

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'I-1': NEW DELHI  
BEFORE,  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SHRI O.P.KANT, ACCOUNTANT MEMBER**

**ITA No.3174/Del/2017  
(ASSESSMENT YEAR-2007-08)**

<p>Quattro Business Support Solutions Private Limited (formerly known as FPO Business Solutions India Pvt. Ltd. Previously known as RSM Mc Gladrey Financial Process Outsourcing India Pvt. Ltd. as per original order) Plot No.264, Sector-22, Gurgaon, Haryana-122015. PAN -AAACA 3684P</p>	Vs.	<p>Dy. CIT-8(3), Mumbai.</p>
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA No.3188/Del/2017  
(ASSESSMENT YEAR-2007-08)**

<p>Dy. CIT, Circle-20(2), New Delhi</p>	Vs.	<p>M/s Quattro Business Private Limited (formerly known as FPO Business Solutions India Pvt. Ltd. earlier RSM Mc Gladrey Financial Process Outsourcing India Pvt. Ltd.) Unit No.1, MBC Infotech Park, Fifth Floor, Near Hyper city Mall, Near Kasarvadivili Police Station, Kasarvadivili, Ghodbunder Road, Thane (W)-400607, Mumbai.</p>
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant By	<b>Ms. Lalitha Krishnamurthy, Adv., Ms. Vidhi Agrawal, CA &amp; Himani Jain, CA</b>
Respondent by	<b>Sh. Sachin Daniya, Sr. DR</b>

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JM:**

ITA No.3174/Del/2017 has been preferred by the assessee against the order dated 22.11.2016 passed by the learned Commissioner of Income Tax (Appeals)-44, New Delhi {CIT(A)} and pertains to Assessment Year 2007-08. ITA No.3188/Del/2017 is the Cross Appeal filed by the Department.

2.0 The brief facts of the case are that the assessee is a process outsourcing company. Its 90% equity is held by M/s RSM MC Gladrey Financial USA (FPO-Business). The assessee has entered into an agreement with its Associated Enterprise (AE) FPO-US to provide accounting and financial services for its client. During the year under consideration the assessee has entered into the following international transactions:-

SL No.	Nature of service	FY 2006-07	Method adopted	FY 2005-06
1.	Financial Process Outsourcing Services (Received)	22,86,28,408	TNMM	9,20,80,786
	Total	22,86,28,408		9,20,80,786

2.1 The assessee has adopted TNMM method as the most appropriate method with the Profit Level Indicator (PLI) as OP/OC. The assessee has remunerated at cost plus 12% mark up. Further, during the year, the PLI of the assessee as the tested party is 12.84%. The assessee has arrived at arithmetic mean of 12 comparables on multiple year data basis and average of the arithmetic mean of PLI was 11.13% and even updated PLI on current year data basis, average PLI was 13.5%. Therefore, the assessee concluded that its international transactions are at arm's length.

2.2 A reference was made to the Transfer Pricing Officer (TPO) in view of the international transaction. The TPO analyzed the comparables of the assessee and has given a finding that out of the 12 comparables, for 3 comparables namely B2K Corp Ltd, BT Technet and Saffron Global, current year data is not available. Therefore, only 9 comparables remained out of the assessee's list.

Finally the TPO proposed 30 comparables in the final list. The final list of 30 comparables with arithmetic mean of PLI of 27.18% is reproduced as under:

<i>SI No.</i>	<i>Name of the Comparable Company</i>	<i>PLI (%)</i>	<i>Remarks</i>
1	<i>Accentia Technoloesies Ltd</i>	<i>38.26</i>	<i>Department</i>
2	<i>Aditya Birla Minacs Worldwide Ltd (Earlier Transivorks Information Services Ltd)</i>	<i>11.98</i>	<i>Department</i>
3	<i>Allsec Technologies Ltd</i>	<i>27.31</i>	<i>Department</i>
4	<i>Apex Knowledge Solutions Pvt. Ltd.</i>	<i>12.83</i>	<i>Common</i>
5	<i>Appollo Healthstreet Ltd</i>	<i>-13.55</i>	<i>Department</i>
6	<i>Asit C. Mehta Financial Services Ltd</i>	<i>24.21</i>	<i>Department</i>
7	<i>Bodhtree Consulting Ltd (Seq.)</i>	<i>29.58</i>	<i>Department</i>
8	<i>Caliber Point Business Solutions Ltd</i>	<i>21.26</i>	<i>Common</i>
9	<i>Cosmic Global Ltd</i>	<i>12.40</i>	<i>Common</i>
10	<i>Datamatics Financial Services Ltd (Seq.)</i>	<i>5.07</i>	<i>Department</i>
11	<i>Eclerx Services Ltd</i>	<i>90.43</i>	<i>Department</i>
12	<i>Flextronics Software Systems Ltd (Seq.)</i>	<i>14.54</i>	<i>Department</i>
13	<i>Genesys International Corporation Ltd</i>	<i>13.35</i>	<i>Department</i>
14	<i>H C L Comnet Systems &amp; Services Ltd (Seq.)</i>	<i>44.99</i>	<i>Department</i>
15	<i>IC R A Techno Analytics Ltd (Seq.)</i>	<i>12.24</i>	<i>Department</i>
16	<i>Informed Technologies India Ltd</i>	<i>35.56</i>	<i>Department</i>
17	<i>Infosys B P O Ltd</i>	<i>28.78</i>	<i>Department</i>
18	<i>I Services India Pvt Ltd</i>	<i>50.27</i>	<i>Department</i>
19	<i>Maple Esolutions Ltd</i>	<i>34.05</i>	<i>Department</i>
20	<i>Mold-Tek Technologies Ltd</i>	<i>113.49</i>	<i>Department</i>
21	<i>R Systems International Ltd (Seq.)</i>	<i>20.18</i>	<i>Department</i>
22	<i>Spanco Ltd (Seq.)</i>	<i>25.81</i>	<i>Common</i>

23	<i>Triton Corp Ltd</i>	34.93	<i>Department</i>
24	<i>Vishal Information Technologies</i>	51.19	<i>Department</i>
25	<i>Wipro Ltd (Seq.)</i>	29.70	<i>Department</i>
26	<i>Ace Software Exports Ltd.</i>	2.03	<i>TP Report</i>
27	<i>Ask Me Info Hubs Limited (Shreejal Info Hubs Ltd.)</i>	0.34	<i>TP Report</i>
28	<i>Fortune Infotech</i>	17.49	<i>TP Report</i>
29	<i>Rev IT Systems Pvt. Ltd</i>	21.70	<i>TP Report</i>
30	<i>Sparsh BPO Services Ltd.</i>	5.11	<i>TP Report</i>
	<i>Arithmetic mean</i>	27.18	
	<i>Assessee</i>	12.48	

2.3 The TPO has computed the adjustment of Arms Length Price (ALP) on the basis of average PLI of the comparables at 27.18% and made upward adjustment of arm's length price for Rs 2,98,81,299/- as under:-

SI. No.	Particulars	As per assessee (Form 3CEB)	ALP determined by Department
1.	<i>Value of support services provided to the AE in relation to financial support</i>	22,86,28,406	25,85,09,707
2.	<i>Operating Cost (OC)</i>	20,32,62,861	20,32,62,861
3.	<i>Operating Profit (OP)</i>	2,53,65,547	5,52,46,846
4.	<i>OP/OC</i>	12.48%	27.18%
5.	<i>Difference between ALP of sales and value of international transaction</i>		2,98,81,299

2.4 Accordingly, the TPO has passed the order u/s 92CA(3). The assessing officer after issuing the draft assessment order

passed the final assessment order and made adjustment in ALP in accordance with order u/s 92CA(3).

2.5 Aggrieved by the assessment order framed after incorporating the recommendations of the TPO, the assessee approached the Ld. First Appellate Authority challenging the transfer pricing adjustment with respect to the Arms Length Price in respect of the International Transactions. The assessee challenged the inclusion of comparables M/s Accentia Technologies Ltd., M/s. Bodhtree Consulting Ltd. (Seg.), M/s Eclerx Services Ltd., M/s Informed Technologies India Ltd., M/s Infosys BPO Ltd., M/s I Services India Ltd., M/s Maple Esolutions Ltd., M/s Mold-Tec Technologies Ltd., M/s Triton Corp Ltd. & M/s Wipro Ltd. The assessee also appealed to the Ld. First Appellate Authority for allowing adjustment on account of risk adjustment. Before the Ld. CIT (A), the assessee also submitted that use of multiyear data was to be allowed. Apart from this, the assessee also prayed for allowing benefit of (+ -) 5% as per the provisions of Sec.92C of the Act. The assessee's appeal was partly allowed by the Ld. CIT (A) and now

both the assessee as well as the Department is in appeal before this Tribunal.

2.6 The following grounds are raised by the assessee in ITA No. 3174/Del/ 2017:

- “1. That the TP adjustments made in respect of consideration for the services rendered by the assessee to its AE FPO-US to the extent sustained by CIT (A) is unjust, unwarranted and in any case very excessive on various factual and legal grounds.*
- 2. That the object and purpose of introducing Chapter X of the Act is not to tax any notional income but to ensure that the real income is brought to tax under the Act and to also ensure that there is no avoidance of tax by transfer of income from India to other tax jurisdictions consequently, the transfer pricing adjustment to the extent sustained by CIT(A) is unjust, unwarranted and not tenable on various factual and legal grounds.*
- 3. That CIT (A) had erred in upholding the inclusion of three comparables viz. eClerx Services Limited, Informed Technologies India Private Limited and I Service India Private Limited for the purpose of benchmarking the appellant’s International Transactions with the AE and in thus confirming the Transfer Pricing Adjustment made by the TPO to this extent.*
- 4. That the CIT(Appeals) had erred in upholding the selection of company earning super normal profits as being comparable for bench marking the international transaction entered into by the appellant with its AE.*
- 5. That the CIT (Appeals) had erred in upholding the selection of company rendering KPO Services as being comparable for*

*bench marking the international transaction entered into by the appellant, rendering accounting services, with its AE.*

- 6. That the CIT (Appeals) had erred in upholding the selection of company having very high profit margin in the relevant year as against earlier and subsequent years, as being comparable for bench marking the international transaction entered in to by the appellant with its AE.*
- 7. That the inclusion of eClerx Services Limited as a comparable for benchmarking the international transaction entered into by the appellant with its AE and upheld by CIT(A) is unsustainable as the said company was engaged in the business of Knowledge Process Outsourcing Services (KPO services) and thus, the functions performed and the services rendered by it were materially different from those performed by the appellant.*
- 8. That as the profit margin of Informed Technologies India Private Limited in the relevant year is very high as against earlier and subsequent years, CIT (A) ought to have excluded this company for the purpose of benchmarking the international transaction.*
- 9. That as I Service India Private Limited was having super normal profits in the relevant year CIT (A) ought to have excluded this company for the purpose of benchmarking the international transaction.*
- 10. That the AO/TPO ought to have excluded HCL Comnet Systems and Services Limited (segment) as a comparable as it is an industrial giant with very high turnover, significant related party transactions and assuming all risks.*
- 11. That the CIT (A) had erred in not considering the effect of difference in the functions performed and risk assessment of the appellant and the three comparable companies sustained*

by CIT (A) and in thus not granting any adjustment to the appellant on this account to arrive at a reliable ALP.

12. That the CIT(A) had erred in not allowing suitable economic adjustments on account of:

i Working capital adjustments to account for differences in working capital employed by the appellant and the comparable sustained by CIT(A);

ii Risk adjustment to account for differences in risk profile of the appellant (a risk free captive service provider) and the comparable (full-fledged entrepreneurial service provider) sustained by CIT(A);

iii. Functional profile of appellant and the comparable sustained by CIT (A); for the purpose of benchmarking the international transaction.

13. That the appellant denies its liability to be charged interest under section 234B/C of the Act.

14. That the Ld. CIT (A) ought to have given the benefit of +/- 5% adjustment as contemplated in law.

The above grounds of appeal are mutually exclusive and without prejudice to each other. The appellant craves leave to add, alter, amend and / or modify any of the grounds of appeal at or before the hearing of the appeal.

2.7 The following grounds are raised by the Department in ITA No. 3188/Del/2017:

“1. The Ld. CIT(A) has erred in law and on facts of the case in deciding the exclusion of companies decided by the TPO without appreciating the facts of the case i.e. M/s. Accentia Technology Pvt. Ltd., M/s. Bodhtree Consulting Limited, M/s. Infosys BPO Ltd., M/s. Mold Tek Technologies Solutions, M/s. Vishal Information

*Technologies Pvt. Ltd., M/s. Wipro Ltd. and M/s. Maple Esolution Ltd. & M/s Triton Corp Ltd are suitable comparable . The Ld. CIT (A) has been also not able to examine in detail and brought out the finding on record and the TPO has mentioned in detail and passed a speaking order.*

*2. The appellant craves to be allowed to add any fresh ground(s) of appeal and/or deleted or amend any of the ground(s) of appeal.”*

3.0 At the outset, the Ld. Authorized Representative submitted that Department's Appeal i.e. ITA No.3188/Del/2017 was liable to be dismissed at the threshold itself as the same was below the prescribed monetary limit for preferring appeals before the Income Tax Appellate Tribunal. The Ld. Authorized Representative submitted a chart depicting the calculation of the tax effect which has been placed on record. As per the calculation, the disputed tax in the Department's appeal is Rs.44,26,663/-.

3.1 The Ld. Sr. DR fairly accepted that the appeal of the Department was below the prescribed monetary limit.

3.2 We note that the CBDT, vide Circular No.17/2019 dated 08.08.2019, has revised the monetary limit for filing the appeals before the Tribunal to Rs.50 Lacs. Further, the CBDT, vide letter

dated 20.08.2019, has also clarified that Circular No.17/2019 would be applicable to all pending appeals. In such circumstances, the present appeal filed by the Revenue due to the tax effect being below the prescribed monetary limit is not maintainable. Before parting, we clarify here that the Revenue shall be at liberty to approach the Tribunal for re-institution of appeal, if the requisite material is brought to show that the appeal is protected by the exceptions prescribed in Para 10 of the Circular dated 11.07.2018. In conclusion, by applying the CBDT Circular dated 08.08.2019 and letter dated 20.08.2019 (supra), the captioned appeal of the Revenue is dismissed as withdrawn/not pressed. Accordingly, ITA No.3188/Del/2017 stands dismissed.

4.0 The Ld. Authorized Representative submitted that so far as the assessee's appeal was concerned, the assessee was contesting only three comparables viz. Informed Technologies India Ltd., Eclerx Services Pvt. Ltd. & I Service India Pvt. Ltd. The Ld. AR also drew our attention to the additional ground preferred by the assessee. She drew our attention to the application dated

06.02.2020 wherein the assessee has moved prayer for admission of additional ground which reads as under:

*“That the Assessing Officer/TPO ought to have excluded HCL Comment Systems and Services Limited (segment) as a comparable as it is an industrial giant with very high turnover, significant related party transactions and assuming all risks.”*

4.1 The Ld. Authorized Representative submitted that although this comparable was not agitated before the Ld. CIT (A), its inclusion was objected by the assessee before the Transfer Pricing Officer (TPO) on the ground that the annual report of this company was not available in public domain. The Ld. Authorized Representative submitted that the ITAT has power to admit additional ground, although the same had not been the subject matter of dispute before the Ld. CIT (A).

4.2 The Ld. Sr. DR, however, opposed the assessee's prayer for admission of additional ground.

4.3 Having heard both the parties, we are of the considered opinion that the assessee can indeed raise an additional ground before the Income Tax Appellate Tribunal and Income Tax Appellate

Tribunal has power to admit such additional ground. Therefore, in view of the judgment of the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd vs. CIT (1998) 229 ITR 383 (SC) we admit this additional ground.

5.0 The arguments made by the Ld. AR in respect of the comparables being challenged by the assessee are as under:

(i) Informed Technology India Pvt. Ltd:- It was submitted that the assessee's seeks exclusion of this comparable on the ground that there were wide fluctuations in the margin and revenue of this company. It was submitted that in March, 2007 this company had returned profit @ 39.06% whereas in the immediately preceding year there was a negative profit of 26.35%. To substantiate these figures, the Ld. AR drew our attention to page-396 of the annual report. It was further submitted that apart from the wide fluctuations in the margins and revenues, this company had very low employee cost (21.77%) as compared to the assessee company 52.08%. It was further submitted that this company was operating as an IT enabled knowledge based back office processing center i.e. it was a KPO whereas the assessee was a low-end ITES company

providing accounting and financial support services and was, thus, a captive service provider. It was further submitted that, therefore, the functionality of this company was entirely different from the assessee company and, therefore, the same should be excluded. The Ld. Authorized Representative also placed reliance on numerous orders passed by the Co-ordinate Benches of the Tribunal wherein this company had been excluded as a comparable.

(ii) Eclerx Service Pvt. Ltd.- The Ld. Authorized Representative argued that this company also was a non comparable company because it provided the services being provided by a KPO whereas the assessee functioned as a low-end ITES captive service provider. It was also submitted that this company was earning super normal profits in as much as the operating margin of this company, as per the order of the TPO, was 19.43% as against the margin of 12.48% in the case of the assessee. Against the inclusion of this comparable also, the Ld. Authorized Representative placed reliance on numerous orders of the ITAT wherein this company had been

excluded as a comparable and prayed that this company be excluded.

(iii) I Services India Pvt. Ltd.- Arguing against the inclusion of this comparable, the Ld. Authorized Representative submitted that this company was also not comparable to the assessee company in as much as this company also was providing high end diversified services like web hosting email services, spam filtering, domain names, DNS hosting etc. whereas the assessee functioned as a low end captive service provider providing ITES services. The Ld. AR also submitted that other information relating to this company was not available in the public domain in as much as the profit and loss account and its schedules were not available even on the site of the Ministry of Corporate Affairs which was contrary to the finding of the Ld. CIT (A) at page-11 of the impugned order. She also placed on record a copy of Form-23AC in respect of this company which had been downloaded from the site of the Ministry of Corporate Affairs and submitted that only this information was available which included the Director's report, Form No.23AC and the report

of the auditors etc. The Ld. AR also relied on numerous case laws for exclusion of this comparable

(iv) HCL Comnet Software System Services Ltd.- The Ld. AR submitted that the turnover of this company was approximately 260 Crores whereas the assessee's turnover was only 22.86% and, therefore, this company was an industrial giant as compared to the assessee company. It was also submitted that this company was a full-fledged risk taking entrepreneur as compared to the assessee company which was only a captive service provider. It was also submitted that this company provided multi-layer services like Advisory Services ITES, ITES research and analysis, advisory services to support client engagement, etc. It was also submitted that this company was operating 24/7 whereas the assessee was operating only 5 days a week. The Ld. AR also pointed out that the assessee's asset base was a mere 16.54 crores as compared to the assets base of this company which was 188.90 crores. While praying for exclusion of this company, the Ld. AR placed reliance of numerous judicial precedent/orders passed by the Co-ordinate Benches of the Tribunal wherein this company has been excluded.

6.0 In response, the Ld. SR. DR submitted that the assessee was providing Financial Process Outsourcing (FPO) services as well as business valuation services and had clubbed these two transactions for the basis of bench marking. It was argued by the Ld. Sr. DR that FPO services themselves would come under high-end ITES services as compared to BPO services like Call Center Etc. It was submitted that the business valuation services have to be categorized under the KPO services and, therefore, the objection of the assessee against inclusion of certain comparables on the ground that they were KPO was misplaced. It was further submitted that so far as the issue of functional comparability with the comparables was concerned, it was evident from the transfer pricing study report that the entire verticals of ITES was picked up for selection of comparables and the comparables selected were of a broad functional comparability under Transactional Net Margin Method (TNMM). It was submitted that at that point of time the assessee had not objected to the approach of the Transfer Pricing Officer and, therefore, the assessee cannot be permitted at this stage to change its stand by praying for strict functional

comparability. With respect to the assessee's prayer for exclusion of companies having huge turn over, it was submitted that earlier the assessee itself had adopted the turn-over filter of less than one crores. With respect to assessee's prayer for exclusion of comparables on the ground of extraordinary events, it was submitted that comparables cannot be excluded merely on the ground that some extraordinary event has taken place unless the assessee is able to demonstrate as to how they have affected the profitability. It was further submitted that, therefore, the comparables being objected to by the assessee should be retained at this stage.

7.0 We have heard the rival submissions and have also perused the material on record. We have also carefully considered the assessee's plea for exclusion of four comparables. After giving a considerable thought to the arguments of both the parties, our adjudication on each of the comparables is as under:

(i) Informed Technologies India Pvt. Ltd.- With respect to this comparable, it is the assessee's plea that there has been wide fluctuations in the margins and the revenue of this company. We

have gone through page -396 of the annual report of this company wherein the comparative figures for March, 2006 and March, 2007 have been given. It is seen that the contention of the Ld. AR is correct in much as it has been contended that there has been a wide fluctuation in profits. It is seen that for the year ended 31<sup>st</sup> March, 2006, the company returned a negative profit of 26.35% and for the year ending 31<sup>st</sup> March, 2007 i.e., year under consideration, there was a positive profit of 39.06%. Thus, this wide fluctuation of 65.41% is apparent from the records of the company. The Pune Bench of ITAT in the case of *Cummins Turbo Technology Ltd. reported in [2015] 53 taxmann.com 492 (Pune Tribunal)* had taken a view that where there is a wide fluctuation in the margins earned, the inclusion of such a company in the final set of comparables would not lend creditability to the comparability analysis and therefore, such a company deserves to be excluded. This order of ITAT Pune Bench excluding Informed Technologies India Ltd. was upheld by the Hon'ble Bombay High Court and is reported in [2018] 91 Taxmann.com 307 (Bombay High Court). Another argument of the Ld. Authorized Representative has been regarding the low

employee cost of this company that is being 21.77% as compared to 52.08% of the assessee company. We have perused the annual report of this company and have studied the figures in this regard as appearing in page 10 of the Paper Book filed by the assessee and we note that this contention of the Ld. AR is also correct. We note that for this reason the ITAT Delhi Bench in the case of H & S Software Development and Management Center Pvt. Ltd. vs. ACIT reported in [2017], 78 taxmann.com 159 (Delhi Trib.) had held that ITES sector company having less than 25% of sales as employee cost should not be chosen as a comparable for benchmarking international transaction. For this reason also, this company deserves to be excluded. Further ITAT Mumbai Bench in the case of *DCIT Vs. Morgan Stanley Advantage Services (Pvt.) Ltd.* reported in [2019] 109 taxmann.com 101 (Mumbai Trib.) had directed exclusion of this company by observing that the company having the low employee cost as compared to the assessee cannot be considered as a comparable. Accordingly, we direct the exclusion of this comparable from the final set of comparables.

(ii) Eclerx Services Pvt. Ltd.- It has been argued of the Ld. AR that this company was providing KPO related services whereas the assessee was a low end captive service provider in the field of ITES. We note that this company has been ordered to be excluded by the Hon'ble High Court of Delhi in Rampgreen Solutions (Pvt.) Ltd. (supra) on the ground that this company was engaged in data analytics, data processing services, pricing analytics, bundling optimization, content operation, sales and marketing support, product data management, revenue management, etc. It has been also noted that in addition to this service Eclerx also offered financial services such as real time capital markets, middle and back-office support, portfolio risk management services and various critical data management services. Thus, clearly these services are not comparable with the services rendered by the assessee company. Following the Hon'ble Delhi High Court, this company was also excluded by the ITAT Delhi Bench in the case of DCIT vs. Everest Business Advisory India (Pvt.) Ltd. reported in [2018] 89 taxmann.com 323, H & S Software Development and Knowledge Management Center Pvt. Ltd. vs. ACIT reported in [2017], 78

taxmann.com 159 (Delhi Tribunal). We also note that this company was directed to be excluded by the Chennai Bench of Tribunal in the case of ACIT, Chennai Vs. Brigae Corporation of India reported in [2014] 48 Taxamann.com 176 (Chennai-Trib.) for the reason of super normal profit. We have gone through the annual report of this company placed at page-439 of the paper book. We have studied the figures of service income, operating revenue and operating expenses and we note that for the year ending 31<sup>st</sup> March, 2007, OP/OC was 50.20% whereas for the year ending 31<sup>st</sup> March, 2008, the OP/OC was merely 9.73%. Thus, apparently, there were super normal profits earned by this company. We also note that ITAT Mumbai Bench, after considering the judgment of the Hon'ble Delhi High Court in Rampgreen Solution Pvt. Ltd. (supra) and also in the case of DCIT vs. Morgan Stanley Advantage Services Pvt. Ltd. (supra) had directed the exclusion of this company as it was providing high end data analytics and customized process solution and was leading provider of KPO services with substantial validity for law and ITES Services which the assessee was not providing. Accordingly, in view of the above stated judicial precedents, we

direct the exclusion of this company from the final set of comparables.

(iii) I Service India Pvt. Ltd. - It has been argued by the Ld. AR that this company deserves to be excluded because it was providing high end diversified services like web hosting email service, spam filtering, domain names, DNS hosting etc. We note that the Hon'ble ITAT Delhi Bench in the case of *DCIT vs. Everest Business Advisory India Pvt. Ltd.* reported in [2018] 89 Taxmann.com 323 (Delhi Trib.) had ordered the exclusion of this company in light of the judgment of the Hon'ble Delhi High Court in the case of *Rampgreen Solution Pvt. Ltd.(supra)* by noting that the business profile of this company showed that the same was into high end services like web hosting email services, spam filtering, domain names, DNS hosting, etc. which made it functionally dissimilar to the tax payer. We also note that the Ld. CIT (A) has noted that the information regarding financials of this company was available in the public domain, which is contrary to the facts. In such a situation, the Ld. TPO should not have included this comparable as the relevant details were not available. Accordingly, for the reasons cited above and in

view of the judicial precedents as above cited, we direct exclusion of this company from the final set of comparables.

(iv) HCL Comnet Software System Services Ltd. - It is the contention of the Ld. Authorized Representative that this company should be excluded for the reason of having a very different business profile all together as it is having activities like advisory services, ITES, ITES Research and analysis, advisory services to certain support of client engagement etc. We note that ITAT Delhi Bench in the case of DCIT vs. *Everest Business Advisory India Pvt. Ltd. reported in [2018] 89 taxamnn.com 323 (Delhi Trib.)* had ordered the exclusion of this company on account of functional dissimilarity by following Rampgreen Solution Pvt. Ltd. (supra). It had been noted that this company is operating 24/7 in three shifts whereas the tax payer was operating with a single shift only. It had also been noted by the co-ordinate bench that this company was a risk-bearer company whereas the taxpayer was a captive service provider to its AE and, thus, there was a stark functional dissimilarity. Similarly, this company was directed to be excluded by ITAT Hyderabad Bench in *Capital IQ Information Systems (India) (P.) Ltd. v. DCIT*

(2013) 57 SOT 14 (URO)/25 ITR 185 (Hyd.) (Trib.) on the ground that this company along with *Infosys B P O Ltd. and Wipro Ltd.* cannot be treated as a comparable considering their substantial high turnover as compared to the assessee. Accordingly, in view of the above stated judicial proposition, we direct the exclusion of this company also from the final set of comparables.

7.1 As it has been submitted by the Ld. AR that if these four comparables are excluded, the assessee's other grounds will become academic in nature as the assessee's average would then fall within the accepted range of deviation. Since we have ordered the exclusion of the four comparables being contested by the Ld. AR, in view of the submissions of the Ld. AR, the other grounds are being treated as having become academic and they are not being adjudicated upon.

8.0 In the final result, the appeal of the assessee's stands partly allowed whereas the Department's appeal stands dismissed in view of the law tax effect.

Order pronounced on 26/05/2020.

Sd/-

**(O.P.KANT)**

**ACCOUNTANT MEMBER**

Date: 26/05/2020

PK/Ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(SUDHANSHU SRIVASTAVA)**

**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI