

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ C ” BENCH: BANGALORE

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

IT(TP)A No.169/Bang/2016
(Assessment Year: 2011-12)

M/s. Acusis Software India Private Limited, No.17/2, Dollars Chamber, Lalbagh Road, Bangalore-560 027 PAN: AADCA 2415P (Appellant)	Vs.	Income Tax Officer, Ward 1(1)(1), Bangalore. (Respondent)
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Assessee By:	Shri Chavali Narayan, C.A.
Revenue By:	Dr. P. V. Pradeep Kumar, CIT(D.R)

Date of Hearing :	09.07 .2019
Date of Pronouncement :	06.09.2019

ORDER

PER SHRI PAVAN KUMAR GADALE, JM :

The assessee has filed an appeal against the order passed under Section 143(3) r.w.s. 144C(13) of Income Tax Act, 1961 in pursuance to the Directions of Dispute Resolution Panel (DRP) Order Dt.13.11.2015.

2. The learned Authorised Representative at the time of hearing filed revised and modified grounds of appeal and submitted that Ground Nos.1 & 2 are general

in nature and is not pressing Ground Nos.3, 7, 8 & 9 and made endorsement.

Whereas the Ground No.12 is consequential and the effective grounds of appeal are Ground Nos.4, 5, 6, 10 & 11 which are mentioned hereunder :-

4. The learned AO/ TPO erred, in law and in facts, by rejecting the following comparable companies identified by the Appellant for having different accounting year (i.e. companies having accounting year other than March 31 or companies whose financial statements were for a period other than 12 months:
 - a) Caliber Point Business Solutions Limited
 - b) R Systems International Limited
5. The learned AO/ TPO has erred in law and in facts, by selecting the following companies which are functionally different:
 - a) Accentia Technologies Limited
 - b) ICRA Online Limited (Segmental)
6. The learned AO/ TPO erred, in law and in facts, by rejecting the following companies based on directions of the hon'ble DRP though the comparables are functionally similar:
 - a) e4e Healthcare Business Services Private Limited
 - b) Cosmic Global Limited
 - c) Informed Technologies India Limited
 - d) Micro Genetics Systems Limited
10. The learned AO/ TPO erred, in law and in facts, by considering foreign exchange gain/ loss as non-operating in nature by ignoring the directions of the hon'ble DRP.
11. The learned AO/TPO erred, in law and in facts, by computing the arm's length price without giving benefit of +/- 5 percent under the proviso to section 92C of the Act;

3. The Brief facts of the case are that the assessee is engaged in the business of medical transcription and is a subsidiary of Acusis Holding Co. Ltd. British Virgin Islands which is a wholly subsidiary of Acusis LLC, USA and the company registered as a private company engaged in medical transcription services to Acusis LLC and is remunerated on cost + 15% mark up. The assessee filed Return of Income for the Assessment Year 2011-12 with income at NIL after claiming

deduction under Section 10A of the Act of Rs.88,25,084. Subsequently, the case was selected for scrutiny and a Notice under Section 143(2) and 142(1) were issued. The Assessing Officer on perusal of the financial statements found that the assessee has claimed deduction under Section 10A whereas the Assessing Officer found that the claim is excessive and restricted the claim of Rs.3,81,78,684. Since the assessee company has international transactions, the matter was referred to the Transfer Pricing Officer (TPO) with prior approval of the Commissioner of Income Tax and the TPO dealt on the financial profile of the assessee with operating profit on operating cost at para 3 as under :

Operating Revenues	25,93,15,082/-
Operating Expenses	22,23,59,708/-
Operating (Profit) / Loss	3,69,55,374/-
Op. Profit on cost %	16.61%

The assessee has international transactions of providing medical transcription of Rs.25,93,15,082. The assessee has submitted the documents required under Rule 92D along with actual reports and copies whereas the assessee has selected 14 comparables in respect of IT Enabled Services and TNMM is considered as Most Appropriate Method (MAM) whereas the TPO has rejected the TP Study and applied filter and finally selected comparables and rejected assessee's comparables at page 7 para 6 as under :

6. REJECTION OF TAXPAYER'S COMPARABLES:

Based on the filters selected and applied by the TPO, the comparables selected by the taxpayer accepted/rejected was communicated in the show cause notice. The same is reproduced below:

Sl. No.	Name of the comparable	Remarks
1	Accentia Technologies Ltd.	Accepted. Passes all filters of TPO.
2	Aditya Birla Minacs Worldwide Ltd	Fails RPT filter. Hence, rejected.
3	CG-VA K Software & Exports Ltd.	Income from BPO segment less than one crore. Hence rejected.
4	Caliber Point Business Solutions Ltd.	No available data for current year. Rejected.

5	Cepha Imaging Pvt. Ltd.	Data not available. Rejected.
6	Coral Hub Ltd.	Data not available. Rejected.
7	Cosmic Global Ltd.	Accepted. Passes all filters of TPO.
8	Fortune Infotech Ltd.	Fails RPT filter. Hence rejected
9	Informed Technologies India Ltd.	Has rental income more than operating income. Hence rejected
10	Infosys BPO Ltd.	Accepted. Passes all filters of TPO.
11	Jeevan Softech Ltd.	No available data for current year. Rejected.
12	Jindal Intellicom Pvt. Ltd.	Accepted. Passes all filters of TPO.
13	Microgenetic Systems Ltd.	No available data for current year. Rejected.
14	R Systems International Ltd.	No available data for current year. Rejected.

The TPO discussed the analysis of comparables selected in pages 8 to 14 and finally dealt on the economics and computed Arm's Length Price (ALP) at

Rs.2,73,57,054. Further, the Draft assessment order was passed on 16.2.2015 under Section 143(3) r.w.s. 92CA of the Act determined the total income after ALP at Rs.2,79,97,454 against the draft assessment order, the assessee filed objections with the DRP, whereas the DRP after considering the submissions of the assessee, has granted relief in respect of comparables and final assessment order was passed. Aggrieved by the order, the assessee has filed an appeal with the Tribunal.

4. At the time of hearing, the learned Authorised Representative submitted the chart in respect of exclusion of the comparables i.e. Accentia Technologies Ltd. and ICRA Online Ltd., since the DRP has confirmed the action of the TPO. The ld. AR submitted that 6 comparables are to be included and relied on the judicial decisions of **EMC Software and Sitel India Pvt. Ltd. and Finastra Software Solutions** for the same Assessment Year 2011-12. Similarly, the learned Authorised Representative prayed for inclusion of comparables of **E4E Healthcare Business Services Pvt. Ltd., Cosmic Global Limited, Informed Technologies India Limited, Microgenetic Systems Ltd., Calibre Point Business Solutions Limited and R. Systems International Limited.** The contention of ld. AR on the issue of inclusion of comparables covered in assessee's own case where 6 comparables are included for the Assessment Years 2009-10, 2010-11 and 2012-13 and supported with the decision of Hon'ble Delhi High

Court. On the other issues with respect to Working Capital Adjustment and Foreign Exchange fluctuation, the assessee could not able to submit the details and prayed for restoring to the file of TPO and Id. DR supported the orders of lower authorities.

5. We heard the rival contentions and perused the material on record. On the first disputed issue on the exclusion of two comparables, the learned Authorised Representative filed chart. We find –

(i) **Accentia Technologies Ltd.** turn over is Rs.106.90 Crores and the functioning of the company is engaged in packaging its services into software productions that are developed in-house with no bifurcations. The company also invested in the development of EMR Software and SaaS Model, and marketed inUSA retaining of the workforce across all its delivery centres. The company in the previous year expansion by acquiring stake in Strategic Tangent Corporation and Alpine Technologies Inc having expertise in software development and Remodel Business Plan with the adoption of EMR based clinical practice and has opened up avenues for an integrated end-to-end SaaS model and also involved in product development of a wide range like Insta Kare, Insta PMS, Insta EMR, etc further software with host of other BPO services provides a competitive edge solely on medical transcription services and Segment Information of the company is reported only on one segment namely “Healthcare

receivable Management”, but whereas the company is also working on other segments such as SaaS, Product Development etc and there is no proper disclosure. Further the company considers its services are in the nature of KPO rather than BPO Services and Intangibles in the nature of goodwills, Brands and IPRs which constitute 46.68% of the total value of fixed assets excluding capital work in progress and the company recognizes the revenue on completion of services, the assessee follows mercantile system of accounting and relied on co-ordinate Bench decision in IT(TP)A No.273/Bang/2016 for Asst. Year 2011-12 Dt.25.4.2018 in the case of EMS Software Services (India) Pvt. Ltd. at page13 at paras 29 to 31 as under :

“ 29. As far as the cross-objection of the Assessee is concerned, in ground 1.6 the assessee has sought exclusion of Accentia Technology Ltd., from the final list of comparables, after the order of the DRP. The ground on which the assessee seeks exclusion of this company is that this company is engaged in providing high end services in the nature of knowledge processing out sourcing. According to the Assessee it was engaged in back office services which are only supportive and cannot be compared with services performed by Accentia Technology Ltd. Besides the above, this company is also stated to have income from coding which is substantial. The Id counsel for the assessee placed reliance on the decision of the ITAT Bangalore Bench in the case of M/s Swiss Re Shared Services India Pvt. Ltd., Vs. ACIT in IT(TP)A No.380/Bang/2016 order dated 8/7/2016 for assessment year 2011-12. Our attention was drawn to the order of the paras 9 to 20 of the order of the Tribunal, wherein the Tribunal has considered comparability of this company in the ITES segment and has held as follows:-

09. Adverting to Accentia Technologies Ltd, Ld. AR submitted that the said company had inorganic growth during the relevant previous year due to creation of a US based localised front-end company. As per the Ld. AR, Accentia Technologies Ltd, was doing outsourcing work as well as coding. Coding work fell within the realm of software development only. According to the Ld. AR, medical transcription earnings of Accentia Technologies Ltd, comprised of preparation of customised notes of patients, record keeping of patients, insurance verification of patients, appointment scheduling of patients, providing accessible practice management system, providing EMR systems including EMR coding, billing, bill payment management system, adhoc reporting etc., As per the Ld.AR, said company catered to the health care industry and their products were customised and not similar to what assessee was doing. As per the Ld. AR the work done by Accentia Technologies Ltd, required skilled knowledge and advanced analytics. Ld. AR submitted that during the relevant previous year, the said company had invested in

another company which had an expertise in EMR Software and Saas. In any case, as per the Ld. AR, segmental results of Accentia was not available in between various segments like MT billing collection and coding. When segmental results were not available, as per the Ld. AR it was not proper to consider Accentia Technologies Ltd, as a good comparable. Reliance was also placed on decision of Delhi Bench of the Tribunal in the case of Equant Solutions India P. Ltd v. DCIT [ITA.1202/Del/2015, dt.21.01.2016] and that of coordinate bench in the case of Amba Research (India) P. Ltd, v. DCIT [IT(TP)A.286/Bang/2015, dt.09.03.2016]. As per the Ld. AR though the above decisions were for A. Y. 2010-11, Accentia Technologies Ltd, was doing the very same activities during the relevant previous year also. Hence according to him these decisions could be taken as a precedence for excluding the said company from the list of comparables.

10. Per contra, Ld. DR submitted that 80% of the revenue of Accentia Technologies Ltd, were from medical transcription, which fell within ITES only. As per the Ld. DR, actual activities of the assessee compared favourable with Accentia Technologies Ltd. When 80% of the income was from ITES services, as per the Ld. DR further segmentation was not required. As for the reliance placed on the decisions of Delhi Bench in the case of Equant Solutions India P. Ltd, (supra) and coordinate bench in the case of Amba Research India P. Ltd (supra), Ld. DR submitted that these were for A. Y. 2010-11 and there was a clear finding by the Tribunal that results of Accentia Technologies Ltd, were skewed because of acquisition of a business during that year and also due to inorganic growth.

11. In reply Ld. AR submitted that even within the same ITES segment differentiation could be made based on high-end and low-end services. Relying on judgment of Hon'ble Delhi High Court in the case of Rampgreen Solutions P. Ltd v. CIT [ITA.102/2015, dt.10.08.2015], Ld. AR submitted that there could be high-end and low-end services which may not be comparable. As per Ld. AR in the case of assessee, it was doing low-end BPO services in the field of insurance and could not be compared with a high-end service provider in the medical field.

12. We have perused the orders and heard the rival contentions. Twentieth annual report of Acentia Technologies Ltd, for financial year 2010-11 has been filed at paper book page 491 to 568. In the part captioned 'Management discussion and Analysis', the company mentioned its medical transcription business being moved from a low-end category to a high-end category. Management of the said company had decided to acquire necessary skills inorganically so that it could do medical coding and provide end to end services in HRCM. In what is called by the said company as EMR method, it captured and stored all demographic and clinical data in data base format rather than keeping physical reports as done in orthodox medical transcription methods. That M/s. Accentia Technologies Ltd, was providing integrated end to end software services and remodelling its own business is clear from page 25 of its annual report which is reproduced hereunder :

13. Type of work done by the said company has been explained in detail at pages 24 and 25 of annual report. This is reproduced hereunder :

17. Thus the functions which were done by Accentia Technologies Ltd, and the functions which were rendered by the assessee were entirely different. We cannot say that the type of services done by the assessee was of a level as sophisticated as the one which was being provided by Accentia Technologies Ltd. In the case of Rampgreen Solutions P. Ltd (supra), Hon'ble Delhi High Court mentioned as under at para 31 of its order, which reads as under :

31. In the present case, the Tribunal noted that Vishal and eClerx were both engaged in rendering ITeS. The Tribunal held that, "once a service falls under the category of ITeS, then there is no sub-classification of segment". Thus, according to the Tribunal, no differentiation could be made between the entities rendering ITeS. We find it difficult to accept this view as it is contrary to the fundamental rationale of determining ALP by comparing controlled transactions/entities with similar uncontrolled transactions/entities. ITeS encompasses a wide spectrum of services that use Information Technology based delivery. Such services could include rendering highly technical services by qualified technical personnel. involving advanced skills and knowledge, such as engineering, design and support. While, on the other end of the spectrum ITeS would also include voice-based call centers that render routine customer support for their clients. Clearly, characteristics of the service rendered would be dissimilar. Further, both service providers cannot be considered to be functionally similar. Their business environment would be entirely different, the demand and supply for the services would be different, the assets and capital employed would differ, the competence required to operate the two services would be different. Each of the aforesaid factors would have a material bearing on the profitability of the two entities. Treating the said entities to be comparables only for the reason that they use Information Technology for the delivery of their services, would, in our opinion, be erroneous.

18. Thus when characteristics of services rendered were dissimilar and the competence required to operate the services were different, it will not be correct to compare the results of two companies.

19. In the case of Amba Research India P. Ltd (supra), this Tribunal had directed exclusion of Accentia Technologies Ltd, for comparison purposes. Assessee in the said case was providing ITES services to its holding company at British Virgin Islands. Observation of the Tribunal at para 8 of the order dt.09.03.2016, is reproduced hereunder :

08. We have perused the orders and heard the rival contentions. No doubt Accentia Technologies Ltd, formed a part of the list of comparables considered by the assessee in its TP study. However assessee had objected to its inclusion citing functional dissimilarity before the AO as well as the DRP. Question regarding comparability of Accentia Technologies in the ITE segment for A. Y. 2010-11 had come up before this Tribunal in the case of Novo Nordisk India P. Ltd (supra). It was held as under at paras 31 and 32 of the order dt.30.07.2015 :

31. We deal with the comparable companies which the Assessee seeks exclusion. 1. Accentia Technology Ltd., 2. Infosys BPO Ltd. The comparability of these company with a ITES company was considered by this Tribunal in the case of Paraxel International (India) Pvt. Ltd. (supra) and the Tribunal held as follows on the comparability of the aforesaid companies with a company providing ITES in the following manner:-

"10. In grounds No.4 to 6, the assessee has challenged the comparables selected by the TPO for the purpose of TP analysis and as submitted by the learned counsel or the assessee, the assessee is

objecting to the selection of only the following five comparables, out of the twelve companies selected as comparables –

Sl. No. Company Name

1. Accentia Technologies Limited Technology
2. Cosmic Global Ltd.
3. Eclerx Services Ltd.
4. Genesys International Ltd.
5. Infosys B P O Ltd.

11. We have heard the arguments of both the sides on the issue of inclusion/exclusion of the above five companies as comparables and also perused the relevant material on record including the various decisions of the coordinate benches of the Tribunal cited by the learned counsel for the assessee.

Accentia Technologies Limited

12. As regards the selection of Accentia Technologies Limited as comparable, the learned counsel for the assessee has relied on the decisions of this Tribunal in the cases of Capital IQ Information Systems (India) Pvt. Ltd. V/s. Addl./Dy. Commissioner of Income-tax, Circle 1(2), Hyderabad and vice versa (ITA No.124 and 170/Hyd/2014 dated 31.7.2014); Excellence Data Research Pvt. Ltd., Hyderabad V/s. ITO Ward 2(1), Hyderabad (ITA No.159/Hyd/2014 dated 31.7.2014); and Hyundai Motors India Engineering P. Ltd., Hyderabad V/s. DCIT, Circle 2(2), Hyderabad (ITA NHo.255/Hyd/2014 dated 31.7.2014), wherein M/s. Accentia Technologies Limited(Seg) was excluded by the Tribunal from the list of comparables on the ground that it was a case of mergers and acquisition, and the company was also found to be functionally different. The relevant observations of the Tribunal as recorded in para 19.2 of the order passed in the case of Excellence Data Research Pvt. Ltd., Hyderabad (supra), being relevant in this case, are reproduced below-

“19.2 We have considered the rival contentions and noticed that this company operates in a different business strategy of acquiring companies for inorganic growth as its strategy. In earlier years on the reason of acquisition of various companies, being an extraordinary event which had an impact on the profit, this company was excluded. As submitted by the learned counsel, this year also, the acquisition of some companies by that company may have impact on the profit. Considering the profit margins of the company and insufficient segmental data, we are of IT(TP)A No.146/Bang/2015 Page 42 of 52 the opinion that this company cannot be selected as a comparable. Moreover, this is also not a comparable in the case of M/s. Mercer Consulting (India) P. Ltd. (supra), which indicates that the TPO therein has excluded it at the outset. In view of this, we direct the Assessing Officer/TPO to exclude this comparable, from the list of comparables selected.”

13. As pointed out by the learned counsel for the assessee, there was acquisition of a company by M/s. Accentia Technologies Limited during the relevant year, and the said company, therefore, cannot be considered as comparable due to this extraordinary event which occurred in the relevant year as rightly held by the Tribunal inter alia in the case of Excellence Data Research P. Ltd. (supra). Although the learned Departmental Representative has sought to contend that the acquisition of a company by M/s. Accentia Technologies Ltd. took place at the fag end of the year under consideration, the learned counsel for the assessee has pointed out that the process of acquisition had started on 15.5.2008 itself, i.e. in the earlier part of the year under consideration. We,

therefore, follow the decision of the coordinate bench of this Tribunal in the case of Excellence Data Research Services Pvt. Ltd. (supra) and direct the AO/TPO to exclude the Accentia Technologies Limited from the list of comparables.

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Infosys BPO

20. As regards selection of Infosys BPO as a comparable company, the learned counsel for the assessee has contended that the said company cannot be taken as comparable because of its uncomparable size of operations. He has contended that the turnover of the said company was many times higher than that of the assessee during the year under consideration. Although the Learned Departmental Representative has contended that the size of operations does not matter as far as selection of comparables is concerned especially in the sector of IT Enabled services, it is observed that similar issue has been decided by the Hon'ble Delhi High Court in the case of CIT V/s. Agnity Technologies Pvt. Ltd. (219 Taxman 26) holding that huge turnover companies like Infosys and Wipro cannot be considered as comparables with smaller companies like the assessee in the present case. Respectfully following the decision of the Hon'ble Delhi High Court in the case of Agnity Technologies P. Ltd. (supra), we direct the Assessing Officer/TPO to exclude Infosys BPO from the list of comparables."

32. As far as Accentia Technology Ltd., is concerned, even during the previous year relevant to AY 2010-11, there was amalgamation of Ascent Infoserve Private Limited with Accentia Technology Ltd., and consequent thereto the assets and liabilities and accumulated reserves and the financial results for the year ended 31st March, 2010, of the amalgamating company were incorporated in the amalgamated company. As far as Infosys BPO Ltd., is concerned, the observations made by the Tribunal in the decision referred in the earlier paragraph will hold good for the present AY 2010-11 also. Respectfully following the decision of the Tribunal referred to above, we direct that the aforesaid 2 companies be excluded from the list of comparable companies for the purpose of computing arithmetic mean for comparability purpose. The TPO is directed to give effect accordingly.

Even after exclusion of Accentia Technologies Ltd, along with the exclusion of four comparable companies directed by DRP, there will be four companies left in the list of comparables which, in our opinion, cannot be considered as too small a sample for an effective TP study. In the circumstances, we direct exclusion of Accentia Technologies Ltd also from the list of comparables. Ordered accordingly.

20. No doubt the said decision was for A. Y. 2010-11, but the conditions which prevailed in the said previous year more or less existed in the impugned assessment year also. Considering all these aspects, we are therefore of the opinion that Accentia Technologies Ltd, was not a good comparable for the purpose of ALP study of the assessee.

30. The learned DR brought to our notice the decision of the DRP at Para-25 of its order on the comparability of this company. He brought to our notice that this company was found comparable in ITES segment with the Assessee in Assessee's own case for AY 2007-08 in IT (TP) A.No.973/Bang/2010. The learned DR submitted that the functional profile of this company and the Assessee was held to be same by the Tribunal in the aforesaid decision.

31. We have given a careful consideration to the rival submission. It is true that the Tribunal found this company to be comparable with the Assessee in AY 2007-08. But the decision of the Tribunal referred to by the learned DR in the case of Swiss Re Shared Services (supra) relates to AY 2010-11. The tribunal has given elaborate reasons for exclusion of this company as a comparable company and concluded at Paragraph 17 of its order that this company was not comparable with a low end or mid end service provider in ITES as it was in high end service provider in ITES. In view of the above decision of the Tribunal, we are of the view that Accentia Technology Ltd., should be excluded from the final list of comparable companies. The AO is directed to compute the ALP after excluding Accentia Technology Ltd., from the list of comparables that remains after the order of the DRP.”

(ii) Icra Online Limited : The company is having turnover of Rs.15.67 Crores and has three business segments namely, Information Services, Software Services and Outsourced Services and the TPO has considered the ‘Outsourced Services’ segment as comparable. Further the Annual Report of the company does not provide any description as to the nature of the services contained in the segment and the outsourcing segment of the company contains KPO services. Further functionally different as the company is engaged in provision of high end KPO services. Further margin error occurred due to the unallocated depreciation amount which was not considered by the learned TPO and relied on decision of Sitel India Pvt. Ltd. Vs. DCIT in ITA No.1821/Mum/2016 for Asst. Year 2011-12

Dt.3.5.2019 at page 10 paras 5.1 to 5.4 as under :

“ 5.1 The TPO included ICRA Online Ltd. (Seg) (in short ‘ICRA’) on the ground that it is engaged in data processing and data mining and accordingly it is providing similar services (ITeS). The DRP upholds the order of the TPO, which is followed by the AO.

5.2 The Ld. counsels of the assessee submit that as per the annual report, the company has following three business segments:

- (i) Information Services,
- (ii) Software Services and
- (iii) Outsource Services

It is further stated that the TPO has considered the operations of the 'Outsourced Services' segment as comparable to the operations of the appellant. The Ld. counsels argue that the annual report of the company does not provide any description as to the nature of the services contained in the segment. However, a reference may be drawn to the annual report of ICRA Ltd., the holding company of ICRA from where it can be seen that the outsourced segment of the company relates to KPO and online software services.

The Ld. counsels further submit that the ITAT in appellant's own case for AY 2010-11 has followed the Tribunal discussion in the case of Tesco Hindustan Service Centre Pvt. Ltd. v. DCIT (ITA No. 191/Bang/2015) to reject the company functionally not comparable to the appellant i.e. companies not engaged in providing ITeS (BPO Services). In this regard, reliance is placed by them on the following orders of the Tribunal :

(i) M/s Sitel Operating Corporation India Pvt. Ltd. (since amalgamated with Sitel India Pvt. Ltd.) v. ITO (ITA No. 598/Bang/2015 & ITA No. 452/Bang/2015) dated 25 April 2018 [AY 2010-11]

(ii) M/s Tesco Hindustan Service Centre Pvt. Ltd. v. DCIT(IT(TP)A No. 191/Bang/2015) dated 25 January 2017 [AY 2010-11]

(iii) Outsource Partners International v. DCIT (IT(TP)A No. 337/Bang/2015) [AY 2010-11].

5.3 On the other hand, the Ld. DR submits that ICRA is engaged in data processing and data mining and accordingly it is engaged in providing similar services (ITeS). Thus it is stated that the inclusion of the above company by the TPO/AO in the list of final comparables be confirmed.

5.4 We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

The TPO has considered the operations of the 'Outsourced Services' segment of ICRA as comparable to the operations of the appellant. However, we find that the annual report of the company does not provide any description as to the nature of the services contained in this segment. As per page 532 of the P/B, a reference may be made to the annual report of ICRA Ltd., the holding company of ICRA from where it can be seen that the outsourced segment of the company relates to KPO and online software services. Also page 8 of the annual report of ICRA Ltd. delineates the business of ICRA stating that the company is engaged in providing KPO and online software services. As per the description at page 532 of the P/B, the knowledge process outsourcing division provides financial and analytical services and support to clients in the area of data extraction, aggregation, electronic conversion of financial statements, validation and analysis, accounting and finance, research and analytics.

Thus the appellant in the instant case performs routine ITeS comprising of contact/call centre services and hence is a routine BPO service provider and cannot be compared to a company providing KPO services such as ICRA.

Also we find that the TPO has wrongly computed the margin of the company as 33.54% instead of the correct margin 22.32%, because the TPO has excluded foreign exchange income and other receipts

(allocated basis revenue in each segment), whereas, the same is to be added for information service, outsource service and software service to arrive at the correct margin.

In assessee's own case for AY 2010-11, the ITAT 'A' Bench Bangalore has followed the Tribunal discussion in the case of Tesco Hindustan Service Centre Pvt. Ltd. (supra) to reject the companies functionally not comparable to the appellant i.e. companies not engaged in providing ITeS (BPO) service. In the case of Tesco Hindustan Service Centre Pvt. Ltd. (supra), ICRA has been held to be non-comparable to an ITeS service provider.

Accordingly, following the decision of Tesco Hindustan Service Centre Pvt. Ltd. (supra) and the observations in the Tribunal decision in appellant's own case for AY 2010-11, we reject ICRA Online as a comparable."

Considering the decision of EMC Software and Services (India) Pvt. Ltd. discussed the Accenture Technologies Ltd. cannot be considered as comparable with assessee company in ITES. We direct the TPO to exclude the comparable for determining ALP. Similarly ICRA Online Limited is directed to be excluded for determining ALP based on the decision of Tribunal in Sitel India Pvt. Ltd. Vs. DCIT (supra).

6. On the second issue of inclusion of comparables, the Id. AR submitted that 6 companies are to be included which are as under :-

(i) **E4E Healthcare Business Services Pvt. Ltd.** turnover is Rs.61.32 Crores and is engaged in providing healthcare outsourcing services. The TPO had retained the company as a comparable and the appellant has not raised any objections against the same before TPO or DRP. The DRP suo moto rejected this comparable due to inconsistency in accounting of Bad debts and provision for bad debts debited to the P&L and does not represent inconsistency in overall accounting policies. Further loss due to bad debts can only be reasonably

estimated, however it could occur due to various unexpected factors leading to difference in quantum of write off/provisions. This is neither a qualitative filter nor a functional criterion in order to reject a comparable which is functionally comparable to the appellant and TPO has considered in assessee's own case for Asst. Year 2012-13 at Page 15 para 8.5 as under :

8.5 FINAL SET OF COMPARABLES CONSIDERED BY THE TPO:

8.5.1 After considering the objections of the taxpayer to the comparables proposed in the show-cause notice, perusal of relevant annual reports and examination of additional comparables suggested by the taxpayer on the touchstones of filters and functionality, the final set of comparables are arrived as per the discussions in the following paragraphs.

Sl. No.	Name of the Case	Operating Income	Operating Cost	OP/OC
1	Accentia Technologies Ltd.	126,38,02,000	112,89,16,000	11.75
2	Universal Print Systems Ltd.(Seg)(BPO)	6,17,67,000	3,87,49,000	52.46
3	Informed Technologies India Ltd.	1,96,36,431	1,82,45,770	6.08
4	Infosys B P O Ltd.	1316,75,11,974	962,91,06,964	36.30
5	Jindal Intellicom Ltd.	30,27,51,875	30,29,02,990	-0.05
6	Microgenetic Systems Ltd.	1,29,93,217	1,08,63,390	19.61
7	T C S E-Serve Ltd.	15,78,44,000	9,64,28,000	63.69
8	B N R. Udyog Ltd.(Seg)(Medical Transcription)	1,47,04,000	97,87,000	50.61
9	Excel Infoways Ltd.(Seg)(IT/BVPO)	790,96,95,000	559,06,04,000	29.79
10	e4e Healthcare Services Pvt Limited	89,50,04,209	74,59,23,078	19.85
	Average PLI			28.11%

(ii) **Cosmic Global Limited** is having turnover of Rs.6.25 Crores and functionally comparable as the company earns revenue from medical transcription, translation and BPO services. The TPO had retained the company as a comparable and the assessee had not raised any objections against the same before TPO or

DRP. But the DRP suo moto rejected the comparable by assuming translation charges to be in the nature of outsourcing charges. However, this accounts only 44% of cost indicating that the company is not purely operating on the alleged outsourcing model and also employee cost is 39% of total cost and transactions are not outsourced and was included by the TPO in assessee's own case for Asst. Year 2009-10 & 2010-11 at TPO order pages 14 & 15 para 10 as under :

10. Final set of comparables and determination of Arm's length Price after due consideration of taxpayer's reply to the show cause notice dated: 27.9.2013:

10.1 Comparables:

10.1.1 After considering the objections of the taxpayer as above, perusal of relevant annual reports and examination of additional comparables suggested by the taxpayer on the touchstones of filters and functionality, the final set of comparables arrived at and adopted by the TPO for comparability analysis under TNMM in the case of the taxpayer is as under:

SL.NO	NAME	PLI
1	ACCENTIA TECHNOLOGIES LTD	43.06%
2	ACROPETAL TECHNOLOGIES LTD (SEG.)	22.27%

3	E-CLERX SERVICES LTD	55.97%
4	FORTUNE INFOTECH LTD	22.80%
5	ICRA ONLINE LTD(SEG)	43.39%
6	INFORMED TECHNOLOGIES INDIA LTD	26.15%
7	INFOSYS BPO	31.23%
8	COSMIC GLOBAL LTD	14.97%
9	SUNDARAM BUSINESS SERVICES LTD	-12.31%
10	JEEVAN SCIENTIFIC TECHNOLOGY LTD.(SEG.)	21.05%
	AVERAGE	26.86%

(iii) **Informed Technologies India Limited** is having turnover of Rs.1.75 Crores and functionally comparable as the company is engaged in rendering BPO services. But the TPO and the DRP had rejected the company stating that rental income is more than the operating income. The TPO has not given finding or instances of functional dissimilarity and the TPO has no reservations. Rental income is non-operating in nature and the mere fact of the non-operating income being higher than the operating income does not render the company as non-comparable and it is forming a part of the final set of comparables conducted by the learned TPO in assessee's own case in AY 2009-10, 2010-11 and 2012-13 and TPO Chart referred above for Asst. Year 2012-13.

(iv) **Microgenetic Systems Limited** is having turnover of Rs.1.28 Crores and functionally comparable as the company is involved in the provision of Medical

transcription charges. Whereas the TPO rejected the company due to non-availability of data in the public database and also the DRP rejected the company stating that expense to the extent of 23% of total cost has been incurred in outsourcing of the medical transcription activity. Further the company has significant employee costs. This indicates that the company is not purely in outsourcing model and operate primarily through its own employees. The TPO has not cited any instances of functional dissimilarity and the DRP has made assumptions regarding the total expenses, without giving regards to the assessee's contentions on functional comparability and was conducted by TPO as comparable to the Asst. Year 2012-13. TPO order for Asst. Year 2012-13 referred above.

(iv) **Caliber Point Business Solutions Limited** is having turnover of Rs.79.07 Crores and functionally comparable and is engaged in comparable services and has segmental information. The TPO and the DRP rejected this company on the basis of different financial year ending. Though the company had different financial year ending, it was operating during the said period and

(v) **R Systems International Limited** is having turnover of Rs.20.21 Crores. And functionally comparable and is engaged in comparable activities of BPO services and has segmental information. The TPO and the DRP rejected this company on the basis of different financial year ending. The company even though having different financial year ending, were operating during the same

period of time. The learned counsel for the assessee supported with judicial decision and we find DRP has dealt at page 5 para 6 (a) as under :

a) Caliber Point Business Solutions Limited ("Caliber Point")

Having considered the submissions, it is noticed by us that the exclusion of the above company due to the different financial year finds support from the decision in the case of Symantec Software solution Pvt Ltd Vs ACIT.(2011-TII-60-ITAT-MUM-TP where-in it is held by the Honourable ITAT that unless a case is made out under proviso to Rule 10B(4), the rule mandates current year data only, proviso does not say that the preceding 2 years' data should always be taken. The rationale for using current year data is that it rules out the effect of differences in economic and market conditions at different time period. In our view, similar rationale need to be applied for the companies which have different financial year ending as it cannot be

denied that with the change of time, the economic and market conditions change which have significant influence on the profit margin. Further, there is no rationale in retaining such companies as comparables when the companies having same accounting year are available for comparability analysis. It is also noticed by us that the Hon'ble Delhi High Court in the case of in the case of Chryscapital Investment Advisors (India) Pvt Ltd vs DCIT (ITA No.417/2014) in paragraph 35 held that 'this court is of the opinion that the general rule as prescribed in Rule 10B(4) mandates the tax authorities to take into account only the relevant assessment years data', on the rationale of the Hon'ble High Court also, the companies which have different

financial year cannot be considered as comparable. Accordingly, exclusion of the above company from the comparables is upheld.

And similarly R. Systems International Ltd., DRP dealt at page 7 para 6(e) as under :

e) R Systems International Limited ("R Systems")

It is submitted that the TPO has rejected R Systems as a comparable stating that there is no data available for the current year i.e. 12 months ending 31 March 2011. However, as he has not cited any instances of functional dissimilarity, it is clear that the learned TPO does not have any reservations in this regard. In this regard, the

Appellant wishes to submit that it does not concur with the adoption of 'Different accounting year end filter' for selection of comparables in the first place. It has already submitted its detailed arguments against the adoption of the same in Ground 5 above and the same are not being repeated.

Having considered the submissions, we have upheld the application of different financial year filter and therefore, the company cannot be retained as comparable. It is also noticed by us that from page 35 & 92 of Annual Report, the company is a leading provider of out sourced product development services, business process outsourcing and also offers own product suite. In profit & loss account revenue has been clubbed under 'Sales and Service income', and shown in two segments "software development & customisation service" and "Business process outsourcing services" which makes it clear that no segmental information is available in respect of software development services alone and therefore, the company on this reason also cannot be retained as comparable.

In view of the above, we do not find any infirmity in exclusion of the above company from comparables.

We considering the directions and order of DRP and TPO, we are not inclined to include above two comparables and dismiss the assessee's ground of appeal. Accordingly, we direct the A.O/TPO to include aforesaid 4 companies i.e. (1) E4E Healthcare Business Services Pvt. Ltd. (2) Cosmic Global Limited (3) Informed

Technologies India Ltd. and (4) Microgenetic Systems Limited in the list of comparables for determining the ALP.

7. The Id. AR argued on the Working Capital Adjustment and the Foreign Exchange Gain/Loss, we found in the course of hearing, no details were filed in respect of Foreign Exchange Gain/Loss and the DRP referred at para 8 of order where the assessee has failed to submit the details. As prayed by the Id. AR, we restore these disputed issues to the file of TPO with a direction to consider the claim of assessee and the assessee shall submit the details in respect of foreign exchange fluctuation. Similarly, the adjustment benefit of +/- 5% was not considered by the TPO in his order and the same has to be allowed and we order accordingly.

8. In the result, the assessee's appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 6th Sept., 2019.

Sd/-
(A.K. GARODIA)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 06.09.2019.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore