

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER
AND
SHRI NARENDRA KUMAR CHOUDHURY, JUDICIAL MEMBER

IT(TP)A No. 622/Bang/2013
Assessment year : 2008-09

Deputy Commissioner of Income Tax, Circle-11(1), Bangalore	Vs.	M/s. Amba Research (India) P. Ltd., 12 th Floor, Concorde (Tower C), UB City, Bangalore PAN: AAECA9391N
APPELLANT		RESPONDENT

Revenue by	:	Dr. G. Manoj Kumar, Addl. CIT
Assessee by	:	Shri Chavali Narayan, CA

Date of hearing	:	16-03-2016
Date of Pronouncement	:	18-03-2016

ORDER

Per B. Ramakotiah, Accountant Member

This appeal is preferred by Revenue aggrieved on the order of Ld. Commissioner of Income Tax(Appeals)-IV, Bengaluru dated 25-02-2013. Revenue has raised the following grounds:

"2. The learned CIT(A) erred in rejecting the diminishing revenue filter used by the TPO to exclude companies that do not reflect the normal industry trend.

3. The learned CIT(A) erred in excluding M/s. Infosys BPO Ltd., Wipro Ltd (Seg) as comparables in the case of taxpayer holding that the size and turnover of the company are deciding factors for treating a company as a comparable.

4. The Ld.CIT(A) erred in excluding Aditya Birla Minacs Worldwide Ltd., Coral Hubs Ltd., Eclerx Services Ltd., Jindal Intellicom Pvt. Ltd., Mold-Tek Technologies Ltd., Allsec Technologies Ltd., from the list of comparables

on the basis of Abnormal profit without defining what constitutes abnormal profit filter and how the same is determined.

5. The Ld.CIT(A) has erred in not appreciating that the different year ending filter applied by the TPO is necessary to exclude companies which do not have the same or comparable financial cycle as the tested party.

6. The learned CIT(A) on the facts and in the circumstances of the case, erred in rejecting M/s. Accentia Technologies Ltd., as a comparable in the case of the taxpayer, holding that events of acquisitions and amalgamations has impacted its profitability.

7. The learned CIT(A), on the facts and in the circumstances of the case, erred in directing the AO to delete M/s. Genesys International Corporation Ltd., from the final set of comparables in the ITES segment.

8. The learned CIT(A) on the facts and in the circumstances of the case, erred in holding that the set of 10 companies listed by him should be considered for determination of average margin of companies and appropriate working capital adjustment should be provided.

9. The learned CIT(A) on the facts and in the circumstances of the case, erred in holding that the foreign exchange loss/gain is operating in nature without appreciating the fact that such loss/gain though attributable to the operating activity is not derived from the operating activity.

10. The CIT(A) erred in allowing the assessee's appeal on the issue of deduction under section 10A holding that the action of the AO cannot be sustained. The CIT(A) erred in holding that the decision in the Tata Elxsi 349 ITR 98 (Kar) is squarely applicable to the facts of the case and the Hon'ble jurisdictional High Court's decision is binding, notwithstanding the appeal pending in the Hon'ble Supreme Court.

11. The CIT(A) erred in directing the AO to exclude from the total turnover telecommunication and travel expenses that are already excluded from the export turnover and accordingly modify the computation of relief allowable under section 10A".

2. Briefly stated, assessee is engaged in providing IT enabled services (ITES) to Amba INC and is remunerated on cost plus mark up. After claiming deduction u/s. 10A, assessee filed return of income declaring total income of Rs. 2,63,171/-. However, it admitted income u/s. 115JB of the Act. As assessee has international transactions with AE, the matter was reported to TPO for analysis. TPO after rejecting assessee's TP study

undertook fresh search with various filters and after giving opportunity to assessee, finally selected the following 20 companies as comparables with an arithmetic mean of 24.75%.

Sl. No.	Company name	Margin as per TPO's order (%)
1.	Accentia Technologies Limited	41.77
2.	Acropetal Technologies Limited	35.30
3.	Allsec Technologies Limited	-13.29
4.	Asit C Mehta Financial Services Limited	9.42
5.	Caliber Point Business Solutions Limited	10.97
6.	Cosmic Global Limited	23.30
7.	Crossdomain Solutions Private Limited	27.03
8.	Datamatics Financial Services Limited	29.11
9.	e4e Haelthcare Business Services Private Limited	18.54
10.	Eclerx Services Limited	58.80
11.	Genesys International Corporation Limited	47.40
12.	Infosys BPO Limited	19.66
13.	Iservices India Private Limited	10.77
14.	Jindal Intelicom Private Limited	-10.29
15.	Mold-Tek Technologies Limited	96.66
16.	R Systems International Limited	4.30
17.	Spanco Telesystems and Solutions Limited	8.81
18.	Aditya Birla Minacs Worldwide Limited	-4.00
19.	Vishaal Information Technologies Limited	50.68
20.	Wipro Limited	30.05
	Arithmetic mean	24.75

TPO proposed an adjustment of Rs. 2,98,73,059/- on a receipt of Rs. 41.39 Crores. AO issued draft order accordingly. While completing assessment, the AO also reduced the claim u/s. 10A by an amount of Rs. 10,75,453/- after adjusting the 'export turnover' by reducing expenditure under the head telecommunications, freight and insurance. Assessee did not prefer objections before DRP but preferred an appeal before Ld.CIT(A).

Ld.CIT(A) after considering the detailed objections has given relief to assessee.

3. Ld.CIT(A) in his order has considered the following:

Transfer Pricing matters:

- i. The learned CIT(A) applied a turnover filter of Rs. 1 Crore to Rs. 200 Crores based on Bangalore Tribunal ruling in case of Genesys Integrating Systems (India) Pvt. Ltd., Vs. DCIT (ITA No. 1231(Bang)/2010) and excluded Infosys BPO Limited and Wipro Limited as comparables.
- ii. The learned CIT(A) rejected the application of diminishing revenue filter by TPO, as the filter focuses on the 'trend' of revenue earned by companies over a period of time and goes against the learned TPO's own stand that only current year's data should be used.
- iii. The learned CIT(A) rejected the application of different year ending filter by TPO (i.e., comparable companies having different account period from tested party).
- iv. The learned CIT(A) disagreed with the approach adopted by assessee to use consolidated financial statement for RPT calculation where the standalone revenues constituted more than 75% of the consolidated revenue.
- v. The learned CIT(A) upheld the TPO's approach of obtaining information under section 133(6) in order to consider contemporaneous data for the relevant year.

- vi. The learned CIT(A) agreed to assessee's contentions that, companies that had abnormally high profits should be rejected. Further, the learned CIT(A) suo-moto rejected companies with negative operating margin.
- vii. The learned CIT(A) agreed with assessee's contentions and rejected certain companies as functionally different.
- viii. The learned CIT(A) rejected the claim of assessee for the allowance of risk adjustment while computation of the margin.
- ix. The learned CIT(A) has directed the AO to re-compute the margins of both assessee as well as comparable companies listed by including the foreign exchange gains or losses in operational costs.

Corporate tax matters:

The CIT(A), following the judgment given by the jurisdictional High Court in the case of CIT Vs. Tata Elxsi Ltd., [349 ITR 98] (Kar) has directed the AO to reduce the telecommunication expenses, insurance expenses, freight and foreign currency travel expenses the communication expenses from both export turnover as well as total turnover and re-compute the deduction u/s. 10A.

3.1. Aggrieved on the order of Ld.CIT(A) present appeal was preferred by Revenue. Assessee is not in appeal as informed by Ld. Counsel.

4. Ground No. 2 on diminishing revenue filter, Ground No. 5 on different year filter, Ground No. 8 on margin/working capital adjustment are general in nature and these principles are followed by Ld.CIT(A) following

various Co-ordinate Bench decisions. So, there is no need to interfere with the same. These principles also are considered in the 'Accept / Reject Matrix' of various comparables which are dealt with separately.

5. The main contentions of Revenue are on rejection of various comparable companies adopting various filters. It was submitted that the Co-ordinate Benches in the following cases has considered each of the comparables and excluded them, so there is no need to reconsider them.

i. Symphony Marketing Solutions India Pvt. Ltd., in IT(TP)A No. 1316/Bang/2012;

ii. Flagstone Underwriting Support Services India Pvt. Ltd., in ITA No. 990/Hyd/2013.

6. We have considered the rival contentions and perused the orders of Ld.CIT(A) and documents placed on record. Even though Ld.CIT(A) has excluded the following comparables on various factors and filters, now the same comparables were examined in detail in various orders. The summary of reasons for exclusion are as under:

Companies	Reasons for exclusion
i. Infosys BPO Limited & ii. Wipro Limited (Seg)	These two companies are having turnover of multiple number of times and has huge brand value. They also have significant intangibles. In the case of Symphony vide para 24 & 25, these two companies are considered and excluded.
iii. Accentia Technologies Limited (Seg)	Merger of company effecting the profits.
iv. Eclerx Services Limited	Involved in data management services acquired companies during the year.
v. Genesys International Corporation Limited	Engaged in high end Global Information System Services, photo geometry.
vi. Mold-Tek Technologies Limited	Provides high-end structural engineering KPO services. Acquired company and demerger during the year.
vii. Coral Hubs Limited	Engaged in E-publishing business. Outsourced its portion of business.

We approve exclusion of the above comparables, following the analysis already done by the Co-ordinate Benches as stated above. Revenue's grounds on these comparables are accordingly rejected.

7. Revenue in Ground No. 4 has contested on the reason of excluding on the 'abnormal profits' on the following three companies:

- i. Aditya Birla Minacs Worldwide Limited;
- ii. Jindal INtellicome Pvt Limited,; and
- iii. Allsec Techonolgies Limited

As seen from the order of CIT(A) the reasons for rejection are that they are having 'negative margins'/ losses. Therefore, grounds raised by the Revenue are not maintainable. Hence, rejected.

8. Ground No. 9 is on the direction of Ld.CIT(A) in inclusion of Foreign Exchange Gain/Loss as operating in nature. This issue is held in favour of assessee and against Revenue in all the cases as the foreign exchange gain/loss is accruing as part of business activity and on the billing/billed amount. So, the same is rightly treated as part of operating income. The above principle is upheld in the following cases:

- i. CISCO Systems (India) P. Ltd., IT(TP)A No. 271/Bang/2014;
- ii. SAP Labs India P. Ltd., [44 SOT 156 (Bang)]; and
- iii. CIT Vs. Gem Plus Jewellery India [330 ITR 175 (Mum)].

The Revenue's ground is accordingly rejected.

9. Ground Nos. 10 & 11 is on the issue of exclusion of Telecommunication Charges for export turnover and total turnover. AO excluded the Telecommunications charges and Travelling charges from estimated turnover. Ld.CIT(A) following the Co-ordinate Bench decision has directed the AO to exclude the same from total turnover as well. This direction is as per the principles on the subject. The jurisdictional High Court in the case of CIT Vs. Tata Elxsi [349 ITR 98 (Kar)] has held that whatever is excluded from estimated turnover should also be excluded

from total turnover. The direction of Ld.CIT(A) is upheld. Grounds are rejected.

10. Ground Nos. 1, 12 and 13 are general in nature and does not require any adjudication.

11. In the result, Revenue's appeal is dismissed.

Pronounced in the open court on this 18th day of March, 2016

Sd/-
(NARENDRA KUMAR CHOUDHURY)
Judicial Member

Sd/-
(B. RAMAKOTAIAH)
Accountant Member

Bangalore,
Dated, the 18th March, 2016

TNMM

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.