

**IN THE INCOME TAX APPELLATE TRIBUNAL "K", BENCH
MUMBAI**

**BEFORE SHRI M.BALAGANESH, AM
&
SHRI RAVISH SOOD, JM**

**ITA No.1802/Mum/2015
(Assessment Year :2010-11)**

ITO 11(3)(4) Room No.429, 4 th Floor Aayakar Bhavan Mumbai – 20	Vs.	M/s. Zenta Pvt. Ltd., 6 th Floor, Unit No.601, Nomura Hiranandani Business Park Powai, Mumbai – 400 076
PAN/GIR No.AAACH3235M		
(Appellant)	..	(Respondent)

**CO No.164/Mum/2015
(Arising out of ITA No.1802/Mum/2015)
(Assessment Year :2010-11)**

M/s. Zenta Pvt. Ltd., 4 th Floor, Tower II Phase II, Logitech Park Andheri Kurla Road Andheri (E) Mumbai – 400 072	Vs.	ITO 11(3)(4) Room No.429, 4 th Floor Aayakar Bhavan Mumbai – 400020
PAN/GIR No.AAACH3235M		
(Appellant)	..	(Respondent)

**ITA No.795/Mum/2016
(Assessment Year :2011-12)**

ITO 11(3)(4) Room No.429, 4 th Floor Aayakar Bhavan Mumbai – 400020	Vs.	M/s. Zenta Pvt. Ltd., 6 th Floor, Unit No.601, Nomura, Hiranandani Business Park, Powai, Mumbai – 400 076
PAN/GIR No.AAACH3235M		
(Appellant)	..	(Respondent)

**CO No.85/Mum/2016
(Arising out of ITA No.795/Mum/2016)
(Assessment Year :2011-12)**

M/s. Accenture Solutions Pvt. Ltd., (Formerly known as Zenta Pvt. Ltd.,)	Vs.	ITO 11(3)(4) Aayakar Bhavan Mumbai – 400020
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4 th Floor, Tower II Phase II, Logitech Park Andheri Kurla Road Andheri (E) Mumbai – 400 072		
PAN/GIR No.AAACH3235M		
(Appellant)	..	(Respondent)

ITA No.1623/Mum/2014
(Assessment Year :2009-10)

Income Tax Officer 3(3)(4) Mumbai (Now assessed under Asst. Commissioner of Income Tax 11(3)(2), Room No.427 Aayakar Bhavan Mumbai - 400020	Vs.	M/s. Accenture Solutions Pvt. Ltd., 4 th Floor, Tower II Phase II, Logitech Park Andheri Kurla Road Andheri (E) Mumbai – 400 072
PAN/GIR No.AAACH3235M		
(Appellant)	..	(Respondent)

CO No.222/Mum/2014
(Arising out of ITA No.1623/Mum/2014)
(Assessment Year :2009-10)

M/s. Zenta Pvt. Ltd., 4 th Floor, Tower II Phase II, Logitech Park Andheri Kurla Road Andheri (E) Mumbai – 400 072	Vs.	ITO 3(3)(4) Room No.672, Aayakar Bhavan Mumbai – 400020
PAN/GIR No.AAACH3235M		
(Appellant)	..	(Respondent)

Revenue by	Shri Anand Mohan
Assessee by	Shri M.P. Lohia
Date of Hearing	16/05/2019 & 19/08/2019
Date of Pronouncement	04/09/2019

ORDER**PER BENCH:**

These appeals in ITA Nos.1802/Mum/2015, ITA No.1623/Mum/2014 & ITA No.795/Mum/2016 alongwith Cross Objections in C.O. No.164/Mum/2015, CO No.222/Mum/2014 and CO No.85/Mum/2015 for A.Yrs. 2009-10, 2010-11 and 2011-12 arise out of the order by the Id. Dispute Resolution Panel, Mumbai (Id. DRP in short) against the order of assessment passed u/s.143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (hereinafter referred to as Act).

ITA No.1623/Mum/2014 (Revenue Appeal) & CO No.222/Mum/2014 (CO by Assessee) (A.Y.2009-10)

2. The brief facts of the appeal in A.Y.2009-10 are that the assessee is primarily engaged in the provision of IT and ITES sector as per disclosure made in the Annual report of the assessee company. The Id. TPO observed that as per TP study report, the assessee is an ITES company. It is providing ITES services to M/s. Zenta Global Ltd. Barbados (ZGL). ZGL is a wholly owned subsidiary of M/s. Zenta Group (LLC), USA. The assessee company is owned by outsourcing Mauritius-1 Ltd., and outsourcing Mauritius-2 Ltd., in the ratio of 51:49. These two Mauritius based companies are in turn held by subsidiary Barbados Ltd. Subsidiary Barbados Ltd., is held by ZGL Barbados.

2.1. As per the TP study report, the assessee is rendering following services to its ZGL Barbados, associated enterprises (AE) in short:-

- i) Accounting services
- ii) Credit Card services
- iii) Mortgage Processing services
- iv) Bank back office services
- v) Accounts receivable management
- vi) Insurance Claims Management

2.2. The Id. TPO observed that as per TP study report the assessee gets a mark-up of 15% of cost of rendering ITES services. The TPO also observed that the entire turnover of the assessee is controlled by ZGL. The list of international transactions carried out by the assessee is as under:-

Sr. No.	Nature of International Transaction	Value in Rupees	Method Followed
1.	Provision of Call Centre and back office services	160,71,82,991	TNMM-ITES
2.	Reimbursement received	36,09,589	CUP

2.3. The margin of the assessee was 14.63%. The assessee computed the industry margin from 14 comparables by adopting operating profit $[OP \div TC(\text{Total Cost})]$ as profit level indicator and arrived margin of 14.84%. Since the same was falling within +/-5% range, the assessee considered its pricing to be at arm's length price (ALP). The Id. TPO rejected 8 comparables among 14 comparables chosen by the assessee. The Id. TPO further added 20 comparables based on his own search. Hence, the average margin of 26 comparables chosen by the Id. TPO was worked out at 28.45%. The Id. TPO accordingly made an adjustment of

Rs.19,37,59,272/- to ALP in the order passed by him u/s.92CA(3) of the Act on 31/12/2012. The Id. DRP directed the Id. TPO to recompute the ALP of international transaction with certain directions. The Id. TPO while giving effect to the directions of the Id. DRP recomputed the ALP, as a result of which, the entire variation made originally was sought to be deleted. In other words, no adjustment to ALP was made by the Id. TPO while giving effect to the directions of the Id. DRP.

3. Aggrieved by this, the revenue has preferred appeals before us and assessee has also preferred cross objections before us.

3.1. At the time of hearing, both the parties before us mutually agreed and stated that if one of the comparables namely Excel Infoways Ltd., which has been directed to be excluded by the Id. DRP from the list of total comparables chosen by the Id. TPO is held in assessee's favour, then the adjudication of the other comparables would become academic in nature as the assessee would fall within +/-5% range. Accordingly, as decided by both the parties before us the bench decided to adjudicate the exclusion of comparable i.e. M/s. Excel Infoways Ltd., The margin of this comparable for the year under consideration was 243.69%. The crux of the arguments of the Id. AR with regard to the exclusion of this comparable are as under:-

i) This comparable has got employee cost of 8.82% whereas the employee cost of assessee works out to 54.55%. Since the employee cost of the comparable is less than 25% of the total cost, the same is to be excluded from the list of comparables.

ii) The said comparable M/s. Excel Infoways Ltd., as per its Director's report for the year ending 31/03/2009 has mentioned that it is in IT enabled services industry providing effective business solutions to the global and Indian companies with excellence in technology and robust processes. The said comparable had continued to win new assignments as well as achieved growth in traditional area of BPO / IT enabled services which has significant grown potential in the years to come. The said Directors report also mentioned that the said comparables is an ISO certified company and is a Customer Contact Center based in India, offering a range of customer care services including telecom fulfillment centre, providing technical services, financial services, healthcare, outbound sales and marketing, voice, email response, real time chat, knowledge management, eCRM architecture and other value added services, where each component of services delivery is critical. However, from the perusal of the Annual report of this comparable in the profit and loss account, the total receipts from BPO / IT enabled services was reflected at Rs.18,60,40,738/-.

iii) The Id. AR argued that there is no break-up of this revenue of Rs.18.60 Crores profit in the Annual report of the said comparable.

Hence, in the absence of segmental data of the revenue, the same is to be excluded. The Id. AR also drew our attention to the balance sheet extract and the contents contained in General Business Profile reflected in part-IV of the Companies Act, 1956 enclosed in page 334 of the paper book wherein under the head "Generic Names of Three Principal Products/Services of the Company", the said comparable had mentioned that they are engaged in providing following services:-

- a. Business auxiliary services
- b. Information technology enabled services

iv) Ld. AR also relied on page 339 of the paper book containing details of activities carried out by M/s. Excel Infoways Ltd., downloaded from the website on 11/11/2013 wherein it is engaged in rendering following services:-

Funds Management	Overseas Property	Collections	Business, Financial e-media Transcription
Inbound sales Outbound sales Enquiries & Application Credit Inspection of underwriting & Funding Out Collections	Inbound Sales Outbound Sales Exhibition Enquiries Inspections Trips After Sales Customer Support	Third Party Collection Early Out Collection Primary Collection Secondary and Later Stage Collection Pre-legal Collection Skip Tracing	Financial Brief News Recording Transcribed in literature in TAT Q & A Sessions

Excel Infoways is a leading company in providing collections & customer relations service to various clients since 2003.

v) Based on this, the Id. AR argued that the aforesaid services are not IT services and hence, the same are not functionally comparable with that of the assessee.

vi) The Id. AR argued that the Id. TPO himself has removed M/s. Excel Infoways Ltd., from the list of comparables as functionally not comparable in the A.Y.2010-11.

vii) The said comparable has got fluctuating margins.

3.2. In response, the Id. DR argued that the said comparable having high employee cost ratio is not relevant for the year under consideration in as much as the same was not considered as filter by the Id. TPO. The Id. DR vehemently argued that no fresh filters could be applied at the stage of appeal before ITAT. The Id. DR also argued that the activities of M/s. Excel Infoways Ltd., are functionally similar to that of the assessee and the highlighted portion in page 379 of the paper book only represents various other services that are relevant for the purpose of ISO certification only and not otherwise. The entire receipts are from BPO/ITES and hence the same are functionally comparable and no segmental data is warranted thereon.

4. We have heard rival submissions and we find that certain basic clarifications are required from the Id. TPO which would clinch the entire dispute before us. Accordingly, we deem it fit to seek a remand report from the Id. TPO to provide specific clarifications on the following issues:-

- i) To obtain details of break-up of the revenue from M/s. Excel Infoways Ltd., in the manner known to law.
- ii) To seek clarification from M/s. Excel Infoways Ltd., as to whether any revenue was earned during the year i.e., A.Y.2009-10 from services other than ITES.
- iii) To obtain clarification as to whether the said comparable is engaged in outsourcing activity.
- iv) To obtain specific clarification from the said comparable with regard to detailed bifurcation of ITES services rendered by M/s. Excel Infoways Ltd.,

4.1. The Id. TPO furnished the remand report through the Id. DR in reference No. MUM/DCIT(TP)-1(1)(1)/Remand Report / ASPL-09-10/2019-20 dated 08/07/2019. The Id. TPO had issued notice u/s.133(6) to M/s. Excel Infoways Ltd.(Now known as M/s. Excel Realty N Infra Ltd) wherein the question raised by the Id. TPO and the reply given by the said party are reproduced herein:-

“i. Please provide the details of break-up of services rendered by your company with respect to BPO/ITES

Reply of EIL: In reference to details of breakup of services rendered, kindly note that we provided BPO/ITES enabled services to our client outside India only.

ii. Please provide the details whether any revenue has been obtained from the services other than BPO/ITES by your company.

Reply of EIL: Kindly note that our revenue was from BPO/ITES enabled services only, did not have any other income.

iii. Please provide detailed break-up of all the activities included under BPO/ITES of your company.

Reply of EIL: Kindly note that we were providing Telecom fulfillment solution services as well as financial services to our clients.

iv. Please provide the details whether your company is engaged in activities which require outsourcing.

Reply of EIL: Kindly note we had our own employees, we were providing BPO/ITES enabled services to our clients outside India only.

4.2. We find that the Id. TPO in his final remarks in the remand report had stated that M/s. Excel Infoways Ltd. and the assessee company are engaged in the business of providing BPO/IT enabled services and hence are functionally comparable. The Id. TPO also remarked that M/s. Excel Infoways Ltd. has received Rs.18,60,40,738/- and Rs.23,09,11,000/- from BPO / IT enabled services for F.Ys 2008-09 and 2007-08 respectively. We find that these figures are nothing but the total revenue from operations of M/s. Excel Infoways Ltd. reflected in the audited financial statements for the year ended 31/03/2009 but we find from the Director's report of M/s. Excel Infoways Ltd. that the said company is engaged in various activities and had classified every activity under BPO/IT enabled services. The list of various activities listed out in the Director's report have already been incorporated by us in para 4 above while addressing the arguments of the Id. AR. We also find from the annual report of M/s. Excel Infoways

Ltd. that 31/03/2009, under part IV "BALANCE SHEET ABSTRACT AND COMPANIES GENERAL BUSINESS PROFILE" under the column "Generic names of three principal products / services of company" , the said company i.e., M/s. Excel Infoways Ltd. had reported the following two activities as principal activities:-

(i) Business Auxiliary Services

(ii) Information Technology Enabled Services

4.3. Moreover, we find from page 399 of the paper book containing details of activities carried out by M/s. Excel Infoways Ltd. which is downloaded from the website on 11/11/2013, that the said company was stated to be engaged in providing collections and customer relation services to various clients since 2003, apart from various other services as listed in para 3.1. (iv) above. This goes to prove beyond doubt that M/s. Excel Infoways Ltd. was also engaged in providing financial services which had been classified as business auxiliary services by M/s. Excel Infoways Ltd. under the "Generic names of principal services rendered" by it supra. Our observation in this regard is further strengthened by the reply given by M/s. Excel Infoways Ltd. before the Id. TPO in respect to question No.iii raised by the Id. TPO u/s.133(6) of the Act which has already been reproduced hereinabove. Hence, the total revenue of Rs.18.60 Crores credited in the P & L account does not belong primarily to IT enabled services simplicitor and that some part of such revenue should also pertain to financial services rendered by that comparable. Admittedly

no segmental break-up of revenue and segmental results are available for various activities carried out by M/s. Excel Infoways Ltd.

4.4. The Id. DR on the contrary argued that all the services rendered by M/s. Excel Infoways Ltd. are only support services to the main activity of IT enabled serves and hence, are to be construed on a bundled manner and 100% functional similarity with that of the assessee company cannot be expected for the purpose of comparability. We are not inclined to accept to these arguments of the Id. DR for the simple reason that business auxiliary services are completely different form IT enabled services. From the various services rendered by M/s. Excel Infoways Ltd. since 2003 onwards as detailed hereinabove, it could be safely concluded that the said company was also predominantly rendering financial services which had been categorized by them as IT enabled services, whereas in the assessee's case, it is rendering routine IT enabled services which are listed in paragraph 2.1 of our order hereinabove.

4.5. We also find lot of force in the argument made by the Id. AR wherein he submitted that in the transfer pricing assessment proceedings for A.Y.2010-11, the very same comparable i.e. M/s. Excel Infoways Ltd. was sought to be included by the Id. TPO as a valid comparable. The assessee had there pleaded it is not functionally comparable apart from other differences. The Id TPO after examining the various details and evidences submitted by the assessee for exclusion of the same, finally

excluded the said comparable from the list of comparables while completing the TP assessment for the A.Y.2010-11. In this regard, the Id. AR placed on record the letter dated 08/01/2011 addressed before the Id. TPO during TP assessment proceedings for A.Y.2010-11 and the copy of the TPO order for A.Y.2010-11 dated 17/01/2014 wherein M/s. Excel Infoways Ltd. was excluded.

4.6. Apart from the aforesaid observations, we also find that the co-ordinate Bench of this Tribunal under similar circumstances had excluded M/s. Excel Infoways Ltd. on functional dissimilarities among others in the following cases:-

1. *Willis Processing Services (India) Private Limited - ITA No 2152/Mum/2014 [AY 2009-10]*
2. *Goldman Sachs Services (P.) Ltd. - ITA No. 1315(Mum.) 2014 [AY 2009-10]*
3. *Swiss Re-services India (P.) Ltd.-ITA No. 1465 & 1493/Mum/2014 [AY 2009-10]*

4.7. The Id. AR had furnished a chart on a very conservative basis by excluding M/s. Excel Infoways Ltd.; by including Accentia Technologies Pvt. Ltd. which was actually excluded by the Id. TPO while giving effect to the order of the Id. DRP and by excluding loss making comparable [Triton Corp Ltd] which was sought to be included by the Id. DRP and stated that the assessee would be through if M/s. Excel Infoways Ltd. alone had been excluded from the list of comparables. We find lot of force in the said argument of

the Id. AR and chart placed by him does not require any verification as the same has been prepared on a conservative manner by him and he has also explained the computation of comparable margin thereon before us at the time of hearing which have been verified by us. For the sake of convenience, the said chart is reproduced below:-

Sr no	Name of the company	Comparable set as per TP Order	Comparable set post DRP Directions	Scenario - Department appeal is dismissed only on Excel Infoways
Assessee's comparables				
1	BNR Udyog Ltd (Seg)	40.10%	40.10%	40.10%
2	Cameo Corporate Services Ltd	14.42%	14.42%	14.42%
3	Cosmic Global Ltd	40.68%	40.61%	40.61%
4	Optimus Global Services	-3.52%	-3.85%	-3.52%
5	Proximus Knowledge & Technology Services Pvt Ltd	28.80%		28.80%
6	Sparsh BPO Services Ltd	3.98%	3.98%	3.98%
7	Triton Corp Ltd		-22.17%	
Additional comparables introduced by the TPO				
8	AOK In House BPO Services Ltd	12.48%	12.48%	12.48%
9	AXA Business Services Pvt Ltd	14.40%	14.40%	14.40%
10	Accentia Technologies Ltd	43.44%		43.44%

11	Aditya Birla Minacs Worldwide	23.88%	23.88%	23.88%
12	Coral Hub (Vishal Information Technologies Ltd)	36.90%	36.93%	36.93%
13	Crossdomain Solutions Ltd	29.40%		29.40%
14	Datamatics Financial Services Ltd	3.07%	3.07%	3.07%
15	Eclerx Services Ltd	46.92%	46.98%	46.98%
16	Excel Infoways Ltd	243.69%		
17	Firstsource Solutions Ltd	6.58%	6.58%	6.58%
18	HDO Technologies Ltd	13.94%	13.94%	13.94%
19	Informed Technologies Ltd	23.13%	23.13%	23.13%
20	Karvy Data Management Services Ltd	4.97%	4.97%	4.97%
21	Maple eSolutions Ltd	4.90%	4.90%	4.90%
22	Mold Tek Technologies Ltd	60.92%		60.92%
23	Mphasis Finsource Ltd	20.56%	20.56%	20.56%
24	Nucleus CIS and ITES Ltd	18.78%	18.78%	1 8.78%
25	One Two Three Greetings India Pvt Ltd	1 .77%	1 .77%	1 .77%
26	Sundaram Business Services Ltd	2.45%	2.45%	2.45%
27	Surevin Internet	3.14%	3.14%	3.14%

	Services Ltd			
	Arithmetic Mean	28.45%	14.15%	19.84%
	ZPL's margin	14.63%	14.63%	14.63%
	Upper range of 5%	20.36%	20.36%	20.36%
	Whether at ALP	Not ALP	ALP	ALP

4.8. In view of the above observations and by respectfully following the various judicial precedents relied upon hereinabove, we hold that M/s. Excel Infoways Ltd. is functionally not comparable with that of the assessee company.

4.9. Apart from this, we find that M/s. Excel Infoways Ltd. had earned super normal profit of 243.69% on which ground also, this comparable deserves to be excluded from the list of comparables with that of the assessee company.

4.10. In view of the aforesaid observations, the ground No.1 of revenue appeal in ITA No.1623/Mum/2014 is dismissed and Ground Nos.1-18 of Cross Objections of the assessee in CO No.222/Mum/2014 for A.Y.2009-10 are allowed.

5. We find that the assessee has also filed the additional cross objection with regard to department not complying with statutory provision of filing fees. This was stated to be not pressed at the time of hearing and accordingly, the same is dismissed as not pressed.

6. The Ground No.2 raised by the revenue for A.Y.2009-10 with regard to deletion of disallowance of interest paid on delayed payment of TDS of Rs.6,82,464 by the Id. DRP.

6.1. We have heard rival submissions. We find that there is no dispute that assessee had indeed remitted the TDS belatedly for which it had paid some interest. According to the Id. AR, said interest is only compensatory in nature and accordingly allowable as deduction. In support of this, the Id. AR placed reliance on the third member decision of Chennai Tribunal in the case of Mascon Global Ltd. vs. ACIT reported in 37 SOT 202 (Chennai)(TM) dated 26/08/2009 wherein it was held as under:-

“11. So far as the main issue is concerned, that is regarding the allowability of the interest, I am unable to agree with the Id. Judicial Member that the assessee's claim should be dismissed. As already noted by me, the correct break up of the interest requires to be considered in proper perspective. Further, again as already noted by me, the Id. Judicial Member has proceeded on the assumption that the taxes paid to the US Government by the assessee represented taxes on the assessee's income earned in America. This is, with respect to an erroneous assumption that has permeated through the entire decision of the Id. Judicial Member as also the order of the CIT. The authorities on which the Id. Judicial Member has relied are also relevant only if the taxes paid are the taxes on the income earned by the assessee in foreign countries. The factual position, however, is that the taxes are withholding taxes which the assessee had deducted from the payments made to its employees in USA. The assessee merely deducted the taxes from

such payments and deposited them with the US Government but after a delay. The interest is payable for such delay. The question is whether the interest is allowable as a deduction. In the light of this factual position, the decision of the Id. Judicial Member that the taxes paid by the assessee on its foreign income are not allowable as a deduction and the interest, being an adjunct of the tax, cannot also allowed as a deduction cannot be upheld.”

6.2. We find that the Id. AO did not adduce any reason as to on what account this payment made by the assessee is to be treated as penal in nature or under what provisions of the Act it has to be construed as penal in nature. The entire reading of the assessment order (both draft as well as the final assessment order) is silent in this regard. We find that the Id. AO merely states that such interest payment on delayed payment of TDS is inadmissible under statute and disallowed accordingly. This goes to prove that it was never the case of the Id. AO to have even remotely contemplated / categorizing the payment of interest to be penal in nature. Hence, there is no need in the instant case to look into the fact as to whether the said payment of interest of delayed payment of TDS could be penal in nature so as to be disallowed in the light of the provisions of Explanation to Section 37(1) of the Act. Accordingly, the reliance placed by the Id. DR on certain decisions viz. 88 Taxman 184 and 230 ITR 733 need not to be adjudicated at all. We find that the main crux of the argument of the Id. DR was that there is no penalty provision provided in the statement for delayed payment of TDS. In this regard, the Id. AR rightly clarified before us that the statute indeed provides for levy of penalty u/s.271C of the Act for such violation. Hence, the argument of the

Id. DR deserves to be dismissed and accordingly, we do not find any infirmity in the order of the Id. DRP granting relief to the assessee in this regard. Accordingly, the ground No.2 raised by the revenue for A.Y.2009-10 is dismissed.

7. The Ground No.3 raised by the revenue is challenging the action of the Id. DRP in allowing deduction u/s.10A of the Act in respect of the following receipts of the assessee:-

(i) Foreign exchange gain earned as a result of hedging contracts	-Rs.36,54,431/-
(ii) Octroi refund	-Rs.21,25,585/-
(iii) Income received on sale of old papers and cartons	-Rs. 49,050/-

7.1. We have heard rival submissions. We find that the Id. AO had challenged the deduction u/s.10A of the Act in respect of the aforesaid three items on the ground that they do not fall under the ambit of the expression "profits derived from export of articles or things". In other words, in the opinion of the Id. AO, they are not linked or connected with the export activity of the assessee and hence, they are not eligible for deduction u/s.10A of the Act. We are unable to persuade ourselves to appreciate the contentions of the Id. AO in view of the specific provisions contained in the statute u/s.10A(4) of the Act which is as under:-

(4) For the purposes of sub-sections (1) and (1A), the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking.

7.2. It is not in dispute that the foreign exchange gain earned as a result of hedging contracts Rs.36,54,431/-, Octroi refund- Rs.21,25,585/- and Income received on sale of old papers and cartons- Rs.49,050/- were earned by the assessee from this eligible undertaking eligible for deduction u/s.10A of the Act. Infact the Id. AR also submitted during the course of hearing that this is the only undertaking available with the assessee. Hence, as per the specific provisions of Section 10A(4) of the Act is reproduced supra, the entire profits of the business of the eligible undertaking shall be eligible for deduction in the proportion of export turnover to total turnover. We find that the Id. DRP had duly considered this aspect while granting relief to the assessee, which in our considered opinion, does not call for any interference. Accordingly, the ground No.3 raised by the revenue for A.Y.2009-10 is dismissed.

8. The Ground No.4 raised by the revenue for A.Y.2009-10 is challenging the action of the Id. DRP in deleting the addition of Rs.12,000/- being interest received from HDFC bank on the basis of information received in form 26AS.

8.1. We have heard rival submissions. We find that the Id. AO had made an addition of Rs.12,000/- towards interest income from HDFC bank allegedly earned by the assessee on the ground that the same was reflected in form 26AS of the assessee and the same was not disclosed by the assessee in its return of income. We find that the assessee had pleaded complete ignorance of the same before the Id. AO and had also placed bank statements to demonstrate that it had never made any deposits with HDFC bank and had not earned any interest thereon. However, the Id. AO did not appreciate the contention and proceeded to make the addition. We find that the Id. DRP had granted relief to the assessee by accepting its contentions and had also observed that it would be impossible for the assessee to prove that it had not received any interest from HDFC bank. We are inclined to accept to these observations of the Id. DRP in as much as the assessee cannot be directed to prove the negative. In the instant case, the assessee had categorically stated before the Id. AO itself that it had never earned any interest income from HDFC bank and had also adduced evidences in the form of its bank statements, books of accounts, balance sheet to demonstrate the same. This has not been rebutted by the Id. AO. The Id. AO had also not made any verification from HDFC bank to understand the real facts.

8.2 On the contrary, we find the assessee had taken efforts by addressing the letter to HDFC bank asking them to revise their annual information return submitted to the Income Tax Department by removing

the alleged interest transactions to the tune of Rs.12,000/- with corresponding TDS of Rs.1236/- in the name of assessee. The assessee had adduced evidences in this regard before the lower authorities and hence, we find that the Id. DRP was right in deleting the addition made in the sum of Rs.12,000/- towards alleged interest from HDFC bank. Accordingly, the ground No.4 raised by the revenue for A.Y.2009-10 is dismissed.

9. The Ground Nos.5& 6 raised by the revenue for A.Y.2009-10 are general in nature and does not require any specific adjudication.

10. In the result, appeal of the revenue in ITA No.1623/Mum/2014 for A.Y.2009-10 is dismissed and Cross Objections No.222/Mum/2014 by the assessee for A.Y.2009-10 is partly allowed.

ITA No.1802/Mum/2015 (A.Y.2010-11) Revenue appeal

11. The Ground No.1 raised by the revenue of A.Y.2010-11 is exactly similar to Ground No.3 raised by it in A.Y.2009-10. The decision rendered for A.Y.2009-10 would apply here with equal force for A.Y.2010-11 also except with variance in figures. Accordingly, Ground No.1 raised by the revenue for A.Y.2010-11 is dismissed.

12. The Ground No.2 raised by the revenue for A.Y.2010-11 is exactly similar to ground No.4 raised by the revenue for A.Y.2009-10 and the decision rendered thereon would apply with equal force for A.Y.2010-11. Accordingly, the Ground No.2 raised by the revenue for A.Y.2010-11 is dismissed.

13. The Ground Nos. 3 & 4 raised by the revenue are general in nature and does not require any specific adjudication.

CO No.164/Mum/2015 (By assessee) – (A.Y.2010-11)

14. The Ground Nos. 1-3 raised by the assessee in its cross objections are supportive of the order of the Id. DRP.

15. The Ground No. 4 raised by the assessee in its cross objection is with regard to the action of the Id.DRP not granting deduction u/s.10A of the Act in respect of disallowance made u/s.40(a)(ia) of the Act amounting to Rs.20,94,076/- and addition on account of advances written off amounting to Rs.16,41,800/-.

15.1. We have heard rival submissions. It is not in dispute that the disallowance u/s.40(a)(ia) of the Act in the sum of Rs.20,94,076/- and addition on account of advances written off in the sum of Rs.16,41,800/- pertain to the eligible undertaking of the assessee. Once any disallowance is made in respect of eligible undertaking of the assessee, it would only

go to increase the profits of such eligible undertaking, consequently it would be eligible for enhanced deduction u/s.10A of the Act thereby making the entire exercise revenue neutral. We find that the Central Board of Direct Taxes in its Circular No.37/2016 dated 02/11/2016 had duly clarified the same, which is not reiterated herein for the same of brevity. Accordingly, we hold that assessee is entitled for enhanced deduction u/s.10A of the Act in the sums of Rs.20,94,076/- and Rs.16,41,800/- in respect of aforesaid two additions / disallowances. Accordingly, the Ground No.4 raised by the assessee in its cross objections is allowed.

16. The Ground Nos. 5 & 6 raised by the assessee in its cross objections are with regard to short grant of credit for tax deducted at source and for advance tax. We direct the Id. AO to make verification of the same and grant credit as per law to the assessee.

17. The Ground Nos. 7 & 8 raised by the assessee are with regard to charging of interest u/s.234B & 234C of the Act which are consequential in nature.

18. In the result, appeal of the revenue in ITA No.1802/Mum/2015 for A.Y.2010-11 is dismissed and Cross Objection in CO No.164/Mum/2015 for A.Y.2010-11 is allowed for statistical purposes.

ITA No.795/Mum/2016 (Revenue Appeal) (A.Y.2011-12)

19. The only ground raised by the Revenue for A.Y.2011-12 is similar to Ground No.1 raised by the revenue for A.Y.2010-11 and the decision rendered thereon would apply with equal force for A.Y.2011-12 also. Accordingly, the grounds raised by the revenue for A.Y.2011-12 are dismissed.

CO No.86/Mum/2016 (A.Y.2011-12) (By Assessee)

20. The Ground Nos.1-3 raised by the assessee in its cross objections are only supportive by the order of the Id. DRP.

21. The Ground No.4 raised by the assessee in its cross objections is challenging the action of the Id. AO in confirming the transfer pricing adjustment amounting to Rs.9,64,24,442/- without complying with the directions issued by the Id. DRP.

21.1. We have heard rival submissions. In this regard, the following list of dates and events require consideration:-

Date	Event
20/02/2015	Date of passing of draft assessment order by the Id. AO

27/11/2015	Date of directions issued by the Id. DRP wherein the Id. DRP had directed the Id. TPO to include one of the comparables E-clerx services ltd
31/12/2015	Date of passing of final assessment order by the Id. AO without waiting for the order of the Id. TPO pursuant to directions of the Id. DRP.
05/01/2016	Date of order passed by the Id. TPO pursuant to directions of the Id. DRP

21.2. The above list of dates and events clearly demonstrate that the Id. AO has passed the final assessment order on 31/12/2015 without waiting for the giving effect order to be passed by the Id. TPO pursuant to the directions of Id. DRP. We have gone through the order of the Id. TPO dated 05/01/2016 passed pursuant to directions of Id. DRP, wherein the Id. TPO had indeed excluded E-clerx Services Ltd., and had arrived at the revised margin of the comparables and had also categorically held that no adjustment to arm's length price is warranted in the case of the assessee. Since the AO had passed the order prior to passing of the giving effect order by the Id. TPO, we direct the Id. AO to rectify the order and delete the addition made towards adjustment to arm's length price in the light of the TPO's order dated 05/01/2016. Accordingly, the ground No.4 raised by the assessee in its cross objections are allowed for statistical purposes.

22. The Ground No.5 raised by the assessee is with regard to short credit of advance tax, for which we direct the Id. AO to make the necessary verification of evidences and grant credit as per law. Accordingly, Ground No.5 raised by the assessee in cross objection is allowed for statistical purposes.

23. The Ground Nos. 6 & 7 are consequential in nature.

24. The Ground No.8 is with regard to initiation of penalty proceedings u/s.271(1)(c) of the Act which would be premature to be adjudicated at this stage.

25. In the result, appeal of the revenue in ITA No.795/Mum/2016 for A.Y.2011-12 is dismissed and Cross Objections of the assessee in CO No.85/Mum/2016 is allowed for statistical purposes.

26. TO SUM UP:-

<u>Sr. No.</u>	<u>ITA No.</u>	<u>AY</u>	<u>Appeal By</u>	<u>Result</u>
1.	ITA No.1802/Mum/2015	2010-11	Revenue	Dismissed
2.	CO No.164/Mum/2015	2010-11	Assessee	Allowed for statistical purposes
3.	ITA No.795/Mum/2016	2011-12	Revenue	Dismissed
4.	CO No.85/Mum/2016	2011-12	Assessee	Allowed

				for statistical purposes
5.	ITA No.1623/Mum/2014	2009-10	Revenue	Dismissed
6.	CO No.222/Mum/2014	2009-10	Assessee	Allowed for statistical purposes

Order pronounced in the open court on this 04/09/2019

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 04/09/2019
Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai