

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, CHENNAI**

श्री प्रमोद कुमार, लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष
**BEFORE SHRI PRAMOD KUMAR, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

अपील सं./I.T.A.No.1889/Mds/2016
निर्धारण वर्ष **Assessment Year : 2007-08**

Watanmal (India) Pvt. Ltd.
Unit- 4, 7th Floor, Crest Building,
Ascendas IT Park, CSIR Road,
Taramani,
Chennai - 600 113.

Vs. Assistant Commissioner of
Income Tax,
Corporate Circle 3(2),
Chennai.

[PAN: AAACW 6624B]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से /Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri T. Banusekar, CA.
: Shri S. Bharath, CIT

सुनवाई की तारीख/Date of Hearing

: 02.11.2016

घोषणा की तारीख/Date of Pronouncement

: 30.11.2016

आदेश / O R D E R

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The assessee has filed appeal against the order passed u/s 143(3) r.w.s. 147 r.w.s. 92CA(3) in pursuance of the Directions of the DRP Order No. F.No. 476/DRP-2/BLR/2015-16, dated 07.04.2016 u/s 144C(5) of the Income Tax Act. At the time of hearing Ld. AR has not pressed the ground nos. 3,4,5,6,7 and

the same are treated as dismissed and assessee has raised only ground no. 8 "For that two of the comparable companies chosen by the Assessing Officer are not compatible with the profile of the appellant company and are functionally different." At the time of hearing the Ld. AR has not pressed the comparable M/s. Adithya Birla Minacs Worldwide Ltd., in ground no.8 and only comparable M/s. Allsec Tech Ltd., chosen by the TPO is not compatible with the working of assessee company and prayed for excluding the said comparable.

2. The Brief facts of the case that the assessee company is engaged in business process of providing support services to its AE (Watanmal Boolchand & Co Limited Hongkkong) engaged in trading of FMCG/food products, sundries etc. and form part of the Watanmal Group operating in various countries and filed the Return of income on 22.10.2007 with total income of Rs. 37,02,530/- and the Return was processed u/s. 143(1) of the Act. Subsequently, there was survey operations u/s 133A of the Act on the business premises of the assessee and the Income Tax Department found that the assessee has international transactions and was not being remunerated at Arm's Length Price by the AE in respect of services of the assessee company. Further, the Assessing Officer recorded reasons for reopening of assessment and issued notice u/s.148 of the Act. In compliance to the notice, the assessee filed the letter dated 15.04.2014 requesting to treat return of income filed on 22.10.2007 as return in compliance to notice u/s.148 and the reasons for reopening of assessment was provided to the assessee and Ld. AR appeared from time to time and submitted the

information. The Ld. AO made reference u/s. 92CA of the Act to the TPO and the assessee filed report form 3CEB on international transactions. The Ld. TPO passed order u/s. 92CA(3) of the Act on 19.05.2015 by determining the Arm's Length Price of support services of the assessee company to its AE and made an upward adjustment of Rs. 36 lakhs towards the management fee and the Ld. AO has passed the draft assessment on 13.08.2015. Against the draft Assessment Order the assessee has filed objections in form 35A before the Dispute Resolution Panel (DRP). Subsequently, DRP rejected the objections and confirmed the disallowance of Ld. AO as in draft assessment order. Finally, the Ld. AO passed assessment order u/s. 143(3) r.w.s. 147 r.w.s 92CA (3) r.w.s 144C(5) of the Act on 05.05.2016 determining the assessed income of Rs. 73,02,530/-against which the assessee has filed appeal before the tribunal.

3. Before us, the Ld. AR argued on selection of comparables. The Ld. TPO based on the international transactions computed Arm's Length Prices (ALP) with upward adjustment of Rs. 36 Lakhs and dealt on the working system where the assessee company is engaged in providing support services to its AE in Hongkong. While determining ALP, the Ld. TPO rejected six comparables selected by the assessee and selected three comparable companies and calculated Arithmetic Mean at 27.58%. The assessee has filed submissions on the comparables and the Ld. TPO considered the submissions and excluded comparable company M/s. Apex Advanced Tech (P) Ltd., being an outsourcing company and is in ITES (Information Technology Enabling Services) provided by

US Company and also in the services of documentation, conversion and process outsource.

4. Where as, the assessee company is in logistic and business support services and The Ld. TPO accepted the assessee company's comparable M/s. Cyber Media Research Ltd and calculated Profit Level Indicator (PLI) at 19.33% and computed the ALP on services to the AE with upward adjustment. Further, the DRP observed that the Ld. TPO accepted the TNM method as Most Appropriate Method for ALP and confirmed the comparables selected by the Ld. TPO and rejected the objections of the assessee.

5. The Ld. AR argued that the assessee company wants to exclude the comparable selected M/s. Allsec Tech Ltd. The Ld. AR emphasised that the assessee company is in support services to its AE at Hongkong and chosen TNM method as the most appropriate method for determining ALP. The Ld. TPO determined PLI at 9.12% as against at 10.29% of the assessee company, further PLI of comparables selected by the assessee company worked out at 15.44% were as the Ld. TPO selected three comparables M/s. Cyber Media research Limited, M/s. Allsec tech Ltd., and M/s. Adithya Birla Minacs Worldwide Ltd., and calculated average PLI at 19.33% and made upward adjustment of Rs. 36 Lakhs. The Ld. AR vehemently contested to exclude comparable M/s. Allsec Tech Ltd. which was formed in the year 1998 with expertise in providing business process solution in various industries and also render the services of HR outsourcing.

Whereas, the assessee company is rendering logistic services, sourcing services and sales services and accounting services to its AE at Hongkong and these services are not rendered by the M/s. Allsec Tech Ltd. and prayed for excluding the said comparable and submitted profile of the comparable company.

6. Contra, the Ld. DR objected to the exclusion of comparable and relied on the DRP Order.

7. We heard the rival submissions and perused the material on record and found that the comparable company M/s. Allsec Tech Ltd., is in HR outsourcing, mortgage processing, voice intelligence and financial processing services and anti money laundering services.

8. Whereas, the assessee company does not render any of the services rendered by M/s. Allsec Tech Ltd. which also provides service in the area of anti-money laundering to the financial institutions to proactively detect fraud and customer authenticity. The assessee company profile and functions are different from M/s. Allsec Tech Ltd., We considering the facts and material on record are inclined to accept the contentions of the Ld. AR on comparable Allsec Tech Ltd., as the functions of the company differ from the assessee company on services. Hence, the Allsec Tech Ltd. company cannot be considered as a comparable for determining the ALP, and we direct the TPO to exclude three comparable company and allow the ground of the assessee.

9. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced on Wednesday, the 30th day of November, 2016 at Chennai.

Sd/-

(प्रमोद कुमार)

(PRAMOD KUMAR)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 30th November, 2016

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF