

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'I-1', NEW DELHI**

**BEFORE SHRI RS SYAL, VICE PRESIDENT
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA No. 6484/Del/2012
A.Y. 2008-09**

Cengage Learning India P Ltd. 418, FIE, Patparganj New Delhi 110 092 PAN: AACCT5522B	vs.	Dy.CIT, Circle 3(1) New Delhi
(Appellant)		(Respondent)

Assessee by	Dr.Shashwat Bajpai, Adv. Sh. Sharad Agarwal, Adv.
Department by	Sh. Sanjay I Bara, CIT,DR
Date of Hearing	16/07/2018
Date of Pronouncement	19/07/2018

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against the final assessment order dated 29/10/12 passed by Ld. ACIT Circle 3 (1) under section 143 (3) read with 144C of the Income Tax Act, 1961 (the Act) for Assessment Year 2008-09 on the following grounds:

GROUNDS OF APPEAL

“That on the facts and circumstances of the case, and in law :

1. The Assessment order r passed in pursuance of the directions issued by the Hon’ble Dispute Resolution Panel (Hon’ble DRP) is a vitiated order as the Hon’ble DRP erred both on facts and in law in partially confirming the

addition made by the Ld. Assessing Officer ('Ld. AO') to the Appellant's income by issuing an order without appreciation of facts and law;

2. The Hon'ble DRP erred both on facts and in law in partially confirming the transfer pricing adjustment to the income of the Appellant by holding that its international transactions under the information technology enables services (ITES) and marketing support services ('MSS') segment do not satisfy the arm's length principle envisaged under the Act. In doing so, the Hon'ble DRP has grossly erred in agreeing with the Learned Transfer Pricing Officer's ('Ld TPO s) action of :

Common Transfer Pricing Objections - All segments

2.1. not appreciating that none of the conditions set out in section 92C(3) of the Act are satisfied in the present case;

2.2. ignoring the fact that the Appellant is entitled to tax holiday under section 10A of the Act on its profits and therefore would not have any untoward motive of deriving a tax advantage by manipulating transfer prices of its international transactions;

2.3. rejecting the Transfer Pricing ('TP') documentation maintained by the Appellant under section 92D of the Act and Rule 10D of the Rules and disregarding the ALP as determined by the Appellant in the TP documentation and conducting a fresh comparability analysis based on application of additional/ revised filters in determining the ALP and rejecting the filters applied by the Appellant in its fresh search;

2.4. disregarding multiple year/ prior years' data as used by the Appellant in the TP documentation and holding that current year (i.e. FY 2007-08) 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;

2.5. collecting selective information of the companies by exercising power granted to him under section 133(6) of the Act that was not available to the Appellant in the public domain and relying on the same for comparability purposes (and to the extent of completely ignoring reliable data available in public domain/ annual reports in numerous cases). Further, in doing so violating the fundamental principles of natural justice by not sharing with the Appellant, in case of a number of comparables the information/ reply received by the Ld.TPO/Ld.AO u/s 133(6).

2.6. ignoring the business/ commercial reality that since the Appellant is remunerated on an arm's length cost plus basis, i.e. it is compensated for all its operating costs plus a pre agreed mark-up based on a benchmarking analysis, the Appellant undertakes minimal business risks as against

comparable companies that are full fledged risk taking entrepreneurs, and by not allowing a risk adjustment to the Appellant on account of this fact.

2.7. computing the margins/ profitability of certain comparable companies erroneously;

2.8. denying the benefit of (+/-) 5 percent range mentioned in proviso to section 92C(2) of the Act while computing the ALP.

2.9. disregarding judicial pronouncements in India in undertaking the TP adjustment.

Transfer - Pricing Objections - ITeS

2.10. rejecting comparability analysis undertaken by the Appellant in the TP documentation./fresh search and conducting a fresh comparability analysis based on application of additional / revised filters in determining the ALP and rejecting the filters applied by the Appellant in its fresh search.

2.11. including high profit making companies in the final comparables set for benchmarking a low risk captive unit such as the Appellant (disregarding judicial pronouncements on the issue),

2.12. including certain companies that are not comparable to the Appellant in terms of functions performed, assets employed and risks assumed;

2.13. resorting to arbitrary rejection of low-profit/ loss making companies based on erroneous and inconsistent reasons;

2.14. excluding certain companies on arbitrary/ frivolous grounds even though they are comparable to the Appellant in terms of functions performed, assets employed and risks assumed

Transfer Pricing Objections - Marketing Support Services Segment

2.15. rejecting without reason, the quantitative and qualitative screens/filters applied and set of comparables arrived at by the Appellant following a detailed and robust search methodology carried out in the TP Report, and proceeding to carry out fresh search by applying certain arbitrarily selected filters and arriving at his own comparables set instead in Marketing Support Services segment;

2.16. including certain companies that are not comparable to the Appellant in terms of functions performed, assets employed and risks assumed;

2.17. excluding certain companies on arbitrary/ frivolous grounds even though they are comparable to the Appellant in terms of functions performed, assets employed and risk assumed.

3. *Without prejudice to the above grounds, the Ld. AO erred in not following the direction of the Hon'ble DRP of excluding certain cost such as provision for doubtful debts and foreign exchange loss or gain from the cost base while computing margins/ profitability of comparable companies.*

4. *On the facts and circumstances of the case and in law, the Ld. AO has grossly erred in initiating penalty proceedings under Section 271(1) (c) of the Act.*

The above grounds are without prejudice to each other.

The appellant craves leave to alter, amend or withdraw all or any of the grounds herein or add any further grounds as may be considered necessary either before or during the hearing.”

2. Brief facts of the case are as under:

Assessee filed its return of income for the year under consideration declaring 'nil' income. Return was processed under section 143 (1) of the Act and notice under section 143 (2) along with questionnaire was issued, in response to which Representatives of assessee appeared before the Ld.AO and filed necessary details.

2.1. Ld.AO observed that assessee is engaged in the business of publishing and trading of books. It was observed that as per Form 3 CEB, assessee during the year had international transactions with Associated Enterprises (AEs). Ld.AO accordingly made reference to the Ld.Transfer Pricing Officer (Ld.TPO) for determination of arm's length price of international transaction.

2.2. Ld.TPO during assessment proceedings observed that assessee had engaged in the business of distribution of books, provision of IT enabled services (ITeS) and sales support services to its AE. The details of international transactions entered into by assessee are as under:

Sl. No.	Description of the transaction	Amount – Rs.
1	Provision of IT Enabled Services	29,317,600
2	Provision of Sales Support Services	4,151,882
3	Provision of Distribution Activity	179,915,076

2.3. At the outset Ld.Counsel submitted that assessee do not wish to press transaction relating Provision of Sales Support Services, for year under consideration, due to value of transaction being less.

He submitted that **Grounds 2.15- 2.17** relates to objections raised regarding Marketing Support Service Segment/Provision of Sales Support Services.

3. We accordingly dismiss these grounds, with the liberty to raise the issue in any subsequent Assessment Years.

4. He further submitted that provision of distribution activity has not been disputed by assessee.

Provision of IT enabled services

In TP study Ld.TPO observed that assessee had characterised itself as provider of IT enabled services. TNMM was selected as the most appropriate method. From the search conducted by assessee set of 9 comparables having an average profit margin of 8.34% on cost was selected. Assessee computed its margin at 17.98% by using OP/TC as PLI. Thus assessee treated its transaction at arm's length as the margin was within +/-5% range.

4.1. Ld.TPO unsatisfied with comparables selected by assessee, conducted fresh search, and final set of comparables determined by Ld.TPO consisted of 20 comparables with average margin of

29.16%. He thus computed arm's length price of international transaction under ITES segment to be Rs.3,37,98,222/-and proposed adjustment of Rs.44,18,622/-.

4.2. Aggrieved by the adjustment made by Ld.TPO, assessee preferred objections before DRP. DRP upheld the order passed by Ld.TPO.

4.3. Ld.AO thereafter while giving effect to the order of Ld.DRP made addition in the hands of assessee to an extent of Rs.40,05,846/-.

5. Aggrieved by final assessment order passed by Ld.AO assessee is in appeal before us now.

6. Ld.Counsel submitted that only issue for adjudication is in respect of the Transfer Pricing objections relating to ITeS segment, and assessee is challenging inappropriate selection of certain comparables by Ld.TPO.

6.1. For the purposes of undertaking compatibility analysis, it is *sine qua non* to understand the functions, risk undertaken and assets owned by assessee before us.

I. Functions:

In the transfer pricing study assessee is submitted to be primarily engaged in the business of distribution of books, provision of IT enabled services.

It has been submitted that the accounting activities of the group are centralised through this segment. The information support services to be provided by assessee include Accounts Payable, Fixed Asset Management, Cash Application and Travel Claims Management.

Under accounting and finance, AEs approves payable invoices received from 3rd parties. These invoices are then allocated to cost centre, to which it pertains and then it is sent to Accounts Payable team for entering it into system. It is submitted that final payment for the invoices is made by the respective group company.

Under fixed asset management, functions include accounting of assets purchased, computing depreciation on the assets etc.

Under cash application, functions performed by assessee include receivable management, monitoring inflow of money into bank account and tracing the payments to vendors.

Under travel management, assessee processes travel claims raised by employees which verifies the claim against the global travel policy of the group.

II. Assets owned

Assessee owns computer system, certain computer software office equipments, motor vehicles etc. It has been submitted in the TP study that it does not own any significant intangibles and does not undertake any significant research and development on its account that leads to the development of non-routine intangibles.

III. Risks assumed

From the TP study it has been submitted that assessee does not have any significant exposure to market risk as it renders contract IT enabled services to its group on cost plus mark-up revenue model. It also does not assume any product/service liability risk and credit risk as it does not have any interface with ultimate customers but provides services only to its associated

enterprises. Assessee receives payments for such services immediately on raising of invoice.

Based on the above analysis of functions, assets owned and risk assumed by assessee in the TP study it has been characterised as a simple back-office contract service provider that assumes less than normal risk associated with carrying out of such business.

6.2. On the basis of the above we shall not undertake the compatibility of assessee with that of the disputed comparables.

6.3. Ld.Counsel submitted that in the present case assessee disputes the following to be included in the final list of comparables:

- Accentia
- Coral Hub (Vishal Information Tech. Ltd.)
- Eclerx
- Genesis International
- HCL Comnet services Ltd (segment)
- Infosys BPO
- Accropetal Technologies Ltd

(i) Accentia

Ld.Counsel submitted that this comparable has been selected by Ld. TPO. He submitted that during the year under consideration Geo-Soft Technologies (Trivandrum) Ltd. and Iridium Technologies India Pvt. Ltd amalgamated with Accentia resulting in abnormal rise in profits. It has been submitted that *Delhi benches in case of Ciena India Pvt.Ltd vs. DCIT reported in (2015) 57 Taxmann.com 329 and ICC India Pvt.Ltd versus DCIT reported*

in (2016) 71 Taxmann.com 164 as well as Mumbai bench in Petro Araldite Pvt.Ltd vs DCIT reported in 31 Taxmann.com 281, has held that a company cannot be considered as comparable because of financial results become distorted due to mergers, demergers etc. It has been submitted that similar view has also been taken by Delhi bench in case of Toluna India Pvt.Ltd vs. ACIT reported in (2014) 50 Taxmann.com 24. Due to the amalgamation of companies into Accentia during the year in question it may not be comparable with assessee.

On the contrary Ld. CIT DR placed reliance upon the orders of Ld.TPO/DRP.

We have perused the submissions advanced by both the sides in the light of the records placed before us. From the audited statements of this company placed at page 1-85 of paper book volume 2, it is clear that assessee has acquired 51% stake in Geo-Soft Technologies (Trivandrum) Ltd. and 51% stake in Iridium Technologies India Pvt. Ltd. it is observed that this comparable has been rejected by this Tribunal in assessee's own case for Assessment Year 2007-08 in ITA No. 5926/Del/2010 and 1843/Del/2010 vide order dated 11/05/18. Further it is observed that there is no segmental information as this company has stated to have only one segment namely Healthcare Receivable Management whereas the functions performed by this company involves medical transcription, software development and film production.

Under such circumstances, we are of the considered opinion that this company is not functionally similar as well as the risk profile

is quite different from that of assessee and accordingly cannot be considered to be a fit comparable.

We direct this company to be excluded from the list of comparables.

(ii) Coral Hub (Vishal Information Tech. Ltd.)

Ld.TPO included this company in the final list of comparables. Ld.Counsel submitted that this company is functionally different from that of assessee as it is a knowledge process outsourcing company and is engaged in high-end services in the nature of data conversion and customer application development services. Further it has been submitted that *Hon'ble Delhi High Court* in the case of *Rampgreen Solutions Pvt Ltd., (supra)* categorised this comparable to be a KPO service provider. Further Ld.Counsel submitted that this entity outsources its ITES services to third-party vendor thereby increasing operating expenses.

Ld. DR placed reliance upon the orders of authorities below.

We have perused the submissions advanced by both the sides in the light of the records placed before us. It is observed that *Hon'ble Delhi High Court* in the case of *Rampgreen Solutions Private Limited (supra)* has considered this to be a KPO service provider. In the facts of present assessee before us, services are rendered to group concerns, strictly on the basis of contract and requirement of its AE. And therefore this company cannot be comparable with the functions performed by present assessee before us.

Accordingly we direct this company to be excluded from the list of comparables.

(iii) Eclerx services Ltd

This comparable was included by Ld.TPO. It has been submitted by Ld.Counsel that *Hon'ble Delhi High Court* in the case of *Rampgreen Solutions Pvt. Ltd., vs. CIT* reported in (2015) 377 ITR 533 has held that KPO segment cannot be compared with ITeS segment. *Hon'ble Court* has held Eclerx to be a KPO, whereas present assessee is a contract service provider.

Ld.CIT DR placed reliance upon the decision of Ld TPO/DRP.

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

It is observed from TP study placed at page 296-345 of Annual Report Compilation Volume 2 that this company is engaged in providing high-level services involving specialised knowledge and domain expertise and is a leading provider of KPO services, whereas assessee is a contract based service provider which provides services only to its group concerns on requirement as per contract. It is observed that the revenue recognition of this company is basically from financial statements and US tax assignments. This company generates revenue from NAV support services also. It is also observed that this company own substantial amount of intangibles in the form of software, which is used in rendering of services. Further from the TP order it is observed that Ld. TPO itself admits it to be a KPO but still has selected it as a comparable because it renders ITeS services.

It has been submitted that *Delhi Bench* of ITAT in *iQor India Services (P.) Ltd v. ITO [2015] 57 taxmann.com 416/69 SOT 37 (URO)* held as under:—

'Eclerx Services Ltd.'

Eclerx is engaged in providing data analytics services with expertise in financial service and retail and manufacturing. The service provided by the company are high end in nature involving special knowledge and domain expertise and therefore, not functionally comparable with the assessee company which is engaged in providing low end ITES enabled call centre services to its AE. The fact Eclerx Services Ltd. is providing high end services involving special knowledge and domain expertise is evident from the company's own reply to the notice u/s 133(6) which is placed at pages 976 to 979 of the paper book filed by the assessee. The Hon'ble Special Bench of the Tribunal in case of Maersk Global Centre (India) (P.) Ltd. v. Asstt. CIT [2014] 147 ITD 83/43 taxmann.com 100 (Mum.) had excluded Eclerx Services Pvt. Ltd. from the list of comparables for the reason that it is providing high end services involving specialised knowledge and domain expertise and same cannot be compared with companies which are mainly engaged in providing low end services to group companies.

The relevant finding of the Hon'ble Tribunal read as follows :—

"In so far as M/s eClerx Services Limited is concerned, the relevant information is available in the form of annual report for financial year 2007- 08 placed at page 166 to 183 of the paper book. A perusal of the same shows that the said company provides data analytics and data process solutions to some of the largest brands in the world and is recognized as experts in chosen markets-financial services and retail and manufacturing. It is claimed to be providing complete business solutions by combining people, process improvement and automation. It is claimed to have employed over 1500 domain specialists working for the clients. It is claimed that eClerx is a different company with industry specialized services for meeting complex client needs, data analytics KPO service provider specializing in two business verticals - financial services and retail and manufacturing. It is claimed to be engaged in providing solutions that do not just reduce cost, but help the clients increase sales and reduce risk by enhancing efficiencies and by providing valuable insights that empower better decisions. M/s eClerx Services Pvt. Ltd. is also claimed to have a scalable delivery model and solutions offered that include data analytics, operations management, audits and

reconciliation, metrics management and reporting services. It also provides tailored process outsourcing and management services along with a multitude of data aggregation, mining and maintenance services. It is claimed that the company has a team dedicated to developing automation tools to support service delivery. These software automation tools increase productivity, allowing customers to benefit from further cost saving and output gains with better control over quality. Keeping in view the nature of services rendered by M/s eClerx Services Pvt. Ltd. and its functional profile, we are of the view that this company is also mainly engaged in providing high-end services involving specialized knowledge and domain expertise in the field and the same cannot be compared with the assessee company which is mainly engaged in providing low-end services to the group concerns.

For the reasons given above, we are of the view that if the functions actually performed by the assessee company for its AEs are compared with the functional profile of M/s eClerx Services Pvt. Ltd. and Mold-Tek Technologies Ltd., it is difficult to find out any relatively equal degree of comparability and the said entities cannot be taken as comparables for the purpose of determining ALP of the transactions of the assessee company with its AEs. We, therefore, direct that these two entities be excluded from the list of 10 comparables finally taken by the AO/TPO as per the direction of the DRP."

The above ruling of Special Bench is equally applicable to facts of assessee, as is evident from functional profile of assessee. For the aforesaid reasons, we direct Eclerx Services Ltd. be excluded from final list of comparables.

(iv) Genesis International Corp. Ltd.

This company has been selected by Ld.TPO in the final list of comparables. Ld. Counsel submits that it is functionally different with that of assessee as it is mainly engaged in the area of Geographical Information Systems services. This is evident from the reply received from this company upon issuance of notice under section 133 (6) of the Act which is reproduced in the order

of Ld.TPO wherein categorically it specifies itself to be providing services including data conversion, data migration, data maintenance, application development, Photogrammetry and outsourcing services. He placed reliance upon the decision of the *Delhi Tribunal* in case of *Macquaireb Global Services Pvt.Ltd., vs. DCIT reported in (2015) 55 Taxmann.com 259.*

On the contrary Ld.CIT DR submits that the functions performed by these companies falls under the category of ITeS services and hence is a fit comparable.

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

From the TP study report placed at page 1-118 of Annual Report Compilation Volume 2, it is observed that this company provides services in the field of Cadastral Mapping, Navigation Maps, 3-D Mapping, Photogrammetry/remote sensing services, power, etc. In our view these services are highly skilled and knowledge-based services which cannot be compared with a back-office support service as that of assessee. It is observed that Ld. TPO disagreeing with the taxpayer regarding horizontals or functional lines considered it to be comparable by placing reliance upon CBDT circular no. 890 (E) dated 26/09/2000.

He observed that *Delhi Tribunal* in case of *Macquaireb Global Services Pvt.Ltd., vs. DCIT* has held as under:

“14. Coming to the functional profile of this company, we find that it is engaged in providing full range of geospatial services to its customers. Such services, in simple terms, mean examining the relative position of things on the earth's surface. These include 3D mapping, Navigation maps, Image processing, Cadastral mapping, etc. There can be no dispute on the proposition that the list in Circular No. S.O.890(E) dated 26.9.2007, taken note of by the TPO,

contains 15 products or services, under the overall umbrella of Information Technology Enabled services. We find that most of them are diverse in nature. It can be seen that the Item at Sr. No. (v) in this list is: 'Engineering and design'; Item at Sr. No. (vi) is: 'Geographic Information System services'; Item at Sr. No. (viii) is: 'Insurance Claim Processing'; Item at Sr. No. (x) is: 'Medical Transcription'; Item at Sr. No. (xiv) is: 'Support centres'; and Item at Sr. No. (xv) is: 'Website services.' We can easily find out from the above elaboration of some of the services picked up from the Circular that some of them are entirely different from one another. Different proportions of skills and the extent of capital employed are required for rendering such services. It is wholly illogical to consider one product or services from this list of 15 products or services as similar and comparable to all the remaining 14.

15. Coming back to our point, it can be seen that Genesys International falls under serial No. vi. of the Circular with the caption 'Geographic Information System services.' There can be no comparison of the services carried out by this company with those rendered by the assessee to its AEs, which are basically in the nature of Accounts payable services and General accounting for funds, falling under (i) Back office operations; (ii) Call centres; (iv) Data processing; and (xiii) Revenue accounting. By no standard, Genesys International can be considered as comparable with the assessee company. Similar view has been taken by the Tribunal in the case of Mercer Consulting (India) (P.) Ltd. (supra). We, therefore, order for the exclusion of this company from the list of comparables.”

Respectfully following the same we direct this company to be excluded from the list of comparables.

(v) HCL Comnet Systems and Services Ltd. (Seg.)

Ld.TPO included this company. It has been submitted by Ld. Counsel that ld.TPO obtained certain data relating to Financial Year 2007-08 under section 133(6) of the Act from this company. Ld.Counsel objected to the inclusion of this comparable because it had a different financial year ending. Ld.Counsel also

submitted that segmental data for Financial Year 2007-08 in respect of this company has not been provided to assessee and that the segmental information covered in the annual report of the company was in relation to year ended 30/06/2008. Ld. Counsel further submitted that during the year 2007-08 this company has achieved supernormal growth of about 57.16% in the turnover and 40.74% in profit before tax in relation to ITES segment.

On the contrary Ld.CIT DR submitted that segmental information available in audited report of this company placed at page 338-397 of Annual Report Compendium, classifies it to be an ITeS company. He placed reliance upon schedules to accounts, wherein revenue recognition has been categorised to be from IT enabled services, which is derived from both the time based and unit priced contracts separately specified. Ld.CIT DR supported this company to be comparable with that of assessee.

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

From the audited accounts it is observed that IT enabled services have been separately segmented. Further ld.TPO used materials which have not been shared with assessee.

It is observed that this company is involved in huge R&D activity and has developed several tools as reported in its annual report. Further company has related party transaction amounting to 23% and thus fails the arbitral filter of 15% applied by Ld.TPO. Reliance has been placed on the decision of *Hon'ble Delhi High Court* in case of *Rampgreen Solutions Pvt.Ltd vs. CIT* reported in (2015) 60 *taxman.com* 355.

Moreover information supplied by this company under section 133 (6) of the Act is found to be inconsistent with the annual report for the year under consideration as it has adopted a different financial year ending on 30/06/08. It is also observed from the annual report of this company at page 369 that this company owns sufficient intangible assets in the form of computer software. Further at page 432 it is observed that revenue recognition is basically from sale of networking equipment and software. Thus it is a high-end KPO and the functions performed by this company cannot be compared with that of assessee.

Accordingly respectfully following the decision of Hon'ble Delhi High Court in the case of *Rampgreen Solutions Pvt.Ltd vs. CIT (supra)*, we direct exclusion of this comparable from the final list.

(vi) Infosys BPO Ltd.

This company has been included by ld.TPO. Ld.Counsel submits that this company is into high-end knowledge process outsourcing services, whereas assessee is a captive service provider to its Associated Enterprises only. He placed reliance upon the decision of *Hon'ble Delhi High Court* in the case of *CIT v. Agnity India Technologies (P.) Ltd. [2013] 36 Taxmann.com 289* and *PCIT vs. Evalueserve SEZ (Gurgaon) Pvt.Ltd in ITA No. 241/2018 vide order dated 26/02/18*. It was further submitted that, it also provides product based solutions such as source to pay business platform, Hire to retire business platform, Order management business platform, Newspaper in a box, Integrated Date Lifecycle Management solution, etc. It was

submitted that Infosys BPO is a giant and a top BPO services provider. It has turnover of 649 cr and total asset base of approx. 450 cr (Gross Fixed assets Rs. 116 cr).

Ld.CIT DR placed reliance upon the order of authorities below.

We have perused the submissions advanced by both the sides in the light of the records placed before us. From TP study placed at page 119-193 of the paper book, it is observed that this company has huge turnovers, owns IPR and brand value on products and provides services to vast clientele. Under such circumstances this company cannot be accepted to be a fit comparable in case of assessee who is a captive service provider providing services only to its group concerns.

Accordingly we direct this company to be excluded from the list of comparables.

(vii) Acropetal Technologies Ltd (engineering design services segment)

This company has been selected by Ld.TPO. Ld.Counsel submitted that it is functionally different with that of assessee as it renders engineering design services and software development services. Ld.Counsel placed reliance upon the decision of the *Delhi Tribunal* in case of *Daksh Business Process Services Pvt. Ltd vs. DCIT* reported in (2016) 72 *Taxmann.com* 44. It is also involved in R&D activity and developing sophisticated delivery system.

Ld. CIT DR submitted that TPO considered ITES segment and not the engineering design segment and therefore is a fit comparable. As seen from the Annual Report, this company placed at page 86-107 of Annual Report Compendium, it is observed that this

company is mainly engaged in development of computer software involved in engineering design services and has products also, which makes it functionally not comparable. Even at the segmental level, it provides engineering design services, which was considered as high end. It is seen that this company was excluded from the comparables by the Hyderabad Bench of ITAT in *Capital IQ Information Systems (India) (P.) Ltd. v. Asstt. CIT* [2014] 49 taxmann.com 313 (Hyd. - Trib.) on the ground of being high-end. It is seen that the functional profile of the company is entirely different from that of assessee and therefore, drawing support from the co-ordinate Bench's decision in *Capital IQ Information Systems (India) (P.) Ltd. (supra)* this company is excluded from list of comparables.

7. Accordingly ground 2.15-2.17 stands allowed.

8. Ground No. 3 has not been argued by assessee before us and hence is dismissed.

9. Ground No. 4 is in respect of initiation of penalty proceedings under section 271 (1) (c) of the act which is premature at this stage and hence do not require adjudication.

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

Order pronounced in the open court on 19/07/2018.

Sd/-

(R.S.SYAL)
VICE PRESIDENT

Sd/-

(BEENA A PILLAI)
JUDICIAL MEMBER

Dt. 19th July, 2018

*mv

Copy forwarded to: -

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

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

		Date
1.	Draft dictated on	17.07.18/ 18.07.2018
2.	Draft placed before author	18. 07.18
3.	Draft proposed & placed before the second member	18. 07.2018
4.	Draft discussed/approved by Second Member.	
5.	Approved Draft comes to the Sr.PS/PS	
6.	Kept for pronouncement on & Order uploaded on :	19.07.18
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.	