

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH "B", BANGALORE**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND
SHRI A.K. GARODIA, ACCOUNTANT MEMBER**

IT(TP)A No. 95/B/2016
(Assessment Year 2011 – 12)

M/s Eads India Private Limited, Now known as Airbus Group India Private Limited, 4 th Floor, Xylem Plot No. 4 & 4A, Dyavasandra, Industrial Area, Mahadevpura Post, White Field Road, Bangalore – 560048. PAN AABCE6092J	Vs	The ACIT, Circle 1(1) (1), Bangalore
--	----	---

(Appellant)		(Respondent)
Assessee by		Shri Himanshu Shekar Sinha, Advocate
Revenue by		Ms Neera Malhotra, CIT DR
Date of hearing		26/07/2016
Date of pronouncement		26/08/2016

ORDER

PER A. K. GARODIA, AM.

This is an assessee's appeal for the Assessment year 2011 – 12 directed against the Assessment order dated 23.12.2015 u/s 143 (3) r.w.s. 144C as per the directions of DRP.

2. The assessee has raised various grounds but the only issue to be decided by us is in respect of T. P. Adjustment for two segments i.e. Technical Support Services (TSS) and Marketing Support Services (MSS). Although the assessee has raised Ground 5 in respect of third segment i.e. Customer Support Services (CSS) also but the same is of academic interest only because as per the order of DRP, as against Tested Party margin of 7% for this Segment, the Arm's Length margin is 2.08% only and therefore, no TP adjustment can be made for this segment.

3. We decide this appeal in respect of remaining two segments. First we consider TSS. For this segment, the assessee selected 6 comparables out of which, the TPO adopted 3 and rejected 3 and DRP approved the order of TPO. The assessee has filed the present appeal for requesting inclusion of those 3 comparables which were rejected by TPO and DRP. The learned AR of the assessee has furnished a chart of his arguments and submitted that the appeal may be decided by considering the arguments in the chart. He also pointed out that as per the chart, the assessee is not pressing for inclusion of one comparable of this segment i.e. Kirloskar Consultants Limited and hence, for this segment, the claim of the assessee is confined to inclusion of 2 comparables i.e. 1) Yasmun Engineers Limited (YEL) and 2) United Van Der Horst Ltd.(UVDHL). Regarding YEL, the submission in the chart is this that the objection of TPO for this company is this that this company fails service income filter because its income comprises receipt from labour charges and the explanation of the assessee in this regard is this that the income of this company on account of labour charges is from provision of services. We find that the details of income of that company in its Annual Report on page 1361 of Paper Book is reproduced in the chart and as per the same, Service income of that company includes Rs. 837.10 Lacs on account of Labour Charges and Rs. 321.59 Lacs on account of Works Contact out of total stated service income of Rs. 1158.69 Lacs. The percentage of labour Charges income to total stated service income is 72.25%. In our considered opinion, providing technical support services cannot be equated with supply of labours and earning labour charges and therefore, this company cannot be considered as a comparable in the present case.

4. Now we consider and examine the second company in dispute for this segment i.e. UVDHL. For this company, the objection of TPO is this that this company is functionally different because this company is engaged in manufacturing and job work. In the chart filed before us, this is contended that description of the business of this company provided at page 1304 of the paper book should be considered as per which, this company operates in the Refurbishing, Restandardising & Reconditioning Industry. In the light of this, we examine the Profit & Loss Account of that company available on page 1319 of the paper book and as per the same, Total Revenue is Rs. 1028.50 Lacs after deducting decrease in inventors of Rs.

37.25 lacs and it includes Receipts on account of manufacturing & Job Work Rs. 1061.71 Lacs, Trading Rs. 3.14 Lacs and other income of Rs. 0.90 Lacs. The Expenditure includes Materials & Stores Consumed Rs. 298.43 lacs and Power & Fuel Rs. 50.68 Lacs. In case of manufacturing and Trading operation, the revenue includes recovery on account of material, stores and Power & Fuel cost in addition to value addition by employees whereas in case of pure service provider as the present assessee, the recovery is mainly on account of expenses on man power and value addition done by the man power and therefore, the percentage of income to total revenue is bound to be much less in case of manufacturing and trading company as compared to only service provider. Therefore, such manufacturing and trading company cannot be considered as a comparable in case of a service provider company as in the present case. Accordingly, we find no merit in the claim of the assessee for inclusion of both these companies in this segment i.e. TSS.

5. Now, we consider, examine and decide the issue in respect of the second segment i.e. MSS. In this segment, the assessee considered 4 comparables out of which, the TPO rejected one and added 2 making it total 5 comparables. DRP upheld the rejection of one comparable i.e. Marketing Consultants & Agencies Ltd. (MCAL) and also rejected two new comparables added by the TPO. The assessee also made request for inclusion of one more comparable i.e. Goldmine Advertising Ltd. (GAL) but this request was not accepted by DRP. Now, the assessee's case before us is for inclusion of these two comparables i.e. MCAL & GAL. Regarding MCAL, it is stated in the chart that the TPO rejected this company on this basis that it fails the filter of Service Income and the explanation of the assessee in this regard is this that this company is engaged in providing advertisement and related services. Our attention is drawn to pages 1200 & 1203 of the paper book. We have examined these pages of the paper book and find that even as per additional details of Income Statement of this company, operating revenue of this company includes Rs. 4218.20 Lacs on account of Domestic sale of traded goods and Rs. 8422.96 Lacs on account of Domestic revenue services total revenue Rs. 12641.16 Lacs and even segmental data of service segment is not

available on these pages and no reference is made to any other page of the paper book in this regard. Under these facts, we have no hesitation in holding that this company cannot be considered as a good comparable in the present case.

6. Regarding second company of this segment i.e. GAL, that the TPO rejected this company also on the same basis that it fails the filter of Service Income and the explanation of the assessee in this regard is this that this company passes this filter it has sales & service income of Rs. 6414.63 Lacs out of total income of Rs. 6451.83 Lacs the percentage service income to total income is 99.42%. Our attention has been drawn to page 1223 of the paper book. On this page, the income on account of sales & Services is Rs. 6414.63 Lacs and expenses on account of Purchases are Rs. 5459.51 lacs. Purchases can be for traded goods only and when the purchase is about 85 % of sales & Services, it has to be accepted that more than 85% of this revenue is on account of sales and hence, under these facts, this company is primarily a trading company and therefore cannot be considered as a comparable in the present case. Accordingly, we find no merit in the claim of the assessee for inclusion of both these companies in this segment i.e. MSS.

7. In the result, the appeal of the assessee is dismissed.

(Order was pronounced in the open court on the date mentioned on the caption page)

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Place: Bangalore
Dated: 26 /08/2016
am*

Copy of the order forwarded to :

- 1.The Appellant
- 2.The Respondent.
- 3.Concerned CIT
- 4.The CIT(A)
- 5.D.R., I.T.A.T., Bangalore

Sd/-
(A.K. GARODIA)
Accountant Member

Asstt. Registrar

1. श्रुतलेख की तारीख.....
DATE OF DICTATION.....
2. तारीख, जिस पर टाइप किया हुआ मसौदे, संबंधित सदस्य के सामने रखा गया है
DATE ON WHICH TYPED DRAFT IS PLACED BEFORE THE DICTATING
MEMBER.....
3. तारीख जिस पर अनुमोदित मसौदे व. निजी सचिव/निजी सचिव के पास वापस आए
DATE ON WHICH THE APPROVED DRAFT COMES TO THE PS/Sr.PS.....
4. घोषणा के लिए आदेश संबंधित सदस्य के सामने रखने की तिथि
DATE ON WHICH THE ORDER IS PLACED BEFORE THE DICTATING MEMBER
FOR PRONOUNCEMENT.....
5. आदेश नि.सचिव/व.नि.सचिव के पास वापस आने की तिथि
DATE ON WHICH THE ORDER COMES BACK TO THE PS/Sr.PS.....
- 6 आदेश अपलोड करने की तिथि
DATE OF UPLOADING THE ORDER ON WEBSITE.....
7. अगर अपलोड नहीं किया तो, उसका कारण
IF NOT UPLOADED, FURNISH THE REASON FOR DOING SO.....
8. बेंच लिपिक के पास फाइल जाने की तिथि
DATE ON WHICH THE FILE GOES TO THE BENCH CLERK.....
9. आदेश ज़ेरोक्स/पृष्ठांकन के लिए भेजने की तिथि
DATE ON WHICH ORDER GOES FOR XEROX & ENDORSEMENT.....
10. फाइल मुख्य लिपिक के पास जाने की तिथि
DATE ON WHICH THE FILE GOES TO THE HEAD CLERK.....
11. आदेश पर हस्ताक्षर के लिए फाइल सहायक रजिस्ट्रार के पास जाने की तिथि
THE DATE ON WHICH THE FILE GOES TO THE ASSISTANT REGISTRAR FOR
SIGNATURE ON THE ORDER.....
12. अधिकरण आदेश के प्रेषण के लिए फाइल प्रेषण विभाग में जाने की तिथि
THE DATE ON WHICH THE FILE GOES TO DESPATCH SECTION FOR DESPATCH
OF THE TRIBUNAL ORDER.....
13. आदेश की प्रेषण की तिथि
DATE OF DESPATCH OF ORDER.....