

Comparable selected in earlier year couldn't be excluded in later years without any change in facts

Summary – The Bangalore ITAT in a recent case of Tektronix Engineering Development (India) (P.) Ltd., (the Assessee) held that Where assessee had accepted two companies as functionally comparable for earlier assessment year and Tribunal in assessee's own case had accepted same, following order of earlier year these two companies could not be excluded from set of comparables

Facts

- The assessee was a private limited company, and was a wholly owned subsidiary of Tektronix Inc., USA. It was engaged in providing engineering and software development services to its Associated Enterprises (AEs).
- The TPO selected 20 comparables to benchmark international transactions of assessee pertaining to software development services and proposed adjustment under section 92CA.
- On appeal, the DRP upheld the order of the TPO.
- On appeal to the Tribunal the assessee sought exclusion of 13 comparables out of 20 comparables selected by the TPO on ground that they were functionally not comparable.
- The revenue, however, submitted that out of these 13 comparables, two comparables had been accepted as functionally comparable for the assessment year 2006-07 and there is no material change in the business profile and activities of these two companies as well as the assessee for the year under consideration, therefore these two companies could not be excluded from the set of comparables.
- Thereby, the assessee submitted in the rejoinder that if the other comparable companies were excluded from the set of comparables then without prejudice to the right of the assessee to challenge the functional comparability of these two companies, the assessee would not press the exclusion of these two companies because the Arm's Length Price (ALP) from the remaining comparables will be within the tolerance range of + or - 5 per cent and, consequently, there would be no TP Adjustment.

Held

- Since two comparable companies viz. Bodhtree Consulting Ltd. and Lucid Software Ltd. were accepted by the assessee itself as comparable for the assessment year 2006-07 and the Tribunal *vide* its order dated 20-2-2015 in assessee's own case has not disturbed the comparability of these two companies therefore by following the earlier orders of this Tribunal, the Assessing Officer/TPO is directed to exclude the remaining 11 companies from the set of comparables and then recompute the ALP. Needless to say the benefit of proviso to section 92CA also to be considered if the price of the assessee is within the tolerance range of + or - 5 per cent of ALP so computed by the TPO.