

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Shri Vijay Pal Rao, Vice-President
A N D
Shri Manjunatha, G. Accountant Member and

आ.अपी.सं / **ITA No.86/Hyd/2022**
(निर्धारण वर्ष / Assessment Year: 2017-18)

Benu Networks Packet Switch Private Ltd, Hyderabad PAN:AAECB4902B	Vs.	Dy. Commissioner of Income Tax, Circle 1(1) Hydrabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri Ashish Jain, CA	
राजस्व द्वारा/Revenue by:	Shri B Balakrishna, DR	
सुनवाई की तारीख/Date of hearing:	13/11/2024	
घोषणा की तारीख/Pronouncement:	25/11/2024	

आदेश/ORDER

Per Vijay Pal Rao, Vice President

This appeal by the assessee is directed against the assessment order dated 28/10/2022 passed u/s 143(3) r.w.s. 144C(13) r.w.s. 144B of the I.T. Act, 1961 in pursuant to the directions of the DRP dated 7/12/2021 passed u/s 144C(5) of the I.T. Act, 1961 for the A.Y 2017-18. The assessee has raised the following grounds of appeal:

“Ground No.1 The learned TPO grossly erred in conducting independent search in wrongly applying the proviso below Rule 10B(5) and the Hon'ble DRP has erred in conforming the same.

Ground No.1 The learned TPO has erred by rejecting the following 7 comparable companies in the software development segment selected/accepted by the assessee on unjustifiable grounds even though sufficient data was available, and they were functionally comparable to the assessee and satisfied all the filters applied by the learned TPO”

- i) Kals Information Systems Ltd*
- ii) Akshay Software Technologies Ltd*
- iii) Batchmaster Software Private Ltd*
- iv) DCIS NOT COM Solutions India Pvt Ltd*
- v) Evoke Technologies Pvt Ltd*
- vi) Sasken Technologies Ltd*
- vii) E-Zest Solutions Ltd*

And the learned Assessing Officer and the Hon'ble DRP have erred in confirming the same.

Ground No.3 The learned TPO has erred on facts and law by comparing the Assessee with the following 16 companies in the software development segment, which have an entirely different functional and risk profile on account of factors like high turnover, significant RPT, onsite revenues, etc:

- i) Great Software Laboratory P Ltd*
- ii) Gwynniebee India Pvt Ltd*
- iii) Exilant Technologies Pvt Ltd*
- iv) Larsen & Toubro Infotech Ltd*
- v) Nihilent Technologies Ltd*
- vi) Tata Elxsis Ltd*
- vii) Infobeans Technologies Ltd*
- viii) Wipro Ltd*
- ix) Persistant Systems Ltd*
- x) Aptus*
- xi) Software Labs Pvt Ltd*
- xii) Cygnet Infotech Pvt Ltd*
- xiii) Infosys Ltd*
- xiv) Pagetraffic Web Tech Pvt Ltd*
- xv) Gislen Software Pvt Ltd*
- xvi) Cybage Software P Ltd*
- xvii) E-infochips Pvt Ltd*

And the learned Assessing Officer and the Hon'ble DRP have erred in confirming the same.

Ground No.4 The learned TPO has erred in applying related party filter of 25% in his search process instead of 15% as

applied by the assessee relying on various precedents and the learned Assessing Officer and the Hon'ble DRP have erred in confirming the same.

Ground No.5 The learned TPO has erred in facts and laws by considering the deferred receivables from Associated Enterprises as "International Transaction" within the purview of section 92B of the I.T. Act, 1961. The learned TPO has erred in holding that the appellant must charge notional interest income on such receivables and the learned Assessing Officer and the Hon'ble DRP have erred in confirming the same.

Ground No.6 Without the prejudice to the ground number 5, the learned TPO has erred in not providing working capital adjustment which itself takes the impact of outstanding receivable on profitability. Accordingly, no separate adjustment is warranted on deferred receivable and the learned Assessing Officer and the Hon'ble DRP have erred in confirming the same.

Ground No.7 The learned TPO erred in facts and law by considering foreign exchange currency fluctuation gain/loss as operating in nature and the learned Assessing Officer and the Hon'ble DRP have erred in confirming the same.

The appellant prays that above grounds be considered discretely and without prejudice to each other. The appellant craves leave to add, omit or alter grounds of appeal before or during the hearing of the appeal."

3. Ground No.1 is general in nature and does not require any specific adjudication.

4. Ground No.2 is regarding rejection of 7 comparable companies selected by the assessee in its TP study analysis. The assessee company is engaged in the business of providing software development services to its AE namely Benu Networks Inc. USA. In its TP study analysis, the assessee has declared operating profit/operating cost @ 12.12% at Arms' Length while comparing with the comparables selected by the assessee. The

assessee has benchmarked its international transactions by applying TNMM as most appropriate method and selecting 16 comparable companies having 36 percentile at 5.6% and 66 percentile 10.4% and claimed that the profit margin of the assessee at 15% is at Arms' Length. The TPO rejected 12 comparables out of 16 comparables selected by the assessee and carried out a fresh process of selecting the comparables wherein a set of 21 comparables were selected by the TPO for determining the ALP having 35 percentile at 19.7% and 66% percentile at 25.70%. Thus, the median of the comparables selected by the TPO comes to 24.58%. The TPO accordingly proposed transfer pricing adjustment to the tune of Rs.1,27,07,337/-. The Assessing Officer frames draft assessment order in terms of the order of the TPO which was challenged by the assessee by filing objections before the DRP. Consequent to the directions of the DRP, the final list of total comparables was 24 for the purpose of re-computation of the ALP and accordingly, the Assessing Officer has made a TP adjustment on the basis of those 24 comparables.

5. Being aggrieved by the order of the Assessing Officer, the assessee has now contended that the rejection of 8 comparables by the TPO is unjustified when the assessee has produced all the relevant details to show the functional comparability of these entities with the assessee who is providing captive software development services to its Associated Enterprises. The learned AR submitted that out of these 8 comparables, the assessee is not pressing comparable company

Sasken Technologies and E-Zest Solutions Ltd. Therefore, the assessee is now pressing for only 6 comparables to be included in the set of comparables for determination of ALP. The learned AR has referred to the decision of this Tribunal in assessee's own case in ITA No.194/Hyd/2021 dated 29/07/2024 for the A.Y 2016-17 and submitted that this Tribunal has considered an identical issue of the comparable entities which were excluded by the TPO and the matter is set aside to the record of the TPO with the direction to examine whether these companies are functionally comparable with the assessee company or not after applying the applicable filters. Thus, the learned AR has submitted that this matter may also be set aside to the record of the TPO/Assessing Officer for reconsideration of the functional comparability of these six entities.

6. The learned DR, on the other hand, has relied upon the orders of the authorities below.

7. We have considered the rival submissions as well as relevant material available on record. The assessee has challenged the rejection/exclusion of 8 comparables by the TPO as under:

- i) *Kals Information Systems Ltd*
- ii) *Akshay Software Technologies Ltd*
- iii) *Batchmaster Software Private Ltd*
- iv) *DCIS NOT COM Solutions India Pvt Ltd*
- v) *Orangescape Technologies Ltd*
- vi) *Evoke Technologies Pvt Ltd*
- vii) *Sasken Technologies Ltd*
- viii) *E-Zest Solutions Ltd*

8. Now the assessee has not pressed inclusion of 2 comparable companies namely Sasken Technologies Pvt Ltd and E-Zest Solutions Ltd and therefore, only six comparables are sought to be included in the set of comparables for determination of the ALP. At the outset, we note that this Tribunal in assessee's own case for the A.Y 2016-17 has considered an identical issue of exclusion/rejection of 8 comparables by the TPO which are reproduced in Para 4 of the said order as under:

"4. With respect to ground Nos.1 and 2, ld. AR has submitted that the TPO has rejected the following comparables :

- (i) Sagarsoft (India) Limited*
- (ii) Athena Global Technologies Limited*
- (iii) Akshay Software Technologies Limited*
- (iv) Batchmaster Software Private Limited*
- (v) Celstream Technologies Private Limited*
- (vi) Isummation Technologies Private Limited*
- (vii) Evoke Technologies Private Limited*
- (viii) DCIS DOT COM Solutions India Private Limited*
- (ix) Maveric Systems Limited*
- (x) Orangescape Technologies Limited*
- (xi) Sasken Communication Technologies Limited*
- (xii) Infomile Technologies Limited*
- (xiii) E-Zest Solutions Limited*

4.1. The TPO while rejecting the TP objection of the assessee held that these comparables were not appearing in the search matrix of the appellant TP Study Report. It was submitted by the assessee by referring to the TP order that the contention of the TPO was incorrect and the DRP has not considered the submission of the assessee that the data of these comparables were available in the public domain. Our attention was drawn to the order of the TPO."

9. The Tribunal has finally remanded this issue to the record of the TPO in para 6 as under:

"6. We have heard the rival submissions and perused the material on record. Unfortunately, the assessee has sought inclusion of these companies in the TP Study Report, however, for the reasons best known to the TPO, it was stated that these companies were not meeting the

search matrix and accordingly, they were rejected by the TPO. Since the assessee has shown us that these companies are appearing in search matrix, therefore, it would be in the interests of justice the issue of inclusion of these companies are remanded back to the file of TPO with a direction to examine whether these companies are functionally comparable with the assessee company or not after applying the applicable filters. If these companies were functionally comparable, then the TPO is directed to include these companies for the purpose of computing the ALP. Thus, these grounds are allowed for statistical purposes.”

10. Accordingly, to maintain rule of consistency and having the identical facts and circumstances for both the years, we remand the issue of rejection of six comparables to the record of the Assessing Officer for fresh examination and consideration of functional comparability of these six companies and then to determine the ALP in respect of the international transactions entered into by the assessee.

11. In Ground No.3, the assessee is challenging the inclusion of 16 companies in the set of comparables selected by the TPO on the ground of higher turnover, significant RPT, onsite revenues and thus the assessee is seeking exclusion of these 16 companies from set of comparables.

12. The learned AR of the assessee submitted that the TPO has not applied higher turnover, significant RPT and onsite revenues as filter while selecting these companies, whereas the only minimum turnover of Rs.1 crore has been applied by the TPO is not justified and sustainable. The learned AR has submitted that all these 16 comparables are having the turnover of more

than 10 times of the turnover of the assessee. He has pointed out that the turnover of the assessee company is Rs.1.27 crores whereas the turnover of these companies, in some cases, is more than 100 times of the assessee company. Thus, the learned AR has submitted that the assessee is now seeking exclusion of only 10 companies out of the 16 companies whose turnover is more than 10 times of the assessee which are as under:

- 1. Exilant Technologies Pvt Ltd – Rs.373 crores*
- 2. Larsen & Toubro Infotech Ltd – Rs.6,183 crores*
- 3. Nihilent Technologies Ltd – Rs.259 crores*
- 4. Tata Elxix Ltd – Rs.1,201 crores*
- 5. Wipro Ltd – Rs.45,639 crores*
- 6. Persistent Systems Ltd Rs.1,733 crores*
- 7. Infosys Ltd – Rs.59,289 crores*
- 8. Cybage Software P Ltd Rs.759 crores*
- 9. E-Infochips Pvt Ltd. Rs.264 crores*
- 10. Great Software Laboratory Pvt Ltd Rs.127 crores*

13. He further submitted that this Tribunal in assessee's own case for the A.Y 2016-17 has considered an identical issue and remanded the matter to the record of the TPO with a direction to exclude the company whose turnover is more than 10 times of the assessee company as well as the companies whose turnover of 1/10th of the turnover of the assessee. Thus, the learned AR has submitted that the TPO may be directed to apply the said filter of the turnover as directed by this Tribunal for the A.Y 2016-17.

14. The learned DR, on the other hand, submitted that in the software development service business, the turnover filter is not relevant in the absence of any huge fixed cost attributable to the service provided by the assessee. He has further submitted that the TPO has applied the filter of minimum turnover of Rs.1

crore which is just and proper. He has relied upon the orders of the TPO.

15. We have considered the rival submissions as well as the relevant material available on record. There is no dispute that while selecting the comparable companies, the TPO has applied one filter of turnover but only minimum turnover filter of Rs.1 crore was applied by the TPO and no maximum turnover filter was applied. Once the turnover is applied as a filter while selecting the comparables, then there should be a consistent parameter of such turnover filter like 10 times of the turnover of the assessee in both higher as well as lower side. Therefore, applying one side turnover filter by the TPO is not proper and justified. This Tribunal in assessee's own case for the A.Y 2016-17 has considered an identical issue in para 9 of order which read as under:

“9. We have heard both sides and perused the material on record. This Tribunal has continuously been following the turnover of the filter of ten times x and $1/10$ th of the turnover of the assessee on both the sides. In view of the above, we deem it appropriate to remand back this issue to the file of Assessing Officer / TPO with a direction to apply ten times filter lower and upper on both the sides. The companies which are having turnover of more than 10 times are required to be excluded from the list of comparable and similarly, the companies whose turnover are less than $1/10$ th of the turnover of the assessee are also required to be excluded from the list of comparable. In the light of the above, the TPO is directed to exclude the comparable in the light of the above said directions. Thus, this ground is allowed for statistical purposes.”

16. Accordingly, this issue of applying the turnover filter is set aside to the record of the TPO for carrying out necessary

exercise for exclusion and inclusion of the comparable companies in the set of comparables while determining the ALP. We may clarify that once the turnover filter is applied as 10 times on the higher side and 1/10th of the lower side, then the same would be applicable to the entire set of comparables and not on the selective companies.

17. Ground No.4 is regarding related party filter at 25% applied by the TPO as against a filter of 15% applied by the assessee. The learned AR at the time of hearing submitted that the assessee does not wish to press Ground No.4. The learned DR has no objection if Ground No.4 is dismissed as not pressed. Accordingly, Ground No.4 of assessee is dismissed, being not pressed.

18. Ground Nos. 5 & 6 are regarding treating deferred receivables as international transaction and adjustments made by the TPO on notional interest. The learned AR of the assessee has submitted that an identical issue has been considered by this Tribunal in assessee's own case for the A.Y 2016-17 and thus, prayed that the TPO/Assessing Officer may be directed to consider the interest on the deferred receivables @ 6% after allowing a standard credit period of 60 days.

19. On the other hand, the learned DR has relied upon the orders of the authorities below.

20. We have considered the rival submissions as well as the relevant material available on record. At the outset, we note that an identical issue has been considered by this Tribunal in assessee's own case for the A.Y 2016-17 in Para 16 which reads as under:

“16. We have heard the rival arguments and perused the material available on record. Admittedly, this Tribunal in the case of Satyam Ventures Engineering Services Vs. ACIT, Zeta Interactive Systems India Private Limited, M/s. Apache Footware India Private Limited etc has decided the issue in favour of the Revenue by holding that the SBI bank rate of 6% with a credit period of 60 days is to be applied for determining the interest on delayed trade receivables. In the present case, says the assessee has agreed for application of has very deposited of 6% for benchmarking the interest on trade receivable, therefore we don't want to decide the issue and accordingly direct the AO /TPO to apply the SB rate of 6% to the transaction in dispute for with a credit. 60 days. In the light of the above the issue is decided in favour of the assessee and against the revenue.”

21. To maintain rule of consistency, this issue is remanded to the record of the Assessing Officer/TPO for applying savings Bank rate of 6% on the deferred receivables after allowing credit period of 60 days. This issue is partly allowed.

22. Ground No.7 is regarding considering foreign currency exchange fluctuation and gain as operating in nature. At the time of hearing the learned AR of the assessee has stated at Bar that the assessee does not wish to press this ground. The learned DR has no objection, if Ground No.7 is dismissed as not pressed. Accordingly, ground No.7 of the assessee is dismissed, being not pressed.

23. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 25th November, 2024.

Sd/-

Sd/-

(MANJUNATHA, G.) ACCOUNTANT MEMBER	(VIJAY PAL RAO) VICE-PRESIDENT
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Hyderabad, dated 25th November, 2024

Vinodan/sps

Copy to:

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3	Pr. CIT – Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order