

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

Before Sh. K. N. Chary, Judicial Member &  
Dr. B. R. R. Kumar, Accountant Member

ITA No. 2122/Del/2015 : Asstt. Year : 2009-10  
CO No.314/15

Dy. Commissioner of Income Tax, Circle-25(2), New Delhi	Vs	M/s Transcend India Pvt. Ltd., B-4, Sagar Tower, Janak Puri, District Centre, New Delhi-110058
(APPELLANT)		(RESPONDENT)
PAN No. AAGCS9759K		

Assessee by : Sh. Vishal Kalra, Adv.,

Revenue by : Sh. Sarabjeet Singh, Sr. DR

Date of Hearing: 01.07.2019	Date of Pronouncement:03.07.2019
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ORDER

Per B. R. R. Kumar, Accountant Member:

The assessee has raised following grounds of appeal:

*"1. The Ld. CIT(A) has erred in law and on facts in directing to exclude M/s Accential Technologies Ltd. as a comparable without appreciating that the other services provided by the company is also related the healthcare segment, which has been termed as HRCM (Health Receivables Cycle Management), wherein medical transcription services forms the foremost segment and is an integral part of the entire gamut of services provided.*

*2. That Ld. CIT(A) has erred in law and on facts in accepting the additional evidence u/r 46A of the Income Tax Rules, 1962 without providing opportunity to the AO/TPO.*

*3. The appellant craves, leave for reserving the right to amend, modify, alter, add or forego any grounds of appeal at any time before or during the hearing of appeal."*

2. Brief facts of the case are that the assessee is a provider of outsourced medical transcription services. It has developed a business model that delivers a significant quality and cost advantage through the combination of a professionally managed workforce located in India, deployment of a proprietary technology platform and workflow process, and the implementation of targeted, high volume marketing strategy. The company is engaged in providing coordination and outsources the transcription work to the HMTs. The company plays the role of coordinator, facilitator and does the quality review of transcription work outsourced to HMTs and independent supplier before finally delivering the files to the parent company.

3. For medical transcription, quality assurance and related services the TNMM method was applied. The assessee has not included the company, namely, Accentia Technologies Ltd. for the TP study as primarily no segmental data was available. However, the TPO has included the data of Accentia Technologies Ltd. for the TP study. Subsequently, when the matter reached before the Id. CIT(A), it was directed that this company be excluded from the final list of comparables. While holding so, the Id. CIT(A) observed that the OP/TC of the comparable in question is 38.26%. And the company has amalgamated with two of its subsidiary pursuant to the order of the court because of which the immediate effect of the amalgamation/merger is reflected in operating income, expenses and PBIT. It was held by the Id. CIT(A) that this extraordinary event distorts the true profits and hence cannot be taken as a comparable. It was also further held that since the segmental data is not available the overall result declared by the company cannot per se be applied for the purpose of taking comparison.

4. Aggrieved with the order of the Id. CIT(A) excluding the company Accentia Technologies Ltd. as comparable, the Revenue filed on appeal.

5. During the hearing before us, the Id. DR has argued that the segmental data is not necessary for comparison and since the business of the assessee and comparable is and the similar lines off medical transcription the same should not have been excluded from the study. He further argued that from the description of the services in the annual report, it is seen that the other services provided by the company is also related with the healthcare segment which has been termed as Healthcare Receivables Cycle Management (HRCM) wherein medical transcription services forms the foremost segment and is an integral part of the entire gamut of services and hence should not be excluded.

6. Against these arguments, the Id. AR argued that the segmental data was not available which is a primary requirement for comparison. He argued that owing to the major which is an extraordinary event which in turn leads to super normal profits to the tune of 52.51%, the same cannot be included in the final set off comparables. He also argued that the TPO has not considered the cases considered the company that were affected by the factors like persistent losses, declining sales, extraordinary income, mergers and acquisitions or other such factors which affect the operations of the company substantially as they will not provide the sufficient benchmark. Regarding the business of the company in question, it was argued that while the assessee is in the business of medical transcription on HMT basis, the comparable proposed is involved in medical billing, coding, transcription activities, software development. It was argued that the coding turnover of 32.15 crores itself is much more than the total turnover of the assessee company and hence it cannot be considered as a comparable.

7. Heard the arguments of both the parties and perused the material available on record.

8. We find that during the year, the comparable in question has completed acquisition of a company, namely, Oak Technologies, USA and increased the customer base from US. The company Oak Technologies, was also found to be offering medical coding and billing services having global network across US, India and Philippines. Further, the company Accentia Technologies Ltd. has consolidated the operations of a company, namely, Denmat Inc. which was involved in medical transcription technology. Regarding the financials, the comparable in question had total turnover of Rs.236 crores out of which the medical transcription amounts to Rs.143 crores, billing & collection Rs.56.74 crores and coding Rs.32.15 crores whereas the turnover of the assessee company is 28 crores only. Regarding the business model, while the assessee company is in HMT model, the comparable in question depends mostly on outsourcing of business processes. The audit report clearly mentions that no segmental data has been prepared and company has only one segment of activity which is HRCM segment. Hence, keeping in view the factors viz. dissimilar business model, non-comparable turnover, extraordinary events of merger and acquisitions leading to higher profits and non-availability of the segmental data and considering the order of the Tribunal in the assessee's own case for the assessment year 2009-10, we hereby hold that the Id. CIT(A) has rightly excluded the company "Accentia Technologies Ltd." from the final list of comparables.

9. The other grounds taken up by the Revenue pertain to admission of additional evidences under Rule 46A for which the Id. DR could not fetchout any evidences. Hence, this ground is hereby dismissed.

10. In the Cross Objection filed by the assessee, the Id. AR has argued only the ground no. 10 which reads as under:

*"10. That the CIT(A) erred on facts and in law in confirming the action of the AO/TPO to consider foreign exchange gain/loss as non-operative while calculating the operating profit margin of the Assessee and the comparable companies."*

11. Brief facts of the case are that before the Id. CIT(A), the assessee objected to treating foreign exchange gain/loss as non-operating income/expense while calculating the OP/TC margin. Before us, the Id. AR argued that the reliance placed by the Id. CIT(A) on the CBDT notification dated 18.09.2013 pertaining to safe harbor rule is premature and does not apply to the year in question. He argued that the foreign exchange is earned by the way of operations done by the company and hence, the gain or loss has to be treated as part of operational income and expenses. The Id. DR argued that the notification pertaining to "Safe Harbor Rules" may be treated as having retrospective effect.

12. Having heard the arguments we have gone through the facts on record and the legal position on this issue. The foreign exchange emanating from international transaction is a part of business receipt and hence any loss or gain on foreign exchange fluctuation invariably is a part of operational income. Further, owing to the judgments of Hon'ble High Court of Delhi in the case of FISERV India Pvt. Ltd. (in ITA 17 of 2016) and in the case of PCIT Vs BC Management Services Pvt. Ltd. wherein it was held that even the Safe Harbor Rules come into force from 2013 and hence is not applicable to the instant year, we hereby direct the Revenue to treat the foreign exchange gains or losses under operating revenues.

13. In the result, the appeal of the Revenue is dismissed and the CO of the assessee is allowed.

(Order Pronounced in the Open Court on 03/07/2019).

Sd/-

**(K. N. Chary)**  
**Judicial Member**

**Dated: 03/07/2019**

\*Subodh\*

Copy forwarded to:

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

Sd/-

**(B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**