

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

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 2039/MUM/2017
Assessment Year: 2011-12**

Aditya Birla Nuvo Limited
[Successor to Aditya Birla
Minacs BPO Pvt. Ltd.] Aditya
Birla Centre A-Wing, 4th
Floor, S.K. Ahire Marg, Worli
Mumbai-400030.

PAN No. AAACC8690F

Appellant

Vs. Asst. Commissioner of
Income Tax, LTU-1, World
Trade Centre, 29th Floor,
Centre-1, Cuffe Parade,
Mumbai-400005.

Respondent

**ITA No. 2217/MUM/2017
Assessment Year: 2011-12**

Asst. Commissioner of
Income Tax, LTU-1, World
Trade Centre, 29th Floor,
Centre-1, Cuffe Parade,
Mumbai-400005.

Appellant

Vs. Aditya Birla Nuvo Limited
[Successor to Aditya Birla
Minacs BPO Pvt. Ltd.]
Aditya Birla Centre A-
Wing, 4th Floor, S.K. Ahire
Marg, Worli Mumbai-
400030.

PAN No. AAACC8690F

Respondent

Revenue by : Mr. Suhas Kulkarni, DR
Assessee by : Mr. Rajan Vora, AR

Last date of Hearing : 03/01/2020
Date of Pronouncement: 20/03/2020

ORDER

PER N.K. PRADHAN, AM

The captioned cross appeals - one filed by the assessee and the other by the Revenue - are directed against the order of the Commissioner of Income Tax (Appeals)-55, Mumbai (in short 'CIT(A)') and arise out of the assessment order passed u/s 143(3) r.w.s. 144C(1) of the Income Tax Act 1961, (the 'Act').

ITA No. 2039/MUM/2017
Assessment Year: 2011-12

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

On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the order of AO/TPO in :

1. determining the total taxable income of the Appellant for AY 2011-12 against NIL income as reported in the Return Of Income filed by the Appellant.
2. making a transfer pricing adjustment to the total income of the Appellant by holding that the international transactions entered into by the Appellant with its Associated Enterprises ('AEs') were not at arm's length;
3. erred by applying certain rejection criteria/ filters, in an arbitrary, subjective and erroneous manner for the purpose of selection of comparable companies;
4. erred in rejecting Caliber Point business Solutions Limited, Coral Hub Limited and R Systems International Limited as comparable companies on the ground that the companies follow a financial year other than April-March;
5. erred in including TCS e-Serve Ltd. Ltd being functionally not comparable in as much as the same is engaged in high end services by using specialized domain knowledge / Brand Value / Scale of Operation/ High Turnover whereas the Appellant company is engaged in providing low and back office support services of data processing;
6. erred in including Acropetal Technologies Limited and Accentia Technologies Ltd being functionally not comparable in as much as the Segmental results are

not available for BPO segment and are engaged in high end services by using specialized domain knowledge whereas the Appellant company is engaged in providing low end back office support services of data processing.

7. erred in dismissing the ground of Appellant's appeal on initiation of penalty proceedings by AO / TPO under Section 271(1)(c) of the Act.

3. Briefly stated, the facts of the case are that the assessee M/s Aditya Birla Minacs BPO Pvt. Ltd. (in short 'ABMBPO') is a financial outsourcing company rendering IT enabled accounting and financial services. It is a wholly owned subsidiary of Aditya Birla Minacs BPO Ltd., UK ('ABMBPO UK'). The assessee was merged with Aditya Birla Nuvo Ltd. w.e.f. 01.10.2015. Pursuant to it, w.e.f. 01.07.2017, Aditya Birla Nuvo Ltd. amalgamated with Grasim.

During the AY 2011-12, the assessee had entered into an agreement with ABMBPO UK and Mincas Group (USA) for rendering certain accounting and back office support services. As per the agreement, the assessee is compensated at agreed hourly rate for services rendered. The assessee applied internal Transactional Net Margin Method (TNMM) as most appropriate method at segmental level by adopting Operating Profit to Total Cost ('OP/TC') as the Profit Level Indicator ('PLI'). On the said basis, as the margins earned by the assessee from AE segment (i.e. 15.34% on operating cost) is higher than the margins earned from non-AE segment (i.e. -29.48% on operating cost), it concluded that the international transaction of provision of services to its AEs is at arm's length from an Indian transfer pricing perspective.

Further, during the AY 2011-12, the assessee also applied external TNMM as the most appropriate method (secondary analysis) and for the

purpose of benchmarking the said international transaction, it identified 14 companies as comparable to determine the ALP of the aforesaid international transaction. On the basis of the above, as the margin earned by the assessee from the AE segment (i.e. 15.34% on operating cost) is higher than/within + - 5% of the margins earned by the comparable companies, it concluded that the international transaction of provision of services to its AEs is at ALP from an Indian transfer pricing perspective.

The Transfer Pricing Officer (TPO) disregarded the assessee's TP analysis by rejecting allocation of rent, rates and taxes, repairs maintenance, communication, power & fuel charges, based on desk utilization ratio (AE: Non-AE 54:46). Further, the TPO allocated the same in ratio of employee cost (72.7:27.3) for AE to non-AE segment. Accordingly, additional indirect cost of Rs.56,63,474/- was allocated to AE segment.

Further, the TPO disregarded internal TNMM used by the assessee as the primary method to benchmark the international transaction and applied external TNMM. While applying external TNMM, the TPO rejected certain comparable companies and added certain companies. The final set of comparable companies considered by the TPO is as under :

Sr. No.	Comparable companies	Single year margins (OP/OC)	Reference
1.	Informed Technologies India Limited	9.59%	Appellant's comparables
2.	Infosys BPO Limited	17.86%	
3.	Jindal Intellicom Private Limited	13.70%	
4.	Accentia Technologies Limited	29.18%	TPO's comparables
5.	Acropetal Technologies	23.95%	

6.	e-4e Healthcare Business Services Pvt. Ltd	9.77%	
7.	TCS e-serve Ltd.	69.31%	
	Arithmetic mean	24.77%	

Based on the above, the TPO made an adjustment of Rs.1,87,79,675/-. Accordingly, the AO made an addition of Rs.1,87,79,675/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 30.11.2016, the Ld. CIT(A) rejected the allocation methodology adopted by the TPO and restored appellant margins (i.e. 15.34%) as computed by the assessee in the transfer pricing documentation prepared for the impugned assessment year and further directed the TPO to include Microgenetics Systems Ltd. as a comparable company in the set used for benchmarking the international transaction of the assessee.

5. Before us, the Ld. counsel for the assessee begins with the 4th ground of appeal and submits that the TPO/CIT(A) erred in rejecting comparable companies following a financial year (i.e. different from April to March). It is stated that the exclusion of Caliber Point Business Solutions Ltd. (segmental) and Coral Hub Ltd. is not disputed. Only point of dispute is the exclusion of R Systems International Ltd. Relying on the order of the Tribunal in assessee's own case for AY 2010-11 (ITA No. 566/Mum/2015) ; *Maersk Global Service Centre India (P.) Ltd. v. ACIT* (2018) 94 taxmann.com 418 (Mumbai-Trib.) for AY 2011-12; *Goldman Sachs (India) Securities (P.) Ltd. v. ACIT* (2017) 78 taxmann.com 142 (Mumbai-Trib.) for AY 2011-12 and the judgment of the Hon'ble Delhi High Court in *CIT v. Mckinsey Knowledge Centre India (P.) Ltd.*

(ITA 217/2014), the Ld. counsel submits that the quarterly results of R Systems International Ltd. is available in public domain ; considering the said quarterly results, the revised margin of R Systems International Ltd. from “Business process outsourcing segment” is -2.79% on cost and therefore, the extrapolated results be considered and R Systems International Ltd. be included as valid comparable.

6. On the other hand, the Ld. Departmental Representative (DR) submits that R Systems International Ltd. cannot be treated as a valid comparable in view of the fact it followed a different financial year than the financial year followed by the assessee i.e. FY ending 31st March. In this regard, reliance is placed by him on the decision in *PTC Software (I) Pvt. Ltd.* 395 ITR 176 (Bom), *Principal Global Services Pvt. Ltd.* 257 taxman 244 (Bom) 95 taxmann.com 315, *Tevapharma India (P.) Ltd.* (2017) 81 taxmann.com 416 (Mumbai-Trib.), *Hapag Lloyd Global Services Pvt. Ltd.* (TS-47-ITAT-2013(Mum)(TP) ITA No. 8499/Mum/2010 dated 28.02.2013, *Ocwen Financial Solutions Pvt. Ltd.* (TS-350-ITAT-2018(PUN)-TP1 ITA No. 511/Pun/2016 and CO No. 01 and 14/Pun/2018 dated 14.05.2018 and *XL Health Corporation India Pvt. Ltd. v. ACIT-TS-162-ITAT-2018(Bang)-TP-IT(TP)A* No. 2311/Bang/2016 dated 09.02.2018.

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

We discuss below the case laws relied on by both the sides. We begin with the decisions referred to by the Ld. counsel.

In assessee's own case for AY 2010-11 (ITA No. 566/Mum/2015) the ITAT 'K' Bench Mumbai, keeping in mind the decision in *PTC Software Pvt. Ltd* (supra) has remitted the issue of comparability of this company to the AO/TPO for examining afresh in the light of the relevant judicial precedents.

In *Mckinsey Knowledge Centre India Pvt. Ltd.* (supra), Hon'ble Delhi High Court held that :

"The revenue submits that Fortune Infotech Ltd. was correctly rejected by TPO because the company had different financial year ending on December, 2006, whereas Assessee's financial year ended on March, 2006. There is nothing shown to the court that supports the revenue's arguments that the ITAT fell into error in holding that if a comparable is following different financial year then the same cannot be included in the list of comparables selected for benchmarking the international transaction. Therefore, the ITAT has held that if the comparable is functionally same as that of tested party then same cannot be rejected merely on the ground that data for entire financial year is not available. If from the available data on record, the results for financial year can be reasonably extrapolated then the comparable cannot be excluded solely on the ground that comparables have different financial year endings."

In *Maersk Global Services Centre (I) (P.) Ltd.* (supra), it is held by the Tribunal that merely because financial year of comparable was ending on 31st December vis-à-vis assessee's financial year ending on 31st March, said comparable cannot be rejected, if data of comparable could be extrapolated with credible accuracy on the basis of data available on record.

In *Goldman Sachs (India) Securities (P.) Ltd.* (supra), the ITAT 'K' Bench, Mumbai, by following the order of the Tribunal in *DCIT v. Mckinsey Knowledge Centre India Pvt. Ltd.* (ITA No. 2195/Del/2011) held that if a

company is functionally comparable, it cannot be rejected merely on the ground that data for the entire financial year was unavailable, if the data can be reasonably extrapolated.

Then we discuss the case laws relied on by the Ld. DR. In *PTC Software (I) Pvt. Ltd.* (supra), the Hon'ble Bombay High Court that held that :

“(b) We find that the provisions of Section 10B(4) of the Rules are clear in as much as it obliges that the data to be used for comparability analysis should be of the same financial year in which the international transactions were entered into by the tested party. In fact, this principle/mandate was applied by the TPO while considering M/s. Power Soft Global Services Ltd. as a comparable because it had a financial year ending in September, 2006 and not 31st March, 2007 as in the case of respondent assessee. The same yardstick ought to have been applied by the TPO while considering whether Transwork Ltd. was comparable. The submission on behalf of the Revenue that the mandate of Rule 10B of the Rules can be ignored as the difference is only of three months is without any basis. No such liberty is granted in terms of Rule 10B(4) of the Rules.

(c) The findings of the Tribunal being on the basis of the unambiguous mandate of Rule 10B(4) of the Rules, question (iii) as proposed does not give rise to any substantial question of law. Thus, not entertained.”

Thus the Hon'ble Bombay High Court has held that data to be used for comparability analysis should be of the same financial year in which international transactions were entered into by tested party.

In *Principal Global Services Pvt. Ltd.* (supra), the Hon'ble Bombay High Court has held that where data of comparable was for a financial year, that did

not correspond to financial year of the assessee's transaction with AEs, said company was incomparable.

In *Tevapharma India (P.) Ltd.* (supra), the Tribunal followed the decision in *PTC Software (I) (P.) Ltd.* (supra) that in view of provisions of Rule 10B(4) of IT Rules, the accounting period of comparable company should be same with that of the assessee-company.

In *Hapag Lloyd Global Services Pvt. Ltd.* (supra), the Tribunal has held that it is mandatory for the purposes of comparing the data of an uncontrolled transaction with an international transaction that the same must relate to the financial year ending similar to that of the assessee.

In *Ocwen Financial Solutions Pvt. Ltd.* (supra), the Tribunal accepting Revenue's contention relied on the decision in *PTC Software* (supra), wherein it was held that data for the same period is to be applied in order to hold the concerns selected as comparable. Stating that R Systems did not fulfill the financial year filter, the Tribunal opined that "the accounting periods of the said two concerns are at variance to the accounting period followed by the assessee and consequently, the margins of said concerns could not be applied to benchmark the arm's length price of international transactions undertaken by the assessee".

In *XL Health Corporation India Pvt. Ltd.* (supra), the Tribunal observed that "the prescribed Rules for comparability postulate that contemporary data should alone be used". Therefore, it held that the application of filter of same financial year ending was appropriate filter. The Tribunal upheld the exclusion of R Systems International Ltd. from the list of comparables.

A perusal of the above case laws relied on both sides clearly indicate that on the one hand, we have the decision by the Hon'ble Bombay High Court in *PTC Software (I) Pvt. Ltd.* (supra) and *Principal Global Services Pvt. Ltd.* (supra) holding that data to be used for comparability analysis should be of same financial year in which international transactions were entered into by tested party. On the other hand, we have the decision of the Hon'ble Delhi High Court in *Mckinsey Knowledge Centre India Pvt. Ltd.* (supra), holding that if the comparable is functionally same as that of the tested party then the same cannot be rejected merely on the ground that data for entire financial year is not available ; if from the available data on record, the results for financial year can reasonably be extrapolated then the comparable cannot be excluded solely on the ground that the comparables have different financial year endings.

In assessee's own case for the AY 2010-11 (ITA No. 566/Mum/2015), the ITAT "K" Bench, Mumbai has held as under :

"We have considered the submissions of the parties and perused the material is on record in the light of decisions relied upon. A perusal of the TP order makes it clear that R Systems International Ltd was rejected by the TPO as a comparable only for the reason that it has a financial year different from the assessee..... it is necessary now to examine whether the company can be included as a comparable. Undisputedly, the accounting year of this comparable is calendar year, whereas ,the accounting year of the assessee is financial year. Therefore, both are having different financial years. A reading of rule 10B(4) would suggest that data relating to relevant financial year of the assessee as well as comparable has to be considered for comparability analysis. Therefore, to that extent a company having a different financial year cannot be treated as comparable. From a reading of the decisions relied upon by the

Id. authorised representative we have noted that ITAT Delhi Bench in some of the decisions have held that only for the reason that a comparable is having a different financial year it cannot be excluded if otherwise it is functionally similar to the assessee. However, subsequently it has come to our notice that the Hon'ble jurisdictional High Court in case of CIT vs. PTC Software Private limited, Income tax Appeal No. 732 of 2014 dated 26 September 2016 interpreting rule 10B(4) observed, it obliges that the data that are to be used for comparability analysis should be of the same financial year in which the international transactions were entered into by the tested party. The Hon'ble High Court rejecting the contention of the Department that mandate of rule 10B(4) can be ignored as the difference is only of three months, held that no such liberty can be granted in terms of rule 10B(4) of the rules. Keeping in view the aforesaid decision of the honourable jurisdictional High Court of which neither the assessee nor the department had the benefit of and considering the fact that assessee had not raised the issue before the DRP we are inclined to remit the issue of comparability of this company to the AO/TPO for examining afresh in the light of the relevant judicial precedents and of course after due opportunity of being heard to the assessee.”

In the instant case, neither the AO nor the Ld. CIT(A) had the benefit of the above judicial precedents. Facts being identical, we hereby remit the issue of comparability of R Systems International Ltd to the AO/TPO for examining afresh in the light of the relevant judicial precedents and of course after due opportunity of being heard to the assessee. Thus the 4th ground of appeal is allowed for statistical purposes.

8. Then the Ld. counsel raised the 5th ground of appeal. It is stated by him that TCS e-Service Ltd. is not comparable in as much as the same is engaged in high end services by using specialized domain knowledge/brand value/scale of operation/high turnover, whereas the assessee-company is engaged in providing low end back office support services of data processing. It is explained by him that during the AY 2011-12, TCS e-Service Ltd has posted an operating income of around Rs.1,442 crs vis-à-vis the operating income of the assessee of Rs.14.32 crs. Further, it is stated by him that TCS e-Service Ltd has posted an operating margin of over 60% on cost during AY 2011-12 and considering the same such companies earning super normal profits should be rejected while arriving at the arm's length price. Further it is stated that TCS e-Service Ltd. was taken over by Tata Consultancy Services Ltd. during FY 2008-09 and considering the fact that the company has witnessed a huge surge in earnings and profits due to synergy it has derived by merging with TCS, which is a market leader, this would be the case of exceptional year of operations. Relying on the order of the Tribunal in the case of *Goldman Sachs (India) Securities (P.) Ltd. v. ACIT* (2017) 78 taxmann.com 142 (Mumbai-Trib.) and *Capita India Pvt. Ltd. v. ACIT* (ITA No. 356/Mum/2016) for the same assessment year i.e. AY 2011-12, the Ld. counsel submits that TCS e-Service cannot be considered a valid comparable in the instant case.

9. On the other hand, the Ld. DR submits that comparable cannot merely be rejected on applying turnover filter. In this regard, he relies on the order of the Ld. CIT(A).

10. We have heard the rival submissions and perused the relevant materials on record. We notice that in *Goldman Sachs (India) Securities (P.) Ltd.* (supra), the Tribunal observed that :

“We have also considered the rival contention for exclusion of TCS e-service td. It is mainly involved in transaction processing and technology services. It carries on business of providing technology service such software testing, verification and validation. It also developed a software such as transport management software therefore functionally this company is dissimilar to the assessee-company. It also owns huge intangible and uses of Tata Brand, which has definitely benefited this comparable, it is directed to be excluded. This, in view of our discussion and also following the precedence in the aforesaid cases, we hold that TCS e-Serve cannot be held to be comparable company, accordingly, we direct the AO/TPO to exclude the same from comparability list.”

Also in *Capita India Pvt. Ltd.* (supra) for the same assessment year i.e. AY 2011-12, the Tribunal held that TCS e-Service cannot be considered a valid comparable.

Facts being identical, we follow the above decisions of Co-ordinate Bench and hold that TCS e-Service cannot be considered a valid comparable to the present assessee and allow the 5th ground of appeal.

11. Then the Ld. counsel raised the 6th ground of appeal. It is stated that Acropetal Technologies Ltd. and Accentia Technologies Ltd. being functionally not comparable in as much as the segmental results are not available for BPO segment and are engaged in high end services by using specialized domain knowledge, whereas the assessee-company is engaged in providing low end back office support services of data processing.

Referring to Acropetal Technologies Ltd., it is stated by him that it is engaged in IT services and product based offering Information Technology (IT) partnerships for integrated enterprise solutions to its global clients ; it also provides services such as Customer Relationship Management (CRM), Green House Gas Management etc. Mentioning that it made Initial Public Offer (IPO) in FY 2010-11, and the same was oversubscribed, the Ld. counsel submits that Acropetal had exceptional growth in its business and hence it must not be considered as comparable to the assessee, who is engaged only in BPO services. Referring to the assessee's own case for AY 2010-11, the Ld. counsel submits that Acropetal was rejected by the ITAT due to functional difference. Further, reliance is placed by him on the order of the Tribunal in *Goldman Sachs (India) Securities (P.) Ltd.* (supra) for AY 2011-12 and *Ubisoft Entertainment India Pvt. Ltd. v. DCIT* (ITA No. 526/Pun/2016) for AY 2011-12.

In respect of Accentia Technologies Ltd., the Ld. counsel submits that it is engaged in software development as part of healthcare services; engaged in medical transcription and discreet reportable transcription, medical billing, medical coding, receivable management, practice management consulting etc. Referring to the annual report of Accentia for AY 2010-11, it is stated by him that it is a diversified Knowledge Processing Outsourcing Company (KPO) and is also venturing into offering software as a service model in the healthcare outsourcing area. Relying on the order of the Tribunal in the case of *Capital India Pvt. Ltd.* (supra) and *Maersk Global Services Centre (I) (P.) Ltd.* (supra) for the same assessment year i.e. AY 2011-12, the Ld. counsel submits that Accentia be excluded.

12. On the other hand, the Ld. DR submits that as per the annual report of Acropetal Technologies Ltd. and Accentia Technologies Ltd., they are engaged in ITeS segment, which is a broad segment and which further cannot be classified into BPO and non-BPO. Thus relying on the order of the CIT(A), it is submitted by him that the above two companies are rightly included by the TPO/AO in the set of comparables.

13. We have heard the rival submissions and perused the relevant materials on record. For the immediate preceding assessment year i.e. AY 2010-11, the ITAT 'K' Bench Mumbai in assessee's own case in ITA No. 566/Mum/2015 *vide* order dated 18.10.2016 has held in case of Acropetal Technologies Ltd. the following :

"7. We have considered the submissions of the parties and perused the material on record. On a perusal of the annual report of the comparable we have noted that it is engaged in various activities including healthcare, energy and environment solutions etc. Further, the notes on accounts clearly mentions that the company is engaged in development of computer software and quantitative details of sales is not possible to be given. Schedule-9 to the profit and loss account indicates that the company has incurred expenditure towards on-site development charges and schedule 11 indicates that it has incurred selling and marketing expenses. These facts clearly demonstrate that the company is engaged in software development, hence, functionally dissimilar to the assessee. We have also noted different benches of the tribunal in the decisions cited by Id. AR have rejected this company as comparable to low end BPO service providers on the reasoning that this company is providing KPO services. In view of the aforesaid, we hold that this company cannot be considered as a comparable to the assessee."

Facts being identical, we follow the above order of the Co-ordinate Bench and direct the AO to exclude Acropetal Technologies Ltd as it is functionally different.

13.1 In respect of Accentia Technologies Ltd., the ITAT 'K' Bench in *Maersk Global Services Centre (I) (P.) Ltd.* (supra) has held the following :

“We have carefully gone through the orders of the authorities below and also gone through copy of the financial statements of the assessee for the impugned assessment year which is placed by the assessee in paper book and we do not find any significant variation in the functions performed by the assessee vis-à-vis preceding year for which the tribunal has passed the above order dated 29.07.2016 for AY 2010-11. We have also gone through the financial statements of Accentia Technologies Limited which are placed by the assessee in paper book and we also found that there is no variation in the functions performed by the said company in the impugned year i.e. AY 2011-12 vis-à-vis earlier years. We do not find any reason to deviate from the afore-said decision of the tribunal in ITA No. 1082/M/2015 dated 29.07.2016 for AY 2010-11. Thus we uphold the decision of the DRP and dismiss the appeal of the Revenue on this ground. Revenue fails on this ground. We order accordingly.”

Also in *Capita India Pvt. Ltd.* (supra) for AY 2011-12, the ITAT 'K' Bench, Mumbai *vide* order dated 19.09.2016 held in case of Accentia Technologies Ltd. the following :

“From the perusal of the Annual report of this company, it is seen that it is mainly in to rendering of Knowledge processing, outsourcing (KPO) services in the field of Medical. Following services are being provided by this company:-

- Medical Transcription
- Discrete Medical Transcription

- Medial Coding
- Billing
- Receivable
- Practice Management Consultancy
- Software as a Service (SaaS)

The products developed by this company are mainly Instakare- EMR Software, which is into healthcare management systems for Doctors and web based application for the Doctors. Thus, this company is mainly into Medical Transcription and its revenue is from medical transcription, billing and collection and income from coding etc. This company has been found to be un-comparable from companies rendering ITES companies by the Tribunal in the case of Equant Solutions India Pvt. Ltd and also Ameriprise India Pvt. Ltd. (supra). Thus, following the said cases and on comparability analysis, this company cannot be held to be comparable and accordingly, the same is directed to be removed from the comparability list.”

Facts being identical, we follow the order of the Co-ordinate Bench in *Maersek Global Services Centre (I) (P.) Ltd.* (supra) and *Capita India Pvt. Ltd.* (supra) and direct the AO to exclude Accentia Technologies Ltd. as it is functionally different.

Thus the 6th ground of appeal is allowed. As penalty is initiated only, the 7th ground of appeal is premature.

14. In the result, the appeal filed by the assessee is partly allowed.

ITA No. 2217/MUM/2017
Assessment Year: 2011-12

15. The grounds of appeal filed by the Revenue read as under :

- 1) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in upholding the action of the assessee in working out the PLI based on desk Utilization as allocation key.
- 2) Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) is correct in upholding the action of the assessee without bringing out any evidence regarding the correctness of the allocation keys deployed by the assessee.
- 3) Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) is correct in rejecting the action of the TPO in considering the employee cost for allocating cast between AE and Non-AE segment.
- 4) Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is correct in holding that M/s. Microgenetics Systems Ltd can be considered as comparable without giving due weightage to the analysis of the TPO regarding CAGR of IT enabled sector and diminishing returns of the assessee continuously.

16. Central Board of Direct Taxes (CBDT) *vide* Circular No. 17/2019 dated 08.08.2019 has amended Circular No. 3/2018 dated 11.07.2018 for further enhancement of monetary limit for filing of appeals by the Revenue before the ITAT, High Courts and SLPs/Appeals before Supreme Court as measures for reducing litigation.

17. CBDT *vide* Circular No. 3/2018 dated 11.07.2018 has specified that appeals shall not be filed before the Income Tax Appellate Tribunal (ITAT) in cases where the tax effect does not exceed the monetary limit of Rs.20,00,000/-. For this purpose, 'tax effect' means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in

respect of issues against which appeal is intended to be filed. Further, 'tax effect' shall be taxes including applicable surcharge and cess. However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty order, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.

At para 13 of the said Circular, it has been mentioned that:

"13. This Circular will apply to SLPs/appeals/cross objection/references to be filed henceforth in SC/HCs/Tribunal and it shall also apply retrospectively to pending SLPs/appeals/cross objections/references. Pending appeals below the specified tax limits in para 3 above may be withdrawn/not pressed."

18. As a step towards further management of litigation, CBDT *vide* Circular No. 17/2019 has fixed the monetary limit for filing of appeals before ITAT at Rs.50,00,000/-.

19. It is submitted by the Ld. counsel for the assessee that the tax effect of the captioned appeal filed by the Revenue before the Tribunal in relation to the relief granted by the Ld. CIT(A) works out to Rs.33,85,022/-. Therefore, the Ld. counsel submits that the appeal filed by the Revenue be dismissed. The computation of tax effect on the appeal filed by the Revenue as worked out by the Ld. counsel is produced below :

Particulars	Key	Amount (INR)
Adjustment made by the Transfer Pricing Officer ('TPO') vide order dated 19 January 2015 u/s 92CA(3) of the Act	(A)	1,87,79,675

Relief granted by the (CIT(A) as per the order giving effect dated 25 May 2019 on the following Grounds: - - Upholding the allocation of certain expenses on 'desk allocation ratio' (Ground No 1 to 3 of Department appeal) - Upholding Microgenetics Systems Limited as a comparable company (Ground No 4 of Department appeal)	(B)	1,09,54,765
Tax on the above @ 30%	(C) = (B*30%)	32,86,430
Education cess @ 3%	(D) = (C*3%)	98,593
Total tax effect	(E) = (B+C)	33,85,022

20. Before us, the Ld. Departmental Representative (DR) fairly agrees that the tax effect herein is below the monetary limit of Rs.50,00,000/- fixed by the above Circular for filing of appeals before the ITAT. However, it is pleaded by him that in case of exceptions to the above Circular, the appellant may be allowed to bring it to the notice of the Tribunal. Considering the submission, we make it clear that the appellant shall be at liberty to point out the exceptions to which the above Circular may not apply by filing miscellaneous applications.

21. In view of the CBDT Circular No. 17/2019, this appeal by Revenue involving tax effect of less than Rs.50,00,000/- is dismissed.

22. To sum up, the appeal filed by the assessee is partly allowed, whereas the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 20/03/2020

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

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

Mumbai;

Dated: 20/03/2020

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.//Assistant Registrar)
ITAT, Mumbai