

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I-1' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.876/Del./2015
(Assessment Year : 2010-11)**

**ITA No.4175/Del./2016
(Assessment Year : 2011-12)**

Ariba India Private Limited,
15th Floor, Eros Corporate Towers,
Nehru Place,
New Delhi – 110 019.

vs. DCIT, Circle 3 (1),
New Delhi.

(PAN : AAFCA0120K)

(APPELLANT)

(RESPONDENT)

**ASSESSEE BY : Shri Manoneet Dalal, Advocate
Shri Yeesh Goel, AR
REVENUE BY : Shri Surender Pal, CIT DR**

Date of Hearing : 05.03.2020
Date of Order : 18.06.2020

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Since common questions of facts and law have been raised in both the aforesaid appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. Appellant, Ariba India Private Limited (hereinafter referred to as 'the taxpayer') by filing the present appeals sought to set

aside the impugned orders dated 29.12.2014 & 29.01.2016 passed by the AO in consonance with the orders passed by the Id. DRP/TPO under section 143 (3) read with section 154/144C of the Income-tax Act, 1961 (for short 'the Act') qua the assessment years 2010-11 & 2011-12 respectively on the grounds inter alia that:-

"ASSESSMENT YEAR 2010-11

1 That on the facts and in the circumstances of the case and in law, the order passed by the Ld. Assessing Officer ("AO") is bad in law and void ab-initio.

2 That on facts and circumstances of the case and in law, the reference made by the Ld. AO suffers from jurisdictional error as the Ld. AO did not record any reasons in the draft assessment order based on which he reached the conclusion that it was "expedient and necessary" to refer the matter to the Ld. Transfer Pricing Officer ("TPO") for computation of the arm's length price, as is required under section 92CA(1) of the Income Tax Act, 1961 ("Act").

3 That on facts and circumstances of the case and in law, the Ld. AO/Ld. TPO/Ld. Dispute Resolution Panel ("DRP") erred in making an addition of Rs.11,206,867 to the returned income of the Appellant by re-computing the arm's length price ("ALP") of the international transaction of provision of ITES services to its Associated Enterprise ("herein after referred to as the AE"). Thus, in passing the order the Ld. AO/Ld. TPO/Ld. DRP erred in under section 92 of the Act.

3.1 Not accepting the filters selected by the Assessee in its transfer pricing documentation and has instead applied his own additional filters which lacked valid and sufficient reasoning;

3.2 Rejecting the comparable companies selected by the Appellant;

3.3 Accepting companies which were functionally not comparable to the Appellant in terms of Functions, Assets and Risk profile and including companies with high/supernormal margins;

3.4 Not providing the benefit of economic adjustment on account of difference in risk profile in arriving at the arm's length mean margin.

4 That the Ld. AO/Ld. TPO erred in disregarding the multiple year data selected by the Appellant in the TP Documentation and in selecting the current year (i.e. financial year 2009-10) data for comparability despite the fact that at the time of comparison done by the Appellant, the complete data for financial year 2009-10 was not available within the public domain.

5 That the Ld. AO erred in facts and in law in rejecting the benchmarking analysis conducted by the Appellant for the international transaction pertaining to payment of fee for receipt of technical services without understanding the business of the Appellant and benefits derived by the Appellant in lieu of the payment made for such services.

6 That the Ld. AO erred in facts and in law in determining the arm's length price of the payment of fee for receipt of technical services as NIL.

7 That the Ld. AO and Ld. DRP erred in facts and in law in disallowing Rs. 26,23,889 on account of travelling & conveyance expenses appearing as credit card payments in the AIR.

7.1 That the Ld. AO and the Ld. DRP erred in not appreciating that the credit cards are issued by the bank to the employees of the appellant. The statements thereof are issued by the bank directly to the employees. The credit cards and statements thereof are not issued by the bank to the appellant. Accordingly, the appellant is unable to produce details in respect of such credit cards appearing in the AIR.

8 That on the facts and circumstances of the case and in law, the Ld. AO has erred in initiating penalty proceedings U/S 271(1)(c) of the Income Tax Act, 1961, mechanically and without recording any adequate satisfaction for such initiation.

9 That the Ld. AO erred in facts and in law in charging and computing interest under section 234B of the Income Tax Act, 1961."

"ASSESSMENT YEAR 2011-12

1. That on the facts and in the circumstances of the case and in law, the order passed by the Ld. Assessing Officer ("AO") is bad in law and void ab-initio wherein the returned income of

INR 1,27,46,777 of the Appellant was assessed at INR 4,03,77,010.

2 That on the facts and in the circumstances of the case and in law, the reference made by the Ld. AO suffers from jurisdictional error as the Ld. AO did not record any reasons in the assessment order based on which he reached the conclusion that it was "expedient and necessary" to refer the matter to the Ld. Transfer Pricing Officer ("TPO") for computation of the arm's length price, as is required under section 92CA(l) of the Income Tax Act, 1961 ("Act").

Transfer Pricing

3 The Ld. AO/ Ld. Transfer Pricing Officer ("Ld. TPO")/ Ld. Dispute Resolution Panel ("DRP") erred on facts and in circumstances of the case in determining the arm's length adjustment to the Appellant's international transactions from Associated Enterprises ("AEs") and thereby resulting in the enhancement of returned income of the Appellant by INR 19,337,357 (For payment for intra-group services/ technical fee INR 17,375,854 and for alleged interest on accounts receivable INR 1,961,503).

4 That on facts and circumstances of the case and in law in the assessment of the arm's length price of the Appellant's international transactions with AEs in the following manner:

4.1 The Ld. AO/Ld. TPO/ Ld. DRP erred in facts and in law to modify, based on his subjective grounds and presumptions, the comparability analysis conducted by the Appellant for determining the arm's length price in terms of section 92D of the Act read with Rule 10D of the Rules as well as fresh search.

4.2 The Ld. AO/Ld. TPO erred in rejecting the quantitative filters and thereby the comparables selected by the Appellant in the TP documentation by applying additional/modified quantitative filters which lacked valid and cogent reasoning;

4.3 The Ld. AO/ Ld. TPO/ Ld. DRP has erred by selecting certain companies which were not comparable by way of functions and assets in order to determine the arm's length margin applicable to the Appellant. Further, the Ld. TPO erred in rejecting companies which were functionally comparable to the Appellant's IT-enabled services segment.

4.4 The Ld. AO/ Ld. TPO/ Ld. DRP has erred in incorrectly computing margins of several comparable companies selected in the final comparable set.

5 *The Ld. AO/ Ld. TPO/ Ld. DRP erred in arbitrarily rejecting the risk analysis conducted by the Appellant in its transfer pricing submissions without taking cognizance of the fact that the Appellant was operating as a risk free entity rather than an entrepreneur and hence erred in denying the economic adjustment for the difference in risk profile of the Appellant vis a vis comparables.*

6 *That the Ld. AOI Ld. TPOI Ld. DRP erred in disregarding the multiple year data selected by the Appellant in the TP Documentation and in selecting the current year (i.e. financial year 2010-11) data for comparability despite the fact that at the time of comparison done by the Appellant, the complete data for financial year 2010-11 was not available within the public domain.*

Payment of fees for intra-group/ technical services

7 *The Ld. AO / Ld. TPO/ Ld. DRP erred on facts and in law in determining the arm's length price ("ALP") of the Appellant's international transactions pertaining to payment of intra-group services/ technical fee as NIL against the sum of INR 1,73,75,854 incurred by the Appellant and in doing so, have grossly erred in the following manner-*

7.1 *The Ld. AO/ Ld. TPO/ Ld. DRP erred in facts and in law in holding that neither the Appellant has received any service and/ or benefit in lieu of the payment made by it for services availed nor was there was any need for such services/ payments; thereby challenging the commercial wisdom of the Appellant in making such payments while passing the order in contrast with the recent judicial pronouncements in this regard;*

7.2 *The Ld. AO/ Ld. TPO/ Ld. DRP erred in facts and in law by not considering and thereby arbitrarily rejecting the Transactional et Margin Method ("TNMM") analysis adopted by the Appellant as the most appropriate method for benchmarking the said transaction and in doing so have grossly erred in (i) re-computing the arm's length price; and (ii) not appreciating that payment made is closely linked to the primary business functions of the Appellant;*

7.3 *The Ld. AO/ Ld. TPO/ Ld. DRP erred in facts and in law in applying Comparable Uncontrolled Price ("CUP") method merely based on presumptions and without furnishing details of price charged in any comparable uncontrolled transaction which is in contravention of the provisions of Rule 10B of the Rules.*

7.4 *The Ld. AO/ Ld. TPO/ Ld. DRP erred in facts and in law by not considering that such payment was made by the Appellant*

in the earlier years also and no adverse inference was drawn by the Ld. TPO in those years.

Alleged Interest on Accounts Receivable

8 *That the Ld. AO/ Ld. TPO/ Ld. DRP erred on facts and in law in making a notional addition of INR 1,96 I ,503 on account of alleged interest on perceived delay in collection of receivables from the AEs without taking due cognizance of the business model and submissions made by the Appellant*

8.1 *That the Ld. AO/ Ld. TPO/ Ld. DRP has grossly erred in overlooking the fact that before making an adjustment neither a comparable transaction entered into has been identified nor the enterprise which has been entered into such a transaction has been identified as mandated and necessitated as per Rule 10B(2) of the Rules.*

8.2 *That the Ld. AO/ Ld. TPO/ Ld. DRP erred in fact and in law in determining the arm's length interest rate at 10.84% for arriving at the alleged interest on accounts receivable and has wrongly treated the accounts receivable as medium term loan.*

8.3 *That the Ld. AO/ Ld. TPO/ Ld. DRP erred in fact and in law by making a separate notional addition of alleged interest on accounts receivables despite the fact that the same has already been counted by way of working capital adjustment on the comparables.*

8.4 *That the Ld. AO/ Ld. TPO/ Ld. DRP has erred in the computation of alleged interest on accounts receivables*

Corporate Tax

9 *That the Ld. AO and Ld. DRP erred in facts and in law in disallowing INR 82,92,871 on account of travelling & conveyance expenses appearing as credit card payments in the AIR.*

9.1 *That the Ld. AO and the Ld. DRP erred in not appreciating that the credit cards are issued by the bank to the employees of the appellant. The statements thereof are issued by the bank directly to the employees. The credit cards and statements thereof are not issued by the bank to the appellant. Accordingly, the appellant is unable to produce details in respect of such credit cards appearing in the AIR.*

10 *That the Ld. AO erred in not giving credit of TDS in the final assessment order.*

11 *That on the facts and circumstances of the case and in law, the Ld. AO has erred in initiating penalty proceedings u/s*

271(1)(c) of the Income Tax Act, 1961, mechanically and without recording any adequate satisfaction for such initiation.

12 That the Ld. AO erred in facts and in law in charging and computing interest under sections 234A, 234B and 234C of the Income Tax Act, 1961.”

ITA NO.876/DEL/20115 (AY 2010-11)

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : Ariba India Private Limited, the taxpayer is a subsidiary of Ariba International Holdings Inc., USA (formerly known as Freemarkets International Holdings Inc., USA), which is in turn a wholly owned subsidiary of Ariba Inc., which is engaged in the provision of sourcing and procurement solutions utilizing the group’s technology platform/know-how bundled with various value added services to customers in Indian markets. The main solutions provided by the taxpayer in the Indian market during the year under assessment were FullScurce and Ariba Sourcing. The taxpayer is into two business segments viz. (i) provision of spend management solution and (ii) provision of captive IT Enabled Support (ITES) services to group companies. During the year under assessment, the taxpayer entered into international transactions with its Associated Enterprises (AE) as under:-

<i>S.No.</i>	<i>International Transaction</i>	<i>Amount (in Rs.)</i>
<i>1</i>	<i>Provision of Information Technology Enables services</i>	<i>6,43,03,147/-</i>
<i>2</i>	<i>Fee for receipt of technical services for provision of spend management solutions</i>	<i>1,67,15,886/-</i>
<i>3</i>	<i>Reimbursement of expenses from AEs</i>	<i>4,32,181/-</i>
<i>4</i>	<i>Recharges received</i>	<i>11,29,535/-</i>

4. The taxpayer in order to benchmark its international transactions qua ITES segment used Transactional Net Margin Method (TNMM) with Operating Profit/Total Cost (OP/TC) as Profit Level Indicator (PLI) chosen 15 comparables and worked out the margin at 15.68% as against taxpayer's own margin of 17% and found its transaction at ALP. However, ld. TPO accepted the method adopted by the taxpayer but rejected five comparables chosen by the taxpayer and introduced five new comparables and computed their margin at 31.43% and computed the proposed adjustment at Rs.1,31,87,922/- in ITES segment.

5. In case of Spend Management Solutions Services/fee for technical services, taxpayer again adopted Transactional Net Margin Method (TNMM) with Operating Profit/Sales (OP/Sales) as Profit Level Indicator (PLI) selected four comparables and computed their margin at 2.20% with taxpayer's margin of 3% and found its transaction at ALP. However, ld. TPO rejected the method adopted by the taxpayer and applied Comparable Uncontrolled Price (CUP) method and computed the ALP of the taxpayer at nil.

6. AO/DRP have also disallowed an amount of Rs.26,23,898/- on account of travelling and conveyance expenses appearing as

credit card payments in the AIR on the ground that no bills/vouchers are produced by the taxpayer.

7. The taxpayer carried the matter before the Id. DRP by way of filing objections who has partly allowed the objections and consequently margin of the comparable companies qua ITES segment reduced to 28.07% (after working capital adjustment) as against the taxpayer's margin of 17% and Id. TPO after giving effect to the Id. DRP's directions proposed the adjustment qua ITES services of Rs.1,12,06,867/- and proposed the ALP of payment for fee for technical services at Rs.47,08,941/-.

8. Feeling aggrieved, the taxpayer has come up before the Tribunal by way of filing the present appeal.

9. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the Revenue authorities below in the light of the facts and circumstances of the case.

GROUND NO.1 & 2

10. Grounds No.1 & 2 are general in nature and do not require any adjudication.

TRANSFER PRICING ISSUES**GROUND NO.3, 3.1, 3.2, 3.3, 3.4, 3.5 & 4**

11. Undisputedly, the ld. TPO as well as ld. DRP have not disputed the TNMM with OP/OC as the PLI adopted by the taxpayer in order to benchmark its international transactions. Ld. TPP/DRP have also not disputed the taxpayer's own margin at 17%. Ld. AR for the taxpayer in order to compress the controversy at hand challenged inclusion of three comparables viz. *TCS E Serve International Ltd., TCS E Serve Ltd. and Accentia Technology Ltd.*, chosen by the ld. TPO in order to benchmark its international transactions qua ITES segment, suitability of aforesaid comparables examine one by one as under.

TCS E SERVE INTERNATIONAL LTD.
(TCS E SERVE INTERNATIONAL)

12. Before the ld. TPO, the taxpayer challenged inclusion of TCS E Serve International on the ground that it is functionally incomparable; that it has huge brand value; that TCS E Serve International has shown abnormal growth in operation in FY 2009-10; that there is no segmental information of the company; that it provides services predominantly to the Citi Group as a captive service provider; that this comparable has been rejected by the ld. TPO in the subsequent year i.e. AY 2011-12. However, ld. TPO

rejected all the objections raised by the taxpayer and retained it as a comparable.

13. Similarly, Id. DRP also retained this comparable for benchmarking the international transactions by ratifying the reasons given by the Id. TPO.

14. When we examine annual report of TCS E Serve International, available at pages 716 to 791 of the paper book volume III, relevant page 747, its principal activities are :-

“TCS e-Serve International Limited is engaged in the business of providing Information Technology Enabled Services (ITES)/Business Processing Outsourcing (BPO) Services, primarily to Citigroup entities globally.

The Company’s operations broadly comprise of transaction processing and technical services. Transaction processing includes the broad spectrum of activities involving the processing, collections, customer care and payments in relation to the services offered by Citigroup to its corporate and retail clients. Technical services involve software testing, verification and validation of software at the time of implementation and data centre management activities.”

15. Moreover TCS E Serve International is engaged in the business of providing ITES/BPO services primarily to Citi Group entity globally meaning thereby it is into related party transactions. Furthermore, TCS E Serve International has been rejected by the Id. TPO in taxpayer’s own case in AY 2011-12 on account of functional dissimilarity, which action has not been challenged by the Revenue. TCS E Serve International is having huge brand value on account of its acquisition by Tata Group which has

impacted its pricing policy and margin earned. TCS E Serve International has paid Rs.3,737 thousands as a Tata brand loyalty as is evident from page 746 of the paper book. When we examine financial results of TCS E Serve International for the year under assessment at page 723 of the paper book, it has shown huge all around growth in volumes of business and profitability during the year under assessment. Furthermore, TCS E Serve International is into ITES/ BPO services and technical services (which are in the nature of software testing, verification and validation) but there is no segmental information to bifurcate the income and expenditure qua both the segments.

16. TCS E Serve International has been found to be not a suitable comparable vis-à-vis ITES provider by the *Hon'ble Delhi High Court in case of Avaya India Pvt. Ltd. vs. ACIT in ITA 532/2019 in AY 2010-11* on ground of having given huge amount to Tata Sons Ltd. towards brand equity; having no segmental bifurcation between transaction processing and technical services; having huge intangible in the form of brand value having considerable effect on its PLI.

17. All the aforesaid facts go to prove that TCS E Serve International, admittedly rejected by the Id. TPO in AY 2011-12, is

not a suitable comparable for benchmarking the international transactions qua ITES segment, hence ordered to be excluded.

TCS E SERVICE LTD. (TCS E SERVE)

18. Before the Id. TPO, the taxpayer challenged inclusion of TCS E Serve as a comparable on grounds of functional dissimilarity; exceptional year of operation; insufficient segmental information and dissimilarity in scale of operation. However, Id. TPO rejected all the objections and retained it as a valid comparable. Ld. DRP also ratified the reasons for inclusion of TCS E Serve as a valid comparable given by the Id. TPO.

19. When we examine the functional profile of TCS E Serve, at page 894 of the paper book volume III annual report, it reads as under :-

“TCS e-Serve Limited is engaged in the business of providing Information Technology - Enabled Services (ITES) / business Process Outsourcing (BPO) services, primarily to Citigroup entities globally.

The Company's operations broadly comprise of transaction processing and technical services. Transaction processing includes the broad spectrum of activities involving the processing, collections, customer care and payments in relation to the services offered by Citigroup to its corporate and retail clients. Technical services involve software testing, verification and validation of software at the time of implementation and data centre management activities.”

20. TCS E Serve is engaged in the business ITES/BPO services primarily to Citi Group entities globally. So, when TCS E Serve is engaged in high end transaction processing, technical services involving software testing, verification and validation of software at the time of implementation and data centre management activities, it is functionally dissimilar to the taxpayer which is a routine ITES provider.

21. Moreover, TCS E Serve is having huge turnover of Rs.1440.71 crores as against taxpayer's turnover from ITES at Rs.6.43 crores reported at page 880 of the annual report paper book volume III. Furthermore, TCS E Serve is a huge brand having supported by Tata Group in terms of its large scale operations and clientele and it has paid Rs.42097 thousands to Tata Sons Ltd. as Tata brand loyalty. Even there is no segmental information to bifurcate the income and expenses between ITES/BPO services and technical services.

22. Hon'ble Delhi High Court in case of *Avaya India Pvt. Ltd. vs. ACIT* (supra) has found TCS E Serve as not a suitable comparable vis-à-vis routine service provider on grounds of its large scale of operation and clientele base having huge turnover and having given huge amount to Tata Sons Ltd. towards brand

loyalty and having no segmental bifurcation between transaction processing and technical services.

23. All the aforesaid facts go to prove that TCS E Serve International, admittedly rejected by the Id. TPO in AY 2011-12, is not a suitable comparable for benchmarking the international transactions, hence ordered to be excluded.

ACCENTIA TECHNOLOGY LIMITED

24. The taxpayer has not pressed Accentia Technology Ltd. by the Id. AR for the taxpayer during the course of arguments.

ADDITIONAL GROUND NO.3.5

25. By moving a separate application, assessee company sought to raise additional ground for the reason that the same go to the root of the case which are as under :-

“3.5 That on the facts and circumstances of the case and in law, the Hon’ble DRP/Ld.TPO/Ld. AO erred in considering the operating cost of the appellant at INR 58,959,955 instead of actual operating cost amounting to INR 54,959,955 which is a mistake apparent from record thereby resulting in decrease in the operating margin of the Appellant from 17.00% to 9.06%.”

26. Keeping in view the fact that the additional ground sought to be raised by the assessee, which is a legal ground and can be raised at any stage of the proceedings, is otherwise necessary for complete adjudication of the controversy at hand, the application for additional ground is hereby allowed.

27. Ld. AR for the taxpayer contended that the ld. DRP/TPO have erroneously considered the operating cost of the taxpayer at Rs.5,89,59,955/- instead of actual operating cost of Rs.5,49,59,955/- resulting into decrease in the operating margin of the taxpayer from 17% to 9.06% and has given the correct figures as under :

<i>Particulars</i>	<i>Operating Expenses</i>	<i>OP/OC</i>
<i>As per TPO</i>	<i>5,89,59,955</i>	<i>9.06%</i>
<i>As per TP Report</i>	<i>5,49,59,955</i>	<i>17.00%</i>

28. Since both the ld. AR for the taxpayer as well as ld. DR for the Revenue have fairly conceded that it is a mistake apparent on record, the AO/TPO are directed to rectify the mistake after duly verifying the records/documents. Ground No.3.5 is determined in taxpayer's favour.

GROUND NO.4

29. Ground No.4 is dismissed having not been pressed during the course of arguments.

FOUNDATIONS NO.5 & 6

30. During the year under assessment the taxpayer entered into international transactions with its AE qua fee for receipt of technical services for provisions of spend management solutions to

the tune of Rs.1,67,15,886/-. The taxpayer in order to benchmark its international transactions applied TNMM with OP/Sales as PLI by selecting four comparables with margin of 2.20% as against taxpayer's margin of 3%. However, ld. TPO rejected the method adopted by the taxpayer, applied Comparable Uncontrolled Price (CUP) method and computed the ALP of the transaction at nil.

31. However, ld. DRP agreed with the taxpayer's approach of ALP determination by returning following findings :-

“ From the above observation this Panel agrees with the submission that above mentioned expenditure on software solution/ Platform or e-commerce/ e-auctioning is necessary for its third party business, With regard to the value of such software solution/ platform the taxpayer inspite of being specifically asked by the TPO as well as this panel has not provided item-wise details of the value of Intra group services claimed to have been availed from its AE. Therefore, in order to determine arm's length value of such software solution/ platform availed by the taxpayer, this Panel had a look at the segmental provided by the taxpayer on page 59 of the TP Document provided by it which is reproduced as under:

The segmented financial information of Ariba India for the year ended March 31, 2010, as provided by the Company as follows:

Particulars	IT Enabled Services	Provision(s) Spend Management	Total
Sales/Operating Income	64,303,147	133,727,094	198,030,241
Less : Operating Expenses	54,959,955	141,722,226	196,682,181
Operating Profit	9,343,192	(7,995,132)	13,48,060
OP/TC	17%		
Add : Voluntary TP Adjustment		12,006,945	
Revised OP		4,011,813	
Revised OP/Sales		3%	
Add : Other Income			4,419,047
Provision for bad debts			127,395

<i>(utilized during the year)</i>			
<i>Less : Other Expenses</i>			
<i>Loss on sale of assets</i>			<i>1,511,838</i>
<i>Financial Expenses</i>			<i>59,889</i>
<i>Profit Before Tax</i>			<i>4,322,775</i>

From the above table it is observed that under the segment "provision Of Spend Management" the taxpayer has shown a loss of Rs.7.995,132/-. As against this loss, the taxpayer has carried out a voluntary TP adjustment on account of the arm's length price of the International transaction relating to intra group services availed from its AE. As the services charge paid to the AE for such Intra group services is Rs.16,715,886/-, the ALP is worked out at Rs.47,08,941/- after reducing the amount of voluntary adjustment of Rs.12,006,945 made by the taxpayer on this account. This amount of Rs.47,08,941/- is 2.3% of the total third party receipt of Rs.133,727,094/-. This Panel considers this value to be reasonable considering the necessity or software solution/platform for the business of the taxpayer and accordingly, upholds the same. The TPO is therefore directed to consider Rs.47,08,941/- as the ALP of intra group services of providing of software solution/platform by Ariba Inc. after giving credit for voluntary TP adjustment as mentioned above. This voluntary adjustment has been duly reflected in the computation income of the taxpayer as submitted on page 8 of the paper-book. The ground of objection are disposed of accordingly. The taxpayer in it submission has also mentioned that a rectification application 26.03.2014 is pending with the TPO on this issue. The TPO is directed to give predict of the voluntary adjustment of Rs.1,20,06,945/- out of the claimed intra group services payment of Rs.16,715,886/-."

32. However, when we examine the order dated 26.12.2014 passed by the ld. TPO giving effect to the ld. DRP directions dated 14.11.2014 he has not followed the directions of ld. DRP. In these circumstances, this issue is remitted back to the ld. TPO/AO to follow the directions given by the ld. DRP and to pass the order

accordingly. Grounds No.5 & 6 are allowed in favour of the taxpayer for statistical purposes.

CORPORATE TAX ISSUES

GROUND NO.7

33. AO/DRP have disallowed an amount of Rs.26,23,889/- on account of travelling and conveyance expenses appearing as credit card payment in the AIR. Undisputedly, credit card qua which payments have been disallowed are issued by the bank in the name of the employees of the taxpayer and statements of which are also issued by the bank in the name of employees and the taxpayer company was not in picture.

34. AO/DRP disallowed the same on the ground that no document evidence viz. bills/vouchers in support of its claim has been brought on record by the taxpayer to establish that the expenses reimbursed by the taxpayer to the employees have been duly considered in computing the taxpayer's income. No doubt, the taxpayer is having details of expenses claimed as reimbursement by the employees but in order to authenticate the same it has not taken on record the copies of the credit card bills of its employees to prove that the expenses have been incurred by the employees for the business purposes. In these circumstances, we

are of the considered view that the issue is required to be remitted back to the AO to decide afresh by providing an opportunity of being heard to the taxpayer to explain the details of the amount reimbursed to the employees. So, Ground no.7 is allowed in favour of the taxpayer for statistical purposes.

ITA NO.4175/DEL/2016 (AY 2011-12)

35. During the year under assessment, the taxpayer was primarily engaged in providing sourcing solutions to the customers. The sourcing solutions offered by the taxpayer encompass assisting its customers identification, screening etc. of suppliers to shortlist the potential suppliers whose capabilities best match with client's need, conducting online auctions, providing network access to the necessary technology platform on which the auctions are run and undertaking bid evaluation thereafter. Apart from the provision for spend management solutions, the taxpayer also provides ITES to its parent company on cost plus basis. The taxpayer operates in two segments viz. provision of spend management solutions and provision of captive ITES to group companies.

36. During the year under assessment, the taxpayer entered into international transactions with its AE as under :-

<i>S.No.</i>	<i>International Transaction</i>	<i>Amount (in Rs.)</i>
<i>1</i>	<i>Provision of IT enabled support service</i>	<i>73862727</i>
<i>2</i>	<i>Fee for receipt of technical services for provision of spend management solutions</i>	<i>17375854</i>
<i>3</i>	<i>Recharges received / receivable</i>	<i>8323041</i>

37. The taxpayer in order to benchmark its transactions qua ITES adopted TNMM with OP/OC as PLI as MAM chosen 14 comparables with margin of 6.51% as against taxpayer's margin of 17%. However, on the other hand, ld. TPO rejected 11 comparables chosen by the taxpayer and introduced 3 new comparables totaling 6 comparables and computed their margin at 27.51% as against taxpayer's margin of 23.46% without working capital adjustment.

38. The taxpayer in order to benchmark its international transactions qua payment for fee of intra group for technical services in respect of spend management solutions again adopted TNMM with OP/Sales as PLI as MAM chosen 7 comparables with margin of 1.55% as against taxpayer's margin of 4.13%. However, ld. TPO rejected the method adopted by the taxpayer applied comparable uncontrolled price method and recomputed the ALP at nil. Ld. TPO also made adjustment on account of delayed receivables to the tune of Rs.19,61,503/-.

39. AO/DRP have made addition of Rs.82,92,871/- being the payment made by the taxpayer during the year under assessment

against the credit card bills on the ground that the taxpayer has failed to bring on record the documentary evidence viz. bills/vouchers to prove its claim.

40. The taxpayer filed the objections before the Id. DRP by way of filing appeal who has partly allowed the objections. Feeling aggrieved, the taxpayer has come up before the Tribunal by way of filing the present appeal.

TRANSFER PRICING ISSUES

GROUND NO.1, 2 & 3

41. Grounds No.1, 2 & 3 are general in nature and do not require any adjudication.

GROUND NO.4, 5, & 6

42. Undisputedly, TNMM with OP/OC as PLI adopted by the taxpayer as the MAM has been accepted by the Id. TPO who has rejected 8 of the comparables out of 40 selected by the taxpayer in ITES segment. It is also not in dispute that working capital adjustment has been allowed by the Id. DRP to the taxpayer in order to examine comparability. In order to compress the controversy at hand, the Id. AR for the taxpayer at this stage has only grievance against inclusion of TCS E Serve Ltd. as a comparable and qua incorrect computation of margin by the TPO/DRP.

43. So far as question of inclusion of TCS E Serve Ltd. in the final set of comparables by the taxpayer despite objections raised by the taxpayer is concerned, perusal of the annual report shows that TCS E Serve Ltd. is functionally not comparable vis-à-vis the taxpayer; it has huge brand value; having no segmental information and services are being provided by it as a captive service provider predominantly to Citi Group.

44. We have already discussed in detail the suitability of TCS E Serve Ltd. vis-a-vis the taxpayer in preceding paras no.18 to 23 while deciding taxpayer's appeal no.876/Del/2015 for AY 2010-11 of this order and found the same to be not a suitable comparable. Apart from the discussion made in preceding paras, it is also a matter of record that the turnover of TCS E Serve Ltd. is 195 times of the taxpayer.

45. Hon'ble Delhi High Court in case of *Avaya India Pvt. Ltd. vs. ACIT* (supra) has found TCS E Serve Ltd. as not a suitable comparable business routine service provider on grounds of its large scale of operation and clientele base having huge turnover and having given huge amount to Tata Sons Ltd. towards brand loyalty and having no segmental bifurcation between transaction processing and technical services.

46. All the aforesaid facts go to prove that TCS E Serve International, admittedly rejected by the Id. TPO in AY 2011-12, is not a suitable comparable for benchmarking the international transactions, hence ordered to be excluded.

47. So far as question of incorrect computation of margin by the Id. TPO/DRP is concerned as alleged by the taxpayer, the taxpayer has come up with correct margin of comparable companies chosen by the TPO/DRP as under:-

<i>S.No.</i>	<i>Comparable</i>	<i>As per TP order (unadjusted margins)</i>	<i>Correct margin computation by Appellant (unadjusted margins)</i>	<i>Correct working capital adjusted margin computation by Appellant</i>
<i>1</i>	<i>Accentia Technology Ltd.</i>	<i>29.18%</i>	<i>23.13%</i>	<i>16.70%</i>
<i>2</i>	<i>TCS e-Serve Ltd.</i>	<i>69.31%</i>	<i>69.66%</i>	<i>64.73%</i>
<i>3</i>	<i>e4we Healthcare Pvt. Ltd.</i>	<i>9.77%</i>	<i>9.14%</i>	<i>5.47%</i>
<i>4</i>	<i>ICRA Techno Analytics Ltd.</i>	<i>25.24%</i>	<i>24.83%</i>	<i>18.72%</i>
<i>5</i>	<i>Infosys BPO Ltd.</i>	<i>17.86%</i>	<i>17.86%</i>	<i>12.59%</i>
<i>6</i>	<i>Jindal Intellicon Ltd.</i>	<i>13.70%</i>	<i>10.92%</i>	<i>7.94%</i>
	<i>Arithmetic Mean</i>	<i>27.51%</i>	<i>25.92%</i>	<i>21.03%</i>
	<i>Ariba India's margin</i>		<i>17%</i>	

48. Needless to say that in order to compute the correct margin, TCS E Serve Ltd. is to be excluded as discussed in the preceding paras since it appears to be a mistake apparent on record. So, Id. TPO/AO is directed to verify the correct margin given by the AO and proceed in accordance with law.

GROUND NO.7

49. Ld. TPO as well as ld. DRP have rejected the TNMM with OP/Sales as PLI as the MAM to benchmark its international transactions qua fee for intra-group / technical services and proceeded to recompute the ALP of the transaction at nil by applying CUP method.

50. Undisputedly, in AY 2010-11, in taxpayer's own case, TNMM analysis adopted by the taxpayer was upheld by the ld. DRP and held the value for fee for technical services at arm's length but during the year under assessment i.e. 2011-12, ld. DRP have taken opposite view without pointing out any dissimilarity of facts particularly when it is admitted fact that there is no change in the functional profile of the taxpayer during AYs 2010-11 and 2011-12.

51. Ld. DR for the Revenue relied upon the order passed by the ld. DRP/TPO and also relied upon the order of the *Safran Engineering Services India (P.) Ltd. vs. ACIT, Circle 6(1)(1), Bengaluru (2018) 89 taxmann.com 77 (Bengaluru – Trib.)*.

52. It is also the case of the taxpayer that for running its business, there was a dire need of intra – group services i.e. e-commerce auction platform for which it was immensely benefited by utilizing high end platform/know-how developed by

Ariba Inc. and as such, technical services received from Ariba Inc. were critical for running the business of spend management solutions by Ariba India. It is also the contention of the Id. AR for the taxpayer that fee for technical services has been accepted by the Revenue in case of AEs i.e. Ariba Inc. and similar payment has been made in the previous years. It is also contended by the Id. AR for the taxpayer that there is no change in the pricing basis of the transactions vis-à-vis prior years.

53. However, Id. TPO has taken the view after perusing the profit and loss account that the taxpayer has incurred personnel expenses, fee for technical services, legal and professional expenses to the tune of Rs.11,34,29,790/-, Rs.1,73,75,854/- & Rs.77,97,755/- respectively which is in the nature of duplicative services. Id. TPO also proceeded to hold that the taxpayer has not been able to show as to what cost benefit analysis has been done with regard to the purported receipt of services from the AE and no independent party would have made a payment in uncontrolled circumstances. It is settled principle of law that revenue authorities are not empowered to question the commercial wisdom/reasoning applied by the businessmen to run its business. The taxpayer has come up with complete financial data that the technical services

received from AE has immensely increased the sale of the taxpayer during the FYs 2010-11 to 2013-14 which is as under :-

<i>Financial Year</i>	<i>Third Party Revenue from provision of spend management solutions</i>	<i>YOY Growth in revenue</i>	<i>Fee for technical services</i>
<i>FY 2009-10</i>	<i>133,727,094</i>		<i>16,715,886</i>
<i>FY 2010-11</i>	<i>139,006,833</i>	<i>3.95%</i>	<i>17,373,854</i>
<i>FY 2011-12</i>	<i>147,899,633</i>	<i>6.40%</i>	<i>18,487,454</i>
<i>FY 2012-13</i>	<i>194,630,137</i>	<i>31.60%</i>	<i>24,328,767</i>
<i>FY 2013-14</i>	<i>290,078,940</i>	<i>49.04%</i>	<i>38,107,544</i>

54. It is also the case of the taxpayer that even after including fee for technical services the operating expenses ratio of the taxpayer is lower than that of comparable companies and its profit margin is also more than comparable companies as per analysis given at pages 160 & 161 of the paper book. Ld. TPO/DRP have ignored all these facts and has not preferred to discuss the same and preferred to decide the issue on the basis of the fact that the taxpayer has not been able to show the benefit which has been accrued to the taxpayer, which is not permissible under law.

55. Ld. DRP in its order in para B.1 (at page 48 of the appeal file) though agreed with the contention raised by the taxpayer that some benefit has been accrued to the taxpayer in the form of platform to conduct the e-auction and also where the transactions ought to have been benchmarked separately after examining the functional profile because this service is so inter-related to the

business of the taxpayer but declined to grant the relief on the ground that the taxpayer has failed to discharge the onus of adducing proper evidence to show nature of benefit received and whether the cost charged for it was at arm's length and not duplicative.

56. To our mind, it is erroneous approach because when services have been received in the form of platform to conduct the e-auction by the taxpayer and there is not an iota of material on the file if the services are duplicative in nature, drawing the benefit, if any, by the taxpayer is immaterial as it is prerogative of the businessman as to how the business is to be run.

57. So, in these circumstances, this issue is required to be remitted back to the TPO/DRP/AO to decide afresh after providing an opportunity of being heard to the taxpayer and by following a consistent approach particularly when there is no change in the functional profile and nature of transactions during the year under assessment vis-à-vis earlier year in consonance with an approach adopted by the Id. DRP in AY 2010-11. So, Ground No.7 is determined in favour of the taxpayer for statistical purposes.

GROUND NO.8

58. Ld. TPO/DRP have made notional addition of Rs.19,61,503/- by determining arm's length interest rate at 10.85%

on account of interest on delayed collection of receivables from its AE. Ld. AR for the taxpayer contended that TPO/DRP have erred in making a separate notional addition of the alleged interest on account of receivables despite the fact that this cost has already been counted by way of working capital adjustment on the comparables.

59. Undisputedly, in AY 2010-11, in taxpayer's own case, ld. DRP held that the period of delay may be restricted to the very same accounting year for which benchmarking is being done i.e. till 31st March and interest should be computed accordingly to the period of delay only. It being an identical issue consistent approach by the Revenue authorities is required to adopt in order to stop unnecessary litigation. So, we are of the considered view that the issue is required to be remitted back to the AO/TPO to decide in accordance with the view taken in AY 2010-11 as well as law laid down by *Hon'ble High Court of Delhi in Kusum Healthcare Pvt. Ltd. in ITA No.765/2016 dated 25.04.2017*. So, Ground No.8 is determined in favour of the taxpayer for statistical purposes.

CORPORATE ISSUES

GROUND NO.9

60. The taxpayer challenged the action of AO/DRP in disallowing an amount of Rs.82,98,871/- claimed on account of

travelling and conveyance expenses appearing as credit card payments in AIR. Undisputedly, credit cards are issued by the bank in the name of employees of the taxpayer and statements thereof have been directly issued to the employees. The amount has been disallowed by the AO/DRP on the ground that the taxpayer has failed to produce documentary evidence i.e. bills/vouchers in respect of such credit cards. No doubt, the taxpayer is having details of expenses claimed as reimbursement by the employees but in order to authenticate the same it has not taken on record the copies of the credit card bills of its employees to prove that the expenses have been incurred by the employees for the business purposes. In these circumstances, we are of the considered view that the issue is required to be remitted back to the AO to decide afresh and to provide an opportunity of being heard to the taxpayer to explain the details of the amount reimbursed to the employees. Ground no.9 is allowed in favour of the taxpayer for statistical purposes.

GROUND NO.10

61. Ground No.10 is dismissed having not been pressed during the course of arguments.

GROUND NO.11

62. Ground No.11 being premature needs no specific findings.

GROUND NO.12

63. Ground No.12 being consequential in nature needs no specific findings.

64. Resultantly, the appeals of the taxpayer for AYs 2010-11 & 2011-12 are partly allowed for statistical purposes.

Order pronounced in open court on this 18th day of June, 2020.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 18th day of June, 2020
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A).
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**