

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

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER  
AND  
SHRI A. K. GARODIA, ACCOUNTANT MEMBER**

**IT (TP) A No.457(Bang) 2015  
(Assessment year : 2010-11)**

The Deputy Commissioner Income Tax,  
Circle-7(1)(2),  
Nrupathunga Road,  
Bangalore

Appellant

**Vs**

M/s Yodlee Infotech Pvt.Ltd.,  
1<sup>st</sup> Floor, Mercury (2B) Block, Prestige Techno Park,  
Marathalli Sarjapur Ring Road,  
Kadubeesanahalli,  
Bangalore-560 103  
**No.AACY1273E**

Respondent

**And**

**IT (TP) A No.441-(Bang) 2015  
(Assessment year : 2010-11)  
(By Assessee)**

**Revenue by: Mrs Neera Malhora, CIT  
Assessee by: Shri Vikram Vijayaraghavan, Advocate**

**Date of hearing : 27-06-2016  
Date of pronouncement: : 27-07-2016**

**ORDER**

**PER SHRI A.K.GARODIA, AM**

These are cross appeals filed by the assessee and the revenue which are directed against the assessment order passed by the AO u/s 143 (3) r.w.s.144C of the IT Act, 1961 dated 30-01-2015, as per the directions of the DRP.

2. The grounds raised by the revenue are as under;

*“1) The order of the learned DRP is opposed to law and the facts and circumstances of the case*

*2) The learned DRP erred in holding that the size and turnover of the company are deciding factors for treating a company as a comparable and accordingly erred in excluding M/s. E- clerk Services Ltd and Infosys BPO Limited as comparables.*

*3) The learned DRP erred in excluding uncontrolled comparables having turnover more than Rs. 200 crores in the absence of Turnover criterion prescribed in Rule 10B of Income Tax Rules and also there being no correlation between turnover and profit margin.*

*4) The learned DRP has erred in directed the TPO to grant risk adjustment of 1 % based on the decision of the IT AT, Hyderabad in the case of Hello Soft Pvt Ltd .*

*5) The learned DRP erred in directing the AO to follow the ratio of the Hon'ble Court in the case of Tata Elxsi Limited 349 ITR 98 and exclude Communication and travel expenses incurred in foreign currency from the total turnover also while computing the deduction u/s 10A of the I.T. Act as the decision of the High Court is binding, without appreciating the fact that there is no provision in section 10A that such expenses should be reduced from the total turnover also, as clause (iv) of the explanation to section 10A provides that such expenses are to be reduced only from the export turnover.*

*6) The learned DRP erred in not appreciating the fact that the jurisdictional High Court's decision in the case of Tata Elxsi Limited 349 ITR 98 has not been accepted by the department and an appeal has been filed before the Hon'ble Supreme Court.*

*7) The Hon'ble DRP has erred in applying 0% RPT. The order of the Hon'ble DRP is in itself contradictory. It has discussed why 0% RPT should not be taken on the other hand the Hon'ble DRP itself has directed the TPO to adopt the same.*

*8) For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the DRP be reversed and that of the AO be restored.*

9) *The appellate craves to leave, to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of appeal.*

3. The grounds raised by the assessee are as under;

“Based on the facts and circumstances of the case and in law, Yodlee Infotech India Private Limited (hereinafter referred to as "Appellant"), respectfully craves leave to prefer an appeal against the appeal order passed by the learned Assessing Officer [hereinafter referred to as the "learned AO"] under section 143(3) read with section 144C of the Income-tax Act, 1961 ("the Act") on the following grounds:

That on the facts and circumstances of the case and in law,

1.The learned AO, based on directions of the Hon'ble DRP, erred in assessing the total income at Rs. 3,65,49,702 as against returned income of Rs. 5,15,771 computed by the Appellant;

**Transfer Pricing Adjustment**

On the facts and in the circumstances of the case and in law:

2.The learned AOI Transfer Pricing Officer ("TPO") has erred in law and facts in confirming the addition made by the AOITPO to the total income of the Appellant on account of adjustment in the arm's length price of the provision of software development services transaction entered by the Appellant with its Associated Enterprise ("AE");

3.The learned AOI TPO erred, in law and in facts, by not accepting the economic analysis undertaken by the Appellant in accordance with the provisions of the Act read with the Income- tax Rules ("Rules"), and conducting a fresh economic analysis for the determination of the ALP in connection with the impugned international transaction and holding that the Appellant's international transaction is not at arm's length;

4.The learned AOI TPO erred, in law and in facts, by determining the arm's length marginal price using only FY 2010-11 data which was not available to the Appellant at the time of complying with the transfer pricing documentation requirements;

5.The learned AO/TPO erred in rejecting certain comparable companies by applying the following quantitative and qualitative filters:

a.The learned AO/TPO erred, in law and in facts, by rejecting certain comparable companies identified by the Appellant for having different accounting year (i.e. companies having accounting year other than March 31 or companies whose financial statements were for a period other than 12 months);

b.The learned AO/TPO erred in rejecting certain comparable companies identified by the appellant on the ground that the comparables were having different accounting year (other than March 31 or companies whose financial statements were for a period other than 12 months); and

c. The learned AO/TPO erred in rejecting certain comparable identified by the appellant using export earnings greater than 75% of the sales as a comparability criterion.

6.The Hon'ble DRP erred, in law and in facts, by suo-moto modifying the related party transactions ("RPT") filter of 'more than 25 percent' to 'equal to 0 percent' and thereby rejecting certain companies, which otherwise were passing the filter of RPT < 25 percent applied and not disputed by both the Appellant and the AO/TPO

7.Without prejudice and consequential to the above ground, the following company rejected based on this filter are to be rejected based on the following reasons:

a)M/s ICRA Technoanalytics Limited is functionally different to Yodlee India and is not a pure software development service provider since it engaged in the sale of software products as well;

8.The learned AO/TPO has erred, in law and in facts, by rejecting certain comparable companies identified by the Appellant using employee cost greater than 25% of the total revenues as a comparability criterion in determining the arm's length price of the software development services transaction;

9.The learned AO/TPO has erred, in law and in facts, by accepting I rejecting companies based on unreasonable comparability criteria;

Companies rejected by TPO based on unreasonable comparability criteria

*Companies having RPT transactions to sales in excess of 0%*

- a)Akshay Software Technologies Limited
- b)Saven Technologies Limited
- c)Cat Technologies Limited
- d)Evoke Technologies Pvt Ltd

*Companies having forex earnings less than 75%*

- e)Cigniti Technologies Limited
- f)Maveric Systems Ltd

*Companies rejected for having a different Financial Year Ending*

- g)Helios & Matheson Information Technology Ltd
- h)Caliber Point Business Solutions Limited

*Companies rejected for having employee cost greater than 25%*

- i) CG-VAK Software and Exports Limited

*Companies rejected for having export sales more than 75% export sales*

- j) Goldstone Technologies Limited

*Companies rejected for financial irregularities*

k) Sat yam Computer Services Ltd

*Other reasons*

l) Silver Line Technologies Limited

m) R Systems International Ltd

Company accepted by TPO based on unreasonable comparability criteria

a)M/s Kals Information Systems Ltd which was rejected by the Tribunal in the Appellant's own case for A Y 2009-10

Without prejudice to the above ground, the Appellant wishes to reserve the right to add comparables to the above list and also *take up* different reasons for argument

**General Grounds**

10.The learned AO erred, in law, and in facts, in initiating penalty proceedings u/s 271(1)(c) of the Act; and

11.The learned DRP erred in upholding the action of the learned AO in levying interest of Rs.1 ,313,412 and RS.130,412 under section 2348 & 234C of the Income Tax Act, 1961, respectively.

The Appellant submits that each of the above grounds is independent and without prejudice to one another.

The Appellant craves leave to add, alter, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal, so as to enable the Hon'ble Tribunal to decide on the appeal in accordance with the law".

4. It was agreed by both sides that DRP has applied 0% RPT filter, whereas this is the settled position by now that the RPT filter should be applied at the rate of 15% and in this view of the matter, it was agreed by both sides that the entire matter may be restored back to the file of the AO/TPO for a fresh decision by applying RPT filter of 15% because by changing this RPT filter from 0% to 15%, several new comparables will have to be considered which are excluded by the DRP by applying 0% filter and in that event, those comparables have to be examined on other aspects. It

was also submitted by the ld. AR of the assessee that if the matter is restored back to the file of the AO/TPO, then such restoration should be with the direction to reconsider all the comparables selected by the assessee but rejected by the AO/TPO.

5. We have considered rival submissions and have gone through the orders of the authorities below and in view of the factual and legal position as discussed above, we feel that in the facts of the present case, where the DRP has applied 0% RPT filter and as per the settled position of law by now, the RPT filter should be applied at the rate of 15%, we set aside the order of the AO/TPO and restore back the matter to the file of the AO/TPO for a fresh decision by applying RPT filter of 15%. We also hold that since the matter is going back to the file of the AO/TPO and much development has taken place in the legal position on the TP issue, now the entire matter should be re-examined and decided afresh by the AO/TPO as per the present legal position, which may result into fresh consideration of those comparables which were rejected earlier for some reasons.

6. In the result, both the appeals of the assessee and the revenue are allowed for statistical purposes.

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

**(SUNIL KUMAR YADAV)**  
**JUDICIAL MEMBER**

Bangalore:

D a t e d : / 07/2016

**am\***

**(A.K. GARODIA)**  
**ACCOUNTANT MEMBER**

**Copy to :**

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

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.....