

## Cos with huge turnover, abnormal profits or functional differences are excludible from comparables list

**Summary –** The Hyderabad ITAT in a recent case of C3i Support Services (P.) Ltd., (the Assessee) held that where TPO made certain adjustment to assessee's ALP in respect of rendering BPO services to its AE, in view of fact that some of comparables selected by TPO were inappropriate on account of functional difference, turnover, abnormal profit margin etc., impugned adjustment was to be set aside and matter was to be remanded back for disposal afresh

### Facts

- The assessee a wholly owned subsidiary of C3i Inc., USA provided business process outsourcing (BPO) services in the field of health care administration to its AE.
- The assessee adopted (TNMM) as most appropriate method in the TP study to determine the ALP of international transactions.
- The search in the data bases yielded 5 companies which were found to be functionally similar, hence selected as comparables with weighted average arithmetic mean of 6.98%. Since assessee's net margin from the provision of services to its AE during the year at 15.18% was found to be within arms' length, no adjustment was made.
- After rejecting the TP study, TPO undertook a fresh search of the data bases for selecting comparables. In this process, the TPO selected 27 companies as comparables with average margin of 30.21 per cent. Accordingly, certain adjustment was made to assessee's ALP.
- The DRP confirmed said adjustment.
- On appeal:

### Held

#### ***Asit C Mehta Financial Services Ltd.***

- The submission was that the aforesaid company being selected as comparable is not correct since it belongs to a different vertical and hence has a different cost structure. In this connection assessee relied on the decision of *Zavata India (P.) Ltd. v. Dy. CIT [2013] 35 taxmann.com 423 (Hyd.)* where in under similar circumstances this company has been rejected on the grounds that the employee cost of the company is only 24.78 per cent of its revenue compared to assessee's 44 per cent. Considering the co-ordinate bench decisions the TPO/AO is directed to exclude the same.

#### ***Vishal Information Technologies***

- The aforesaid company has been removed by the DRP as a comparable in the case of the assessee for the AY 2008-09. Further, the aforesaid company is not only functionally different on account of employee cost filter as the employee cost of the company is only 2% of its revenue, but it also has

huge vendor payment for data entry which is indicative of the fact that it does not provide IT enabled services by itself but out sources the work with third party vendor. In this connection assessee relied on the decision of Income-tax Appellate Tribunal, Hyderabad Bench in case of *Capital IQ Information Systems (India) (P.) Ltd. v. Dy. CIT (International Taxation)* [2013] 32 taxmann.com 21/57 SOT 14 (Hyd.) (URO), *Zavata India (P.) Ltd. (supra)*, *C3i Support Services (P.) Ltd.*, No.1781/Hyd/2011 and *Avineon India (P.) Ltd. v. Dy. CIT* [2014] 41 taxmann.com 334 (Hyd.).

- In view of the observations made by the DRP as well as the decisions of the ITAT mentioned above, it is opined that this company cannot be taken as a comparable.

#### ***Eclerx Services Limited***

- Assessee submitted that this company is engaged in providing knowledge process outsourcing (KPO). It was further submitted that besides being functionally different from the assessee, the aforesaid company has shown extraordinarily high profit at 88.11 per cent hence cannot be treated as comparable. In this connection assessee relied on the decision of Income-tax Appellate Tribunal, Hyderabad Bench in case of *Capital IQ Information Systems (India) (P.) Ltd. (supra)*, *Zavata India (P.) Ltd. (supra)* and, *Avineon India (P.) Ltd. (supra)*. Considering the decision of co-ordinate Benches in the above cases, it is held that this company cannot be taken as comparable.

#### ***Mold-Tek Technologies Limited***

- During the year, the company has shown super normal profit of 117.29 per cent compared to the assessee as well as other comparable companies. Apart from having extraordinarily high profit, Mold-Tek is also functionally different as it is engaged in providing structural engineering consulting services under the KPO division. M/s Mold Tek is providing highly technical and specialised engineering services and use of information technology is only incidental. In this connection assessee relied on the decision of Income-tax Appellate Tribunal, Hyderabad Bench in case of *Capital IQ Information Systems (India) (P.) Ltd. (supra)*, *Zavata India (P.) Ltd. (supra)* and *Avineon India (P.) Ltd. (supra)*. Even in assessee's own case for assessment year 2008-09, the DRP has directed for exclusion of M/s. Mold-Tek from list of comparables.
- In view of the above and following decisions relied upon by assessee, the contentions of the assessee is accepted that this company cannot be treated as a comparable.
- HCL Comnet Systems & Services Limited, Infosys BPO Limited and Wipro Limited.
- While the assessee's turnover during the year was about 12.5 crores, these companies have huge turnovers compared to the assessee.
- In this connection assessee relied on the decision of Income-tax Appellate Tribunal, Hyderabad Bench in case of *Capital IQ Information Systems (India) (P.) Ltd. (supra)*, *Zavata India (P.) Ltd. (supra)*, and *Avineon India (P.) Ltd. (supra)*.
- Having considered the decisions mentioned above, it is held that the aforesaid companies are not comparable at all.

***Genesys Corporation***

- This company is a geospatial services content provider specialising in land based technologies. From the notes to accounts of this company, it is seen that this company is engaged in providing geographical information services comprising of photo geometry, remote sensing cartography, data conversion related computed based services and other related services. Further the business of this company requires skilled manpower and scientists, civil engineers, etc. Assessee is a routine ITES provider who does not require such highly skilled employees. Besides the above, this company also carries out R & D services and own intangibles. Therefore said facts, will take this company out of the list of comparables.
- In view of above, TPO/AO is directed to re-workout the TP adjustment as per the provisions after excluding the comparables rejected above and considering the comparables which require reconsideration after giving opportunity to assessee.