

**IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA
BEFORE SHRI S. S. GODARA, JM & DR. A.L. SAINI, AM**

ITA No.1458/Kol/2017
(Assessment Year: 2010-11)

ACIT, Circle-14(1), Kolkata	Vs.	M/s Acclaris Business Solutions (P) Ltd. Eco Space Tower, 2B, 2 nd Floor, Unit 201, New Town, Rajarhat, 24 pgs(N), Kolkata – 700156.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAECA2366E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Appellant by : Shri Sanjay Paul, ACIT(DR)
Respondent by : Shri J.P. Khaitan, Sr. Advocate

सुनवाई की तारीख / Date of Hearing : 24/07/2020
घोषणा की तारीख/Date of Pronouncement : 20/10/2020

आदेश / O R D E R

Per Dr. A. L. Saini, AM:

The captioned appeal filed by the Revenue, pertaining to Assessment Year 2010-11 is directed against the order passed by the Commissioner of Income Tax (Appeals)-22, Kolkata which in turn arises out of an assessment order passed by Assessing Officer u/s 143(1)/144C of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. Grounds of appeal raised by the Revenue are as follows:

Ground No.1- CIT(A) erred in stating that the assessee is purely engaged in processing claims relating to medical claims and travel and not also in software developments.

Ground No.2- The CIT(A) erred in ignoring the fact that the assessee is engaged in customer research software development and KPO services as evidenced by various cases or portals and website of the company.

Ground No.3- The CIT(A) erred in stating that the TPO has not considered functional, asset and risk profile of the assessee and has overlooked the evidence filed by the assessee.

Ground No.4- The CIT(A) erred in rejecting companies that are functionally comparable of the assessee from the final list of the comparable without providing any cogent reasons for non-comparability of FAR of these companies.

1. *Accentia Technologies Ltd.*
2. *TCS E-Serve International Ltd.*
3. *e4e Healthcare Business Services Pvt. Ltd.*
4. *Crossdomain Solutions Pvt. Ltd.*

Ground No.5 – The CIT(A) erred in accepting companies that are functionally different from that of the assessee without providing any cogent reasons for comparability of FAR of these companies

1. *Cosmic Global Ltd.*
2. *Timex Group India Ltd -*
3. *AOK In-House BPO Services Ltd*
4. *Aditya Birla Minacs Worldwide Ltd.*
5. *Omega Healthcare Management Services Pvt. Ltd.*
6. *In House Productions Ltd. – Seg*
7. *Fortune Infotech Ltd.*

Ground No.6 – The CIT(A) erred in deleting ALP adjustment of Rs.2,97,51,782/-.”

3. First we shall take Ground No.1,2 and 3 raised by the Revenue, which relate to functional, asset and risk ('FAR') profile of the assessee. The stand of the Revenue in these grounds is that the assessee is not a captive BPO service provider.

4. The facts of the case which can be stated quite shortly are as follows: The respondent, Acclaris Business Solutions Pvt. Ltd. (hereinafter referred to as 'the assessee') was incorporated on 6th June 2003 as a subsidiary of Acclaris Inc. (formerly known as Acclaris LLC and hereinafter referred to as the holding company). The assessee claimed that it is a captive service provider and during the year under consideration, the assessee provided back office processing services or business process outsourcing services ('BPO') to some of the clients of its holding company. The BPO activities included various types of services, primarily related to collation and checking of medical claims and travel &

expense claims with their respective bills. The assessee all along operated under constant support and guidance from its holding company for these services. The assessee in its Form 3CEB reported two international transactions: “**services rendered**” and “**expenses recovered**”. The transaction under litigation is the transaction of “**services rendered**” and there is no dispute with respect to the transactions in the category of “**expenses recovered**”. As per the Form No. 3CEB filed by the assessee the transaction of “**services rendered**” was reported at INR 191,423,932/-. Such amounts were paid by the assessee’s holding company to the assessee for the abovementioned BPO services which were provided by the assessee to its such holding company. The assessee applied the Transactional Net Margin Method (‘TNMM’) as the most appropriate method for benchmarking such international transaction. A profit level indicator (‘PLI’) of Operating Profit/Operating Cost (‘OP/OC’) was computed by the assessee at 12.37%. Five companies were considered as comparable companies and their average margin was 8.54%. The arithmetic mean of operating profits margins of these five comparable companies were compared favorably with assessee's PLI and, hence, the international transaction of “**services rendered**” was concluded to be at arm's length by the assessee.

5. A reference was made by the Ld. Assessing Officer (‘AO’) for determining the arm’s length price (‘ALP’) of the international transactions to the Ld. Transfer Pricing Officer (‘TPO’). In the course of the proceedings before the Ld. TPO, the assessee filed the Transfer Pricing Study Report (vide letter dated 10th May, 2013 addressed to the Ld. TPO which is at **Pg. 3 of the paper book**, wherein the activities undertaken by the assessee were described in detail and the relevant portions thereof are as follows:

“1.2.2 Acclaris Business Solutions Private Limited

...

Acclaris India provides back office processing (‘BPO’) services to Acclaris Inc. as a captive service provider in relation to some of Acclaris Inc’s clients. The BPO services includes various types of services including e-recruitment services, financial accounting services

and routine back office services which could be like indexing and enrollment for clients.

Our analysis recognizes that Acclaris India works as an IT enabled service provider providing back-office services to Acclaris Inc. Acclaris Inc. bears all the significant business and entrepreneurial risks of product acceptability and performances in the market. Acclaris India does not own any interest in these intangibles and is a mere service provider.

Based on the functional analysis, Acclaris India has least complex operations and bears lesser share of risks and was accordingly selected as the tested party for the economic analysis.

Our analysis recognizes that Acclaris India works as a contract IT enabled service provider providing routine IT enabled services to the group. Acclaris India leverages on all the valuable intellectual property rights (know-how, copyrights etc.) and other commercial or marketing intangibles (brand names, trademarks etc.) owned by Acclaris Inc. Acclaris Inc. also bears all the significant business and entrepreneurial risks of product acceptability and performance in the market. Acclaris India does not own any interest in these intangibles and is a mere service provider.”

Further, in response to the notice of the Ld. TPO dated 18th September, 2013, the assessee, vide its letter dated 17th October 2013 filed before the Ld. TPO, made detailed submissions inter alia regarding the functions performed and activities undertaken by the assessee. The relevant portions of such submissions, which are at **Pages 119-120 of the paper book**, are given below:

“Claims Processing (Claims Indexing & Data Entry):

*For each of the clients, the first step in the process of claim approval is “claims processing”. During the said process, the clients submit their healthcare claims through fax / images in the Acclaris Inc. web-based application. The assessee’s resources **log into the application to retrieve** the said data. Based on the claims submitted by the clients, the assessee performs the necessary **data entry functions**. **In case any clarification or guidance is required by the assessee, these are provided by the US Subject Matter Experts (‘SME’).***

Customer Analysis & Research (CARE):

Post completion of the work there may be instances wherein queries are raised by the clients with regard to the processing of their claims.

*During such a scenario, the assessee would perform a **review of the basic data entry functions undertaken by it** to ensure that no errors have been made. In case any errors are found in the limited functions being performed by the assessee, these are rectified.*

Alternatively, if no errors are present, these queries are sent across to the US SMEs for resolution.

Operational Accounting:

*Operational accounting refers to a **reconciliation process** performed by the assessee to confirm whether all payments that were required to be made to the clients have been processed by Acclaris Inc. The reconciliation process is performed using the rules and steps provided by the US SMEs. If any errors are found, these are informed to the US SMEs for initiation of corrective action.”*

In such letter, the assessee further submitted that for the rendering of the above mentioned BPO services, Acclaris Inc (AE) had developed a software module which was its own proprietary product intended only for the purpose of claim processing. The assessee in certain situations, provided support to Acclaris Inc., which were based on specific customer needs ascertained by Acclaris Inc. Assessee`s functions were limited to making incidental changes to the module necessary for rendering BPO services; requiring basic coding activities, under the guidance and based on the requirements shared by subject matter experts (‘SME’) employed by its holding company.

6. The assessee, vide its above letter dated 17th October, 2013 filed before the Ld. TPO, annexed the agreement dated June 30, 2003 which it had entered into with its holding company, Acclaris Inc (**Pages 122-131 of the paper book**) under which such BPO services, i.e. back office processing and Information Technology Enabled Services were agreed to be provided by the assessee to its holding company. Such agreement in its Addendum 1 made reference to Software development/support services which the assessee would be willing to provide on the terms and conditions of the service agreement. The said Addendum was also valid from June 30, 2003 which is the date from which the service arrangement came into force. The assessee claimed that such agreement had been filed with

the Departmental Authorities in the course of the assessment proceedings for the earlier assessment years also and in such years, it was all along accepted by the Department that the assessee was engaged in providing BPO services and there was no dispute with respect thereto in those assessment years. The relevant portion of such addendum is as under:

1. *“In accordance with the terms and conditions of the agreement between Acclaris, LLC (“ACCLARIS”) and Acclaris Business Services Pvt Ltd (“ABSPL”) dated June 30, 2003, (“the Agreement”) it is agreed between the parties that the services described below are not currently included in the scope of services of the Agreement and the Addenda as they may have been modified from time to time.*
2. *.... ABSPL agrees to provide and ACCLARIS agrees to utilise the services of up to 4 software developers, one of whom may also function in a supervisory capacity.”*

The assessee states that on March 31 2010, the said agreement between the assessee and Acclaris Inc. was further amended, with respect to the Kolkata Service Centre of the Respondent-assessee, to include for specific payment related terms pertaining to the provision of software service for running of the assessee’s BPO services (**Pages 134-135 of the paper book**). Such amendment was made effective from April 1, 2009. The relevant portion of such amendment is as follows:

*“ACCLARIS (i.e. the holding company) will pay ABSPL (i.e. the assessee) monthly charges towards Direct FTEs (i.e. full time employees) engaged by ABSPL for rendering ‘BPO services’ for clients of ACCLARIS as well as for ‘Software services’ **for running such ‘BPO Services**.*

*A Direct FTE for Software Services is defined as any FTE assigned in the development (either in part or in full) or maintenance of any software, **which is used by ACCLARIS for running its ‘BPO Services’...**”*

7. The Ld. TPO, however, rejected the contention of the assessee and held that since some of the activities of the assessee pertained to adjudication over

claims, the assessee carried out higher functions than a routine BPO, leaning towards a Knowledge Process Outsourcing ('KPO'). Reference in this regard was also made by the Ld. TPO on online job profiles of some of the employees of the assessee. Further, the Ld. TPO also held that the assessee carried out software development work and maintenance of software for the work of its holding company. The Ld. TPO therefore undertook a fresh search for selecting comparables. In said search, the Ld. TPO selected six companies (mainly engaged in KPO services) as comparables with an arithmetic mean PLI of 29.83%. Accordingly, adjustment was made to the assessee's Arm Length Price (ALP) and the adjusted amount of Rs, 2,97,51,782/- was added to the income of the assessee.

8. Aggrieved by the order of the TPO/AO, the assessee carried the matter in appeal before the Id CIT(A) who has deleted the Arm Length Price (ALP) determined by the TPO at Rs, 2,97,51,782/- and also held that the assessee is a captive BPO service provider. Aggrieved by the order of the Id CIT(A), the Revenue is in appeal before us.

9. Learned DR for the Revenue, before the Bench, has primarily reiterated the stand taken by the Transfer Pricing Officer (TPO), which we have already noted in our earlier para and is not being repeated for the sake of brevity.

10. Learned Counsel for the assessee, has relied on the order of the Id CIT(A).

11. We heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id TPO and findings of Id CIT(A) and other materials brought on record. We note that during the appellate proceedings, the assessee company submitted letter dated 18th January 2017 before the Ld. CIT(A), wherein the assessee reiterated its

submissions made before the Ld. TPO (**Pages 377-381 of the paper book**).

Relevant extracts of the said submissions are given below:

“The appellant provides back office processing services (‘BPO’) to some of the clients of its holding company, Acclaris Inc. The BPO activities include various types of services which include medical claims and travel & expense claims. On the other hand, Acclaris Inc undertakes the entire marketing and business development activity to generate business, negotiates and enters into contracts with customers, bears the costs of the entire project transition phase, renders the requisite training to its employees or the employees of the respondent and last but not the least, performs the function of seeing the complete project through.

Software Services:

Acclaris India performs basic software coding activities which is under the guidance of the US experts. Acclaris India has no access to the source code of the software and is provided a copy for use.

The functions performed by the entities are summarised below:

<i>Functions</i>	<i>Brief of the Function</i>	<i>Acclaris Inc.</i>	<i>Applicant</i>
<i>Deposits and disbursements</i>	<i>Reconciliation of the claim to confirm that all payments required to be made to client’s employees have been processed by Acclaris Inc.-executed through ‘Acclaim Software’ owned by Acclaris Inc.</i>	√	√
<i>Delivery Supervision</i>	<i>Supervising all services to client, prioritizing deliveries to the client</i>	√	X
<i>Query Resolution (Non-Voice)</i>	<i>Basic query Handling through raising of help desk tickets</i>	√	√
<i>Query Resolution (Voice)</i>	<i>Resolving complex customer queries through voice-based support</i>	√	X
<i>Software requirement and design</i>	<i>Interaction with clients to seek requirements, designing of solutions, testing and deployment</i>	√	X
<i>Basic coding and testing</i>	<i>Basic software coding and testing under supervision by Acclaris Inc.</i>	X	√

(b) Assets

The appellant does not own any significant intangible and does not undertake any significant Research and Development on its account that leads to the development of non-routine intangibles. It leverages on the process, know-how, technical data software, operating / quality standards etc. developed/ owned by Acclaris Inc. for undertaking the above functions.

(c) Risks

The risks assumed by the appellant and AE in course of performing the above functions are summarised below. Since, the appellant is operating under the captive arrangement and entirely under the support and guidance of the AE, it is absolved of most of the business and operational risks arising out of the operation.

Particulars	Acclaris Inc.	Acclaris India
Market Risk / Price Risk	√√	XX
Service Liability / Quality Risk	√√	XX
Credit Risk	√√	XX
Manpower Risk	√	√√
Entrepreneurial Risk	√√	XX
Foreign Exchange Risk	√√	XX

As it can be seen from above that the appellant does not assume any significant risk from its business operation.

(c) Characterisation

In light of the above, the appellant being a captive service provider remunerated on a cost-plus model does not bear risks like R&D risk, price risk... whereas Acclaris Inc., being an entrepreneur is exposed to all risks associated with its business operations.

Considering the same, the appellant was characterised as a routine IT enabled service provider providing back-office services exclusively to Acclaris Inc., which assumes less than normal risks associated with carrying out such business.

The submissions were also made by assessee to counter the erroneous and arbitrary findings of the Ld. TPO. After considering the actions of the Ld. TPO and the submissions and reasons offered by the assessee before the Ld. TPO and also in the appellate proceedings, the Ld. CIT(A) held that the Ld. TPO had overlooked and had not taken into consideration the functions, asset and risk

profile of the assessee and the Ld. CIT(A) confirmed the FAR profile of the assessee. The relevant findings of the Ld. CIT(A) are reproduced below:

*“1. I have carefully considered the action of the Ld. TPO and the submissions and reasons offered by the appellant before the Ld. TPO as well as in appeal. After examining the issues at hand, as also the different judicial decisions placed on record by the appellant / Ld. AR for the appellant, I am inclined to **agree with the contention of the appellant that the Ld. TPO has not taken into account the Functional Asset and Risk (FAR) profile of the appellant company and the AE, and has overlooked the evidence provided by the appellant before him in respect of the Comparables selected or rejected by him.***

*2. The basic facts as emanating in the case are that the appellant is shielded from any risks and performs functions in a captive arrangement. As such, in my considered view of the matter, the functions undertaken by the appellant and AE which forms the basic premise of undertaking the search process and identifying the comparable companies, are to be guided by the fact that **the appellant is purely engaged in processing claims relating to medical claims and travel. It has been submitted, the client relationships are maintained by Acclaris Inc. and only a part of the data entry functions are being outsourced to the appellant in India. The services are rendered by appellant under constant support and guidance of Acclaris Inc. It has also been submitted that Acclaris Inc. provides user manual to the appellant for provision of claim processing services. Accordingly, the appellant is completely shielded from any risks arising out of the operation under the captive arrangement.**”*

12. We note that the Ld. CIT(A) selected all the five comparables chosen by the assessee in its transfer pricing study report. The Ld. CIT(A) also selected a further two comparables which were selected by the Ld. TPO and which were not disputed by the assessee and rejected the four other comparables selected by the Ld. TPO which were functionally different from the assessee. Considering the profit level margins of seven companies (**five from the transfer pricing study and remaining two comparables of the Ld. TPO**), the Ld. CIT(A) held that no adjustment was warranted in assessee's case and allowed the appeal of the assessee.

We note that Ld. TPO has erred, in law and in facts, by not considering the FAR profile of the assessee being the key comparability factor in selection of

comparable companies. The Ld. TPO has erroneously characterized the assessee as a business engaged in higher functions than a routine BPO, leaning towards a Knowledge Process Outsourcing (KPO).

The assessee provides BPO services to its holding company as a captive service provider in relation to some of the clients. The BPO services includes various types of services including e-recruitment services, financial accounting services and routine back office services which could be like indexing and enrollment for clients. The assessee reconciles claims to confirm that all payments required to be made to client's employees have been processed by the holding company. All client relations are maintained by the holding company and only a part of the data entry functions is outsourced to the assessee. The holding company, on the other hand, undertakes the entire marketing and business development activity to generate business, negotiates and enters into contracts with customers, bears the costs of the entire project transition phase, renders the requisite training to its employees or the employees of the respondent and oversees the running of the entire project. The assessee functions all along under the guidance and supervision of the holding company. A user manual is provided to the assessee from the holding company for guiding and aiding the assessee in the performance of its functions. These rule books are based on the statutory rules and guidelines applicable in the holding company's country, i.e. USA, and are collated and prepared by the holding company's subject matter experts. For each of the clients, the first step in the process of claim approval is "**claims processing**". During the said process, the clients submit their healthcare claims through fax / images in the web-based application of the holding company. The assessee's resources log into the application to retrieve the said data. Based on the claims submitted by the clients, the assessee performs the necessary data entry functions. In case any clarification or guidance is required by the assessee, these are provided by the holding company's subject matter experts.

13. We note that the Tribunal in the assessee's own case in AY 2007-08 and AY 2008-09 had held that the assessee is engaged in providing BPO services to its holding company. Vide order passed by the Tribunal for AY 2007-2008 in ITA No. 695/Kol/2011, which is reproduced below:

“The assessee provides Back Office Processing services (BPO) to Acclaris Inc., as a captive service provider in relation to some of Acclaris Inc's clients. The BPO services include various types of services including recruitment services, financial services and routine back office services like indexing and enrollment for clients. The assessee works as an IT enabled back office services provider which provides back office services to the client. The assessee does not own any intangibles interest in the intangibles owned by Acclaris Inc. and is only a service provider.”

Taking into account the above discussions and order of Id CIT(A), we note that there is no any infirmity in the order passed by the Id CIT(A). Besides, the Coordinate Bench in assessee`s case (supra), held that assessee was engaged in providing captive BPO services to its holding company. Therefore, respectfully following the judgment of the Coordinate Bench in assessee`s case (supra), we hold that assessee is engaged in providing captive BPO services to its holding company and hence we dismiss grounds Nos.1, 2 and 3 raised by the Revenue.

14. Now we shall take ground Nos. 4, 5 and 6 raised by the Revenue which relate to comparables selected and rejected by the Id TPO and Id CIT(A). The grievance of the Revenue in ground No. 4 is that the CIT(A) erred in rejecting following companies that are functionally comparable to the assessee:

1. Accentia Technologies Ltd.
2. TCS E-Serve International Ltd.
3. e4e Healthcare Business Services Pvt. Ltd.
4. Crossdomain Solutions Pvt. Ltd.

In ground No.5 the grievance of the revenue is that the CIT(A) erred in accepting following companies that are functionally different from the assessee:

1. Cosmic Global Ltd.
2. Timex Group India Ltd -
3. AOK In-House BPO Services Ltd
4. Aditya Birla Minacs Worldwide Ltd.
5. Omega Healthcare Management Services Pvt. Ltd.
6. In House Productions Ltd. – Seg
7. Fortune Infotech Ltd.

Ground No. 6 raised by the Revenue is general in nature.

Now, we shall discuss these comparables one by one:

15. We note that the FAR analysis, discussed in above para, forms the basic premise of undertaking the search process and identifying comparable companies. We note that the comparables chosen by the Ld. TPO are primarily engaged in KPO services, unlike the assessee which is engaged in providing BPO services. We note that the assessee is engaged in performing captive BPO services to its holding company and such view has been accepted by the Ld. CIT(A). When a tested party is a BPO service provider (*akin to the assessee*), KPOs cannot be considered as comparables from a transfer pricing perspective. On the basis of the aforesaid detailed discussions and the FAR profile of the assessee discussed above, we shall examine the acceptance/ rejection reasons of each comparable which have been selected by the assessee as well as those selected by the Ld. TPO and ld CIT(A) as follows:

(1). Accentia Technologies Ltd

The company is engaged in development of software products and rendering KPO services in the healthcare sector. As per its annual report, Accentia is a multi-location diversified Knowledge Process Outsourcing company, operating from multiple locations in India, USA, UK and the Middle East. It is engaged in SaaS (Software as a Service) model, services under Healthcare Receivables Cycle management including medical transcription, medical coding and billing and

receivables management services. Medical transcription is an IT enabled service requiring specialized skills. It has also ventured into Legal Process Outsourcing, Data Process Outsourcing and high end software services delivery. The medical transcription services of Accentia represent 68.82% of total operating revenues.

The Id Counsel submitted that the company has acquired IQ group of Companies (Pg. 38 and 40 of PB) and amalgamated with Asscent Infoserve Private Limited during the year. The Id Counsel placed reliance on the order the Delhi High Court in the case of Pr. Commissioner of Income Tax v. BC Management Services Pvt Ltd. Delhi High Court dated 28th November 2017 in ITA 1064/2017 & CM No. 43177/2017 & ITA 1083/2017 & CM No. 43280/2017. The assessee in this case was engaged in providing IT enabled services to its AE and the Hon'ble High Court rejected Accentia as a comparable company by holding in Paragraph 13 Page 3 of its order as under: -

*“The assessee was aggrieved by the inclusion of **Accentia a Software Development Company**. The Revenue is aggrieved by the exclusion of Accentia from the TP analysis. The DRP had directed its deletion. We observe that the ITAT has noticed the **unavailability of the segmental data** so far as these comparables are concerned. Furthermore, the functionality of this entity was concerned, **it is different from that of the assessee; Accentia was engaged in KPO services in the healthcare sector.**”*

Therefore, considering the above facts and precedents Accentia Technologies Ltd should be rejected as a comparable. Thus, we accept the view taken by the Id CIT(A).

(2).TCS E-Serve International Ltd

TCS E-Serve International Ltd has provided services largely to Citi Group based on the agreement entered into by TCSL and Citi concurrent to the acquisition transaction. This would imply that pricing and terms on which services are provided by TCSE to Citi is influenced by Citi itself. The company is engaged in provision of services to Citigroup Inc. and its affiliates (Citi Group) based on the long-term agreement for 9.5 years which

is a part of sale consideration. As per the annual report of TCS E-Serve International Ltd.-,

- The Company provides a broad range of services that cater to the process management requirements of wide range of financial products and enterprise support functions, which include Financial Information Processing (data processing) and Customer Contact (**voice based**) (**Pg. 117 of SPB**)

Such **voice-based services** are completely different from the low-end claim processing services provided by the assessee.

- It is engaged in the business of providing Information Technology - Enabled Services (ITES) / Business Processing Outsourcing (BPO) services, primarily to Citigroup entities globally (Pg. 140 of SPB).
- The company became part of the TCS/ Tata group and is supported by the scale and large client base brought by these groups. During the year under consideration, this company has made payments towards use of Tata brand. (**Pgs. 116-117, 145-146 of the PB**). Due to this, there is a 300% increase in profits of the company (**Pg. 129 of the SPB**).

The Id Counsel submits that TCS E-Serve International is a subsidiary of Tata Consultancy Services Ltd. The company is backed by the Tata brand. The benefits of being a part of the world's largest IT services group and also, part of India's largest business houses render the company incomparable to the assessee. Further, as per various media reports, TCS purchased Citi group's business process outsourcing (BPO) arm, formerly known as e-Serve International Ltd. Tata Consultancy Services acquired Citigroup Inc.'s interest in Citigroup Global Services Limited (CGSL), the India-based captive business processing outsourcing (BPO) for an all cash consideration of \$512 million. As part of the deal, TCS will provide process outsourcing services to Citi and its affiliates for an aggregate amount of US\$ 2.5 billion over a period of 9.5 years (**Pg. 185-190 of PB**). Since the services are being provided as a part of an acquisition deal, pricing and the terms on which TCS E-serve International provided services would not have been at market defined rates. In this regard, the Id Counsel relied on the judgment of the Coordinate Bench of Delhi ITAT in the case of Morningstar India Pvt. Ltd v. DCIT, Circle-17(1), (**ITA No. 1520/Del/2015**) dated 6th May 2019 for AY 2010-11. The assessee in this case was engaged in providing data processing services to its AEs (Para

3 Page 4 of the order) and the Hon'ble Tribunal rejected TCS E-Serve International as a comparable company (Paragraph 22 Page 17 of the order) by holding as under:

“22. We have carefully considered the contentions and find the annual account of the above comparable company placed at page number 297 – 371 of the paper book. Apparently TCS E serve international is a subsidiary of Tata consultancy services Ltd. Behind the above comparable company, there is a Tata brand. On the perusal of schedule M of the profit and loss account there is a payment of 3738000 towards the Tata brand equity contribution. For this reason that it belongs to Tata group and has also contributed to Tata brand which is one of the largest brand in the information technology segment, there is a definite impact on the pricing capacity of the comparable which the assessee lacks. Hence, we find that TCS E serve international Ltd deserves to be excluded. Accordingly we direct the learned TPO – AO to exclude the above comparable.”

In light of the above facts, the TCS E-Serve International Ltd should be rejected as a comparable. Hence, we accept the view taken by the Id CIT(A).

(3).e4e Healthcare Business Services Pvt Ltd

As per annual report of the company, the company *Provides healthcare outsourcing services and software development. The company is also a 100% EOU, under STPI guidelines. (Pgs. 211 and 222 of the PB).* Further, as per their website, e4e Healthcare Business Services was formed by a group of oncologists based in State College, Pennsylvania as their captive operational center. This group owned and operated a large chain of Oncology and Radiology centers throughout the East Coast and was one of the first to see the Quality and Cost advantage of offshore processing of their medical billing and transcription functions. The company has also invested heavily on developing rigorous process controls, in systems and software platforms and in information security. **(Pg. 236 of SPB).**The assessee submits that it is thus evident that the above company was engaged in business of providing healthcare outsourcing services and software development for the healthcare industries, the same cannot be compared with the assessee which was engaged in providing BPO services. In this regard, the Id Counsel relied on the judgment of the Coordinate Bench of Delhi ITAT in the case of Bechtel India Pvt. Ltd. vs DCIT dated 21st December 2015 in **I.T.A No.1478/Del/2015** for AY 2010-11.The assessee in this case was

engaged in providing captive support services to its AE (Para 3 Pages 1-2 of the order) and the Tribunal rejected e4e Healthcare Business Services as a comparable company by holding in Paragraph 3 Pages 17 of the order as under:

“3) E4e Healthcare Business Services Private Limited. This company has been included by the Id.TPO as a comparable. Functionally the company is into health care outsourcing services and in addition it also renders software development services. It is also observed that segmental information in respect of this company is not available. The company is also a 100% EOU, under STPI guidelines. We are therefore inclined to accept the contention of the assessee that this company should be excluded as a comparable. Hence we direct the Assessing Officer to do so.”

In light of the above facts, the E4e Healthcare Business Services should be rejected as a comparable. Hence, we accept the view taken by the Id CIT(A).

(4).Crossdomain Solutions Pvt Ltd

As per the website of this company, Crossdomain is a Business Process Management Company relentlessly focusing on knowledge intense processes. The service offerings of Crossdomain include Medical Billing and Transcription, Knowledge Services Outsourcing in Insurance, Healthcare, HR and Accounting domains. The company also offers Business Excellence, Market Research & Data Analytics and IT Services. **(Pg. 237 of PB)**.The Ld Counsel submits that it is evident that the said concern operates as a Knowledge Process Outsourcing services provider (KPO) and not a simple business process outsourcing services provider and cannot therefore be compared with the assessee. In this regard, the Id Counsel relied on the judgment of the Coordinate Bench of Hyderabad ITAT in the case of M/s Market Tools Research Pvt. Ltd. in **ITA No.1811/Hyd/2012** dated 24th October 2013. In this case, the assessee was engaged in providing IT enabled back office services to its AE (Para 2 Page 1 of the order) and the Tribunal rejected Crossdomain Solutions Private Ltd as a comparable company (Paragraphs 11.1-11.3 Pages 17-19 of the order) by holding as under-

“We have heard the submissions of the parties and perused the material on record with regard to the aforesaid company. As can be seen from the website extract of the aforesaid company, it is engaged in

providing services which are in the nature of KPO. Further, on perusal of the annual report of the company, furnished in the paper book, it is seen that the said company is engaged in providing Niche services, as well as developed its own brand 'Exdion' to target the insurance industry in US. The Annual Report further reveals that the company has been running marketing campaigns in the US for expanding its plant base in relation to the brand developed by it. The assessee however, is only providing IT Enabled Services to its AE and does not have the diversified activities like the aforesaid company. The Bangalore Bench of the Tribunal in the case of Symphony Marketing Solutions India P. Ltd. V/s. ITO (supra), while considering the issue of aforesaid company as a comparable accepted the assessee's contention that Crossdomain cannot be compared to a routine ITES provider and directed for exclusion of the same from the list of comparables. Respectfully following the aforesaid decision of Income-tax Appellate Tribunal Bangalore in the case of Symphony Marketing Solutions (supra), we also direct the Assessing Officer to exclude the aforesaid company from the list of comparables for the purpose of determining ALP."

In light of the above facts, the Crossdomain Solutions Pvt Ltd should be rejected as a comparable. Hence, we accept the view taken by the Id CIT(A).

16. Now, we deal with the comparable companies accepted by the Id CIT(A), as follows:

1. Cosmic Global Ltd

The Id Counsel submits that this company had been proposed by the Ld. TPO as a comparable in the course of the proceedings before him (Pg. 197 of the paper book vide notice dated 13th January, 2014) and the same was not disputed by the assessee in its reply dated 21st January, 2014 (Pg. 200-201 of the paper book). The margin of this company was taken into consideration by the Ld. TPO in making the adjustment of the arm's length price of the assessee (Pg. 268 Para 13 of the paper book). Even in the appellate proceedings before the Ld. CIT(A) such company was accepted in the order of the Ld. CIT(A). The Id Counsel submits that as per the annual reports of Cosmic Global Ltd. and various judicial pronouncements, such company is not comparable to the assessee as it has different functions which cannot be compared to those of the assessee. The Id Counsel submits that Cosmic Global should be excluded as a comparable for the reasons stated hereunder-

As per the annual reports of Cosmic Global Ltd.,

- The company's activities were IT enabled services like Medical Transcription, Translation and Software Development.

(Pgs. 243-244, Pg. 250 of PB)

- The company employs only experienced and trained professionals as transcriptionists.

(Pg. 250 of PB)

- Medical translation service income accounts for 94% of total revenue.

(Pg. 248 of PB)

The Id Counsel submits that Cosmic Global Ltd was engaged in providing services which were in the nature of KPO. The company was providing software development, medical transcription and translation services in various streams including legal, marketing, technical, medical, etc. Therefore, this company cannot be compared to the assessee. In this regard, the Id Counsel relied on the judgment of the Coordinate Bench of Pune ITAT in the case of Schlumberger India Technology Centre Pvt. Ltd. V. The Dy. Director of Income Tax (IT)-II, Pune (**ITA No.640/PUN/2014**) dated 10th January 2018 (AY 2010-11).The assessee in this case was engaged in providing technical support services to its AEs (Para 4 of the order) and the Hon'ble Tribunal rejected Cosmic Global as a comparable company (Paragraphs 27-28 of the order) by holding as under-

*“19..... In view of the findings of Tribunal in the case of assessee and another IT enabled service provider and the ratio laid down by Hon'ble Delhi High Court, we hold that where **Cosmic Global Ltd. was operating in different business model** than the assessee in the year under consideration also, the same **needs to be excluded** from the final set of comparables. Accordingly, we hold so.”*

Based on the above facts, we reject Cosmic Global Ltd as a comparable. We do not agree with the view taken by the Id CIT(A).

2. Timex Group India Ltd - Segment

The Global Services segment of the above comparable is engaged in providing IT and finance related back office support services. The same has been confirmed in the financial statements of the company provided in Pg. 297 of PB. Moreover, in Timex Group India Ltd.'s own case, M/s. Timex Group India Limited v. DCIT, Circle 25 (2),

(ITA No. 845/Del./2016) at Pgs. 16 and 25 of its order, the Tribunal mentioned that the company was into IT-ES services in the payroll processes, account processes, etc. The relevant portion of the decision is produced below:

“29. The taxpayer during the year under assessment entered into international transactions qua provision of Information Technology Enabled Services (ITES) in the form of provisions of services in the nature of payroll processes, account processes, etc. to the tune of Rs.2,60,97,175/- with its Associated Enterprises (AE).”

The Id Counsel submits that the Tribunal after detailed examination accepted a margin of 7.86% for Timex Group India Ltd. (segment) for the rendering of ITeS; services which are similar to that provided by the assessee.

Therefore, based on the facts and precedent narrated above the Timex Group India Ltd. (**segment**) should be accepted as a comparable. We agree with the view taken by the Id CIT(A).

3. AOK In-House BPO Services Ltd

The company is engaged in providing BPO services. As per their annual report, the company is a BPO service provider (**Pg. 322 of SPB**). As per its website, the company is a leading outsourced IT Enabled Business Processing and backend Support Services, Insurance policy issuance and claims processing etc. (**Page 342 of SPB**).

Therefore, based on the facts and precedent narrated above the AOK In-House BPO Services Ltd should be accepted as a comparable. We agree with the view taken by the Id CIT(A).

4. Aditya Birla Minacs Worldwide Ltd

As per its annual report, the company provides a variety of business process outsourcing services which are non-voice based. (Pages 305 and 318 of PB).The services provided by Aditya Birla Minacs Worldwide Ltd, being non-voice based BPO services, are similar to those provided by the assessee. Therefore, based on the facts narrated above the Aditya Birla Minacs Worldwide Ltd should be accepted as a comparable. We agree with the view taken by the Id CIT(A).

5. Omega Healthcare Management Services Pvt Ltd

As per its annual report, the company was into BPO services like medical billing, coding, accounts receivable management, clinical staff augmentation, and total healthcare revenue management services, data entry services and physician and hospital claims services. (Pg. 345, Pg. 352 PB). In this regard, the Id Counsel relied on the judgment of the Coordinate Bench of Delhi in the case of Bechtel India Pvt. Ltd. vs DCIT (I.T.A No. 1478/Del/2015, AY 2010-11). The assessee in this case was engaged in providing captive support services to its AE (Para 3 Pages 1-2 of the order) and the Tribunal accepted Omega Healthcare Management Services Pvt. Ltd. as a comparable company by holding in Paragraph 1 Pages 17-18 of the order as under:

“...The company is involved in the provision of offshore healthcare business outsourcing services, like medical coding, billing, accounts receivable management, claims processing, and healthcare revenue management. It also provides services to AR Management companies, and their hospital clients, for their credit balance account, regular accounts receivable and facility coding needs. It is noticed that this company is basically into ITES business...”

The services provided by Omega Healthcare Management Services Pvt Ltd. are similar to those provided by the assessee. Therefore, based on the facts and precedent narrated above the Omega Healthcare Management Services Pvt Ltd should be accepted as a comparable. We agree with the view taken by the Id CIT(A).

6. In House Productions Ltd – Segment

As per its annual report, the year under review has seen the company having income from Medical BPO activities (Pages 386, 388, 390, 398 of PB). The services provided by In House Productions Ltd–Segment are similar to those provided by the assessee. Therefore, based on the facts narrated above, the In House Productions Ltd – Segment should be accepted as a comparable. We agree with the view taken by the Id CIT(A).

7. Fortune Infotech Ltd

As per the annual reports of Fortune Infotech Ltd., the company is engaged in providing IT enabled services (Pg. 410 of PB). The Ld Counsel submits that in Fortune Infotech Ltd.’s own case, Fortune Infotech Ltd. v. Assistant Commissioner of Income-tax, Circle

-1(2), **(ITA NO. 274 (AHD.) OF 2013)** dated 3rd February 2016 reported in [2016] 66 taxmann.com 92 (Ahmedabad- Trib.), the Tribunal held that the company was engaged in the business of providing IT enabled services. The relevant portion of the decision, is reproduced below:

“7. In order to adjudicate on these issues, it is essential to take a look at the relevant material facts, and developments leading to this appeal before us. The assessee is engaged in the business of providing information technology enabled services in the areas of insurance claim processing, mortgage loan processing and document processing services....”

The Id Counsel submits that it is evident from the above that this company is engaged in providing IT Enabled Services such as claims and document processing. This company had been selected as a comparable by the Ld. TPO and the Respondent-assessee does not dispute that this company is functionally comparable to the assessee.

Therefore, based on the facts and precedent narrated above the Fortune Infotech Ltd should be accepted as a comparable. We agree with the view taken by the Id CIT(A).

17. We note that Ld. CIT(A) after detailed examination of the comparables and after going through the submissions of the assessee in that regard, rightly concluded that the transaction is at arm's length, by observing the as follows:

“07.DECISION:

1. I have carefully considered the action of the Ld. TPO and the submissions and reasons offered by the appellant before the Ld. TPO as well as in appeal. After examining the issues at hand, as also the different judicial decisions placed on record by the appellant/Ld. A/Rs for the appellant, I am inclined to agree with the contention of the appellant that the Ld. TPO has not taken into account the Functional Asset and Risk (FAR) profile of the appellant- company and the AE, and has overlooked the evidence provided by the appellant before him in respect of the Comparables selected or rejected by him.

2. The basic facts as emanating in the case are that the appellant is shielded from any risks, and performs functions in a captive arrangement. As such, in my considered view of the matter, the functions undertaken by the appellant and AE which forms the basic premise of undertaking the search process and identifying the comparable companies, are to be guided by the fact that the appellant is purely engaged in processing claims relating to medical claims and travel. It has been submitted, the client relationships are maintained by Acclaris Inc. and only a part of the data entry functions are being outsourced to the appellant in

India. The services are rendered by appellant under constant support and guidance of Acclaris Inc. It has also been submitted that Acclaris Inc. provides user manual to the appellant for provision of claim processing services. Accordingly, the appellant is completely shielded from any risks arising out of the operation under the captive arrangement.

3. The appellant has been able to demonstrate that considering the FAR profile in its own case vis-à-vis the AE is to be compared with similar entities which are engaged in providing services akin to what the appellant is providing, to determine the arm's length price of the services rendered by the appellant. In addition to providing the information on the companies adopted by the Ld. TPO, the appellant has also provided the results of the scientific search process based on which the appellant's transactions with the AE can be concluded to have been undertaken at arm's length; the comparables also includes the two accepted companies from the list.

4. Based on the above submission and apparent demonstration, I find merit in the submissions of the appellant-company. Considering the business operation of the appellant, I find merit in the appellant's argument summarised as below:

SI NO	Name of the Company	Reason for Disposition	Disposition
1	Accentia Technologies Ltd.	Medical transcription services, coding services, offering SaaS model. Case of Bechtel India Pvt. Ltd. vs DCIT (I.T.A No. 1478/Del/2015, AY 2010- 11).	Reject
2	TCSE-Serve International Ltd.	Engaged in provision of services to Citigroup Inc. and its affiliates ('Citi Group') based on the long term agreement for 9.5 years which is a part of sale consideration.	Reject
3	e4e Healthcare Business Services Pvt. Ltd.	Provides healthcare outsourcing services and software development Case of Bechtel India Pvt. Ltd. vs DCIT (I.T.A No. 1478/Del/2015, AY 2010-11)	Reject
4	Crossdomain Solutions Private Limited	The service offerings of Crossdomain include Knowledge Services Outsourcing in Insurance, Healthcare, HR and Accounting domains. The company also offers Business Excellence, Market Research & Data Analytics and IT Services. Case of M/s. Market Tools	Reject

		<i>Research Pvt. Ltd., V/s. Dy. Commissioner of Income-tax Circle 16(2) and BNY Mellon International Operations (India) Private Limited, V/s. Dy. Commissioner of Income-tax Circle 1(1), Pune.</i>	
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5. Based on above, final comparables are as below:

<i>SI NO</i>	<i>Company Name</i>	<i>Disposition</i>	<i>OP/TC</i>
1	<i>AOK In-House BPO Services Ltd.</i>	<i>Accept</i>	<i>12.58%</i>
2	<i>Aditya Birla Minacs Worldwide Ltd.</i>	<i>Accept</i>	<i>8.06%</i>
3	<i>Omega Healthcare Management Services Pvt. Ltd</i>	<i>Accept</i>	<i>9.34%</i>
4	<i>In House Productions Ltd.</i>	<i>Accept</i>	<i>4.32%</i>
5	<i>Timex Group India Ltd.</i>	<i>Accept</i>	<i>8.38%</i>
6	<i>Fortune Infotech Ltd.</i>	<i>Accept</i>	<i>22.77%</i>
7	<i>Cosmic Global Ltd.</i>	<i>Accept</i>	<i>14.97%</i>
	<i>Mean</i>		<i>11.49%</i>
	<i>The appellant's margin is 12.37%.</i>		

6. Based on the above, it is held that the transaction of the appellant with its AE is at arm's length and no adjustment is warranted in this case. Therefore, the adjustment made by the Ld. TPO and accordingly confirmed by the Ld. AO stands deleted. Therefore Ground No. 3 stands allowed in favour of the appellant. I have taken the submissions of the appellant with regard to the other Grounds relating to the impugned Transfer Pricing adjustment; as such the specific grounds No 1 to 5 stand allowed, with the observations that with the findings given the balance grounds do not require any specific adjudication. ”

18. Learned CIT(A) accepted seven comparable companies. However, we have rejected Cosmic Global Ltd, as comparable for the reasons stated in our para 16 of this order, however, this gives the impact on average margin of comparables,

that is, average PLI comes at 10.91% and average margin of the assessee is at 12.37, as tabulated below:

S No	Company	PLI
1	Timex Group India Ltd - Seg	8.38%
2	AOK In House BPO Services Ltd	12.58%
3	Aditya Birla Minacs Worldwide	8.06%
4	Omega Healthcare Mgt Services	9.34%
5	In House Productions Ltd - Seg	4.32%
6	Fortune Infotech Ltd	22.77%
	Average	10.91%
	Assessee's margin	12.37%

Since the margin earned by the assessee is higher than the margin of the comparables, therefore the transaction of "services rendered" is at arm's length. We do not find any infirmity in the order of Id CIT(A) except that we have rejected Cosmic Global Ltd, and this does not give any impact so far the arm's length price adjustment (ALP adjustment of Rs.2,97,51,782/-) is deleted by the Id CIT(A). That being so, we decline to interfere with the order of Id. C.I T.(A) in deleting the aforesaid ALP adjustment. His order is therefore, upheld and the grounds of appeal of the Revenue are **dismissed**.

19. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on this/10/2020.

Sd/-
(S. S. Godara)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

Dated:.....20/10/2020

RS, Sr.PS

Sd/-
(A. L. Saini)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- ACIT, Circle-14(1), Kolkata
2. प्रत्यर्थी / The Respondent.- M/s Acclaris Business Solutions (P) Ltd.
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

//True Copy//

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.