

IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

IT(TP)A No.418/Bang/2016
Assessment year: 2011-12

Global E-Business Operations Private Ltd., 2 <sup>nd</sup> Floor, Kalyani Platina, Phase-II, Building, Sy.No. 1, 6 and 24 of Kundanahalli Village, K R Puram Hobli, Bangalore – 560 066. <b>PAN: AABCG 2843D</b>	Vs.	The Deputy Commissioner of Income Tax, Circle 3(1)(2), Bangalore.
APPELLANT		RESPONDENT

IT(TP)A No.250/Bang/2016
Assessment year: 2011-12

The Deputy Commissioner of Income Tax, Circle 3(1)(2), Bangalore.	Vs.	Global E-Business Operations Private Ltd., Bangalore – 560 066. <b>PAN: AABCG 2843D</b>
APPELLANT		RESPONDENT

Assessee by	:	Shri Sharath Rao, CA
Revenue by	:	Shri Sumer Singh Meena, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	31.01.2022
Date of Pronouncement	:	31.01.2022

**ORDER**

*Per Chandra Poojari, Accountant Member*

These are cross appeals by the assessee and the revenue against the final assessment order passed by the Assessing Officer u/s. 143(3) r.w.s. 144C(13) of the Income-tax Act, 1961 [the Act] dated 29.12.2015 for the assessment year 2011-12.

**Assessee's appeal [IT(TP)A No.418/Bang/2016]**

2. The assessee has raised the following grounds of appeal:-

“1. Transfer Pricing Adjustment

1.1 The Honorable DRP and the learned AO / TPO have erred in law and on facts in making an addition of interest on overdue debtors and in doing so has considered a trade debt as a commercial or financial loan.

1.2 The learned AO / TPO and the Honorable DRP have erred in disregarding the fact that financial transaction in the nature of a "trade credit" provided to a customer is different from that of a "financial loan facility" provided to a borrower, and in doing so, has erred in law and facts in equating the attributes of a "loan" to that of a "trade credit

1.3 The learned AO / TPO and the Honorable DRP have erred in law and on facts in levying interest on overdue AE debtors, disregarding the fact that the Appellant has not paid interest to its AE creditor.

1.4 Without prejudice to the argument that the learned AO / TPO and Honorable DRP have erroneously re-characterised trade debtors as loan and charged interest on the same, the learned AO / TPO and Honorable DRP have erred in law and on facts in ignoring that the working capital adjustment takes care of the difference on account of outstanding debtors/ creditors and the same does not

warrant an additional adjustment by way of charging interest on the outstanding debtors.

- 1.5 The Honorable DRP has erred in law in not upholding the principle of *res judicata*, wherein exactly the same circumstances, the Honorable DRP for AY 2010-11, directed the learned AO / TPO to delete the adjustment on account of notional interest on outstanding debtors from AE's stating that working capital adjustment takes care of the differences on account of outstanding debtors / creditors and therefore, does not warrant an additional adjustment by way of charging interest on outstanding debtors.
- 1.6 Without prejudice to the fact that the working capital adjustment takes care of any difference on account of outstanding debtors, the learned AO / TPO and the Honorable DRP have erred in not appreciating that the debtors outstanding above 6 months to the total sales of the comparable companies is 5.14 percent and that of the Appellant is only 0.17 percent which reflects that the working capital cycle of comparable Companies is higher than that of the Appellant thus not warranting an adjustment on account of outstanding receivables.
- 1.7 Further, the Honorable DRP has erred in law and on facts, in arriving at the interest rate to be levied on overdue receivables to be 5 percent by relying on the decision of the Honorable Bangalore ITAT in the case of Logix Micro System Limited Vs ACIT (42 SOT 525) wherein the rate of interest has been decided on an arbitrary basis.

2. The learned AO and the DRP have erred in holding for exclusion of telecommunication charges amounting to Rs 43,689,951 from the 'export turnover' for the purpose of computing the relief under Section 10A of the Act.

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds, at any time before or at the time of hearing of the appeal. Each of the above objections is independent and without prejudice to the other grounds preferred by the Appellant.”

3. The assessee has raised the following additional ground by way of two petitions:-

3. The Hon'ble DRP has erred in facts and in law, in upholding the order of the TPO which selected ICRA Online Limited as comparable to the Appellant in the information technology enabled services ("ITeS") segment despite the same being functionally different to the Appellant and/or fails to meet the legally acceptable criteria for comparability;

4. The Hon'ble DRP has erred in facts and in law, in upholding order of the TPO which excluded the comparables that were selected by the Appellant in its TP study, without considering the detailed submissions of the Appellant.

5. The Id. TPO and DRP, having applied the minimum service revenue of Rs.1 crore, erred in not applying a cap on upper limit on the turnover/service revenue while selecting the companies comparable to the Appellant for the purpose of determining the Arm's Length Margin of the international transactions of the Appellant with its Associated Enterprises outside India in the Information Technology Enabled Services (ITES) segment.

4. The assessee in the petitions for admission of additional grounds has stated that these grounds arise out of the orders of the lower authorities and ICRA Online Ltd. is functionally different to the business of the assessee because it fails comparability test and to be rejected. Further, the lower authorities having applied the minimum service revenue of Rs.1 crore, erred in not applying a cap on the upper limit on the turnover/service revenue while determining the ALP of the international transactions of the assessee with its AE in the ITeS segment. The Id. AR submitted that admission of the above additional grounds would be necessary to assess the correct ALP of the international transactions undertaken by the assessee and render substantial justice.

5. We have heard both the parties on the admission of additional grounds. In our opinion, the issues raised in these grounds arise out of the orders of lower authorities and in the interest of justice, it is appropriate to admit these additional grounds. *Accordingly, following the Hon'ble Supreme Court judgment in the case of M/s National Thermal Power Co. Ltd. Vs. CIT, 229 ITR 383 (SC)*, the additional grounds are admitted for adjudication.

6. Grounds No.1 to 6 by the assessee are with regard to notional interest on AE debtors in excess of six months.

7. The assessee company is engaged in the business of providing data processing services and other ITeS for HP companies worldwide. The assessee had international transactions exceeding Rs.15 crores during the year and a reference was made to the TPO to determine the ALP as per the provisions of section 92CA of the Act. The TPO observed that there are debtors outstanding for more than six months amounting to Rs.1,53,47,086. According to him, this is an international transaction as per clause (c) of Explanation to section 92B of the Act. When a balance is outstanding for a period exceeding six months, it taxes the characterization of a loan transaction, hence the balance received from AE is treated as loan transaction for which interest is chargeable. Accordingly, the TPO made adjustment on this count at Rs.20,65,717. The DRP observed that interest is to be charged @ 5% instead of 13.46% p.a. Against this, the assessee is in appeal before us.

8. The Id. AR submitted that in addition to the AE debtors, the assessee also owes certain dues to its AE creditors and no interest has been paid to the AE creditors on the outstanding payables. Further the debtors outstanding above 6 months to the total sales of the comparable companies is 5.14% and that of the assessee is only 0.17% which reflects

the working capital cycle of comparable companies is higher than that of assessee. Therefore the adjustment on account of outstanding receivables is not warranted in the assessee's case.

9. At the outset, the Id. DR submitted that the issue may be remitted to the AO/TPO to examine the past history of debtors and creditors and decide the issue afresh.

10. We have heard both the parties and perused the material on record. In our opinion, similar issue came for consideration before this Tribunal in the case of *Blue Coat Network (India) Pvt. Ltd. in IT(TP)A No.78/B/2019 dated 23.11.2020* wherein it was held as under:-

“52. We have heard the rival submissions, perused the materials available on record and relied on the order of the Tribunal in the case of *Dy. CIT v. CGI Information Systems & Management Consultation (P.) Ltd. [2020] 115 taxmann.com 214 (Bang. - Trib.)* This issue was considered by this Tribunal in the above case as follows:

'3.5.7.-We have perused the submissions advanced by both the sides in the light of the records placed before us.

This Bench referred to decision of Special Bench of 1's Tribunal in case of Special Bench of ITAT in case of *Instrumentation Corpn.1 Ltd. v. Asstt. DIT in ITA No. 1548 and 1549 (Kol.) of 2009, dated 15-7-2016*, held that outstanding sum of invoices is akin to loan advanced by assessee to foreign AE., hence it is an international transaction as per explanation to section 92 B of the Act. We also perused decision relied upon by Ld.AR. In our considered opinion, these are factually distinguishable and thus, we reject argument advanced by Ld.AR.

3.5.7. Alternatively, it has been argued that working capital adjustment subsumes sundry creditors. In such situation computing interest on outstanding receivables and loans an advances to international transaction would amount to double taxation. Hon'ble Delhi Tribunal in case

of Orange Business Services India Solutions Pvt. Ltd. v. DC/Pin ITA No. 6570/De1/2016 vide its order dated 15-2-2018 has observed that:

"There may be a delay in collection of monies for supplies made, even beyond the agreed limit, due to a variety of factors which would have to be investigated on a case to case basis. Importantly, the impact this would have on the working capital of the assessee would have to be studied. It went on to hold that, there has to be a proper inquiry by the TPO by analysing the statistics over a period of time to discern a pattern which would indicate that vis-a-vis the receivables for the supplies made to an AE, the arrangement reflected an international transaction intended to benefit the AE in some way. Similar matter once again came up for consideration before the Hon'ble Delhi High Court in Avenue Asia Advisors Pvt. Ltd. v. DCIT (2017) 398 ITR 120 (Del). Following the earlier decision in Kusum Healthcare (supra), it was observed that there are several factors which need to be considered before holding that every receivable is an international transaction and it requires an assessment on the working capital of the assessee. Applying the decision in Kusum Health Care (supra), the Hon'ble High Court directed the TPO to study the impact of the receivables appearing in the accounts of the assessee; looking into the various factors as to the reasons why the same are shown as receivables and also as to whether the said transactions can be characterized as international transactions."

3.5.8. In view of the above, we deem it appropriate to set aside the impugned order on this issue and remit the matter to the file of the Assessing Officer/TPO for deciding it in, conformity with the above referred judgment. Needless to say, the assessee will be allowed a reasonable opportunity of being heard in such fresh proceedings. Accordingly, this ground raised by assessee stands allowed for statistical purpose.'

53. In view of the above order of the Tribunal, taking a consistent view, we remit the issue to the file of the AO/TPO for deciding the same in conformity with the order of the Tribunal in the case of CGI Information Systems & Management Consultation (P.) Ltd. (supra).”

11. Similar view was taken in the case of Orange Business Services India Solutions P. Ltd. in ITA No.6570/Del/2016 vide order dated 15.2.2018 wherein the Tribunal held as follows:-

“15. We have heard the rival submissions and perused the relevant material on record. It is seen that the assessee reported an international transaction of 'Interest on receivables' amounting to Rs.49,18,007/-. It is further discernible from the Agreement that no credit period has been prescribed for realization of invoices. On a specific query, it was admitted that there were no trade transactions with non AEs. In such a scenario, it is difficult to make any comparative analysis of the time allowed for realization by the assessee to AEs vis-à-vis non-AEs.

16. No direct decision of the Hon'ble jurisdictional High Court has been brought to our notice by the ld. DR. The Hon'ble Delhi High Court in . Kusum Health Care (P.) Ltd. (supra) found that the entire focus of the AO was on just one assessment year and the figure of receivables in relation to that assessment year could hardly reflect a pattern that would justify a TPO concluding that the figure of receivables beyond particular number of days constituted an international transaction by itself. It observed that there may be a delay in collection of monies for supplies made, even beyond the agreed limit, due to a variety of factors which would have to be investigated on a case to case basis. Importantly, the impact this would have on the working capital of the assessee would have to be studied. It went on to hold that, there has to be a proper inquiry by the TPO by analysing the statistics over a period of time to discern a pattern which would indicate that vis- à-vis the receivables for the supplies made to an AE, the arrangement reflected an international transaction intended to benefit the AE in some way. Similar matter once again came up for consideration before the Hon'ble Delhi High Court in Avenue Asia Advisors (P.) Ltd. v. Dy. CIT [2017] 398

ITR 120/250 Taxman 539/85 taxmann.com 311. Following the earlier decision in Kusum Healthcare (supra), it was observed that there are several factors which need to be considered before holding that every receivable is an international transaction and it requires an assessment on the working capital of the Assessee. Applying the decision in Kusum Health Care (supra), the Hon'ble High Court directed the TPO to study the impact of the receivables appearing in the accounts of the assessee; looking into the various factors as to the reasons why the same are shown as receivables and also as to whether the said transactions can be characterized as international transactions. In view of the above decision in Avenue Asia Advisors (supra), we deem it appropriate to set aside the impugned order on this issue and remit the matter to the file of the Assessing Officer/TPO for deciding it in conformity with the above referred judgment. Needless to say, the assessee will be allowed a reasonable opportunity of being heard in such fresh proceedings.”

12. In view of the above orders of the Tribunal, we are inclined to remit this issue to the AO/TPO with similar directions.
13. Ground No.2 was not pressed and dismissed accordingly.
14. By way of additional grounds, the assessee seeks exclusion of ICRA Online Ltd. and inclusion of Informed Technologies India Ltd. and Microland Ltd.
15. With regard to exclusion of ICRA Online Ltd. and inclusion of Informed Technologies India Ltd., in our opinion, it is appropriate to remit this issue to the file of AO/TPO for fresh consideration since the assessee has raised this issue for the first time before the Tribunal. Accordingly, the comparability of these two companies are remitted to the AO/TPO to consider the TP study and decision on exclusion/inclusion of these companies on merits.

16. The Id. AR has not pressed the issue with regard to inclusion of Microland Ltd. in the comparables and hence this issue is dismissed as not pressed.

17. No other grounds were pressed before us, accordingly all other grounds by the assessee are dismissed as not pressed.

18. In the result, the appeal by the assessee is partly allowed for statistical purposes.

**Revenue's appeal [IT(TP)A No.250/Bang/2016]**

19. The revenue has raised the following grounds:-

“Grounds of Appeal:-

1. The directions of the Hon'ble DRP is opposed to law and facts of the case.

Comparable wise

**2. Accentia Technologies Ltd. this comparable was excluded on the grounds of different functionality:**

**Grounds:**

2(i) Whether the Hon'ble DRP was right in not accepting Accentia Technologies Ltd as a comparable in this case when it has considered Accentia Technologies Ltd as a good comparable in subsequent decision in similar case.

2(ii). Whether the Hon'ble DRP was right in fact and in law in seeking exact comparability while searching for comparable companies of the assessee under TNMM method whereas requirement of law and international jurisprudence require seeking similar comparable companies.

2(iii) Whether while seeking the exact comparability as mentioned above the panel was right in fact and in law in imposing condition beyond law where the requirement of law is to acknowledge only those differences that are likely to materially affect the margin.

**3. Acropetal Technologies Ltd. This comparable was excluded on the grounds of different functionality.**

**Grounds:**

3(i) Whether the Hon'ble DRP was right in fact and in law in seeking exact comparability, while searching for comparable companies of the assessee under TNMM whereas the requirement of law and international jurisprudence require seeking similar comparable companies?

3(ii) Whether while seeking the exact comparability as mentioned above the panel was right in fact and in law in imposing condition beyond law whereas the requirement of law is to acknowledge only those differences that are likely to materially affect the margin.

**4. iGate Global Solutions Ltd. This comparable was excluded on the grounds of different functionality.**

**Grounds:**

4(i) Whether the Hon'ble DRP was right in fact and in law in seeking exact comparability, while searching for comparable companies of the assessee under TNMM whereas the requirement of law and international jurisprudence require seeking similar comparable companies?

4(ii) Whether while seeking the exact comparability as mentioned above the panel was right in fact and in law in imposing condition beyond law whereas the requirement of law is to acknowledge only those differences that are likely to materially affect the margin.

4(iii) Whether the Hon'ble DRP was right in fact in law in seeking exact comparability while the comparable may be in similar section of segment and segmental analysis is not available as it only different lines of business in the same segment.

**5. Infosys BPO Ltd. This comparable was excluded on the grounds of different functionality Infosys.**

**Grounds:**

5(i) Whether Hon'ble DRP was right in not accepting Infosys BPO Ltd as a comparable when it satisfies all the qualitative and quantitative filters applied by the TPO.

5(ii) Whether the Hon'ble DRP was right in fact and in law in seeking exact comparability while searching for comparable companies of the assessee under TNMM method whereas requirement of law and international jurisprudence require seeking similar comparable companies.

5(iii) Whether while seeking the exact comparability as mentioned above the DRP was right in fact and in law in imposing condition beyond law where the requirement of law is to acknowledge only those difference that are likely to materially affect the margin.

**6. e4e Healthcare Business Services Pvt Ltd. This comparable was excluded due to inconsistency in financial reporting.**

**Grounds:**

6(i) Whether the Hon'ble DRP was right in not accepting e4e Healthcare Business Services Pvt Ltd. as a comparable when it satisfies all the qualitative and quantitative filters applied by the TPO.

6(ii) Whether the Hon'ble DRP was right in fact and in law in excluding comparables on the basis of provision for bad debt when it is taken as non-operating in nature.

6(iii) Whether while seeking the exact comparability as mentioned above the DRP was right in fact and in law in imposing condition beyond law where the requirement of law is to acknowledge only those differences that are likely to materially affect the margin.

7. For these and other ground that may be urged upon at the time of hearing, it is prayed that the order of Hon'ble DRP in so far as it relates to the above grounds, may be reversed and that of the Assessing Officer may be restored.

8. The appellant requests leave to alter, amend or delete any of the grounds mentioned above and / or add any new grounds on or before the hearing.”

20. The first ground is whether the DRP was right in excluding **Accentia Technologies Ltd.** on the ground of different functionality. The DRP noticed that the above company was excluded as comparable by the ITAT in assessee's own case for A.Y. 2008-09 in IT(TP)A/No.1678/Bang/2012 , due to amalgamation of the company. It observed that though there is no such situation during the year , however, on examination of page 25 of the annual report, that the company is engaged in e-prescription and document management include coding, billing, bills payments management, account receivables management and adhoc reporting. Coding is nothing but a service module in which physicians diagnosis is fed into the coding module which automatically generates procedures and diagnostics codes. However, as the assessee company is providing the routine ITeS services which cannot be compared with the function of the above company. The above company was excluded by the Mumbai ITAT in the case of *Vodafone India Services Private Limited [ITA No.7140 /Mum/2012]* due to above functional differences. Accordingly the DRP directed the A.O. to exclude the above company from the comparables. Against this, the revenue is in appeal before us.

21. We have heard both the parties and perused the material on record. In the case of *Swiss Re Shared Services (India) Pvt. Ltd.* for the AY 2011-12 [76 taxmann.com 22 (Bang Trib.)], the Tribunal with respect to comparability of this company held as under:-

“Accentia Technologies Limited

12. As regards the selection of Accentia Technologies Limited as comparable, the learned counsel for the assessee has relied on the decisions of this Tribunal in the cases of Capital IQ Information Systems (India) Pvt. Ltd. v. Addl./Dy. Commissioner of Income-tax, Circle 1(2), Hyderabad and vice versa (ITA No.124 and 170/Hyd/2014 dated 31.7.2014); Excellence Data Research Pvt. Ltd., Hyderabad v. ITO Ward 2(1), Hyderabad (ITA No.159/Hyd/2014 dated 31.7.2014); and Hyundai Motors India Engineering P. Ltd., Hyderabad v. DCIT, Circle 2(2), Hyderabad (ITA NHo.255/Hyd/2014 dated 31.7.2014), wherein M/s. Accentia Technologies Limited(Seg) was excluded by the Tribunal from the list of comparables on the ground that it was a case of mergers and acquisition, and the company was also found to be functionally different. The relevant observations of the Tribunal as recorded in para 19.2 of the order passed in the case of Excellence Data Research Pvt. Ltd., Hyderabad (supra), being relevant in this case, are reproduced below-

"19.2 We have considered the rival contentions and noticed that this company operates in a different business strategy of acquiring companies for inorganic growth as its strategy. In earlier years on the reason of acquisition of various companies, being an extraordinary event which had an impact on the profit, this company was excluded. As submitted by the learned counsel, this year also, the acquisition of some companies by that company may have impact on the profit. Considering the profit margins of the company and insufficient segmental data, we are of IT(TP)A No.146/Bang/2015 Page 42 of 52 the opinion that this company cannot be selected as a comparable. Moreover, this is also not a comparable in the case of M/s. Mercer Consulting (India) (P.) Ltd. (supra), which indicates that the TPO therein has excluded it at the outset. In view of this, we direct the Assessing

Officer/TPO to exclude this comparable, from the list of comparables selected." 13. As pointed out by the learned counsel for the assessee, there was acquisition of a company by M/s. Accentia Technologies Limited during the relevant year, and the said company, therefore, cannot be considered as comparable due to this extraordinary event which occurred in the relevant year as rightly held by the Tribunal inter alia in the case of Excellence Data Research (P.) Ltd. (supra). Although the learned Departmental Representative has sought to contend that the acquisition of a company by M/s. Accentia Technologies Ltd. took place at the fag end of the year under consideration, the learned counsel for the assessee has pointed out that the process of acquisition had started on 15.5.2008 itself, i.e. in the earlier part of the year under consideration. We, therefore, follow the decision of the coordinate bench of this Tribunal in the case of Excellence Data Research Services Pvt. Ltd. (supra) and direct the AO/TPO to exclude the Accentia Technologies Limited from the list of comparables."

.....

32. As far as Accentia Technology Ltd., is concerned, even during the previous year relevant to AY 2010-11, there was amalgamation of Ascent Infoserve Private Limited with Accentia Technology Ltd., and consequent thereto the assets and liabilities and accumulated reserves and the financial results for the year ended 31st March, 2010, of the amalgamating company were incorporated in the amalgamated company. As far as Infosys BPO Ltd., is concerned, the observations made by the Tribunal in the decision referred in the earlier paragraph will hold good for the present AY 2010-11 also. Respectfully following the decision of the Tribunal referred to above, we direct that the aforesaid 2 companies be excluded from the list of comparable companies for the purpose of computing arithmetic mean for comparability purpose. The TPO is directed to give effect accordingly.

Even after exclusion of Accentia Technologies Ltd, along with the exclusion of four comparable companies directed by DRP, there will be four companies left in the list of comparables which, in our opinion, cannot be considered as too small a sample for an effective TP study. In the

circumstances, we direct exclusion of Accentia Technologies Ltd also from the list of comparables. Ordered accordingly.'

20. No doubt the said decision was for A. Y. 2010-11, but the conditions which prevailed in the said previous year more or less existed in the impugned assessment year also. Considering all these aspects, we are therefore of the opinion that Accentia Technologies Ltd, was not a good comparable for the purpose of ALP study of the assessee.”

22. Further the this Tribunal in assessee’s own case for the AY 2010-11 in IT(TP)A No.172/Bang/2015 dated 21.4.2017, for the AY 2009-10 [81 taxmann.com 199] and for the AY 2008-09 [63 taxmann.com 282] has upheld the exclusion of Accentia Technologies Ltd. from the list of comparables.

23. In view of the above orders of the Tribunal, we confirm the order of the DRP in excluding this company.

24. With regard to exclusion of **Acropetal Technologies Ltd.**, the DRP noticed that Bangalore Tribunal in IT(TP)/A/1678/Bang/2012 for A.Y. 2008-09 in assessee's own case, directed to exclude the above company by observing that 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. Therefore 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)', there is no functional difference and the TPO has considered the engineering designing services segment which is not functionally comparable to the assessee, accordingly, it was directed to exclude the above company from comparables.

25. We have heard both the parties and perused the material on record. Apart from exclusion of this company in the assessee's own case for AY 2008-09, the Tribunal for the AY 2011-12 in the case of *Swiss Re Shared Services (India) Pvt. Ltd.* for the AY 2011-12 [76 taxmann.com 22 (Bang Trib.)], upheld the exclusion of Acropetal Technologies Ltd. with the following observations:-

“23. We have perused the orders and heard the rival contentions. There is no dispute that M/s. Acropetal was having at least three segments, namely, engineering design services, IT service and health care. TPO had taken engineering design service as a good comparable with that of the services done by the assessee. Engineering Design Services that were being rendered by Acropetal Technologies Ltd, appears at page 8 of its annual report. It comprised of architectural, structural, electrical, plumbing, steel detailing, and utilities designing. Its revenue model appears at page 9 of its annual report. It is mentioned that the said company was providing comprehensive offerings using its deep domain understanding of infrastructural healthcare, engineering design and enterprise solutions. In our opinion, the type of services that was being provided by Acropetal Technologies Ltd, was not at all comparable with the type of services that the assessee was providing. It is also mentioned in the annual report of the said company that it was providing high end services in the engineering design services. No doubt as mentioned by the Ld. DR, it may not be feasible to have comparables which fit in the exact mould as that of an assessee in TP analysis. However, when one company is giving sophisticated set of services which involves higher level of skill sets, and the other is doing it on a lower level, we cannot say that the former should be considered as a comparable to the latter. Though for a

different year, comparability of Acropetal Technologies Ltd, (seg) had come up before Hyderabad bench of the Tribunal in the case of Excellence Data Research (P.) Ltd. (supra). Observations of the Tribunal as it appears at para 18.1 reads as under :

"18.1 After considering the rival contentions, we agree with the objections raised by assessee. As seen from the Annual Report, this company is involved in engineering design services and has products also, which makes it functionally not comparable. Even at the segmental level, it provides engineering design services, which was considered as high end, by the coordinate bench of the Tribunal in the case of Hyundai Motors India Engineering (supra) in earlier year. Therefore, we are of the opinion that this company cannot be selected as a comparable. We accordingly direct the Assessing Officer/TPO to exclude this company."

24. Considering all these, we are constrained to take a view that engineering design services segment of M/s. Acropetal Technologies Ltd, (seg), cannot be considered as a proper comparable for the TP study of the assessee."

26. In view of the above orders of the Tribunal, we confirm the exclusion of Acropetal Technologies Ltd. from the comparables list by the DRP. This ground is therefore rejected.

27. **iGate Global Solutions Ltd.** This company was excluded by the DRP on the ground that the company was engaged in multiple activities of software development and services, contact centre service and ITeS in respect of which segmental reporting has been considered as one segment. In the absence of segmental information of this company, this company was excluded from the comparables.

28. We have heard both the parties and perused the material on record. This company was considered by the Tribunal in the case of AON Specialist Services (P.) Ltd. 116 taxmann.com 368 (Bang. ITAT) and held as not comparable with the following observations:-

“14. As far as exclusion of iGate Global Solutions Ltd. ("iGate") is concerned, the finding of the DRP is that i-Gate is engaged in provision of varied services and no segmental breakup of the same is available in its Annual Report. Further, the company's software services segment is clubbed with its ITEs segment and there is no breakup between the revenues generated from the two segments. During the year under consideration, this company had acquired majority equity interest in Patni Computer Systems Ltd. rendering it incomparable due to it failing the TPO's own filter of having peculiar economic circumstances. In addition, the company owns significant intangibles in its name, which is evident from the balance sheet of the company for the Financial Year 2010-11 which is available at page no. 276 of the paper book. We are of the view that the above reasons given by the DRP for excluding this company as a comparable company is right and does not call for any interference.”

29. In view of the above decision, exclusion of iGate Global Solutions Ltd. by the DRP is justified. This ground is rejected.

30. **Infosys BPO Ltd.** : This company was excluded by the DRP on the grounds of failure of functionality test and that it owns intellectual properties. The DRP placed reliance on the decisions of the Tribunal where this company has been excluded in the assessee's own case for the AY 2008-09 in IT(TP)A No.1678/Bang/2012 dated 4.9.2015. Against this, the revenue is in appeal before us.

31. We have heard both the parties and perused the material on record. This comparable has been continuously excluded from the list of comparables in assessee's own case for the AYs 2008-09 (*supra*), 2009-10 & 2010-11. For the AY 2008-09, the Tribunal vide order dated 4.9.2015 (*supra*) held as under:-

“(7) Infosys BPO Ltd.

28. This company is listed at Sl.13 in the list of comparable companies chosen by the TPO. As far as this company is

concerned, it is the submission of the Id. counsel for the assessee that this company has a brand value and therefore there would be significant influence in the pricing policy which will impact the margins. Schedule 13 to the profit & loss account of this company for the F.Y. 2007-08 shows that this company incurred huge selling and marketing expenses. Page 133 of the annual report of this company for the F.Y. 2007-08 shows that this company realizing its brand value has chosen to value the same on the basis of its earnings and that of Infosys. The brand value of the Assessee and Infosys has been valued at Rs. 31,863 Crores. Infosys BPO, being a subsidiary of Infosys, has an element of brand value associated with it. This is also clear from the presence of brand related expenses incurred by this company. Presence of a brand commands premium price and the customers would be willing to pay, for the services/products of the company.”

32. Similar is the position in AYs 2009-10 & 2010-11. Accordingly, exclusion of Infosys BPO Ltd. by the DRP is justified. We confirm the order of the DRP.

33. **e4e Healthcare Business Services Pvt. Ltd.**: The DRP noticed that the company is engaged in the forward contracts, on that account the amount outstanding as on 31.03.2011 is USD 11.85 million, such forward contracts have influence on the margin of the assessee company. Further there is no consistent approach in regard to accounting of the bad debts which is evident that in the financial year 2009-10, the provision for bad and doubtful debts is created to the extent of 3,30,69,141/- as against which there is no provision during the year. As against the bad debt written off of 29,87,000/- in the preceding year, during the year the bad debt written off are to the extent of 1,62,09,146/-, in such inconsistency of accounting. Instead of modification of computation of margin, the DRP was of the view that it was appropriate to exclude the above company from the comparables.

34. Before us, the ld. AR fairly conceded that he has no objection to include this company as a comparable. In view of this, we direct the AO/TPO to include e4e Healthcare Business Services Pvt. Ltd. in the list of comparables. Accordingly, this ground of the revenue is allowed.

35. In the result, the revenue's appeal is partly allowed for statistical purposes.

36. Thus, the appeal by the assessee as well as the revenue is partly allowed for statistical purposes.

Pronounced in the open court on this 31<sup>st</sup> day of January, 2022.

Sd/-

Sd/-

( BEENA PILLAI )  
JUDICIAL MEMBER

( CHANDRA POOJARI )  
ACCOUNTANT MEMBER

Bangalore,

Dated, the 31<sup>st</sup> January, 2022.

*/Desai S Murthy /*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.