

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

**BEFORE SHRI ANIL CHATURVEDI, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM**

आयकर अपील सं. / ITA No. 400/PUN/2014

निर्धारण वर्ष / Assessment Year : 2009-10

M/s. Eaton Technologies Private Limited.
Cluster C, Wing-1, Eon Free Zone,
Plot No.1, S. No. 77, MIDC Kharadi Knowledge
Park, Kharadi, Pune-411 014.
PAN : AABCE4323Q.

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-1(2), Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Vishal Kalra
Revenue by : Smt. Nandita Kanchan

सुनवाई की तारीख / Date of Hearing : 27.02.2019

घोषणा की तारीख / Date of Pronouncement : 06.03.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of Ld. Transfer Pricing Officer (TPO)/ Dispute Resolution Panel (DRP) as per following grounds of appeal on record:

"1. That on the facts and circumstances of the case and in law, the AOI Transfer Pricing Officer ("TPO") have erred in making and the DRP further erred in upholding an adjustment of Rs 3,96,51,776 in respect of the international transactions pertaining to Information Technology ("IT), Information Technology Enabled Services ("ITeS"), Business

Support Service ("BSS") and Marketing Support Services ("MSS"), alleging that the same to be not at arm's length in terms of the provisions of section 92C(1) and 92C(2) of the Act read with Rule 10D of the Income Tax Rules, 1961 ("the Rules").

2. That on the facts and circumstances of the case and in law, the AO/DRP/TPO have erred in arbitrary selecting comparables companies based on incorrect appreciation of functional asset and risk profile in relation to the IT Segment of the appellant.

3. That on the facts and circumstances and in law, the AO/DRP/TPO have erred in arbitrarily rejecting certain functionally comparable companies selected by the Appellant in respect of its IT segment on a subjective basis.

4. That on the facts and circumstances and in law, the AO/DRP/TPO have erred in arbitrarily rejecting certain functionally comparable companies selected by the Appellant in respect of its ITes segment on a subjective basis.

5. That on the facts and circumstances and in law, the AO/DRP/TPO have erred in holding CRISIL Limited as a valid comparable for the Appellant's BSS Segment.

6. That on the facts and circumstances and in law, the AO/DRP/TPO have erred in arbitrarily selecting Agrima Consultants Ltd. as a comparable in relation to the Appellant's BSS Segment.

7. That on the facts and circumstances and in law, the AO/DRP/TPO have erred in arbitrarily selecting Agrima Consultants as comparable in relation to the Appellant's MSS segment.

8 That on the facts and circumstances and in law, the AO/DRP/TPO have erred in not granting the benefit of economic/risk adjustments.

9. That on the facts and circumstances and in law, the AO/DRP/TPO have erred in ignoring the provisions of Rule 10B(4) of the Rules and judicial pronouncements which advocate usage of multiple year data of comparable companies for the purpose of determination of the arm's length price.

10. That on the facts and circumstances and in law, the AO/DRP/TPO have erred in not providing the appellant the benefit of 5% range as provided by the proviso to section 92C(2) of the Act.

Each of the above grounds is independent and without prejudice to the other grounds of appeal preferred by the Appellant."

2. At the time of hearing, the Ld. AR of the assessee apprised the Bench that **ground No.1 is general in nature. That as stated by the Ld. AR, this ground being general in nature, requires no adjudication.** The Ld. AR of the assessee also stated that he is not pressing ground No.9 and hence,

ground **No.9 is dismissed as 'not pressed'**. The **ground Nos. 8 and 10 are consequential and hence, requires no adjudication.**

3. Ground Nos. 2 and 3 relates to IT Segment. Ground No.4 is with regard to ITes Segment. Ground Nos. 5, 6 and 7 relates to BSS Segment and MSS Segment.

4. First we would take the grounds relates to IT Segment i.e. Ground Nos. 2 and 3. Ground No.2 pertains to exclusion of companies from Information Technology Segment:

EXCLUSION OF COMPANIES FROM INFORMATION TECHNOLOGY SEGMENT

(A) **KALs Information Systems Ltd. ("KALS")** :

5. The Ld. AR of the assessee submitted that KALS is established software products, educational services organization. It has several off-the Shelf software solutions that are sold as it to the customers. Website extracts are provided at page 458 to 465 of Volume-2 of the paper book. KALS cannot be considered as a comparable since it is a product company engaged in developing software products as well as providing software development services. This is also clear from the annual report of the company wherein it has been clearly stated that company is engaged in software development and software products. This document is placed at page 470 of Volume-2 of the paper book. The company has reported three segment viz. software development segment, translation & interpretation and training receipts. None of which are comparable to assessee's IT support services segment thus, completely different profile in terms of the profile of the assessee. There is no bifurcation of software services and sale of software products. This is

provided at page 471 of Volume-2 of the paper book. The Ld. AR further submitted that the TPO in the show cause notice had merely selected this company alleging that the assessee has itself selected the said company in assessment year 2008-09. This position taken by the TPO is factually incorrect as KALS was not considered as comparable for the previous year by the assessee and the TPO did not make any adjustment to the arm's length price (ALP) of IT segment of the assessee in the said year. With this regard, TPO's order for assessment year 2008-09 and final set of comparable in TP study for assessment year 2008-09 are annexed at page 64 of the paper book.

5.1 The Ld. AR of the assessee has placed reliance on the decision in the case of CIT Vs. PTC Software India (Pvt.) Ltd. in ITA No.732 of 2014 (Bombay High Court) wherein it has been held by the Hon'ble Jurisdictional High Court that on account of functionally not comparable, KALS should be excluded from the list of comparable companies. That on perusal of the order of the Hon'ble Jurisdictional High Court in the case of CIT Vs. PTC Software India (Pvt.) Ltd. (supra.) wherein the Hon'ble High Court has held as under:

“(a) M/s. KALS Information Solutions Ltd. (KALS Ltd.) and Helios & Matheson Information Technology Ltd. (Helios & Matheson Ltd.) were included by the TPO in his comparability analysis . The grievance of the respondent assessee before the Tribunal was that both are functionally different from the respondent assessee and, therefore could not be used as comparables. The respondent assessee pointed out that KALS Ltd and Helios & Matheson Ltd. are engaged in the business of selling of software products while the respondent assessee renders software services to its holding company.

(b) The Tribunal in the impugned order records that for the preceding assessment year i.e. A.Y. 2006- 07, the TPO had found that KALS Ltd. and Helios & Matheson Ltd. were functionally not comparable with the respondent assessee. In the subject assessment year also, on the basis of Annual Report, it was noted that the KALS was engaged in selling of software products which is different from the activity undertaken by the respondent assessee, namely, rendering of software service to its holding company. Further, the impugned order also records that no attempt was even made by the Revenue before it to bring on record any change in the nature of activities carried out by KALS Ltd. and Helios & Matheson Ltd. in the subject assessment year, making them functionally comparable to the respondent assessee. In the aforesaid facts, the Tribunal rendered a

finding of fact that KALS Ltd. and Helios & Matheson Ltd. are not comparable with the respondent assessee.

(c) Even before us, no submissions were advanced justifying the order of the Assessing Officer that the services rendered by KALS Ltd. and Helios & Matheson Ltd. are comparable for the subject assessment year with that of the respondent assessee.

(d) In the above view, as the findings of the Tribunal being one of the fact which has not been shown to be perverse, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.”

The Hon'ble Bombay High Court upheld the findings of Tribunal wherein KALS Ltd. is functionally not comparable and therefore, has to be excluded from the list of comparables.

5.2 In view of the matter and following the decision of the Hon'ble Bombay High Court, KALS Information Systems Ltd. cannot be treated as comparable company and the TPO is directed to exclude KALS from final list of comparable companies with regard to IT Segment.

(B) Compucom Software Ltd. (“Compucom”) :

6. The Ld. AR of the assessee submitted that Compucom is engaged in diversified services such as ready-made software products, Learning Solutions, Wind power generation and Treasury. Website extracts are annexed at page 477 of Volume-2 of the paper book and annual report is annexed at page 478 of Volume-2 of the paper book. The Ld. AR further stated that even under the software services segment it is engaged in ITes/BPO services. This has been clearly stated in annual report of the company on page 29 of the annual report compilation wherein under software services the company has stated a contract with JDVVNL has been extended for rendering IT enabled call center services. Further, on page 42 of the annual report compilation under business environment outlook, it has clearly

stated that it renders customer support out sourcing in telecommunication, BPO services/ call centers solutions, KPO services etc. It has further detailed services in relation to IT infrastructure that it undertakes. The TPO has made this company as comparable merely on the basis that the said comparable is comparable on perusal of the annual report.

6.1 The Ld. AR of the assessee has placed reliance on the decision of Principal Global Services Vs. DCIT in ITA No.280/PN/2014. We observe that the Pune Bench of the Tribunal on the issue whether Compucom Software Ltd. can be considered as comparable or not, has observed as under:

“25.....However, in the present case, it is required to be appreciated that M/s. Compucom Software Ltd. (Software Segment) is engaged in a wide spectrum of activities noted earlier and its customer profile includes Government bodies etc. whereas the assessee is a captive software service provider rendering pure software development services to its associated enterprises as per the specifications provided. It has also been pointed out by the assessee that the software services segment of Compucom Software Ltd. is, inter-alia, engaged in development of software products also which is qualitative different from what is being undertaken by the assessee. Therefore, in the absence of any credible discussion emerging from the order of the lower authorities as to in what manner the functional profile of the said concern in the software segment is similar to assessee's tested activity, we that the software segment of Compucom Software Ltd. is not comparable to assessee's segment of Provision of software services to its associated enterprises. We accordingly direct the lower authorities to exclude the said concern from the final set of comparable.”

Respectfully, following the decision of Co-ordinate Bench of the Tribunal, we direct the TPO to exclude M/s. Compucom Software Ltd. from the final set of comparable.

(c) **Mindtree Ltd. (“Mindtree”)** :

7. The Ld. AR of the assessee submitted that the business of Mindtree comprises of two business segments namely IT services and R & D Services. Mindtree was selected as comparable as segmental level i.e. software segment

of Mindtree was comparable to the assessee's IT segment. Segmental data in case of Mindtree is readily available and thus, merely because assets and liabilities cannot be bifurcated on segmental basis cannot be a reason for taking Mindtree as a comparable at entity level. Meaning thereby, even though it was comparable as segmental legal however, Mindtree is not a comparable according to the assessee at entity level.

7.1 The Ld. AR of the assessee has placed reliance on the decision of Principal Global Services Vs. DCIT (supra.). We observe that the Pune Bench of the Tribunal in the aforesaid case has held as under:

“26. with respect to the dispute in the software services segment, another point made out by assessee was that the margin of Mindtree Consulting Ltd. considered by the TPO at 27.60% was wrong. In this context, the Ld. Representative for the assessee pointed out that before the TPO, assessee had asserted that only the IT services segment of the said concern be considered as a comparable and not the entire entity and therefore the margin relatable to the IT services segment of the said concern at 5.52% be alone considered for the purposes of the comparability analysis. The Ld. Representative submitted that the TPO has considered the margin at the entity level and not the segmental level, which was required to be done.

27. In this context, the Ld. CIT-DR referred to the discussion made by the TPO in para 10(5) of the impugned order to justify non-adoption of segmental profits for the purposes of comparability analysis. According to the Ld. CIT-DR, the said concern was engaged in the activity of computer software and even the R&D services were nothing but to support development services therefore the margin of the said concern at the entity level reflected profits from software development services only and thus the TPO was justified in adopting the margins at the entity level for the purposes of comparability.

28. We have carefully considered the rival submissions. In the context of the controversy before us, we have perused the Annual Report of the said concern, a copy of which is placed at pages 214 to 267 of the Paper Book. At page 263 of the Paper Book in para 15 of the Schedule to the Annual financial statement, the said concern has enumerated its segmental reporting. As per the Annual Report, the said concern is having two business segments viz. IT services and R&D services. The segmental profits relating to R&D services and IT services have been separately enumerated therein. The plea of the assessee is that the margin relating to the IT services segment alone be considered comparable to assessee's activities of Provision of software services and not the margin relatable to the R&D services segment of the said concern. It has been emphasized that the activities of the R&D services segment are nowhere comparable to assessee's activities since assessee does not render such services and rather it is providing software

development services on the basis of the specifications provided by the associated enterprises. In our considered opinion, the aforesaid functional difference pointed out by the assessee vis-a-vis the R&D services segment of the said concern are germane and relevant to decide about the inclusion of the said concern for the comparability analysis. Therefore, we direct the lower authorities to exclude the margins relatable to the R&D services segment of the said concern and consider only the margin relatable to the IT services segment alone to benchmark assessee's activity of Provision of software services to its associated enterprises. Thus, on this aspect also assessee succeeds.”

Therefore, as observed in the aforesaid case by the Pune Bench of the Tribunal, similarly it is directed that the lower authorities to exclude the margins relatable to the R&D services segment of the said concern and consider only the margin relatable to the IT services segment alone to benchmark assessee's activity of Provision of software services to its associated enterprises. Therefore, Mindtree Ltd. has to be also excluded from the final list of comparables.

(D) F.C.S Software Solutions Ltd. (“FCS Software”) :

8. The Ld. AR of the assessee submitted that FCS Software is engaged in the business of Software Development & IT enables Services. As per the annual report of the company for F.Y.2008-09, it is engaged in (i) IT Consultancy (ii) E-learning division and (c) Infra management. The Company is also engaged in product development. Website extract is placed at page 490, 491 and 494 of Volume-2 of the paper book. The same is evident from the annual report at page 100, 146 and 147 of the annual report compilation wherein under segment wise/product wise performance of the company has given various services provided. The Ld. AR further submitted that the company does not have any separately reported segments in the financial statements and has only one segment viz. ‘software development and other services’. The TPO has selected the said company on the ground that this was part of assessee’s old search however, the assessee had not selected the said

comparable in its fresh search. The selection of the said company was challenged before the DRP. Further, Courts have time and again held that the assessee cannot be stopped from taking a stand which is different from the stand taken at the time of preparing TP report particularly when relevant financial data is not there. At the present moment, it is the contention of the Ld. AR that this company i.e. FCS Software Solutions Ltd. is not comparable company with that of the IT segment of the assessee as it does not have segmental and major components of services rendered includes ITes services.

8.1 The Ld. AR of the assessee has placed reliance on the decision of TIBCO Software India (P.) Ltd. Vs. DCIT, ITA No.94/PUN/2012 while submitting that why this company should be excluded from the list of comparables. We observed that the Pune Bench of the Tribunal on this issue has held as under:

“12 By way of Ground of Appeal No.4.1, the plea of the assessee is for excluding FCS Software Solutions Ltd. from the final set of comparables. On this aspect, the point made out by the assessee is that the said concern is functionally different from the assessee inasmuch as the majority of services rendered by it are in the category of IT enabled services and therefore it is not to comparable to assessee's activity of providing software design and development services to the associated enterprises. The Ld. Representative for the assessee has referred to para 11 (xv) of the order of the TPO to point out that the TPO included the said concern as comparable primarily on the ground that the same was also included by him in the Transfer Pricing assessment for the preceding assessment year 2008-09. In this context, the Ld. Representative for the assessee submitted that before the lower authorities, assessee had pointed out that the revenue earned by the said concern from software development activities was less than 75% of the total revenue and therefore it was excludible from the list of comparables. The Ld. Representative pointed out that the Tribunal in the assessee's own case for assessment year 2008-09 vide its order dated 11.02.2015 (supra) has excluded the said concern from the final set of comparables. It has also been pointed out that for assessment year 2010-11 in assessee's own case the said concern has been excluded from the final set of comparables as per the order of the DRP, a copy of which has been placed in the paper book at pages 1674 to 1738.

13. The Ld. CIT-DR appearing for the Revenue has not contested the assertions of the assessee that under similar circumstances, the said concern has been directed to be excluded from the final set of comparables by the Tribunal in the assessee's own case vide order

dated 11.02.2015 (supra).

14. We have carefully considered the rival submissions. In this context, we have perused the order of the Tribunal in assessee's own case dated 11.02.2015 (supra.) wherein the following discussion is relevant:

23. We have carefully considered the rival submissions. In fact the TPO has reproduced in para 15.7 the written submissions of the assessee on this aspect. The first plea raised by the assessee was that income earned by the said concern from rendering of application support services and infrastructure management services, which constitute 11% and 15% respectively of the total revenue, are in the nature of IT enabled services and not linked to the software development services. On this basis, it was sought to be pointed out that if the aforesaid income streams are excluded from the segment of software development services, then the income from software development services segment falls below 75% of the total income. The TPO had applied a filter to exclude such concerns from the list of comparables, wherein the income from software development services was less than 75% of the total income. In fact, in the discussion made by the TPO in response to assessee's aforesaid assertions, there is no denial to the same. Though the TPO goes on to rely on the CBDI's Circular dated 26.09.2000 (supra), but that is in relation to the activity of E-learning and Digital Consulting being carried out by the assessee. The segment of E-learning and Digital Consulting is a different segment. In any case, assessee's plea based on the nature of services on account of application support services segment and infrastructure management services segment have not been rebutted by the TPO. Therefore, we are inclined to hold that the application support services and infrastructure management services, which constitute 11 % and 15% respectively of the total income, are IT enabled services and not linked to the software development services.

24. Moreover, the assessee had referred to the following extract from the Annual report of the said concern in relation to the E-learning and Digital consulting before the TPO to say that it is in the nature of IT enabled services.

"E-learning and Digital Consulting Services."

US corporations look at E-learning of web/CD based training programs as one of the ways to achieve organizational growth and improved business performance. E-learning helps employees, vendors, and dealers of a company to better their performance and deal with fast-changing environments. E-learning makes training highly efficient, by making it available anytime, anywhere and reduces total cost of training. E-learning is used to train employees, customers and service technicians on product knowledge, concepts, strategies, risk and finance, compliance and technology."

25. Ostensibly, the aforesaid services involve setting up of support centres and remote maintenance, which have been duly categorized as ITES by the CBDT's Circular dated 26.09.2000 itself, which has been reproduced by the TPO in the impugned order. Therefore, even the said segment is not to be included as part of the software development services, as asserted by the assessee. Once the segment of application support and infrastructure management services are removed along with the exclusion of E-learning and Digital consulting segment, then

the income of the said concern from software development services falls below 75% of its total income and therefore, it deserves to be excluded even on the basis of the filter applied by the TPO. Thus, on this aspect, assessee succeeds.'

15. Ostensibly, the Tribunal has excluded the said concern on the ground that its income from software development services was below 75% of the total income. The fact-situation noted by the Tribunal in its order dated 11.02.2015 (supra) continues to hold in the present year also. For this, the Ld. Representative for the assessee has referred to the submissions made before the lower authorities based on the relevant extract of the Annual Report of the said concern placed at pages 1739 to 1742 of the Paper Book. In terms of the aforesaid, it is noticed that the proportionate income of the said concern in various segments is as under:

<i>IT Consulting</i>	<i>48%</i>
<i>Infrastructure Management services</i>	<i>17% and</i>
<i>E-learning and Digital Consulting</i>	<i>35%</i>

16. On the basis of the aforesaid, it quite clear that the activities on account of the Infrastructure Management services and E-learning and Digital Consulting which constitute 17% and 35% respectively of the total revenue are obviously IT enabled services and are not akin to the software design and development services being rendered by the assessee. On similar considerations, the said concern was found to be incomparable to assessee's segment of provision of software design and development services in the immediately preceding assessment year 2008-09 (supra.) by the Tribunal. Following the aforesaid precedent, which continues to hold the field, in this year also on account of similarity in circumstances? We therefore uphold assessee's plea for exclusion of FCS Software Solutions Ltd from the set of comparables. This on ground of appeal No.4.1 assessee succeeds."

Respectfully, following the observation of the Pune Bench of the Tribunal, we uphold the assessee's plea for exclusion of FCS Software Solutions Ltd from the set of comparables and TPO is directed accordingly. Hence, **ground No.2 raised in appeal by assessee is allowed.**

9. Ground No. 3 pertains to inclusion of comparables to the Information Technology Segment to the assessee.

INCLUSION OF COMPARABLES TO THE INFORMATION TECHNOLOGY SEGMENT:

(E) Techprocess Software Solutions Ltd- Software Solution Segment
(“Techprocess”) :

10. The Ld. AR of the assessee submitted that the company is functionally comparable to the assessee. Techprocess is engaged in providing software support services to the banking industry. Segmental financials of the company shows that the company operates in two segments- Processing Services and Software development and support. The Ld. AR further submitted that the TPO merely rejected the company on the ground that the said company provides services to only banking industry. However, he has not doubted the functional comparability of the comparable because it caters to a certain industry even though it performs the same functions as that of the assessee.

10.1 We have perused the case records and have given considerable thought to the order of TPO/DRP and submissions of the assessee. In this respect, whether Techprocess Software Solutions Ltd should be included as comparable or not, needs verification by the TPO and therefore, the matter is restored to the file of TPO for verification and adjudication after providing reasonable opportunity of hearing to the assessee.

(F) Reliance Infosolutions Private Limited (“Reliance Infosolutions”)

11. The Ld. AR of the assessee submitted that the company is functionally comparable to the assessee. The company is sought to be included on the facts that Reliance Infosolutions Ltd. is engaged in Information Technology (IT) services and solutions. It offers software development and customization, software consultancy. The TPO has not objected to the functional comparability of the comparable, the limited challenge is on the ground that

the company is a subsidiary of Motech Software Pvt. Ltd. on which allegations of tax evasion were leveled and that the employees were previously working in some other Reliance concerns and they seem to have been shifted on the payroll of peer. During the year under consideration, Reliance Solutions was not a subsidiary of Motech Software Private Limited as is evident from the annual report of the company for F.Y. 2008-09. Further, the TPO have not been able to demonstrate that the allegations against Motech Software Private Limited for alleged tax evasion have in any way impacted the operating margins of Reliance Infosolutions or otherwise what is the source of allegations and whether such allegations have been proved to be correct.

11.1 We have perused the case records and have given considerable thought to the findings of the TPO as well as submissions of the assessee. We are of the opinion that this matter needs verification by the TPO. Accordingly, we remand the matter to the file of TPO to verify and adjudicate whether Techprocess Software Solutions Ltd can be brought in the list of comparables or not after providing reasonable opportunity of hearing to the assessee.

(G) Thinksoft Global Services Limited ("Thinksoft Global")

12. The Ld. AR of the assessee submitted that the company is functionally comparable to the assessee. Thinksoft Global Services Limited is engaged in provision of software services primarily delivering software validation and verification services to the banking and financial services industry. The TPO has erroneously stated that the company is a financial service testing specialist. The same is evident from the annual report. Website extract of the company is placed at 519 of the Volume-2 of the paper book.

12.1 We have considered the submissions of the Ld. AR and order of the

TPO. We are of considered view that this issue needs verification by the TPO and therefore, the matter is restored to the file of TPO for verification and adjudication after providing reasonable opportunity of hearing to the assessee.

(H) **Bells Softtech Ltd. (“Bells Softtech”)** :

13. The Ld. AR of the assessee submitted that the company is functionally comparable to the assessee. Bells Softtech operated in software development which is evident from the profit and loss account which is annexed at page 527 of the paper book Volume-2. The TPO has not objected to the functional profile of the company, however, the limited challenge is that the company operates in domestic market. Domestic operations of Bells Softtech would not result in distorting the functional comparability. Further, on the facts it is pertinent to mention that the company does not operate in the export segment although the earning from exports is low. The Ld. AR of the assessee in this regard referred page 523 of Volume-2 of the paper book.

13.1 We have perused the case records and order of TPO. The TPO has observed that Bells Softtech is selling its services in the domestic market only whereas the assessee is providing services abroad. On this ground, TPO rejected the Bells Softtech to be comparable to that of the IT segment of assessee. However, the Ld. AR submits that the TPO has not categorically objected to the functional profile of the company and domestic operations of Bells Softtech do not result in distorting the functional comparability. These are the issues which the TPO should verify and adjudicate upon. Therefore, we remand the matter to the file of TPO to verify and adjudicate after providing reasonable opportunity of hearing to the assessee. Hence, **ground No. 3 raised in appeal by the assessee is allowed for statistical purposes.**

14. Ground No.4 pertains to ITes segment. In this ground, the assessee has contended the exclusion of certain companies as comparable and at the same inclusion of company in the list of comparables.

EXCLUSION OF COMPARABLES TO INFORMATION TECHNOLOGY ENABLED SERVICES SEGMENT

(I) Infosys BPO Ltd. ("Infosys")

15. The Ld. AR of the assessee submitted that Infosys BPO Ltd. should be excluded from the list of comparables of ITes segment of the assessee as it has acted on different functional profile and risk undertaken. The Appellant is a captive service provider and cannot be compared to Infosys as the latter is a market leader in its business with brand value and is a giant in its area of operation and full-fledged risk taking entrepreneur with diversified business including software product, consulting application, design development, re-engineering and maintenance etc. Infosys BPO possesses brand value which will tend to influence the pricing policy and thereby directly impacting the margins earned by the company. The turnover of the Infosys BPO is very high which is 154 times more than that of the assessee. The assessee's turn over for the segment is only 7.87 crores as against Infosys BPO which has earned revenue of INR 1,081 crores. It is an industry giant in the field. The annual compilation report is annexed at 254 of the paper book. The Ld. AR further submitted that a company PAN Financial Services India Pvt Ltd has been merged with the company and financials of both the companies for the relevant year have been merged. Therefore, the functions performed and revenue earned from operations of this company cannot demonstrate the correct picture of revenues earned from operations. This is evident from page 271 of the paper book.

15.1 The Ld. AR of the assessee has placed reliance on the decision of Principal Global Services Pvt. Ltd. (supra.) with regard to the contention that Infosys BPO Ltd. has to be excluded on account of high turnover. We observe that the Pune Bench of the Tribunal on the issue has held as under:

“34. We have carefully considered the rival submissions. In the case of Agnity India Technologies (P) Ltd. (supra), the Hon'ble High Court noted that M/s. Infosys Technologies Ltd. was a concern with a turnover of Rs.9028 crores whereas the assessee before it i.e. Agnity India Technologies Pvt. Ltd. was having a turnover of Rs.16.09 crores. The Hon'ble High Court also noted the difference in spending on advertisement, sales promotion and Research & Development by Infosys Technology Ltd. and Agnity India Technologies Pvt. Ltd. Whereas Infosys Technologies Ltd. was s end in substantial sums on advertisement, sales, promotions, brand, building and R&D activity, and Agnity India Technologies Pvt. Ltd.'s spending on such activities was NIL. Agnity India Technologies Pvt. Ltd. was a captive service provider for its associated enterprises, which was not the case of Infosys Technologies Ltd. Under these circumstances, the Hon'ble Delhi High Court approved the decision of the Tribunal which held that Infosys Technologies Ltd. could not be compared with M/s Agility India Technologies Pvt. Ltd. having regard to the financial data etc. of the two concerns. Considering the aforesaid parity of reasoning, it has to be appreciated in the present case that the activities undertaken by Infosys BPO Ltd. cannot be qualitatively compared with the activities being carried out by the assessee in its back office support services segment. Undoubtedly, Infosys BPO Ltd. owns significant intangibles and eminent brand value whereas in the case of the assessee before us there is no such situation. The turnover achieved by Infosys BPO Ltd. is many times higher in comparison to the assessee; the said concern is a giant in comparison to the assessee. In our view, the presence of the aforesaid factors justify assessee's assertion that the said concern be excluded from the list of comparables. We hold so.”

Respectfully, following the aforesaid decision, we direct the TPO to exclude Infosys BPO Ltd. from list of comparables with regard to ITes segment of the assessee.

(J) Cosmic Global Ltd. (“Cosmic”)

16. The Ld. AR of the assessee submitted that Cosmic Global Ltd. is involved in rendering services in relation to translation and medical transcription of voice data. Cosmic was sub-contracting majority of its translation services work to third party vendors and had made significant payments to third parties, whereas assessee was undertaking its activities on

its own. The company has very low employee cost as compared to the payments made to third party vendors for translation. The same is reflected in the profit and loss account at page No. 579 of Volume 2 of the paper book.

16. The Ld. AR of the assessee has placed reliance on the decision of Principal Global Services Vs. DCIT (supra.) wherein the Pune Bench of the Tribunal has observed as under:

“35. The second point made by the assessee is that the TPO erred in including Cosmic Global Ltd. in the final set of comparables. In this context, the plea of the assessee before the lower authorities as well as before us is that the said concern was sub-contracting most of its work whereas assessee was undertaking its activities by itself. It was pointed out that the said concern was sub-contracting majority of its translation services work to third party vendors and had made significant payments which were almost 62% of the total cost, whereas assessee was undertaking its activities on its own. In this context, reliance has been placed on the decision of the Mumbai Bench of the Tribunal in the case of Asstt. CIT v. Maersk Global Service Center (India) (P) Ltd. [2011] 16 taxmann.com 47/133 ITO 543 as also the decision of the Pune of the Tribunal in the case of PTC Software (India) (P) Ltd. (supra).

36. On the other hand, the Ld CIT-DR referred to the discussion made by the TPO in para 11(1) of the order by pointing out that the said concern was a part of the search conducted by the assessee also. Therefore, according to her, the said concern cannot be excluded at the present stage.

37. In our considered opinion, the point made out by the Ld. CIT-OR that the assessee had initially selected the said concern as comparable cannot be the sole basis to reject assessee plea for exclusion of the said concern if the assessee is otherwise able to justify it on facts. Quite clearly, the difference in the business model undertaken by the assessee vis-a-vis the said concern cannot be denied. In the case of Maersk Global Service Center (India) (P) Ltd. (supra), the Mumbai Bench of the Tribunal noted that a concern which was outsourcing most of its work could not be construed to be a good comparable with an assessee who was carrying out the work by itself. To the similar effect is also the decision of the Bangalore Bench of the Tribunal in the case of 2417 Customer.Com (P) Ltd. v. Dy. CIT [2013] 140 ITD 344/[2012] 28 taxmann.com 258. The decision of the Pune Bench of the Tribunal in the case of PTC Software (India) (P) Ltd. (supra) is also to the similar effect. Therefore, in our considered opinion, having regard to the difference in the business model brought out by the assessee, M/s. Cosmic Global Services Ltd. is liable to be excluded from the final set of comparables. We hold so.”

That on perusal of the findings, it is evident that there is difference in the business model brought out by the assessee and that of the Cosmic

Global Services Ltd. Therefore, respectfully following the decision of the Pune Bench of the Tribunal, we direct the TPO to exclude Cosmic Global Ltd. from final set of comparables.

INCLUSION OF COMPARABLES TO INFORMATION TECHNOLOGY ENABLED SERVICES SEGMENT

(K) Sparsh BPO Services Ltd. ("Sparsh")

17. The contention of the Ld. AR is that this company should be included in the list of comparables to the ITes segment on the following reasons :

i) The company is engaged in providing IT enabled Services in the nature of call centre, transaction processing, back office activities and related services.

ii) The sole reason given by TPO for exclusion of the said comparable is that this company renders services only to BSNL. The said argument of the TPO is factually incorrect. In the annual report of the company is placed at page 542 of Volume 2 of the paper book under the heading operations the company has clearly stated that it has over 34 clients and about 80 processes.

iii) Further, the Schedule 15 - Notes to accounts annexed at page 543 of the paper book Volume-2 has given the business description of the company which is in the nature of ITeS and therefore, the said company should be held to be comparable to the assessee.

17.1 We have perused the case records, order of TPO and submissions of the Ld. AR of the assessee. We find that TPO has excluded the said

comparable i.e. Sparsh BPO Services Ltd on the ground that it renders services only to BSNL. Whereas it is contended by the Ld. AR that as per the annual report of the company it got 34 clients and about 80 processes. We set aside the issue to the file of TPO to verify and adjudicate the matter after providing reasonable opportunity of hearing to the assessee and decide whether Sparsh BPO Services Ltd can be included in the list of comparables in ITes segment of the assessee.

(L) In House Productions Ltd.- Healthcare Segment ("In House") :

18. The Ld. AR of the assessee submitted that the company provides medical BPO services. The same is evident from the segmental information provided in Schedule 12 of the balance sheet which is placed at Page 556 of Volume 2 of the Paper book. The TPO has not challenged the functional comparability of the company, however, the limited challenge is that the financials are unreliable as there was a fire in the company. Financial statements of the company have been audited and the Auditors have also not commented adversely on the reliability of the data. Healthcare division of the company is engaged in healthcare BPO services and hence is considered as a comparable to the Appellant's ITes segment and the same can be evidenced from the annual report for FY 2008-09 which is placed at page 561 of the paper book Volume 2 for segmental result. The Ld. AR further submitted that this issue was not adjudicated by the DRP and therefore matter may be set aside to the file of TPO for verification.

18.1 On perusal of the records with regard to this issue, we accept the prayer of the Ld.A.R. and thereby we set aside this issue to the file of the TPO for verification and adjudication after providing reasonable

opportunity of hearing to the assessee.

(M) Galaxy Commercial Ltd.- BPO Segment ("Galaxy"):

19. The Ld. AR of the assessee submitted that Galaxy Commercial Ltd is engaged in providing BPO services in the area of call center, accounting, telecom and billing, services. The finding of the TPO that Galaxy is a consistent loss maker is factually incorrect. Galaxy has made profits both at entity as well as segmental level for the previous two years ended March 31, 2008 and March 31, 2007. The relevant extract of the annual report for the financial year 2007-08 is attached at Page 563 of Volume 2 of the paper book. The Ld. AR further submitted that in case the losses are on account of normal business operating reasons, then even if the company is making losses, the same cannot be the reason for rejecting it as a comparable. Further, the TPO has not challenged the business profile of the said company.

19.1 The Ld. AR of the assessee has placed reliance on the decision of Pune Bench of the Tribunal in the case of Principal Global Services Pvt. Ltd. Vs. DCIT (supra.) wherein it has been accepted by the Tribunal as comparable and not a consistent loss maker. On this issue, the Tribunal has held as under:

“45. The last point made out by the assessee is for inclusion of Galaxy Commercial Ltd (BPO Segment) in the final set of comparables. The TPO rejected the said concern from the final set of comparables on the ground that it was a consistently loss-making concern. Before us also, the Ld. CIT-DR has reiterated the point made out by the TPO in order to exclude the said concern from the final set of comparables.

46. The Ld. Representative for the appellant pointed out that the BPO segment of the said concern was not a consistent loss-maker. In-fact, by referring to the profitability margins of the BPO segment for the immediately preceding assessment year 2008-09, it is sought to be made out that it had a positive margin.

47. We have considered the plea setup by the assessee and prima-facie it appears that in the immediately preceding assessment year the said concern had a positive margin. Nevertheless, in order to examine as to whether it is a consistent loss-making or not, a trend over more than one year is required to be evaluated. For the said purpose, we deem it fit and proper to restore the matter back to the file of the TPO, who shall examine the financial results of the said concern for two years prior and subsequent to the assessment year under consideration so as to formulate a belief as to whether or not it is a consistently loss-making concern. If the Assessing Officer/TPO comes to conclude, having regard to the aforesaid trend analysis that it is a consistently loss-making unit then the same is liable to be excluded otherwise the said concern cannot be excluded merely because in the year under consideration it has suffered a loss. For the aforesaid purpose, we deem it fit and proper to restore the matter back to the file of hall allow a reasonable opportunity the assessee of being heard and thereafter pass an order afresh as per law on this aspect.”

From the above, it is evident that this matter was remand back to the file of TPO for verification and adjudication. Respectfully following the same, we set aside this issue to the file of TPO for verification and thereafter, he shall pass a speaking order on this aspect after providing reasonable opportunity of hearing to the assessee.

(N) Cameo Corporate Services Ltd. (“Cameo”) :

20. The Ld. AR of the assessee submitted that Cameo is engaged in providing Registry and Transfer agency services, archival and retrieval services and medical transcription services all services being in the nature of back office support services, hence should be considered as comparable. The Ld. AR further submitted that not having being exchange earnings cannot be a ground for rejecting an otherwise functionally comparable company. The Ld. AR of the assessee referred page 577 of Volume-2 of the paper book.

20.1 We have perused the case records on the issue. We are of considered view that this issue needs verification and accordingly, we set aside the matter to the file of TPO for adjudication and passing a

speaking order as per law after providing reasonable opportunity of hearing to the assessee.

(O) **Omega Healthcare Management Services Pvt. Ltd. (“Omega”)** :

21. The Ld. AR of the assessee submitted that the company is engaged in providing billing, medical accounts receivable management, claims processing and healthcare revenue management for hospital and medical institutions. The TPO has wrongly stated that the data is not available in the public domain. The annual report for the comparable is attached at page 574 of Volume 2 of the paper book which has been filed before the DRP as well as complete annual report has been filed in annual report compilation which is at page 214 and 233 of the paper book.

21.1 The Ld. AR has placed reliance on the decision of Principal Global Services Pvt. Ltd. Vs. DCIT (supra.) wherein the Pune Bench of the Tribunal has held as under:

“39. With respect to the M/s.Omega Healthcare Management Services Pvt. Ltd., we find that the TPO excluded the said concern on the ground that the information with regard to the said concern was not available in public domain. For the said reason, the financial data with regard to the said concern was not considered by the TPO in the comparability analysis.

40. The Ld. Representative for the assessee asserted at the time of hearing that the TPO was wrong in stating that the Annual Report of the said concern was not available in the public domain whereas assessee had duly furnished a copy of the Annual Report of the said concern pertaining to financial year under consideration. In this context. reference has been made to pages 475 to 494 of the Paper Book wherein is placed a copy of the Annual Report of the said concern for the relevant period. By referring to page 477 of the Paper Book which deals the business operations of the said concern it is pointed out that the said concern was engaged in rendering back office support services and therefore it was a good comparable.

41. In this context, we have considered the submissions made by the assessee before the DRP also which are emerging from page 116 of the appeal Paper Book. Even before the DRP, assessee had asserted that the Annual Report of the said concern was duly submitted to the TPO and

therefore it could not be said that the financial data of the said concern was not available in public domain. The activities rendered by the said concern have also been detailed in the submissions before the DRP and it was asserted that the said concern is functionally comparable to assessee's activities of providing back office support services to the associated enterprises. Thus, assessee justified the inclusion of the said concern in the final set of comparables. In our considered opinion, the assertions made by the assessee before the lower authorities and as well as before us are borne out of the material on record. In-fact, in the face of the detailed submissions made by the assessee before the lower authorities, there is no repudiation emerging from the orders of the authorities below. Therefore, in the absence of any adverse finding that the activities of the said concern are not comparable to assessee's activity of rendering back office support services to its associated enterprises, we deem it fit and proper to direct the lower authorities to include the said concern in the final set of comparables as was contended by the assessee in the course of the Transfer Pricing proceedings."

21.2 We have perused the case records on the issue and we observe that the TPO has not included this company in the list of comparable only on the ground that the data was not available in the public domain. Whereas, the Ld. DR fairly demonstrated that Annual Report of the company is available and it was also filed before the DRP and entire Annual Report has been filed before the Revenue Authorities. Furthermore, Pune Bench of the Tribunal on the issue in the case of Principal Global Services Pvt. Ltd. Vs. DCIT (supra.) that no adverse findings on the activities of the said concern have been stated by the TPO and it was also not stated that it is not comparable to the assessee's activities and therefore, this concern should be included in the final set of comparables as contended by the assessee. Accordingly, we hold so. Hence, **ground No. 4 raised in appeal by the assessee is partly allowed for statistical purposes.**

22. Ground Nos. 5, 6 and 7 pertains to exclusion of CRISIL Limited ("CRISIL") and Agrima Consultant's Ltd. from BSS and MSS Segment. The Ld. AR of the assessee has placed submission with regard to

these three grounds in consolidation.

EXCLUSION OF CRISIL FROM BSS

(P) CRISIL Limited (“CRISIL”) :

23. The Ld. AR of the assessee submitted that CRISIL Limited ought to be rejected as the comparable has significant RPT being 45%. The related party transactions have been reported in the annual report which is placed at page 610 of Volume 2 of the paper book from which it can be clearly seen that the company has significantly high RPT. The factual findings of high RPT was brought before both the TPO as well as the DRP however, none of the authorities have dealt with assessee’s submission. The factum of high RPT for assessment year 2009-10 has been discussed by the Hon'ble Mumbai Bench of the Tribunal in the case of TPG Capital India Pvt. Ltd. Vs. DCIT in ITA No.7594/MUM/2014. In this case, the Mumbai Bench of the Tribunal has observed and held as under:

“(1) Crisil Ltd. (Segment Research Service)

The Ld. A.R at the very outset submitted that the co-ordinate bench of the Tribunal while disposing of the appeal of the revenue so filed in the case of Dy. CIT v. Temasek Holding Advisors (P) Ltd. [2014] 47 taxmann.com 311/151 ITD 458 (Mum. - Trib.). had therein upheld the order of the DRP who had excluded Crisil Ltd. (supra) as a comparable. for the reason that It had RPT of 44.51 %. The Ld. A.R further drew our attention to the segment reporting of the aforesaid comparable' (Page 649 of the APB), which therein revealed that the advisory segment comprising international advisory and risk management practice had been transferred to a wholly owned subsidiary with effect from 01.04.2004. Thus, on the basis of the aforesaid facts it was averred by the Ld. A.R that the aforesaid comparable so adopted by the TPO was even otherwise functionally different. The Ld. A.R in support of his contention therein relied on the order of the ITAT, Delhi in the case of Avenue Asia Advisors (P) Ltd. v. Dy. CIT [2016] 66 taxmann.com 267. and therein averred that in the case of the aforesaid assessee which too was engaged in the business on investment advisory services, the aforesaid comparable, viz M/s Crisil Ltd. (supra) which was taken by the assessee as one of the comparable, was however excluded by the TPO for the reason that the RPT in the case of the said comparable was more than 25%. The Ld. A.R further relied on the order of the /TAT, Mumbai in the case of: IIML Asset Advisors Ltd. v. Asstt. CIT [2013] 33 taxmann.com

297/58 SOT") 21 (URO). wherein the tribunal observing that the aforesaid comparable, viz Crisil Ltd. (supra) had substantial revenue from research. i.e revenue of Rs. 116.4 crore from research, as compared to advisory revenue of only 8.76 crore. It was further submitted by the Ld. A.R that the 'Annual report' of Crisil Ltd. (supra) for the year 2007 revealed that it was Indias leading independent and integrated research house which meets the requirement of more than 600 domestic and integrated clients, having unparalleled width and breadth spanning the entire economy. Thus in the backdrop of the aforesaid facts, it was submitted by the Ld. A.R that no feasible comparison could be arrived at by adopting the aforesaid comparable, viz Crisil Ltd. (supra), which as such was liable to be excluded. That on the other hand the Ld. D.R relied on the orders of the lower authorities and therein averred that the said comparable was functionally comparable and after thorough vetting of the various aspects. had rightly been selected by the TPO for benchmarking the ALP of the international transactions of the assessee with its AE as regards its Investment Advisory Services.

We have considered the submissions of Ld. Representatives of both the parties, perused the orders of the lower authorities and the record available before us, and find substantial force in the contention of the Ld. A.R who had at length demonstrated before us that the aforesaid comparable. viz. Crisil Ltd (supra) was not only functionally different, but had RPT of more than 25%. We are of the considered view that in light of the fact that the advisory segment comprising international advisory and risk management practice of the aforesaid comparable. viz M/s Crisil Ltd. (supra) had been transferred to its wholly owned subsidiary. coupled with the fact that a coordinate benches of the Tribunal in the case of: Temasek Holdings Advisors (P) Ltd. (supra) and Avenue Asia Advisors (P) Ltd. (supra) taking cognizance of the RPT of more than 25% in the case of the said comparable had upheld the exclusion of the said comparable. viz Crisil Ltd. (supra). as well as the observations of another coordinate bench of the Tribunal in the case of: IIML Asset Advisors Ltd. (supra) therein observing that the aforesaid comparable was functionally incomparable, we are persuaded to be in agreement with the contention of the Ld. A.R that the TPO had wrongly selected the aforesaid comparable. We thus in light of our aforesaid observations are thus of the considered view that the aforesaid party, viz M/s. Crisil Ltd. (supra) has to be excluded from the list of the comparables selected by the TPO and thus direct accordingly."

That on perusal of the order of the Mumbai Bench of the Tribunal with regard to CRISIL Ltd, it has been held by the Tribunal that it had RPT of 44.51 % and therefore, the said company was excluded from the list of comparables selected by the TPO. Respectfully, following the same in the case of assessee also, we direct the TPO to exclude CRISIL Ltd. from BSS segment.

EXCLUSION OF AGRIMA CONSULTANT'S FROM BSS & MSS SEGMENT

(Q) Agrima Consultant's Limited :

24. The Ld. AR of the assessee submitted that Agrima is engaged in providing technical and technology related consultancy. The website also confirms the fact that the company is approved consultant to leading financial institutions, indicating that it is into financial consultancy. On the other hand assessee's BSS segment is engaged in providing services in nature of routine market research and financial analysis services. Further, it is also submitted that the DRP/TPO did not provide any reason as to how Agrima is functionally comparable despite specific challenge against its inclusion being made by the assessee before the lower authorities. The Ld. AR further submitted that Agrima has changed its accounting year from year ended March 31 to year ending December 2008 and in the subsequent financial year again has not continued with the same and gone back to accounting for the year ended March 31, 2010 thus making an accounting year to 15 months (i.e. January 1, 2009 to March 31, 2010). This is an unusual event which cannot give a clear picture of the financials for the relevant financial year of the assessee for benchmarking the international transactions. Further, it is also submitted by the Ld. AR that the DRP/TPO have added Agrima Consultant's Limited in the final set of comparables based on the fact that the same has been accepted in the preceding years in the assessee's TP documentation. The Ld. AR of the assessee also submitted that in assessee's own case in ITA No.1650/PUN/2013 for the assessment year 2008-09, the Tribunal has directed the rejection of the said comparable i.e. Agrima Consultant's Limited from the final set of comparables. In ITA No. 1650/PUN/2013, on the issue the Tribunal has held as under:

"22. The additional ground of appeal raised by assessee is against inclusion of Agrima Consultants International Ltd. The assessee is aggrieved by said inclusion and he has raised the issue by way of

additional ground of appeal. The assessee had included the said concern as comparable in both the segments marketing support services and business support services and computed arm's length price. The plea of assessee before us is that Agrima Consultants International Ltd. was functionally not comparable as it was providing technical and technology related consultancy and was consultant to leading financial institutions, hence it was engaged into financial consultancy. The learned Authorized Representative for the assessee pointed out that inclusion / exclusion of a concern can be raised at any stage as held by Special Bench of Chandigarh Tribunal in DCIT Vs. Quark Systems Pvt. Ltd. (2010) 38 SOT 307 (CHD) (SB), which has been approved by the Hon'ble High Court of Punjab and Haryana in CIT Vs. Quark Systems Pvt. Ltd. (2011) 244 CTR 542 (P&H). The learned Authorized Representative for the assessee further placed reliance on the decision of Pune Bench of Tribunal in Dover India (P) Ltd. Vs. DCIT (supra), wherein the said concern was excluded being not functionally comparable to a concern providing market support services.

23. The learned Departmental Representative for the Revenue has strongly objected to the said issue raised by assessee for the first time before the Tribunal.

24. We find no merit in the stand of learned Departmental Representative for the Revenue especially in view of the ratio laid down by Special Bench of Chandigarh Tribunal in DCIT Vs. Quark Systems Pvt. Ltd. (supra), which has been approved by the Hon'ble High Court of Punjab and Haryana. In view thereof, the assessee can raise the issue of inclusion / exclusion of any concern during any stage and hence, we admit the additional ground of appeal raised by assessee.

25. Now, coming to merits of the issue raised, wherein the assessee is engaged in marketing support services and is also providing business support services to its associated enterprises. The concern which has been picked up during TP study report was Agrima Consultants International Ltd. on the premise that it was functionally comparable, but it was engaged in providing financial consultancy.

26. We find that the Tribunal in Dover India (P.) Ltd. Vs. DCIT (supra) has already held that Agrima Consultants International Ltd. was engaged in providing financial consultancy and the said company could not be said to be functionally comparable to a concern providing marketing support services. Where the comparables selected are not functionally comparable to the tested party, then the margins of such concern cannot be utilized for determining the arm's length price of international transactions undertaken by tested party. In view thereof, we direct the TPO to exclude margins of Agrima Consultants International Ltd. while benchmarking international transactions of assessee in both the segments pertaining to marketing and business support services and compute the arm's length price of international transactions after including Times Innovative Media Ltd. in market support services segment. The additional ground of appeal raised by assessee is thus, allowed."

From the above it is evident that in assessee' own case itself, Agrima Consultant's Limited has been excluded from the list of comparables in both BSS & MSS segment. Agrima Consultant's Limited is functionally not

comparable as it is engaged in consultant to leading financial institutions, indicating that it is into financial consultancy. Thus, respectfully, following our decision in assessee's own case in ITA No.1650/PUN/2013 (supra.), we direct the TPO to exclude Agrima Consultant's Limited from the final set of comparables from BSS & MSS segment. Hence, **ground Nos. 5, 6 and 7 raised in appeal by the assessee are allowed.**

25. In the combined result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on 06th day of March, 2019.

Sd/-
ANIL CHATURVEDI
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 06th March, 2019.

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-13, Pune.
4. The Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	27.02.2019	Sr.PS/PS
2	Draft placed before author	05.03.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		