

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I-2' NEW DELHI**

**BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 6386/Del/2016
Assessment year : 2012-13**

**Kronos Solutions India Pvt. Ltd., vs Addl. CIT,
807, New Delhi House, Special Range-05,
Barakhamba Road, C.R. Building,
New Delhi. New Delhi.**

**ITA No. 1685/Del/2016
Assessment Year: 2011-12**

**Kronos Solutions India Pvt. Ltd., vs DCIT,
807, New Delhi House, Circle-14(2),
Barakhamba Road, New Delhi.
New Delhi.
(PAN: AACCD4922B)
(Appellant) (Respondent)**

**Appellant by : S/Shri Nishant Saini, Aditya Anand, Ankit Bhatia, Adv.
Respondent by : Shri H.S. Choudhary, CIT DR**

**Date of Hearing: 08.08.2017
Date of Pronouncement: 22.09.2017**

O R D E R

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

Both the appeals have been preferred by the assessee. ITA No. 1685/Del/2016 pertains to assessment year 2011-12 whereas ITA No. 6386/Del/2016 pertains to assessment year 2012-13. ITA No. 1685 is against the final assessment order dated 29.1.2016 passed subsequent to the directions of the

Hon'ble DRP-I, New Delhi vide its order dated 21.12.15 whereas ITA No. 6386 challenges the final assessment order dated 7.11.2016. Both the appeals were heard together and now they are being disposed of through this common order.

2. The assessee, Kronos Solutions India (P) Ltd. (Kronos India), was incorporated in December 2006 as a subsidiary of Kronos Solutions Inc. (Kronos Inc.) which in turn is a wholly owned subsidiary of Kronos Incorporated USA (Kronos US). Kronos India is a 100% Export Oriented Unit and is also an offshore development centre for Kronos US. As per the Transfer Pricing Study (TP Study), Kronos India is engaged in delivering an integrated suite of software development services that enables organization to reduce costs, increase productivity, improve employee satisfaction, and enhance the level of service they provide. Kronos India is also engaged in provision of back office support services which involves application support services, technical support and hosting services and application and technical support in relation to cloud services. In respect of application support services, the assessee's services include providing support services in respect of the applications already

developed by the Associated Enterprises (AE). The services also include fixing of bugs. With respect to technical support services, the same include addressing the queries raised by the customer on AEs. The queries addressed by the assessee are in the nature of configuration issues, data corruption issues and bug issues. With respect to hosting services, the assessee provides monitoring, help desk, incident response, change and release management, asset tracking and reporting. The nature of hosting services includes technical administrative maintenance, troubleshooting and support for all servers. Further, the assessee is also engaged in monitoring the cloud so developed by the AE to ensure that the application is functioning as per the requirements.

ITA No. 1685/Del/2016 for Assessment Year 2011-12:

3. During the captioned year, the return declaring income of Rs. 3,03,72,440/- was filed. The assessee company was engaged in the business of provider of software services and back office support. The assessee company had entered into international transactions with AEs and on a reference to the Transfer Pricing Officer (TPO) u/s 92C, the TPO proposed an adjustment of Rs.

2,44,54,233/- in respect of provision of software development services and Rs. 50,74,969/- with respect to provision of IT enabled services, thus making total adjustment of Rs. 2,95,29,202/-. The assessee approached the Hon'ble DRP who directed the TPO to include/exclude the comparables on ground of functional difference and accordingly the adjustment on account of software development support services was reduced to Rs. 1,68,08,253/- in the final assessment order. The assessee filed a rectification application before the TPO and post the rectification application, the TPO deleted the adjustment on account of software development support services segment.

3.1 However, with respect to back office support services, the TPO rejected 11 out of 14 comparables selected by the assessee in the Transfer Pricing Study and included five new comparables in the final set. The final comparable set adopted by the TPO is as under:-

S.No.	Company Name	OP/ OC (%) Margins as considered by the TPO	Comparable considered by the TPO / Appellant
1	Acentia Technologies Limited	29.18%	Appellant
2	E4e Healthcare Business Services Private Limited	9.77%	Ld. TPO
3	Eclerx Services Limited	56.82%	Ld. TPO
4	ICRA Techno Analytics Limited (Segment)	25.24%	Ld. TPO
5	Inosys BPO Limited	17.86%	Appellant
6	TCSE-serve Limited	69.31%	Ld. TPO
7	Acropetal Technologies Limited (Segmental)	14.36%	Ld. TPO
8	Jindal Intellicom Limited	13.70%	Appellant
Mean		29.53%	

3.2 The TPO also did not include economic adjustments like working capital adjustment and risk adjustment while computing the arm's length margin in the back office support services segment of the assessee company. The TPO determined the arm's length margin in the back office support services segment of assessee company at 29.53% as against the assessee's margin of 16.02% and proposed an adjustment of Rs. 50,74,969/- . On the assessee approaching the Hon'ble DRP, the Hon'ble DRP accepted the approach and the comparables considered by the TPO and directed the TPO to provide working capital adjustment and also to re-compute the margins of the assessee as well as the of the comparables by removing computational errors. The Hon'ble DRP while rejecting the assessee's claim for excluding comparables held that the functional profile of the assessee with

reference to the back office support segment was akin to a Knowledge Processing Outsourcing (KPO) service whereas the assessee's contention was that it was not a KPO but only a back office service provider. However, the TPO did not provide the working capital adjustment as per the directions of the Hon'ble DRP and also did not correct the margins as directed by the Hon'ble DRP and accordingly, the adjustment with respect to back office support service segment continued to remain at Rs. 50,74,969/- and the Assessing Officer also issued the final assessment order on 29.01.2016 by making the same amount of adjustment. On rectification application filed by the assessee, the TPO, however, reduced the adjustment to Rs. 46,80,539/-. The final set of comparables post the rectification order is as under:-

Final set of comparables

S. No.	Company Name	Working capital adjusted OP/ OC
1	Accentia Technologies Limited	27.89%
2	E4e Healthcare Business Services Private	9.55%
3	Eclerx Services Limited	54.19%
4	Infosys BPO Limited	16.65%
5	T C S E-serve Limited	68.28%
6	Acropetal Technologies Limited (Segmental)	14.27%
7	Jindal Intellicom Limited	11.70%
8	ICRA Techno Analytic Limited	25.24%
	Arithmetic mean	28.48%

4. Aggrieved, the assessee has approached the ITAT and has raised the following grounds of appeal: -

“1. That on facts and circumstances of the case and in law, the Ld. AO / Learned Transfer Pricing Officer (“Ld. TPO”) / Learned Dispute Resolution Panel (“Ld. DRP”) erred in making an addition of INR 2,18,83,222/- to the returned income of the Appellant by re-computing the arm’s length price of the international transaction pertaining to back office support service segment, under section 92 of the Act. Thus, in passing the order, the Ld. AO / Ld. TPO / Ld. DRP erred in:

1.1 Rejecting the comparable companies selected by the Appellant in its transfer pricing documentation on the basis of additional/ modified quantitative filters which lacked valid and sufficient reasoning;

1.2 Accepting companies which were functionally not comparable to the Appellant;

1.3 Not considering the correct computation of operating margins of certain comparables;

1.4 Denying the benefit of economic adjustment on account of difference in risk profile in arriving at the arm’s length margin;

1.5 Accepting high turnover companies as comparables and thereby ignoring the impact of economies of scale; and

1.6 That on facts and circumstances of the case and in law, the Ld. AO/Ld. TPO/Ld. DRP erred in selecting the current year (i.e. financial year 2010-11) data for comparability despite the fact that at the time of preparation of transfer pricing documentation by the appellant, the complete data for financial year 2010-11 was not available within the public domain.

2. That the Ld. AO / Ld. TPO erred in not following the directions of the Ld. DRP that comparability adjustment (working capital adjustment) should be provided to appellant while determining the arm’s length profit margin.

3. *That the Ld. AO/Ld. TPO/Ld. DRP erred in law and facts of the case by not considering the foreign exchange gain/loss as operating in nature while computing the margins of the appellant company and comparable companies.*

4. *That the Ld. AO has erred in charging interest under section 234B and 234C of the Act amounting to INR 44,95,692/- and INR 5,792/- respectively.*

5. *That on the facts and in the circumstances of the case and in law, Ld. AO erred in initiating penalty proceedings under section 271(1)(c) of the Act.*

The Appellant craves leave to add, amend, alter, delete, rescind, forgo or withdraw any of the above grounds of appeal either before or during the course of the proceedings before the Hon'ble Income Tax Appellate Tribunal in the interest of natural justice. The aforesaid grounds are mutually exclusive and without prejudice to each other."

5. The Ld. AR submitted that the Hon'ble DRP, while passing the directions, held that the functional profile of the assessee with reference to back office support services was akin to a KPO which was patently incorrect. It was submitted that there was a vast difference in the functional profile of the assessee *vis-a-vis* a KPO and that the assessee's functional profile was akin to an Information Technology Enabled Services (ITeS) provider. Ld. AR referred to Rule 10TA(e) and Rule 10TA(g) of the Safe Harbour Rules for the definition of KPO and ITeS. Ld. AR submitted that

the assessee was engaged in rendering back office support services which involved application support services, technology support services, hosting services and application and technical support in relation to the cloud service. It was also submitted that ITeS follows business process outsourcing services with the assistance or use of information technology and includes back office operations, call centre or contract centre service, data processing and data mining, insurance claim processing, legal data base, creation and maintenance of medical transcription excluding medical advice, translation service, payroll, remote maintenance, revenue accounting support centres, website services, data search integration and analysis, remote education excluding content development, clinical data base management service, clinical data base management service. It was also submitted that as per the definition of ITeS the same did not include any research and development services. Ld. AR further submitted that as far as KPOs are concerned, they provide business process outsourcing services, mainly with the assistance of information technology requiring application of knowledge and advanced analytical and technical skills. It was submitted that KPOs usually provide services in the nature of geographical

information system, human resource services, engineering and design services, animation or content development and maintenance, business analytics, financial analytics and market research. It was submitted that the functions performed by the assessee were not at all related to the services covered by the definition of a KPO and the TPO did not consider the assessee as a KPO but the Hon'ble DRP, without analysing the functional profile of the assessee and without providing any cogent reasoning, held the assessee's functions as akin to a KPO. It was reiterated that the functions of the assessee were more akin to ITeS services provider and not a KPO.

5.1 Coming to the comparables, the ld. AR advanced his arguments as under:-

i) TCS E-Serve Limited

It was submitted that TCS E-Serve earned revenue from financial information processing, voice based customer contract, business process management and analytics. It was also submitted that the erstwhile Citigroup Global Services was taken over by the TCS during financial year 2008-09 and post the takeover by Tata Consultancy Services Limited TCS E-Serve utilized the large customer base of TCS to achieve greater

operational efficiencies. He drew our attention to the annual report of TCS E-Serve and submitted that this company was engaged in activities beyond normal business processing services and provided technical services in the nature of software testing, verification, validation etc. whereas the assessee was only performing routine back office functions and accordingly this company was functionally dissimilar to the assessee company.

5.2 Reliance was placed on the judgment of Hon'ble Delhi High Court in the case of Actis Global Services Pvt. Ltd. in ITA 94/H.C./2017 wherein the Hon'ble High Court affirmed the order of the ITAT of excluding TCS as a comparable by noting that TCS was involved in transaction processing and technical services. It was further submitted that the annual report of TCS E-Serve did not provide segmental information and, therefore, on this ground also, this comparable ought to be rejected. The ld. AR also assailed the inclusion of TCS E-Service on the ground of incomparable scale of operations and submitted that TCS E-Serve has a turnover of 330 times than that of the assessee's back office segment. Reliance was placed on a plethora of case laws on this contention as well. It was also submitted that TCS E-Serve had a very significant brand presence due to its association with the

Tata brand and on this count also, the comparable needed to be rejected. It was also submitted that TCS E-Serve bore significant risks such as macro-economic risks, currency risks, ability to hire and retain talent, data protection, pressure on billing rates, technology, network and telecommunications risk, risks from operations, financial risk, legal and statutory liabilities risk, risk due to man-made and natural disasters, government policies etc. which indicated that the company is a full risk bearing entrepreneurial company whereas the assessee was a low risk captive unit of its AE. Exclusion was sought of this comparable on this ground also.

ii) Eclerx Services Limited

5.3 Ld. AR submitted that this company was also functionally dissimilar as this company was a KPO engaged in financial services and sales and marketing services. He referred to the annual report of the company Eclerx Services Limited and pointed out that under sales and marketing functions, the company provided web content management and merchandising execution, web analytics, social media moderation, analytics, search engine analytics and support, CRM platform support, lead generation, customer data management, supply chain and channel analytics,

price and catalogue competitive intelligence and broader data collection, cleansing, enriching and reporting. It was submitted that as per the definition of KPO, the functions performed by Eclerx Services Limited fell within the meaning of a KPO for providing high end services which was way beyond the realm of services performed by the assessee company as the assessee's company only provided back office services which were more in the nature of ITeS services. Reliance was placed on a number of judgements wherein Eclerx Services Limited had been excluded as a comparable on the ground of being a KPO and catering to high end clients. It was also submitted that this comparable had a turnover 78 times more than that of the assessee and, therefore, the scale of operations were incomparable. It was also submitted that this company had a significant intangibles assets amounting to Rs. 2.94 crores as compared to the assessee's intangible assets of Rs. 23.10 lakh and the exclusion of Eclerx Services Limited was sought on this ground also. It was also submitted that this company bore the risks associated with the high end service provider whereas the assessee company was a back end service provider having a very low risk due to being a captive service provider. It was also submitted that this company

mostly operated through outsourcing model whereas there was no outsourcing done by the assessee company.

iii) R Systems International Limited

5.4 The ld. AR submitted that this company was rejected by the TPO/Hon'ble DRP on account of different financial year ending. Ld. AR placed reliance on judgment of Hon'ble Delhi High Court in the case of Mckinsey Knowledge Centre Pvt. Ltd. in ITA 217/2014 wherein it was held that if from the available data on record, the results for financial year can reasonably be extrapolated then the comparable cannot be excluded solely on the ground that the comparables have different financial year endings. It was submitted that this judgment of the High Court was not available at the time of the proceedings before the Hon'ble DRP and the assessment proceedings. Ld. AR also drew our attention to the computation made by the assessee in which the financial results of R Systems International Limited have been tabulated so as to match with the results of the assessee company on the basis of same financial year ending. It was submitted that ITAT Mumbai in Maersk Global Service Centres (India) Pvt. Ltd. and ITAT Delhi in Ameriprise India Pvt. Ltd. had held that there can be no objection to the inclusion of a company

in the final list of comparables with the adjusted data for the relevant financial year where the relevant data can be deducted from the information available from annual reports. It was submitted that R Systems International Limited should be included as a comparable.

iv) Infosys BPO Limited

5.5 The Ld. AR submitted that the assessee itself had initially selected this company in the TP study but that inclusion was being sought to be rejected because of functional dissimilarity and incomparable scale of operations. The ld. AR submitted that the assessee cannot be prevented from rejecting a comparable solely on the ground that the same had initially been included in its TP documentation or submitted during the course of assessment proceedings. Reliance was placed on the order of ITAT Chandigarh (Special Bench) in the case of Quark Systems Pvt. Ltd for the proposition that the taxpayer should be given an opportunity rectify the *bona fide* mistake in its TP analysis if it is based on facts on record. Reliance was also placed on another order of ITAT Mumbai Bench in the case of UCV India Pvt. Ltd. wherein it was held that the assessee is not pinned down to his statement in the first round of his transfer pricing proceedings. It

was submitted that the Infosys BPO Ltd. was engaged in high end integrated services by assisting its clients in improving their competitive positioning by managing their business processes in addition to providing increased value. It was further submitted that this company had a turnover 260 times more than that of the assessee company. Reliance was placed on the judgment of Hon'ble Delhi High Court in the case of Actis Global Services Pvt. Ltd. (supra) wherein this company was rejected on ground of high turnover. Reliance was also placed on the case of Agnity India Technologies vs ITO in ITA 1204/Del/2011 wherein the ITAT Delhi Bench had rejected this comparable on the ground of high turnover. Ld. AR also submitted that Infosys BPO was associated with the brand "Infosys" which was one of the most prominent brands in the Indian IT industry. Infosys BPO being a subsidiary of Infosys had an element of brand value associated with it and it incurred significant amount of brand promotion and advertising expenses which led to the creation of marketing intangibles. It was submitted that Infosys BPO was a giant company with high risk profile and it operated as a full-fledged entrepreneur and, therefore, it could not be compared with back office support service provider like the assessee and, accordingly, the same

should be excluded from the final set of comparables. Ld. AR also relied on a number of case laws where Infosys BPO had been excluded as a comparable. Ld. AR submitted that if the three comparables as argued above are excluded and comparable as suggested is included, the arithmetic mean of OP/TC would work out to 14.54% whereas the assessee's OP/TC was 16.02% and, therefore, the same will satisfy the arm's length criteria.

6. In response, the Ld. CIT DR referred to the TP documentation and read out extensively from the same to support his argument that as per the functions spelt out in the TP documentation report, the assessee company was essentially a KPO. Ld. CIT DR submitted that as the assessee was modifying the software, there was value addition to the software and this was not a simple back office support service *per se*.

6.1 On the issue of exclusion of Eclerx Services Limited, ld. CIT DR submitted that the outsourcing did not invalidate the functional profile and, therefore, the same should not be excluded. On exclusion of TCS, it was submitted that both the assessee company as well as TCS were service providers and neither does the turnover affect the profit level indicator (PLI) nor does the brand value change the functional profile. It was also

submitted that intangible assets had relevance only in the case of public limited companies and not in the case of private limited companies and, therefore, this comparable was also a good comparable for the assessee company. On the issue of exclusion of Infosys BPO, it was submitted that the arguments were similar to that in case of TCS. It was also submitted that the assessee has not been able to bring out the nature of mistake in selecting this comparable as a comparable. It was submitted that this comparable should be retained in the final set of comparables.

6.2 On the issue of assessee's plea for including R systems in the set of comparables, the ld. CIT DR placed reliance on the observations of the TPO and submitted that when other comparables were available, then there was no justification introducing a new comparable.

6.3 The ld. CIT DR read out extensively from the order of the TPO and the Hon'ble DRP and vehemently argued that no alteration should be made in the final set of comparables.

ITA 6386/Del/2016 – Assessment Year 2012-13:

7. For this year, the return of income was filed declaring income of Rs. 73202670/-. On a reference being made to the TPO, the

TPO disregarded the approach followed by the assessee in the TP Study and with reference to back office support service rejected six out of eleven comparables selected by the assessee and included four new comparables in the final set. The final set of comparables, as adopted by the TPO, was as under:-

S. No.	Company Name	OP/ TC (%) Margins as considered in TP order	Comparable considered by . TPO / Appellant
1	Accentia Technologies Limited	11.95%	Ld. TPO
2	Informed Technologies India Limited	7.62%	Appellant
3	E4e Healthcare Business Services Private Limited	19.85%	Appellant
4	Eclerx Services Limited	58.40%	Ld. TPO
5	Infosys BPO Limited	36.75%	Appellant
6	T C S E-serve Limited	63.69%	Ld. TPO
7	Acropetal Technologies Limited (Segmental)	18.32%	Ld. TPO
8	Jindal Intellicom Limited	-0.05%	Appellant
9	Microgenetics Systems Limited	19.61%	Appellant
Mean		26.24%	

7.1 The TPO also rejected R System International Ltd. and did not allow working capital and risk adjustment. The OP/TC of the comparables chosen by the TPO was 26.24% whereas the assessee's margin was 15.88% and accordingly the TPO proposed an adjustment of Rs. 57,32,595/-. On the assessee approaching the Hon'ble DRP, the Hon'ble DRP accepted the approach and the comparables as formulated by the TPO but directed the TPO to provide adjustment with reference to working capital and also

directed the TPO to re-compute the margins of the assessee as well as of the comparable companies by removing computational errors. The final set of comparables post the DRP directions are as under:-

S. No.	Company Name	Working capital adjusted OP/TC
1	Accentia Technologies Limited	8.49%
2	Informed Technologies India Limited	5.59%
3	E4e Healthcare Business Services Private	20.42%
4	Eclerx Services Limited	56.17%
5	Infosys BPO Limited	33.39%
6	T C S E-serve Limited	61.66%
7	Acropetal Technologies Limited (Segmental)	18.30%
8	Jindal Intellicom Limited	-0.37%
9	Microgenetics Systems Limited	19.66%
Arithmetic mean		24.81%

7.2 Thereafter, the Assessing Officer passed the final assessment order reducing the adjustment to Rs. 49,41,097/- with respect to back office support service segment. Now, the assessee has approached the ITAT and has raised the following grounds of appeal:-

“1. That on facts and circumstances of the case and in law, the Ld. AO / Learned Transfer Pricing Officer (“Ld. TPO”) / Learned Dispute Resolution Panel (“Ld. DRP”) erred in making an addition of INR 49,41,097/- to the returned income of the Appellant by re-computing the arm’s length price of the international transaction pertaining to back office support service segment, under section 92 of the Act. Thus, in passing the order, the Ld. AO / Ld. TPO / Ld. DRP erred in:

- 1.1. *Rejecting the comparable companies selected by the Appellant in its transfer pricing documentation on the basis of additional/ modified quantitative filters which lacked valid and sufficient reasoning;*
- 1.2. *Characterizing the functional profile of the Appellant in the impugned segment as a knowledge process outsourcing company providing significant technical functions and thereby ignoring the actual functional profile of the back office segment;*
- 1.3. *Accepting companies which were functionally not comparable to the Appellant's back office segment;*
- 1.4. *Accepting high turnover companies as comparables and thereby ignoring the impact of economies of scale;*
- 1.5. *Rejecting companies whose accounting year does not end with March 31, 2012 on the basis that the transactions taking place in a different period cannot be compared;*
 - 1.5.1 *Without prejudice to the above, the Ld. AO/ Ld. DRP/ Ld. TPO erred in rejecting the comparable 'R Systems International Limited' whose data for the financial year ("FY") 2011-12 can be deduced from its published / audited annual accounts thereby satisfying the said filter.*
- 1.6. *Denying the benefit of economic adjustment on account of difference in risk profile in arriving at the arm's length margin; and*
- 1.7. *Selecting the current year (i.e. FY 2011-12) data for comparability despite the fact that at the time of preparation of transfer pricing documentation by the Appellant, the complete data for FY 2011-12 was not available within the public domain.*
2. *That the Ld. AO / Ld. TPO erred in not computing the margin of the Appellant for the back office support services segment as per the directions of the Ld. DRP, thereby following an inconsistent approach for margin computation of the Appellant vis-a-vis the comparables.*

3. *That the Ld. AO erred in charging interest under section 234B and 234C of the Act amounting to INR 11,25,999 and INR 317,219 respectively.*
4. *That on the facts and in the circumstances of the case and in law, Ld. AO erred in initiating penalty proceedings under section 271(1)(c) of the Act.*

The Appellant craves leave to add, amend, alter, delete, rescind, forgo or withdraw any of the above grounds of appeal either before or during the course of the proceedings before the Hon'ble Income Tax Appellate Tribunal in the interest of the natural justice. The aforesaid grounds are mutually exclusive and without prejudice to each other."

8. At the outset, the Id. AR submitted that the assessee was challenging the inclusion of Eclerx Services Limited, TCS E-serve Limited and Infosys BPO Limited and was praying for their exclusion and was also praying for inclusion of R Systems International Ltd. It was also submitted that the arguments for the exclusion of these three comparables had already been advanced during the course of hearing for assessment year 2011-12 and, therefore, the same were not being repeated for the sake of brevity. It was also submitted that even if Eclerx and TCS E-Serve Limited and Infosys BPO were excluded from the final set of comparables, the assessee would be within the margin of $\pm 5\%$. Ld. AR further submitted that on exclusion of these three comparables, the OP/TC after providing for working capital

adjustment of these comparables would be 11% whereas the assessee's OPYTC would be 16.14% which would be within the permitted range.

8.1 Ld. CIT DR also submitted that his arguments would be the same for the three comparables as were advanced during the course of hearing for assessment year 2011-12. He also read out extensively from the order of the TPO and the Hon'ble DRP and placed heavy reliance on the same.

9. We have heard the rival submissions and perused the material available on record. As far as the appeal for assessment year 2011-12 is concerned, the assessee has challenged the inclusion of certain comparables. Our adjudication on the comparables is as under:-

i) TCS E-serve Limited

It is evident that while the assessee company provides back office support service, TCS E-serve Limited provides transaction processing as well as technical services. It is seen that TCS E-serve Limited provides a broad spectrum of services which include processing, collection, customer care and payments in relation to the services offered by the Citi Group to its corporate and retail clients. Technical services involving software testing,

verification and validation of the software at the time of implementation and data centre management activities. This is evident from a reading from the notes to accounts contained in the annual report of TCS E-serve Limited. Thus, there is strength in the contention of the assessee that TCS E-serve Limited is engaged in activities which are beyond providing back office support service and thus this company is functionally dissimilar. We also find that the Hon'ble Delhi High Court in the case of Actis Global Services Pvt. Ltd. in ITA 94/2017 had upheld the order of ITAT Delhi directing the deletion of this comparable from the final set of comparables on the ground that TCS was involved, both in transaction processing and technical services, and was, therefore, not a comparable company with respect to a company engaged only in BPO activities. Therefore, we deem it appropriate to exclude this company from the final set of comparables and direct the TPO/Assessing Officer accordingly.

ii) Eclerx Services Limited

As per the annual report of this company, it is seen that this company is engaged in financial services, web content management and merchandising execution, web analytics, social

media moderation and analytics, search engine analytics and support, CRM platform support, lead generation, customer data management, supply chain and channel analytics, price and catalogue competitive intelligence and broader data collection, cleansing, enriching and reporting whereas the assessee's impugned segment is a back office segment which can only be characterised as a routine ITeS service provider. Therefore, it is evident that this company is functionally dissimilar to the assessee company. The Hon'ble Delhi High Court in the case of Actis Global Services Pvt. Ltd. in ITA 417/2016 had directed Eclerx to be excluded as a comparable on the ground of it being a KPO and catering to high end clients. Exlerx was also excluded by ITAT Delhi in Copal Research India Pvt. Ltd. (ITA No. 1713/Del/2014), Willis Processing Services (India) Private Limited (ITA No. 1890/Del/2015), B.C. Management Services Private Limited (ITA No. 6134/Del/2015) and Corporate Executive Board India Private Limited in ITA No. 6683/Del/2015. Therefore, applying the ratio of the above said orders as well as finding strength in the arguments of the ld. AR that this company is functionally dissimilar to the assessee company, we direct the TPO/Assessing Officer to exclude this company from the final set

of comparables.

iii) Infosys BPO Limited

Initially, the assessee itself had selected this company in its transfer pricing study but now, the assessee seeks to exclude this company on the grounds of being functionally dissimilar, incomparable scale of operations and difference in brand value and economies of scale. Ld. AR has also placed reliance on the order of ITAT Chandigarh Special Bench in the case of Quark Systems Pvt. Ltd. reported in 2010-TIOL-31-ITAT-CHD-SB for the proposition that the tax payer should be given an opportunity to rectify a *bona fide* mistake in its transfer pricing analysis during an assessment if it is based on facts on record. Placing reliance on the ratio of the decision of the Special Bench of the ITAT in Quark Systems Pvt. Ltd. (supra) we deem it fit to examine the assessee's claim for exclusion of BPO Infosys from the final set of comparables. The Ld. AR has argued that this company was engaged in providing high-end integrated services by assisting its clients in improving their competitive positioning by managing their business processes in addition to providing increased value and, hence, was functionally dissimilar to the back end office support services being provided by the assessee. It is seen that

Infosys BPO Ltd. has been rejected as a comparable by ITAT Delhi Bench in New River Software Services Pvt. Ltd. reported in ITA No. 451/Del/2013 on the ground of huge turnover, economies of scale and brand value. It is also seen that the Hon'ble High Court of Delhi had rejected this company as a comparable in Agnity India Technologies vs ITO in ITA No. 1204/2011 on the ground of high turnover wherein the comparable had a turnover of 58 times of the assessee. Similarly, the Hon'ble Delhi High Court in Actis Global Services Pvt. Ltd. in ITA 94/2017 rejected this comparable on the ground of high turnover wherein the comparable had a turnover of 66 times of the taxpayer. In the assessee's case, it is seen that the assessee's turnover from back office segment amounts to Rs. 4.35 crores whereas, as per the annual report of Infosys BPO, the turnover was Rs. 1129.11 crore which is approximately 260 times more than that of the assessee's turnover. Therefore, we are inclined to agree with the contentions of the ld. AR and deem it fit to remit this comparable to the file of the Assessing Officer/TPO with the direction to delete this company from the final set of comparables after due verification of the figures of turnover of the assessee as well as of the comparable. Hence, this company stands excluded for

statistical purposes.

iv) R Systems international Limited

It is seen that the TPO/Hon'ble DRP had rejected this company on account of different financial year ending. However, the assessee has re-cast the profit and loss account of the company as per the quarterly audited results and has derived the updated operating margin. The Hon'ble High Court has held in Mckinsey Knowledge Centre India Pvt. Ltd. in ITA No. 217/2014 that if from the available data on record, the results for financial year can reasonably be extrapolated, then the comparable cannot be excluded solely on the ground that the comparables have different financial year endings. Therefore, we deem it appropriate to restore this comparable also to the file of the TPO/Assessing Officer for verifying the computation, as recast by the assessee, and include this comparable in the final set of comparables.

10. As far as the appeal for AY 2012-13 is concerned, in this year also, the assessee wants exclusion of TCS E-Serve Ltd., Eclerx Services Limited and Infosys BPO Ltd. and wants inclusion of R. Systems International Ltd. The arguments advanced by both the parties on all these four comparables were similar as in

the pleadings for assessment year 2011-12 and no new distinguishing fact was pointed out by either of the parties. As we have already directed exclusion of TSE E-Serve and Eclerx Ltd. in the final set of comparables in assessment year 2011-12, we direct the Assessing Officer/TPO to exclude these two comparables from the final set of comparables for assessment year 2012-13 as well. Further, as we have directed the exclusion of Infosys BPO Ltd. after due verification by the TPO in assessment year 2011-12, we direct the Assessing Officer/TPO to exclude this comparable from the final set of comparables for assessment year 2012-13 as well after due verification by the TPO and after giving proper opportunity to the assessee. We have also directed inclusion of R. Systems International Ltd. after due verification of the financials as recomputed by the assessee in appeal for assessment year 2011-12. Likewise, for assessment year 2012-13 also, we restore this comparable to the file of the TPO to include this comparable in the final set of comparables after verifying the financials as recast by the assessee and after giving proper opportunity to the assessee to present its case.

11. In the result, both the appeals of the assessee stand allowed in terms of our above directions.

Order pronounced in the Open Court on 22nd September, 2017.

Sd/-

(B.P. JAIN)
ACCOUNTANT MEMBER

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

DT. 22nd SEPTEMBER 2017
'GS'

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By Order

Asstt. Registrar