

zINCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I-2": NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6200/Del/2015
(Assessment Year: 2011-12)

DCIT, Circle-25(2), New Delhi	Vs.	Transcend MT Services Pvt. Ltd, Plot No. 1/11, Arakere, Bannerghatta Road, Bangalore PAN: AABCH2275E
(Appellant)		(Respondent)

CO No. 49/Del/2016
(In ITA No. 6200/Del/2015)
(Assessment Year: 2011-12)

Transcend MT Services Pvt. Ltd, Plot No. 1/11, Arakere, Bannerghatta Road, Bangalore PAN: AABCH2275E	Vs.	DCIT, Circle-25(2), New Delhi
(Appellant)		(Respondent)

Revenue by :	Shri Vishal Kalra, Adv Shri Ankit Sahni, Adv
Assessee by:	Ms. Nidhi Sharma, Sr. DR
Date of Hearing	21/08/2020
Date of pronouncement	19/11/2020

ORDER

PER PRASHANT MAHARISHI, A. M.

1. These are the appeals and Cross objections for assessment year 2011 – 12 in case of the assessee M/s Transcend MT services private limited.
2. The Deputy Commissioner of Income Tax, Circle – 25 (2), New Delhi (The Learned Assessing Officer) in ITA number 6200/Del/2015 has filed appeal against the direction of the Id Dispute Resolution Panel incorporated in order of the learned Assessing Officer where the Dispute Resolution Panel –II directed the learned assessing officer/transfer pricing officer to exclude certain comparable companies from the final set of comparables for arriving at arm's-length price of the international transaction.

3. Assessee Transcend MT services private limited, (the appellant,) has also filed cross objection in CO number 49/del/2016 against the order of the learned assessing officer raising several grounds of cross objections.

4. The learned assessing officer in ITA number 6200/Del/2015 has raised the following grounds of appeal:-

“1. *“On the facts and in the circumstances of the case, the DRP-II erred in directing to reduce the addition of Rs.4,83,59,544/- on account of proposed addition of arm’s length price of the international transaction with its associated enterprises.”*

2. *“On the facts and in the circumstances of the case, the DRP-II erred in directing TPO to exclude 5 mentioned below companies from the final set of comparables :*

i) Accentia Technologies Ltd.

ii) Acropetal Technologies Ltd.

iii) Eclerx Services Ltd.

iv) Infosys BPO Ltd.

v) TCS E-Serve Ltd.”

5. The assessee has raised the following grounds of appeal in cross objection number 49/del/2016”-

“1. *That on the facts and circumstances of the case and in law, the present appeal is not maintainable and non-est as it does not comply with the provisions of section 253(6) of the Act.*

2. *That on the facts and circumstances of the case and in law, the Dispute Resolution Panel (“DRP”) erred in partially upholding the order of the Transfer Pricing Officer (“TPO”) which is arbitrary, bad in law and void ab-initio.*

3. *That on the facts and in law the action of the AO in invoking the provisions of Chapter X - Special Provisions relating to avoidance of tax of the Act, without appreciating that there would have been no profit shifting from India is bad in law. Further, DRP erred in sustaining the same.*

Grounds relating to Transfer Pricing (“TP”1 adjustments:

4. *The AO / DRP / TPO erred in law and on facts by rejecting the transfer pricing study of the Assessee without providing any cogent reason for the same.*

5. *AO / DRP / TPO have erred in law and facts by ignoring the provisions of Rule 10B / 10CA of the Income-tax Rules, 1962 and judicial pronouncements, which advocate use of multiple year data of comparable companies for the purpose of determination of the arm’s length price.*

6. *The AO/DRP/TPO erred in law and on facts in upholding the incorrect calculation of the margins of "ay comparables selected by the TPO.*
 7. *AO/DRP/TPO erred in law and on facts in rejecting the quantitative filters applied by the Assessee and replacing them with TPO's own set of filters without providing any cogent reason(s) for the same.*
 8. *The AO/DRP/TPO erred in law and on facts in cherry picking comparable companies, such as 'Mastiff Tech Private Limited', which are functionally dissimilar.*
 9. *The AO/DRP/TPO erred in law and on facts in not providing adjustment on account of difference in ^ risk assumed by the Assessee vis-a-vis the comparable companies.*
 10. *The DRP erred on facts and in law in upholding the order of the AO / TPO whereby TPO had suo-moto made working capital adjustment without appreciating that the Assessee did not bear any working capital risk."*
6. Brief facts of the case shows that assessee is a company who filed its return of income declaring an income of ₹ 44,625,282 on 25/11/2011. The assessee company is engaged in the business of medical transcription services. It provides such services to its associated enterprise and has centres in Bangalore and Delhi. It collects, reviews and transcribe medical data information services and has responsibility for medical transcription generation and quality assurance of the medical transcription services provided by it. During the year the assessee entered into a international transaction of medical transcription services provided its associated enterprise amounting to ₹ 336,320,776/- . Assessee benchmarked the same by adopting the Transactional Net Margin Method as the Most Appropriate Method adopting the Profit Level Indicator of Operating Profit/Total Cost. Assessee has selected comparable companies whose weighted average margin was 11.65% and assessee worked out its own margin to be 15% and stated that the international transactions entered into by it are at arm's-length.
7. The case of the assessee was referred to the learned Transfer Pricing Officer for examination of arm's-length price of the international transactions. Therefore the learned TPO i.e. The Additional Commissioner Of Income Tax, Transfer Pricing Officer – 3 (2), New Delhi examined the same and rejected the filters adopted by the assessee as well as the comparable companies selected by the assessee and its accept/ reject metrics. He considered all the seven comparable selected by the assessee and found

them not a suitable comparable. Therefore he carried out his own search and found 10 comparable companies whose margin was computed at 25.74% and assessee's margin was computed at 15.63%, therefore, an adjustment was proposed by the show cause notice of ₹ 29,396,019/-. The assessee objected to the show cause notice raising several issues. The learned Transfer Pricing Officer considered the arguments of the assessee and ultimately reached the set of 10 comparable companies whose margin was computed after granting working capital adjustment of 32.26%. The arm's-length price of the international transaction on the total operating cost of 29,08,51,595 was then determined at ₹ 384,680,320/- and thus an adjustment of ₹ 48,359,544 was made by passing an order u/s 92CA (3) of the act on 29/1/2015. The learned assessing officer passed a draft assessment order u/s 144C (1) of the act on 20/2/2015 wherein the above adjustment was computed and the total income of the assessee in that draft assessment order was computed at ₹ 92,984,826/- against the return of income filed by the assessee of ₹ 44,625,282/-.

8. Assessee aggrieved with the draft assessment order preferred an objection before the learned Dispute Resolution Panel who gave its direction to the learned assessing officer / TPO by direction dated 24/8/2015 wherein it directed the learned transfer pricing officer to exclude following comparable companies from comparability analysis:-

- a. Accentia technologies Ltd
- b. Acropetal technologies Ltd
- c. E clrex Services Ltd
- d. Infosys BPO Ltd
- e. TCS E serve limited

The learned assessing officer aggrieved with the above direction of the learned dispute resolution panel has preferred this appeal.

9. Assessee is also aggrieved with the direction of the learned dispute resolution panel. Though assessee has raised several grounds of appeal. Ground number 1 & 2 of the cross objections are stated to be general in nature, ground number 3 to ground number 9 though raised in the cross objection but not pressed by the assessee. Therefore, these grounds of appeal are dismissed. Ground number 10 is with respect to the granting of

the working capital adjustment to the comparability analysis of the assessee without appreciating that the assessee did not bear any working capital risk. This is the solitary grievance of assessee in CO.

10. The learned departmental representative vehemently supported the order of the learned transfer pricing officer with respect to all the above five comparables which are held to be not comparable by the learned dispute resolution panel.
11. The learned authorised representative in support of the order of the learned Dispute Resolution Panel has submitted a detailed chart wherein he tried to justify that the order of the learned Transfer Pricing Officer in including the above comparables in the comparability analysis has rightly been considered by the learned Dispute Resolution Panel and has directed the learned Transfer Pricing Officer to exclude them. Therefore it was stated that there is no infirmity in the direction of the Dispute Resolution Resolution Panel.
12. We have carefully considered the rival contention. Coming to the first comparable **Accentia technologies Ltd** we find that the learned Dispute Resolution Panel has excluded this comparable by following the decision in case of Telecordia technologies India private limited (ITA number 7821/MU M/2011 and host of other rulings. The learned Dispute Resolution Panel in its direction has also given a finding in paragraph number 4 that this comparable is engaged in software development and also into product sales hence not comparable. The learned authorised representative has drawn our attention to page number 298 – 300 of the paper book submitted wherein it is claimed by the learned authorised representative that this company is involved in the development of the software. We find that these pages do not relate to the standalone balance sheet , which has been used by the learned transfer pricing officer for the comparability analysis but is part of the Accentia technologies Ltd on consolidated basis. At page number 40 – 53 we find that the standalone balance sheet of the above comparable company is submitted. The same is at page number 306 to 323 of the paper book. We also looked at the schedule number 8 wherein income with respect to sales and services are shown. This is at page number 317 of the paper book and page number 50 of the annual report. We find that the revenue shown by

this comparable company is only medical transcription, billing and collection and income from coding. We do not find any product sale by this comparable company, therefore, the reason given by the learned Dispute Resolution Panel for exclusion of this comparable company is devoid of any merit. Therefore, we reverse the finding of the learned Dispute Resolution Panel and direct the learned Transfer Pricing Officer to include the above comparable company for the comparability analysis. Therefore, the ground of the learned assessing officer with respect to this comparable company for its inclusion is upheld.

13. Reason given for exclusion of second comparable ACROPETAL TECHNOLOGIES LTD wherein engineering design segment was considered by the learned Transfer Pricing Officer for the comparability analysis and learned DRP held that this comparable is engaged in software development and also into product sales hence not comparable. Standalone accounts of the acropetal technologies Ltd are submitted by the assessee. Same are placed at page number 388 onwards Of the paper book. On careful perusal of the above balance sheet at schedule 13 (B) (1) it is stated that this company is engaged in the development of computer software. The production and sale of such items cannot be expressed on any generic term. In schedule 9 the comparable company is also debited software development expenses. The learned departmental representative on this aspect could not show us that whether the company is not engaged in development of software or not. This comparable has been selected by the learned Transfer Pricing Officer and therefore he should have brought on record necessary details to show that this company is not engaged in development of the software but in the similar kind of functions as performed by the assessee. For this reason , we do not find any infirmity in the order of the learned Dispute Resolution Panel in directing the learned TPO to exclude this comparable company. Thus, direction of the learned Dispute Resolution Panel with respect to exclusion of this comparable is upheld.
14. With respect to other three comparable companies E Clrex Services Limited, Infosys BPO Ltd and TCS E Serve Ltd the learned Dispute Resolution Panel has directed the learned transfer pricing officer to exclude these comparable. With respect to E Clrex services Ltd it is held that this

company is functionally not comparable as it has diverse functionality of high-end business. This fact was examined by us by looking at the annual account submitted by the assessee at page number 432 – 559 of the paper book standalone financial statements are available at page number 56 (page number 433 of the paper book) of annual accounts at Page number 499 of paper book speaks about the revenue recognition of comparable company which is that revenue from that analytic services and process solution comprises of both time/unit price and fixed fee based service contracts.. Further in note number 19 at page number 79 of the annual report (page number 512 of the paper book) clearly shows that this company is in the business of providing Knowledge Process Outsourcing services which is not the function of the assessee. Therefore, we do not find any infirmity in the direction of the learned dispute resolution panel in directing the learned transfer pricing officer to exclude this comparable company. Thus, direction of the learned dispute resolution panel with respect to this comparable is upheld.

15. With respect to Infosys BPO Ltd and TCS E serve Ltd it is held by the learned Dispute Resolution Panel that these are Mega entities. With respect to Infosys BPO Ltd it is stated that the turnover of this comparable company is 37 times more than that of the assessee and is an industry giant in the field. Further with respect to TCS E serve Ltd the turnover of this comparable company is found to be 47 times more than that of the assessee. For the similar reasons the above two comparable have also been excluded in earlier year i.e. assessment year 2010 – 11 in ITA number 2229/del/2015 dated 18 November 2020 following the decision of the honourable Bombay High Court in case of CIT V Pentair water limited (381 ITR 216). Thus, we find no infirmity in the direction of the learned dispute resolution panel to exclude both these comparable from the comparability analysis on the basis of their turnover being multiple times then the turnover of the assessee.
16. In view of this, we partly allow the appeal of the learned assessing officer.
17. Coming to the cross objection filed by the assessee, only ground number 10 with respect to the working capital adjustment granted by the learned dispute resolution panel despite the assessee does not bear any working

capital risk. This has been dealt with by the learned additional dispute resolution panel at page number 14 of the direction. The learned DRP held that the contention of the assessee that it does not bear any working capital risk is fundamentally flawed as the fund flowing regularities in the related uncertainties would remain even in case of such a captive entities, because of the reason that certain receivables/fund inflows are needed towards basic sustenance and upkeep even when business flows. To understand this we looked at the annual accounts of the company. These are placed at page number 171 – 192 of the paper book number volume 1 of 2. On looking at schedule 6 of the at page number 188 of paper books it is found that assessee has sundry debtors of ₹ 19.76 crores whereas the revenue of the assessee is only ₹ 33 .36 crores. Therefore it is apparent that substantial revenue of the assessee is locked into the sundry debtors. Therefore we do not find any infirmity in the order of the learned dispute resolution panel in upholding the working capital adjustment granted by the learned transfer pricing officer. Accordingly the cross objection filed by the assessee with respect to ground number 10 is dismissed.

18. Accordingly appeal of the learned assessing officer is partly allowed and cross objection of the assessee is dismissed.

Order pronounced in the open court on 19/11/2020.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 19/11/2020
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	19.11.2020
Date on which the typed draft is placed before the dictating member	19.11.2020
Date on which the typed draft is placed before the other member	19.11.2020
Date on which the approved draft comes to the Sr. PS/ PS	19.11.2020
Date on which the fair order is placed before the dictating member for pronouncement	19.11.2020
Date on which the fair order comes back to the Sr. PS/ PS	19.11.2020
Date on which the final order is uploaded on the website of ITAT	19.11.2020
date on which the file goes to the Bench Clerk	19.11.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	