 months LIBOR + 300 basis points beyond the credit period. The ld. AR

submitted that the Tribunal has not adjudicated as to what would be the reasonable credit period, without which the ALP cannot be computed. We noted from para 2.11.19 of the DRP order that the assessee has contested that all the receivables are received within the 30 day period, which is a mistake apparent from record. In this regard, we note that since the assessee itself accepted that the entire receivables are received within 30 days period. In view of the above, we deem it appropriate to set aside this issue to the file of the Assessing Officer/TPO for deciding it afresh as per law. The assessee is directed to provide copy of agreement regarding realisation from receivables. If the assessee is unable to provide copy of agreement, then the credit period of 30 days shall be considered as reasonable credit period. Needless to say that the assessee will be allowed a reasonable opportunity of being heard in such fresh proceedings. Accordingly this issue regarding the credit period stands allowed for statistical purposes.

12. **Issue no. 3** relates to ground no. 19 regarding disallowance of depreciation on goodwill. We note that this issue has been remanded to the Ld.AO with certain directions in para 32.1. It is also brought to our notice that on this issue, the assessee has filed appeal before Hon'ble High Court wherein the questions of law has been raised in ITA No.652/2023 and ITA No.670/2023. Under such circumstances, this issue is left open.

**M.P. No 195/Bang/2023 (AY 2017-18)**

13. The first issue raised by the assessee is regarding the filters applied by the Ld.TPO that has been raised in ground no. 5(iii) of the appeal. In paras 6-9 of the miscellaneous petition, the Ld.AR submitted that identical issue was also considered by this Tribunal while adjudicating the grounds 7(iii) and 14(ii). He submitted that in para 10.7, this Tribunal had directed the Ld.AO/TPO to consider the decision of Hon'ble Karnataka High Court in case of PCIT vs. Yodlee Infotech Pvt. Ltd. in ITA No. 685/2017 dated 28/06/2018.

14. Further while considering similar issue for A.Y. 2017-18, this Tribunal had upheld the RPT filter of 15%. The Ld.AR submitted that there is a mistake apparent on record by not considering identical issue on similar lines in the assessee's own case.

15. The Ld.DR relied on the orders passed by the Tribunal.

16. We have perused the submissions advanced by both sides in the light of records placed before us. We note there is a mistake apparent on record on this issue. This issue has been decided in para 10.7 for AY 2016-17 to follow the judgment of Hon'ble High Court of Karnataka in PCIT v. Yodlee Infotech P. Ltd. (supra). This decision for AY 2016-17 will apply mutatis mutandis for AY 2017-18 also on similar facts.

17. The next issue is regarding ground 5(iv) regarding selection of Threesixty Logica Testing Services P. Ltd. as a comparable. The

Tribunal remitted this issue to the AO/TPO in para 40.7 of the order following the decision for AY 2016-17 by observing that the RPT filter computed by the assessee for AY 2014-15 (instead of AY 2017-18) is 16.85% which is more than 15% RPT filter inadvertently. The same is modified to read as RPT filter computed by the assessee for AY 2017-18 is 16.85% which is more than 15% RPT filter.

18. The next issue raised by the assessee is in respect of non-adjudication of ground no.6 wherein assessee had sought exclusion of R Systems International Ltd. under software development segment, which amounts to mistake apparent on record. We have perused the submissions of the assessee in the light of the impugned order passed by this Tribunal. As this issue has not been adjudicated by this Tribunal, we now take up the same for consideration.

19. The Id. AR relied on the submissions filed by the assessee and submitted that the DRP had directed to apply different financial year in para 2.6.30.8 of the DRP order which has not been followed by the Ld.AO/TPO.

20. Considering the rival submissions, it is noted that the Ld.AO/TPO has not considered the directions of the DRP in respect of this comparable. We direct the Ld.AO/TPO to consider the claim of assessee by applying this filter as per the directions of the DRP in para 2.6.30.8. The assessee is directed to furnish the final annual reports in support of its claim. Accordingly, ground no. 6 raised by the assessee stands partly allowed for statistical purposes.

21. The next issue raised in paras 23-28 of the miscellaneous petition is regarding ground no. 10 that relates to disallowance of depreciation on goodwill. Similar issue has been dealt by us for AY 2016-17 and for the reasons stated therein, this issue is left open for AY 2017-18 also.

22. In the result, both the miscellaneous petitions filed by the assessee stands partly allowed.

Pronounced in the open court on this 03<sup>rd</sup> day of September, 2024.

Sd/-

( BEENA PILLAI )  
JUDICIAL MEMBER

Sd/-

(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 03<sup>rd</sup> September, 2024.

*/Desai S Murthy /*

Copy to:

1. Applicant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.