

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

**BEFORE
SHRI N.K. SAINI, VICE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 6710/Del/2015
Assessment Year: 2011-12**

**Income Tax Officer,
Ward 1(3),
New Delhi.**

**vs. M/s Actis Global Services Pvt. Ltd.,
MIRA, The Corporate Suites,
Block D, Ground Floor, 1 & 2,
Ishwar Nagar,
New Delhi.-110025
(PAN: AAMFA2371E)**

(Appellant)

(Respondent)

**Appellant by : Shri Kumar Pranav, Sr. DR
Respondent by : Shri Nagesh Behl, CA**

**Date of hearing: 14.08.2018
Date of pronouncement: 30.10.2018**

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.

This appeal is preferred by the Revenue against the final assessment order passed subsequent to the directions of the Ld. Dispute Resolution Panel (DRP) -1, New Delhi for assessment year 2011-12.

2.0 Brief facts of the case are that as per the information culled out from the orders of the lower authorities, the assessee is engaged in providing Information Technology Enables Services

(ITeS) such as back office, financial and fund accounting services to its AE. The assessee further leverages on IPR and other commercial or granting intangibles owned by the group and therefore, it is characterized as routine IT enabled service provider which is exposed to less than normal risk in the business since it does not own any interest for the intangibles.

2.1 The assessee filed its return of income on 29.11.2011 showing an income of Rs.23,19,782/- which was subsequently revised on 27.04.2012 to Rs.24,72,931/-During the course of assessment proceedings, the Assessing Officer found that the assessee has entered into international transactions with its Associate Enterprise (AE) for provision of back office support services/IT enabled services (ITES) amounting to Rs. 17,02,10,918/- and reimbursement of expenses of Rs. 1,28,706/- and therefore, reference u/s. 92CA of the Income Tax Act, 1961 (hereinafter called 'the Act') was made by the Assessing Officer for determination of Arm's Length Price (ALP) for the international transactions undertaken by the assessee.

2.2 The assessee, in its Transfer Pricing documentation, i.e., T.P. study report has used Transaction Net Margin Method (TNMM) as the most appropriate method and had used Operating

Profit (OP)/Total Cost (TC) as the Profit Level Indicator (PLI). The assessee has used 12 comparables with an average margin of 12.37% using multiple year data and had compared it with the margin of the assessee at 12.01% and had submitted that its international transactions were at arm's length. The TPO rejected the transfer pricing documentation of the assessee and applying his own filter, selected nine comparables with an average PLI of 28.30% and taking into consideration the PLI of OP/OC, i.e., Operating Profit/Operating Cost, determined the ALP of international transaction of Rs.18,72,10,918 at Rs.21,44,45,184/- and proposed an adjustment of Rs.2,72,34,266/-. Further, in view of the assessee's submission that the terms of payment was 60 days, the TPO further computed the interest on outstanding period exceeding 60 days and applying the interest rate of 10.84%, made an adjustment on account of receivables amounting to Rs.18,61,066/-, making total adjustment of Rs.2,90,95,332/-. The Transfer Pricing Officer (TPO) passed the order u/s 92CA(3) of the Act vide order dated 07.01.2015 proposing an adjustment on account of ITES amounting to Rs. 2,72,34,266/- and on account of receivables amounting to Rs.18,61,066/- totaling to Rs. 2,90,95,332/-.

Based on this, the Assessing Officer passed the draft assessment order on 02.02.2015 wherein in the normal computation of income, addition of Rs.2,90,95,332/- was proposed and the taxable income was determined at Rs.3,15,68,262/- and further, on the book profit declared by the assessee u/s 115JB of the Act, computed by the assessee at Rs.2,05,21,759/-, an adjustment on account of transfer pricing adjustment of Rs.2,90,95,332/- was made and the taxable book profit u/s. 115JB of the Act of was determined at Rs.4,96,17,091/-. Subsequently, the income was assessed at Rs.3,15,68,262/-.

2.3 The assessee filed its objections against the transfer pricing adjustment proposed in the draft assessment order before the Ld. DRP and the Ld. DRP, vide its directions dated 31.08.2015, disposed of the objections of the assessee. After objections before the Ld. DRP, eight comparables remained. The comparable excluded by the Ld. DRP was Accentia Technology Ltd. The arithmetic mean of PLI taking OP/TC was calculated at 25.51% and the final adjustment of Rs.2,33,48,693/- was approved.

2.4 Consequently, in the final assessment order, transfer pricing adjustments were made amounting to Rs.2,33,48,693/- in the normal computation of total income assessing the total

income of the assessee at Rs.2,58,21,623/-. Further, the book profit was increased by the Transfer Pricing adjustment of Rs.2,33,48,693/- against the book profit of Rs.2,05,21,759/- declared by the assessee, assessing the book profit at Rs.4,38,70,452/-. The assessee approached the ITAT challenging the directions of the Ld. DRP and this appeal before the ITAT, in ITA No 6175/Del/2015, was partly allowed by the ITAT vide order dated 29.07.2016. Against the order of the ITAT, the revenue filed an appeal before the Hon'ble Delhi High Court and vide order dated 5.8.2016, the Hon'ble Delhi High Court dismissed the appeal of the revenue in ITA 417/2016.

2.5 Further, the assessee also filed a rectification application before the Ld. DRP on some issues in which there was apparently some mistake on the face of the record.

2.6 Subsequently, the TPO, vide order dated 5.1.2017 passed u/s 92CA(5) r/w section 254 of the Act, recomputed the transfer pricing adjustments as under:-

- | | | |
|-----|---------------------|------------------|
| i) | IT Enabled services | Rs. 14,163,639/- |
| ii) | Receivables | NIL |

2.7 The TPO also passed an order u/s 154 of the Act vide order dated 7.3.2017 wherein the TP adjustments, both in respect of

ITES as well as receivables was recomputed at nil. The final list of comparables along with margins as calculated by the TPO in order passed u/s 154 was as under:-

S.No.	Comparables	NCPM as per Latest Order of AO after ITAT order (%)
1	Jindal Intellicom Ltd.	13.70
2	e4e Healthcare Business Services Private Limited	9.77
3	Microland Ltd.	(12.94)
4	ICRA Techno Analytics Ltd	25.24
5	Mastiff Tech Pvt Ltd	24.34
6	eClerx Limited	Excluded as per the directions of ITAT
7	Infosvs Limited	Excluded as per the directions of ITAT
8	TCS e-Serve Limited	Excluded as per the directions of ITAT
9	R Systems Internatinal Ltd	(4.10)
10	Techprocess Solutions Limited	4.80
	Arithmetic Mean	8.69

2.8 The proposed adjustment as per the order u/s 154 of the Act was as under:-

Operational Cost	Rs.	167,143,557/-
ALP at a margin of 8.69%	Rs.	181,663,557/-
Price received	Rs.	187,210,918/-
Proposed adjustment		NIL

2.9 This appeal of the department is against the direction of the Ld. DRP in directing the TPO to re-compute the addition on account of transfer pricing adjustment by excluding M/s Accentia Technology Limited from the final list of comparables.

The grounds raised by the department are as under:-

“1. On the facts and in the circumstances of the case, the Ld. DRP has erred in directing the TPO to recompute the addition on account of transfer pricing adjustments by excluding/comparable of M/s Accentia Technology Limited without appreciating the fact that the activity of the said company is similar to the activity of assessee .”

3.0 The Ld. Sr. DR vehemently argued that the Ld. DRP had erred in directing the TPO to re-compute the addition on account of transfer pricing adjustment by excluding the comparable of M/s Accentia Technology Limited without appreciating the fact that there was functional similarity between the assessee and the said company. The Ld. Sr. DR referring, to the order of the Transfer Pricing Officer, submitted that this company had been improperly excluded by the Ld. DRP and the same should be directed to be included.

4.0 In response, the Ld. AR submitted that Accentia Technology was not functionally comparable to the assessee company because Accentia Technology was engaged in providing varied

services in the nature of medical transcription services, medical billing, practice management consulting services, medical coding, claims processing and software development including SAAS and implementation services. It was also submitted that Accentia has a large portfolio of products such InstaKare, Insta PMS, Insta EMR, Insta WEB, InstaDRT, InastaScribe, InstaView etc. which made it a product-based company rather than a services company as was in the case of the assessee. Reliance was also placed on the direction of the Ld. DRP in this regard and it was submitted that this company had been rightly excluded by the Ld. DRP. The Ld. AR also submitted that even if Accentia Technology Limited was included in the final list of comparables, its margin being 29.8%, the arithmetic mean will come to 11.25% which will again be within $\pm 5\%$ of the assessee's margin and, therefore, even on that account, no adjustment will be required.

5.0 We have heard the rival submissions and perused the material available on record. The Ld. DRP has given a detailed finding with respect to this company while directing this company to be excluded. The relevant observations of the Ld. DRP are contained in Para 3.6.4 of the directions of the DRP and the same are being reproduced here in under for a ready reference:-

“Accentia Technology is engaged in providing varied services in the nature of medical transcription services, medical billing, practice management consulting services, medical coding, claims processing and software development including SAAS and implementation services. Accentia it is evident has a large portfolio of products such as instaKare a EMR software developed by Accentia that enables providers using it receive EMR incentives from federal and state agencies, Insta PMS a web based practice management solution, Insta EMR, Insta WEB, instaBill, InstaDRT, InstaScribe InstaView,- making it a product company more than a services company even though it is reporting only one segment ie ITes. Though TPO has stated that more than 84.76% receipt is from healthcare receivables and only 15.24% Sale of software, the offering of software as a service (SaaS) makes it functionally different from the taxpayer. Segmental information is also not available since taxpayer is reporting only one ITES segment. The following extract from its Annual Report is explanatory:

“Even though the management realised that these drastic changes in Accentia's core area of operation would affect the normal operations and would have an impact on the revenue and profitability of the Company in the short run, we were quick to understand that there is a huge opportunity that was waiting to be exploited if we can change our functioning to adapt to the new requirements in the healthcare industry in the US. Accordingly we

decided to go all out on a war footing basis to develop out own EMR software rather than depend on third party offerings; get the software certified at the earliest and market the same ail over the US. Further, we realised that the adoption of EMR based clinical practise is opening up avenues for an integrated end-to-end SaaS model (Software as a Service) of service delivery; hence, we quickly ventured into that too. Accentia's seamlessly integrated SaaS delivery model will function as a one stop shop for a clinical provider that will manage all their healthcare documentation needs, receivables management needs, performance tracking and reporting".

There appears to be merit also in the taxpayers assertions that it fails TPO's filter of peculiar economic circumstances involved in that there was a strategic acquisition of companies and investments in companies with expertise in software development (page 76-78 of Annexure A of the Paper book) during the FY to own EMR software rather than depend on third party offerings. Thus Accentia with a business model of providing both services and products while reporting only one segmental, is not functionally similar, and has a significantly different asset and risk profile (Goodwill Brands/IPR constitute 41.24% of its total fixed assets) during the FY 2010-11. Also this was not selected by TPO last year and during the year except a greater emphasis on products and SAAS, there is no change in FAR. The changes in business model only render it

functionally more different from taxpayer and it cannot serve as a valid comparable for the ITeS segment in the case of taxpayer. TPO is thus directed to exclude Accentia from the list of comparables.”

5.1 Although the Ld. Sr. DR has argued vehemently against the directions of the Ld. DRP for exclusion of Accentia Technology Limited, he was unable to point out any infirmity in the directions of the Ld. DRP. He could also not point out any judicial precedent wherein Accentia Technology Limited was retained as a comparable in case of a service company. Accordingly, we find no reason to interfere and we dismiss the grounds raised by the department.

6.0 In the result, the appeal of the department stands dismissed.

Order pronounced in the open court on 30th October, 2018.

Sd/-
(N.K. SAINI)
VICE PRESIDENT

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 30th OCTOBER , 2018
'GS'

ITA No. 6710/Del/2015
Assessment year 2011-12

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

By Order

ASSTT. REGISTRAR