

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.13/Hyd/2018
निर्धारण वर्ष/Assessment Year: 2013-14

M/s. Cognizant Technology- Solutions India Pvt. Ltd., (as successor in interest of erstwhile Excellence Data Research Pvt. Ltd.), 6 th Floor, New No.165, Old No.110, Menon Eternity Building, St. Mary's Road, Alwarpet, Chennai-600 018.	v.	The ACIT, Circle-17(1), 9 th Floor, Signature Towers, Opp: Botanical Garden, Kondapur, Hyderabad.
[PAN: AABCE 4933 C]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr. S.P.Chidambaram, Adv.
प्रत्यर्थी की ओर से /Respondent by	:	Ms. C. Vatchala, CIT
सुनवाईकीतारीख/Date of Hearing	:	29.08.2024
घोषणाकीतारीख /Date of Pronouncement	:	08.11.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee company against the order of the Assessing Officer [hereinafter in short 'AO'] dated 25.10.2017 passed u/s.143(3) r.w.s.92CA(3) r.w.s.144C (13) of the Income Tax Act, 1961 (hereinafter in short 'the Act') pursuant to the direction of the Dispute Resolution Panel (hereinafter in short 'DRP') order dated 24.08.2017.



:: 2 ::

2. Grounds of appeal raised by the assessee are as under:

1. That on the facts and circumstances of the case, the final assessment order dated 25 October 2017 (and received by the Appellant on 06 November 2017) passed by the Assistant Commissioner of Income tax Circle 17(1), Hyderabad u/s 143(3) of the Income-tax Act, 1961 ('the Act') read with section 92CA(3) and 144C(13) of the Act pursuant to the directions issued by Dispute Resolution Panel ('DRP') u/s 144C(5) of the Act dated 24 August 2017 is bad in law and void ab-initio so far as it is prejudicial to the Appellant.

Transfer Pricing

General

2. That on the facts and circumstances of the case and in law, the AO/DRP erred in confirming the transfer pricing adjustment of Rs. 1,74,95,524 on account of provision of Information Technology enabled Services ('ITeS') by the Appellant to its Associated Enterprise (AE').

3. That on the facts and circumstances of the case and in law, the AO/DRP erred in rejecting transfer pricing documentation maintained by the Appellant in accordance with the provisions of the Act read with the Income-tax Rules, 1962 ('Rules') and undertaking a fresh economic analysis during the course of assessment proceedings and thereby making an adjustment to the international transactions.

Selection of incomparable companies

4. That on the facts and the circumstances of the case and in law, the AO/DRP erred in confirming acceptance of following companies as comparable as selected by TPO:

- a) Capgemini Business Services (India) Limited, and
- b) Hartron Communications Limited.

5 That on the facts and circumstances of the case and in law, the AO/DRP erred in accepting Hartron Communications Limited for comparability analysis under Transactional net margin method ('TNMM') without appreciating the fact that the auditor has qualified its report on account of non-compliance with Accounting Standard-15 regarding provision for retirement benefits, for which impact on profits is not ascertainable.

Error in computation of margin of comparable companies

6. That on the facts and the circumstances of the case and in law, the AO/DRP erred in confirming the TPO's stand of treating the provision



:: 3 ::

for bad and doubtful debts and bad debts written off as non-operating expenses for the purpose of margin computation of comparable companies as selected by TPO.

Rejection of comparable companies

7 That on the facts and the circumstances of the case and in law, the AO/DRP erred by not including following companies as comparables as requested by the Appellant:

1. Ace BPO Services Private Limited,
2. Informed Technologies India Limited;
3. Jindal Intellicom Limited, and
4. Crystal Voxx Limited.

8 That on the facts and circumstances of the case and in law, the AO/DRP erred by not including companies as per ground no 7 which are functionally comparable and meets the filter adopted by the TPO

9 That on the facts and circumstances of the case and in law, the AO/DRP erred by not addressing the points raised by the Appellant on comparables mentioned in Ground No. 7 while passing their orders

10. That on the facts and circumstances of the case and in law, the AO/DRP erred by not appreciating that Informed Technologies Limited and Jindal Intellicom Limited are considered as comparables by the TPO in earlier assessment years in Appellant's own case and the functions of comparable have remained same for the assessment under consideration.

Use of Filters

11. That on facts and circumstances of the case and in law, the AO/DRP erred in upholding the use of different financial year-end filter for rejection of comparable companies while undertaking the comparative analysis

Rejection of use of multiple year data

12 That on facts and circumstances of the case and in law, the AO/DRP erred in rejecting the use of multiple year data and using data for FY 2012-13 only.

Negative working capital adjustment

13 That on the facts and circumstances of the case or in law, AO/DRP has erred in making negative working capital adjustment in the Appellant's case who is mainly a captive service provider, without taking into account the jurisdictional judicial precedents on the issue



:: 4 ::

Adjustment for risk differences

14 That on the facts and circumstances of the case and in law, the AO/DRP erred in disregarding the risk profile of the Appellant vis-à-vis alleged comparable companies selected by the TPO and not allowing risk adjustment as per the provisions of Rule 108(1)(e) of the Rules

Arm's length range of 3%

15. That the AO/TPO be directed to re-work the profit margins of the Appellant vis-à-vis the resultant comparable companies and to allow the benefit of +/-3% range as provided in proviso to Section 92C(2) of the Act.

Corporate Tax grounds

16. The Ld. AO/DRP erred in not considering revised computation filed by the Appellant for grant of deduction of foreign exchange gain on capital transactions of Rs.3.524 which was erroneously added back to total income and offered to tax by the Appellant.

17. The Ld. AO/DRP erred in not granting the set off of MAT credit u/s 115.JAA to the extent of Rs. 1,21,13,176 of the Act from the current year's tax liability.

18. The Ld. AO/DRP has erred in levying interest under 234B and 234C of the Act.

19 The Appellant submits that each grounds of appeal are without prejudice to one another

20 The Appellant further craves leave to add, alter, amend, substitute and/or modify, in any manner whatsoever, all or any of the foregoing grounds of appeal at or before the hearing of the appeal.

3. Brief facts are that the assessee, erstwhile M/s. Excellence Data Research Pvt.Ltd, is a company engaged in the business of back office, data creation, content development and support services in relation to analysis. The assessee company filed its return of income for AY 2013-14 on 29.11.2014 declaring income of Rs.6,14,93,550/- under normal provisions of the Act and book profit amounting to Rs.6,75,47,977/-.



:: 5 ::

Since assessee company had international transactions with its Associated Enterprises (AEs), in compliance of provisions of section 92E, assessee furnished report in Form 3CED, wherein, it adopted Transactional Net Margin Method (TNMM) with a PLI of OP/OC with a margin of 23.23%. And the assessee has selected 9 comparables with a weighted average operating margin of comparable companies at 12.21%.

4. Since there was international transactions, AO made reference to Transfer Pricing Officer (TPO) for determination of arm's length price (ALP). The TPO accepted business profile of the assessee and accepted the most appropriate method (MAM) i.e., TNMM and PLI, OP/OC. The TPO accepted net margin of assessee at 23.23%, however, rejected search process undertaken by the assessee, because it was based on weighted average [i.e., on the basis of three-year data of comparables]. Therefore, the TPO undertook fresh search for identifying comparables in ITeS with current year data i.e., AY 2013-14. And thereafter, TPO proposed 7 new comparables with a margin of 22.30% and further TPO computed negative working capital adjustment at *minus* 8.13% and increased arm's length margin of comparable companies to 30.43% and proposed adjustment of Rs.1,82,03,682/-.

5. The assessee preferred objections before Dispute Resolution Panel (DRP) and the DRP vide directions dated 24.08.2017 gave directions to



:: 6 ::

exclude two comparable companies namely (i) Acropetal Technologies Limited & (ii) Infosys BPO Ltd. And the DRP rejected assessee's prayer for exclusion of two comparables namely (i) Hartron Communications Ltd. and (ii) Capgemini Business Services (India) Ltd. In addition, the DRP has rejected the prayer of the assessee for inclusion of five comparables i.e., i) Ace BPO Services Ltd., ii) Caliber Point Business Solutions Ltd. iii) Informed Technologies India Ltd. iv) Jindal Intellicom Ltd. & v) Crystal Voxx Ltd. And the final list of comparables post DRP directions for benchmarking analysis are as given below:

- i) e4e Healthcare Services Pvt.Ltd.,
- ii) Microgenetics Ltd.
- iii) Microland Ltd.
- iv) Capgemini Business Services (India) Ltd
- v) Hartron Communications Ltd.

Moreover, the assessee's prayer for not thrusting upon negative working capital adjustment was repelled by DRP [refer observation at para 10 of the DRP direction]. And on the basis of DRP direction margin of comparable companies was revised to 20.49% with negative working capital adjustment of *minus* 9.66% leading to adjusted arithmetic mean of 30.15%. The adjustment post DRP direction was at a reduced amount of Rs.1,74,95,524/-.

6. Aggrieved by the transfer pricing adjustment of Rs.1,74,95,524/- on account of providing ITe Services to its AE's, the assessee is before us



:: 7 ::

raising the grounds of appeal (supra) and contended that the main grievance of assessee in this appeal is against the action of Ld.TPO/DRP making negative working capital adjustment without appreciating the crucial fact that company does not bear any working capital risk, being a captive service provider [*refer ground number 13*]. The Ld. AR submitted that assessee company does not bear any working capital risk, since it is fully funded by its AE from its inception and has no working capital contingencies. It was also brought to our notice that company has neither taken any loan nor has incurred any expenses for meeting the working capital requirement. According to the Ld.AR, if negative working capital adjustment is not thrust upon it, then international transaction will be at arm's length. In this regard, the Ld.AR brought to our notice the decision of the co-ordinate Bench of Hyderabad Tribunal in assessee's own case M/s.Excellence Data Research Pvt.Ltd. in ITA No.93 & 34/Hyd/2016 for AY 2011-12 dated 25.04.2018, wherein the Tribunal has held that *negative working capital adjustment should not be made in assessee's case* and directed the AO to do so at para 13 of its order. We note that ITAT., Hyderabad Bench in assessee's own case for AY 2011-12 has upheld similar contention [negative working capital adjustment was not warranted in the case of assessee] by following the co-ordinate Bench decision in the case of M/s. Adaptec (India) Pvt. Ltd. Vs. ACIT



:: 8 ::

(2015) 57 taxmann.com 307(Hyderabad– Trib), wherein the Tribunal decided a similar/identical issue by holding as under:-

"10. Ground No.8 pertains to the issue of negative working capital. As briefly stated above, after arriving at the arithmetic mean of all comparables at 22.03%, the A.O. worked out negative working capital adjustment of 3.22% thereby, making arms length price at 25.25%. Even though, DRP refused to interfere with the objections of the assessee in its order, we were informed that DRP has directed the TPO/A.O. not to make any negative working capital adjustment in some of the cases in the next assessment year, in the cases of Market Tools Research P. Ltd., and Mega Systems Worldwide India P. Ltd., assessee placed on record copies of orders of DRP. In that DRP considered the issue and directed the TPO as under:

'14. Ground No. 11 : Negative Working Capital adjustment - Making a negative working capital adjustment without appreciating the fact that the company does not bear any working capital risks. On this issue, the assessee submitted as under :

"The learned TPO determined the ALP for the international transactions with A.Es by making a negative working capital adjustment for the differences in working capital between the assessee and the companies considered as comparables. The assessee does not agree with the learned TPO as :

The company does not bear any working capital risk since it is been fully funded by it's A.E. from its inception and has no working capital contingencies.

The company has never taken any loans till date from the date of incorporation nor has incurred any expense for meeting the working capital requirement."

We have gone through the submissions and the order of the TPO. The assessee pleaded that the DRP has acceded such a plea in some other case. On examination, we find that the DRP, Hyderabad in the case of Cordys Software India P. Ltd., for A.Y. 2008-09 in its directions dated 03.08.2012 has given a finding as under :

"7.7.4 Thus, working capital adjustment is made for the time value of money lost when credit time is provided to the customers. The applicant is not an entrepreneur but a captive service provider. Its entire funding needs are provided by the A.E. This being so, the applicant does not stand to lose anything as it is compensated on a total cost plus basis. The TPO probably was carried away by the large amount of receivables appearing in the books of the applicant. But the applicant is running its business without any working capital risk while comparable companies have such a risk for them. If at all any working capital adjustment is to be made to this situation, only a positive adjustment



:: 9 ::

has to be made to the comparables so that they are brought on par with the applicant. In view of the same, the Panel directs that negative working capital adjustment to the arithmetic mean margin of the comparables shall not be made.”

In view of the above, the Panel directs that negative working capital adjustment to the arithmetic mean margin of the comparables shall not be made.'

11. *In view of the above, we are of the opinion that assessee's case being similar, there is no need for making any negative working capital adjustment when assessee does not carry any working capital risk. In fact, TPO should have done necessary working capital adjustment to the profits of the selected comparables so as to make them comparable to the assessee. In view of this, we direct the TPO not to make negative working capital adjustment.*

7. In light of the aforesaid decision, it is urged before us that since assessee company does not bear any working capital risk, being fully funded by its AE [from its inception] and has no working capital contingencies, being captive service provider having no risk, negative working capital adjustment was not warranted in the case of assessee. According to Ld AR, the assessee company has neither taken any loan nor incurred any expenses for meeting working capital requirement, and being captive service provider having no risk, negative working capital adjustment was not warranted in the case of assessee. We find considerable force in the submission of assessee, negative working capital adjustment was not warranted in the case of assessee. Therefore, respectfully following the ratio laid down by the co-ordinate Bench of the Tribunal in the case of M/s. Adaptec (India) Pvt.Ltd. Vs.ACIT (supra) and in the assessee's own case for AY 2011-12, we direct the AO not to make any negative working capital adjustment. And it is further noted



:: 10 ::

that when no negative working capital adjustment is made, the international transactions in question will be at arm's length i.e., assessee's margin was at 23.23% which is more than comparable margin post DRP direction of 20.49% and therefore, no adjustment is required in the case of assessee; and so, it is directed to be deleted. All other grounds raised by the assessee have become academic and thus, not being adjudicated. Ordered accordingly.

8. In the result, appeal of the assessee is partly allowed.

Sd/-
(अमिताभ शुक्ला)
(AMITABH SHUKLA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 08th November, 2024.

TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Hyderabad.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF