

आयकर अपीलिय अधिकरण  
मुंबई पीठ "एच", मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री एस. रिफौर रहमान, लेखाकार सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH " H ", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER

आअसं. 1905/मुं/2022 (नि.व. 2018-19)  
ITA NO.1905/MUM/2022(A.Y.2018-19)

Syngenta Services Private Limited,  
Office No.102, Amar Paradigm,  
Sr.No.110/11/3, Baner,  
Pune- 411 045

PAN: AATCS-3668-N

..... अपीलार्थी / Appellant

बनाम Vs.

The Asst. Commissioner of Income Tax  
Circle 3(2)(1), Mumbai.  
Room No.608, 6<sup>th</sup> Floor,  
Aaykar Bhavan, M.K.Road,  
Mumbai – 400 020

.....प्रतिवादी / Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Vishal Kalra, Advocate  
प्रतिवादी द्वारा/ Respondent by : Shri Rignesh Das, Sr.A.R  
सुनवाई की तिथि/ Date of hearing : 21/09/2023  
घोषणा की तिथि/ Date of pronouncement : 07/12/2023

आदेश/ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the assessment order dated 08/06/2022 passed u/s. 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 [in short 'the Act'].

2. The assessee has raised multiple grounds of appeal. Shri Vishal Kalra appearing on behalf of the assessee restricted his submissions to ground No.2.8 and ground No.2.10 of the appeal.

3. The Id.Counsel for the assessee submitted that the assessee is engaged in the business of providing Business Support Services to its Affiliate Companies in relation to finance, human resources and Corporate Information Technology. The assessee entered into international transactions with its overseas group companies for provision of business support services. To benchmark the international transactions with its Associated Enterprises (AEs) the assessee applied Transactional Net Margin Method(TNMM) as the most appropriate method. The same was accepted by the Transfer Pricing Officer (TPO). The Profit Level Indicator OP/OC 14.70% was also accepted by the TPO. However, the TPO did not accept the list of comparables selected by the assessee in Transfer Pricing (TP) study to benchmark its transactions. The TPO rejected all but one company from the list of comparables selected by the assessee and introduced eight new companies as comparable. Thus, the final list of comparables has nine companies having average margin of 22.68%. The assessee in ground No.2.8 of appeal is seeking exclusion of four companies selected by the TPO as comparable i.e.:

(i) **Domex E-data Pvt. Ltd.**(in short "Domex") – The Id. Counsel for the assessee contended that Domex is functionally different. The said company is engaged in providing knowledge processing services such as patent analysis, technical editing, deep indexing of scientific research papers, etc. The company is also providing assistance to the publishers and pharmaceutical companies to maximize the value of their information assets. To substantiate the activities carried out by Domex the Id.Counsel for the assessee referred to the Annual Report of the company at page 1 to 46 of the Paper Book. The Id.Counsel for the assessee further submitted that Domex is functionally

dissimilar as it is engaged in diversified activities, including software development with usage of very high end software. No segmental information of various service segment is available in the Annual Report. In the absence of segmental data it is difficult to attribute income earned by the company in different segments including BPO services, hence, the said company should be rejected as comparable. The Id.Counsel for the assessee referred to the decision in the case of Katerra Technology Services LLP vs. ACIT, 152 taxmann.com 397(Pune-Trib) to contend that in A.Y. 2018-19 Domex was held as not comparable to a Information Technology service provider company. He further referred to the decision in the case of CIT vs. PTC Software (I) (P) Ltd. 395 ITR 176(Bom) to contend that the companies that are KPO service providers should not be compared to BPO Service providers .

(ii) **MPS Ltd (“MPS”)**.- The Id.Counsel for the assessee submitted that the company is engaged in providing I.T based support services /digitalization services in the publishing industry which are in the nature of ITES. He further submits that MPS is functionally not comparable with the assessee, as the said company provides platforms and services for content creation, full service production and distribution to the worlds leading publisher companies, corporates, libraries and content aggregators. To support his arguments he referred to Annual Report of the company at page 47 to 258 of the Paper Book. He in particular has drawn our attention to the Notes forming part of Financial Statements at page 133 of the Paper Book to substantiate the activities carried out by MPS. He pointed that the company earns majority of its revenue from content solutions. 82% of the total revenue of the said company is from content solutions and balance 18% represents revenue from

platform services. He further pointed that during the relevant period extraordinary events had taken place. During Financial Year ended March 31, 2017 MPS acquired application platform business from Digital River Inc. a US based company. In the year 2018 MPS had also acquired Tata Interactive Systems, a global leader in e-learning industry. Referring to the Annual Report he argued that these acquisitions have helped the company to provide its customers the wider array of capabilities, which directly contributed to the business operations and growth of company. The Id.Counsel for the assessee placed reliance on the following decisions to contend that MPS cannot be considered comparables to an ITES service provider”

- (i) Emersion Electric Co.(India) (P) Ltd. Vs. ACIT,ITA No.6098/Mum/2018 & ITA No.531/Mum/2018.
- (ii) Symantec Software India (P) Ltd. Vs. DCIT, ITA No.1824/PUN/2018
- (iii) Maersk Global Service Centres India Pvt. Ltd. Vs. ACIT, ITA No.6394/Mum/2017

The Id.Counsel for the assessee submits that it is a well settled proposition that extraordinary events like acquisition/merger have the potential to impact margins of acquiring company and thus, would be even more relevant where the company has more than one acquisition in a short span of time. Therefore, such companies are not good comparables. To support this proposition he placed reliance on various decisions including:

- (i) Optiva India Technologies (P) Ltd. vs. ACIT, 141 taxmann.com 560 (Pune-Trib)
- (ii) Rage Framework India (P) Ltd. vs. ACIT, 147 taxmann.com 117 (Pune-Trib)

(iii) JCIT vs. HSBC Professional Services (India) (P) Ltd., 145 taxmann.com 330 (Mum-Trib).

(iii) **Vitae International Accounting Services Pvt. Ltd.** (“Vitae”) – The Id.Counsel for the assessee submitted that the said company is primarily engaged in accounting, auditing, computer programming, consultancy, technical content writer, processing and staff services. To substantiate his submissions he referred to the Annual Report of the company for Financial Year ending on 31/03/2018 at page 259 to 293 of the Paper Book. He further submitted that website of Vitae suggest that the company is engaged in staffing services. It is a global staffing service provider for accounting, tax and pension firms worldwide. He referred to the decision of Pune Tribunal in the case of Rage Framework India P. Ltd. vs. ACIT(supra), wherein the said company was excluded from the list of comparables being not comparable to ITES service providers.

(iv) **Access Healthcare Services Pvt. Ltd.** (‘Access Healthcare’) – The Id.Counsel for the assessee submits that the company is engaged in providing professional, technical and business services. The company is engaged in diversified activities the services include customer application development, end to end Revenue cycles, management services involving the coding and clinical processes. No segmental break up of revenue attributable to various service segments is available in the Annual Report. In the absence of segmental data the said company cannot be accepted as comparable. He further referred to the decision of Pune Tribunal in the case of Rage Framework India P. Ltd. vs. ACIT(supra), wherein the said company was excluded from the final list of comparables. Hence, the company is not

comparable to ITES service provider. He further submitted that Courts have time and again held that KPO service providers are not comparable to BPO service providers.

4. In ground No.2.10 of the appeal the assessee is seeking inclusion of two comparables selected by the assessee in TP study but excluded by the TPO. They are :

(i) R. Systems International – Rejected for the reason having different financial year.

The Id.Counsel for the assessee submits that merely for the reason that company has different financial year cannot be rejected as comparable if the quarterly audited financial data is available in the public domain. The TPO himself in Assessment Year 2017-18 and Assessment Year 2020-21 accepted R. Systems International as comparable. The Id.Counsel for the assessee furnished copy of audited quarterly financial results of R. Systems International in the financial year ended March, 2018. To further augment his submissions he placed reliance on the following decisions to contend that the company can be accepted as comparable even though the said company was having different financial year:

CIT vs. Mc Kinsey Knowledge Centre India Pvt. Ltd. decided by Hon'ble Delhi High Court in ITA No.217/2014 decided on 27/03/2015; and

ACIT vs. Axis Risk Consultant Services Pvt. Ltd., 115 taxmann.com 696(Del-Trib).

4.1 The Id.Counsel for the assessee submitted that Sundaram Business Services is engaged in the business of processing and ITES in the areas of accounting, insurance, banking, human resources, etc. The company was accepted as comparable by TPO in Assessment Year 2017-18 and 2020-21. There has been no change in the business activities of the company. Once the TPO accepted the company as comparable, without there being any change in the business activity of the company the TPO cannot exclude the said company from the list of comparables.

5. Shri Rignesh Das representing the Department vehemently defended the direction of the Dispute Resolution Panel (DRP) and impugned assessment order. Placing reliance on the order of TPO and DRP directions the Id. Departmental Representative prayed for rejecting the submissions of the assessee and accepting list of comparables prepared by the TPO as final.

6. We have heard the submissions made by rival sides and have examined orders of authorities below. The assessee is a BPO and a captive service provider. The assessee is providing Business Support Services to its AEs. The limited issue for adjudication in the present appeal is with reference to inclusion/exclusion of comparable companies. The assessee by way of sub-grounds to ground No.2 has raised multiple arguments, however, the Id.Counsel for the assessee has confined his submissions to sub-ground No.2.8 and 2.10 relating to exclusion /inclusion of comparables.

7. The assessee is seeking exclusion of (i) Domex; (ii)MPS; (iii) Vitae and (iv)Access Healthcare on the ground of functional disparity, extraordinary

events and non-availability of segmental data. The objections taken by the assessee before the Tribunal were also raised before the TPO.

7.1 **Domex:** The objection of assessee is that the company is aKPO and not a BPO hence, functionally different. The TPO rejected the same and held that since KPO is part of ITES, the said company is comparable. The assessee has substantiated before us the complex nature of activities carried out by Domex. The said company is also engaged in diversified activities including software development and no segmental reporting of various streams of revenue is available in financial reporting of the company. We further find that the Coordinate Bench in the case of Katerra Technology Services LLP vs. ACIT(supra) held that Domex is not functionally comparable to company engaged in providing ITES services. The Tribunal further observed that Domex is engaged in diversified activities including software development, KPO and BPO services, hence, functionally dissimilar. Similar view has been expressed in the case of Altair Engineering India (P) Ltd. Vs. ACIT ,147 taxmann.com 476 (Bang-Trib). Thus, in facts of the case and in the light of decision referred above, we hold Domex E-Data Pvt. Ltd. is not functionally comparable to assessee and hence, is directed to be excluded from the list of comparables.

7.2 MPS- A perusal of Annual Report (at page 133 of the paper book) would show that the company provides platforms and services for content creation, full-service production and distribution to the world's leading publishers , leading companies, corporate institutions, libraries and content aggregators. A perusal of Annual Report of the company reveals that during the relevant period the company acquired "Think Subscription" and "Tata Interactive

Systems". Acquisition/amalgamation/mergers are extraordinary events in the life circle of company which substantially impact the margins of the acquiring company in the relevant financial years. The Tribunal has been consistently holding that where there is an extraordinary event in a relevant year, the company should not be accepted as comparable. Thus, in the facts of the case, we find merit in argument of the assessee to exclude MPS Ltd. from the list of comparable. We direct accordingly.

7.3 Vitae - The assessee is seeking exclusion of Vitae on the ground of functional disparity. The said company is engaged in account, audit, computer programming, consultancy, technical content writing and staffing services. The Id. Counsel for the assessee has brought to the notice of Bench that in the case of Rage Frameworks India (P) Ltd. vs. ACIT(supra), Vitae was held to be functionally different from the company engaged in providing ITES. We find that in the aforesaid case the Co-ordinate Bench further observed that the said company is engaged in providing diversified services cannot be considered as comparable to ITES service provider. Taking into consideration entire facts, we direct the TPO to exclude Vitae from the list of comparables.

7.4 Access Healthcare – The company is engaged in providing professional, technical and business services. The nature of services provided by the company falls into the category of KPO. Thus, the services rendered by the company requires higher level of skill and specialized knowledge. The companies rendering KPO services are not comparable to the company providing ITES – BPO services. The Hon'ble Bombay High Court in the case of CIT vs. PTC Software (I) (P) Ltd. 395 ITR 176 (Bom) has held that services

rendered by KPO are not comparable to services rendered by companies providing back office services in the nature of BPO. Thus, we find merit in the arguments advanced by Id. Counsel for the assessee and direct the TPO to exclude Access Healthcare from the list of comparables.

8. The assessee in ground No.2.10 of the appeal has sought inclusion of – R.Systems International Ltd. The TPO has rejected the said company as comparable on the ground of different financial year. Admittedly, the said company is having financial year different from that of assessee. The financial year of the company coincides with the calendar year and ends on 31<sup>st</sup> December, whereas the financial year of assessee is from 1<sup>st</sup> April to 31<sup>st</sup> March. However, audited quarterly financial result, of R-Systems is available in public domain. The assessee has placed on record copy of the audited quarterly financial results of R-Systems for the quarter ending 30/06/2017, 30/09/2017, 31/12/2017, and 31/03/2018. Since, audited quarterly result are available, there is no impediment in accepting the said company as comparable. The Id. Counsel for the assessee pointed that the TPO has accepted R-Systems as comparable in A.Y 2017-18 and Assessment Year 2020-21. Copy of the order passed by TPO in A.Y.2017-18 dated 20/01/2021 and in A.Y.2020-21 dated 11/03/2022 are placed on record at page 207 and 260 of the paper book, respectively. Once the TPO has accepted the company as comparable in the preceding and succeeding assessment years, without there being any change in the facts in the impugned assessment year the TPO cannot reject the company as comparable. It is not the case of Revenue that the company is in any manner functionally different from that of the assessee or the said company does not fall within any of the parameters of filters applied.

The Hon'ble Delhi High Court in the case of CIT vs. Mc Kinsey Knowledge Centre India Pvt. Ltd (supra) has held that, if from the available data on record the results for financial year can reasonably be extrapolated then the comparable cannot be excluded solely on the ground that the comparables have different financial year endings. Thus, in light of our above observations we hold R-Systems to be a valid and good comparable and direct the A.O to include R-Systems in the list of comparables.

Sundaram Business Services- The TPO rejected the said company on the ground of functional disparity. The Id. Counsel for the assessee has pointed that the TPO had accepted the company as comparable in A.Y 2017-18 and 2020-21. There has been no change in the business activity of the assessee or comparable company in the impugned A.Y. The aforesaid facts have not been disputed by the Revenue. Once, the company has been accepted as functionally comparable in the preceding and the subsequent assessment years, there can be no plausible reason to reject the same on the ground of functional disparity in the sandwich assessment year. Hence, the said company is directed to be included in the list of comparables. The assessee succeeds on ground No.2.8 and 2.10.

9. No submissions were made by the Id. Counsel for the assessee with respect to ground No.2.1 to 2.7 and 2.9, hence, the aforesaid grounds are dismissed.

10. In ground No.3 of appeal, the assessee has assailed levy of interest u/s. 234B and 234D of the Act. Charging of interest under aforesaid sections is

mandatory and consequential, hence, ground No.3 of appeal is liable to be dismissed, we hold and direct accordingly.

11. In ground No.4 of appeal, the assessee has assailed initiation of penalty proceedings u/s. 270A of the Act. Challenge to penalty proceedings at this stage is premature, ground No.4 of the appeal is dismissed, accordingly.

23. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on Thursday the 07<sup>th</sup> day of December , 2023.

Sd/-

(SHRI S.RIFAUR RAHMAN)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 07/12/2023

Vm, Sr. PS(O/S)

**प्रतिलिपि अग्रेषित**Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्तCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि. , मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

BY ORDER,

//True Copy//

(Dy./Asstt.Registrar)/Sr. Private Secretary ITAT,  
Mumbai