

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

IT(TP)A No.3375/Bang/2018
Assessment Year: 2014-15

M/s. EMC Software & Services India Pvt. Ltd. Bagmane Developers Private Ltd. SEZ-Marathahalli Ring Road Doddanekkundi Village Road Bangalore-560 037. PAN NO : AABCT0199B	Vs.	Joint Commissioner of Income-tax Special Range-2 Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri T. Suryanarayana, A.R.
Respondent by	:	Shri Pradeep Kumar, D.R.

Date of Hearing	:	01.10.2020
Date of Pronouncement	:	01.10.2020

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the assessment order dated 29-10-2018 passed by the assessing officer for assessment year 2014-15 u/s 143(3) r.w.s. 144C of the Act in pursuance of directions given by Ld Dispute Resolution Panel (DRP).

2. This appeal was earlier disposed of by the co-ordinate bench on 18-12-2019. Thereafter, the assessee filed a miscellaneous application, wherein certain mistakes apparent from record were pointed out. The co-ordinate bench disposed of the miscellaneous

application in M.P No.33/Bang/2020 on 13.8.2020. As per the said order, the Tribunal has recalled its order for the limited purpose of adjudicating following grounds:-

- a. Ground No.3(l) in so far as it is related to “I2T2 India Limited”
- b. Ground No.8 and 9.

Accordingly, this appeal came to be listed before us.

3. In ground no.3(l), the assessee seeks inclusion of “I2T2 India Limited” as a comparable company. The Ld A.R submitted that this company is functionally comparable and passes all filters applied by TPO. He further submitted that the co-ordinate bench has examined this company in the case of LG Soft India P Ltd (IT(TP)A No.3122/Bang/2016 dated 28-05-2019) and has held it to be a good comparable for a captive software development service company.

4. We heard Ld D.R and perused the record. We notice that the co-ordinate bench has held in the case of LG Soft India P Ltd (supra) that M/s I2T2 India Limited is a good comparable for a captive software development company. The relevant observations made by the co-ordinate bench in the above said case are extracted below:-

“11. The assessee seeks inclusion of T2T2 India Ltd. The Ld. A.R. submitted that this company is functionally comparable company. The TPO/DRP has rejected the same only for the reason that the detail of Related Party Transactions (RPT) was not disclosed in the Annual Report. The Ld. A.R. submitted that the above said company would have disclosed RPT transactions if any such transactions were available. Since no disclosure was made, it has to be concluded that there was not RPT transaction., Accordingly the Ld. A.R. submitted that there is no justification for excluding this company.

12. We find force in the contentions of Ld. A.R. If the Annual report of this company does not mention about Related Party Transactions, then the assessee cannot be held responsible to prove a fact relating to a third party, which may or may not exist. We notice from the Auditors Report of M/s. T2T2 India Ltd. that the

auditor in para 5(b) of Annexure to the Auditor's report has mentioned as under:-

"There are no transactions that are made at prices exceeding Rs.5 lakhs in respect of any party who is covered under section 301 of the Act during the financial year".

Hence, in the absence of any specific information, there is merit in the contentions of the assessee that the above said company might not have had related party transactions during the year under consideration. Accordingly we do not agree with the reasoning given by Ld. DRP for excluding this company as a comparable. Accordingly we direct the AO/TPO to include this company."

It is pertinent to note that the name of the above said comparable company was wrongly mentioned as "T2T2 India Ltd" in the above said order and the same has been rectified by the Tribunal, vide its order dated 27-09-2019 passed in MP No.95/Bang/2019.

5. Accordingly, following the decision rendered by the co-ordinate bench in the case of M/s LG Soft India P Ltd (supra), we direct the TPO/AO for inclusion of the I2T2 India Ltd as a comparable company.

6. In ground no.8, the grievance of the assessee is that the AO has not granted credit of correct amount of advance tax, self assessment tax and TDS amounts. In ground no.9, the grievance of the assessee is that the AO has not granted credit of correct amount of Minimum Alternative Tax (MAT) u/s 115JAA of the Act.

7. We notice that the above said claims of the assessee require verification at the end of AO. Accordingly, we restore both the issues to the file of AO for examining the claim of the assessee and give credit of correct amount of claim by way of advance tax, self assessment tax, TDS amounts and MAT credit.

8. In the result, the ground no.3(l), 8 and 9 are treated as allowed.

Order pronounced in the open court on 1st Oct'20

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 1st Oct, 2020.
VG/SPS

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.