

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : I-1 : NEW DELHI
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.1103/Del/2017
Assessment Year: 2007-08

Comverse Network Systems India Pvt. Ltd., DLF Building No.14, Tower-D, 18 th Floor, Sector 24 & 25A, DLF Cyber City, Gurgaon.	Vs	DCIT, Circle-1(1), Gurgaon.
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PAN: AABCC3425B

(Appellant)		(Respondent)
Assessee by	:	None
Revenue by	:	Shri Surender Pal, CIT, DR
Date of Hearing	:	05.03.2020
Date of Pronouncement	:	11.05.2020

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order passed u/s 143(3)/144C of the IT Act, relating to the A.Y. 2007-08.

2. None appeared on behalf of the assessee despite service of notice. It was seen from the order sheet entry that on earlier occasions also no one was appearing for the assessee. Therefore, this appeal is being decided on the basis of the material available on record and after hearing the ld. DR.

3. Facts of the case, in brief, are that the assessee filed its return of income on 31.10.2007 declaring the total income at Rs.4,04,26,450/- which was subsequently revised on 31.03.2010 claiming a loss of Rs.3,54,66,920/-. Since the assessee had entered into certain international transactions, the AO referred the matter to the TPO for determination of ALP of the international transactions entered into by the assessee. The TPO, vide order dated 19th January, 2016, suggested an upward adjustment of Rs.4,69,71,391/-. Accordingly, the AO passed the order making the addition of Rs.4,69,71,391/-.

4. The assessee approached the DRP, who, vide order dated 18.11.2016 directed the AO to recompute the transfer pricing adjustment after making the following revised calculations:-

ñ1. Exclude Helios & Matheson Information Technology Ltd, and Ishir Infotech Ltd. in the final list of comparable of Computer software development services if it fails the employee cost filter.

2. Income computed in this case includes the income of Comverse Kenan India Pvt. Ltd. also for the assessment year under consideration.

3. Examine the margins for any arithmetical errors, and make any corrections that are found to be necessary due to arithmetical errors.

4. Gain/loss from foreign exchange fluctuations is to be excluded from operating revenue/expenditure.

5. Give working capital adjustment using the methodology given in Annexure to Chapter III of OECD guidelines and apply SBI Prime Lending rate (as on 30th June of the relevant F.Y.) as the interest rate.ò

5. The AO, thereafter, vide order dated 26th December, 2016, passed the order revising the upward adjustment to Rs.2,03,72,092/-.

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

On the facts and circumstances of the case and in law, the learned Assessing Officer (AO) has erred in passing the assessment order under section 143(3) read with section 144C of the Income-tax Act, 1961 (the Act) after considering the adjustments proposed by the learned Transfer Pricing Officer (TPO) in his order passed under section 92CA(3) of the Act and subsequently confirmed by the Hon'ble Dispute Resolution Panel (DRP). Each of the ground is referred to separately, which may kindly be considered independent of each other.

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

Ground No. 1

The learned TPO / AO / DRP have erred in making an adjustment of INR 20,372,092 to the total income of the Appellant in respect of international transaction pertaining to provision of software development services, professional services and maintenance services (collectively software services) by the Appellant to its associated enterprises (AEs) (hereinafter referred to as impugned transaction).

Ground No. 2

The learned AO / TPO / DRP have erred in not accepting the economic analysis undertaken by the Appellant in accordance with the provisions of the Act read with the Income-tax Rules, 1962 (the Rules), and modifying the same for the determination of the Arm's Length Price (ALP) of the impugned transaction to hold that the same is not at arm's length.

Ground No. 3

The learned AO / TPO / DRP have erred in:

- (a) Not accepting the use of multiple year data, as adopted by the Appellant in TP documentation; and
- (b) Determining the arm's length margins / prices using data pertaining only to financial Year (FY) 2006-07 which was not available to the Appellant at the time of complying with the Indian TP documentation requirements.

Ground No. 4

The learned TPO / AO / DRP have erred, in rejecting certain comparable companies selected by the Appellant by applying inappropriate comparability criteria such as:

- a. Turnover less than INR 1 crore;
- b. Different accounting year;
- c. Employee cost less than 25 percent of total sales;
- d. Diminishing revenues trend; and
- e. Onsite revenues greater than 75 percent of export revenues.

Ground No. 5

The learned AO/TPO has erred by exercising powers assigned under section 133(6) of the Act to obtain information which was not available in the public domain and relying upon the same for comparability purposes.

Ground No. 6

The learned TPO/ AO/ DRP have erred in selecting certain companies (which are earning supernormal profits) as comparable to the Appellant to benchmark the impugned transaction.

Ground No. 7

The learned TPO/ AO/ DRP have erred in wrongly rejecting certain companies from and including certain companies to the set of final comparables for the impugned transaction on an ad-hoc basis, thereby resorting to cherry picking of comparable for benchmarking the impugned transaction.

Ground No. 8

The learned TPO/ AO/ DRP have erred in not making suitable adjustments to account for differences in the risk profile of the Appellant vis-a-vis the comparable companies.

Ground No. 9

The learned AO has erred in not granting full credit of prepaid taxes (i.e. advance tax, TDS and self-assessment tax) as claimed by the Appellant in its return of income.

Ground No. 10

The learned AO has grossly erred in initiating penalty proceedings under section 271(1)(c) of the Act.

The Appellant craves leave to add, 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.

The Appellant prays for appropriate relief based on the said grounds of appeal and the facts and circumstances of the case.ò

7. We have heard the ld. DR and perused the record. We find, the TPO, in the instant case, had proposed an upward adjustment of Rs.4,69,71,391/- which the ld. DRP in a very elaborate order, revised to Rs.2,03,72,092/-. We find, the ld. DRP while deciding the issue has directed the TPO to exclude Helios & Matheson Information Technology Ltd, and Ishir Infotech Ltd., from the final list of comparables of Computer software development services if it fails the employee cost filter. Further, they also directed the TPO to examine the margins for any arithmetical errors, and make any corrections. They have directed the TPO/AO to exclude the gains/loss from foreign exchange fluctuations from the operating revenue/expenditure and also directed to give working capital adjustment. Under these circumstances, we do not find any infirmity in the order of the DRP/AO to take any contrary view especially in absence of any distinguishable features brought before us. Accordingly, the order of the AO is upheld and the grounds raised by the assessee are dismissed.

8. In the result, the appeal filed by the assessee is dismissed.

The decision was pronounced in the open court on 11.05.2020.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 11th May, 2020.

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi