

## Co. having related party transactions in excess of 25% of total revenue couldn't be selected as comparable

**Summary – The Pune ITAT in a recent case of Starent Networks (India) (P.) Ltd., (the Assessee) held that A company having Related Party Transaction exceeding 25 per cent of total revenue cannot be selected as comparable**

**Where assessee had ostensibly given detailed working of working capital adjustment and risk, adjustment but DRP had rejected issues raised by assessee in mechanical manner since appeal had not been properly adjudicated by DRP, same was remitted back to DRP for fresh adjudication**

### Facts

- The assessee was engaged in the business of software development. It exported its entire output to its parent company. To benchmark the same, the assessee adopted CPM and had originally selected 27 comparables.
- The TPO rejected 22 out of 27 comparables selected by the assessee and introduced three more companies for TP study. Accordingly, the TPO determined the ALP of the assessee's international transactions. As a consequence, an adjustment to ALP of international transactions with AE was made.
- DRP confirmed the said order.
- On appeal: the assessee challenged selection of some comparables.

### Held

#### ***Comparable Compucom Software Ltd.***

- The contention of the assessee is that the company has related party transaction exceeding 25 per cent of the total revenue and, therefore, it has to be excluded from the list of comparables. The Tribunal in assessee's own case for assessment year 2006-07 has rejected the said company for similar reasons. In the case of *PTC Software (India) (P.) Ltd. v. Asstt. CIT* [\[2012\] 28 taxmann.com 412 \(Pune\)](#) the Tribunal excluded the said company from final set of comparables on account of excessive related party transactions. Respectfully following the said decision the Assessing Officer/TPO is directed to exclude the said company from the list of comparables.

#### ***Comparable Kals Information Systems Ltd.***

- The assessee is engaged in software research and development solely for its AE, whereas, Kals Information systems Ltd. is engaged in development of software and software products. The Tribunal in the case of *Barclays Technology Centre India (P.) Ltd. v. Asstt. CIT* [\[2015\] 56 taxmann.com 386 \(Pune\)](#) excluded the said company from the list of comparables being functionally different.

- For the similar reasons, Kals Information Systems Ltd. has to be excluded from the list of the comparables in the present case as well.

***Comparable Avani Cimcon Technologies Ltd.***

- The assessee has objected to the inclusion of Avani Cimcon Technologies Ltd. in the list of comparables on the ground that the company is functionally different. In support of his submissions the assessee has placed reliance on the decision of Bangalore Bench of the Tribunal in the case of *Trilogy E-Business Software India (P.) Ltd. v. Dy. CIT* [2013] 29 taxmann.com 310/140 ITD 540 to the effect that is company has revenue from software product and observed that in the absence of segmental details, Avani Cincom cannot be considered as comparable to the assessee who was rendering software development services only. The revenue has not been able to distinguish the decision of the Tribunal, nor any material has been brought on record to take a different view. Respectfully following the decision of Co-ordinate Bench, Aani Cimcon Technologies Ltd. is to be excluded from the list of comparables in the present case as well.

***Comparables Akshay Software Technologies Ltd., Maars Software International Ltd., Melstar Information Technologies Ltd. and VMF Software International Ltd.***

- A perusal of the order of TPO, as well as the DRP shows that there is no reference of the Akshay Software Technologies Ltd., Maars Software International Ltd., Melstar Information Technologies Ltd. and VMF Software International Ltd. in the order. No reason whatsoever has been given for not considering the aforesaid companies in TP study. Accordingly, it would be appropriate to remit this issue back to the file of TPO for considering the aforesaid companies and pass speaking order thereon accepting/rejecting the said companies as comparable entities, provided the assessee has furnished the data of said companies with a request to consider the same during the pendency of proceedings before TPO in first round.