

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**'D' BENCH, CHENNAI**

श्रीएन.आर.एस. गणेशन, न्यायिकसदस्य एवं

श्री एसजयरामन, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1002/Mds/2015

निर्धारण वर्ष /Assessment Year : 2010-11

Williams Lea India Private  
Limited,  
Module No.0308, "D" Block,  
Third Floor, Tidel Park,  
Taramani, Chennai – 600 113.

v. The Deputy Commissioner of  
Income –Tax,  
Corporate Circle 3 (2),  
Aayakar Bhavan,  
Mahatma Gandhi Road,  
Chennai – 600 034.

PAN : AAACW 5477 G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri T.G.Suresh, C.A.

प्रत्यर्थीकीओरसे/Respondent by

: Shri Anurag Sahay, CIT-DR

सुनवाईकीतारीख/Date of Hearing : 24.08.2016

घोषणाकीतारीख/Date of Pronouncement : 03.11.2016

**आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

This appeal of the assessee is directed against the order of the assessing officer consequent to the order of the Dispute Resolution Panel dated 17.12.2014 and pertains to assessment year 2010-11.

2. Shri T.G.Suresh, the learned representative for the assessee submitted that the company is engaged in the business of providing corporate information services. According to the learned representative, corporate information services includes creative development, document processing, business information services, etc. For the purpose of determining the Arm's Length Price, the assessee adopted the Transaction Net Margin Method as most appropriate method. The assessee selected seven comparables for the purpose of determining the Arm's Length Price whose profit level indicator comes to nearly 16.08%. However, the Transfer Pricing Officer rejected all the seven comparables selected by the assessee. According to the learned representative, the TPO conducted a fresh search and selected five comparable whose arithmetic mean of the profit level indicator comes to nearly 27.21%. After making necessary capital adjustments, the TPO determined the arithmetic mean of the profit level indicator at 27.43%. Accordingly, the TPO determine the Arm's Length Price of the international transactions at Rs.32.29 crores disclosed by the assessee. Accordingly, the TPO made an upward adjustment to the extent of Rs.2.17 crores.

3. The first issue raised by the assessee is with regard to selection of Cosmic Global Limited as one of the comparable for making adjustment. According to the learned representative, the profit level indicator of Cosmic Global Limited was 18.62% and the adjusted profit level indicator was 19.16%. According to the learned representative, Cosmic Global Limited is not the same of business. Therefore, it cannot be taken as comparable while determining the

Arm's Length Price. Referring to the comparable selected by the TPO, namely, M/s.Nittany Outsourcing Services Pvt.Ltd., the TPO excluded the provision for bad and doubtful debt and asset written off from the operating cost. According to the learned representative, the provision for bad and doubtful debt and asset written off cannot be excluded from the operating cost. According to the learned representative, in the next financial year, bad debt has been charged to profit and loss account net of provision. Therefore, the same need not be reduced for the purpose of arriving the operating cost. Referring the comparables selected by the TPO, namely, Informed Technology India Ltd., the TPO erred in excluding the electricity cost of Rs.7,00,000/- as non operating cost. According to the learned representative, the exclusion of Rs.7,00,000/- from the operating cost is not warranted. The learned representative further submitted that the employees cost filter was not taken in to consideration by the TPO and DRP. Referring to the decision of the Mumbai Bench of this Tribunal in the case of Ness Technologies (India) Private Ltd. in ITA No.7016/Mum/2012 dated 24.09.2014, the learned representative for the assessee submitted that by applying the filter of employees cost, the appeal was restored to the file of the assessing officer for applying the employees filter cost to all comparable companies selected by the TPO. The learned representative placed his reliance on the following decisions of the Tribunal:

- (a) Brigade Global Services Private Ltd. in ITA No.1494/HYD/2010
- (b) Avaya India (P) Ltd. [TS-89-ITAT-2011(DEL) –TP]
- (C) Market Tools Research Pvt.Ltd. [TS-30-ITAT-2014 (HYD) –TP]

- (d) BA Continuum India Pvt.Ltd. [TS-490-HC-2014 (TEL & AP) –TP]
- (e) Motorola Solutions India Pvt.Ltd. [TS-240 –ITAT-2014 (Bang)-TP]
- (f) CISCO Systems (India) Pvt.Ltd. [TS-246-ITAT-2014 (Bang)-TP]
- (g) Integrated Decisions and Systems (India) Private Limited [TS-281 – ITAT -2015 (JPR) –TP]
- (h) Arowana Consulting Ltd. [TS -353-ITAT-2015 (Bang)-TP]
- (i) ACI Worldwide Solutions Pvt.Ltd. [TS-494-ITAT-2015 (Bang)-TP]

4. On the contrary, Shri Anurag Sahay, the learned representative for the department submitted that the TPO conceded all the comparable companies selected by the assessee - company as well as TPO and found that the TPO selected all the five companies which are functionally similar with that of the assessee company. Therefore, there is no justification in the objection raised by the assessee. Referring to the profit level indicator, the learned representative for the revenue submitted that the operating income means, the revenue recognised during the year from the respective business on account of transaction carried on by the assessee during the relevant year. Any income which is not directly linked to the business of the assessee during the year under consideration should not be considered as operating income of the year. Similarly, the operating expenses shall be the expenses incurred by the assessee during the year under consideration for earning the operating income. All other expenses, though allowable for the purpose of computing the total income of the assessee, shall not be considered as operating expenses. The provision for bad and doubtful debts, assets written off are on

account of transactions made in the earlier assessment years. This provision for bad and doubtful debts and assets written off has no relation to the current year income. Therefore, it has to be excluded from the operating expenses. Referring to the employees cost filter, the learned department representative submitted that the assessee did claim before the DRP suitable filter on the employees cost. The DRP after considering the claim of the assessee found that there are many companies which outsource the procurement of the man power. In such case, the expenditure will be under a different head instead of employees cost. Moreover, where the employees are outsourced, the operating cost will get increased. The overall profit margins in such case will come down and the situation will be more beneficial to the assessee when such company with outsourced manpower is selected as a comparable. Therefore, according to the department representative, it is not required to exclude the company on account of employees cost filter.

5. We have considered the rival submissions on either side and also perused the material available on record. The method selected by the assessee as most appropriate method is not in dispute. The dispute is only with regard to selection of comparable companies for the purpose of determining the Arm's Length Price. The assessee objecting inclusion of Cosmic Global Ltd. as one of the comparable companies by the TPO and DRP. The assessee is also objecting excludes of provision of bad and doubtful debts and asset written off from the operating cost. The assessee also claims before

this Tribunal that employees cost filter shall be obtained for determining the arm's length price.

6. We have carefully gone through the decision of Mumbai Bench of this Tribunal in the case of Ness Technologies (India) Private Ltd. (supra). The Mumbai Bench of this Tribunal has observed as follows:

"8. From the TPO report, we found that for the purpose of selection of comparables, the TPO had applied a filter of rejecting companies having employee costs less than 25% of revenues. However, the four companies as part of comparables selected by TPO fails the filter of 25% employee cost to the revenue. Since the employee cost to revenue ratio in case of this company is less than 25% of revenue, we restore the appeal back to the file AO/TPO/DRP for considering afresh and applying the filter properly to the all comparables selected by TPO, keeping in view of our above observation."

7. In view of the decision of the Mumbai Bench of this Tribunal, employees cost filter is also one of the factors to be taken into consideration for the purpose of determining the arm's length price. As rightly submitted by the learned department representative, the employees cost may vary wherever the man power was outsourced. Therefore, the assessing officer has to take into consideration whether the assessee has employed its employees directly or outsourced its man power. Since these factors are not available on record with regard to comparable companies and that of the

assessee company, this Tribunal is of the considered opinion that the matter needs to be reconsidered by the assessing officer. By following the order of the Mumbai Bench of this Tribunal in Ness Technologies (India) Private Ltd. (Supra), the order of the lower authorities are set aside and the entire issue is remitted back to the file of the assessing officer. The assessing officer shall re-examine the issue afresh in the light of the objections raised by the assessee and in the light of the decision referred to by the learned representative for the assessee before this Tribunal and thereafter decide the same in accordance with law. It is needless to mention that it is open to the assessing officer to once again refer the matter to the DRP for considering all the objections raised by the assessee including the employees cost filter and thereafter decide the matter in accordance with law.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 3<sup>rd</sup> November, 2016 at Chennai.

Sd/-

(एसजयरामन)

**(S. Jayaraman)**

लेखा सदस्य/Accountant Member

Sd/-

(एन.आर.एस. गणेशन)

**(N.R.S. Ganesan)**

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 03<sup>rd</sup> November, 2016.

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT,
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.