

**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. 2702/Bang/2017
Assessment Year : 2013-14

M/s. Acusis Software India Pvt. Ltd., No. 17/2, Dollars Chamber, Lalbagh Road, Bangalore – 560 027. PAN: AADCA2415P	Vs.	The Deputy Commissioner of Income Tax, Circle – 1(1)(2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Chavali Narayan, CA
Revenue by	:	Shri Sumer Singh Meena, CIT (DR)

Date of Hearing	:	01-02-2022
Date of Pronouncement	:	01-02-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal by the assessee has been filed by assessee against the final assessment order 12.10.2017 passed by the Ld.DCIT, Circle-1(1)(2), Bangalore relating to Assessment Year 2013-14 on **following revised and modified grounds of appeal:**

“Based on the facts and circumstances of the case and in law. Acusis Software India Private Limited (hereinafter referred to as 'Appellant). respectfully craves leave to prefer an appeal against the appeal order passed by the learned Assessing Officer [hereinafter referred to as the 'learned AO'] under section 143(3) read with section 144C of the Income-tax Act. 1961 ('the Act') on the following grounds:

That on the facts and circumstances of the case and in law.

1. The learned AO. based on directions of the Hon'ble DRP. erred in assessing the total income at INR 60.157.140/- as against returned income of INR 48.561.140 computed by the Appellant;

2. The learned AO/ Transfer Pricing Officer ('TPO') erred in making an addition of INR 11,596.000 to the total income of the Appellant on account of adjustment in the arm's length price of the transaction of provision of medical transcription service entered by the Appellant with its associated enterprise:

3. The learned AO/ TPO erred. in law and in facts, by exercising the powers under section 133(6) of the Act to obtain information which is not available in public domain and relying on the same for comparability purposes:

4. The learned AO/ TPO erred. in law and in facts. by not applying upper turnover filter as a comparability criterion:

5. The learned AO/ TPO erred, in law and in facts. by rejecting the following comparable companies identified by the Appellant for having different accounting year (i.e. companies having accounting year other than March 31 or companies whose financial statements were for a period other than 12 months):

a) Caliber Point Business Solutions Limited (Segmental); and

b) R Systems International Limited (Segmental)

6. The learned AO/ TPO erred, in law and in facts. by accepting the following companies based on unreasonable comparability criteria:

a) Capgemini Business Services (India) Limited;

b) Hartron Communications Limited (Segmental); and

c) Infosys BPO Limited

7. The learned AO/ TPO erred. in law and in facts. by rejecting the following companies based on unreasonable comparability criteria:

a) Informed Technologies India Limited

b) ACE BPO Services Private Limited

8. The learned AO/ TPO erred. in law and in facts, by considering provision for doubtful debts/advances as non-operating in nature.

9. The learned AO/ TPO erred, in law and in facts. by undertaking negative working capital adjustment.

10. The learned AO/ TPO erred, in law and facts, by not making suitable adjustments to account for differences in the risk profile of the Assessee vis-a-vis the comparables.

11. *The learned AO erred. in law and in facts, in initiating penalty proceedings u/s 271(1)(c) of the Act.*

The Appellant submits that each of the above grounds is independent and without prejudice to one another.

The Appellant craves leave to add, alter, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal. so as to enable the Hon'ble Tribunal to decide on the appeal in accordance with the law."

2. Brief facts of the case are as under:

The assessee is a wholly owned subsidiary of Acusis Holding Company Limited, British Virgin Islands with the exception of one share which is owned by Acusis LLC, USA. The assessee is engaged in providing medical transcription services to its Associated Enterprise ("AE") for which it is remunerated on a cost plus basis. During the year under consideration, assessee entered into following international transaction with its AE.

Nature of International Transaction	Amount in INR
Provision of medical transcription services	238,517,198

The assessee undertook a Transfer Pricing ("TP") study, carried by using TNMM as MAM and OP/OC as PLI. The searches on the databases by assessee yielded a set of 10 comparables with weighted average operating profit / operating cost of 15.22%. The margin was arrived at by taking the average of three-year data. As the assessee's net margin of 17.89% was higher than the margin of comparable companies, the margin of the assessee was concluded to be at arm's length.

Sl. No.	Particulars	Margin (%)
1	Caliber Point Business Solutions Limited (Segmental)	12.83%
2	Cosmic Global Limited	29.44%
3	Datamatics Financial Services Ltd.	5.88%

4	e4e Healthcare Business Services Private Limited	14.11%
5	Informed Technologies India Limited	10.71%
6	Infosys BPO Limited	32.70%
7	Jindal Intellicom Private Limited	9.72%
8	Microgenetics Systems Limited	12.68%
9	MPS Limited	20.45%
10	R Systems International Limited (Segmental)	3.68%
	Arithmetic Mean	15.22%

Dissatisfied with the above comparables selected by assessee, the Ld.TPO carried out new search and finalised the following 9 set of comparables having average margin of 20.64%.

Sl. No.	Particulars	Margin (%)
1.	Acropetal Technologies Limited	24.16%
2.	Microgenetics Systems Limited	16.34%
3.	Jindal Intellicom Limited	-3.01%
4.	Hartron Communications Limited (Segmental)	44.07%
5.	Microland Limited	8.62%
6.	Capgemini Business Services (India) Private Limited	26.78%
7.	Tech Mahindra Limited (Segmental)	22.27%
8.	e4e Healthcare Business Private Limited	17.26%
9.	Infosys BPO Limited	29.28%
	Arithmetic Mean	20.64%
	Less: Working capital Adjustment	-1.44%
	Adjusted arithmetic mean	22.08%

The Ld.TPO undertook negative working capital adjustment and no risk adjustment was granted to assessee.

In the draft assessment order, the adjustment proposed by the Ld.TPO was incorporated by the Ld.AO.

Aggrieved by the draft assessment order, the assessee raised objections before the DRP.

The DRP upheld the exclusions made by the Ld.TPO. The DRP allowed exclusion of Acropetal Technologies Ltd. and Tech Mahindra Ltd. from the final set of comparables. The DRP however remanded Infosys back to the Ld.TPO to assess if the company fails export revenue filter. The DRP directed against the use of upper turnover filter.

The DRP upheld TPO's approach of negative working capital.

Post DRP directions, the comparables that remained are as under:

Sl. No.	Particulars	Margin (%)
1.	e4e Healthcare Business Private Limited	17.26%
2.	Infosys BPO Limited	29.28%
3.	Jindal Intellicom Limited	-3.01%
4.	Microgenetic Systems Limited	16.34%
5.	Capgemini Business Services (India) Private Limited	26.78%
6.	Microland Limited	8.62%
7.	Hartron Communications Limited (Segmental)	44.07%
	Arithmetic Mean	19.91%
	Less: Working capital Adjustment	-3.56%
	Adjusted arithmetic mean	23.47%

On receipt of the DRP directions, the final assessment order was passed by making addition in the hands of the assessee at Rs.1,15,96,000/-.

Aggrieved by the final assessment order, the assessee is in appeal before us.

At the time of argument, the Ld.AR submitted that assessee wishes to argue only on **Ground no. 6** of the revised and

modified grounds of appeal wherein following comparables are sought for exclusion.

- a) Capgemini Business Services (India) Ltd.
- b) Hartron Communications Ltd.(Segmental); and
- c) Infosys BPO Ltd.

Before we undertake the comparability analysis of the above comparables sought for exclusion, it is *sine qua non* to understand the functions performed, assets owned and risks assumed by assessee under ITe segment. The transfer pricing study placed at page 291 of the paper book reveals the FAR analysis as under.

Functional Analysis

During FY 2012-13, as confirmed by Acusis India, there have been no changes in the functions performed and risks assumed in the provision of medical transcription services transaction vis-a-vis the FY 2011-12 for which a transfer pricing study was undertaken by Acusis India. A summary of functions performed and risks assumed by Acusis India in relation to the medical transcription services to its AE, as documented in the FY 2011-12 transfer pricing study, has been reproduced below.

I. Management Functions:

- a) Strategic management functions
- b) Corporate services
- c) Marketing / Business development

II. Medical Transcription Functions:

- a) Process conceptualization
- b) Process delivery
 - Generation and receipt of voice file
 - Customisation and transmission of voice file
 - Transcription
 - Transmission to clients

III. Quality control

IV. Quality assurance

The transfer pricing study, states that assessee undertakes corporate service functions, limited process conceptualisation and quality control in rendering the ITeS services to its AEs.

Risk Analysis:

It is observed from the TP study on page 296 that assessee does not undertake any utilisation risk, credit and collection risk or service liability risk in rendering relevant services to its AE. The market risk undertaken by assessee is only for the reason that it renders marketing services to the group companies worldwide.

Assets:

The assessee does not hold any intangible property and all the technology employed is owned by the associated enterprises.

Characterisation of entity:

In the TP study assessee is operating in a risk mitigated environment and does not carry out significant entrepreneurial activities nor does it bear significant risks associated with such activities. Accordingly, Acusis India may be characterised as a risk mitigated contract service provider for provision of medical transcription services.

From the above, it is clear that assessee is a capital service provider only rendering the medical transcription services to its AE. Based on the above, the Ld.AR submitted that the comparables sought for exclusion cannot be compared with assessee. He placed reliance on following decisions of *Coordinate Bench* of this *Tribunal* wherein under similar FAR circumstances, these comparables were excluded.

On the contrary, the Ld.DR relied on the orders passed by the authorities below.

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

On the FAR analysis, it is not disputed by the revenue authorities, it is ascertained that assessee is a pure captive service provider rendering ITES services to its Associated Enterprises that do not own intangible assets and bears less than minimum risk.

The Ld.AR has placed reliance on the following decisions for exclusion of these comparables.

- a) *ISG Novasoft Technologies Limited [IT(TP)A No. 42/Bang/2018]*
- b) *Harsco India Services Private Limited [IT(TP)A No. 2176/Hyd/2017]*
- c) *Digital Juice Animations Private Limited [IT(TP)A No. 215/Bang/2017]*
- d) *FNF India Private Limited [IT(TP)A Nos. 195/Bang/2016 and 459/Bang/2017]*
- e) *Acusis Software India Private Limited IT(TP)A No.169/Bang/2016*

We note that in case of *ISG Novasoft Technologies Ltd. (supra)* for the same Assessment Year, these comparables sought for exclusion by assessee in the present case have been dealt as under.

“9. Aggrieved by the order, the assessee has filed the appeal before the tribunal. At the time of hearing, learned AR argued grounds of appeal and reiterated the submissions made before the lower authorities. The learned AR submitted a chart and prayed that the 3 comparables selected by the TPO viz., M/s.Hartron Communications Ltd. (Seg.), M/s.Capegemini Business Services (India) Pvt. Ltd., and M/s.Infosys BPO Ltd., be excluded. The learned AR made submissions on comparable M/s.Hartron Communications Ltd. and explained that the turnover of this company is Rs.18.43 crores and has 0% related party transactions and is functionally different. Learned AR referred to page 1350 of the paper book and submitted that this company is engaged in software development services and has intellectual property services, web hosting, tech solutions apart from back office services. The company has revenue

from software development services and there is no bifurcation of revenue from software development services and BPO and the company is functionally different. The learned AR also referred to page 135 and 136 in respect of profits of the comparables which is highly fluctuating. The contention of the learned AR that income from BPO services has increased by 483.71% from last year and whereas the BPO services has incurred losses for the financial year 2010-11, 2011-12, 2013- 14 and 2014-15 except financial year 2012-13. The learned AR emphasized that the comparable is functionally different and has exceptional year of operations. The learned AR relied on judicial decision and prayed for excluding comparable M/s. Hartron Communications Ltd., Contra, the learned DR supported the order of the AO/TPO and filed written submissions.

10. We heard rival submissions and perused material on record. We found the learned AR has referred to financial profile of the comparable and at pages No.133 & 134 of paper book the assessee-company is in the software development services for the last 8 years and also involved in intellectual property services. Further at page 135 and 136 of the paper book containing the Annual Report of the assessee was filed and in particular income from operations are negative and hence, the profit figures for earlier years cannot be relied upon.

We found strength in the submission of the learned AR that financial results are fluctuating and will not give correct picture. We found in the case of [Principal CIT vs. Allscripts \(India\) \(P.\) Ltd. \(2016\) \(72 taxmann.com 305\)\(Gujarat\)](#), the following observations are made at paras.6 and 7 :

"6. With respect to Bodhtree Consulting Ltd., we notice that the Tribunal in case of another assessee had noted the company's financial results for financial year 2005-06 to financial year 2012-13 as under :

Particulars	FY05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY11-12	FY 12-13
OP/TC.	13.87%	80.15%	19.89%	62.27%	33/42%	-4.46%	3.29%	- 11.53%

7. Term 'OP' stands for operation profit and 'TC' stands for total cost. It can thus be seen that this ratio has fluctuated widely from -11.53% to 80.15% in a span of about 7 years. From year to year also, this ratio has fluctuated between 13.87% to 80.15%, back to 19.89% up again to 62.27% and so on. Therefore, on account of such widely fluctuating and erratic results of the company, the Tribunal found that

it would be unsafe to assess arm's length price based on TNMM taking into account the results of this company. We do not find the decision of the Tribunal gives rise to any substantial question of law. The Revenue's objection in this regard therefore, must be turned down."

Further the learned AR emphasized that this comparable company is also engaged in real estate activity. The learned AR referred to page 1344 and 1350 of the paper book 2 and emphasized the entry into real estate business. The learned AR made submissions on the trading of shares of this company and relied on the observations of the Auditors. We found that the Chennai Bench of Tribunal in the case of [M/s.Cameron Manufacturing India Pvt. Ltd. vs. DCIT](#) in ITA No.336/Chny/2018 dated 16/10/2018 has observed at para 7 which read as under:

*"7. Ground No.2.3: **M/s. Hartron Communications** as the comparable company:-*

The Ld.AR submitted before us that M/s. Hartron Communications had diversified operations amongst which many relates to activities that are not similar to the activity of the assessee company. Further it was submitted that the company M/s. Hartron Communication's profit from BPO business both export and domestic for the current year is 18.43 crores while as for the previous year the profit was 3.81 crores which shows an increase of profit to the tune of 483.72%. Therefore in the relevant assessment year there was extraordinary operations and hence 8 ITA No.336/Chny/2018 cannot be taken as comparable company. Before us the facts presented by the Ld.AR could not be disputed by the Ld.DR. After considering the issue, we are of the view that when the company is functionally dissimilar and when in a particular year there is an extraordinary profit, then the company cannot be taken as a comparable company. In the case of M/s. Hartron Communication, it is apparent that the company has achieved extraordinary profits during the relevant assessment year and further it has diversified activities and therefore functionally dissimilar to that of the assessee company. Hence as pleaded by the Ld.AR, we are of the considered view that M/s. Hartron Communication cannot be accepted as a comparable company."

We, considering the submissions of the learned AR and the decision of co-ordinate bench of Tribunal in the case of [M/s.Cameron Manufacturing India Pvt .Ltd.\(supra\)](#) are of the opinion the company has extraordinary profits/losses

in subsequent years. We are of the substantive opinion that this company cannot be considered as comparable to the assessee's functional profile and accordingly, direct the AO/TPO to exclude this this comparable for determining ALP.

,M/s.Capegemini Business Services (India) Pvt. Ltd.,:

11. The learned AR submitted that this comparable company has revenue from business process management services and assurances and Compliance Services which include operational control, assessments, and also turnover is around Rs.518.19 crores as against the assessee's turnover of Rs.108 crores and RPT transactions are very much higher and also widened scope of services in supply chain, procurement and technical publications services. is also engaged in procurement and technical publication services as under:

Capgemini Business Services (India) Pvt Ltd for FY 2012-13

Particulars	Amount	Amount
Trade Mark, Methodology and Information Support		1,32,27,082
Other expenses (Bank Guarantee Charges)		4,58,647
Revenues		
Capgemini America Inc	1,38,34,00,945	
Capgemini Outsourcing Services SAS	1,11,29,20,107	
Capgemini UK PLC	56,38,85,986	
Capgemini Canada Inc	51,76,50,927	
Others	24,73,18,736	3,82,51,76,701
Expenditure		
Network related cost (Capgemini Services SAS, France)	6,44,33,165	
Network related cost (Capgemini Outsourcing Services SAS)	8,35,22,704	
Professional and consultancy (Capgemini Business Services (China) Ltd)	1,04,21,158	
Professional and consultancy (Capgemini Singapore Pte. Ltd.)	73,99,408	
EDP Expenses (Capgemini India Pvt. Ltd)	6,07,22,526	
Service fees (Capgemini Outsourcing Services SAS)	14,87,17,789	

Service fees (Others)	1,42,30,206	
Training charges (Capgemini Universite)	1,70,02,732	
Reimbursement of expenditure (Capgemini Services SAS)	27,17,661	
Reimbursement of expenditure (Others)	15,89,465	41,07,56,814
Total RPT		4,24,96,19,244
Total revenue from operations		5,16,22,18,012
RPT %		82.32%

Whereas the RPT is 82% which does not satisfy the assessee's profile and above and it is functional different and accordingly, we direct TPO for exclusion of M/s.Capegemini Business Services from the list of comparables for determining the ALP.

12. Similarly, the learned AR submitted for exclusion of **M/s.Infosys BPO** stating that this company cannot be comparable considering the brand value, functional dissimilarity and the company's turnover is Rs.1831.36 crores which is 10 times more than turnover filter and works as under:

1. The company earns revenue from provision of high end ITES in the nature of both KPO Et BPO, whereas the Appellant provides low end ITES in the nature of BPO. Therefore, the company is functionally different.
2. The company is an established player a market leader and also operates as a full fledged risk bearing entrepreneur.
3. It has significant selling, marketing & brand building expenses.
4. It commands a very high brand value as it enjoys premium pricing.
5. It owns significant intangibles in the form of goodwill.
6. Extraordinary event occurred during the year under consideration (i.e, acquisition of Marsh BPO).
7. It fails export earning filter of 75% (i.e, 74.06%)
8. Fails upper turnover filter of Rs.200 crores.
9. Incorrect margin computation.

Further M/s. Infosys BPO Ltd., fails the revenue filter of 75% and functionally different and has large company intangibles brands and acquisition. The learned AR referred to Annual Report and the export turnover filter and emphasized on functionality and extraordinary filters

and relied on assessee's own case for the assessment year 2009-10 on exclusion of the the company in IT(TP)A No.60/Bang/2014 dated 15/02/2019 which reads as under:

"8. We heard the rival submissions and perused material on record. The learned AR has argued ground No.8 in respect of exclusion of comparables and other grounds as envisaged by learned AR shall become academic. Therefore, we consider it appropriate to deal with ground No.8 and exclusion of comparables. We found, the TPO has considered Infosys BPO for the TP study whereas the assessee-company is providing IT products and solutions catering to all aspects of Mortgage lending and also engaged in servicing the residential mortgage industry and also providing full spectrum of mortgage technology services for its group companies and adopted TNMM method for international transactions. The learned AR contention that Infosys BPO Ltd., is providing high end integrated services and also diversified services like business platforms, customer service outsourcing, finance and accounting, human resourcing outsourcing and whereas the assessee's functionality is ITES. The turnover of Infosys BPO is Rs.1081.5 crores and fails in the upper turnover filter of Rs.200 crores and has High brand value and enjoys premium which the assessee company does not own. The learned AR referred to relevant Extract of Annual Report of the said company placed at page No.657 of the paper book 2. Further similar exclusion considered by the co-ordinate bench of the Tribunal in the case of *e4e Business Solutions India Pvt. Ltd., vs. Deputy Commissioner of Income-tax* in IT(TP)A No.1845/Bang/2013 dated 10/11/2015. We find there is strength in the arguments of the learned AR duly supported with evidence on segmental details and functional dissimilarities. The Infosys BPO was dealt by the co-ordinate bench in above case for the assessment year 2009- 10 at page 21 at para. 11.3(ii) which reads as under:

ii) We have considered the rival submissions as well as relevant material on record. We note that in para 16.2.15 of the Annual Report of this company, it has been reported that there was amalgamation w.e.f 1/4/2008. The relevant part of the information provided in the Annual Report reads as under:

Amalgamation of PAN Financial Services India Private Limited

The Board of Directors in their meeting held on October 6, 2008. approved, subject to the approval of the Honorable High Courts of Karnataka and Chennai, a Scheme of amalgamation ("the Scheme") to amalgamate PAN Financial Services India Private Limited (-PAN Financial"), a wholly owned subsidiary of the Company engaged in providing business process management of services, with the Company with effect from April 1. 2008 ("effective date"). The approval of the High Court was received on April 6, 2009 and filed with the respective Registrar of Companies of Karnataka and Tamilnadu on April 6, 2009 and March 10, 2009 respectively. Accordingly on the scheme becoming effective, the financial statement of PAN Financial has been merged with the company.

It is clear that there was extraordinary event of amalgamation during the year under consideration. Therefore, in view of the extraordinary development of amalgamation of another company, this company cannot be considered as a good comparable for the assessment year under consideration. Apart from this, we further note that as per the segment reporting in para.16.2.21 this company is providing business process management services as under:

Segment reporting

The company's operations primarily relate to providing business process management services to organizations that outsource their business processes. Accordingly. revenues represented along industry classes comprise the primary basis of segmental information set out in these financial statements. Secondary segmental reporting is performed on the basis of the geographical location of customers.

The accounting principles consistently used in the preparation of the financial statements are also consistently applied to record income in individual segments. These are set out in the note on significant accounting policies.

Thus it is clear that the revenue earned by this company is from the activity inclusive of operation primarily relates to providing business process management services to other organization engaged in outsourcing business process. This company is not engaged in direct activity of BPO but it provides service to BPOs and that too management service to BPO. Therefore, in our considered view, this company is

engaged in a different nature of activity to that of the assessee provided to its AE. Accordingly, we direct the AO/TPO to exclude this company from the list of comparables."

We found that there is similarity of the segmentation and the assessee company is engaged in ITES. Therefore, we, considering the turnover, functionality and brand value of the company, are of the view that the company cannot be chosen as a comparable to functional profile of the assessee company. Accordingly, we are of the substantive opinion that Infosys BPO Ltd., be excluded and direct the AO/TPO to exclude this company from the list of comparables for calculating adjustment of the ALP."

We rely on factual aspect and judicial decision and direct the TPO to exclude M/s.Infosys BPO for determination of ALP."

No distinguishing factors have been brought on record by revenue in order to deviate from the above view. We, therefore, direct the Ld.AO to exclude Capgemini Business Services (India) Ltd., Hartron Communications Ltd.(Segmental); and Infosys BPO Ltd. from the final list of comparables.

Accordingly, ground no. 6 raised by assessee stands allowed.

The remaining grounds are not adjudicated as the same has not been pressed by the assessee and are therefore left open.

Accordingly, the appeal filed by the assessee stands partly allowed as indicated above.

In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 01st February, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 01st February, 2022.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore