

THE INCOME TAX APPELLATE TRIBUNAL
"K" Bench, Mumbai
Shri B.R. Baskaran (AM) & Shri Rahul Chaudhary (JM)

I.T.A. No. 691/Mum/2016 (A.Y. 2007-08)

WTW Global Delivery and Solutions India Pvt. Ltd. [formerly known as M/s. Wills Processing Services (India) Pvt. Ltd.] Plot No. 6, Godrej & Boyce Compound, Pirojshanagar LBS Marg, Vikhroli, West Mumbai-400 079. PAN : AA ACT1796R (Appellant)	Vs.	DCIT, Range-2(3)(1) Room No. 556 Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri Rajan R. Vora & Shri Nikhil Tiwari
Department by	Ms. Smruddhi D. Hande
Date of Hearing	28.06.2022
Date of Pronouncement	29.08.2022

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the final assessment order dated 30-12-2015 passed by the Assessing officer for assessment year 2007-08 u/s 143(3) r.w.s. 144C(13) of the Act in pursuance of directions issued by Ld Dispute Resolution Panel (DRP).

2. The assessee herein is earlier known as "Willis Processing Service (India) Private Limited". It is an Export Oriented Unit (EOU) under Software Technology Park of India Scheme (STPI Scheme) of Government of India. It is engaged in provision of IT Enabled Services (ITES) to its Associated Enterprises.

3. This is second round of proceeding. On the earlier occasion, the Tribunal had disposed of the appeal, vide its order dated 01-03-2013. The assessee originally had selected 11 comparable companies. In the first

round, the Transfer Pricing Officer (TPO) selected 30 companies as comparables. In the first round, the Ld CIT(A) excluded 1 company. The ITAT, vide its order 01-03-2013, excluded certain comparable companies, remanded certain comparable companies to the file of TPO. In the mean time, the revenue and assessee challenged the order passed by the ITAT by filing appeal before Hon'ble High Court of Bombay.

4. The Hon'ble High Court remanded 13 comparable companies to the file of ITAT for examining it afresh. In the remanded proceedings, the TPO selected 20 comparable companies, which were confirmed by Ld DRP. We notice that the 20 comparable companies selected by TPO included 8 comparable companies remanded by Hon'ble High Court of Bombay. Hence, there are 5 comparable companies need to be included along with 20 companies selected by TPO. Accordingly, final set of comparable companies are 25 companies (20 comparable companies selected by TPO (+) 5 additional comparable companies remanded by Hon'ble High Court). These 25 companies are listed out below:-

Sr. No.	Name of comparable company	TPO in 2 nd round	HC	Remarks
	TPO COMPARABLES			
1.	Accentia Technologies Ltd	Yes		
2.	Aditya Birla Minacs Worldwide	Yes		
3.	Allied Digital Services Ltd	Yes		
4.	Asit C Mehta Fin Services Ltd	Yes	Yes	
5.	Ask Me Info Hubs Ltd	Yes		
6.	Bodhtree Consulting Ltd	Yes	Yes	
7.	Caliber Point Business Solutions	Yes		
8.	Cosmic Global Ltd	Yes		
9.	Datamatics Fin Services Ltd	Yes		
10.	Eclerx Services Ltd	Yes	Yes	
11.	Genysys International Corp Ltd	Yes		
12.	ICRA Online Ltd	Yes		
13.	Informed Technologies India Ltd	Yes		
14.	Infosys BPO Ltd	Yes	Yes	
15.	Maple Esolutions Ltd	Yes	Yes	
16.	Mold-Tek Technologies Ltd	Yes	Yes	
17.	Spanco Tele-systems & solutions	Yes		
18.	Sparsh BPO Ltd	Yes		
19.	Vishal Information Technologies	Yes	Yes	

20.	Wipro Ltd	Yes	Yes	
	HIGH COURT REMANDED CASES - ADDITIONAL			
21.	AllsecTehnologies Ltd			
22.	Flextronics Software Sys Ltd (Seg)			
23.	HCL Comnet Sys &Ser Ltd			
24.	ICRA Techno Analytics Ltd (Seg)			
25.	R Systems International Ltd			

5. In the present appeal, the assessee seeks exclusion of following 10 comparable companies:-

- (i) Accentia Technologies Ltd
- (ii) Mold-Tek Technologies Ltd
- (iii) E-clerk Services Ltd
- (iv) Vishal Information Technology
- (v) Asit C Mehta Financial Services Ltd
- (vi) Bodhtree Consulting Ltd
- (vii) Infosys BPO Ltd
- (viii) Wipro Limited
- (ix) Maple E Solutions Ltd
- (x) HCL Comnet Sys & Serv Ltd.

6. We heard the parties and perused the record. The assessee placed reliance on host of case laws in support of its contention that the above said companies are not good comparables. We shall examine each of the ten companies below:-

(i) Accentia Technologies Ltd:-

The assessee submitted that this company is functionally different and the TPO himself has excluded this company in the assessee's own case in AY 2010-11. Further, the Tribunal has excluded this company in the assessee's own case in AY 2006-07 (ITA No.690/Mum/2016) and in AY 2008-09 (ITA No.6877/Mum/2012). The Ld A.R also relied upon the decision rendered by the Tribunal in the case of Stream International Services (ITA No.8290/Mum/2011 dated 10th October, 2014) in AY 2007-08. Thus, we notice that this company has been held as not a good comparable in various years in the assessee's own case and in the hands of other assessee's also. Accordingly, we direct exclusion of this company.

(ii) Mold-Tek Technologies Ltd:-

The assessee submitted that this company is a KPO company and hence it is functionally different. Further, during the year under consideration, it has demerged its Plastics division into a separate listed entity, which is an extra ordinary event. The Tribunal has excluded this company in AY 2008-09 (ITA No.6877/Mum/2012) in the assessee's own case. The TPO himself has excluded this company in the assessee's own case in AY 2006-07. The Ld A.R also relied upon the decision rendered by the Tribunal in the case of Stream International Services (ITA No.8290/Mum/2011 dated 10th October, 2014) in AY 2007-08. Thus, we notice that this company has been held as not a good comparable in various years in the assessee's own case and in the hands of other assessee's also. Accordingly, we direct exclusion of this company.

(iii) E-clerx Services Ltd:-

The assessee submitted that is functionally different, as it is engaged in KPO activities. The Tribunal has excluded this company in AY 2008-09 (ITA No.6877/Mum/2012) and in AY 2010-11 (ITA No.1890/Mum/2015) in the assessee's own case. The Ld A.R also relied upon the decision rendered by the Tribunal in the case of Stream International Services (ITA No.8290/Mum/2011 dated 10th October, 2014) in AY 2007-08. Thus, we notice that this company has been held as not a good comparable in various years in the assessee's own case and in the hands of other assessee's also. Accordingly, we direct exclusion of this company.

(iv) Vishal Information Technologies Ltd:-

The assessee submitted that this company follows different business model, which is evidenced by the fact that this company's personnel cost works out 2.3% of the turnover. This company has been excluded by the Tribunal in the assessee's own case in AY 2005-06 (ITA No.1832/Mum/2016), in AY 2006-07 (ITA No.690/Mum/2016) and in AY 2008-09 (ITA No.6877/Mum/2012). The Ld A.R also relied upon the decision rendered by the Tribunal in the case of Stream International Services (ITA No.8290/Mum/2011 dated 10th October, 2014) in AY 2007-08. Thus, we notice that

this company has been held as not a good comparable in various years in the assessee's own case and in the hands of other assessee's also. Accordingly, we direct exclusion of this company.

(v) Asit C Mehta Financial Services Ltd:-

The assessee submitted that this company is rendering ITES services and also engaged in providing portfolio management services. However, segmental details are not available with regard to the above said two segments. The Tribunal has excluded this company in the assessee's own case in AY 2006-07 (ITA No.690/Mum/2016). The Ld A.R also relied upon the decision rendered by the Tribunal in the case of Stream International Services (ITA No.8290/Mum/2011 dated 10th October, 2014) in AY 2007-08. Thus, we notice that this company has been held as not a good comparable in various years in the assessee's own case and in the hands of other assessee's also. Accordingly, we direct exclusion of this company.

(vi) Bodhtree Consulting Ltd:-

The assessee submitted that this company is functionally different, i.e., it is engaged in development of software products and provides end to end solutions, software consultancy, design and development of software using latest technologies etc. Further, the revenue recognition method followed by this company is peculiar. The Ld A.R submitted that this company has been excluded in the case of Affinity Express India P Ltd (ITA No.595/PN/2013) in AY 2007-08. He submitted that the Hon'ble Bombay High Court has excluded this company in AY 2008-09 in the case of PCIT vs. John Deere India P Ltd (ITA No.63/2017) and there is no different in facts between AY 2007-08 and 2008-09. Thus, we notice that this company has been held to be not a good comparable for captive ITES provider. Accordingly, we direct exclusion of this company.

(vii) Infosys BPO Ltd:-

The assessee submitted that this company belongs to "Infosys" group, which enjoys goodwill and brand value in the market. This company has been rejected in the assessee's own case by the Tribunal in AY 2010-11 (ITA

No.1890/Mum/2015) and by Ld DRP in 2008-09. The Ld A.R submitted that this company has been held to be not a good comparable in the case of Hinduja Global Solutions Ltd (ITA No.4933 & 4950/Mum/2012). Accordingly, we direct exclusion of this company.

(viii) **WIPRO Ltd:-**

The assessee submitted that this company is a leading market player and is possessing significant intangibles. This company has spent about 8.5% of its revenue towards R & D Activities. Further, this company has had 9 acquisition arrangements during this year. The Ld A.R also relied upon the decision rendered by the Tribunal in the case of Stream International Services (ITA No.8290/Mum/2011 dated 10th October, 2014) in AY 2007-08. Thus, we notice that this company has been held as not a good comparable in various years in the assessee's own case and in the hands of other assessee's also. Accordingly, we direct exclusion of this company.

(ix) **Maple E-Solutions Ltd:-**

The assessee contended that the promoters of this company have been charged with fraud cases by CBI. Further, the profit trend is very much fluctuating, i.e., the operating margin was -2.49%, 30.60%, 32.38%, 15%, -16.96% and -97.26% in FY 2004-05 to 2009-10 respectively. The Ld A.R also relied upon the decision rendered by the Tribunal in the case of Stream International Services (ITA No.8290/Mum/2011 dated 10th October, 2014) in AY 2007-08. Thus, we notice that this company has been held as not a good comparable in various years in the assessee's own case and in the hands of other assessee's also. Accordingly, we direct exclusion of this company.

(x) **HCL Comnet Sys & Ser Ltd:-**

The assessee submitted that this company is a unlisted company and it follows different accounting year, i.e., it ends its accounts on 30th June and not on 31st March. The Ld A.R submitted that the companies following different accounting year was excluded by the Tribunal in the case of American Express (India) P Ltd (ITA No.1674/Del/2015 dated 7th June 2017)

relating to AY 2007-08. The Ld A.R also submitted that the Hon'ble Bombay High Court has also excluded this company in the case of CIT vs. PTC Software (I) Pvt Ltd (2017)(395 ITR 176)(Bom). Accordingly, we direct exclusion of this company.

7. After exclusion of above said 10 companies, there would remain 15 comparable companies. Accordingly, we direct the AO/TPO to determine the ALP of the transactions by taking into account the remaining 15 companies.

8. In the result, the appeal filed by the assessee in respect of T.P adjustments mentioned above is allowed.

Order pronounced in the open court on 29.08.2022.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 29/08/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,
(Assistant Registrar)
ITAT, Mumbai