

[2017] 85 taxmann.com 202 (Hyderabad - Trib.)/[2017] 167 ITD 11 (Hyderabad - Trib.)

IT/ILT : A company engaged in e-prescription and document management i.e., providing specified services or a company providing technical services involving software testing, verification and validation of software or a company providing engineering design and information technology services were not comparable to assessee, engaged in business of software development and low end ITES back office services to group companies

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[2017] 85 taxmann.com 202 (Hyderabad - Trib.)

IN THE ITAT HYDERABAD BENCH 'B'

Deputy Commissioner of Income-tax, Circle- 2 (1), Hyderabad

v.

Infor (India) (P.) Ltd.*

SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
 AND RIFAUR RAHMAN, ACCOUNTANT MEMBER
 IT APPEAL NO. 113 (HYD.) OF 2016
 [ASSESSMENT YEAR 2011-12]
 JULY 7, 2017

Section 92C of the Income-tax Act, 1961 - Transfer pricing - Computation of arm's length price (Comparables and adjustments/Comparables/Illustrations) - Assessment year 2011-12 - Assessee was engaged in business of software development and low end ITES back office services to its group companies - Whether a company with huge turnover and brand value should be excluded from comparable list - Held, yes - Whether where a company was engaged also in forward contracts, same could be considered as comparable provided correct margin of company was taken into consideration - Held, yes - Whether a company engaged in e-prescription and document management i.e. providing specified services or a company providing technical services involving software testing, verification and validation of software or a company providing engineering design and information technology services were not comparable to assessee - Held, yes [Paras 4,5 and 6] [In favour of assessee]

CASE REVIEW

CIT v. Agnity India Technologies (P.) Ltd. [2013] 36 taxmann.com 289/219 Taxman 26 (Delhi) (para 3) followed.

CASES REFERRED TO

CIT v. Agnity India Technologies (P.) Ltd. [2013] 36 taxmann.com 289/219 Taxman 26 (Delhi) (para 3), *Symphony Marketing Solutions India (P.) Ltd. v. ITO* [2013] 38 taxmann.com 55 (Bang. - Trib.) (para 5), *Rampgreen Solutions (P.) Ltd. v. CIT* [2015] 373 ITR 533/234 Taxman 573/60 taxmann.com 355 (Delhi) (para 5) and *ITO v. Nevis Network (India) (P.) Ltd.* [2015] 55 taxmann.com 519 (Pune - Trib.) (para 7).

Smt. U. Mini Chandran, DR for the Appellant. Sunil Moti Lala for the Respondent.

ORDER

Smt. P. Madhavi Devi, Judicial Member - This is Revenue's appeal for the A.Y. 2011-2012. In this appeal, the Revenue is aggrieved by the order of the AO passed u/s 143(3) r.w.s 144C of the Income Tax Act, 1961 (the Act). In this appeal, Revenue has raised the following grounds of appeal which read as under:—

- "1. The DRP erred on facts and in law in granting relief to the assessee.
2. Whether on the facts and in the circumstances of the case, the Hon'ble DRP was justified in rejecting companies on the ground of functional difference when the taxpayer has not considered the verticals & horizontals (categorizing companies into BPO and KPO of the ITES sector while selecting the comparables. The TPO has also not gone into the verticals / horizontals of the comparable companies. The DRP failed to consider that the main search strategy of the taxpayer as well as the TPO has been to identify the companies which are engaged in the ITES.
3. Whether on the facts and in the circumstances of the case, the Hon'ble DRP was justified in rejecting Infosys BPO on ground of High turnover and brand value since brand value do not influence the net margin of the company.
4. Forward contracts are part and parcel of operations of the company and gain or loss arising out of the same is operational in nature hence, it does not influence profit origin. Thus, the DRP erred in its decision of forward contracts influence the profit margin of the company.
5. The RBI has replaced the PLR with base rate. Hence, it is more judicious to adopt base rate as against PLR. The DRP erred in directing to adopt average PLR in compounding working capital adjustment."

2. Brief facts are that the assessee, who is an indirect subsidiary of Infor Global Solutions Intermediate Holdings Limited, is engaged in the business of sale of user license of enterprise application software to the external parties, rendering software development, software related services and back office services to the Group companies. Thus, the assessee is a captive service provider and provides comprehensive enterprise application and enterprise resource planning software at Hyderabad centre. During the relevant FY, the assessee entered into international transactions with its Associated Enterprise (AE). In its TP study, assessee reported the international transactions. The determination of the ALP of the international transactions has been referred to the TPO u/s 92CA of the Act. The TPO observed that the search process of the assessee suffers from defects which resulted in selection of inappropriate comparables and rejection of the companies that are appropriate comparables. Therefore, he rejected the TP study and conducted an independent analysis using TNMM and arrived at ALP for ITES segment at 21.99% and proposed the adjustment of Rs. 2,33,48,502/-. The TPO has arrived at 13 companies as comparable to the assessee-company. Assessee objected to the said companies but, the assessee's objections were rejected by the TPO by holding that the assessee is also a KPO (Knowledge Process Outsourcing). Aggrieved, assessee preferred objections before the DRP, who granted relief to the assessee by directing the following companies to be excluded from the final list of companies i.e., (1) Accentia Technologies Limited (Accentia); (2) Acropetal Technologies Limited (Acropetal); (3) eClerx Services Limited (eClerx); (4) Infosys BPO Limited (Infosys) and (5) TCS e-serve Limited (TCS). Against the relief granted by the DRP, the Revenue is in appeal before us.

3. As regards the Ground no.3, against the rejection of Infosys as a comparable on the ground of high turnover and brand value, the Ld DR though fairly admitted that this issue is covered against the Revenue by the decision of the Hon'ble Delhi High Court decision in the case of *CIT v. Agnity India Technologies (P.) Ltd.* [2013] 36 taxmann.com 289/219 Taxman 26 but relied on orders of the TPO / AO. Since, the issue is covered in favour of the assessee by the above cited decision, this ground of appeal is rejected.

4. As regards Ground no.4, Ld DR submitted that the DRP, taking into consideration that the company E4e Healthcare Business Services Private Limited is engaged in the forward contracts, and that such forward contracts have influence in the margin of the company and further, that there is no consistent approach in accounting of bad debts, has directed its exclusion. According to the Ld DR, income from such forward contracts is also the operational income and therefore, does not have any impact on the margin of the company and therefore, this company should also be considered as comparable to the

assessee. Ld Counsel for the assessee submitted that the assessee has no objection for considering this company as a comparable provided, the correct margin of the company is taken into consideration. In view of the above statement of the Ld Counsel for the assessee, we direct the AO to consider this company as comparable to the assessee by adopting the correct margin of the said company. Thus, Ground no.4 is considered as allowed for statistical purposes.

5. As regards Grounds no.2, against the exclusion of the 5 companies from the final list of comparables, we find that the main objection of the Revenue is that the assessee is also a high end KPO service provider and therefore, the other companies which are also KPO companies ought not to have been directed to be excluded. In reply to the arguments of the Ld DR, Ld Counsel for the assessee submitted that the TPO himself has considered the assessee to be engaged in IT Enable Services (ITES) and has also adopted the companies which are only into ITES. He submitted that according to the TPO, the companies viz., Accentia, Acropetal, eClerx, Infosys and TCS are also into ITES segment, but, has not considered the functional dissimilarities in their services. He further submitted that the DRP has appreciated the functional dissimilarities and has, thus, rightly directed their exclusion. Having regard to the rival contentions and the material on record, we find that the DRP has directed the exclusion of the above companies on the following grounds:—

(1) *Accentia Technologies Limited*:- This company is engaged in e-prescription and document management including coding, billing, bills payments management, account receivables management and ad-hoc reporting. This company is providing specified services as against the routine ITES services provided by the assessee.

(2) *Acropetal Technologies Limited*:- On perusal of the annual report of this company which shows that the revenue is earned from engineering design services segment, and the ITAT, Bangalore Bench in the case of *Symphony Marketing Solutions India (P.) Ltd. v. ITO* [[2013](#)] [38 taxmann.com 55](#) has directed to exclude the above company on the very same ground, DRP denied its exclusion. It is also clear that the major income of this company is from providing engineering design services and information technology services which are not comparable to ITES / BPO functions performed by the assessee.

(3) *Eclerx Services Limited*:- This company is engaged in providing KPO services and the comparability of company to ITES companies has been considered by various Benches of ITAT i.e., Hyderabad and Bangalore, wherein, on similar set of facts, this company was directed to be excluded. The Hon'ble Delhi High Court in the case of *Rampgreen Solutions (P.) Ltd. v. CIT* [[2015](#)] [373 ITR 533/234 Taxman 573/60 taxmann.com 355](#) has also directed for exclusion of this company.

(4) *TCS e-Service Limited*:- From the annual report of this company, it is seen that this company provides technical services involving software testing, verification and validation of software at the time of implementation and data centre service management activities, which makes the company functionally different from the services rendered by the assessee.

6. From the above observations, it is seen that all these companies are into KPO services. From the profile of the taxpayer as recorded by the TPO himself in his order, the assessee is into simple ITES services. Except for arguing that the assessee is also into KPO services, the Ld DR has not been able bring on record any material to rebut the findings of the DRP. In view of the same, we do not see any reason to interfere with the order of the DRP. Accordingly, Ground no.2 is also rejected.

7. As regards Ground no.5, the Ld DR submitted that the assessee has shown a sum of Rs. 5,31,98,803/- as receivables for shared services segment at the end of the year out of total receivables of Rs. 72,30,51,562/-. The assessee was asked to submit the details of raising invoices and subsequent receipts and also proposed to charge interest @ 12% p.a. The assessee objected to the charging of interest stating that the receivable is a continuing debit balance, arising as a result of international transaction and is not a loan or borrowing. The AO, however, did not accept the assessee's contention and held that the receivables are also to be charged with interest. Accordingly, he charged the interest @ 12% p.a. and brought it into tax. Aggrieved, the assessee preferred its objections before the DRP and submitted that base rate should not be adopted but the prime lending rate of State Bank of India should be adopted. The DRP accepted the contention of the assessee and directed the AO to take into consideration the average prime lending rate of SBI for computing the working capital adjustments. While the Ld DR supported the order of the TPO, the Ld Counsel for the assessee placed reliance on the decision of "B" Bench of the

ITAT, Pune in the case of *ITO v. Nevis Network (India) (P.) Ltd.* [[2015](#)], [55 taxmann.com 519](#), wherein it was held that the Prime Lending Rate (PLR) is to be adopted for computing the interest on receivables.

8. Having considered the rival contentions and the relevant material on record, we find that the Tribunal at Pune in the case of *Nevis Network (India) (P.) Ltd. (supra)* has considered the issue at length and at para 11 of its order has held as under:—

"11. We have carefully considered the rival submissions. In principle, we are in agreement with the stand of the assessee that while carrying out comparability analysis in the TNM Method, appropriate adjustment deserves to be allowed with respect to the working capital differences between the tested party and the potentially comparable concerns. In the present case, the assessee has not incurred any interest expenditure and therefore, the stand of the Revenue is that no adjustment is to be allowed with respect to the working capital differences vis-à-vis the comparable concerns. In our considered opinion, the aforesaid objection of the Revenue is not in a correct perspective as it does not take into consideration other factors which have a bearing on the working capital requirements. No doubt, incurrence of interest expenditure for the funds used in business impact the operating margins. So however, the period of credit allowed to the customers also is a factor which would impact the working capital requirements and consequential sale realizations. In the present case, assessee has worked out the working capital difference for the time lag in recovery of the sale proceeds. In assessee's case the said time lag is quite short inasmuch as it was also pointed out that in some cases assessee has received monies in advance. Nevertheless, at page 102 of the Paper Book, assessee has placed a working regarding the difference in time lag in sale recoveries in the case of the assessee and that of the three comparable concerns selected by the TPO. The difference in such time lag is applied to the Prime Lending Rate (PLR) to compute the working capital adjustment. On this basis, an adjustment of 5.90% was determined, which was required to be applied to the operating margins of the three comparable concerns. The CIT (A), in our view, made no mistake in accepting the plea of the assessee for allowing of such working capital adjustment. The said action of the CIT (A), in our view, is liable to be affirmed. We hold so."

9. Since the facts before us are similar, respectfully following the decision of the Coordinate Bench (*supra*), the Revenue's ground of appeal, Ground no.5, is rejected.

10. In the result, the Revenue's appeal is partly allowed.

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*Partly in favour of assessee.