

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

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 7482/MUM/2012  
Assessment Year: 2008-09**

Travelex India Private  
Limited, B Wing, 7<sup>th</sup> Floor,  
Eureka Tower, Mindspace,  
Link Road, Malad (W),  
Mumbai-400064

**PAN No. AACCR4942B**

**Appellant**

Vs. Asst. Commissioner of  
Income Tax Circle-3(3),  
Mumbai.

**Respondent**

**ITA No. 1464/MUM/2014  
Assessment Year: 2009-10**

Travelex India Private  
Limited, Paradigm, A Wing,  
2<sup>nd</sup> Floor, Unit No. 201,  
Mindspace, Malad Link  
Road, Malad,  
Mumbai-400064

**PAN No. AACCR4942B**

**Appellant**

Vs. Deputy Commissioner of  
Income Tax Circle-3(3),  
Mumbai.

**Respondent**

Assessee by : Mr. Niraj Sheth, AR

Revenue by : Mr. Manish Kumar Singh, DR

Last Date of Hearing : 15/11/2019  
Date of Pronouncement: 10/02/2020

**ORDER**

**PER N.K. PRADHAN, A.M.**

The captioned appeals filed by the assessee are directed against the order of the Assistant Commissioner of Income Tax, Circle-3(3), Mumbai [in

short 'the AO'] u/s 143(3) r.w.s. 144C(13) of the Income Tax Act 1961 (the 'Act'). As common issues are involved, we are proceeding to dispose them off through a consolidated order for the sake of convenience.

**ITA No. 7482/MUM/2012**  
**(AY: 2008-09)**

2. The grounds of appeal filed by the assessee read as under :

- 1 On the facts and circumstances of the case, the AO erred in framing the assessment under Section 143(3) r.w.s 144C of the Act by upholding the action of the Transfer Pricing Officer (TPO) in making a Transfer Pricing (TP) adjustment of Rs.98,28,555 and Rs.3,54,249 in respect of provision of IT support and group audit services respectively provided to its Associated Enterprise.
- 2 On the facts and circumstances of the case, the AO erred in retaining the comparables Caliber Point Business Solutions Ltd - BPO segment and HCL Comnet Systems & Services Ltd -ITeS segment even though they ought to have been rejected on account of they having high related party transactions, as per the directions of the Dispute Resolution Panel ('DRP')
- 3 On the facts and circumstances of the case, the AO erred in retaining the comparables Mold-Tek Technologies Ltd and Eclerx Services Ltd. even though they ought to have been rejected on account of they earning supernormal profits, as per the directions of the DRP.
- 4 On the facts and circumstances of the case, the AO erred in not granting a working capital and risk adjustment to the Appellant to account for differences in the working capital and risk profile of the comparables vis-a-vis the Appellant.
- 5 On the facts and circumstances of the case, the Appellant be granted benefit of the 5% range as envisaged under proviso to Section 92C(2) of the Act.

3. Further, the appellant filed additional grounds of appeal on 06.03.2019 which are produced below:

6. On the facts and circumstances of the case, the AO/ TPO/DRP has erred in rejecting certain companies selected by the Appellant as comparables in its transfer pricing documentation.
  7. On the facts and circumstances of the case, the AO/ TPO/ DRP has erred including certain companies as comparables which are functionally not comparable to the appellant.
  8. On the facts and circumstances of the case, the AO/ TPO/ DRP has erred including certain companies as comparables which earn supernormal profits and/or fail the filters applied by the TPO.
4. Having examined the contentions of the appellant, we find that the above additional grounds of appeal are being raised only with a view to bring to the fore the nature of objections of each of the comparables under dispute before the Tribunal. Therefore, we admit the additional grounds for adjudication.
5. During the course of hearing, the Ld. counsel for the appellant submits that he would not like to press the 2<sup>nd</sup> ground of appeal. Thus the 2<sup>nd</sup> ground of appeal is dismissed as not pressed.
6. Briefly stated, the facts are that the appellant is a part of Travelex Group, which is foreign exchange specialist. The appellant is a wholly own subsidiary of Travelex Plc, UK, which in turn, is held by Travelex Holdings Ltd. The appellant's business is divided into four activities :
- (i) IT enabled services, which include application development, testing and IT support ;

(ii) Retail services, which include purchase and sale of foreign currency in its capacity as a licensed full-fledged money changer;

(iii) Distribution services which include undertaking sales and marketing of traveler's cheques and prepaid card among business partners such as banks and financial institutions in India ;

(iv) Group audit services, which include the performance of various internal audit functions.

The AO granted relief to the appellant in respect of serial No. (ii) & (iii) in the above. The dispute here is serial number (i) & (iv) above.

During the year under consideration, the appellant provided IT enabled services to its AE, which include application development, testing services and IT support. The appellant has benchmarked this transaction using TNMM as the most appropriate method and operating profit to total cost as the appropriate profit level indicator. The appellant made a search on 'Prowess' and 'Capitaline' database and identified 14 comparables using data for financial year (FY) 2005-06, 2006-07 and 2007-08. However, the TPO made a fresh search and arrived at the following final list of comparables and margins using data for FY 2007-08 :

<b>S No.</b>	<b>Name of the Comparable</b>	<b>OP/TC</b>
1.	Accentia Technologies Ltd. (Seg.)	41.76%
2.	Acropetal Technologies Ltd. (Seg.)	35.30%
3.	Aditya Birla Minacs Worldwide Ltd.	2.20%
4.	Asit C Mehta Financial Services Ltd. (Seg.)	9.42%
5.	Caliber Point Business Solutions Ltd.	10.97%
6.	Coral Hubs Ltd. (formerly Vishal Information Technologies Ltd.)	50.68%
7.	Cosmic Global Ltd.	23.30%

8.	Crossdomain Solutions Ltd.	26.96%
9.	Datamatics Financial Services Ltd. (Seg.)	34.87%
10.	e4e Healthcare Business Services Ltd.	16.72%
11.	Eclerx Services Ltd.	65.88%
12.	Genesys International Corporation Ltd.	47.40%
13.	HCL Comnet Systems & Services Ltd. (Seg.)	32.90%
14.	Infosys BPO Ltd.	20.01%
15.	Iservices India Pvt. Ltd.	9.58%
16.	Maple eSolutions Ltd.	20.43%
17.	Mold-Tek Technologies Ltd.	96.66%
18.	R Systems International (Seg.)	4.30%
19.	Spanco Ltd. (Seg.)	11.04%
20.	Triton Corp Ltd.	23.81%
21.	Wipro Ltd. (Seg.)	30.05%
	<b>Average</b>	<b>29.25%</b>

In the above list, the TPO included 4 comparable companies selected by the appellant itself. The TPO thus worked out an adjustment of Rs. 98,28,555/- (Rs. 92,961,041 – Rs. 83,132,486/-).

In the case of audit services, similarly the TPO made an adjustment of Rs. 3,54,249/-.

6.1 Thus the following transfer pricing adjustments were made by the AO.

Sr. No.	Issue	Amount in Rs.
1.	Provision of IT enabled services	98,28,555/-
2	Audit services	3,54,249/-
	<b>Total</b>	<b>1,01,82,804/-</b>

It may be relevant to mention here that the appellant earned operating margin of 15.58% on cost 'Provision of IT enabled services' and 19.87% on cost from 'Audit Services'.

7. Before us, the ld. counsel for the assessee submits that *vide* the ground of appeal No. 1, 5 & 7 (additional) the entire transfer pricing adjustment of Rs. 1,01,82,804/- made by the TPO / AO is challenged. It is explained that (i) if the contention of the assessee in respect of exclusion of Coral Hubs Ltd. (formerly known as Vishal Information Technologies Ltd.) and Accentia Technologies Ltd. and (ii) the direction of the DRP for exclusion of eClerx Services Ltd. and Mold - Tek Technologies Ltd. is accepted then the appellant's operating margin would fall within +/- 5% range of arithmetic mean of comparables. Thus it is stated that thereafter the issue of comparability of the remaining disputed comparables would be rendered academic.

8. On the other hand, the Learned Departmental Representative (DR) relies on the order of the TPO/AO.

It is explained that no objection has been raised by the appellant for exclusion of Coral Hubs Ltd. and Accentia Technologies Ltd. before the TPO and the DRP.

In respect of Coral Hubs Ltd., it is stated that on perusal of financial statement of this company, it could be inferred that 'wages' were wrongly classified as 'vendor payments' under the head 'operating expenses' (Schedule 14). It is further argued by the ld. DR that this may be a mere classification issue regarding expenses leading to incorrect calculation of employee cost ratio and cannot be interpreted as different business model being adopted by the company. Referring to the 'Depreciation Schedule' it is stated that the

company owns assets and thus it could not be said that it was outsourcing its business.

In respect of Accentia Technologies Ltd., the ld. DR submits that extraordinary events do not have any impact on margins earned by company and thus, it should not have been excluded on account of extraordinary events.

9. We have heard the rival submissions and perused the relevant materials on record. The reasons are recorded given below:

We find that the DRP *vide* order dated 30.07.2012 have directed at para 12 (ii):

“Mold tek has earned super normal profits of 96.66%. Such profit is not representative of the industry. Similar is the case with Eclerx with a reported margin of 65.88%. These two companies, we agree, should be eliminated from the final list to make the comparison realistic.”

We find merit in the above directions given by the DRP and direct the AO to eliminate Mold-Tek Technologies Ltd. and Eclerx Services Ltd. from the final list of comparables.

9.1 In the case of Coral Hubs Ltd. (formerly known as Vishal Information Technologies Ltd.), we find that it has been excluded by the Tribunal in assessee’s own case of AY 2006-07 by observing as under:

“Para 11... as Vishal Information Technologies Ltd. is concerned, from the facts and material available on record, it is noticed that the business model of the company is totally different from that of the assessee as it does not undertake the work itself but outsources to its third parties vendors.

Following the consistent view expressed in the judicial precedents cited before us, we direct the Assessing Officer to exclude the company from the list of comparables.”

9.2 In *Pr. CIT vs Aptara Technology (P.) Ltd.* (2018) 92 taxman.com 240 (Bombay), for the AY 2008-09, the Hon’ble Bombay High Court held:

“II Coral Hub Ltd.:

(a) The impugned order of the Tribunal has excluded M/s. Coral Hub Ltd. from the list of comparable after rendering a finding of fact that activities undertaken by Coral Hub Ltd. are not comparable to that engaged by the Respondent-Assessee. It was found as a fact by the Tribunal that M/s. Coral Hub Ltd. is engaged in ITES particularly selling and purchasing of products and goods whereas the Respondent-Assessee is engaged in e-learning and content development activity. Besides, the Tribunal has recorded finding of fact that business model adopted by M/s. Coral Hub Ltd. was different inasmuch as it outsources its work to sub-vendors as against the Respondent-Assessee carrying out its activities in-house.

(b) The grievance of the Revenue is that both the Coral Hub Ltd. as well as the Respondent-Assessee are in the field of Information Technology Enabled Services. Therefore, by virtue of above fact, they become comparable.

(c) It is obvious that merely because the tested party and the comparable provide ITES, they do not become comparable. The content of the services rendered by virtue of IT is to be examined before holding it to be comparable. Besides, the two are not comparable as the business model in both are different i.e. outsourcing in one and in-house in the other. We further note that the impugned order of the Tribunal places reliance upon the decision of the Tribunal dated 30.10.2013 of its coordinate bench in the case of PTC Software India Pvt. Ltd. which also excluded M/s. Coral Hub Ltd. (formerly known as 'Vishal Information Technologies Ltd.'). Mr. Suresh Kumar the learned counsel for the Revenue very fairly states that being aggrieved by the above order an appeal was filed to this Court being Income Tax Appeal No. 732 of 2014 (CIT v. PTC Software). This appeal was dismissed upholding the finding of the fact of the Tribunal that M/s. Coral Hub (formerly known as 'Vishal Information Technologies Ltd.') was a company not only engaged in IT enabled services but also in providing agency services by way of outsourcing to third party vendors. In this case also, the impugned order of the Tribunal has come to a finding of the fact that the services rendered by the Respondent to its AE is different from the activities/services provided by M/s. Coral Hub Ltd. Therefore, they would not be comparable only on the ground that both of them broadly fall under the category ITES providers.

(d) The finding reached by the Tribunal is one of finding of fact which is not shown to be perverse. Thus, there is no reason to interfere with the finding of fact recorded by the Tribunal.”

9.2.1 Thus as per the above decision, M/s. Coral Hub Ltd. is engaged in ITES, particularly selling and purchasing of products and goods; further the business model adopted by it was different in as much as it outsources its work to sub-vendors.

As mentioned earlier the assessee-company in the instant case primarily provides foreign exchange services which include purchase and sale of foreign currency to individuals and corporate, in its capacity as a licensed full-fledged money changer. In addition the assessee – company also provides certain IT support services to its AE.

In view of the above factual scenario and the decision of the Hon’ble Bombay High Court in *Aptara Technology (P.) Ltd.* (supra), we exclude Coral Hubs Ltd. (formerly known as Vishal Information Technologies Ltd.), from the list of comparables.

9.3 In respect of Accentia Technologies Ltd., it is found that the DRP rejected it in assessee’s own case in AY 2010-11. Also the TPO excluded it in assessee’s own case in AY 2009-10. Further we observe that the company has made various acquisitions / mergers during FY 2007-08 which are extra ordinary events and such economically different facts have impacted the margin of the company.

We further notice that in the case of in the case of Accentia Technologies Ltd, the Hon’ble Bombay High Court in *Aptara Technology (P) Ltd.* (supra) for AY 2008-09 has held:

“(I) Accentia Technologies Ltd. :

(a) The impugned order of the Tribunal excluded Accentia Technologies Ltd. from the list of comparables by rendering a finding of the fact that the services rendered by Accentia Technologies Ltd. is different from that offered by the Respondent to its A.E. It found on facts that Accentia Technologies Ltd. was providing medical transaction, billing and coding services, application development and customization service in respect of which segmental data was also not available while the Respondent provides E-Learning service. Thus, the impugned order of the Tribunal found that M/s. Accentia Technologies Ltd. is not comparable with the Respondent-Assessee. Besides, impugned order also records a finding of fact that during the year the profitability of M/s. Accentia Technologies Ltd. had been impacted by merger/amalgamation and therefore, cannot be considered to be comparable.

(b) The grievance of the Revenue before us is that the merger and/or amalgamation would have no impact on the profitability of M/s. Accentia Technologies Ltd. Therefore, it was urged to be an appropriate comparable as both are rendering ITES services.

(c) We find that the impugned order of the Tribunal has after rendering a finding of fact that the activities of the tested party and comparable are functionally different, also records finding of fact that extraordinary events such as merger/amalgamation would have an impact/effect on the profitability of M/s. Accentia Technologies Ltd. Therefore, on both the above grounds, it was held to be not a comparable to the transaction of the Respondent with its AE.

(d) In fact on the issue of merger/amalgamation the Tribunal holds that it affected the profitability of M/s. Accentia Technologies Ltd. Reliance for the above was placed on the decisions of its coordinate benches in Hyderabad and Bangalore, i.e., Capital IQ Information Systems (India) Private Ltd. v. DCIT (2013) 32 Taxmann.com 21 (Hyderabad) and Symphony Marketing Solutions India Pvt. Ltd. v. ITO (2013) 38 Taxmann.com 55 (Bangalore). The Revenue has not attempted to show either before the Tribunal or even before us that the merger/amalgamation which took place in the previous year relevant to subject assessment year did not have an impact on the profitability of the Accentia Technologies Ltd. Merely because both the tested and the comparable provide ITES services they do not become comparable. This is so as the nature of services provided by use of InformationTechnology is different. In any event, no challenge has been made to the finding of the Tribunal that the activities carried out by Accentia Technologies Ltd. and the Respondent-Assessee are functionally different and, therefore, not comparable.

(d) Therefore, the view taken by the Tribunal in excluding Accentia Technologies Ltd. is a possible view more particularly in the absence of the same being shown to be perverse. Thus, no interference is warranted.”

9.3.1 As mentioned earlier the assessee-company in the instant case primarily provides foreign exchange services which include purchase and sale of foreign currency to individuals and corporate, in its capacity as a licensed full-fledged money changer. In addition the assessee - company also provides certain IT support services to its AE.

In view of the above factual scenario and the decision of the Hon'ble Bombay High Court in *Aptara Technology (P.) Ltd.* (supra), we exclude Accentia Technologies Ltd., from the list of comparables.

9.4 In view of our decision excluding Coral Hubs Ltd.; Accentia Technologies Ltd.; eClerx Services Ltd. and Mold - Tek Technologies, the issue of comparability of the remaining disputed comparables become academic in nature.

Accordingly ground no 3 and 7-8 (additional) are allowed. Ground No. 4 & 6 (additional) become academic in nature.

10. In the result, the appeal for AY 2008-09 is allowed.

**ITA No. 1464/MUM/2014**  
**(AY: 2009-10)**

11. The grounds of appeal filed by the assessee read as under :

- 1 On the facts and circumstances of the case and in law, the DRP erred in confirming the action of the AO/TPO in determining the arm's length price of the international transaction for provision of Information Technology enabled Services ('ITeS') at Rs.10,12,42,135/- instead of Rs.9,49,81,609/- and thereby making an adjustment of Rs.62,60,526.

- 2 On the facts and circumstances of the case and in law, the benefit of (+/-) 5% range in accordance with law [proviso to section 92C(2) of the Act], be granted to the Appellant, if eligible.
- 3 On the facts and circumstances of the case, the AO and DRP have erred in not granting the credit of taxes withheld of Rs.58,103 which was claimed by the Appellant in its return of income.
- 4 On the facts and circumstances of the case and in law, the AO and DRP have erred in not allowing brought forward losses including depreciation as per its return of income.
- 5 On the facts and circumstances of the case and in law, the AO and DRP have erred in levying interest of Rs.47,85,038 under section 234B of the Act.
- 6 On the facts and circumstances of the case and in law the AO and DRP have erred in initiating penalty proceedings under section 271(1)(c) of the Act.

12. The additional ground filed by the assessee on 06.03.2019 are produced below:

7. On the facts and circumstances of the case, the AO / TPO/ DRP has erred in rejecting certain companies selected by the appellant as comparables in its transfer pricing documentation.

8. On the facts and circumstances of the case, the AO/TPO/DRP has erred in including certain companies as comparables which are functionally not comparable to the appellant.

9. On the facts and circumstances of the case, the AO/TPO/DRP has erred in including certain companies as comparables which fail the filters applied by the TPO.

12.1 Having examined the contentions of the appellant, we find that the above additional grounds of appeal are being raised only with a view to bring to the fore the nature of objections of each of the comparables under dispute before the Tribunal. Therefore, we admit the additional grounds for adjudication.

13. The transfer pricing adjustment arising in the case of the appellant is on account of dispute on selection of comparables by the TPO / AO for benchmarking the international transaction. In short, the final comparable set adopted by the TPO is produced below:

Sr. No.	Company Name	OP/TC FY 08-09
1	Aditya Birla Minacs Worldwide Ltd.	23.86%
2	Coral Hub Ltd.	35.48%
3	Cosmic Global Ltd.	40.61%
4	Infosys BPO Ltd.	24.28%
5	Maple Esolutions Ltd.	8.58%
6	Acropetal Technologies Ltd. (IT Service)	21.30%
7	HCL Comnet Systems & Services Ltd. (ITeS)	39.24%
8	R Systems International Ltd. (BPO Services)	14.08%
9	Crossdomain solutions Ltd.	29.40%
	<b>Arithmetic Mean</b>	<b>26.31%</b>

Accordingly the TPO made an adjustment of Rs. 93,41,234/-.

14. It is the contention of the learned counsel that if Coral Hubs Ltd. (formerly known as Vishal Information Technologies Ltd.) is excluded from the above list of comparables, the appellant's operating margin would fall

within +/- 5% range of the arithmetic mean of the comparables and the issue of comparability of the remaining disputed comparables would be rendered academic.

On the other hand, the Id. DR reiterates his submission in AY 2008-09 for retention of the above comparable.

Let us examine it. We observe that Coral Hubs Ltd. was excluded by the Tribunal in assessee's own case for AY 2006-07. As mentioned earlier, it was excluded from the list of comparables on account of the same having a different business model in by the decision of the Hon'ble High Court in *Aptara Technology (P) Ltd.* (supra); *CIT v PTC Software (I) (P.) Ltd.* (2016) 75 taxmann.com 31 (Bombay); *Pr. CIT v PTC Software (I)(P) Ltd.* (2019) 101 taxmann.com 117 (Bombay); *Pr. CIT v BNY Mellon International Operations (India) (P.) Ltd.* (2018) 93 taxmann.com 353 (Bom); *Rampgreen Solutions (P.) Ltd. v CIT* (2015) 60 taxmann.com 355 (Delhi); *Pr. CIT v New River Software Services (P.) Ltd.* (2017) 85 taxmann.com 302 (Delhi); *CIT v Mercer Consulting (India) (P.) Ltd.* (2016) 76 taxmann.com 153 (P&H); *Pr. CIT v IHG IT Services (India) Pvt. Ltd.* (ITA No. 264 of 2016) (P & H).

In view of the above decisions, we exclude Coral Hubs Ltd. (formerly known as Vishal Information Technologies Ltd.) from the list of comparables. Thus ground no 1, 2, 8 (Additional) and 9 (Additional) are disposed of. Ground No. 7 (Additional) becomes academic in nature.

15. Ground No. 3 relates to short grant of credit for taxes withheld (to the extent of Rs. 58,103/-) which was claimed by the assessee in its return of

income. We direct the AO to verify it and grant tax credit as per the provisions of the Act.

Ground no. 4 relates to issue of set off of brought forward losses which was claimed by the assessee in its return of income. We direct the AO to verify it and allow set off of brought forward losses as per the provisions of the Act.

Ground No. 5 which relates to levy of interest on section 234B is consequential in nature. Ground No. 6 which pertains to initiation of penalty proceedings u/s 271(1)(c) is premature.

In the result, the appeal filed by the assessee for AY 2009-10 is partly allowed.

16. To sum up, the appeal filed for AY 2008-09 is allowed, whereas the appeal filed for AY 2009-10 is partly allowed.

**Order pronounced in the open Court on 10/02/2020.**

Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai; Dated:10/02/2020

Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**