

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

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER
AND
SMT ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER**

**ITA No.1453 (Bang) 2010
(Assessment years : 2006-07)**

M/s Tyco Electronics Corpn. India Pvt. Ltd.
TE Park, 22B, Doddenakundi 2nd Phase Industrial Area,
Whitefield Road,
Bangalore - 560048
PAN No.AABCT7374C

Appellant

Vs

The DCIT, LTU,
Bangalore

Respondent

**Assessee by : Shri P.K.Prasad, CA & Shri Umashankar, CA
Revenue by : Miss Neera Malhotra, CIT DR**

**Date of hearing : 17-10-2016
Date of pronouncement: : 03-11-2016**

ORDER

PER SHRI A.K.GARODIA, AM

This appeal is filed by the assessee and it is directed against the assessment order passed on 01.10.2010 u/s 143 (3) r.w.s. 144 C of the IT Act, 1961 for A. Y. 2006-07.

2. The Grounds raised by the assessee are as under:-

"The grounds mentioned herein are without prejudice to one another.

General grounds

1.That the order of the learned Deputy Commissioner of Income Tax, Large Tax Payers Unit, Bangalore ('Assessing Officer' or 'AO') to the extent prejudicial to the Appellant, is bad in law and liable to be quashed.

2.That the Appellant craves leave to add to and/or to alter, amend, rescind, modify the grounds herein above or produce further documents before or at the time of hearing of this Appeal.

Transfer Pricing Related

3. That the learned DRP erred in not appreciating the fact that the Appellant had prepared the TP documentation bona fide and in good faith in compliance with the Act and Income tax Rules, 1962 ('the Rules') and selected the comparable uncontrolled companies based on the detailed Functional Asset and Risk ('FAR') analysis performed with due diligence, following a methodical and consistent benchmarking process in respect of various international transactions with associated enterprises.

4. That the learned DRP erred both in facts and law in making an adjustment (enhancement in the manufacturing segment) to the transfer price of the Appellant by Rs. 262,599,834 holding that the international transactions do not satisfy the arm's length principle envisaged under the Act and in doing so, grossly erred in:

(a) Not considering the Appellant's contentions/arguments/evidentiary data put forward during the course of the assessment proceedings, and in not appreciating the fact that the reasons for the low profitability in the manufacturing segment were due to business reasons and not arising from the international transactions undertaken by the Appellant with its Associated Enterprises.

(b) Rejecting the profit level indicator, as selected by the Appellant under the Transactional Net Margin Method, for arbitrary reasons, and thereby going against general Transfer Pricing principles.

(c) Applying multiple year/prior year data for comparable companies while determining arm's length price.

(d) Using data of comparables as at the time of assessment proceedings, instead of that available as on the date of preparing the TP documentation for comparable companies while determining arm's length price.

(e) That the learned DRP erred in including companies in the comparability analysis which are different from the Appellant in functions, asset base and risk profile.

(f) That the learned DRP erred in rejecting companies similar to the Appellant in functions, asset base and risk profile while performing comparability analysis.

5. That the learned DRP erred in arbitrarily adopting and imposing filters for arriving at the 9 comparable companies in the manufacturing segment.

6. That the learned DRP erred in making an adjustment to the appellant's entire sales, which included even third party sales and thereby going against settled principles of transfer pricing that an analysis of determining the arm's length price should be restricted

to the related party transactions undertaken by the appellant with its Associated Enterprises and not to the company as a whole.

7. That the ld.DRP erred in concluding that the amended proviso to sec.92C(2) of the Act under Finance (No.2) Act, 2009 would be applicable for assessment year 2006-07 and in not appreciating that even if the arm's length price fails outside the 5% tolerance and the adjustment would have to be reckoned after allowing the benefit of +/-5% variation as provided in proviso to Sec.92C(2) of the Act, while determining the arm's length price.

Other than Transfer pricing related

8. (a) That the ld.AO erred in treating software expenses amounting to Rs.4,116,495/- as capital in nature.

(b) That the ld. AO erred in proposing to disallow software expenditure amounting to Rs.1,646,598/- (after allowing depreciation at the rate of 60% of Rs.2,469.897 on total expenses of Rs.4,116,495/-) in the computation of total income

9. That the ld., AO erred in not allowing the deduction claimed under Chapter VIA amounting to Rs.100.000

10. (a) That the learned AO erred in computing the interest under section 234B without considering the provisions of this section.

(b) That the AO erred in adjusting the interest due under section 234C against the self assessment tax in arriving at the tax liability on which interest is to be computed under section 234B.

11. The ld. AO erred in not considering the extension in due for payment of the fourth instalment of advance tax and consequently, computing higher interest under section 234C”.

3. It is submitted by the ld.AR of the assessee that ground no.1,2,3,4c,4d and 7 are general and ground no.4b is not pressed and ground no.11 is consequential. Accordingly, ground no.4b is rejected as not pressed and it is held that no separate adjudication is called for regarding general and consequential grounds noted above.

4. Regarding remaining ground no.4a,4e,4f and 5 to 7 in respect of TP issues and ground no.8 & 9 in respect of Corporate Tax issues, it is submitted by the ld. AR of the assessee that these issues should be restored back to the file of the AO/TPO/DRP because the order of DRP is very cryptic and without any reasoning.

5. The ld. DR of the revenue supported the orders of the authorities below.

6. We have considered the rival submissions. We find that on page-6 & 7 of DRP' order, the DRP has noted various facts and various objections of the assessee and thereafter, the issue was decided by the DRP in one line which is re-produced herein below;

“ The panel is of the view that the filters adopted by the TPO are very reasonable and the objections of the assessee cannot be accepted”.

7. From the above finding of the DRP, it is very clear that the order of the DRP is very cryptic and without any reasoning and therefore, we find force in the submissions of the ld. AR of the assessee that the entire issue should be restored back to the file of the AO/TPO/DRP for fresh decision. Hence, we set aside the order of the AO and restore the matter back to his file for a fresh decision after allowing adequate opportunity of being heard to the assessee.

8. In view of our above decision, no adjudication is called for on merit of any of the issues involved in this appeal.

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

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(SMT ASHA VIJAYARAGHAVAN
JUDICAL MEMBER

Place: Bangalore:
D a t e d : 03.11.2016
am*

Copy to :

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

Sd/-
(A.K. GARODIA)
ACCOUNTANT MEMBER

By order

AR, ITAT, Bangalore

1.	Date of Dictation
2.	Date on which the typed draft is placed before the dictating Member
3.	Date on which the approved draft comes to the Sr. P. S.
4.	Date on which the order is placed before the dictating Member for pronouncement
5.	Date on which the order comes back to the Sr. P.S.
6.	Date of uploading the order on website
7.	If not uploaded, furnish the reason for doing so.....
8.	Date on which the file goes to the Bench Clerk
9.	Date on which order does for Xerox & endorsement
10.	Date on which the file goes to the Head Clerk.....
11.	The date on which the file goes to the Assistant Registrar for signature on the order.....
12.	The date on which the file goes to the dispatch section for dispatch of the Tribunal order.....
13.	Date of dispatch of order.....