

Comparable with related party transaction of 18% can't be excluded considering the standard range of 15-20%: ITAT

Summary – The Bangalore ITAT in a recent case of Ketera Software India (P.) Ltd., (the Assessee) held that Since RPT percentage of 15-20 per cent was confirmed by various Tribunals, RPT of comparable being 18.3 per cent, it need not be excluded from comparable list

Facts

- The assessee-company was engaged in the business of providing software development services to its AE. It had selected a set of 11 comparable companies with an average profit margin of 10.24 per cent. Since the assessee own profit margin was more than the arithmetical mean of the comparables, it concluded that its international transactions was at arm's length.
- The TPO rejected all comparable companies selected by the assessee, selected a new set of 26 comparable companies, arrived at an arithmetical mean margin of 32.07 per cent *vis-à-vis* the assessee's margin 16.43 per cent and made TP adjustment.
- The Commissioner (Appeals) had excluded 13 comparables out of 20 comparables adopted by the TPO.
- On appeal :

Held

- The Tribunal in the case of *Infineon Technologies India (P.) Ltd. v. Dy. CIT* [[2016](#)] [71 taxmann.com 139 \(Bang. - Trib.\)](#) has examined the functional profile of the similar comparables. Having examined the functional profile in detail, the Tribunal has held that these comparables are to be excluded from the list of comparables while determining the ALP for international transactions:

Comparable Avani Cincom Technologies Ltd.

The assessee has brought on record evidence that this company is functionally dis-similar and different from the assessee and hence is not comparable. Therefore, the finding excluding it from the list of comparables rendered in the immediately preceding year is applicable in this year also. Since the functional profile and other parameters by this company have not undergone any change during the year under consideration which fact has been demonstrated by the assessee, the Assessing Officer/TPO is directed to omit this company from the list of comparables.

Comparable Celestial Biolabs Ltd.

This company is engaged in the development of products in the field of bio-technology, pharmaceuticals, etc., and therefore is not functionally comparable to the assessee.

Comparable KALS Information Systems Ltd.

This company was developing software products and was not purely or mainly a software service provider. Thus this company is functionally dis-similar and different from the assessee.

Comparable Infosys Technologies Ltd.

Infosys Technologies Ltd. being a giant company and market leader assuming all risks leading to higher profits cannot be considered as comparable to captive service providers assuming limited risk.

Comparable Wipro Ltd.

This company is engaged both in software development and product development services. There is no information on the segmental bifurcation of revenue from sale of product and software services.

Another major flaw in the comparability analysis carried out by the TPO is that he adopted comparison of the consolidated financial statements of Wipro with the stand alone financials of the assessee, which is not an appropriate comparison.

A company owning intangibles cannot be compared to a low risk captive service provider who does not own any such intangible and hence does not have an additional advantage in the market.

Comparable Tata Elxsi Ltd.

This company is predominantly engaged in product designing services and not purely software development services and is not to be considered for inclusion in the set of comparables.

Comparable E-Zest Solutions Ltd.

This company *i.e.* e-Zest Solutions Ltd., is rendering product development services and high end technical services which come under the category of KPO services.

Thus e-Zest Solutions Ltd. be omitted from the set of comparables for the period under consideration.

Comparable Persistent Systems Ltd.

This company is engaged in product development and product design services while the assessee is a software development services provider and, the segmental details are not given separately. In the absence of segmental details/information a company cannot be taken into account for comparability analysis, this company *i.e.* Persistent Systems Ltd. ought to be omitted from the set of comparables for the year under consideration.

- Since the Tribunal has taken a particular view with regard to these comparables, there is no justification for taking a contrary view. Thus, the Commissioner (Appeals) has rightly excluded.

Comparables Flextronics Software Systems Ltd., iGate Global Solutions Ltd., Sasken Communication Technologies Ltd.

- The turnover of these comparables is certainly 10 times more than the assessee. The Tribunal has been taking a consistent view that turnover filter will apply while selecting comparables in order to determine the ALP of the international transactions.
- Since a consistent view is taken that by applying the turnover filter, comparables can be excluded,; there is no infirmity in the order of Commissioner (Appeals), who has rightly applied the turnover filter.

Comparable Softsol India Ltd.

- The Commissioner (Appeals) having applied the RPT filter more than 15 per cent has excluded this company as a comparable. In the instant case, the RPT was 18.3 per cent. It has been repeatedly held that RPT filter is not a water tight compartment and once it crosses 15 per cent, the comparable has to be excluded. In a number of cases, the RPT percentage of 15 to 20 per cent is comparable. In the instant case, since the RPT is 18.3 per cent, there is no justification in exclusion of this comparable from the list of comparables. Accordingly, the order of Commissioner (Appeals) is set aside and the TPO/Assessing Officer is directed to take into account this comparable while determining the ALP of the international transactions.