

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

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.2117/Bang/2024
Assessment year: 2020-21

Hydro BS India Private Limited, Nos.201-202, Municipal Nos. 29/14 & 29/15, 2 nd Floor, Prestige Meridian-1, 29, M.G. Road, Bangalore – 560 001. PAN: AAOCS 4633C	Vs.	The Deputy Commissioner of Income Tax, Circle 3(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Harsha, CA
Respondent by	:	Dr. Divya K J, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	14.07.2025
Date of Pronouncement	:	04.09.2025

ORDER

Per Prashant Maharishi, Vice President

1. This appeal is filed by Hydro BS India Private Limited (the assessee/appellant) for the assessment year 2020-21 against the assessment order passed u/s. 143(3) r.w.s. 144C(13) r.w.s. 144B of the Income Tax Act, 1961 [the Act] dated 23.7.2024 by the Assessment Unit, Income Tax Department [the Id. AO] wherein the total income of the assessee is determined at Rs.1,51,48,690/- against the returned income of Rs.Nil as per return of income filed on 29.5.2021. In the assessment proceedings, transfer pricing adjustments of Rs.1,46,78,480/- is made as

per direction of the Id. Dispute Resolution Panel-1, Bengaluru [Id. DRP] dated 10.6.2024 wherein the assessee's objection against the draft assessment order passed u/s. 144C of the Act dated 29.9.2023 pursuant to the order of The DCIT, TP 1(3)(1), Bengaluru [Id.TPO] passed u/s. 92CA(3) dated 28.6.2023 proposing adjustment of Rs.2,27,76,555.

2. The assessee is aggrieved and in appeal before us raising the following grounds :-

- “1. The Final Assessment order of the DCIT-3(1)(1) is not justified in law and on the facts and circumstances of the case.
2. The Directions of the DRP are not justified in law and on facts and circumstances of the case.
3. As regards the DRP directions dated 10.06.2024:
 - 3.1. The Honourable DRP is not justified in confirming the TPO's action of invoking provisions of section 92C(3)(c) of the Income Tax Act.
 - 3.2. The Honourable DRP is not correct in stating that the assessee had not adopted appropriate filters justified i.e., adopting turnover filter between Rs. 1 crore & Rs. 200 crore, not adopting employee filter and not adopting 'income from core services > 75% of sale' filter, without duly applying its mind to the submission made by the Appellant and confirming the TPO's action of invoking provisions of section 92C(3)(c) of the Income Tax Act.
 - 3.3. The Honourable DRP has erred in upholding the companies selected by the TPO, without duly applying its' mind to the objections filed by the Appellant and without providing adequate reasons.
 - 3.4. The DRP is not justified in upholding the action of the TPO in making transfer pricing adjustment of Rs. 1,46,70,674/- with respect to [ow end ITES services provided by the Appellant to its' AE.

- 3.5. The DRP is not justified in upholding the TPO's argument that the turnover of the company will not affect comparability whereas the assessee's 'TES segment consists of low-end back-office support services and thereby upholding 2 companies i.e., Infosys BPM Limited and Tech Mahindra Business Services Ltd. selected by TPO which has turnover more than Rs. 200 crores as against the assessee turnover of Rs. 19.24 crores.
- 3.6. The Honourable DRP has erred in upholding the rejection of Scionspire Consulting Services (India) Pvt Ltd and MAA Business Solutions Pvt Ltd by TPO on the grounds that this company does not figure in the search matrix of the TPO whereas the Honourable DRP has accepted the grounds of Appellant of including M/s IServices India Pvt Ltd and Cheers Interactive India Pvt Ltd in the proceedings even though these companies are not part of search matrix of the TPO.
4. As regards the Order u/s 92CA(3) of Income Tax Act:
 - 4.1. The Learned TPO has erred in incorrectly rejecting Scionspire Consulting Services (India) Pvt Ltd and MAA Business Solutions Pvt Ltd selected by the Appellant on the basis of data not available in the database even though the annual report of the same was provided by the assessee.
 - 4.2. The Learned TPO has erred in rejecting Scionspire Consulting Services (India) Pvt Ltd and MAA Business Solutions Pvt Ltd selected by the Assessee when the same satisfy the test of comparability without duly applying their mind to the submissions made by the Assessee.
 - 4.3. The Learned TPO has erred in failing to deal with the objections of Appellant against the companies proposed by the Learned TPO and instead, he sought to deal with alien objections not at all raised by the assessee.
 - 4.4. The Learned TPO was wrong in changing his reasons for rejections of companies selected by the Appellant i.e., Scioinspire Consulting Services (India) Pvt Ltd which was rejected on the ground that it fails export filter in the show cause notice wherein it satisfies the export filter.

- 4.5. The Lower Authorities are not justified in failing to adopt the upper turnover filter of Rs. 200 crores that resulted in wrongful selection of following 2 companies selected by the TPO:
- 1) Tech Mahindra Business Services Ltd.
 - 2) Infosys B P M Services Pvt. Ltd.
- 4.6. The Learned TPO has erred in comparing companies who are having significant brand value and are not comparable to Assessee company who are captive service provider to its AEs.
- 4.7. The Learned TPO has erred in selecting Savitriya Technologies Pvt. Ltd. Ignoring extraordinary event such as merger with MYBMS Software Pvt Ltd has taken place during the year under consideration.
5. Without prejudice to the above the Learned Assessing officer computed the assessed income as Rs. 1,46,78,480 without considering the current year returned loss of Rs. 27,94,85,850 resulting in tax demand of Rs. 58,30,570/-.

For the above reasons and for such other reasons which may be allowed by the Honourable Members to be urged at the time of hearing, it is prayed that the aforesaid appeal be allowed.”

3. Appeal is delayed by 38 days delay due to non-service of the order as explained by assessee in its letter dated 19/11/2024 stating that order is served only on 10-9-2024, which is not disputed. Time limit for filing of appeal runs from the date of receipt of order and not from the date of order. Date of receipt of order is not disputed; hence appeal is admitted.
4. During the course of hearing, the Id. AR submitted that assessee is seeking exclusion of (i) Infosys BPM Ltd. & (ii) Tech Mahindra Business Services Ltd., (iii) Savitriya Technologies Pvt. Ltd. and inclusion of (i) Scionspire Consulting Services (India) Pvt. Ltd., (ii) MAA Business Solutions Pvt. Ltd.
5. The assessee submitted that ground Nos.1 & 2 are general in nature, ground No.3.1 & 3.2 are challenging the invocation of provisions of section 92C of

the Act and ground Nos. 3.3 & 3.4 are also general in nature, are not pressed, as no separate arguments are advanced, the same are dismissed.

6. Briefly stated the facts of the case show that assessee is a subsidiary of Hydro group providing ITeS services to its AE. It filed its return of income on 29.5.2021 at Rs. Nil. The assessee has entered into international transaction of ITeS services receivable from its AE of Rs.19,24,11,966/-. Therefore reference was made to examine Arm's length price of International transactions.
7. Assessee in its Transfer pricing Study Report [TPSR] benchmarked this international Transaction adopting Transactional Net Margin Method [TNMM] as the most appropriate method selecting the Profit level indicator [PLI] of operating profit to operating cost [OP/OC] ratio, selecting 17 comparable from Capitaline Plus & AceTP databases computing weighted average margin of the comparables considering 3 years financial statements from 6.54% to 14.85% being 35th & 65th percentile and computing the margin of the assessee to 10.62% stating that same is at arm's length.
8. The Id. TPO examined the search criteria, filters and the Accept/Reject matrix adopted by assessee. It was noted that the filter search criteria of the assessee of selecting companies whose turnover is Rs.1 to 100 crores is inappropriate with respect to upper turnover limit. The TPO also noted that assessee has not applied employee cost filter and income from core services filter and accordingly TP Study Report [TPSR] was rejected.
9. The Id. TPO carried out fresh search on the above basis and initially selected 12 comparables and after considering the objections of the assessee, selected final set of 17 comparables whose 35th percentile margin is 18.49% and 65th

percentile PLI is 25.38% computing the arm's length price [ALP] at Rs.21,51,88,521/- against the price received by the assessee of Rs.19,24,11,956/- proposed a shortfall adjustment of Rs.2,27,76,555/- . In the process the Id. TPO considered the comparables selected by the assessee and found that Scionspire Consulting Services (India) Pvt. Ltd. fails export filter and further MAA Business Solutions Pvt. Ltd. is not part of the search matrix of the TPO, therefore they were excluded.

10. The assessee filed objections before the Id. DRP. After the directions were issued on 10.6.2024, the Id. TPO was given a direction with respect to four comparable companies which were examined and order giving effect was passed. Based on this, a shortfall was computed at Rs.1,46,70,674/-. Accordingly final assessment order was passed on 23.7.2024 incorporating the above adjustment. This order is appealed against.
11. In the appeal of the assessee, the Id. AR submitted that assessee is a captive service provider to its AE, and its turnover is merely 11 crores. The assessee is compared with two giant companies viz., Infosys BPM Ltd. & Tech Mahindra Business Services Ltd. He referred to page 239 of PB to show that Infosys BPM Ltd. has huge turnover of Rs 4595 cr. which could not have been compared with the assessee company and further it has a huge brand value which could not have competed with the assessee company. He submitted that this was contested before the Id. DRP vide objection No.2.5. He further stated that similar is the case with Tech Mahindra Business Services Ltd. whose annual accounts are placed at page 204 of PB to show that it has a turnover of Rs.7036 crores. Thus, both the companies should have been excluded as they are not comparable with the assessee company having a turnover of only Rs.11 crores. It was submitted that the finding of

the Id. lower authorities that huge turnover does not have any impact on the margin, is a falsity. The turnover of the company gives it added strength to cover and bid for new markets across the geographies and further when the assessee is a captive service provider, naturally they are not comparable. He relied on several judicial precedents for this purpose.

12. The Id. DR extensively referred to the direction of the Id. DRP at para 2.1.15.5 submitting that in the software industry size has no influence on the margins earned by the company and economies of scale are relevant only in the companies which have substantial fixed assets. It was further stated that in the service industry, only human capital matters and for which appropriate filters have been applied by the TPO and accordingly both these companies could not have been excluded by the Id. lower authorities.
13. We have carefully considered the rival contentions and perused the orders of the Id. lower authorities and find that both these companies have huge turnover compared to the turnover of the assessee. It is alarming that assessee is providing captive service to its AE and further has meagre turnover of Rs. 11 crores which could not have been comparable with Infosys BPM Ltd. of Infosys group company having huge brand value and Tech Mahindra Business Services Ltd. having huge brand value of Mahindra group.
14. Thus the question is that whether higher turnover companies are comparable with companies having relatively small turnover. It is undisputed that lower turnover filter of Rs 1 Crore is accepted by assessee as well as the learned transfer pricing officer to remove insignificant companies from comparability analysis. Therefore turnover filter should be applied for comparability analysis or not. If higher and lower turnover filter is applied, it

truncates large number of comparable, by eliminating comparable which have fairly large turnover compared to the tested entity. Naturally, large turnover companies have economies of scale compared to lower turnover entity.

15. Para number 3.43 in OECD Guidelines on Transfer Pricing (2022) says that in practice, both quantitative and qualitative criteria are used to include or reject potential comparable. Examples of qualitative criteria are found in product portfolios and business strategies. The most commonly observed quantitative criteria are Size criteria in terms of Sales, Assets or Number of Employees. The size of the transaction in absolute value or in proportion to the activities of the parties might affect the relative competitive positions of the buyer and seller and therefore comparability. Naturally higher turnover multiple times also shows that comparable company has higher market share compared to the tested entity. Naturally, higher market share gives freedom of selling larger volumes even at strained margins. The various studies carried out by NASSCOM and Dun Bradstreet also IT(TP)A No.1681/Bang/2024 supports it. Though such studies have compartmentalised turnover filter of Rs. 1-200 hundred crores. Naturally in transfer pricing analysis lower turnover filter and upper turnover filter cannot be fixed and how to adopt the same depends upon the facts of each case looking at the turnover of the tested entity. In fact, the purpose of applying a filter is to have a manageable level of independent business concern having broadly similar level of turnover, intangibles, employees, and other assets. Guidance note issued by ICAI also advocates the same reasoning for adopting turnover filter.

16. In fact, the simplest way of explaining what an arm's-length price is how independent parties price a particular transaction therefore that is how related parties should also price it. To arrive at such an arm's-length price, economies of scale should be similar/ comparable. Therefore, the upper turnover filter is necessarily required to be employed for better determination of arm's-length price. Honourable Bombay High Court in case of Pentair Water India Pvt Ltd [TS-566-HC-2015(BOM)-TP] and Honourable Delhi High Court in Agnity Technologies [TS-189-HC-2013(DEL)-TP] has also accepted the fact that if the turnover of the comparable is multiple times compared to the turnover of the tested entity, such comparable company should be excluded from comparability analysis. Several decisions of the coordinate benches were also pressed before us wherein the upper turnover filter is upheld for comparability analysis. Further the issue before the Honourable Delhi High court in Chryscapital Investment Advisors (India) Pvt Ltd [TS-173-HC-2015(DEL)-TP] relied up on by the Id. TPO was with respect to super normal profits and not applicability of filters of Turnover.
17. This issue has been considered by the Hon'ble Karnataka High Court in *PCIT v. Softbrands India Pvt. Ltd. in 406 ITR 513* holding that giant companies cannot be compared with small size companies. As there is no dispute that turnover of these two comparable companies is more than 200 times of the turnover of the assessee company, naturally from the comparability analysis of ITeS services, those should be excluded.
18. Both these companies also have huge brand value as those belong to very large groups, which have different capabilities of influencing customers and getting niche advantage, so, not comparable with the small company like

assessee, who provides service to its holding company, does not need any leverage of brand, even if it has. Therefore, also same are excluded.

19. We have also examined the analysis made by the Id. TPO by considering the annual accounts of Wipro, Infosys and TCS limited. The claim of the Id. TPO is that increase in turnover did not impact margins. With respect to Infosys limited it says that with the increase in turnover of the company for the year 2002 to 2022 margins were hovering around 40 % only. In case of Wipro turnover increased from 2002-2022 to 20 times margins have reduced. In case of TCS, turnover of the company increased by 20 times, but margins hovered around 38%.
20. When above analysis looked at from the tables produced, wide variation in margin from 63.30 % to 29.25 % in case of Infosys, in case of Wipro limited from 62.20 % to 19.96 % and in case of TCS 76.43 % to 35.85 % for all these years were noted. But those variations were ignored by the Id. TPO and looked at the block of years, without justification profit variation in each of the years. Thus, the above analysis does not give any indication that increase in turnover does not have any impact on profitability. The purpose of upper turnover filter is to just minimize the size of comparable set, is not appreciated by Id. TPO. It is not denied that all these three comparable are comparable with each other!
21. Accordingly, we direct the Id. TPO to exclude the above 2 companies and then compute the shortfall. Accordingly ground No.3.5 of the appeal is allowed.
22. The assessee has also asked for inclusion of Scionspire Consulting Services (India) Pvt. Ltd. The Id. TPO rejected the same because it fails the export

filter. The issue was raised before the Id. DRP vide para 2.2.12. The Id. DRP has held that when the TPSR prepared by the assessee is rejected and the Id. TPO carried out fresh search, the comparable company not appearing in the search matrix of the TPO cannot be inserted as it amounts to cherry picking. The Id. AR submitted that as it is functionally comparable, it should be included.

23. The Id. DR supported the orders of Id. lower authorities.
24. We have carefully considered the rival contentions and find that the TPSR prepared by the assessee has been rejected by the Id. TPO. The Id. TPO carried out a fresh search by keyword search mentioned in para 9.2.1.1. The database selected by the TPO of Prowess & AceTP databases was not objected to. The search matrix and filters are also not objected to before us. It is also fact that the comparable suggested by the assessee is that it should be included but did not give any reason that in step of accept reject matrix above comparable is excluded or whether it was not there on selection of key words itself.
25. Inserting comparable without falling into the search matrix, steps of elimination at each step, amounts to cherry picking. It disturbs the methodology of deciding arm's length price of the international transactions. It may also happen that there may be many more comparable, which are like the suggested inclusion, then why also those should not be included. Then it will set the entire process to be carried out once again.
26. In view of this, it is not correct to include the comparable which was not part of search matrix of the Id. TPO. Naturally, that amounts to cherry picking. It was also not shown before us that in the Accept/Reject matrix of the TPO at

any point of search step this company was included. Accordingly, we find no infirmity in the direction of the Id. DRP in exclusion of the above company.

27. Similarly with respect to MAA Business Solutions Pvt. Ltd., this company was also not part of search matrix of TPO, and it was not shown that at any point of search process this company was falling into Accept/Reject matrix of the TPO. Accordingly, we find no infirmity in the direction of the Id. DRP and action of the Id. TPO in not including the above company.
28. The assessee also objected for not including iSN Global Solutions Pvt. Ltd. in the comparability analysis which was rejected by the TPO because it did not appear in the search matrix of the Id. TPO. For the similar reasons given in MAA Business Solutions Pvt. Ltd., we do not find any infirmity in not including the above comparable as it was not part of search matrix of the TPO.
29. Assessee has also challenged the exclusion of Savitriya Technologies Pvt. Ltd. Same was also not objected before the Id. TPO as well as before the Id. DRP. Before us the assessee challenges that there is a merger of some other company with the comparable company w.e.f. 1.4.2019 and therefore there is an extra-ordinary event.
30. We have considered this argument and find that as per Note No.34 w.e.f. 1.4.2019 there is a merger of MYBMS Software Pvt. Ltd. with the comparable company. However each merger could not result into an extra-ordinary event which will impact the margin of the comparable company. It was not shown to us that the amalgamated entity and amalgamating company has different businesses which makes the margin of the comparable company not comparable with the assessee company. In view of this, we do not find

any infirmity in the order of the Id. TPO in not excluding Savitriya Technologies Pvt. Ltd. from the comparability analysis. This fact is also evident from the Operating Profit margins of the comparable company which was 26.66%, 35.55% and 20.11% for the 3 years comparable data. For this year it is 26.66 % compared to 35.55 % in earlier year, this has decreased the margin. Merger of entities carrying similar business does not impact the margins but the different business merged may distort margin for that year. It is not shown that there is merger of two heterogenous activity carrying entities. Before us also, assessee could not show any extra-ordinary event of merger impacting the margins, hence we find no reason to exclude the above company.

31. As per ground no 5 assessee contends that it has not been given set off of the current year losses of Rs 27.94 Crs. We have heard the parties and examined the computation sheet which started computing income from the adjustments of ALP as business income and it did not consider the losses. Ld. AO is directed to verify the same and grant its set off in accordance with the law. Ground no 5 is allowed.
32. As no other grounds are pressed, so, as indicated above, the appeal of the assessee is partly allowed.

Pronounced in the open court on this 04th day of September, 2025.

Sd/-

(KESHAV DUBEY)
JUDICIAL MEMBER

Bangalore,
Dated, the 04th September 2025.

/Desai S Murthy /

Sd/-

(PRASHANT MAHARISHI)
VICE PRESIDENT

Copy to:

1. Appellant 2. Respondent
5. DR, ITAT, Bangalore.

3. Pr. CIT

4. CIT(A)

By order

Assistant Registrar
ITAT, Bangalore.