

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

IT(TP)A No. 2587/Bang/2019
Assessment year : 2015-16

Invitrogen Bioservices India Pvt. Ltd., Ground Floor, First Technology, Place 3 EPIP, Whitefield, Bangalore – 560 066. PAN: AABCI 3134K	Vs.	The Assistant Commissioner of Income Tax, Circle 3(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Darpan Kriplani, CA
Respondent by	:	Shri Pradeep Kumar,. CIT (DR)(ITAT), Bengaluru.

Date of hearing	:	01.09.2021
Date of Pronouncement	:	06.09.2021

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order of the Assessing Officer passed u/s. 143(3) r.w.s. 144C(13) of the Income-tax Act, 1961 [the Act] dated 31.10.2019 for the assessment year 2015-16.

2. The assessee has raised the following grounds:-

“The grounds mentioned herein by the Appellant are without prejudice to one another.

1. That the order of the Learned Assistant Commissioner of Income-tax, Circle - 3(1)(1), Bengaluru (learned AO) to the extent prejudicial to the Appellant, is bad in law, contrary to

the facts and circumstances of the case and is liable to be quashed.

2. That the Dispute Resolution Panel - I (learned DRP') erred in not appreciating that the order of the Learned Assistant Commissioner of Income Tax, Transfer Pricing - 1(3)(2), Bengaluru (learned TPO') passed under Section 92CA of the Income-tax Act, 1961 ('the Act') is contrary to law and thus liable to be quashed.
3. That on facts and in the circumstances of the case, the learned AO/ learned TPO erred in making a transfer pricing adjustment of INR 12,255,203 to the Appellant's international transaction i.e. income from Research & Development ('R&D') services.
4. On the fact and in the circumstances of the case and in law, with respect to adjustment to the transfer price of the R&D segment, the learned DRP/ AO/ TPO erred in:
 - 4.1. Rejecting the Transfer Pricing ('TP') documentation maintained by the Appellant under Section 92D of the Act, in good faith and with due diligence.
 - 4.2. Rejecting the comparability analysis carried out by the Appellant in the TP documentation and in conducting a fresh comparability analysis for the R&D segment based on the application of additional filters in determining the arm's length price.
 - 4.3. Using data, which was not contemporaneous, and which was not available in the public domain at the time of preparing the TP documentation.
 - 4.4. Disregarding certain filters applied by the Appellant in selection of the comparable companies in the TP documentation.
 - 4.5. Applying/ modifying the following filters while undertaking comparability analysis:

- Rejection of companies whose service to sales income is less than 75% of total operating revenue; and
 - Companies of different financial year ending or data of the company do not fall within 12 month period i.e. 01.04.2014 to 31.03.2015.
- 4.6. Including the following companies even though they fail the test of comparability:
- Aurigene Discovery Technologies Ltd.
 - Rubicon Research Pvt. Ltd.
 - T C G Lifesciences Pvt. Ltd.
 - G V K Biosciences Pvt. Ltd.
 - A E S Laboratories Pvt. Ltd.
- 4.7. Computing incorrect operating mark-up of the following companies by not considering certain expenses as operating/ considering certain items as non-operating in nature:
- Rubicon Research Pvt. Ltd.
 - T C G Lifesciences Pvt. Ltd.
- 4.8. That the Learned DRP erred in not appreciating the functions performed, assets employed and risks undertaken by the Appellant in a proper perspective.
- 4.9. Not providing appropriate adjustments towards material differences between the operational profile of comparable companies and the Appellant.
- 5.0 That the learned AO erred in levying interest under Section 234B and 234 C of the Act.

(Tax Effect : 6,335,269)''

3. The assessee company is a wholly owned subsidiary of Life Tech US. It is a 100% export orient unit with Cochin Special Economic Zone. It commenced commercial operations from 01.07.2005 engaged in the operations of Distribution, Manufacturing, Information Technology Enabled Services [ITesS] and Research & Development [R&D] activity. The

assessee has reported international transactions in respect of ITeS, Manufacturing, Distribution and R&D. The arm's length price of the international transactions in ITeS segment and R&D provided to the Associated Enterprises (AE) has been determined by the assessee by applying Transactional Net Margin Method (TNMM) as the most appropriate method. The Operating Profit to Operating Cost ratio has been taken as the Profit Level Indicator (PLI) in TNMM analysis.

4. With regard to R&D segment, the assessee considered three comparables viz., Choksi Laboratories Ltd., Teg Lifesciences Ltd. and Vimta Labs Ltd. The TPO considered the final set of five comparables i.e., Aurigene Discovery Technology Ltd., Rubicon Research Pvt. Ltd., TCG Lifesciences Pvt. Ltd., GVK Biosciences Pvt. Ltd. and AES Laboratories Pvt. Ltd. Against this, the assessee is in appeal before us.

5. At the time of hearing, the Id. AR for the assessee pressed exclusion of only two comparables i.e., Rubicon Research Pvt. Ltd. and G V K Biosciences Pvt. Ltd. As such, all other grounds are dismissed as not pressed.

Rubicon Research Pvt. Ltd.

6. According to the Id. AR, this company is engaged in in-house research and development business comprising of in-house research & development activities in relation to drug delivery technologies and it has no revenue generation from this activity. On the other hand, the assessee is engaged in distribution, manufacturing, Information Technology Enabled Services [ITeS], R&D activity. The assessee has reported international transaction in respect of ITeS, manufacturing, distribution and R&D. The ALP of R&D provided to the AE has been determined by applying the TNMM stating to be the most appropriate method. The Operating Profit to

Operating Cost ratio has been taken as the Profit Level Indicator (PLI) in TNMM analysis. The Id. AR submitted that Rubicon Research Pvt. Ltd. has not undertaken any contract R&D and its inhouse research cannot be compared with assessee's R&D activity. He drew our attention to the annual report of this company which is placed at page 509 of PB under the head 'Textual Information'.

7. On the other hand, the Id. DR submitted that before the DRP the assessee has not substantiated the above facts. Being so, this ground may be dismissed.

8. We have heard both the parties and perused the material on record. We have gone through the annual report produced by the assessee at page 509 of PB where under the head Textual Information, it is clearly mentioned that Rubicon Research Pvt. Ltd. is engaged in inhouse R&D business which comprises of in-house research & development activities in relation to drug delivery technologies and having no revenue generation from that activity. Being so, it is not appropriate to consider it as a comparable to the assessee company as there is functional dissimilarity. Accordingly this ground of assessee is allowed.

G V K Biosciences Pvt. Ltd.

9. The Id. AR submitted that this company is a discovery research and development organization providing broad spectrum of services, across the R&D and manufacturing value chain. Its capabilities include collaborative research, discovery services, clinical development, contract manufacturing, formulations and informatics. It also holds a number of patents as provided in its annual report. According to the Id. AR, it is a product company which is having inventories as seen from page 674 of PB. This company undertakes very high level research work, which cannot be compared to

the assessee, which is a captive service provider. Further, the textual information of this company at page 738 of PB shows as follows:-

“Segments are identified taking into consideration the internal organization and management structure as well as the differential risk and returns of the segment.

a. Based on the Company's business model, contract research solutions have been considered as the only reportable business segment and hence no separate financial disclosures are provided in respect of its single business segment.

b. The Company's operations are managed from India and includes significant amount of export sales. Accordingly information on the geographical segment is disclosed in note 31.”

10. On the other hand, the Id. DR submitted that GVK Biosciences Pvt. Ltd is engaged in farm related research and the argument of the Id. AR for the assessee is that assessee is engaged in conducting R&D in farm related equipment, however, the assessee has not substantiated the same before the lower authorities and therefore this ground of the assessee has to be dismissed.

11. We have heard both the parties and perused the material on record. As seen from the annual report, this company is a discovery research and development organization providing broad spectrum of services, across the R&D and manufacturing value chain. It also holds a number of patents as provided in its annual report. It is a product company which is having inventories and undertakes very high level research work, which cannot be compared to the assessee, which is a captive service provider. Being so, we direct the AO/TPO to exclude this company from the list of comparable companies in the R&D segment.

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

Pronounced in the open court on this 6th day of September, 2021.

Sd/-
(N V VASUDEVAN)
VICE PRESIDENT

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 6th September, 2021.

/Desai S Murthy/

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.