

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD 'B' BENCH, HYDERABAD.**

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND  
SHRI L. P. SAHU, ACCOUNTANT MEMBER  
(Through Virtual Hearing)**

**ITA No.209/Hyd/2017  
(Assessment Year : 2012-13)**

M/s. Progressive DigitalMedia Pvt. Ltd.,  
Hyderabad.  
PAN AAFCP 2745P

.....Appellant.

Vs.

Dy. Commissioner of Income Tax,  
Circle 16(2), Hyderabad.

.....Respondent.

Appellant By : Shri Aliasgar Rampurwala. (AR)  
Respondent By : Shri YVST Sai. (D.R.)

Date of Hearing : 07.12.2021.  
Date of Pronouncement : 09.12.2021.

**O R D E R**

**Per Shri S.S. Godara, J.M. :**

This assessee's appeal for Asst. Year 2012-13 arises against the DCIT, Circle 16(2), Hyderabad's assessment dt.30.12.2016 framed in furtherance to the Dispute Resolution Panel-1, Bangalore ("DRP")'s direction dt.31.10.2016 in F.No.59/DRP-BNG/2015-16 involving

proceedings u/s.143(3) r.w.s. 92CA(3) r.w.s. 144C(5) of the Income Tax Act, 1961 ('the Act').

Heard both the parties. Case file perused.

2. Learned counsel representing the assessee presses only substantive ground Nos.4(a) to 4(c) thereby seeking to exclude / reverse the learned lower authorities' action accepting M/s. Eclerx Services Limited, M/s. Infosys BPO Limited and M/s. TCS e-serve Limited as comparables while determining arm's length price (ALP) adjustment in issue of Rs.1,07,81,875. Learned counsel thereafter quotes this tribunal's co-ordinate bench order in Revenue's appeal ITA 426/Hyd/2016 and assessee's C.O. 30/Hyd/2016 dt.11.4.2018 for A.Y. 2011-12 excluding the foregoing three comparables as under :

“ 12. As regards the comparables excluded by the DRP against which Revenue is in appeal before us, we find that they are as follows:

- (i) Acropetal Technologies Ltd (Seg);
- (ii) eClerx Services Ltd;
- (iii) Infosys BPO;
- (iv) Jeevan Scientific Technologies Ltd; and
- (v) TCS E-Serve Ltd.

The DRP has excluded all these companies on the ground that they are functionally dissimilar.

13. The learned DR has reiterated that the assessee is also performing similar high end services and therefore, the DRP is not right in directing exclusion of these companies.

14. The learned Counsel for the assessee has submitted that both the TPO as well as the DRP have accepted the assessee to be a back office support service provider and there is no challenge to the said findings by the Revenue and therefore, such findings have become final and the DR cannot advance a new ground before the Tribunal.

15. We accept this contention of the assessee, because, it is the TPO who has considered the assessee to be a back office support service provider and the DR cannot now re-characterize the profile of the assessee. Once it is accepted that the assessee is only a back office support service provider (ITES), then such companies which are also engaged in similar services only can be considered as comparable to the assessee.

16. The learned Counsel for the assessee has relied upon the decision of the Coordinate Bench of the Tribunal in the case of S&P Capital IQ (India) Private Limited vs. DCIT in ITA Nos. 200 and 435/Hyd/2016 for the A.Y 2011-12, wherein S&P Capital IQ was also providing I.T enabled services like the assessee before us and the TPO therein also had taken the very same 13 companies as comparable to the assessee therein. He has also drawn our attention to the relevant paragraphs of the order of the Tribunal, wherein, these companies

have been considered at length and the Tribunal has held that they are not comparable to the assessee therein. Therefore, according to him, on the basis of the said decision, exclusion of these companies is to be upheld. We have gone through the order of the Tribunal, to which the learned A.M. is a signatory. The Tribunal at Paras 12,16, 18 and 23 had held as under:

*“ii. Acropetal Technologies Ltd (Seg):*

*12. This company is included by TPO but excluded by DRP for the following reasons:*

*"Having considered the submissions, on perusal of the annual report, it is noticed by us that the assessing officer has considered the revenue from the engineering design segment. Hon'ble ITAT, Bangalore in IT(TP)/A/1678/Bang/2012 in the case of Global E Business Operations, directed to exclude the above :- 18 -: S&P Capital IQ (India) Pvt Ltd., company by observing that 'we have considered the submission of the learned counsel for the assessee, on perusal of note no.15 of notes to accounts, which gives segmental revenue of this company, it is clear that the major source of the income for this company is from providing engineering design services and information technology services. The function performed by the engineering design services of the company cannot be considered as comparable to the ITES /BPO function performed by the assessee. The performance of the engineering design services is regarded as providing high end services amongst the BPO which require high skill whereas the services performed by the assessee are routing low end ITES function. We therefore hold that this company could not have been selected as comparable, especially when it performs engineering design services which only a knowledge processing outsourcing- (KPO) would do and not a business processing outsourcing (BPO).' Similar View was taken by Hon'ble Bangalore ITAT in the case of - Symphony Marketing Solutions India Pvt.*

*Ltd. vs. ITO (IT (TP) A No. 1316/Bang/2012), held that Acropetal cannot be considered as comparable as it performs engineering design services accordingly we direct the assessing officer to exclude the company from the comparables".*

*12.1. We do not see any reason to differ from the findings of DRP as it is providing high end KPO services and is functionally different. The order of exclusion is therefore, upheld.*

*vi. eClerx Services Ltd.,:*

*16. This company is included by TPO but excluded by DRP for the following reasons:*

*"Having considered the submission, respectfully following the decision of Hon'ble the ITAT for the AY 2009-10 in assessee's own case, as the functional profile of the assessee company and the above company remain the same, we direct the AO to exclude the above company from comparables".*

*16.1. We do not see any reason to differ from the findings of DRP as it is providing high end KPO services and is functionally different. The order of exclusion is therefore, upheld.*

*viii. Infosys BPO*

*18. TPO included the same in the list of comparables on the reason that the turnover does not have any effect on profitability. DRP excluded the same being functionally different. Even though, Ld. DR has argued vehemently for inclusion, we do not see any reason to include as Infosys BPO is functionally different and being excluded in many cases in earlier years as well being unique in its functionality.*

*xiii. TCS E-serve Ltd:*

23. TPO included the same in the list of comparables on the reason that the turnover does not have any effect on profitability. DRP excluded the same by stating as under:

*"Having considered the submissions, on perusal of annual report, it is noticed by us from the schedule to the financial statement that the company is engaged in the business of providing information technology - enabled services/business processing outsourcing service, primary to the Citi group companies introduced globally the transaction processing include the broad spectrum of :- 24 -: S&P Capital IQ (India) Pvt Ltd., activities involving the processing, collections, customer care and payments in relation to the services offered by Citi group to its corporate and retail clients. As per the annual report, the company also provide technical services involving software testing, verification and validation of software at the time of implementation and data centre management activities, which makes the company functionally incomparable with the assessee, accordingly, we direct the assessing officer to exclude the above company from comparables".*

*Even though, Ld. DR has argued vehemently for inclusion, we do not see any reason to include as this company is functionally different and being excluded in many cases in earlier years as well being unique in the functionality".*

17. Since the facts and circumstances in the case before us are similar and the learned DR has not brought out any distinguishable factor, respectfully following the decision above, we do not see any reason to interfere with the order of the DRP/AO on these comparables."

3. Learned CIT-DR invited our attention to his detailed written submissions supporting inclusion of these three comparables. His case is that each and every assessment year has its own facts and such an issue of inclusion of comparable in transfer pricing parlance is pure a factual in nature. He also quotes a catena of case law (not specifically considered for the reasons given hereunder) that all these three entities have been rightly included in the array of comparables.

4. We find no merit in the Revenue's foregoing stand mainly for the reason that either there is any change in assessee's segment of IT enabled services (back office support) nor the corresponding financials of three entities forming subject matter of adjudication i.e. E-Clerx Services Limited, Infosys BPO Services Limited and T.C.S. e-Serve Limited have undergone any material change in their respective business models. We thus adopt the learned co-ordinate bench earlier decision mutatis mutandis and direct

the Transfer Pricing Officer "TPO" to recompute the assessee's ALP in issue after excluding the foregoing three comparable entities. Ordered accordingly.

All other pleadings on merits stand rendered infructuous at this stage.

5. This assessee's appeal is partly allowed in above terms.

*Order pronounced in the open court on 9th Dec., 2021.*

Sd/-

**(L.P. SAHU)**  
Accountant Member

Sd/-

**(S.S. GODARA)**  
Judicial Member

Hyderabad, Dt.09.12.2021.

\* Reddy gp

Copy to :

1.	M/s. Progressive Ditigal Media Pvt. Ltd., II Floor, Wing B, NSL Centrum, Plot No.S-1, Phase 1 & 2, Opp. BSNL Office, KPHB Colony, Kukatpally, Hyderabad-500 072
2.	DCIT, Circle 16(2), Hyderabad.
3.	DRP-1, Bangalore.
4.	CIT(Appeals)- Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.