

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'B', BANGALORE

BEFORE SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

AND

SHRI. VIJAY PAL RAO, JUDICIAL MEMBER

I.T(TP).A No.286/Bang/2015
(Assessment Year : 2010-11)

Amba Research (India) P. Ltd,
7th floor, Elixir Chancery Building,
Municipal door No.135/1-2, Residency Road,
Bangalore 560 025
PAN : AAECA9391H

.. Appellant

v.

Deputy Commissioner of Income-tax,
Circle -1(1)(1), Bangalore

.. Respondent

Assessee by : Shri. Chavali Narayan, CA
Revenue by : Ms. Neera Malhotra, CIT

Heard on : 09.02.2016
Pronounced on : 09.03.2016

ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

In this appeal filed by assessee, directed against an assessment done by the AO on 30.12.2014, pursuant to directions of the DRP u/s.144C of

the Income-tax Act, 1961 ('the Act' in short), it has altogether raised 14 grounds.

02. Ld. Counsel for the Assessee submitted that if his grievances with regard to rejection of certain comparables considered by the TPO, appearing as a part of its ground no.6 is considered, other grounds need not be adjudicated now. Accordingly we are confining ourselves to ground raised by assessee with regard to certain comparables considered by the TPO on which it is aggrieved.

03. Ld. AR submitted that assessee was a 100% export-oriented unit ('EOU' in short) and providing ITE services to its holding company in British Virgin Islands. As per the Ld. AR revenue from such transactions came to Rs.52,47,44,085/-. Ld. AR submitted that assessee in the TP documentation had adopted TNMM for justifying the price of its international transactions and considered nine comparable companies for this purpose, based on an analysis done on prowess and capitaline data base. As per the Ld. AR, TPO had on the other hand applied filters like RPT, insignificant ITES segment, absence of data in public domain, etc, and arrived at a list of ten comparables as hereunder :

SL.NO	NAME	PLI
1	ACCENTIA TECHNOLOGIES LTD	43.06%

2	ACROPETAL TECHNOLOGIES LTD (SEG.)	22.27%
3	E-CLERX SERVICES LTD	55.97%
4	FORTUNE INFOTECH LTD	22.80%
5	ICRA ONLINE LTD(SEG)	43.39%
6	INFORMED TECHNOLOGIES INDIA LTD	26.15%
7	INFOSYS BPO	31.23%
8	COSMIC GLOBAL LTD	14.97%
9	SUNDARAM BUSINESS SERVICES LTD	-12.31%
10	JEEVAN SCIENTIFIC TECHNOLOGY LTD.(SEG.)	21.05%
	AVERAGE	26.86%

04. Ld. AR submitted that TPO had allowed working capital adjustment of 0.23% and a final adjustment of Rs.54,46,46,045/-, as given hereunder was recommended :

IT ENABLED SERVICES

Arm's Length Mean Margin on cost	26.86%
Less: Working Capital Adjustment (Annex.C)	0.23%
Adjusted margin	26.63%
Operating Cost	462,226,533
Arms Length Price (ALP) 126.63% of Operating cost	585,317,459
Price Received	530,671,414
Shortfall being adjustment u/s 92CA:	54,646,045

05. Assessee as per the Ld. AR, moved the DRP against the above recommendations of the TPO. As per the Ld. AR, DRP had considered the arguments of the assessee and directed exclusion of Acropetal Technologies Ltd (seg), E-clerx Services Ltd, ICRA Online Ltd (seg), Infosys BPO Ltd and Sundaram Business Services Ltd, from the list of eleven comparables. However, according to him, DRP did not accept the assessee's contentions in so far as it related to Accentia Technologies Ltd. As per the Ld. AR though Accentia Technologies Ltd was a part of assessee's own list of comparables in the TP study, it had before the TPO objected and sought exclusion. As per the Ld. AR assessee had relied on various decisions of this Tribunal in support. However, this was not considered by the TPO. Ld. AR pointed out that similar exclusion was sought before DRP also, but with no result. As per the Ld. AR, AO had thereafter concluded the assessment considering M/s. Accentia Technologies as a good comparable.

06. Ld. AR relying on the decision of coordinate bench in the case of M/s. Novo Nordisk India P. Ltd v. DCIT [IT(TP)A No.146/Bang/2015, dt.30.07.2015], submitted that in the said case also Accentia Technologies Ltd was considered as a comparable under ITES segment. As per the Ld.

AR assessment year concerned was also the very same and the segment being considered by the Tribunal was ITES. Placing reliance on paper book page 109 to 159, where a copy of the decision in Novo Nordisk India (supra), was placed, Ld. AR submitted that Accentia Technologies Ltd, was directed to be excluded from the list of comparables in the ITES segment, in the said case.

07. Per contra, Ld. DR submitted that a change in the list of comparables would completely affect the matrix of the study under TNMM and therefore lower authorities should be given a free hand to make a fresh search.

08. We have perused the orders and heard the rival contentions. No doubt Accentia Technologies Ltd, formed a part of the list of comparables considered by the assessee in its TP study. However assessee had objected to its inclusion citing functional dissimilarity before the AO as well as the DRP. Question regarding comparability of Accentia Technologies in the ITE segment for A. Y. 2010-11 had come up before this Tribunal in the case of Novo Nordisk India P. Ltd (supra). It was held as under at paras 31 and 32 of the order dt.30.07.2015 :

31. We deal with the comparable companies which the Assessee seeks exclusion. 1. Accentia Technology Ltd., 2. Infosys BPO Ltd. The comparability of these company with a ITES company was considered by this Tribunal in the case of Paraxel International (India) Pvt. Ltd. (supra) and the Tribunal held as follows on the comparability of the aforesaid companies with a company providing ITES in the following manner:-

“10. In grounds No.4 to 6, the assessee has challenged the comparables selected by the TPO for the purpose of TP analysis and as submitted by the learned counsel or the assessee, the assessee is objecting to the selection of only the following five comparables, out of the twelve companies selected as comparables-

Sl. No.	Company Name
1.	Accentia Technologies Limited
2.	Cosmic Global Ltd.
3.	Eclerx Services Ltd.
4.	Genesys International Ltd.
5.	Infosys B P O Ltd.

11. We have heard the arguments of both the sides on the issue of inclusion/exclusion of the above five companies as comparables and also perused the relevant material on record including the various decisions of the coordinate benches of the Tribunal cited by the learned counsel for the assessee.

Accentia Technologies Limited

12. As regards the selection of Accentia Technologies Limited as comparable, the learned counsel for the assessee has relied on the decisions of this Tribunal in the cases of Capital IQ Information Systems (India) Pvt. Ltd. V/s. Addl./Dy. Commissioner of Income-

tax, Circle 1(2), Hyderabad and vice versa (ITA No.124 and 170/Hyd/2014 dated 31.7.2014); Excellence Data Research Pvt. Ltd., Hyderabad V/s. ITO Ward 2(1), Hyderabad (ITA No.159/Hyd/2014 dated 31.7.2014); and Hyundai Motors India Engineering P. Ltd., Hyderabad V/s. DCIT, Circle 2(2), Hyderabad (ITA NHo.255/Hyd/2014 dated 31.7.2014), wherein M/s. Accentia Technologies Limited(Seg) was excluded by the Tribunal from the list of comparables on the ground that it was a case of mergers and acquisition, and the company was also found to be functionally different. The relevant observations of the Tribunal as recorded in para 19.2 of the order passed in the case of Excellence Data Research Pvt. Ltd., Hyderabad (supra), being relevant in this case, are reproduced below-

“19.2 We have considered the rival contentions and noticed that this company operates in a different business strategy of acquiring companies for inorganic growth as its strategy. In earlier years on the reason of acquisition of various companies, being an extraordinary event which had an impact on the profit, this company was excluded. As submitted by the learned counsel, this year also, the acquisition of some companies by that company may have impact on the profit. Considering the profit margins of the company and insufficient segmental data, we are of IT(TP)A No.146/Bang/2015 Page 42 of 52 the opinion that this company cannot be selected as a comparable. Moreover, this is also not a comparable in the case of M/s. Mercer Consulting (India) P. Ltd. (supra), which indicates that the TPO therein has excluded it at the outset. In view of this, we direct the Assessing Officer/TPO to exclude this comparable, from the list of comparables selected.” 13. As pointed out by the learned counsel for the assessee, there was acquisition of a company by M/s. Accentia Technologies Limited during the relevant year, and the said company, therefore, cannot be considered as comparable due to this extraordinary event which occurred in the relevant year as rightly held by the Tribunal inter alia in the case of Excellence Data Research P. Ltd. (supra). Although the learned Departmental Representative has sought to contend that the acquisition of a

company by M/s. Accentia Technologies Ltd. took place at the fag end of the year under consideration, the learned counsel for the assessee has pointed out that the process of acquisition had started on 15.5.2008 itself, i.e. in the earlier part of the year under consideration. We, therefore, follow the decision of the coordinate bench of this Tribunal in the case of Excellence Data Research Services Pvt. Ltd. (supra) and direct the AO/TPO to exclude the Accentia Technologies Limited from the list of comparables.

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Infosys BPO

20. As regards selection of Infosys BPO as a comparable company, the learned counsel for the assessee has contended that the said company cannot be taken as comparable because of its uncomparable size of operations. He has contended that the turnover of the said company was many times higher than that of the assessee during the year under consideration. Although the Learned Departmental Representative has contended that the size of operations does not matter as far as selection of comparables is concerned especially in the sector of IT Enabled services, it is observed that similar issue has been decided by the Hon'ble Delhi High Court in the case of CIT V/s. Agnity Technologies Pvt. Ltd. (219 Taxman 26) holding that huge turnover companies like Infosys and Wipro cannot be considered as comparables with smaller companies like the assessee in the present case. Respectfully following the decision of the Hon'ble Delhi High Court in the case of Agnity Technologies P. Ltd. (supra), we direct the Assessing Officer/TPO to exclude Infosys BPO from the list of comparables.”

32. As far as Accentia Technology Ltd., is concerned, even during the previous year relevant to AY 2010-11, there was amalgamation of Ascent Infoserve Private Limited with Accentia Technology Ltd., and consequent thereto the assets and liabilities and accumulated reserves and the financial results for the year

ended 31st March, 2010, of the amalgamating company were incorporated in the amalgamated company. As far as Infosys BPO Ltd., is concerned, the observations made by the Tribunal in the decision referred in the earlier paragraph will hold good for the present AY 2010-11 also. Respectfully following the decision of the Tribunal referred to above, we direct that the aforesaid 2 companies be excluded from the list of comparable companies for the purpose of computing arithmetic mean for comparability purpose. The TPO is directed to give effect accordingly.

Even after exclusion of Accentia Technologies Ltd, along with the exclusion of four comparable companies directed by DRP, there will be four companies left in the list of comparables which, in our opinion, cannot be considered as too small a sample for an effective TP study. In the circumstances, we direct exclusion of Accentia Technologies Ltd also from the list of comparables. Ordered accordingly.

09. Before parting with, we note that assessee has apart from the ground relating to transfer pricing also raised a ground relating to MAT credit u/s.115JAA of the Act, and certain consequential grounds which were not seriously argued by the Ld. AR.

10. In the result, appeal of the assessee is treated as partly allowed.

Order pronounced in the open court on 9th day of March, 2016.

Sd/-

(VIJAY PAL RAO)
JUDICIAL MEMBER

Sd/-

(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

MCN

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order

Assistant Registrar