

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'I-2' : NEW DELHI)**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**(THROUGH VIDEO CONFERENCE)**

**ITA No.2388/Del./2015  
(ASSESSMENT YEAR : 2010-11)**

M/s. Transcend India Pvt. Ltd., vs. DCIT, Circle 25 (2),  
(formerly known as Spryance (India) New Delhi.  
Pvt. Ltd.),  
Plot 1/1, Arakere, Bannerghatta Road,  
Bangalore – 560 076.

**(PAN : AAGCS9759K)**

**(APPELLANT)**

**(RESPONDENT)**

**ASSESSEE BY : S/Shri Vishal Kalra, Advocate  
Shri Ankit Sahni, Advocate**

**REVENUE BY : Shri Anupam Kant Garg, CIT DR**

**Date of Hearing : 03.11.2020  
Date of Order : 25.11.2020**

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Appellant, M/s. Transcend India Pvt. Ltd. (TIPL)  
(hereinafter referred to as 'the taxpayer') by filing the present  
appeal sought to set aside the impugned order dated 28.01.2015  
passed by the Assessing Officer (AO) in consonance with the  
orders passed by the Id. DRP/TPO under section 143 (3) read with

section 144C of the Income-tax Act, 1961 (for short 'the Act') qua the assessment year 2010-11 on the grounds inter alia that :-

**“1. That on the facts and circumstances of the case and in law the AO has erred in completing the assessment of the Appellant under section 143(3) read with section 144C(13) of the Act, at an income of Rs 4,32,10,640 as against returned income of Rs 2,70,33,386 by the Appellant.**

**2. The DRP, further, erred in upholding the said action of the AO/ Transfer Pricing Officer ("TPO"). That on the facts and circumstances of the case and in law, reference made by the AO to the TPO is void ab-initio and bad in law as the AO failed to provide copy of approval granted by the Commissioner of Income tax and affording any opportunity of being heard to the Appellant, in violation of the principle of natural justice.**

**3. That on the facts and circumstances of the case and in law, the AO / DRP / TPO erred in making a transfer pricing adjustment of INR 1,58,54,643 on account of provision of Medical Transcription services alleging the same not to be at arm's length in terms of the provisions of section 92C of the Act read with Rule 10D of the Income-tax Rules, 1962 ("the Rules").**

**4. That on the facts and circumstances of the case and in law, the AO / DRP / TPO erred in arbitrarily rejecting the comparable companies and modifying the comparable set selected by the Appellant in relation to provision of Medical transcription services alleging them to be functionally incomparable.**

**4.1 That on the facts and circumstances of the case and in law, the AO / DRP / TPO erred in arbitrarily rejecting/modifying the search process and the filters for the purpose of benchmarking the international transaction pertaining to provision of Medical transcription services.**

**4.2 That on the facts and circumstances of the case and in law, the AO / DRP / TPO erred in arbitrarily selecting companies which were functionally not comparable in relation to Medical transcription services, and inter alia have high turnovers, abnormally high margins / super profits, abnormal or peculiar circumstances and/or substantial related party transactions during the given year.**

5. That on the facts and the circumstances of the case and in law, the AO / DRP / TPO have erred in not providing appropriate working capital, comparability, risk and other economic adjustments as required under Rule 10B(1)(e)(iii) of the Rules.

6. That on the facts and circumstances of the case and in law, the AO / DRP / TPO have erred by ignoring the provisions of Rule 10B(4) of the Rules and judicial pronouncements, which advocates the usage of multiple year data of comparable companies for the purpose of determination of the arm's length price as defined under section 92F of the Act.

7. That on the facts and circumstances of the case and in law, the AO / DRP / TPO failed to understand and appreciate intent and spirit of Rule 10B(1)(e)(ii) of the Rules.

8. That on the facts and circumstances of the case and in law, the AO / DRP / TPO erred in not providing the Appellant the benefit of (+/-) 5% range as provided by the proviso to section 92C(2) of the Act.

9. That on the facts and circumstances of the case and in law, the AO has erred in directing and / or charging interest under section 234b of the Act.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : M/s. Transcend India Pvt. Ltd., the taxpayer is a wholly owned subsidiary of Spryance Inc. (Spryance USA) and is engaged in providing coordination and quality assurance services for the medical transcription work outsourced to Home Based Medical Transcriptionist (HMTs) and third party medical transcription service providers (suppliers) by Spryance USA. For the said services, the taxpayer was remunerated on a total cost plus basis.

3. During the year under assessment, the taxpayer entered into international transactions with its Associated Enterprises (AE) as under :-

S.No.	Nature of transaction	Value (Rs.)	Method Applied
1	Medical Transcription, Quality assurance and related services	217,958,433	TNMM
2	Recovery of Expenses	259.193	CUP

4. The taxpayer to benchmark its international transaction applied Transactional Net Margin Method (TNMM) with Operating Profit/Operating Cost (OP/OC) as the Profit Level Indicator (PLI) selected six comparables with mean margin of 11.86% as against tested party margin of 24.08% and found its transcription qua medical transaction, quality insurance and related services at arm's length.

5. Ld. TPO, after applying various filters, discussed in para 9 of the TP order accepted TNMM with OP/OC as the PLI as the Most Appropriate Method (MAM), rejected five comparables chosen by the taxpayer out of six and introduced ten new comparables to benchmark the international transactions undertaken by the taxpayer with its AE qua provisions of IT Enabled Services (ITES). Ld. TPO computed the mean margin of finally selected 11 comparables at 35.13% and proposed upward adjustment of Rs.1,94,02,855/-.

6. The taxpayer carried the matter before the Id. DRP by way of filing objections who has partly allowed the same and have also credited computational error in the computational margin of seven comparables from 63.38% as per transfer pricing order to 61.22%. Ld. DRP also provided working capital adjustment to the taxpayer. Consequently, the AO made upward adjustment on account of arm's length price qua provision of ITES to the tune of Rs.1,58,54,643/-. Feeling aggrieved, the taxpayer has come up before the Tribunal by way of filing the appeal.

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

**GROUND NO.1**

8. Ground No.1 is general in nature, hence does not require any specific adjudication.

**GROUND NO.2**

9. Ground No.2 is dismissed having not been pressed during the course of arguments.

**FOUNDATIONS NO.3 & 4**

10. Undisputedly, TNMM with OP/TC as the PLI applied by the taxpayer to benchmark its international transactions qua provision

of ITES has been accepted by the TPO. After DRP order, following companies have been finally selected as comparable to benchmark its international transactions which are as under :-

S.No.	Company	OP/OC (%)	Adjusted OP/TC (%)
1	Accentia Technology Ltd.	43.07	46.62
2	Cosmic Global Ltd.	18.29	26.71
3	e4e Healthcare	31.03	37.98
4	Fortune Infotech Ltd.	22.78	27.80
5	I-gate Global Ltd.	24.54	30.52
6	Infosys BPO Ltd.	31.45	36.58
7	Jindal Intellicom Ltd.	13.62	21.38
8	Microland Limited	-3.11	4.14
9	Omega Healthcare	15.31	21.15
10	TCS E-serve International Ltd.	53.80	61.85
11	TCS E-serve Ltd.	63.38	71.69
	<b>Mean Margin</b>	<b>28.56</b>	<b>35.13</b>

11 By taking adjustment of OP/TC at 35.13%, the Arm's Length Price (ALP) of international transactions pertaining to ITES is determined as under :-

<b>Operating Cost</b>	<b>17,56,54,028</b>
<b>Arm's Length OP/TC margin (%)</b>	<b>35.13%</b>
<b>Arm's Length margin (Rs.)</b>	<b>6,17,07,260</b>
<b>Arm's Length Price</b>	<b>23,73,61,288</b>
<b>Price charged by the assessee</b>	<b>21,79,58,433</b>
<b>105% of price charged in international transaction</b>	<b>22,88,56,355</b>
<b>Adjustment to be made</b>	<b>1,94,02,855</b>

12. By way of filing present appeal, the taxpayer has sought exclusion of five companies viz. **Accentia Technologies Limited, I-gate Global Solutions Ltd., Infosys BPO Ltd., TCS**

**E-serve International Ltd. & TCS E-serve Ltd.** and sought inclusion of **R. System International Ltd.** on ground of functional dissimilarity, extra ordinary events, non-availability of segmental data, presence of brand, abnormal growth etc. We would discuss the suitability of the comparables sought to be excluded/included by the taxpayer one by one as under.

### **COMPARABLES SOUGHT TO BE EXCLUDED**

#### **ACCENTIA TECHNOLOGIES LTD. (ACCENTIA)**

13. The taxpayer sought to exclude Accentia as a comparable on the grounds inter alia that it is functionally dissimilar vis-à-vis the taxpayer; that its segmental financials are not available; that during the year under assessment, extra ordinary events took place due to amalgamation of Asscent Infoserve Private Ltd.; and that this comparable has been excluded in taxpayer's own case by the Tribunal in AYs 2007-08 and 2009-10 on account of functional dissimilarity, extra ordinary events and non-availability of financial data.

14. When we examine annual report of Accentia, available at pages 430, 431 & 469 of the paper book, under a single segment of ITES, it renders numerous services viz. medical transcription,

billing, coding, along with provision of development of software products and it also renders software as a service.

15. Ld. DR for the Revenue sought to retain this comparable on the ground that its major income is from medical prescription and also referred to data of last three years, available at page 131 of the appeal set containing TP order at page 25, which shows that merger has not significantly impacted the business of the Accentia, which is extracted as under :-

<b>Financial Year</b>	<b>2009-2010</b>	<b>2008-2009</b>	<b>2007-2008</b>
<b>Total Operating Income (OR)</b>	<b>927621875</b>	<b>787207652</b>	<b>503631675</b>
<b>Total Operating Expenses (OC)</b>	<b>648415415</b>	<b>516206651</b>	<b>348908824</b>
<b>Operating Profit (OP)</b>	<b>279206460</b>	<b>271001001</b>	<b>154722851</b>
<b>(OP) / (OC)</b>	<b>43.07%</b>	<b>52.50%</b>	<b>44.34%</b>

16. So, in these circumstances, we are of the considered view that financial results of Accentia for the last three years shows that merger itself has not impacted its profit significantly and as such, is not a ground in itself to disregard this comparable.

17. However, its functional dissimilarity vis-à-vis taxpayer does make it incomparable to the taxpayer because it is rendering numerous services under single segment of ITES but segmental financials are not available as is apparent from the annual report available at page 469 of the paper book. Moreover, in Assessment Years 2007-08 & 2009-10, since there is no change in the business

profile of the assessee company, this comparable was rejected by the coordinate Bench of the Tribunal in **ITA Nos.2754/Del/2015 & 2122/Del/2015 for AYs 2007-08 & 2008-09 order dated 10.12.2018 & 03.07.2019** respectively on ground of functional dissimilarity, non-availability of segmental data and high turnover. So far as contentions raised by the Id. DR for the Revenue that its major income is from medical transcription, is not sustainable because that income accounts for only 64% of the total income but remaining income is from other services like billing, coding and development of software product is sufficient to impact its profitability, whose segmental financials are not available. So, we are of the considered view that Accentia is not a suitable comparable vis-à-vis the taxpayer which is into providing routine low end services of coordination and related services for medical transcription work of its AE on cost plus model, hence ordered to be excluded.

**I-GATE GLOBAL SOLUTIONS LTD. (I-GATE)**

18. The taxpayer sought exclusion of I-gate on grounds of functional dissimilarity, having huge turnover, non-availability of

segmental financials and extra ordinary events. Ld. DR relied upon the order passed by the TPO/ld.DRP.

19. When we examine annual report of I-gate, available at page 343 of the paper book, it shows that I-gate is into the business of software development and services, contact centre services and ITES whereas no segmental financials are available for driving revenue or profit attributable to the various segments to be under ITES, as is apparent from annual report at pages 343 and 354 of the paper book.

20. When we examine the turnover of I-gate from the annual report, available at pages 343 & 354 of the paper book, its turnover of Rs.932.19 crores as against Rs.21 crores of the taxpayer which is 42.77 times more than the taxpayer and as such is not a valid comparable as the high turnover certainly enhanced its revenue and profits as has been held by the Hon'ble Delhi High Court in **PCIT vs. Agnity India Technologies in ITA 447/Del/2018 order dated 13.04.2018.**

21. Furthermore, during the year under assessment, I-gate's wholly owned subsidiary of I-gate Global Solutions Sdn Bhd, Malaysia got merged with I-gate which has impacted its financial results as is apparent from annual report available at page 329 of the paper book. So, in these circumstances, we are of the

considered view that I-gate is not a valid comparable vis-à-vis the taxpayer who is into providing routine low end medical transcription services at cost plus model to its AE, hence ordered to be excluded.

**INFOSYS BPO LTD. (INFOSYS BPO)**

22. The taxpayer challenged this comparable on grounds of significant high turnover, presence of huge brand and extraordinary events. The TPO as well as ld. DRP rejected the contentions of the taxpayer on the ground that turnover is not a relevant criteria to examine comparability. Ld. DR for the Revenue relied upon the orders of the TPO and ld. DRP.

23. When we examine annual report of Infosys BPO, available at page 531 of the paper book, turnover of Infosys BPO is Rs.1,126 crores which is 52 times more of the taxpayer. Moreover, Infosys BPO is having huge brand value which certainly influence the pricing policy to impact the margins earned by the company. Moreover, when we examine financials of Infosys BPO, available at page 532 of the paper book, its advertising and marketing expenses to operating cost is of 9.13% as against nil of the taxpayer.

24. Hon'ble Delhi High Court in **PCIT vs. Agnity India Technologies** (supra) excluded Infosys BPO as a comparable vis-à-vis routine ITES provider on ground of its huge turnover and brand value.

25. Hon'ble High Court of Delhi in case of **PCIT vs. New River Software Services Pvt. Ltd. (2017) 85 taxmann.com 302 (Delhi HC)** also excluded Infosys BPO as a comparable vis-à-vis routine ITES service provider on grounds of significantly high turnover and huge brand value by returning following findings :-

**“12. Wipro BPO is more or less on the same footing as Infosys BPO as far as the size and scale are concerned. Consequently the Court finds no legal infirmity in the impugned order of the ITAT, which has, apart from excluding the above comparables, remanded the matter to the TPO on the question of working capital adjustment.”**

26. In these circumstances, we are of the considered view that Infosys BPO is not a valid comparable vis-à-vis the taxpayer, hence ordered to be excluded.

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

27. The taxpayer sought exclusion of TCS E-Serve International on the grounds inter alia that it has presence of big brand being part of Tata Group; that it is functionally different; that it has huge abnormal growth in operation during the assessment year; that its profit after tax increased by 227% and operating income increased

by 161%. However, TPO/ld. DRP have retained this comparable by rejecting the contentions raised by the taxpayer.

28. When we examine annual report of TCS E Serve International, available at pages 746 of the paper book, its principal activities are :-

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

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

29. Moreover TCS E Serve International is engaged in the business of providing ITES/BPO services primarily to Citi Group entity globally meaning thereby it is into related party transactions. TCS E Serve International is having huge brand value on account of its acquisition by Tata Group which has impacted its pricing policy and margin earned. When we examine financial results of TCS E Serve International for the year under assessment at page 722 of the paper book, it has shown huge all round growth in volumes of business and profitability during the year under

assessment. Furthermore, TCS E Serve International is into ITES/BPO services and technical services (which are in the nature of software testing, verification and validation) but there is no segmental information to bifurcate the income and expenditure qua both the segments.

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

31. In view of what has been discussed above, we are of the considered view that TCS E-Serve International is not a suitable comparable vis-à-vis the taxpayer, hence ordered to be excluded.

**TCS E-SERVE LTD. (TCS E-SERVE)**

32. The taxpayer sought exclusion of TCS E-Serve International on the grounds inter alia that TCS E-Serve is a huge company having huge presence of brand being part of the Tata Group; that it is functionally dissimilar vis-à-vis the taxpayer; that the year under

assessment is an exceptional year of performance; that it has earned supernormal profit and that it has abnormal fluctuation in the profit.

33, When we examine the functional profile of TCS E Serve, at page 746 of the paper book volume III annual report, it reads as under :-

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

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

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

35. Moreover, TCS E Serve is having huge turnover of Rs.1359 crores which is 62.37 times the turnover of the taxpayer, available at page 669 of the paper book. Furthermore, TCS E Serve is a huge brand having supported by Tata Group in terms of its large scale operations and clientele and it has paid to Tata Sons Ltd. as Tata brand loyalty. Even there is no segmental information to bifurcate the income and expenses between ITES/BPO services and technical services.

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

37. During the year under assessment, TCS E-Serve profit has been increased by 5.74% and growth by 226% and it has earned super normal profit during the year under assessment i.e. 60.49% on cost.

38. In view of what has been discussed above, we are of the considered view that TCS E-Serve is not a valid comparable vis-à-vis the taxpayer, hence ordered to be excluded.

**COMPARABLE SOUGHT TO BE INCLUDED**

**R SYSTEM INTERNATIONAL LTD. (R SYSTEM)**

39. TPO rejected R System, which is taxpayer's comparable, on the ground that it has different financial year and cannot be taken as a comparable. Ld. DRP has also ratified the findings of the TPO.

40. We are of the considered view that when the taxpayer has submitted result for the period 01.01.2009 to 31.03.2009 and 01.01.2020 to 31.03.2010 which are also in the public domain, there was no reason with the TPO/DRP to reject this comparable.

41. Coordinate Bench of the Tribunal in **CIT vs. Mercer Consulting (India) (P) Ltd. (2014) 150 ITD 1 (Del.-Trib.)**, which is affirmed by the Hon'ble Delhi High Court reported in **(2017) 390 ITR 615 (P&H)**, held that merely on the ground that company has a different financial year cannot be rejected as a comparable.

42. In view of what has been discussed above, we are of the considered view that this comparable is remitted back to the TPO to decide afresh in view of the law laid down, after providing an opportunity of being heard to the taxpayer.

**GROUND NO.5, 6 & 7**

43. Ground No.5, 6 & 7 are dismissed having not been pressed during the course of arguments

**GROUND NO.8 & 9**

44. Grounds No.8 & 9 being consequential in nature need no specific findings.

45. Resultantly, the appeal filed by the taxpayer is partly allowed for statistical purposes.

**Order pronounced in open court on this 25<sup>th</sup> day of November, 2020.**

**Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

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

**Dated the 25<sup>th</sup> day of November, 2020  
TS**

Copy forwarded to:

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

**AR, ITAT  
NEW DELHI.**