



**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"J" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

ITA no.594 and 595/Mum./2015  
(Assessment Year : 2008-09 and 2010-11)

Dy. Commissioner of Income Tax  
Central Circle-1(1), Mumbai

..... Appellant

v/s

Technip India Ltd.  
(Amalgamated with Technip E&C  
India Ltd.) Unit no.602, Wing-A  
Bomrang Chandivali, Form Road  
Andheri (E), Mumbai 400 072  
PAN - AAICS7355M

..... Respondent

C.O. no.64 and 65/Mum./2016  
(Arising out of ITA no.594 and 595/Mum./2015)  
(Assessment Year : 2008-09 and 2010-11)

Technip India Ltd.  
(Amalgamated with Technip E&C  
India Ltd.) Unit no.602, Wing-A  
Bomrang Chandivali, Form Road  
Andheri (E), Mumbai 400 072  
PAN - AAICS7355M

..... Appellant  
(Original Respondent)

v/s

Dy. Commissioner of Income Tax  
Central Circle-1(1), Mumbai

..... Respondent  
(Original Appellant)

Revenue by : Shri Nilu Jaggi  
Assessee by : Shri Farookh Irani a/w  
Ms. Urvi Mehta

Date of Hearing - 25.07.2019

Date of Order - 31.07.2019

**ORDER****PER BENCH**

Captioned Appeals and Cross Objections have been filed by the Revenue and the Assessee respectively, challenging the final assessment orders passed under section 143(3) r/w section 144C(13) of the Income Tax Act, 1961 (for short "*the Act*") for the assessment years 2008-09 and 2010-11, in pursuance to the directions of learned Dispute Resolution Penal (DRP)-II, Mumbai.

2. The cross objections have been filed by the assessee with delay of 277 days. The assessee has filed applications supported by affidavits seeking condonation of delay. Shri Farookh Irani, learned Counsel for the assessee submitted, though the DRP has held that the assessee comes within the purview of Knowledge Process Outsourcing (KPO) Company. However, since due to the relief granted by the DRP on other issues, assessee's margin came within the acceptable range of the margin of the comparables requiring no further adjustment, assessee was advised not to file any appeal or cross objection initially. However, subsequently, on professional advice, assessee filed the present cross objections challenging the decision of DRP in categorizing the assessee as a KPO service provider.

3. He submitted, since non-filing of cross objections was due to bona fide reasons, delay should be condoned. In support, he relied upon the decision of the Tribunal, Mumbai Bench, in DBS Bank Ltd. v/s DDIT, C.O. no.189/Mum./2013, dated 15<sup>th</sup> June 2016.

4. Smt. Nilu Jaggi, the learned Departmental Representative, opposed condonation of delay.

5. Having considered rival submissions, we are of the view that the delay in filing the present cross objections is due to reasonable cause. Accordingly, we condone the delay and admit the cross objections for adjudication on merit.

**ITA no.594/Mum./2015**  
**Revenue's Appeal – A.Y. 2008-09**

6. The grievance of the Revenue in the present appeal is against the decision of the DRP in excluding following three comparables selected by the Transfer Pricing Officer:–

- i) *Coral Hubs Ltd.*  
(earlier known as Vishal Information Technologies Ltd.)
- ii) *e-Clerx Services Ltd.*
- iii) *Moldtech Technologies Ltd.*

7. Briefly the facts are, the assessee is an Indian Company providing Information Technology Enabled Services (ITES) in the form of engineering service, computer aided drawings and technical

consultancy. Though, the assessee claimed itself as a routine ITES provider, however, the Transfer Pricing Officer treated the assessee as a high end ITES provider. In other words, he held that the assessee is providing KPO services. In the course of proceedings before him, the Transfer Pricing Officer found that while benchmarking KPO services provided to the AE, the assessee has applied Transactional Net Margin Method (TNMM) with Operating Profit to Total Cost (OP/TC) as the Profit Level Indicator (PLI). Further, the assessee had selected eight companies as comparables in transfer pricing study report with arithmetic mean of 21.33%. Since the assessee has shown PLI of 25.87%, the transaction with AE was claimed to be at arm's length. The Transfer Pricing Officer, however, rejected the benchmarking of the assessee and proceeded to compute the arm's length price of the transaction with the AE independently. Though, he accepted TNMM as the most appropriate method, however, he selected fresh set of comparables with arithmetic mean of 43.95%. Applying the arithmetic mean of the comparables, the Transfer Pricing Officer determined the arm's length price of provision of ITES to AE, which resulted in an upward adjustment of ₹ 8,31,90,256=24. The adjustment made by the Transfer Pricing Officer was added to the income of the assessee in the draft assessment order. The assessee raised objections against the draft assessment order before learned DRP.

8. Though, learned DRP upheld the decision of the Transfer Pricing Officer classifying the assessee as a KPO service provider, however, accepting assessee's objection, learned DRP excluded three companies viz. (i) Coral Hubs Ltd. (ii) e-Clerx Services Ltd. and (iii) Mold Tech Technologies Ltd.

9. Insofar as Coral Hubs Ltd. and Mold Tech Technologies Ltd. are concerned, learned Departmental Representative relied upon the observations of the Transfer Pricing Officer. Regarding e-Clerx Services Ltd., the learned Departmental Representative submitted, this company is showing high profit consistently from the assessment year 2008-09 onwards. Therefore, there is no abnormality in the high profit margin shown by the company. She submitted, even in the subsequent assessment years also, the DRP has accepted it as a comparable. Thus, she submitted, the company should be included as comparable.

10. The learned Sr. Counsel for the assessee strongly relying upon the observations of learned DRP submitted, Coral Hubs Ltd., cannot be treated as a comparable, as it does not provides service itself, but it does so by outsourcing which is evident from low personnel cost. Thus, he submitted, the business model of the company being completely different from the assessee, it cannot be treated as a comparable. He submitted, for the very same reason, the Tribunal as well as the High

Court in various cases have excluded this company as a comparable.

In this context, he relied upon the following decisions:–

- i) Cummins Turbo Technologies Ltd. v/s DDIT, [2015] 53 taxmann.com 492 (Pn.);*
- ii) CIT v/s Cummins Turbo Technologies Ltd., ITA no.1095/2015, dated 28.02.2018 (Bom.); and*
- iii) PCIT v/s Aptara Technology Pvt. Ltd., [2018] 92 taxmann.com 240 (Bom.).*

11. Insofar as e-Clerx Services Ltd. is concerned, the learned Sr. Counsel for the assessee submitted, during the year under consideration, this company had acquired Igentica Travels Solutions Ltd. of U.K., which has provided the company with a set of 28 large customers in Europe, thereby, giving it a platform in Europe and strengthening its position there. He submitted, by virtue of such acquisition, the company has been given an entry platform into a new vertical in travel and hospitality besides consolidating its position in retail and manufacturing space. He submitted, the company has an abnormal profit trend over the past five years. Therefore, learned DRP has rightly rejected this company.

12. As regards Mold Tech Technologies Ltd., the learned Sr. Counsel for the assessee submitted, during the year under consideration, there was an amalgamation between Techmen Tools Pvt. Ltd. and this company and further there was a demerger between Mold Tech Plastic

Ltd. and the said company which resulted in super normal profit. Thus, he submitted, these two companies were rightly rejected by learned DRP. In support of his contention, he relied upon the following decisions:-

- i) *Goldman Sachs Services Pvt. Ltd. v/s ITO, 55 taxmann.com 233 (Mum.);*
- ii) *Hyundai Motors India Engineering Pvt. Ltd. v/s ITO, 44 taxmann.com 34 (Hyd.); and*
- iii) *ACIT v/s Transcent M.T. Services Pvt. Ltd., [2016] 68 taxmann.com 18 (Del.).*

13. We have considered rival submissions and perused the material on record. We have also applied our mind to the decisions relied upon. Insofar as Coral Hubs Ltd. is concerned, it is seen from the materials available on record that the personnel cost as a ratio of the total cost works out to 4.40% as against assessee's personnel cost of 36.37%. The aforesaid fact clearly demonstrates that unlike the assessee, this company is not providing services itself, but has employed third party vendors to do the work. Thus, the business model of the company is totally different from the assessee. Considering the aforesaid aspect, the Tribunal in Cummins Turbo Technologies Ltd. (supra) has excluded this company as a comparable. The aforesaid decision of the Tribunal was approved by the Hon'ble Jurisdictional High Court in the decision cited supra. Since the aforesaid decisions are for the very same

assessment year, respectfully following them, we hold that the Coral Hubs Ltd. was rightly rejected as a comparable.

14. As regards e-Clerx Services Ltd., it is seen that during the year under consideration, it has acquired a U.K. based company which has not only provided a large existing customer base in Europe, but by virtue of such acquisition, the company has been provided a platform in the European market to expand its business. Thus, the aforesaid acquisition during the year certainly has impacted the profitability of the company which is evident from the super normal profit earned by it during the year. Considering the aforesaid factual aspect, the Tribunal in Goldman Sachs Pvt. Ltd. (supra) and Hyundai Motors India Engineering Pvt. Ltd., has excluded this company as a comparable. Since the aforesaid decisions of the Tribunal are for the very same assessment year and there is no material difference in fact, respectfully following the aforesaid decisions, we uphold the decision of learned DRP in excluding e-Clerx Services Ltd. as a comparable.

15. As regards Mold Tech Technologies Ltd., facts are more or less common with e-Clerx Services Ltd. During the year under consideration, there was not only an amalgamation of Techman Tools Pvt. Ltd. but there was a demerger with Mold Tech Plastics Ltd. Thus, due to amalgamation and demerger, there is a definite impact on the profitability of the company, which is reflected in the super normal

profit earned by it. Looking at the aforesaid factual position, the Tribunal in Goldman Sachs Services Pvt. Ltd. (supra) and Transcent M.T. Services Pvt. Ltd. (supra), has excluded this company as a comparable. As these decisions of the Tribunal are for the very same assessment year and there being no material difference in fact, respectfully following the aforesaid decisions of the Tribunal, we uphold the decision of learned DRP in excluding the Mold Tech Technologies Ltd. as a comparable. Grounds raised are dismissed.

16. In the result, Revenue's appeal is dismissed.

**C.O. no.64/Mum./2016 – By Assessee**  
**(Arising out of Revenue's appeal in**  
**ITA no.594/Mum./2015)**

17. In the course of hearing, learned Sr. Counsel for the assessee had submitted, if the decision of learned DRP in excluding three companies challenged by the Revenue in its appeal being ITA no.594/Mum./2015, is upheld, the margin of the assessee would be within  $\pm 5\%$  range of the rest of the comparables, hence, no adjustment to the arm's length price would be required. Thus, the issue raised in the cross objection against classifying the assessee as a KPO service provider would not require adjudication in the impugned assessment year. In view of the aforesaid submissions of the learned Sr. Counsel for the assessee and since we have upheld the decision of the DRP in

excluding the comparables challenged by the Revenue in its appeal being ITA no.594/Mum./2015, the present cross objection has become infructuous, hence, dismissed. However, the issue raised in the cross objection relating to classification of the assessee as KPO service provider is left upon for adjudication if it arises in any other assessment year in future.

18. In the result, cross objection is dismissed.

**ITA no.595/Mum./2015**  
**Revenue's Appeal – A.Y. 2010–11**

**And**

**C.O. no.65/Mum./2016 – By Assessee**  
**(Arising out of Revenue's appeal in**  
**ITA no.595/Mum./2015)**

19. In this appeal also, the Revenue has challenged the decision of learned DRP in excluding three companies viz. (i) Coral Hubs Ltd. (ii) e-Clerx Services Ltd. and (iii) Mould Tech Technologies Ltd.

20. The learned Sr. Counsel for the assessee submitted, learned DRP relying upon its own decision in assessment year 2008–09 has excluded the above three companies and has not decided various other grounds raised by the assessee under a misconception that upon exclusion of these three companies, the margin shown by the assessee would come within the range of  $\pm 5\%$  of the margin of rest of the comparables. He submitted, the aforesaid finding of learned DRP is

factually incorrect, as even after exclusion of these three companies, assessee's margin would not come within  $\pm 5\%$  of the margin of the rest of the comparables. Therefore, the other grounds left undecided by learned DRP requires adjudication. Further, he submitted, the Revenue has also filed a Misc. Application before learned DRP seeking rectification of its direction. He submitted, the assessee has also filed a reply to the Misc. Application filed by the Revenue which is still pending. Thus, he submitted, the issues raised in the Revenue's appeal as well as assessee's cross objection have to be restored back to the file of learned DRP for fresh adjudication.

21. The learned Departmental Representative also agreed with the aforesaid submissions of the learned Sr. Counsel for the assessee and submitted, the issues raised in the appeal and the cross objection may be restored back to the file of learned DRP for fresh adjudication along with the Misc. Application filed by the Revenue.

22. Having heard both the parties, we are inclined to restore the issues raised in the present appeal and the cross to the file of learned DRP for de novo adjudication after providing proper opportunity of being heard to the assessee. It is also made clear, learned DRP must record its finding on all the objections raised by the assessee. With the aforesaid observations, grounds raised in the appeal and cross objection are allowed for statistical purposes.

23. In the result, Revenue's appeal and assessee's cross objection are allowed for statistical purposes.

24. To sum up, Revenue's appeal in ITA no.594/Mum./2015 and assessee's C.O. no.64/Mum./2016, are dismissed and Revenue's appeal in ITA no.595/Mum./2015 and assessee's C.O. no.64/Mum./2016, are allowed for statistical purposes.

Order pronounced in the open Court on 31.07.2019

**Sd/-**  
**MANOJ KUMAR AGGARWAL**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 31.07.2019**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai