

**IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI SANDEEP SINGH KARHAIL, JM

**ITA No. 2129/MUM/2021**

(Assessment Year 2012-13)

M/s Tricom Infotech  
Solutions Ltd  
2<sup>nd</sup> Floor, Tricom House,  
Gandhi Estate, Andheri Kurla  
Road, Safed Pool, Andheri  
(E)  
Mumbai- 400 072

Vs.

DCIT 3(3)(1)  
Aaykar Bhavan, M.K.  
Road, Mumbai- 400 020

**(Appellant)****(Respondent)****PAN No. AABCG8618E**

**Assessee by** : Shri. Reepal G. Tralshawala.  
**Revenue by** : Shri. Samuel Pitta

**Date of hearing:** 06.09.2022  
**Date of pronouncement:** 21.11.2022

**ORDER****PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by Tricom Infotech solutions Limited [ Assessee/ Appellant] for assessment year 2012 - 13 against the order of The Commissioner Of Income Tax, (Appeals) - 55, Mumbai ( the Ld. CIT (A) ) dated 27/9/2021 wherein the appeal filed by the assessee against the assessment order passed by The Assistant Commissioner Of Income Tax, Circle - 14 (3) (1), Mumbai (the learned AO) passed u/s 143 (3) read with Section

144C (3) of the Income tax Act , 1961 ( The Act) dated 4/05/2016 was partly allowed.

02. Assessee aggrieved with the appellate order has preferred appeal before us on following grounds

*"1. The CIT(A) erred on facts in law and under the circumstances in not deleting the addition made by the AO of ₹ 3,09,13,399/- in the assessment order passed u/s 143(3) rws 144C (3) of the IT Act 1961 dated 04/05/2016. "*

03. In short, the fact shows that assessee is a company engaged in the business of providing services of IT enabled services [ ITes] and sale of software. It filed its return of income on 30 November 2012 declaring total income of Rs. 1,74,42,014/-.

04. As assessee has entered international transaction of business process outsourcing payments of ₹ 56,672568/-, provision of IT enabled service income of ₹ 187,175,972/- and commission paid on sales of Rs. 1 88,18,901/-.Sale of software is not an international Transaction. As these international transactions were to be benchmarked at Arm's length, Ld. assessing officer made a reference to The Deputy Commissioner Of Income Tax, Transfer Pricing – 4 (2) (2), Mumbai [ the Id. TPO] for verification of ALP.

05. Assessee benchmarked these transactions,Considering, assessee as tested party adopting transactional net margin method [ TNMM] as the most appropriate method by computing profit level indicator [ PLI] of operating

profit/operating cost (OP/OC) selecting 10 comparable taking their three years' weighted average margin of 9.82% comparing it with the margin of the assessee at 11.35% at entity level. In its TP study report the assessee has stated that the effect of profit of loss relating to trading in software been ignored as the said business line is distinct from provisioning of ITeS and BPO services and further it does not have any international transaction with its associated enterprises. Thus transfer pricing study report [ TPSR] shows that the international transactions are at arm's-length.

06. The learned transfer pricing officer examined the benchmarking analysis of the assessee. He did not accept the benchmarking analysis by the assessee for the reason that according to him, assessee has not considered in profit level indicator revenue, cost and profitability in respect of trading in software, as no segmental accounts were furnished. Further the entire revenue has been shown Under the head income from services. Thus, there is no bifurcation of sale of software in it. if the revenue and cost is considered in respect of Software trading account, the PLI of the assessee would be turning in to a loss of 0.87%. Accordingly, the learned transfer pricing officer the PLI of the assessee would be 8.93%. TPO also made an independent search, by rejecting 3 comparable of the selected by assessee and included 2 comparable, retained 9 comparable companies whose profit level indicator was determined at 21.75%. Accordingly, he determined the adjustment of ₹

30,913,399/- by passing an order u/s 92 CA (3) of the act on 23/12/2015. Accordingly, the learned assessing officer passed the assessment order u/s 143 (3) read with Section 144C (3) of the IT act 1961 on 4/5/2016 determining the total income of the assessee at Rs 4,78,05,409/- wherein the only adjustment is of transfer pricing adjustment on account of arm's-length price of the international transaction.

07. Assessee aggrieved with the assessment order preferred an appeal before the learned Commissioner Of Income Tax, (Appeal) – 55, Mumbai (The learned CIT – A) who passed an order on 27/9/2021. According to the appellate order, he held that learned TPO

- a. has correctly worked out PLI
- b. is correct in Rejection of 3 comparable chosen by the assessee namely [1] cybermat Infotech Ltd, [2] Info drive software Ltd and [3] Aurum soft Systems Ltd correctly,
- c. Wrongly included Infosys BPO Ltd and Excel Info way Ltd, which were included by the learned transfer pricing officer, directed to be excluded

Therefore, assessee is aggrieved with the appellate order and is in appeal before us.

08. The learned authorized representative referred to the paper book containing 275 pages wherein he mostly relied



on the written submission placed before the learned CIT – A on 25/8/2021 containing 23 pages. He submitted that

- a. assessment order passed u/s 143 (3) with Section 92CA (3) of the act along with the order of the learned transfer pricing officer for assessment year 2011 – 12 shows that on identical facts and circumstances Id. TPO has accepted the benchmarking of assessee in that year.
- b. assessee's financials are prepared in accordance with the Accounting Standard issued by the Ministry of corporate affairs and the details of purchases, sales, Closing stock of traded goods software is separately identified in the annual accounts , therefore, the learned transfer pricing officer is incorrect in making an observation that no segmental accounts are furnished.
- c. observation of the learned transfer pricing officer does not hold any grounds as the sale of software is not an international transaction u/s 92 of the act and the same is not to be taken into consideration for determining PLI for benchmarking. Only International transactions are to be considered for PLI comparison.
- d. learned transfer pricing officer has worked out Sale of software revenue of Rs 980.38 lakhs and held that there is a loss of ₹ 8.62 lakhs indicating a percentage of loss of 0.87% which is absolutely incorrect. There is no basis available that how the

learned transfer pricing officer has computed the figure of sale of software at ₹ 980.38 lakhs.

- e. Software trading account revenue [sales] works out to ₹ 101,238,355/- and not ₹ 980.38 lakhs. With respect to the cost of sales of software trading is purchase value of ₹ 128,448,338 and out of which the closing stock of Rs. 2,84,48,338 is deducted and therefore the cost of sales is only ₹ 10 crores. Thus there is a profit of Rs 12,38,355/- in software trading. Ld. TPO determined loss.
- f. On the exclusion of the comparable Aurum software system Ltd, alleging incomplete information by Ld. TPO, is incorrect as the same company is available in the database capitaline, and annual accounts are submitted to lower authorities.
- g. for exclusion of other comparable, no reasons have been given by the learned transfer pricing officer and therefore same deserves to be included.

Accordingly, he submitted that the order of the learned transfer pricing officer and so far as the transfer pricing adjustment is considered, the assessment order as well as the appellate order is not sustainable in law.

09. The learned departmental representative vehemently supported the orders of the lower authorities.
010. We have carefully considered the rival contention and perused the orders of the lower authorities as well as the



paper book filed by the assessee. Fact shows that assessee is engaged in the business of IT enabled services and provides business process support and services in the areas of non-voice service online and off-line, medical billing and claim processing. It encompasses a comprehensive suite of platform enabled back office services in medical and pharmacy revenue cycle workflow from patient admission and discharge for claim processing and receivable management, Thus assessee is engaged in providing back-office transaction processing services. There is no dispute about the selection of the most appropriate method as transactional net margin method and assessee being a tested party. The only disputes are [1] determination of profit level indicator computation and [ 2] exclusions of three comparable. The assessee has computed PLI at 11.35% which is rejected by the learned transfer pricing officer and computed at 8.93 percentage. The reason for such differences that the learned transfer pricing officer has also included in the gross revenue the amount of sale of software which is not an international transaction at all as , same was entered into with non-associated enterprises , i.e. independent parties. As the learned TPO included sale of software in gross revenue for working out PLI, identically he also included the cost of goods sold as cost incurred. In fact the assessee has purchased software (traded goods) for ₹ 128,448,338 and out of which a sum of ₹ 28,448,338 is lying in the closing stock, accordingly the cost of sales of goods is only ₹ 10 crores. Software Sales though included

in services of ₹ 101,238,355. Therefore, the profit level indicator determined by the learned transfer pricing officer is not correct as he has included, the non-international transactions. For the purpose of profit level indicator, the margin of the assessee should be computed only on international transactions. It was also found that the learned CIT – A has not given any finding on this aspect despite making a written submission before him. Therefore, the order of the lower authorities is not sustainable on this count. Accordingly, the learned transfer pricing officer/the learned assessing officer is directed to compute the profit level indicator of the assessee at 11.35%.

011. Coming to the comparable companies exclude by the learned transfer pricing officer, we find that Aurum software systems Ltd was excluded by the learned transfer pricing officer for the reason that it did not have complete information. There is no finding that what is the information that is lacking in that comparable. Compared to this, the learned authorized representative submitted that the capitaline database correctly shows the complete information and before us the learned authorized representative has also submitted the annual account of that company placed at page number 255 – 275 of the paper book for the comparable period i.e. assessment year 2012 – 13. The learned departmental representative could not show us that what is the incomplete information in such annual account. It was also not denied that it is functionally comparable. The learned CIT – A confirmed



the action of the learned transfer pricing officer excluding the above company for the reason that the comparable company is predominantly having its operation in India and cannot be a suitable comparable for the assessee because there are international transactions in case of appellant company with its associated enterprises and as such export oriented companies operating in similar line of business would only be good comparable. We do not find any justification in the order of the learned CIT – A4 exclusion of above comparable. Naturally, the learned transfer pricing officer did not apply the accept reject metrics filter which the learned CIT – A applied. The logic given by the learned CIT – A is devoid of any merit. Accordingly, as the comparable is functionally comparable, same deserves to be included in comparable analysis. Accordingly, we direct the learned transfer pricing officer/assessing officer to include the above company.

012. Similarly, the assessee has included cybermate Infotech Ltd (-13.71%) and info drive software Ltd (-17.52%), which were excluded by the learned transfer pricing officer without giving any reasoning. Before us the learned authorized representative has produced annual account of this company is placed at page number 176 – 254 of the paper book and submitted that both are functionally comparable, merely because they have negative margin in the last year, the learned transfer pricing officer excluded the same.



013. The learned CIT – A confirmed the exclusion of CybermateInfoTech Limited for the reason that the assessee did not make a specific submission for this company and further according to him the company is engaged in software development activities. He also confirmed the exclusion of Info Drive software Ltd holding that it is also a software development company and the tales of business process outsourcing activity like it's extent and its profitability cannot be derived from the information available therein.
014. On careful analysis of the annual accounts of Cybermate Infotech Ltd and info drive software Ltd, we do not find any support for finding of the learned CIT – A. Cybermate Infotech Ltd has revenue from operation according to schedule 18 and such is only ITeS segment. Further info drive software Ltd is also from ITeS segment. Accordingly, both are functionally comparable.
015. The learned departmental representative could not show that these companies are not functionally comparable with the assessee. He also could not show anything to support the finding of the learned CIT – A. Therefore, we do not have any other alternative but to direct the learned AO/TPO to include both these companies in the comparability analysis. The learned CIT – A despite having the annual accounts before him did not comment that why he is upholding the action of the learned transfer pricing officer in excluding the above comparable.
016. In the result appeal filed by the assessee is allowed.



Order pronounced in the open court on 21.11.2022.

Sd/-  
(SANDEEP SINGH KARHAIL)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 21.11.2022

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai