

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "C", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.09/PUN/2020  
निर्धारण वर्ष / Assessment Year: 2014-15

DCIT, Circle-6, Pune.	Vs.	Schlumberger India Technology Private Limited, Office No.701, 7 <sup>th</sup> Floor, Bldg. No.6, Commerce Zone, S.No.1441145, Samrat Ashok Path, Off Airport Road, Yerawada, Pune- 411057. PAN : AALCS4945G
Appellant		Respondent

C.O. No.04/PUN/2022  
(Arising out of ITA No.09/PUN/2020)  
निर्धारण वर्ष / Assessment Year: 2014-15

Schlumberger India Technology Private Limited, Office No.701, 7 <sup>th</sup> Floor, Bldg. No.6, Commerce Zone, S.No.1441145, Samrat Ashok Path, Off Airport Road, Yerawada, Pune- 411057. PAN : AALCS4945G	Vs.	DCIT, Circle-6, Pune.
Appellant		Respondent

Revenue by : Shri Arvind Desai  
Assessee by : Shri Siddhesh Chaugule

Date of hearing : 08.06.2022  
Date of pronouncement : 17.06.2022

**आदेश / ORDER****PER INTURI RAMA RAO, AM:**

This is an appeal filed by the Revenue directed against the order of Id. Commissioner of Income Tax (Appeals)- 13, Pune. [‘the CIT(A)’] dated 30.08.2019 for the assessment year 2014-15. The assessee filed the Cross Objection in appeal of the Revenue.

2. First, we shall take up the appeal of the Revenue in ITA No.09/PUN/2020 for adjudication.

**ITA No.09/PUN/2020 – By Revenue :**

3. The Revenue raised the following grounds of appeal :-

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in holding that the Cybercom Datamatics Information Solutions Ltd. is not a comparable without going into the merits of the case.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) was incorrect in holding that the MPS Limited is not a comparable relying on incomplete information provided by the assessee and information culled from the website of MPS Ltd.

3. On the facts and in the circumstances of the case and in the law, the Ld. CIT(A) was incorrect in holding that MPS Limited was not functionally comparable without examining the functions performed by the assessee which are similar in nature to the assessee.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) was incorrect in relying on the decision of the Bangalore ITAT in the case of Google (India) Pvt. ltd. ignoring the fact that the assessee and MPS Ltd. performed similar functions.

5. *For these and such other reasons as may be urged at the time of hearing, the order of the Ld CIT(A) may be vacated and that of the Assessing Officer be restored.*

6. *The appellant craves, leave to add, amend, alter or delete any of the above grounds of appeal during the course appellate proceedings before the Hon'ble Tribunal."*

4. Briefly, the facts of the case are that the assessee is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of providing oilfield services and is into onsite operations providing research and engineering facilities, providing develop products, services and solutions that optimize customer performance. The assessee company was also provided technical support services to its AEs and remunerated at cost plus mark-up basis. The return of income for the assessment year 2014-15 was filed on 30.11.2014 disclosing total income of Rs.3,42,52,170/-. The assessee company also reported the following international transactions in Form No.3CEB :-

<i>Sr. No.</i>	<i>Description of International Transaction</i>	<i>Amount (Rs).</i>	<i>Method used</i>
1.	<i>Provision of technical support services</i>	<i>321,881,397</i>	<i>TNMM</i>
2.	<i>Provision of software development services</i>	<i>136,555,147</i>	<i>TNMM</i>
3.	<i>Activity of Light Integrated Test Equipment ('LITE')</i>	<i>23,461,251</i>	<i>TNMM</i>
4.	<i>Purchase of capital goods</i>	<i>8,235,411</i>	<i>TNMM</i>
5.	<i>Provision of procurement support services</i>	<i>26,881,036</i>	<i>TNMM</i>
6.	<i>Purchase of testing materials and other</i>	<i>2,042,728</i>	<i>TNMM</i>

	<i>goods</i>		
7.	<i>Purchase of business (including assets) of SGSCL India branch</i>	<i>118,113,356</i>	<i>Other method</i>
8.	<i>Purchase of business (including assets) of RPMSPL India branch</i>	<i>10,263,000</i>	<i>Other method</i>
9.	<i>Reversal of mark-up</i>	<i>1,002,606</i>	<i>Other method</i>
	<i>Total</i>	<i>64,84,35,932</i>	

5. The assessee company sought to justify the consideration received for the above international transactions entered with its AE to be at arm's length price (ALP). The assessee company also submitted Transfer Pricing (TP) study report adopting the Operating Profit to Total Cost (OP/TC) as a Profit Level Indicator (PLI) for the transfer pricing study. The assessee company also applied Transactional Net Margin Method (TNMM) which is considered to be the most appropriate method for the purpose of benchmarking the international transactions. In respect of technical support services which are classified as ITES, the assessee company's profit margin was computed at 12.30% and the assessee company claimed that the same was comparable with other companies rendering ITES services. For the purpose of TP study, the assessee company chosen 8 comparable entities and arithmetic average of operating profit margins of said comparables was computed at 8.86%. According to

the assessee company, its PLI was much higher than the arithmetic mean of the comparable entities. Hence, it was claimed that the international transactions with its AE are at arm's length. The assessee company had also chosen the following 8 entities as comparables whose average profit margin was computed at 8.86% using 3 years weighted data :-

<i>Sr. No.</i>	<i>Name of Company</i>	<i>Weighted average of OP/TC (%)</i>
1	<i>ACE BPO Services Private Limited</i>	<i>4.88%</i>
2	<i>Caliber Point Business Solutions Limited (Segmental)</i>	<i>5.22%</i>
3	<i>Comic Global Limited</i>	<i>18.73%</i>
4	<i>Datamatics Financial Services Ltd.</i>	<i>7.99%</i>
5	<i>Informed Technologies India Limited</i>	<i>6.21%</i>
6	<i>Jindal Intellicom Private Limited</i>	<i>1.33%</i>
7	<i>Microgenetics Systems Limited</i>	<i>18.08%</i>
8	<i>R Systems International Limited (Segmental)</i>	<i>8.43%</i>
	<i>Arithmetic Mean</i>	<i>8.86%</i>

6. In respect of software development services, the assessee company's profit margin was computed at 18.38% and the assessee company claimed that the same was comparable with other companies rendering software development services. For the purpose of TP study, the assessee company chosen 11 comparable entities and arithmetic average of operating profit margins of said comparables was computed at 4.60%. According to the assessee

company, its PLI was much higher than the arithmetic mean of the comparable entities. Hence, it was claimed that the international transactions with its AE are at arm's length. The assessee company had also chosen the following 11 entities as comparables whose average profit margin was computed at 4.60% using 3 years weighted data :-

<i>Sr. No.</i>	<i>Name of Companies</i>	<i>Weighted average of working capital adjusted operating margins (%)</i>
1	<i>Akshay Software Technologies Limited</i>	<i>5.97%</i>
2	<i>Caliber Point Business Solutions Limited (Segmental)</i>	<i>3.65%</i>
3	<i>Cat Technologies Limited</i>	<i>(-) 21.31%</i>
4	<i>GC-VAK Software &amp; Exports Limited (Segmental for F.Y. 2011-12)</i>	<i>1.90%</i>
5	<i>Cigniti Technologies Ltd.</i>	<i>14.89%</i>
6	<i>Evoke Technologies Private Limited</i>	<i>11.47%</i>
7	<i>Goldstone Technologies Limited</i>	<i>6.23%</i>
8	<i>Kellton Tech Solutions Ltd.</i>	<i>22.37%</i>
9	<i>Lucid Software Limited</i>	<i>5.72%</i>
10	<i>Maveric Systems Limited</i>	<i>8.59%</i>
11	<i>Spry Resources India Private Ltd.</i>	<i>-8.91%</i>
	<i>Arithmetic Mean</i>	<i>4.60%</i>

7. On noticing the above international transactions, the Assessing Officer referred the matter to the Transfer Pricing Officer (TPO) for the purpose of benchmarking the above international transactions. The TPO by an order dated 30.10.2017 passed u/s 92CA(3) suggested the upward TP adjustments of Rs.1,96,99,456/- in respect of ITES services and Rs.68,45,386/- in respect of software

development services, totalling to Rs.2,65,44,842/-. While doing so, the TPO had accepted the TNMM as the most appropriate method, but rejected the TP study report submitted by the assessee company and proceeded to identify the different set of comparable entities for the purpose of determining the ALP of the international transactions in both the segments i.e. ITES services and software development services. While doing so, in respect of ITES services, the TPO had applied the following filters :-

- a) Use of current year data.*
- b) Companies having different financial year ending (i.e. not March 31, 2014) or data of the company which does not fall within 12 month period i.e. 01-04-2013 to 31-03-2014, were rejected.*
- c) Companies whose turnover is 10 times lower or 10 times more than the turnover of the assessee are selected as comparable rest are excluded.*
- d) Companies whose SWD service is less than 75% of the total operating revenues were excluded.*
- e) Companies who have more than 25% related party transactions of the sales were excluded.*
- f) Companies who have export service income less than 75% of the sales were excluded”*

8. Applying the above filters, the TPO had rejected the 10 comparables and accepted 1 comparable i.e. Cigniti Technologies Ltd. selected by the assessee and finally selected the following comparables :-

<i>Sr. No.</i>	<i>Name of Company</i>	<i>Turnover (In Crore)</i>	<i>Margin (%)</i>
1	<i>E-Zest Solutions Ltd.</i>	<i>37.73</i>	<i>14.53</i>
2	<i>Thirdware Solutions Ltd.</i>	<i>207.25</i>	<i>50.45</i>
3	<i>R S Software (India) Ltd.</i>	<i>352.64</i>	<i>24.36</i>
4	<i>Cigniti Technologies Ltd.</i>	<i>55.52</i>	<i>27.37</i>
5	<i>Sasken Communication Technologies Ltd.</i>	<i>350.83</i>	<i>7.81</i>
6	<i>Cybercom Datamatics Information Solutions</i>	<i>14.70</i>	<i>85.47</i>
7	<i>Exilant Technologies Pvt. Ltd.</i>	<i>298.10</i>	<i>10.41</i>
	<i>Average</i>		<i>31.48%</i>

9. The TPO computed the average profit margin of the comparables finally selected by him at 31.48%. On the above basis, the TPO computed the upward TP adjustments of Rs.1,96,99,456/- in respect of ITES segment.

10. In respect of software development services, the TPO finally selected the following set of comparables whose average profit margin of the comparables computed at 24.31% :-

<i>Sr. No.</i>	<i>Name of Company</i>	<i>PLI (%)</i>
1	<i>Cigniti Technologies Ltd.</i>	<i>22.71</i>
2	<i>CG-VAK Software &amp; Exports Limited</i>	<i>5.58</i>
3	<i>Evoke Technologies Private Limited</i>	<i>3.21</i>
4	<i>E-Zest Solutions Limited</i>	<i>10.82</i>
5	<i>Cybercom Datamatics Information Solutions</i>	<i>81.20</i>
	<i>Arithmetic Mean</i>	<i>24.31</i>

11. On the above basis, the TPO computed the upward TP adjustments of Rs.68,45,386/-.

12. On receipt of the TPO's order, the Assessing Officer passed the draft assessment order u/s 143(3) r.w.s. 144C(1) of the Act proposing the above TP adjustments of Rs.2,65,44,840/.

13. On receipt of the draft assessment order, the Assessing Officer passed the final assessment order on 29.01.2018 u/s 143(3) r.w.s. 92CA of the Act incorporating the above upward TP adjustments.

14. Being aggrieved, an appeal was filed before the Id. CIT(A), who vide impugned order directed the Assessing Officer/TPO to exclude MPS Limited from list of the comparables in respect of ITES segment and also include Cybercom Datamatics Information Solutions from the list of the comparables in respect of software development services segment.

15. Being aggrieved by the above decision of the Id. CIT(A), the Revenue is in appeal before us and the assessee is in Cross Objection.

16. The Revenue challenges the correctness of decision of the Id. CIT(A) holding that Cybercom Datamatics Information Solutions is not comparable which is engaged in the software development services segment. The issue of comparability of the said company

‘Cybercom Datamatics Information Solutions’ was dealt by the Co-ordinate Bench of this Tribunal in the case of Velocity Tech-Sol India Pvt. Ltd. vs. ACIT in ITA No.1694/PUN/2018 for A.Y. 2014-15 order dated 30.05.2022 (to which one of us is party), wherein the Tribunal held as under :-

*“19. We heard the rival submissions and perused the material on record including the financial statements of this comparable, Cybercom Datamatics Information Solutions Ltd., copy of which is placed at page no.232 to 250 of the Paper Book. At page no.239, Note- 1A forming part of the financial statements, it is stated as under :-*

*“About the Company*

*.....*

*The Principal object of the Company is to act as consultants and advisors on information/internet system and surveyors of information services, and to carry on the business of development, testing, implementation, migration of home grown and other applications, marketing and manufacturing of information technology products and services, software and hardware systems to enterprise and embedded technologies in the telecom and other industries.”*

*20. At page no.237 income from operations was shown from sale of software services alone and at page no.274 in Note- 23 forming part of the financial statements for the year ended 31.03.2014, it is stated that the principal business of the company is of providing of technical and software services. All other activities of the company revolve around its main business. A perusal of the annual report of the said company clearly shows that it was engaged in providing technical software services, contrary to the assessee company which is engaged purely in rendering software development services. The financial statements of the said company do not give any segmental information between the technical services and software services. Further, this company was chosen by the TPO in the list of the comparables, the onus of proving the comparability lies upon the TPO. We also find that this company had reported super profit of 83.99% which is abnormally high profits, the TPO should have caused enquiry to ascertain whether such*

*abnormally profits reflected normal business conditions or arising from abnormal conditions. We also find that this company was excluded from the list of the comparables by the Co-ordinate Bench of the Tribunal in the case M/s. Nethawk Networks India Private Limited vs. ACIT in ITA No.173/PUN/2017 for A.Y. 2012-13 vide order dated 17.06.2021. In the circumstances, we direct the Assessing Officer/TPO to exclude this company from the list of comparables.”*

17. No change in the facts was brought to our notice therefore, we hold that the decision of this Co-ordinate Bench of the Tribunal in the case of Velocity Tech-Sol India Pvt. Ltd. (supra) is squarely applicable to the facts of the present case. Accordingly, we direct the Assessing Officer/TPO to exclude this company ‘Cybercom Datamatics Information Solutions’ from the list of comparables.

18. Ground of appeal no.2 to 4 challenges the correctness of the decision of the ld. CIT(A) in holding that the company, MPS Limited is not comparable which is engaged in ITES services. The issue of comparability of this company ‘MPS Limited’ in relation to ITES segment was examined by the Co-ordinate Bench of the Tribunal in the case of Symantec Software India Private Limited vs. DCIT in ITA No.1824/PUN/2018 for A.Y. 2014-15 order dated 17.02.2020 wherein the Co-ordinate Bench of the Tribunal following the decision of the Mumbai Bench of the Tribunal in the

case of Emerson Electric Company (India) Private Limited vs. ACIT in ITA No.6098/Mum/2018 & ITA No.531/Mum/2018 held as under :-

*“20. We have perused the case records and heard the rival contentions. We find from the annual report of MPS Limited is engaged in high end activity i.e. type-setting, data digitization, content and product development for learners which is in the nature of ‘knowledge processing outsourcing services. From the various functions performed by MPS Limited, we find that the said comparable is predominantly in the business of digital publishing which cannot be treated at par with ITes which is in the name of the assessee in ITes segment. In this regard, we find in the case of Emerson Electric Company (India) Private Limited Vs. ACIT (supra.) wherein the Co-ordinate Bench of the Tribunal, Mumbai held the MPS Limited as functionally not comparable by observing as follows:*

*“9.3. From the perusal of the annual report for the year ended 31/03/2014 of the said comparable, we find from page 707 of the paper book that the said comparable had incurred outsourcing cost of Rs.1078.76 Crores which is included under the head "miscellaneous expenses" which goes to prove that it has got a different business model. From the various functions performed by MPS Ltd., we find that the said comparable is predominantly in the business of digital publishing which cannot be treated at par with ITeS which is the case of the assessee in ITeS segment. In this regard, we find that the reliance placed by the ld.AR on the Co-ordinate Bench decision of Bangalore Tribunal in the case of M/s. Google (India) Pvt. Ltd., vs. DCIT in ITA No.1368/Bang/2010 for A.Y.2006-07 dated 19/10/2012 is well founded wherein it was held as under:-*

*16. As far as (4) Apex Knowledge Solutions Pvt. Ltd., is concerned, we find that the assessee had taken objections before the TPO that it is functionally different, as it provides services such as E-publishing knowledge based services etc. But TPO has rejected the objection on the ground the assessee has not considered the verticals or functional lines during the search process conducted by it and, therefore, it is not proper to make any objection on this basis now. We are not able to agree with the finding of the TPO as confirmed by the DRP on this issue. Merely*

*because, the assessee itself has not considered the said filter while making its TP study; it cannot be said that it cannot raise such an objection before the TPO. It is the TPO who has adopted this company as comparable. On such adoption, the assessee has every right to raise the objections as regards the functional differences between the assessee and comparable. It is the bounden duty of the TPO to consider the said objections in accordance with law. As brought out by the assessee, the assessee is in the IT enabled services, whereas the said company Apex Knowledge Salutation Pvt. Ltd., is in the business of E-publishing which cannot be said to be in the same line of business. The functional differences are likely to affect the profit marking capacity of both the companies. In view of the same, we are of the opinion that this company is also to be excluded from the list of comparables.*

*9.3. In view of the above, we hold that the comparable chosen by the ld. TPO, M/s. MPS Ltd., is functionally not comparable with that of the assessee and accordingly, we direct the ld. TPO to exclude the same from the list of comparables.”*

*21. We further observe in the case of United Health Group Information Services Pvt. Ltd. Vs. ACIT (supra.) wherein with regard to Vishal Informatics which is engaged in e-publishing business like the company in the instant case i.e. MPS Limited, on same issue, the Co-ordinate Bench of the Tribunal, Delhi has held as follows:*

*“Vishal Informatics*

*12.1. The TPO included this company in the list of comparables by noticing that it was engaged in providing BPO services. The assessee failed to convince him and the DRP that it was incomparable.*

*12.2. Having heard the rival submissions and perused the relevant material on record, we find from the Annual report of this company that it is mainly engaged in e-publishing business. It has more than 10,000 classic books to its credit which are also converted into large font titles for visually challenged. Apart from e-publishing, this company is also engaged in Documents scanning & Indexing. It can be seen from the financial results of this company that both the segments viz., e-publishing and Documents scanning etc. have been combined and there are no separate financial results in respect of Documents scanning work, which may be comparable with the assessee to some extent. As the assessee is not engaged in any e-publishing*

*business and the financials given by this company are on consolidated basis, we direct to exclude this company from the list of comparables. The assessee succeeds.”*

22. *We further observe that the Ld. DRP held MPS Limited as BPO Company and is engaged in ITes only. In this regard, the Pune Bench of the Tribunal in the case of Macom Technology Solutions (India) Private Limited Vs. DCIT in ITA No.2393/PUN/2017 for A.Y.2013-14 vide its order dated 08.08.2019 discussed the definitions as provided under Rule 10TA of Part-II DB wherein the definition of Information Technology Enabled Services are provided the business process outsourcing is defined under clause (e) which provides mainly with assistance or use of Information Technology which as back office operations, call centre, data processing or insurance claim processing. Further, the definition of KPO is provided under clause (g) of Rule 10TA to mean certain business process outsourcing services (BPO) services provided mainly with the assistance or use of information technology requiring application of knowledge and advanced analytical and technical skills such as geographic information system, human resource services, business analytical services, financial services or engineering and design services, therefore, the Tribunal held being a KPO, it cannot be compared with that of company which is into business of BPO. The revenue recognition note states that the company is deriving revenue from website design and development and website hosing which is not similar to ITes. Further, MPS Limited underwent type-setting, data digitization, content and product development for learner which as per Safe Harbour Rules issued by Central Board of Direct Taxes qualifies to be in the nature of KPO.*

*In view of the above, respectfully following the decisions of the Tribunal as mentioned hereinabove, we are of the considered view, high end activities of the MPS Limited is akin to IT services and not ITes. The activities of the MPS Limited i.e. typesetting, data digitization, content development and product development are in the nature of “Knowledge Processing Outsourcing Services (KPOs) and not BPO. Accordingly, MPS Limited cannot be treated as comparable company and the AO/TPO is directed to exclude MPS Limited from final list of comparable companies with regard to its technical support service segment.”*

19. Respectfully following the decision of the Tribunal (supra),

we hold that this company ‘MPS Limited’ activity is in the nature of

KPOs cannot be compared with that of the assessee company. In the light of this finding, we direct the Assessing Officer/TPO to exclude this company 'MPS Limited' from the list of the comparables as selected in ITES. Therefore, we do not find any illegality and perversity in the order of the Id. CIT(A). Thus, the ground of appeal no.2 to 4 filed by the Revenue stands dismissed.

20. In the result, the appeal filed by the Revenue in ITA No.09/PUN/2020 stands dismissed.

**C.O. No.04/PUN/2022 – By Assessee :**

21. Since the appeal filed by the Revenue is dismissed as above, the Cross Objection filed by the assessee becomes infructuous. Accordingly, the Cross Objection filed by the assessee stands dismissed as infructuous.

22. To sum up, the appeal filed by the Revenue as well as Cross Objection filed by the assessee stand dismissed as indicated above.

Order pronounced on this 17<sup>th</sup> day of June, 2022.

**Sd/-**  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 17<sup>th</sup> June, 2022.

*Sujeet*

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-13, Pune.
4. The Pr.CIT-3, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "C" बेंच,  
पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.