

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

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
AND SHRI A.K.GARODIA, ACCOUNTANT MEMBER

IT(TP)A No. 2485/DEL/2013
Assessment year: 2008-09

M/s ISG Novasoft Technologies Ltd. 2 <sup>nd</sup> Floor, Maruthi Sapphire 128/9, Madiwala Machideva Road, Murugeshpalya, Bangalore - 560017 <b>PAN: AABCI 2488Q</b>	Vs.	The Deputy Commissioner of Income Tax, Circle 3(1)(1). Bengaluru. [formerly ITO, Ward 11(4), New Delhi].
APPELLANT		RESPONDENT

IT(TP)A No. 610/BANG/2013
Assessment year: 2008-09

The Deputy Commissioner of Income Tax, Circle 3(1)(1). Bangalore.	Vs.	M/s ISG Novasoft Technologies Ltd., Bangalore. <b>PAN: AABCI 2488Q</b>
APPELLANT		RESPONDENT

Assessee by	:	Shri S.Vasudevan, Advocate.
Revenue by	:	Smt R. Premi, JCIT (DR)(ITAT),Bengaluru.

Date of hearing	:	11.03.2020
Date of Pronouncement	:	20.03.2020

**ORDER**

*Per N.V. Vasudevan, Vice President*

IT((TP)A No.2485/Del/2013 is an appeal by the Assessee while IT(TP)A No.610/Bang/2013 is appeal by the revenue. Both these appeals are directed against the order dated 25.2.2013 of CIT(Appeals)-XX, New Delhi, relating to assessment year 2008-09.

2. The grounds raised in the appeal by the Assessee (as per amended grounds) and the grounds of appeal raised by the revenue in its appeal are with regard to determination of Arm's Length Price (ALP) and are connected to the grounds raised by the revenue in its appeal. As far as the issue of determination of ALP of international transactions carried out by the assessee with its Associated Enterprise (AE) is concerned, the same is in respect of Information Technology Enabled Services (ITeS). During the previous year, the assessee rendered Information Technology Enabled Services [ITES] to its AE. As required under the provisions of section 92 of the Income Tax Act, 1961 (Act), income arising from international transaction with AE has to be computed having regard to the arm's length price [ALP]. The assessee filed a transfer pricing [TP] study justifying the amount that it received for providing ITES to its AE as one at Arm's Length. The assessee received a sum of Rs.20,05,56,461 from its AE for providing ITES. The assessee in its TP study justifying the amount received from its AE is at arm's length, selected the Transactional Net Margin Method [TNMM] as the most appropriate method(MAM). The assessee adopted Operating Profit to Operating Cost (OP/OC) as the profit level indicator (PLI) for comparison of Assessee's net profit margin with that of comparable companies. The Assessee selected comparable companies and claimed that the average arithmetic profit margin of those companies when compared with that of the Assessee's profit margin was at Arm's

Length after benefit of (+)/(-) variation to the profit margin permitted by the second proviso to Sec.92CA(2) of the Act.

3. The Transfer Pricing Officer (TPO) to whom the rejected the Transfer Pricing Analysis of the Assessee and he finally proposed final set of 20 comparable companies and the arithmetic mean of profit margins of those comparable was as follows:-

Sl.No.	Name of the company
1	Accentia Technologies Ltd. (Seg.)
2	AcropetalTechnologies Ltd. (Seg.)
3	Aditya Birla Minacs Worldwide Limited (Earlier known as Transworks Information Services Ltd.)
4	Asit C Mehta Financial Services Ltd. (Seg.)
5	Caliber Point Business Solutions Ltd.
6	Coral Hubs Ltd. (Earlier known as Vishal Information Technologies Ltd.)
7	Cosmic Global Ltd.
8	Crossdomain Solutions Ltd.
9	Datamatics Financial Services Ltd. (Seg.)
10	e4e Healthcare Solutions Ltd. (Formerly known as Nittany Outsourcing Services Pvt. Ltd.)
11	Eclerx Services Ltd.
12	Genesys International Corporation Ltd.
13	Infosys BPO Ltd.
14	IServices India Pvt. Ltd.
15	HCL Comnet Systems & Services Ltd.(Seg.)
16	Mold-Tek Technologies Ltd.
17	R Systems International Ltd. (Seg.)
18	Spanco Ltd. (Seg.) [Earlier known as Spanco Telesystems & Solutions Ltd.)
19	Wipro Ltd. (Seg.)
20	ICRA Techno Analytics Ltd. (seg.)

4. The Average Arithmetic mean profit margin of the aforesaid 20 companies after working capital adjustment was 25.40%. The TPO determined the ALP of the international transaction and the consequent addition/adjustment to the total income as follows:-

“Computation of Arms Length Price:

The arithmetic mean of the Profit Level Indicators is taken as the arms length margin. (Please see Annexure E for details of computation of PLI of the comparables). Based on this, the arms length price of the software development services rendered by the taxpayer to its AE(s) is computed as under:

Arm's Length Mean PLI	29.16%
Less: Working Capital Adjustment (as per Annexure-C)	3.76%
Adjusted mean margin of the comparables	25.40%
Operating Cost	Rs.18,28,28,461
Arms Length Margin	25.40% of the Operating Cost
Arms Length Price (ALP)	Rs.22,92,66,890
Price Received	Rs.20,05,56,461
Shortfall being adjustment u/s. 92CA	Rs.2,87,10,429

The above shortfall of Rs.2,87,10,249/- is treated as transfer pricing adjustment u/s. 92CA.”

5. The above adjustment suggested by the TPO was incorporated in the draft assessment order by the AO as an addition to the Total income. Against the draft assessment order of the AO incorporating the adjustment to the ALP as proposed by the TPO, the Assessee did not file any objection before the Dispute Resolution Panel (DRP). The AO passed final assessment order. Against the final assessment order, the Assessee preferred appeal before CIT(A).

6. The CIT(A) directed exclusion of Genesys International Corporation Ltd., Coral Hub Ltd., and Mold-tek technologies Ltd., from the list of comparable companies chosen by the TPO. The CIT(A) while computing the average arithmetic mean margin of the remaining 17 comparable companies arrived at a profit margin of 24.23%. There were some clerical errors in the said calculation done by the CIT(A). This was pointed out by the Assessee to the CIT(A) in an application filed u/s.154 of the Act dated 7.5.2013 filed in the office of the CIT(A) on 29.5.2013. The same is as follows:-

“We refer to your order under section 250 of the Act dated 25 February 2013 (enclosed Annexure- 1) received by us on 28 February 2013. In this regard, we wish to highlight the following mistakes which were apparent on record:

In this said order (Table – 2 Page 50 of the order). We observe that your goodself has erroneously computed the margins of various comparable companies. The same is elucidated below your goodself’s reference:

Company Name	AY 2008-09	
	As per your goodself’s order	Rectified Margins
Accentia Technologies Ltd. (Seg.)	39.60%	39.60%
Acropetal Technologies Ltd. (Seg.)	2.56%	27.97%
Aditya Birla Minacs Worldwide Limited	27.97%	-9.25%
Asit C Mehta Financial Services Ltd.	-9.25%	6.86%
Caliber Point Business Solutions Ltd. (Seg.)	6.86%	6.46%
Coral Hubs Ltd. (Vishal Information)*	6.64%	Rejected*
Cosmic Global Ltd.	39.12%	23.38%
Crossdomain Solution P. Ltd.	23.38%	25.37%
Datamatics Financial (BPO Division)	25.37%	32.48%
e4e (earlier known Nittany Outsourcing Services Pvt. Ltd.)	32.48%	14.02%
Eclerx Services Ltd.	14.02%	64.07%
Genesys International Ltd.	Rejected	Rejected
HCL Comnet Systems & Services Ltd.(Seg.)	44.07%	29.58%

ICRA Online Ltd. (Seg.)	29.58%	7.57%
Infosys BPO Ltd.	7.57%	18.12%
I-Service Ind P Ltd	18.12%	7.71%
Mold-Tek Technologies Ltd.	Rejected	Rejected
R Systems International Ltd. (Seg.)	35.51%	2.56%
Spanco Telesystems & Solutions Ltd (Seg)(Consolidated)	89.53%	3.02%
Wipro Ltd. (Seg.)	3.02%	35.51%
<b>Average</b>	<b>24.23%</b>	<b>19.72%</b>

\*Your goodself has rejected Vishal Information Technologies Limited in the said order. However, the same has been erroneously included in the margin computation for AY 2008-09.

Consequent to the above rectification, the computation of adjustment sustained / relief provided to the appellant would read as follows (Table -4, Page 51 of the order):

Particulars	AY 2008-09	
	As per your goodself's order	Rectified Margins
Operating Revenue	227,127,797	218,880,083
Operating Cost	182,828,461	182,828,461
Operating Profit	44,299,336	36,051,622
Operating Margin (OP/OC)	24.23%	19.72%
Price of International Transaction shown	200,556,461	200,556,461
Adjustment sustained	26,571,336	18,323,622
Adjustment as per TPO	28,710,429	28,710,429
Relief given to the Appellant	2,139,093	10,386,807

Based on the above, we humbly request your goodself to rectify the mistake apparent from record in your order dated 25 February 2013, as explained in above paragraphs by passing an order under section 154 of the Act.”

7. It was stated that the said application is still pending consideration before the CIT(A).

8. Aggrieved by the order of the CIT(A) in excluding Genesys International Corporation Ltd., and Mold-tek Technologies Ltd., from the list of comparable companies, the revenue is in appeal before the Tribunal.

9. Aggrieved by the order of the CIT(A) in not excluding some of the comparable companies which the Assessee sought exclusion before the CIT(A), the Assessee is in appeal before the Tribunal.

10. At the time of hearing, the learned counsel for the Assessee prayed for adjudication of amended grounds relating to exclusion of the following six comparable companies, viz., Accentia Technologies Ltd., Acropetal Technologies Ltd., Crossdomain Solutions Pvt. Ltd., Eclerx Services Ltd., Infosys BPO Ltd., and WIPRO Ltd. Therefore the comparability of the 8 companies viz., the two companies excluded by CIT(A) which the revenue challenges in their appeal and the 6 companies which the Assessee seeks exclusion alone need to be adjudicated and no other ground of appeal was pressed for adjudication on behalf of the Assessee.

11. The learned counsel for the Assessee filed before us a copy of the decision of the ITAT Bangalore Bench in the case of *Symphony Marketing Solutions India (P) Ltd. Vs. ITO (2013) 83 Taxmann.com 55 (Bangalore-Trib.)* wherein the comparability of all the aforesaid 8 companies were considered by the Tribunal. It is not disputed before us that the functional profile of the Assessee and that of the case decided by the Tribunal are identical i.e., both are in ITeS. The fact that 18 out of the 20 comparable companies chosen in the case of the Assessee and in the case decided by the Tribunal by itself would show that the functional profile of the two companies are similar. Therefore the ratio laid down in the decision cited before us, which is also in relation to AY 2008-09, can safely be applied in the present case also. We shall now see the relevant portion of the

decision of the Tribunal in the case of *Symphony Marketing solutions (supra)*.

12. In Paragraph-9 onwards of the order cited before us, the comparability of all the 8 companies have been discussed and held that these 8 companies are not functionally comparable with a company rendering ITeS such as the Assessee. The relevant conclusions of the Tribunal is as follows:-

“9. We have heard the submissions of both the parties. The Id. counsel for the assessee filed before us submissions on each of the companies that were considered as comparable by the TPO and has also explained as to why those companies cannot be considered as comparable. The Id. DR, on the other hand, relied on the order of the TPO and the directions of the DRP, wherein the DRP has given reasons as to why the objections of the assessee to adopt comparable proposed by the TPO should not be accepted. We will deal with these objections while we take up the individual comparable companies for consideration.

**(1) Accentia Technologies Ltd. (Seg.)**

10. This was considered as a comparable by the TPO and listed at Sl.No.1 of the comparable companies chosen by the TPO. The Id. counsel for the assessee drew our attention to the fact that there are extra ordinary events that occurred during the previous year in this company. Our attention was draw to the annual report of this company for the A.Y. 2007-08 wherein the fact that this company had acquired Thunga Software Pvt. Ltd., GSR Physicians Billing Services Inc., GSR Systems Inc. and Denmed Inc. is mentioned. Our attention was also drawn to the decision of the Hyderabad ITAT Bench in the case of Capital IQ Information Systems India Pvt. Ltd. v. DCIT (2013) 32 Taxman.com 21 (Hyd. Trib). In the aforesaid decision, the Hyderabad Bench of the Tribunal had to deal with a case of determination of ALP in the case of an assessee who was providing ITES business support services for the A.Y. 2007-08. The TPO had considered Accentia Technologies Ltd. as a comparable. The DRP however held that the said company

cannot be compared as a comparable owing to extra ordinary events that took place during the previous year. The Tribunal upheld the order of the DRP observing as follows:-

“I. Accentia Technologies Ltd.

10. It is the submission of the assessee that this company cannot be treated as a comparable because of uncomparable financial results arising out of amalgamation in the company. In this regard, the assessee has relied upon the order of the DRP for the assessment year 2008-09 in assessee's own case. It is seen that the DRP while considering similar objection placed by the assessee in the case of another company, viz. Mold Tek Technologies Ltd., in the proceedings relating to the assessment year 2008-09, has observed in the following manner-

"17.5. In addition to the above, the Director's Report of the company for the FY 2007-08 revealed the merger and the demerger. A company known as Techmen Tools Pvt. Ltd. had amalgamated with Mold-tek Technologies Ltd. with effect from 1st October, 2006. There was a de-merger of Plastic Division of the company and the resulting company is known as Moldtek Plastics Limited. The de-merger from the Moldtek Technologies took place with effect from 1st April, 2007. The merger and the de-merger needed the approval of the Hon'ble High Court of Andhra Pradesh and also the approval of the shareholders. The shareholders of the company gave approval for the merger and the de-merger on 25.01.2008 and the Hon'ble High Court of Andhra Pradesh had approved the merger and de-merger on 25th July, 2008. Subsequently, the accounts of Moldtek Technologies for FY 2007-08 were revised. On a perusal of the annual report it is noticed that Teckmen Tools Pvt. Ltd. and the Plastic Division of the company were demerged and the resulting company was named as Moldtek Plastics Ltd. The KPO business remained with the company. A perusal of the Annual report revealed that to give effect to the merger and demerger, the financial statements

were revised and restated after six months from the end of the financial year 31.3. 2008. The assessee filed Form No.21 under the Companies Act with the Registrar of Companies on 26th August, 2008. Thus the effective date of the scheme of merger and demerger was 26th August, 2008. The Annual Report supported the argument of the assessee that there were merger and demerger in the financial year and it was an exceptional year of performance as financial statements were revised by this company much after the closure of the previous year. The Panel agrees with the contention of the assessee that it is an exceptional year having significant impact on the profitability arising out of merger and demerger."

11. On careful consideration of the matter, we also agree with the aforesaid view of the DRP that extraordinary event like merger and de-merger will have an effect on the profitability of the company in the financial year in which such event takes place. It is the contention of the assessee that in case of the aforesaid company, there is amalgamation in December, 2006, which has impacted the financial result. This fact has to be verified by the TPO. If it is found upon such verification that the amalgamation in fact has taken place, then the aforesaid comparable has to be excluded."

11. We have considered the submissions of the Id. counsel for the assessee and are of the view that the ratio laid down by the Hyderabad Bench of the ITAT is squarely applicable to the present case also. It is clear that during the previous year there were extra ordinary events that took place in this company which warrants exclusion of this company as a comparable. We therefore hold that this company cannot be considered as a comparable.

**(2) Acropetal Technologies Ltd. (Sea.)**

12. This company is listed at Sl.No.2 of the comparables chosen by the TPO. As far as this company is concerned, the objection of the assessee is that this company is not functionally comparable. The assessee is a BPO company that provides market analytics

and data management services. To provide market analytics solutions, the assessee gives strategies that impact on client revenue including data based marketing strategies for customer acquisition, devising customer retention strategies and excluding loss mitigation strategies through cutting edge forecasting tools. The data management services provided by the assessee include routine business data reporting and management, website management, marketing data analysis and top line reporting. As far as Acropetal Technologies Ltd. is concerned, this company does the business of export of software services. It is also seen from the segmental revenue of this company (Note 15 to the notes on accounts to Annual Report for 07-08) that it derives income from engineering design services and software development services. It is also pertinent to point out that before the TPO, the assessee raised an objection that this company performs different functions and mainly engaged in the area of software development services and engineering design services. The TPO in his order has observed that the services rendered by this company fall in the definition of ITES.

13. We have considered the submissions of the learned counsel for the Assessee. On a perusal of the Note No.15 of notes to accounts which gives segmental revenue of this company, it is clear that the major source of income for this company is from providing Engineering Design Service and Information Technology Services. The functions performed by the Engineering Design Services segment of the company cannot be considered as comparable to the ITES/BPO functions performed by the Assessee. The performance of Engineering Design Services is regarded as providing high end services among the BPO which requires high skill whereas the services performed by the Assessee are routine low end ITES functions. We therefore hold that this company could not have been selected as a comparable, especially when it performs engineering design services which only a Knowledge Process Outsourcing [KPO] would do and not a Business Process Outsourcing [BPO].

#### **(4) Crossdomain Solutions Ltd.**

18. This company was considered as a comparable and listed at Sl.No.8 of the comparables chosen by the TPO. It is the stand of

the assessee that this company is not functionally comparable. As observed in the case of Coral Hubs Ltd., the TPO rejected the plea of the assessee on the basis of a non-existent TP order passed for the A.Y. 2007-08. It is seen that the business profile of this company is re-engineered payroll service. This company is also engaged in the development of information systems. These activities are totally different from the activities of the assessee which perform very limited/low end functions back office services. The review and business functions of Cross Domain is as follows:-

“With a decade of experience in Payroll Outsourcing, Crossdomain has created a re-engineered payroll service EFFIPAY - that processes and delivers accurate payroll to clients with headcount up to 1000 employees in just 4 hours\*. With Effipay Lite and Effipay Lite Plus, our bouquet of services cover end to end payroll, retrials, reimbursement, tax proof verifications upto issue of Form 16 for employees of our clients across different industry verticals. Our processes are highly scalable and provide end to end payroll solutions to clients with headcount ranging from 5 to 65,000.

“Crossdomain’s IT knowledge and domain competence has provided the edge to develop information systems to implement process innovation and continuously increase efficiency and turn-around-time for business critical processes.”

Source: <http://www.cross-domain.com>

As can be seen from the above, the business of Cross Domain ranges from high end KPO services, development of product suites and routine low end ITES service. However, there is no bifurcation available for such verticals of services. Therefore the assessee contends that Cross Domain cannot be compared to a routine ITES service provider.

19. We are of the view that in the absence of any reasons given to the contrary either by the TPO or the DRP for regarding this company as a comparable, this company should be excluded from the list of comparables, accepting the plea of the Assessee. We hold accordingly.

**(5) Eclerx Services Ltd.**

20. This company is listed at Sl.No.11 in the list of comparable companies chosen by the TPO. It is the stand of the assessee that this company offers solutions that include data analytics, operations management, audits and reconciliation and therefore has to be classified as high end KPO. In support of the stand of the assessee, extracts from the annual report of this company have been pointed out. It has further been submitted that extra ordinary events and peculiar circumstances prevail in the case of the assessee in as much as this company acquired a UK based company which has significantly contributed to the increase in the customer and revenue base of the company. This Tribunal in the case of Capital IQ Information Systems India Pvt. Ltd. (supra) had an occasion to deal with comparability of this company in the case of an ITES company such as the Assessee and the Tribunal held as follows:-

“14. The assessee has objected for this company being taken as comparable mainly on the ground that it was having a supernormal profit of 89%, and as such it cannot be taken as a comparable in view of the decision of the Mumbai Bench of the tribunal in the case M/s. Teva India Ltd. (supra). That apart, relying upon the annual report of the company, the learned Authorised Representative for the assessee has contended that that the concerned company is engaged in providing Knowledge Process Outsourcing(KPO) Services.

15. On considering the objections of the assessee in relation to this company, we accept the contention of the assessee that this company cannot be taken as a comparable both for the reasons that it was having supernormal profit and it is engaged in providing KPO services, which is distinct from the nature of services provided by the assessee.”

21. We are of the view that in the light of the decision of the Hyderabad Bench referred to above, this company cannot be regarded as a comparable for the reason that it was functionally different.

**(6) Genesys International Corporation Ltd.**

22. This company is listed at Sl. No.12 in the list of comparable companies chosen by the TPO. As far as this company is concerned, the stand of the assessee has been that this company is functionally not comparable and that it has a different employee skill set and that this company performs R&D services and also owns intangibles. This company is a geospatial services content provider specialising in land based technologies. From the notes to accounts of this company, it is seen that this company is engaged in providing geographical information services comprising of photogrammetry, remote sensing cartography, data conversion related computed based services and other related services. Further the business of this company requires skilled manpower and scientists, civil engineers, etc. The assessee is a routine ITES provider who does not require such highly skilled employees. Besides the above, this company also carries out R&D services and own intangibles. The aforesaid facts, in our view, will take this company out of the list of comparables. We may also point out that the objection of the assessee in this regard has been disregarded by the TPO by mere observation that it cannot be rejected on the basis that it is into different functional line within ITES. In this regard, we may refer to the decision of the ITAT Bangalore Bench in the case of First Advantage Offshore Services Ltd. (supra), wherein it was observed as under:-

“39. Having heard both the parties and having considered their rival contentions, we find that the assessee had raised elaborate objections to each of the comparables in group 3 before the TPO. The TPO has also reproduced the said objection in his order para 6.5.1. of page 178 of his order. He has rejected the contention of the assessee by holding that every function within BPO sector can be from low end to high end and the activities of the assessee such as accounting, web management, network management are BPO services using technology but these services are not categorized as KPO. He held that a call centre may offer support services like telemarketing to high end services like technical support services, where not only the level of knowledge, skill required would be high, but the technical knowledge as well would be high. According to

him, back office transaction process services may be as remarkable and as complicated as insurance/market transaction processing services. He, therefore, rejected the contention of the assessee and treated the BPO as equivalent to KPO services.

40. We have to now consider whether a BPO and KPO are functionally similar and are comparable to each other. BPO is a sub-set of outsourcing and involves the contracting of the operations and responsibilities of specific business functions or process to a third party services provider. Often business processes outsourcing are information technology based and referred to as ITES-BPO. KPO is one of the sub-segment of the BPO industry. It involves outsourcing of core information related business activities which are competitively important or form an integral part of a company's value chain. It thus requires advanced analytical and technical skills as well as a high degree of specialist expertise. The KPO services include all kinds of research and information gathering. Thus it can be seen that even though both BPO and KPO are offering information Technology based services, the skill and expertise and may be even the tools required are different which may result in different economic results of both the segments. Thus, in such circumstances, we are of the opinion that they cannot be compared with each other and have to be excluded from the list of comparables.”

23. It is thus clear from the aforesaid decision of the Tribunal that among the ITES companies there is a hierarchy in terms of skill required to provide services. It ranges from providing routine services where no skills and required and providing services where highly professionalized skills are required. Depending on the skills required to perform ITES the comparability has to be done. In view of the above, we are of the view that this company cannot be regarded as a comparable and deserves to be excluded from the list of comparables.

**(7) Infosys BPO Ltd.**

24. This company is listed at Sl.13 in the list of comparable companies chosen by the TPO. As far as this company is concerned, it is the submission of the ld. counsel for the assessee that this company has a brand value and therefore there would be

significant influence in the pricing policy which will impact the margins. Schedule 13 to the profit & loss account of this company for the F.Y. 2007-08 shows that this company incurred huge selling and marketing expenses. Page 133 of the annual report of this company for the F.Y. 2007-08 shows that this company realizing its brand value has chosen to value the same on the basis of its earnings and that of Infosys. The brand value of the Assessee and Infosys has been valued at Rs.31,863 Crores. Infosys BPO, being a subsidiary of Infosys, has an element of brand value associated with it. This is also clear from the presence of brand related expenses incurred by this company. Presence of a brand commands premium price and the customers would be willing to pay, for the services/products of the company. Infosys BPO is an established player who is not only a market leader but also a company employing sheer breadth in terms of economies of scale and diversity and geographical dispersion of customers. The presence of the aforesaid factors will take this company out of the list of comparables. We therefore accept the contention of the assessee that this company cannot be regarded as a comparable.

**(8) Mold-tek Technologies Ltd.**

25. This company is listed at Sl.No.16 of the list of comparable companies chosen by the TPO. As far as this company is concerned, the submission of the assessee before us is that it is in the business of Knowledge Process Outsourcing and cannot be considered as a comparable. The functional profile of this company is as follows:-

As per the annual report for the F.Y. 2007-08, the company primarily operates in two business segments:

**Plastic division:** The plastic division is engaged in the manufacture of tube & oils, paints, pet products, consumer products, etc. The company demerged the said segment effective 1 April, 2007 and transferred the business unit to the Company Plastics Lt. The extract from the annual report confirms the fact that the Company had restructured its operations resulting in demerging the plastic segment business.

Information Technology (IT) division: The IT division (also referred to as the KPO division by the company) of the company specializes in providing structural design and detailing services which can be categorized as structural engineering services. The structural engineering services provided by the IT division of the company cannot be classified as falling with the scope and ambit of ITES services. On the contrary, the said services would fall under the category of engineering services.

Excerpts from the Annual Report of the company

Page 10 of the Annual Report for the FY 2007-08 contains the following observation regarding the KPO division of the Company:

“The Company has achieved about 56.49% growth in 2007-08 to register a turnover of Rs.17.86 crore. The company having established its credentials in structural engineering services to US clients is devising aggressive marketing strategy to achieve rapid growth. “”

This company is also engaged in providing a host of engineering services like civil and structural engineering services, mechanical product design, plant engineering, IT services and GIS services. As we have already seen, this company is to be classified as KPO and cannot be compared with the assessee. The decision of the Bangalore Bench of the ITAT in the case of First Advantage Offshore Services Ltd. (supra) which we have referred to in the earlier part of this order will clearly apply to this company. We therefore direct this company to be excluded from the list of comparables.

**(8) Wipro Ltd.**

26. This company is listed at Sl.No.18 in the list of comparable companies chosen by the TPO. As far as this company is concerned, the discussion made while deciding Infosys BPO Ltd. as a comparable will equally apply to this company also. This company owns substantial intellectual property on software products. This company cannot therefore be regarded as a comparable. For the reasons given while disregarding Infosys

BPO Ltd. as a comparable, this company is also directed to be excluded from the list of comparables.”

9. Respectfully, following the decision of the Tribunal, we uphold the exclusion of Genesys International Corporation Ltd., and Mold-tek Technologies Ltd., by the CIT(A) and dismiss the relevant grounds of appeal of the revenue. We also direct exclusion of the following six companies sought by the Assessee in its appeal, viz., Accentia Technologies Ltd., Acropetal Technologies Ltd., Crossdomain Solutions Pvt. Ltd., Eclerx Services Ltd., Infosys BPO Ltd., and WIPRO Ltd.

10. We also direct the TPO while giving effect to this order to verify the correctness of the claim of the Assessee with regard to incorrect profit margin of comparable companies considered by the CIT(A) in the impugned order as stated in the application filed u/s.154 of the Act and if found correct, adopt the correct profit margins as reflected in the TPO's order. The TPO shall recomputed the ALP in the light of the directions given above after affording opportunity of being heard to the Assessee.

11. In the result, the appeal of the Assessee is partly allowed while the appeal of the revenue is dismissed.

Pronounced in the open court on this 20<sup>th</sup> day of March, 2020.

Sd/-

( A.K.GARODIA )  
ACCOUNTANT MEMBER

Sd/-

( N V VASUDEVAN )  
VICE PRESIDENT

Bangalore,  
Dated, the 20<sup>th</sup> March, 2020.

*/Desai S Murthy/*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar  
ITAT, Bangalore.