



**IN THE INCOME TAX APPELLATE TRIBUNAL "K", BENCH MUMBAI**  
**BEFORE SHRI R.C.SHARMA, AM**  
**&**  
**SHRI PAWAN SINGH, JM**  
**ITA No.6795/Mum/2017**  
**(Assessment Year :2013-14)**

M/s. Capital India Pvt. Ltd., Plant 6, Gate 2 Godrej & Boyce Complex LBS Marg, Phirojshahnagar Vikhroli (W) Mumbai – 400 079	Vs.	DCIT – Circle 9(2)(1) Aayakar Bhavan Mumbai – 400 020
<b>PAN/GIR No.AABCE7046A</b>		
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Assessee by	Shri P. Lohia / Shri Nikhil Tiwari
Revenue by	Shri V. Janardhanan
<b>Date of Hearing</b>	<b>04/04/2018</b>
<b>Date of Pronouncement</b>	<b>19/06/2018</b>

**आदेश / O R D E R**

**PER R.C.SHARMA (A.M):**

This is an appeal filed by the assessee against the order of DRP-1(WZ), Mumbai dated 22/09/2017 for A.Y.2013-14 in the matter of order passed u/s.143(3) r.w.s.144C(13) of the IT Act.

2. The grievance of the assessee revolves around exclusion of TCS E-Serve Ltd., for the final set of comparables. Assessee has alleged TPO in making a transfer pricing adjustment of Rs.25,27,43,714/- in the international transaction of provision of IT-enabled services.

3. At the outset, learned AR placed on record the order of the Tribunal in assessee's own case wherein exactly similar issue was dealt by the

Tribunal for the A.Y.2011-2012 vide order dated 19 /09/2016. The precise observation of the Tribunal was as under:-

*“i) M/s TCS e-Serve:- From the perusal of its Annual reports, it is seen that, this company is engaged in the business of providing ITES services and BPO services primarily to ‘Citi Group’ entities globally. Its operations comprised of transaction processing includes the broad spectrum of activities involving the processing, collections, customer care and payments in relation to the services offered by Citigroup to its corporate and retail clients. Technical services involve software testing, verification and validation of software at the time of implementation and data centre management activities. From the perusal of the profit and loss account, the revenue shown from transaction processing and other services is approximately Rs.1442.42 crores. There are no segmental details and any other bifurcation as to what comprised of transaction processing charges and other services. That apart, it is seen that, this company is a part of Tata Group and has a huge brand value across the world and also owns huge intangibles. Thus, there is a huge difference in the assets employed by this Company as compared to the assessee which also reflects in its revenue and profit margin. Its intangible assets itself is more than Rs. 3337.4 crores as on 1st April, 2010 and additions during the year were more than Rs.756.24 crores. Thus, this company having huge intangibles assets cannot be compared with the assessee who has no significant intangibles. That apart, it has been pointed out by the Ld. Counsel that, this company has been emerged with TCS in the year 2009 which has led to shooting up of its profit margin to 13% to 68%-70%. This factor itself points out that its high profit margin were due to its huge brand value, which cannot be held to be comparable with captive service provider like Assessee Company. So far as the decision of ITAT Delhi Bench in the case of ‘Techbooks International Pvt. Ltd’ is concerned as pointed out by the Ld. Counsel, we find that this decision of the Tribunal has been distinguished and explained by the subsequent three decisions of the Delhi Bench of the ITAT, wherein, the Tribunal has categorically held that, in absence of any segmental details and segregation of the total revenue this comparable company cannot held to be comparable. The relevant observation of the Tribunal in the case of Ameriprise India Pvt. Ltd (supra) reads as under:- 12.5 We have gone through the annual report of Company and have carefully considered the reasoning given by the coordinate Bench in the case of Techbook International P Ltd (supra). On perusal of Schedule ‘O’ – Notes to Accounts of the Standalone financials of the Company, it is clear that the Company is engaged in “transaction processing” – and “technical services” activities. No separate segmental details are available. On a careful reading of the decision of coordinate Bench in Techbook International P td (supra) it is clear that Schedule ‘O’ – Notes to Accounts in respect to carried out by Company and relevant segmental details were never brought to the attention of the Bench. We find that in the absence of availability of any such segregation of the total revenue of this company, it is not possible to separately consider its profitability from rendering of “Transaction processing services”. Thus, the entity level figures render this company as unfit for comparison. Following the above reasons also taken note in the case*

*of International Limited, we order for the elimination of this company from the final set of comparables”. Subsequently in the case of Equant Solutions India Pvt. Ltd also this company has been held to be un-comparable on the following reasoning: “We have also considered the rival contention for exclusion of TCS e-service td. It is mainly involved in transaction processing and technology services. It carries on business of providing technology service such as software testing, verification and validation. It is also developed a software such as transport management software therefore functionally this company is dissimilar to the assessee company. It also owns huge intangible and uses of Tata Brand, which has definitely benefited this comparable, it is directed to be excluded”. This, in view of our discussion and also following the precedence in the aforesaid cases, we hold that TCS e-Serve cannot be held to be comparable company, accordingly, we direct the AO/TPO to exclude the same from comparability list.”*

5. It was further contended by learned AR that TCS e-Serve Ltd., has been rejected as a comparable by the ITAT in Capita India's own case for A.Y.2011-12 (ITA No.356/Mum/2016), on account of functional dissimilarity, ownership of significant intangibles and impact of 'TATA' brand on its profitability. There is no change in the functional profile of TCS E-serve Ltd., in A.Y.2013-14 as compared to AY 2011-12. Accordingly, the company ought to be rejected as a comparable in this year as well relying on the ITAT's ruling in its own case.

6. Reliance was also placed on the decision of jurisdictional Mumbai Tribunal ruling in the case of Willis Processing Services (India) Pvt. Ltd., vs. DCIT (ITA No.1890/Mum/2015) A.Y.2010-11 dated 09 December 2015 which has excluded TCS E-Serve Limited on account of functional dissimilarity and ownership of significant intangibles.

7. We had carefully gone through the orders of the authorities below and also the order of the Tribunal in assessee's own case for the A.Y.2011-12, wherein facts and circumstances were similar and Tribunal

have directed for exclusion of TCS- E-serve Ltd., from the final set of comparables. Respectfully following the order of the Tribunal, we direct the AO to exclude TCS- E-serve Ltd., from the final set of comparables.

**8. In the result, appeal of assessee is allowed in terms indicated hereinabove.**

Order pronounced in the open court on this 19/06/2018

**Sd/-**  
**(PAWAN SINGH)**  
JUDICIAL MEMBER

**Sd/-**  
**(R.C.SHARMA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 19/06/2018

Karuna Sr.PS

**Copy of the Order forwarded to :**

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

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)  
ITAT, Mumbai