

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'I-1', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member**

**Ms. Astha Chandra, Judicial Member**

**ITA No.5528/Del/2018 : Asstt. Year: 2012-13**

DCIT, Circle-9(1), New Delhi	Vs	FIL Research (India) P. Ltd. Successor of FIL India Business Services Pvt. Ltd., 807, New Delhi House, Barakhamba Road, New Delhi-110001
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AABCF3695C</b>		

**Assessee by : Sh. K. M. Gupta, Adv. &  
Sh. Rishabh Malhotra, AR  
Revenue by : Sh. Sandeep Kumar Mishra, Sr. DR**

<b>Date of Hearing: 24.02.2022</b>	<b>Date of Pronouncement: 19.05.2022</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the Revenue against the order of the Id. CIT(A)-44, New Delhi dated 31.05.2018.

2. Following grounds have been raised by the Revenue:

*"1. The Id. Commissioner of Income-tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs.9,74,29,594/- made by the AO on account of ALP adjustment for international transactions entered into by the assessee company."*

3. In the instant case, the Transfer Pricing Officer ('TPO') has made an adjustment of INR 9,74,29,594/-. The Assessee in the year under consideration had provided Information Technology Enable Services ('ITeS') to its Associated Enterprises ('AEs') at a mark-up of 15% on the total cost. The assessee is engaged in

back-office operations. In the capacity of a back-office contract service provider, its activities broadly include customer support services, business finance, controlling functions, accounts payables, accounts receivables, reporting and forecasting. Being in the back-office operations, the assessee is fairly shielded from various risks such as market risk, price risk, capacity utilization risk etc.

4. The TPO rejected the analysis carried out by the Assessee and computed a mark-up of 27.49% by selecting incomparable companies while determining the Arm's Length Price under section 92CA(4) thereby making the addition of Rs. 9,74,29,594/-. Aggrieved by the action of the TPO, the Assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) excluded 5 companies considered to be comparable by the TPO thereby reducing the adjustment to 'Nil'.

5. The final set of comparable companies as per the order of the Ld. CIT(A) is as under:

**Disposition of comparables after order of CIT(A)**

S. No.	Company Name	OP/OC (As per TPO order)	OP/OC (As per CIT(A) directions)
1	Accentia Technologies Ltd.	9.23%	Excluded
2	Eclerx Services Ltd	58.06%	Excluded
3	Informed Technologies India Ltd.	18.81%	18.81%
4	Jindal Intellicom Ltd.	-0.44%	-0.44%
5	TCS E-serve Ltd.	62.24%	Excluded
6	Excel Infoways Ltd (Seg)	38.91%	38.91%
7	R Systems International Ltd. (Seg)	-1.67%	-1.67%
8	Infosys BPO Ltd	35.06%	Excluded
9	Acropetal Technologies Ltd. (Seg)	15.93%	15.93%
10	B N R Udyog Ltd.	46.74%	Excluded
11	e4e Healthcare Business services	19.55%	19.55%
	Arithmetic Mean	27.49%	15.18%

6. Heard the arguments of both the parties and perused the material available on record.

**A. Accentia Technologies Ltd.:**

7. The Ld. CIT(A) held that the company is functionally dissimilar to the Assessee as it provides KPO services and owns intangibles. The issue was dealt by the Co-ordinate Bench of Tribunal while passing the order for A.Y. 2010-11 in ITA No. 6867/Del/2014 in the case of the assessee. In the instant year also, the company is engaged in similar business services as it was conducting in the previous year as is evident from the following extract of the Annual Report for F.Y. 2011-12:

*"Accentia has gone a long way from being a single location, single service firm to a multi location, diversified Knowledge Process Outsourcing Company, operating from multiple locations in India, USA, UK and the Middle East. Not resting at being one of the fastest growing Healthcare Receivables Cycle Management Companies, we have now ventured into offering Software As A Service model in the healthcare outsourcing area, since the US administration has made sweeping changes in the healthcare sector, especially in the documentation area."*

8. The Co-ordinate Bench of Tribunal in Evalueserve.com Pvt. Ltd in ITA No. 1814/Del/2017 rejected Accentia Technologies as a valid comparable for the concerned assessment year i.e., A.Y. 2012-13 holding that,

*"9. We have heard the rival submissions and also perused the relevant finding given the impugned orders as well as the material referred before us. Accentia Technologies Ltd. is a company which is providing medical transcription services which encompasses process of prescribing or converting voice recorded reports as detected by*

*physicians or other health care professionals who vet the actual transcription. Apart from that it is providing medical coding, billing and collection services. Medical coding is related to procedures of financial assessment which help insurance companies and Government companies. Medical billing is described as medical practice management which involves bill on insurance companies by hospitals for on behalf of the personnel for medical care expenses, which are majorly from US markets .*

*.... In fact it has been reported that there is only one segment called as health care receivable management. As pointed out by the Ld. Counsel this company is also into software development services and also own proprietary products like IMTAS, IRTS, IAMS, IPMS, which is used for various functions. Due to these factors and comparison of functional profiles, the Tribunal in assessee's own case for A.Y. 2008-09 has directed to exclude this company. Further, in this year there was acquisition of software development company namely, Medex Healthcare Global which is into development of software related to EMR and SAAS."*

9. It was held that the instant company cannot be taken as a valid comparable in the following judgments:

- Evalueserve Sez (Gurgaon) Pvt. Ltd. in ITA No. 241/2018 (DEL HC)
- Torus Business Solution Pvt. Ltd. in ITA No. 2017/2019 (DEL HC)
- M/s Equant Solutions India Pvt. Ltd. in ITA No. 419 of 2016 (O&M)( P & H HC)
- PTC Software (I) Pvt. Ltd. in ITA 598 of 2016 (Bom. HC)
- Xchanging Technologies Services India P. Ltd. in ITA No. 813/2015 (DEL HC)

- Agilent Technologies (International) Pvt. Ltd. in ITA Nos.1620/Del/2015, 477 & 6420/DEL/2016 AY 2010-11, 2011 -12 & 2012-13
- Bechtel India Pvt. Ltd. in ITA No. 1478/Del/2015
- Sun Life India Service Centre Private Limited in ITA No. 750/Del/2015

10. Hence, we decline to interfere with the order of the Ld. CIT(A) in excluding Accentia Technologies.

**B. Eclerx Sendees Ltd.:**

11. The Ld. CIT(A) held that the said company is functionally dissimilar to the Assessee as it is engaged in the provision of software development and engineering designs and derives its revenue solely from these services. The comparable has earned super normal profits and has undergone extraordinary events in the current Assessment Year. The Hon'ble Delhi High Court in the case of Rampgreen Solutions Private Limited in ITA No. 102/2015 had noted that a Knowledge Process Outsourcing unit cannot be compared with an assessee providing Business Process Outsourcing services. The Hon'ble High Court concluded that since Eclerx is a KPO it cannot be compared with the assessee and excluded the same from the final list of comparable companies.

12. Hence, we decline to interfere with the order of the Id. CIT(A) on this issue.

**C. TCS E-Serve Ltd.:**

13. The Ld. CIT(A) held that the instant comparable is performing functions which is different from that of the Assessee, has a high brand value, is engaged in diversified services and own intangibles. The Co-ordinate Bench of ITAT in Assessee's own case for A.Y. 2010-11 in ITA No. 6867/Del/2014 excluded this company from the final set of comparable. Hence, we decline to interfere with the order of the Id. CIT(A) on this issue.

**D. Infosys BPO Ltd.**

14. The Ld. CIT(A) held that unlike the assessee, the instant comparable is engaged in a wide array of services in the nature of finance and accounting, legal process outsourcing, sales etc. and is therefore, functionally dissimilar. It also possesses significant brand value and goodwill. It is submitted that during the current year, the company has undergone business restructuring/ acquisitions and has rendered significant large scale of operations. It was held that the instant company was excluded as a comparable in Assessee's own case for AY 2010-11 in ITA No. 6867/Del/2014. Hence, we decline to interfere with the order of the Id. CIT(A) on this issue.

**E. BNR Udyog Ltd.:**

15. The Ld. CIT(A) held that the instant company is functionally different as it is engaged in medical coding and transcription and is earning supernormal profits. Reliance was also placed on the decision of the Co-ordinate Bench of Tribunal

in the case of Teradata (1833/Del/2014) wherein it was held that the company was engaged in medical transcription business and it did not give simple output but also provided its client with value addition from experts in medical profession. The Id. CIT(A) took note of the aforesaid decision and excluded the company from the final list of comparable companies.

16. The Co-ordinate Bench of Tribunal in Evalueserve.com Pvt. Ltd. in ITA No. 1814/Del/2017 rejected BNR Udyog Limited as a valid comparable for the concerned assessment year i.e., AY 2012-13 in the following manner:

*"After considering the aforesaid submissions, we find that, first of all, on perusal of the annual report it is seen that apart from medical transcription activities, it is also into medical billing and coding services. The functional profile of the medical transcription segment is almost akin to functions of Accentia Technologies Ltd. and again for the various activities of medical transcription, medical billing and coding services there is no separate segment. In the case of Evalueserve SEZ, the Tribunal after detail analysis has excluded the said comparable. The finding of the Tribunal now stands confirmed by the Hon'ble Delhi High Court (supra). Accordingly, respectfully following the same, this comparable is also directed to be excluded."*

17. Since, the decision of the Id. CIT(A) is based on the orders of the higher judicial authorities, we hereby affirm the order of the Id. CIT(A).

18. In the result, the appeal of the Revenue is dismissed.  
Order Pronounced in the Open Court on 19/05/2022.

Sd/-

**(Astha Chandra)**  
**Judicial Member**

**Dated: 19/05/2022**

**\*Subodh Kumar, Sr. PS\***

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**