

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'A', BANGALORE**

**BEFORE SMT ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER
AND
SHRI ABRAHAM P GEORGE, ACCOUNTANT MEMBER**

**IT(TP)A No.1404(B)/2010
(Assessment year : 2006-07)**

M/s VeriSign Services India Pvt.Ltd.,
Summit No.6/B, 7th Main,
3rd Block, 80 Feet Road, Koramangala,
Bangalore 560-034

Appellant

PAN No.AAACL8712F

Vs

The Deputy Commissioner of Income-tax,
Circle-12(5), 14/3, 5th Floor, R.P.Bhavan,
Nrupathunga Road,
Bangalore-560 001

Respondent

**Assessee by : Shri Pravin Kishore Prasad, Advocate
Revenue by : Shri I.P.S.Bindra, CIT-DR-I**

Date of hearing : 14-10-2015

Date of pronouncement : 30-10-2015

O R D E R

PER SHRI ABRAHAM P GEORGE, AM:

In this appeal filed by the assessee directed against an assessment done on it u/s 143(3) r.w.s 144C of the IT Act, 1961('The Act') it has altogether taken nine grounds of which grounds 1,2,3 & 9 are general in nature needing no specific adjudication.

2. The learned counsel for the assessee at the outset submitted that he was pressing only ground nos.4.4, 4.5 and 4.6 out of the grounds raised on the Transfer Pricing issues accordingly, we dismiss ground nos.4.1,4.2,4.3 & 4.7 as not pressed. Ground nos.4.4 & 4.5 are concerned with selection of comparables taken by the lower authorities for benchmarking the pricing of the international transactions undertaken by the assessee with its Associated Enterprises (AE) during the relevant previous year. Ground no.4.6 is on the benefit of +/-5% as stipulated u/s 92C(2) of the IT Act. These grounds 4.4 to 4.6 are taken up together for disposal.

3. Facts apropos are that the assessee a wholly owned subsidiary of M/s LightSurf Technologies India Pvt.Ltd., USA had filed its return for the impugned assessment year on 29-11-2006 declaring an income of Rs.11,61,159/-. Since assessee had international transactions with its Associated Enterprises (AE) the issue of evaluating the pricing of such international transactions was referred to the TPO. The TPO has summarized the business profile of the assessee as under;

“ VeriSign Services India provides software design and development services to VeriSign Group, working as an independent contractor. As per the taxpayer, the software designed, developed, amended, tested or modified is the property of VeriSign Group and at no point of time, such ownership vests with VeriSign Services India either wholly or in part. The Company is an offshore development centre

to aid the parent company, which is primarily a provider of MMS Services, Picture-Message and Premium Content Delivery. VeriSign Services India receives a fixed mark-up on the costs incurred for the said services.

VeriSign Services India also provides sales and customer support services, which consists of presales services like database creation, customer presentations etc. and post sales services like customer support to VeriSign Group. VeriSign Services India is required to promote the products, participate in trade exhibitions and develop and protect the goodwill and reputation of the products. VeriSign Services India receives a fixed mark-up on the costs incurred for rendering such marketing support services. The other support services performed include public relations, marketing and customer support services”.

4. Financial results of the assessee for the relevant FY: 2005-06 read as under;

<i>Description</i>	<i>Amount</i>
<i>Operating Revenue</i>	<i>Rs.31,19,31,742/-</i>
<i>Operating Cost</i>	<i>Rs.28,19,42,969/-</i>
<i>Operating Profit(PBIT)</i>	<i>Rs.2,99,88,773/-</i>
<i>Operating Profit to Cost Ratio</i>	<i>10.64%</i>

5. Its segmental results and operating profit to cost ratio, reported by the learned TPO read as under;

<i>Description</i>	<i>Software development services</i>	<i>Marketing support services</i>
<i>Operating Revenue</i>	<i>Rs.30,34,90,270/-</i>	<i>Rs.84,41,472/-</i>
<i>Operating Cost</i>	<i>Rs.27,41,62,659/-</i>	<i>Rs.76,48,101/-</i>
<i>Operating Profit (PBIT)</i>	<i>Rs.2,93,27,611/-</i>	<i>Rs.7,93,371/-</i>
<i>Operating Profit to Cost Ratio</i>	<i>10.70%</i>	<i>10.37%</i>

6. International transactions with AE reported by the assessee in its audit report were as under;

<i>Contract software design & development services</i>	<i>Rs.30,34,90,270/-</i>
<i>Provision of marketing support services</i>	<i>Rs. 84,41,472/-</i>
<i>Purchase of fixed assets</i>	<i>Rs. 18,05,200/-</i>
<i>Recharge of expenses</i>	<i>Rs. 2,32,879/-</i>
<i>Interest paid/payable on loan from AE</i>	<i>Rs. 82,230/-</i>

7. The TPO found adjustment necessary only with regard to the contract software design and development services segment. Therefore, the issues in this appeal are also confined to this particular segment.

8. Assessee had selected TNM method in its TP study to justify its profit level and had used prowess and capital data base for selecting 44 comparables. It worked out a mean operating margin of 11% for such comparables without making any adjustment for working capital and 7% after such adjustment. As per the assessee since the average PLI and of

the comparables selected by it fell within +/- 5% of its own PLI, there was no necessity for any adjustment towards ALP.

9. However, the TPO did not accept the contentions of the assessee either with regard to the working of the PLI or with regard to selection of the comparables. As per the TPO comparables selected by the assessee did not satisfy the test of far analysis and other functional criteria. He therefore, accepted only three comparables out of the list provided by the assessee. He also accepted an additional comparable suggested by the assessee during the course of proceedings before him. The four comparables accepted out of assessee's list were M/s Aztec Software Ltd. M/s Accel Transmatics Ltd (Segment) M/s Mega soft Ltd., and SIP Tech. & Exports Ltd. Thereafter the TPO conducted his own study of the public data bases and zeroed in on 20 comparables including the four of the assessee. The comparables selected by the TPO and their average PLI read as under;

<i>Sl. No.</i>	<i>Company Name</i>	<i>Sales (Rs.Cr.)</i>	<i>OP. to Total cost%</i>
1	<i>Aztec Software Ltd</i>	<i>128.61</i>	<i>18.09</i>
2	<i>Geometric Software Ltd (Seg.)</i>	<i>98.59</i>	<i>6.70</i>
3	<i>Infosys Limited</i>	<i>9028.00</i>	<i>40.38</i>
4	<i>KALS Info Systems Limited</i>	<i>1.97</i>	<i>39.75</i>
5	<i>Mindtree Consulting Ltd</i>	<i>448.79</i>	<i>14.67</i>
6	<i>Persistent Ssystems Ltd</i>	<i>209.18</i>	<i>24.67</i>
7	<i>R Systems International Ltd (Seg.)</i>	<i>79.42</i>	<i>22.20</i>
8	<i>Sasken Communication Ltd (Seg.)</i>	<i>240.03</i>	<i>13.90</i>

9	<i>Tata Elxsi Ltd (Seg.)</i>	188.81	27.65
10	<i>Lucid Software Ltd</i>	1.02	8.92
11	<i>Mediasoft Solutions P.Ltd</i>	1.76	6.29
12	<i>R S Software (Ind.) Ltd</i>	91.57	15.69
13	<i>SIP Technologies & Exports Ltd</i>	6.53	3.06
14	<i>Bodhtree Consulting Ltd</i>	5.32	15.99
15	<i>Accel Transmatics Ltd (Seg.)</i>	8.02	44.07
16	<i>Synfosys Business Solutions Ltd</i>	4.49	10.61
17	<i>Flextronics Software Systems Ltd</i>	595.12	27.24
18	<i>Lanco Global Solutions Ltd</i>	35.63	5.27
19	<i>Megasoft Ltd</i>	56.15	52.74
20	<i>iGate Global Solutions Ltd (Seg.)</i>	527.91	15.61
	<i>Average PLI</i>		20.68%

He effected the margin of working capital adjustment of 2.24% on the mean PLI and arrived at adjusting the arithmetic mean PLI of 18.44%. Accordingly, he recommended the following adjustment being shortfall u/s 92CA of the IT Act, 1961.

Arms Length Price

<i>Operating cost</i>	<i>Rs.27,42,94,867/-</i>
<i>Arms Length Margin</i>	<i>18.44% of the operating cost</i>
<i>Arms Length Price(ALP) @118.44% of operating cost</i>	<i>Rs.32,48,74,840/-</i>

<i>Price shown in the international transactions</i>	<i>Rs.30,34,90,270/-</i>
<i>Shortfall being adjustment u/s 92CA</i>	<i>Rs.2,13,84,570/-</i>

9. When a proposal on the above lines was made to the assessee, assessee chose to move an application before the DRP. The DRP did not accept any of the contention raised by the assessee before it except for computation of operating margin of Ms/s Megasoft Ltd., On account of this the final addition made by the AO in the assessment came to Rs.2,12,19,994/-.

10. Now before us learned AR submitted that the additional grounds numbering five have been filed by the assessee. As per the learned AR such additional grounds were for exclusion of M/s Aztec Software Ltd. M/s Geometric Software Ltd (Seg.) Infosys Ltd, M/s Mindtree Consulting Ltd., M/s Persistent System Ltd., M/s Sasken Communication (Seg.) M/s Megasoft Ltd and iGate Global Solutions (Seg.). As per the learned AR out of these M/s Aztec Software Ltd., M/s Accel TRansmatics Ltd (Seg.) and M/s Megasoft Ltd. were a part of assessee's study, whereas others though were TPO selection, were assailed before lower authorities for exclusion on different criteria on filters. Learned AR also submitted that turnover of the following comparables exceeded Rs.200 Crores, but application of turnover filter was not put before the lower authorities.

a. iGate Global Solutions Limited

b. Infosys Limited

c. Mindtree Limited

d. Persistent Systems Limited

e. Sasken Communication Limited

f. Flextronics Software Systems Limited

For admitting the additional grounds learned AR placed reliance on the Special Bench decision in the case of DCIT Vs M/s Quark Systems Pvt. Ltd (2010) 42 DTR 0414.

11. Per contra, learned DR strongly objecting admission of above additional grounds submitted that in case these were admitted, the comparability of the concerned companies had to be referred back to the AO/TPO for verification fresh.

12. After considering the averments of the counsels with regard to admission of additional grounds, we find force in the contention of the learned AR that by virtue of Special Bench decision in the case of M/s Quark Systems Pvt. Ltd (Supra), assessee can raise additional grounds seeking exclusion of comparables selected by it or not objected by it before the lower authorities. However, the Hon'ble Punjab & Haryana High Court in (2011) 62 DTR 0182 had upheld the Special Bench decision in the case of M/s Quark Systems Pvt.Ltd., (Supra) specifically noting that the Special Bench had remitted the issue of comparability of such companies to the AO/TPO for verification afresh. Hence, we are admitting the additional grounds. However, the comparability of the companies

assailed in such additional grounds will be dealt by us, considering the judgment of the Hon'ble Punjab & Haryana High Court judgment in the case of CIT Vs M/s Quark Systems India (P) Ltd., (2011) 62 DTR 0182.

13. Learned counsel for the assessee submitted before us a chart which according to him, summarize the exclusions which were sought by the assessee from the list of comparables selected by the TPO and the decisions of the Co-ordinate Bench wherein similar companies were considered for exclusion, on which he was placing reliance.

14. Per contra, learned DR after going through the chart filed by the assessee, reiterated his contentions with regard to comparability of companies freshly sought for exclusion by the assessee. As per the learned DR, these had to be remitted back to the AO/TPO.

15. We have perused the orders and heard the rival contentions and also carefully gone through the chart submitted by the assessee and the decisions relied upon by the assessee. The decision mainly relied on by the assessee for exclusion of various companies listed by it in its chart is that of Co-ordinate Bench in the case of M/s ThoughtWorks Tech.(Ind.) Pvt. Ltd., Vs DCIT in IT(TP)A No.1326(Bang)/2010 dated 30-07-2015. On the strength of this order assessee is seeking exclusion M/s Aztec Software Ltd., M/s Geometric Software Ltd (Seg.) M/s Infosys Ltd., and M/s Kals

Info Systems Ltd., M/s Mindtree Consulting Ltd., M/s Persistent Systems Ltd., M/s Saskaen Communications (Seg.) M/s Tata Elxsi Ltd.,(Seg.) M/s Accel Transmatics Ltd (Seg.), M/s Flextronics Software Systems Ltd. (Seg.) M/s Megasoft Ltd and M/s iGate Global Solutions (Seg.). No doubt, the decision of the Co-ordinate Bench in the case of M/s ThoughtWorks (Ind.) Pvt. Ltd (Supra) was also for the very same assessment year and also in relation to software services development segment. Therefore, in our opinion, assessee is justified in relying on the above decision for seeking exclusion. The Co-ordinate Bench at para-6.3 of the above decision held M/s Aztec Software Ltd.,(Supra) and M/s Geometric Software Ltd (Seg.) to be not good comparables on account of application of RPT filter. M/s Infosys Ltd.(Supra) was directed to be excluded on application of turnover filter at para 6.2 of very same decision. M/s Kals Info Systems Ltd(Supra) was held to be functionally not comparable to a software development services provider at para 6.4 to 6.5 of the very same decision. M/s Mindtree Consulting Ltd and M/s Persistent System Ltd. excluded on application of upper turnover of Rs.200 Crores at para-6.2 of the very same decision. M/s Sasken Communication Ltd.(Seg.) was directed to be excluded for the very same reason. M/s Tata Elxsi Ltd. was found to be functionally not comparable at 6.4 to 6.5 of the same decision. M/s Accel Transmatics Ltd(Supra) was also found functionally not comparable to a software development services provider in the very same para. M/s Flextronics Software System Ltd (Supra) was directed to excluded applying

the turnover filter at para-6.2 of the same ruling. M/s Megasoftware Ltd(Supra) was directed to be excluded applying the RPT filter of 15% at para-6.3 of the very same decision. M/s iGate Global Solutions Ltd(Supra) was directed to be excluded by application of turnover filter again at para-6.2 of the same order. These paras 6.2, 6.3, 6.4 & 6.5 are reproduced hereunder;

"6.2 This Tribunal, in the case of Genesis Integrating Systems (India) P Ltd. vs. DCIT reported in (2012) 20 Taxmann.com 715(Bang.) has held that turnover is a reasonable filter to be adopted and has also prescribed the slabs of Rs.1 to 200 crores, Rs.200 to 500 Crores and Rs.500 and above for the purpose of adopting this filter. Respectfully following the above decision, we direct the TPO to exclude these companies from the final list of comparables.

6.3 Further, the assessee is also seeking application of RPT of more than 15%. We find that this Tribunal, in various decisions, has been holding that RPT filter of more than 15% is to be adopted for determining the ALP. The assessee has sought exclusion of the following companies on the ground of RPT of more than 15%:

Sl. No.	Name of the company	RPT on sales
1	Aztec Software Ltd.	17.77%
2	Geometric Software Ltd.	19.34%
3	Megasoft Ltd.	17.09%

As observed above, this Tribunal, in various other cases pertaining to the very same assessment year has taken a similar view. Respectfully following the same, we direct the AO to exclude these companies from the final list of comparable companies.

6.4 In addition to the above, assessee is seeking exclusion of the following companies on functional dissimilarity:

- 1. KALS Info Systems Ltd.*
- 2. Tata Elxsi Ltd. (seg.)*
- 3. Accel Transmatics Ltd. (Seg.)*

It is stated by the learned counsel for the assessee that the assessee had raised objections against these companies before the TPO as well as the DRP but the same has not been appreciated by the lower authorities. He relied upon various case-laws for exclusion of these companies on the ground of functional dissimilarity.

The learned departmental representative, however, supported the orders of the authorities below.

6.5 Having regard to the rival contentions and the material on record, we find that with regard to KALS Info Systems Ltd., even before the TPO, the assessee has claimed that it was functionally different as it was engaged in production of software products and similarly with regard to Accel Transmatics Ltd., the assessee has claimed that it was into software product as well as that it has income from sale of IP rights and further that related party transaction was more than 15%. As regards Tata Elxsi Ltd.(seg.), it was argued that it fails RPT filter and was also functionally different. The learned counsel for the assessee has relied upon the following decisions for exclusion of these companies:

- i. *M/s.Ariba Technologies India Pvt.Ltd. (ITA No.1179/Bang/2010)*
- ii. *Agile Software Enterprise Private Limited (ITA 1172/Bang/ 2010*
- iii. *EMC Data Storage Systems (India) Pvt. Ltd., (ITA No.1274/Bang/2010), and*
- iv. *Huawei Technologies India Pvt. Ltd.,(ITA No.1338/Bang/2010).*

In all these cases, the Tribunal had considered the functional dissimilarity of these companies with software development companies like the assessee and has held as under for exclusion of these companies”.

15. We also find that 15% as the threshold limit for applying RPT filter was laid down by the Co-ordinate Bench decision in the case of 24/7 Customer.com Pvt.Ltd Vs DCIT(2013) 140ITD 344. Similarly, Co-ordinate

Bench in the case of M/s Genesis Integrating System (Ind.) Pvt.Ltd., Vs DCIT (2011) 64 DTR 0225 had directed exclusion of companies, applying the turnover filter of 1 to 200 Crores.

16. However, out of the very many companies which prima facie have to be excluded on account of the decision of the Co-ordinate Benches in the case of M/s ThoughtWorks Tech.(Ind.) Pvt. Ltd (Supra), 24x7 Customer.com. Pvt. Ltd.,(Supra) and M/s Genesys Integrating System India Pvt.Ltd.,(Supra), we find that M/s Aztec Software Ltd., M/s Accel Transmatics Ltd.(Seg.) M/s Megasoft Ltd were part of assessee's own transfer pricing study. Further, vis-à-vis M/s Geometric Software Ltd.(Segment) M/s Mindtree Consulting Ltd., M/s Persistent Systems Ltd., assessee had not raise any objections before either the TPO or DRP against their exclusion. At the same time, we note that vis-à-vis M/s Aztec Software Ltd., and M/s Accel TransmaticsLtd., and M/s Megasoft Ltd., though it formed a part of assessee's own transfer pricing study, assessee had exclusion either before the TPO and/or the DRP seeking their exclusion citing the application of RPT filter and functional disparity. The DRP had rejected this. Considering all these, and the Co-ordinate Bench decision cited above, we direct exclusion of the following companies.

- a) *M/s Aztec Software Ltd.,*
- b) *M/s Infosys Ltd.,*
- c) *Kals Info SystemLtd.,*

- d) M/s Sasken Communications(Sg.)*
- e) M/s Tata Elxsi Ltd.,*
- f) Accel Transmatics Ltd (Segmental)*
- g)Flextronics Software Systems Ltd.,(Segmental)*
- h) Megasoft Ltd., and*
- i) iGate Global Solutions Ltd.,(Seg.)*

17. Comparability of M/s Geometric Software Ltd. (Segmental) M/s Mindtree Consulting Ltd. and M/s Persistent Systems Ltd., are remitted back to the file of the AO/TPO for consideration afresh in accordance with the judgment of Punjab & Haryana High Court in the case of M/s Quark Systems Ltd., (Supra) since their exclusion was not sought by the assessee before the lower authorities. Ordered accordingly.

18. Vide its ground no.5 to 8 assessee aggrieved on data link charges of Rs.16,55,375/- being excluded from the export turnover while calculating its deduction u/s 10A of the IT Act, 1961.

19. We find that by virtue of definition of export turnover given Explanation-2(iv) to Sec.10A of the IT Act, 1961, interpretation sought by the assessee cannot be accepted. However, its alternative contention for exclusion of such amount from the total turnover also, while calculating deduction u/s 10A of the IT Act, 1961 is reasonable in view of the Hon'ble

jurisdictional High Court in the case of CIT Vs M/s Tata Elxsi Ltd., (2012) 349 ITR 0098. Ground 5 to 9 are treated as partly allowed.

20. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on the 30th October, 2015.

Sd/-
(ASHA VIJAYARAGHAVAN)
JUDICIAL MEMBER

Place : Bangalore
Dated : 30-10-2015

am*

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

Sd/-
(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

By order

AR, ITAT, Bangalore