

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: 'I-2', NEW DELHI**

**BEFORE SHRI P.M.JAGTAP, ACCOUNTANT MEMBER  
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA No. 1438/Del/2016**

**AY: 2011-12**

Inductis India Pvt.Ltd. 414, 4 <sup>th</sup> Floor, DLF Jasola Tower B Plot No. 10 & 11, DDA District Centre, Jasola New Delhi 110 044  PAN: AAAC18497C	<b>vs.</b>	Dy.CIT, Circle 12(1) New Delhi
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**(Appellant)**

**(Respondent)**

**Assessee by :** Sh. Vishal Kalra, Adv.  
Sh. S.S.Tomar, Adv.

**Department by :** Sh. HK Chaudhary, CIT-DR

**Date of Hearing :** 18.04.2018

**Date of Pronouncement:** 13.07.2018

**ORDER**

**PER BEENA A PILLAI, JUDICIAL MEMBER**

The present appeal has been preferred by the assessee against the final assessment order dated 28/01/16 passed by Ld. DCIT Circle 12 (1), New Delhi under section 143 (3) read with 144C read

with 154 of the Income Tax Act, 1961 (the Act) for Assessment Year 2011-12 on the following grounds of appeal:

*“1. That on the facts and in the circumstances of the case and in law, the order passed by the Ld. Assessing Officer ("AO") is bad in law.*

*2. The Ld. AO/Ld. Transfer Pricing Officer ("TPO") has grossly erred in not following certain directions of the Hon'ble Dispute Resolution Panel ("DRP") while passing the Appeal effect order and determining the income of the Appellant at Rs. 12,40,78,385 in respect of provision of Information Technology ("IT") enabled services and Rs. 2,9313,479 in respect of outstanding receivables. In doing so, the Ld. A.O./ Ld. TPO have grossly erred in:*

*2.1. not allowing adjustment to comparable's margin on account of differences in the rates of depreciation charged by the Appellant vis-a-vis that of comparables;*

*2.2. application of incorrect Profit Level Indicator ("PLI") for the purpose of determination of Arm's Length Price ("ALP");*

*2.3. considering the amount of reimbursements (received by the Appellant) as a part of cost but not as a part of income while computing the Operating Profit/ Total Cost ("OP/TC") margin of the Appellant;*

*2.4. not applying appropriate interest rate for the computation of interest on outstanding receivables.*

*3. The Ld. A.O./Ld. TPO erred on facts and in law in enhancing the income of the Appellant by Rs. 12,40,78,385 holding that the international transactions pertaining to provision of IT enabled services do not satisfy the arm's length principle envisaged under the Act and in doing so have grossly erred in:*

*3.1. disregarding the ALP as determined by the Appellant in the Transfer Pricing ("TP") documentation maintained by it in terms of section 92D of the Act read with Rule 10D of the Income-tax Rules, 1962 ("Rules") as well as the fresh search and in particular modifying/rejecting the filters applied by the Appellant;*

3.2. *disregarding multiple year/ prior years' data as used by the Appellant in the TP documentation and holding that current year [(i.e. Financial Year ("FY") 2010-11] data for comparable companies should be used despite the fact that the same was not necessarily available to the Appellant at the time of preparing its TP documentation;*

3.3. *not appropriately considering the functions, assets and risk profile of the companies used for comparison with the Appellant, thereby including in the final comparable set certain companies with completely different functional profile;*

3.4. *excluding certain companies considered by the Appellant in its TP Documentation/fresh search on arbitrary/ frivolous grounds even though they are comparable to the Appellant in terms of functions performed, assets employed and risks assumed;*

3.5. *including companies having abnormal margins/ volatile operating margins in the final comparables' set, that signify high element of entrepreneurial risk, thereby not appreciating the risk profile of the services rendered by the Appellant and not allowing risk adjustment to the Appellant;*

3.6. *without prejudice, that if risk adjustment is not allowed to compensate for risk free activities of the Appellant and hence considered it to be risk bearing, in that case appropriate tested party for the arm's length analysis should be the Appellant's overseas Associated Enterprise ("AEs");*

3.7. *following a contradictory approach, in principle, and committing a number of factual errors in the computation of the operating profit margins of the comparables by considering provisions for expenses/write back as non-operating in nature by placing reliance on Safe Harbour Rules issued vide CBDT Notification No. S.O. 2810 while on the other hand completely ignoring the mark-up percentage prescribed by aforesaid notification for a low end captive IT enabled service provider and adjusting the arm's length price of the Assessee at much higher percentage.*

4. *The Hon'ble DRP has erred in considering reimbursement of expenses received as part of the core transaction of the Appellant and re-computing the PLI after considering it as part of the operating revenue and operating cost, thus, in effect proposing that a mark-up*

is required to be earned on such non-core, non-value adding pass through transactions.

5. The Ld. AO/ Ld. TPO erred on facts and in law in enhancing the income of the Appellant by Rs. 2,93,13,479 holding that the alleged international transactions pertaining to outstanding receivables do not satisfy the arm's length principle envisaged under the Act and in doing so have grossly erred in:

5.1. re-characterizing the outstanding related party receivable from overseas

AEs beyond 90 days period as short term loans advanced to the AEs;

5.2. disregarding the business/ commercial arrangement by not appreciating the fact that unlike a loan or borrowing, outstanding receivable is not an independent transaction which can be viewed on standalone basis and needs to be examined with the commercial transaction as a result of which the debit balance has come into existence;

5.3. rejecting the Appellant's contention that independently benchmarking the outstanding receivables of the Appellant by considering an interest rate for comparability does not amount to the application of Comparable Uncontrolled Price ("CUP") Method or any of the "method" defined in the Act;

6. Strictly without prejudice to the above grounds, the Ld. A.O./ Ld. TPO erred on facts and in law in not appreciating that imputing the interest on alleged international transaction has resulted in high effective mark-up for benchmarking the captive risk free/low end activities of the Appellant.

7. The reference made by the Ld. AO suffers from jurisdictional error as the Ld. AO has not recorded any reasons in the draft assessment order based on which he reached the conclusion that it was 'necessary or expedient' to refer the matter to the Ld. TPO for computation of the ALP, as is required under section 92CA(1) of the Act.

8. The Ld. A.O./ Ld. TPO erred in enhancing the income of the Appellant by Rs 15,33,91,864 holding that the international transactions do not satisfy the arm's length principle envisaged under the Act and in doing so have grossly erred in not appreciating that none of the conditions set out in section 92C(3) of the Act are satisfied in the present case.

9. The Ld. A.O./Ld. TPO has grossly erred on facts and in law by disregarding judicial pronouncements in India in undertaking the TP adjustment.

10. The Ld. DRP/Ld.AO erred in law and on the facts and circumstances of the case by making notional addition of Rs.21,478 per provisions of section 14A of the Act read with rule 8D of the Income-tax Rules, 1962 ("Rules").

10.1. The Ld. AO/Ld. DRP erred in law and on the facts and circumstances of the case by not taking cognizance of the detailed submission filed by the Appellant and erred in stating that the Appellant's case is a fit case for disallowance under section 14A of the Act despite of the fact that the Appellant did not have investment on which it could earn exempt income in India other than old investment in foreign subsidiary company situated in Singapore, income from which is not exempt from tax in India.

10.2. The Ld. AO/Ld. DRP erred in law and on facts and circumstances of the case by disallowing 0.5% of the average investment on the amount of investment in foreign subsidiary company in Singapore as per Rule 8D of the Rules without appreciating the fact that any dividend income earned on investment in equity shares of foreign subsidiaries is not an exempt income under the Act and no disallowance under section 14A of the Act is warranted on such investment.

10.3. The Ld. A.O./Ld. DRP erred in law and on the facts and circumstances of the case by stating that the Appellant has made fresh investment during the year whereas no investment has been made by the company during the year under consideration.

10.4. *The Ld. AO/Ld. DRP erred in law on the facts and circumstances of the case by ignoring the fact that no exempt income has been earned by the company during the year under consideration.*

11. *The ld.AO has grossly erred on facts and in law by initiating penalty proceedings u/s 271(1)(c ) of the Act mechanically and without recording any satisfaction for its initiation.*

12. *The Ld.AO has erred in law and on the facts of the case by charging interest u/s 234B and 234D of the Act.”*

**2. Brief facts of the case are as under:**

Assessee filed its return of income for the year under consideration on 29/11/11 declaring total income of Rs.66,58,545/-. The case was selected for scrutiny and notice under section 143 (2) of the Act was issued. In response to the statutory notice, representatives of the assessee appeared before Ld.AO and attended the assessment proceedings.

**2.1.** Ld.AO observed that assessee is providing analytic services for custom-made data driven solution to a variety of business applications. Assessee uses information technology and infrastructure to provide such IT enabled services. It was observed by Ld.AO that assessee during the year had entered into international transaction and accordingly reference was made to Ld.TPO. Ld.TPO vide order dated 08/01/15 worked out arm's length price adjustment to Rs.6,94,13,250/-. Thereafter draft assessment order under section 143 (3) read with section 144C of the Act was passed by Ld.AO on 20/03/15. While making the

addition on account of TP adjustment disallowance under section 14A at Rs.21478/-was also made. On receipt of draft assessment order, assessee filed objections before DRP. Hon'ble DRP passed order dated 21/12/15 with certain directions to Ld. TPO to recalculate the transfer pricing adjustment by making following observations:

The DRP directed to exclude following companies from the final set of comparables selected by TPO which are:

- Acropetal Technologies Ltd (segment)
- Eclerx services Ltd
- ICRA Techno Analytics Ltd
- Microland Ltd (segment)

**2.2.** On complying with directions of DRP, Ld.AO computed the transfer adjustment at Rs.6,69,62,508/-.

Disallowance under section 14 A to the extent of Rs.21,478/-was also made.

**2.3.** Aggrieved by the final assessment order passed, assessee is in appeal before us now.

**3.** Ld.Counsel at the outset submitted that in respect of the grounds raised on the transfer pricing issues:

**Ground No. 1 & 2** are general in nature and therefore do not require any adjudication.

He submitted that amongst sub ground of **Ground No. 2** assessee do not wish to press **Ground No. 2.1, 2.2.**

**3.1. Accordingly we dismiss ground No. 2.1, 2.2 as 'not pressed'.**

**3.2.** Ld.Counsel submitted that **Ground No. 2.4** may be considered along with **Ground No. 5-9** as they are relating to the same issue of interest on receivables.

**3.3.** Ld.Counsel submitted that assessee do not wish to press Ground No. 3.2, 3.6, 3.7.

**3.4. Accordingly we dismiss Ground No. 3.2, 3.6 and 3.7 as not pressed.**

**4.** On the basis of above we start with Ground No. 2.3.

**5. Ground No. 2.3** raised by assessee is against disallowance of reimbursement of expenses incurred by assessee on behalf of its AE pertaining to travel cost, marketing cost etc.

**5.1.** Ld.Counsel submitted that these expenses have been reimbursed by its AE on actual expenditure incurred by assessee and accordingly no adjustment is called for. The total expenditure incurred by assessee towards travel cost, marketing cost etc amounts to Rs.6,40,07,521/-. It has been submitted that Ld. TPO had made an adjustment of the said sum on the basis that reimbursements being international transaction in terms of section 92B which are closely linked to assessee's main transactions of providing IT enabled services to its AE. It has been observed by Ld.TPO that the amount involved are substantial and by making payments on behalf of its AE, assessee has performed a service to the AE by using its financial and other services. Ld.TPO was of the opinion that assessee's funds were used for the benefit of AE even though assessee had debited a substantial amount of interest in its P&L account.

**5.2.** Upon raising objection before DRP, it was held that reimbursements received from AE at actual cost incurred by assessee, should be included in operating income/expenditure and then adjustment should be worked out accordingly. It has been submitted that Ld.AO did not work out adjustment as per directions of DRP, and therefore has raised this ground before us.

Ld. DR placed reliance upon the orders of Ld.TPO.

**5.3.** We have perused the submissions advanced by both the sides in the light of the records placed before us.

**5.4.** The submissions of Ld.Counsel in this case is that, assessee has paid for the cost incurred and that these amounts were charged to AE as reimbursements for actual cost incurred by assessee. We do not find any infirmity in the directions issued by DRP and direct Ld.TPO to compute the adjustment if any by considering actual reimbursement received from AE and actual cost incurred by assessee in operating income/expenditure. Assessee shall file all the requisite bills raised by upon AE relating to reimbursement of the expenses, along with vouchers/bills, proving details of total expenditure incurred by assessee, on behalf of AE. Ld.TPO shall then verify the same. In the event it is found to be reimbursements on actual, no adjustments are called for. Ld.AO shall allow the claim of assessee to the extent it is reimbursements of expenditure incurred by assessee on behalf of AE.

**5.5. Accordingly we allow this ground raised by assessee for statistical purposes.**

## **6. Ground No. 2.4, 5-9**

All these grounds relate to computation of interest on outstanding receivables being the main issue and the selection/rejection of comparables by Ld. TPO.

**6.1.** We shall first deal with the issue relating to interest on outstanding receivables.

**6.2.** It has been alleged that ld.TPO enhanced the income of assessee by Rs.2,93,13,479/- by re-characterising the outstanding receivables from its AE as short-term. It was observed by Ld. TPO that receivables were pending from overseas AE being a related party beyond 90 days period and therefore Ld.TPO computed interest on outstanding receivables at the rate equal to 10.84% LIBOR (SBI base rate) +300 basis points. It has been argued by Ld. Counsel that authorities below disregarded business/commercial arrangement between the assessee and its AE's, by holding outstanding receivables to be an independent international transaction.

**6.3.** At the outset Ld.Counsel submitted that this issue stands squarely covered by Delhi Tribunal in assessee's own case in ITA No. 2075/Del/2015 for immediately preceding Assessment Year being 2010-11. *Delhi Tribunal* in assessee's own case for assessment year 2010-11 (supra) decided this issue as under:

*"12. In view of what has been discussed above and by following the decision of the Coordinate Bench of the Tribunal in Kadimi Tool Manufacturing Co. (P) Ltd. (supra) which has been confirmed by the Hon'ble High Court as well as Hon'ble Apex Court, we are of the*

*considered view that when undisputedly, the taxpayer is a debt free company, there is no question of charging any interest on receivables by recharacterizing the transaction as loan from its AE and as such, no adjustment on account of arm's length interest on receivables can be made. Consequently adjustment made by the TPO/DRP on account of arm's length interest on receivables is not sustainable in the eyes of law, hence ordered to be deleted. Consequently, grounds no. 2, 2.1, 2.2, 2.3, 2.4, 2.5, 3, 4 & 5 are determined in favour of the taxpayer."*

It has been mentioned by Ld. counsel that there is no functional difference in the present year under consideration vis-a-vis immediately preceding Assessment Year.

*Delhi Tribunal in Kusum Healthcare Pvt.Ltd vs. ACIT reported in (2015) 62 Taxmann.com 79, deleted the addition by considering the above principle. Delhi Tribunal in Kusum Healthcare Pvt.Ltd (supra) also observed therein as under:*

*"8. In view of the above, a working Capital adjustment appropriately takes into account the outstanding receivable. Therefore, the assessee has undertaken a working capital adjustment to reflect these differences by adjusting for differences in working capital and thereby, profitability of each comparable company. Accordingly, while calculating the working capital adjusted, operating margin on costs of the comparable companies, the impact of outstanding receivables on the profitability has been taken into account. If the pricing/profitability of the assessee are more than the working capital adjusted margin of the comparables, then additional imputation of interest on the outstanding receivables is not warranted.*

*9. The assessee had undertaken a working capital adjustment for the comparable companies selected in its transfer pricing report*

which was also submitted with the Ld. TPO. A snapshot of the result is provided below:

Segment Name	Appellant's Margin (OP/TC)	Working capital adjusted margins of comparables (OP/TC)
Manufacturing Activity	46.33%	11.84%
Trading Activity	17.44%	8.36%

**10.** The above analysis empirically demonstrates that the differential impact of working capital of the assessee vis-a-vis its comparables has already been factored in the pricing/profitability of the assessee which is more than that working capital adjusted margin of the comparables. Hence, any further adjustment to the margins of the assessee on the pretext of outstanding receivables is unwarranted and wholly unjustified.”

Ld. counsel submitted that, subsequently Hon’ble Delhi High Court in *Pr. CIT vs. Kusum Health Care Pvt. Ltd. (2017) 398 ITR 66 (Del)*, held that no interest could have been charged as it cannot be considered as international transaction.

**6.4.** On the contrary Ld. DR submitted that the master service Agreement dated 01/04/10 placed on record has specified the time within which AE shall make the payments on the invoices raised by assessee which is as under:

### 3.Charges and terms of Payment

3.1. *Inductis Inc. shall pay charges (the "Charges") to Inductis for the Services on the basis of the costs borne by Inductis in rendering the Services plus an arm's-length margin. The arm's-length margin effective on the Effective Date is set forth below and shall be subject to change over the term of the agreement by mutual agreement of the parties:*

Cost + 19%

"Cost" - Cost includes all the expenses incurred in performance of the Services including, but not limited to payroll and employee related expenses and facility and technology costs which are set forth in Exhibit A.

3.2. In addition to the Charges, Inductis Inc. shall pay to Inductis (i) any applicable services tax and/or other statutory taxes that are charged on the Services; and (ii) all travel related expenses (Travel Related Expenses") incurred by Inductis for Services rendered at the customer's site. Travel Related Expenses shall mean and include actual charges in respect of the air ticket, visa, overseas medical insurance, boarding and lodging expenses, kit allowance, per diem and any other allowance paid by Inductis. Any service debits or credits arising under any Service Agreement shall accrue to Inductis.

3.3 The Charges payable for the Services performed pursuant to this Agreement shall be invoiced by Inductis in US Dollars, on a monthly basis, or on such other basis as mutually agreed, and shall be due within ninety (90) days of receipt of such invoice by Inductis Inc..)

Ld. DR submitted that interest on receivables is an international transaction and the TPO has rightly determined its ALP. To buttress the contention of rightly treating the interest on receivables as an international transaction, he read out the relevant parts of the DRP's direction, in which the Panel has relied on the Delhi Tribunal order in *Ameriprise India Pvt. Ltd. vs. ACIT (2015- TII-347-ITAT-DEL-TP)* for holding that interest on receivables is an international

transaction and the transfer pricing adjustment is warranted. He stated that Finance Act, 2012 has inserted *Explanation* to Section 92B, with retrospective effect from 1.4.2002 and sub-clause (c) of clause (i) of this *Explanation* provides that:

- (i) *the expression "international transaction" shall include—*  
*..... (c) capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;....' .*

Ld. DR submitted that expression '*debt arising during the course of business*' refers to trading debt arising from sale of goods or services rendered in course of carrying on business. Once any debt arising during course of business is an international transaction, he submitted that any delay in realization of same is needs to be considered within transfer pricing adjustment, on account of interest income short charged or uncharged. It was argued that insertion of *Explanation* with retrospective effect covers assessment year under consideration and hence under/non-payment of interest by AEs on debt arising during course of business becomes international transactions, calling for computing its ALP. He referred to the decision of the *Delhi Tribunal* in *Ameriprise (supra)* in which this issue has been discussed at length and eventually interest on trade receivables has been held to be an international transaction. Referring to the discussion in the said order, it was stated that the Delhi Bench in this case has also

noted a decision of the Hon'ble Bombay High Court in the case of *CIT vs. Patni Computer Systems Ltd.*, (2013) 215 Taxmann 108 (Bom.), which dealt with question of law :

(c) 'Whether on the facts and circumstances of the case and in law, the Tribunal did not err in holding that the loss suffered by the assessee by allowing excess period of credit to the associated enterprises without charging an interest during such credit period would not amount to international transaction whereas section 92B(1) of the Income-tax Act, 1961 refers to any other transaction having a bearing on the profits, income, losses or assets of such enterprises?'

He pointed out that while answering the above question, Hon'ble Bombay High Court noticed that amendment to section 92B has been carried out by Finance Act, 2012 with retrospective effect from 1.4.2002. Setting aside the view taken by the Tribunal, the Hon'ble Bombay High Court restored the issue to the file of the Tribunal for fresh decision in the light of legislative amendment. It was thus argued that non/under-charging of interest on excess period of credit allowed to AEs for realization of invoices, amounts to an international transaction and ALP of such international transaction has been rightly determined by Ld.TPO. In so far as the charging of the rate of interest is concerned, he relied on the decision of the Hon'ble Delhi High Court in *CIT vs. Cotton Naturals (I) Pvt. Ltd* (2015) 276 CTR 445 (Del) holding that currency in which such amount is to be re-paid, determines rate of interest. He, therefore, concluded by summing up that interest on outstanding

trade receivables is an international transaction and its ALP has been correctly determined.

**6.5.** We have perused the submissions advanced by both the sides in the light of the records placed before us.

**6.6.** On perusal of the Annexures, in respect of outstanding receivables attached to order passed by Ld.TPO, it is observed that except for a few, most of the payments have been received beyond 90 days. However from the records it is not discernible if credit period beyond 90 days has been admittedly granted by assessee to its AE.

**6.8.** On a query being put up by this Bench to Ld.Counsel regarding whether assessee is a debt free company for the year under consideration as was for Assessment Year 2010-11, the reply was in affirmative. Ld.Counsel submitted that assessee is a debt free company even for the year under consideration which was substantiated from the audited accounts placed at page 4 - 53 of paper book.

Delhi Tribunal in case of *Orange Business Services India Solutions Pvt. Ltd. vs. DCIT* in ITA No. 6570/Del/2016 vide its order dated 15.2.2018 has observed that:

*“There may be a delay in collection of monies for supplies made, even beyond the agreed limit, due to a variety of factors which would have to be investigated on a case to case basis. Importantly, the impact this would have on the working capital of the assessee would have to be studied. It went on to hold that, there has to be a proper inquiry by the TPO by analysing the statistics over a period of time to discern*

*a pattern which would indicate that vis-à-vis the receivables for the supplies made to an AE, the arrangement reflected an international transaction intended to benefit the AE in some way. Similar matter once again came up for consideration before the Hon'ble Delhi High Court in Avenue Asia Advisors Pvt. Ltd. vs. DCIT (2017) 398 ITR 120 (Del). Following the earlier decision in Kusum Healthcare (supra), it was observed that there are several factors which need to be considered before holding that every receivable is an international transaction and it requires an assessment on the working capital of the assessee. Applying the decision in Kusum Health Care (supra), the Hon'ble High Court directed the TPO to study the impact of the receivables appearing in the accounts of the assessee; looking into the various factors as to the reasons why the same are shown as receivables and also as to whether the said transactions can be characterized as international transactions.”*

In view of the above, we deem it appropriate to set aside the impugned order on this issue and remit the matter to the file of the Assessing Officer/TPO for deciding it in conformity with the above referred judgment. Needless to say, the assessee will be allowed a reasonable opportunity of being heard in such fresh proceedings.

**6.9. Accordingly we set aside this issue to Ld. AO/TPO.**

**7.** Now we shall take up the comparable analysis on the basis of the comparables which has been agitated by assessee of having been wrongly included/excluded by ld.TPO in the final list. Before

doing so it is *sine qua non* necessary to understand the functional profile, as it involved risk assumed by assessee.

**(A) Functional profile**

Assessee is a wholly owned subsidiary of Inductis LLC. It provides IT enabled back-office research and data analytics services to Exl Group Companies (which includes Inductis companies as well). It provides following services to its group companies:

- back-office research involving Data collection/coalition;
- data processing, synthesis and analysis; and
- graphics creation.

During the year under consideration the TP study projects IT enabled services being rendered to its AE's only. AE has incurred certain expenses on behalf of assessee which were subsequently reimbursed by assessee on actual basis. It has been submitted that these expenses have been incurred in relation to the IT enabled services by assessee and the same have been treated as closely linked to the said international transaction of assessee and has not been evaluated separately from Transfer Pricing perspective. During the year assessee has also incurred certain cost on behalf of AE's in the nature of travel costs, marketing costs etc which were recharged to its AEs by assessee.

It is observed that assessee has received payment in respect of provision of analytics and advisory services. Assessee has been reimbursed all its costs incurred along with the markup of 19%. Cost refers to actual cost incurred by assessee pertaining to the provision of services in India. Assessee raises invoices on a monthly

basis in US dollars and AE pays invoice within a period of 90 days of receipt of the invoice.

On the backdrop of the above, the functions performed by assessee are limited to provision of services in the nature of research, analytics and risk advisory services. Assessee renders these services to the customers of its AEs. Assessee is also responsible for providing services as per the service agreement and is bound to maintain the quality, performance standard as determined by its AE's in accordance with the client requirement. However AEs of assessee are ultimately liable to clients for any shortfall in services as they are contracting entities. Apart from these, assessee do not bear any marketing services any price negotiating or contracting services.

**(B) Assets employed**

The assets employed by assessee are of minimal however it has some software in the form of intangible assets.

**(C) Risks undertaken**

Assessee do not bear any risk except for foreign exchange risk as it receives its payment from AE in foreign exchange. All other risk regarding the services rendered like business risk, credit and collection risk, service liability risk, rework risk are assumed by its AE's.

**8.** Thus on the basis of the above, the TP study has characterised assessee as a captive contract IT enabled service provider operating in a low risk or risk mitigated environment.

Ld.TPO observed that assessee had selected 12 comparables as comparables with an average margin of 16.33% viz-a-viz assessee's own margin worked out at 19.55%. It had applied TNMM as the most appropriate method with OP/OC as a PLI.

Assessee thus concluded its international transaction to be at arm's length.

**9.** Unsatisfied with the comparables selected by assessee, ld. TPO undertook research activity and proposed 8 comparables having average margin of 29.57%. Ld.TPO accordingly worked out the arm's length price of assessee at a margin of 29.57% and proposed an adjustment of Rs. 33, 600, 539/-.

**10.** Aggrieved by adjustment proposed by Ld.TPO, assessee raised objections before DRP. DRP directed to exclude following comparables from the final set of comparables selected by TPO:

- Acropetal Technology Ltd
- Eclerx Services Ltd
- ICRA Techno analytics Ltd
- Microland Ltd

DRP also directed to include the expenses reimbursed from AE's as its operating income/expenditure.

The adjustment was finally then computed at Rs.15,33,91,864/-

**11.** Ld.Counsel submitted that assessee is aggrieved with inclusion of the following comparables:

- Accentia Technologies Ltd
- TCS E-Serve Ltd

Assessee is also aggrieved with rejection of certain comparables which are as under:

➤ R Systems International Ltd.,

**(I) Accentia Technologies Ltd**

Ld.Counsel submitted that this comparable has been selected by TPO. He submitted that this company is engaged in offering a wide range of services and products like medical transcription and discrete reportable transcription, medical billing, practice management consulting, medical coding, receivables management, software as services. It also has some products in the form of software. Ld.Counsel submitted that activity carried on by this company has been classified under a single segment namely “Healthcare Receivable Management” and audited accounts shows income received under 3 heads namely, medical transcription, billing and coding. Ld.Counsel submitted that there has been an extraordinary circumstance of acquisition from the year 2006 including the subject Assessment Year which has significantly increased its revenues between the interregnum financial years.

It has also been submitted that this company own significant amount of intangibles in the form of brands, IPR and goodwill.

On the contrary Ld. CIT DR submitted that entire income is from IT enabled services. He submitted that coding cannot be presumed to be relating to software development. It was submitted that as assessee is into medical transcription coding relates to the activity of translating the medical prescription. Ld.AR submitted

that acquisition as highlighted by Ld.Counsel was in the year 2006 which will not have much impact for the year under consideration.

We have perused the submissions advanced by both the sides in the light of the records placed before us.

We find that functionally, this company is into development of software products for healthcare. It is submitted by the ld. Counsel that this company is engaged into diversified activities such as Knowledge Process outsourcing(KPO), Legal process outsourcing(LPO), Data process Outsourcing(DTO), high end software services. As the segmental results are also not available, we direct Ld. TPO/AO to remove this company from the final list.

## **(II) TCS E-Serve Ltd**

The Ld. TPO had included this company as a comparable. Ld. Counsel submitted that this company provides financial information processing and customer contact services with high-level of foreign expenditure and abnormal profits.

Ld. DR, by placing reliance upon the order passed by ld. TPO submitted that this company is comparable with assessee. He relied upon decision of *Hon'ble Delhi High Court* in the case of *Chryscapital Investment Advisors (India) (P.) Ltd.* reported in (2015) 56 Taxmann.com 417

We have perused the submissions advanced by both sides in the light of records placed before us.

From the financials of this company placed at page 594-715 of paper book it is observed that technical services offered by this company are in the nature of servicing and maintenance of software

testing, verification and validation of software, which are akin to software maintenance services falling within the overall category of software development services and has created a lot of applications which are in the nature of intellectual property in terms of reconciliation software, fund transfers, etc.

During the year under consideration, this company has made payments towards use of Tata brand. Consequentially use of the TCS brand has substantially increased the operating profits post acquisition. In such factual background, the ratio relied upon by Ld.DR in case of *Chryscapital Investment Advisors (India) (P.) Ltd. (supra)* cannot be applied. Instead ratio laid down by *Hon'ble Delhi High Court* in the case of *Rampgreen Solutions (P.) Ltd. (supra)* would be applicable.

Hence we are of the opinion that this company cannot be taken as a comparable. We therefore direct to exclude this company from the final list.

**(III) R Systems International Ltd.,**

This comparable was excluded by ld. TPO for the simple reason that it followed a different financial year ending. Ld.Counsel submitted that this cannot be the only reason for not considering the comparable. By placing reliance upon the decision of *Delhi Tribunal* in the case of *Mercer consulting (India) (P) Ltd vs DCIT* reported in (2014) 47 *Taxmann.com* 84, which has been subsequently upheld by *Hon'ble Punjab and Haryana High Court* in the case of *CIT vs Mercer Consulting (India) (P) Ltd.,* reported in (2016) 76

*Taxmann.com* 153, submitted that the basis on which this comparable has been rejected is contrary to *Rule 10 (B) (4)* of the ITAT Rules. Ld.Counsel submitted that Rule does not exclude from consideration the data of any entity merely because it's financial year is different from the financial year of assessee.

On the contrary Ld.DR placed reliance upon the observations of Ld.TPO.

We have perused submissions advanced by both the sides in the light of the records placed before us.

From the order passed by Ld.TPO it is observed that he has not cited any instances of functional dissimilarity of this comparable company with that of assessee. He has also not pointed out any difference, due to change of accounting year in the financial results of this company.

Therefore respectfully following the decisions relied upon by Ld.Counsel, we direct this comparable to be included in the final list. Assessee is directed to produce before Ld.TPO the quarterly reports in order to extrapolate the financials for the purposes of computing the margin.

#### **(IV) Informed Technologies India Ltd**

This comparable has been rejected by Ld.TPO on the basis that it has income less than 5 crore. Ld.Counsel submitted that this company is operating as IT enabled, knowledge-based back-office processing centre and serves the needs of the financial content sector in the US. It has been submitted that the company collects

and analyses data on financial fundamentals, corporate governance, director/executive compensations and capital market. The outsourced services consist of financial database and back-office activity for research/advisory report. He thus submitted that this company is comparable with that of assessee.

Ld.DR at the outset relying upon the annual report at page 722 submitted that the company has been categorised as operating in IT enabled knowledge-based back-office processing centre. He submitted that the revenue earned by this company is from sales and services as well as other income. It is also submitted that there is no separate segmental details in respect of the 2 separate services rendered by this company.

He submitted that the functions carried out by this company are not at all similar to that of a contract service provider like assessee. Relying upon decision of *Hon'ble Delhi High Court*, in case of *Rampgreen Solutions (P.) Ltd. (supra)*, he submitted that this comparable has been rightly rejected by ld. TPO.

We have perused submissions advanced by both the sides in the light of records placed before us.

We observe that this company itself categorises it to be dealing in knowledge-based back-office processing services. Further it is observed that it deals in analysing data on financial fundamentals serving the needs of financial content sector in USA. In our opinion this activity requires immense knowledge as has been observed by *Delhi Tribunal* in the case of *Mckinsey knowledge Centre India Pvt. Ltd., vs. DCIT* reported in (2017) 77 *Taxmann.com* 164.

Thus in our considered opinion this comparable has been rightly rejected by Ld.TPO.

**11.1. Accordingly this ground stands partly allowed.**

**12. Additional Ground Raised by assessee**

*That on the facts and circumstances of the case and in law, the Dispute Resolution Panel (“DRP”) vide directions dated December 21, 2015, erred in inadvertently issuing directions for providing working capital adjustment on margins of comparable companies vis-a-vis the Appellant, despite the fact that the Appellant had not raised any ground of objection to this effect.*

*That on the facts and circumstances of the case and in law, the DRP/ TPO have erred in making negative working capital adjustment for the differences in working capital between comparable companies vis-a-vis the Appellant.*

**12.1.** Ld.Counsel submitted that DRP in its direction had directed to grant working capital adjustment in the margins of the comparable. Ld.TPO while giving effect to the said direction, computed negative working capital adjustment on the margins of comparables. Thus he computed the mean margin of comparable companies before granting such adjustment at 19.29% and the resultant mean margin after giving effect to working capital adjustment increased to 28.8%.

Subsequently, assessee filed rectification application submitting that assessee had not claimed any adjustment on account of differences in working capital adjustment on margins of comparables.

It has been submitted by Ld.Counsel that Ld.TPO/AO has not rectified the same.

**12.2.** We have perused submissions advanced by both the sides in the light of records placed before us.

In our considered opinion DRP u/s 144C(8) has powers to enhance variations proposed in the Draft assessment order.

In view of the above we remit this issue back to Ld. TPO to carry out the working capital adjustment as per the directions of DRP.

**12.3. Accordingly this ground stands allowed for statistical purposes.**

### **13. Ground 10**

#### **Corporate Tax Issue :**

The only issue contested is in respect of disallowance under section 14 A read with rule 8D.

**13.1.** Ld.Counsel submitted that assessee has not earned any exempt income. It has been submitted that investments made by assessee are old investments in foreign subsidiary company situated in Singapore, dividend from which if any received, is not exempt from tax in India. He submitted that Ld. AO made disallowance of 0.5% of average investments made in foreign subsidiary company as per rule 8D which deserves to be disallowed. Ld. DR though supported the orders of authorities below, could not controvert that the investments shown in the accounts of assessee are also in domestic companies. It is also an admitted fact that assessee has not earned any exempt income during the year under consideration.

**13.2.** We have perused the submissions advanced by both the sides in the light of the records placed before us.

It is observed from the balance sheet at page 8 that the investments are to the extent of Rs.4,295,506/-. The breakup of the investment is given in Schedule 4 which is basically equity shares of Singapore being wholly owned subsidiary of assessee. Accounts do not reveal any other investments made by assessee apart from this. Even in Schedule 12 representing other income assessee has earned merely dividend from mutual fund investments which is not traded for the year under consideration. Ld. counsel placed reliance upon the decision of *Hon'ble Delhi High Court* in the case of *Cheminvest Ltd. Vs. CIT reported in (2015) 61 Taxmann.com 118*, wherein it has been held that:

*23. In the context of the facts enumerated hereinbefore the Court answers the question framed by holding that the expression 'does not form part of the total income' in Section 14A of the envisages that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, Section 14A will not apply if no exempt income is received or receivable during the relevant previous year.*

Under such circumstances respectfully following the decision of *Hon'ble Delhi High Court* in the case of *Cheminvest Ltd versus CIT (supra)* in our considered opinion Section 14 A cannot be invoked as

assessee do not have exempt income for the year under consideration and the disallowance deserves to be deleted.

**Accordingly this ground raised by assessee stands allowed.**

14. In the result appeal filed by assessee stands partly allowed.

Order pronounced in the open court on 13.07.2018.

Sd/-

**(P.M.JAGTAP)  
ACCOUNTANT MEMBER**

Sd/-

**(BEENA A PILLAI)  
JUDICIAL MEMBER**

Dated: 13<sup>th</sup> July, 2017

\*manga

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

**ITA 1438/Del/2016 Assessment Year:2011-12**  
**Industis India Pvt.Ltd. vs. DCIT, Circle 12(1), New Delhi**

		Date
1.	Draft dictated on	11.07.18
2.	Draft placed before author	12.07.18
3.	Draft proposed & placed before the second member	13.07.18
4.	Draft discussed/approved by Second Member.	
5.	Approved Draft comes to the Sr.PS/PS	
6.	Kept for pronouncement on & Order uploaded on :	13.07.18
7.	File sent to the Bench Clerk	
8.	Date on which file goes to the AR	
9.	Date on which file goes to the Head Clerk.	
10.	Date of dispatch of Order.	