

IN THE INCOME TAX APPELLATE TRIBUNAL
"J" BENCH, MUMBAI

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1195/Mum./2020
(Assessment Year : 2012-13)

Dy. Commissioner of Income Tax
Circle-3(3)(1), Mumbai

...Appellant

v/s

M/s. Reliance Corporate I.T. Park Ltd.
Building no.4/5, TTC Industrial Area
Thane-Belapur Road, Rabale
Navi Mumbai 400 701 PAN – AABCD7169H

.....Respondent

Cross Objection no.140/Mum./2021
(Arising out of ITA No.1195/Mum./2020)
(Assessment Year : 2012-13)

M/s. Reliance Corporate I.T. Park Ltd.
Building no.4/5, TTC Industrial Area
Thane-Belapur Road, Rabale
Navi Mumbai 400 701 PAN – AABCD7169H

...Cross Objector
(Original Respondent)

v/s

Dy. Commissioner of Income Tax
Circle-3(3)(1), Mumbai

.....Respondent
(Original Appellant)

Assessee by : Shri Nimesh Vora a/w
Ms. Moksha Mehta

Revenue by : Shri Chetan M. Kacha, Sr. AR

Date of Hearing – 02/09/2022

Date of Order – 05/09/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal by the Revenue and cross objection by the assessee are against the order dated 15/11/2019, passed under section 250 of the

Income Tax Act, 1961 ("the Act") by learned Commissioner of Income Tax (Appeals)-57, Mumbai, ["learned CIT(A)"], for the assessment year 2012-13.

ITA no.1195/Mum./2020
Revenue's Appeal – A.Y. 2012-13

2. In its appeal, the Revenue has raised following grounds:

(a) *Whether on the facts and in the circumstances of the law, the Ld CIT(A) was justified in deleting the disallowance of Rs 25,10,58,134/- on account of Depreciation on Assets (Famer Lease) without appreciating the fact that in finance lease, all the risks and rewards incidental to ownership of an asset is referred to the lessee and the lessor cannot claim depreciation on the leased plans and machinery citing the reason that the Jessie has not claimed depreciation on the leased plant & machinery.*

(b) *On rejection of Excel Infoways Limited as a comparable:*

1.1 *Whether on the facts and circumstances of the case and in law, the Id CIT(A) is correct in rejecting Excel Infoways Limited as a comparable, by simply stating in a cryptic non-speaking manner. "After examining the contentions of the Appellant and verifying the nature of services rendered by Excel, this company is rejected as a comparable"?*

1.2 *Whether on the facts and circumstances of the case and in law, the Id CIT(A) correct in not giving her clear findings in a speaking manner in her order on the contentions of the assessee?*

1.3 *Whether on the facts and circumstances of the case and in law, the Id CIT(A) is correct in rejecting Excel Infoways Limited as a comparable, stating that the nature of services were different, ignoring the fact that segmental results for the I.T segment were available and so it is to be treated as a valid comparable in terms of Rule 10B?*

1.4 *Whether on the facts and circumstances of the case and in law, the Id CIT(A) is right in rejecting Excel Infoways Limited as a comparable without giving any finding on the segmental accounts of the assessee and without giving any clear findings on the incorrect arguments of the assessee that the entity hail super normal profits, whereas the fact as observed in the Directors Report is "during the year under review, the company has earned total income from operations Rs.1622.78 lacs (previous year Rs. 2040.92 lacs) translating into a fall of 20.49%; the profit after Tax and prior period adjustments falls by 85.45% from Rs.1410.18 lacs in previous year to Rs.205.19 lacs in the current year"*

1.5 *Whether on the facts and circumstances of the case and in law, the LA CIT(A) & right in deleting Excel Infoways Limited as a comparable*

without looking into the basic tenet of transfer pricing that in TNMM under Rule 10B(1)(e), the comparable need not be identical but suffice to be similar as the degree of comparability under NMM is comparatively not as stringent as for CUP or other method?

(c) On rejecting Eclerx Services Ltd as a comparable

2.1 Whether on the facts and circumstances of the case and in law, the Id CIT(A) is right in deleting Eclerx Services Ltd. as a comparable on one hand and accepting Accentia Technologies Ltd. as a comparable on the other hand when both of the comparables are KPOs indicating inconsistent stabs taken by the CIT(A)?

2.2 Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is justified in not following the principle that all the comparables retained by the CIT(A) should also be subjected to the same test of suitability as selected comparables as held by the Hon ITAT Ahmedabad bench in the case of Allscripts India (P) Ltd. ITA no.2401(Ahd.) of 2013, reported in 37 Taxman.com 19?

2.3 Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is right in deleting Eclerx Services Ltd as a comparable without looking into the basic tenet of transfer pricing that in TNMM under Rule 10B(1)(e), the comparable need not be identical but suffice to be similar?

2.4 Whether on the facts and circumstances of the case and in law, the Id CIT(A) while deleting the comparable Eclerx Services Ltd. is correct in placing reliance on the decision of the Hon. ITAT in the assessee own case for AY 2011-12 which placed further reliance on the judgement of Hon'ble Delhi High Court in the case of Rampgreen Solutions Pvt. Ltd v/s DCIT (TS-387-HC-2015-(Del) without taking into account the admission of SLP on the issue of making difference between BPO and KPO?

(d) On rejecting Acropetal Technologies Limited as comparable:

3.1 Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is correct in rejecting Acropetal Technologies Limited as a comparable, by simply stating in a cryptic non-speaking manner "After examining the contentions of the Appellant and verifying the nature of services rendered by Excel, this company is rejected as a comparable"

3.2 Whether on the facts and circumstances of the case and in law, the Id CIT(A) is correct in not giving her clear findings in a speaking manner in her order on the contentions of the assessee?

3.3 Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is right in deleting Acropetal Technologies Limited as a comparable on one hand and accepting Accentia Technologies Ltd as a comparable on the other hand when both of the comparables are KPOs?

3.4 Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is right in deleting Acropetal Technologies Limited as a comparable based on the misleading contention of the assessee that the comparable has made acquisitions during the year, whereas no such acquisitions happened during the material year?

3.5 Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is right in deleting Acropetal Technologies Limited as a comparable based on the incorrect argument of the assessee that it has significant intellectual property with respect to healthcare segment, whereas what is being compared is ITeS services rendered by the comparable?

3.6 Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is right in deleting Acropetal Technologies Limited as a comparable based on the correct argument of the assessee that it has huge turnover of Rs.120 crores, whereas the comparable has a turnover of Rs 187 crores only and more so the CIT(A) herself accepted Accentia Technologies Ltd. as comparable which has a turnover of Rs.126 crores during the same material year?

3.7 Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is right in deleting Acropetal Technologies Limited as a comparable without looking into the basic tenet of transfer pricing that in TNMM under Rule 10B(1)(e), the comparable need not be identical but suffice to be similar?

(e) On inclusion of Sparsh BPO Services Ltd as comparable

4.1 Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is right in including Sparsh BPO Services Ltd as a comparable without appreciating clause (d) of Rule 108(2) of the Income-tax Rules on conditions prevailing in the market and the fact of the extraordinary circumstances of ramp downs in the Telecom markets that affected the revenue of Sparsh BPO Services Ltd, dramatically during the year resulting in a fall in operating income of over 25% and that extraordinary event was also accompanied by delisting of the company from the stock exchange?

4.2 Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is right in including Sparsh BPO Services Ltd as a comparable without appreciating that abnormal profits or losses of a comparable due to extraordinary circumstances will not lead to credible comparability analysis as held by the courts in various decisions like Teva India (P) Ltd vs DCIT [2011] 44 SOT 105 (Mumbai- Tribunal), Adobe Systems India (P) Ltd vs Addl.CIT [2011] 44 SOT 49(Delhi-Trib), TIBCO Software (India) Pvt Ltd vs DCIT, [2015] 58 taxmann.com 215 (Pune- Trib), Q Logic(India) (P) Ltd vs DCIT [2014] 52 taxmann.com 225 (Pune-Trib) etc.?

4.3 Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is right in including Sparsh BPO Services Ltd as a comparable

on the ground that the TPO adopted it as a comparable for an earlier AY, ignoring the basic tenet that the transfer pricing audit is highly facts-intensive and facts-driven and the contemporaneous facts have to be considered and evaluated for every AY independently as dictated by Rule 10B(4)?

(f) On inclusion of Techprocess Payment Services Ltd. as comparable:

5.1 Whether on the facts and circumstances of the case and in law, the Id CIT(A) is correct in including Techprocess Payment Services Ltd as a comparable, stating that the nature of services and functions were similar, ignoring the fact that the said company is having high intangibles which is not a normal feature of company involved in providing normal business support services which would materially affect the profitability and so tx not a valid comparable?

5.2 Whether on the facts and circumstances of the case and in law, the Id CIT(A) is right in including Techprocess Payment Services Ltd without appreciating clause (d) of Rule 10B(2) of the Income-tax Rules on markets which it operates and the fact that the comparable was functioning in a totally different market of processing e-paymeny in which it is a market changer during the changing times of the consumer behaviour fri traditional payments to online payments?

5.3 Whether on the facts and circumstances of the case and in for the to CIT(A) right in including Techprocess Paymet Services Ltd as a comparable the grown the TPO adopted it as a comparable for an earlier 4 ignoring the basic news that the transfer pricing audit is highly facts-intensive and facts-driven and the contemporaneous facts have to be considered and evaluated for every AY independently as dictated by Rule 10B(4) and by taking into account the comparability rules as enshrined in Rule 10B(2)?

(g) On rejecting BVG India Ltd as comparable:

6.1 Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is right in excluding BVG India Ltd as a comparable by stating that there is a functional dissimilarity in the comparable without appreciating that even if the comparable is catering to different types of clients, the functions performed are similar e business Support services?

6.2 Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is right in excluding BVG India Ltd as a comparable without looking into the basic tenet of transfer pricing that in TNMM under Rule 10B(1)(e), the comparable need not he identical but suffice to be similar?

(h) On rejecting Inmacs Management Services Limited as comparable:

7.1 Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is right in excluding Inmacs Management Services Limited as a comparable by stating that the annual report of the company was not

available for analysis purposes without appreciating that the Id. CIT(A) under the Income-tax Act 1961 has the power to call for the same by invoking powers vested us 133(6) or calling for the same from the TPO?

7.2 Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is right in excluding Inmacs Management Services Limited as a comparable by stating that there is a functional dissimilarity in the comparable without appreciating that even if the comparable is catering to different types of clients, the functions performed are similar Le business support services?

7.3 Whether on the facts and circumstances of the case and in law, the Id CIT(A) is right in excluding Inmaes Management Services Limited as a comparable without looking into the basic tenet of transfer pricing that in TNMM under Rule 10B(e), the comparable need not be identical but suffice to be similar?

(i) The appellant prays that the order of CITCA) on the above grounds be set aside and that of Assessing Officer he restored."

3. The issue arising in ground no. (a), raised in Revenue's appeal, is pertaining to deletion of disallowance of depreciation in respect of asset given on lease.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee company is engaged in the business of providing infrastructure support services. For the year under consideration, assessee filed its original return of income on 28/09/2012 declaring loss at Rs. 89,03,86,233 and book profit under section 115 JB at Rs. Nil. The assessee filed revised return of income on 29/03/2014, without any change in the total income/loss declared in the original return of income. The assessee had given on lease its polymer plant located at Thane to Reliance Industries Ltd (lessee) as per lease agreement dated 31/12/2008. During the course of assessment proceedings, it was observed that assessee had added back an amount of Rs. 36,36,60,304 being finance lease receipt in the computation of

total income and against the same, the assessee has claimed deduction of lease rent of Rs. 17,91,16,651. In this regard, assessee was asked to explain as to whether the assessee has claimed depreciation on plant and machinery given on lease and whether the lease value of machinery has been reduced from block of assets. The assessee was also asked to justify its claim of depreciation on such leased out assets and working of depreciation. In reply, assessee submitted that the polymer plant which has been leased out was asset which was being held by it for more than 5 years and as per various paragraphs of the lease agreement, it has been mentioned that the assets are owned by the lessor/owner and will remain the property of the lessor/owner during the period of lease. The assessee further submitted that it has been mentioned in the lease agreement that the lessee has been given only right to use the asset for the terms of the lease on payment of specified lease rent for a lease period of 10 years. The Assessing Officer ('AO') vide order dated 06/04/2016 passed under section 143(3) read with section 144C (3) of the Act, inter-alia, did not agree with the submissions of the assessee and disallowed the entire amount of depreciation claimed under section 32 on the block of assets 'plant and machinery' i.e. Rs. 25,10,58,154. In appeal, learned CIT(A) vide impugned order dated 15/11/2019, inter-alia, allowed the appeal filed by the assessee on this issue by following the order passed by the coordinate bench of the Tribunal in assessee's own case in preceding assessment year. Being aggrieved, the Revenue is in appeal before us.

5. During the course of hearing, learned Departmental Representative ('learned DR') vehemently relied upon the order passed by the AO. On the

other hand, learned Authorised Representative ('learned AR') submitted that this issue is covered in favour of the assessee by the decisions of coordinate bench of the Tribunal in assessee's own case.

6. We have considered the rival submissions and perused the material available on record. We find that the coordinate bench of the Tribunal in assessee's own case in Reliance Corporate IT Park Ltd. vs DCIT, in ITAs No. 4717 and No. 4873/Mum/2017, for assessment year 2011-12, vide order dated 26/06/2019, while deciding similar issue in favour of the assessee, observed as under:

"16. We have heard both parties, perused the material available on record and gone through the orders of authorities below. The ass had entered in to lease agreement with Ms Relance Industries Ud, and leased out Polymer Plant located at 5. TTC Indaial area, Ghansal, Thane, Belapur road, Navi Mumbai As per lease agreement dated 31/12/2008, the assessee has used said asset for more than five years before the same was leased cut to Reliance Industries Ltd. As per lease and licence agreement between assessee and Reliance Industries Ltd. more particularly dane 2, 3, 4, 5 and 8, during the subsistence of the lease agreement, the ownership of the asset rest with the assessee. In the said agreement, it was clearly mentioned that the lessor is the owner of the plant and machinery which the lessee has agreed and acknowledged. It was further stated that ownership of the plant and machinery and equipment at all times remained with the assessee and the lessor only agree to transfer right to use the plant and machinery by way of lease to the assessee. A perusal of the lease agreement put on record clearly proves the ownership of the lessor and at the end of the lease period, as per clause-3 of the lease agreement, the machineries and equipment would be transferred by lessor to the lessee, therefore, till subsistence of lease period Le. ten years, the lessor is undisputedly owner of the asset.

17. The Ld AO has disallowed depreciation claim merely on the ground that as per AS-49 issued by ICA, in finance lease the risk and rewards incidental to ownership of the asset transferred to the assessee. The AO further observed that a careful reading of AS-19 reveal that in finance lease, the lease term will be for the major part of the economic life of the asset even if title is not transferred and generally the leased asset is of specialised nature such that only the lessee can use it without major modifications being made. Therefore, he came to the conclusion that in finance lease whether or not the lessor claimed depreciation on leased assets, but the lessee is entitled to claim depreciation. The AO further noted that the accounting treatment of the

assessee in its books of accounts as also supports the case of the Revenue that the assessee has reduced entire value of plant and machinery from the computation of depreciation as per Companies Act. Therefore, it is abundantly clear that no depreciation relating to the plant and machinery given on lease has been debited in the books of accounts. However, the assessee has claimed depreciation in the statement of total income as per I. T. Act and also offered total lease rental received including lease rental on account of principal portion to taxation to argue that it is entitled for depreciation. The assessee has filed a confirmation from the lessee and stated that lessee did not claim depreciation on plant and machinery, because the ownership of the asset is not transferred to the lessee during subsistence of lease period. Accordingly, the assessee argued that particular mode of recording the transactions in books is of no consequence, but what is relevant is nature of the transactions which to be considered to arrive at proper conclusion. The assessee has also referred Circular No. 2 of 2001 of CBDT, where it was mentioned that the method prescribed in As-19 per se will not effect the claim of depreciation in the hands of the owner of the assets and the depreciation on assets will be guided by ownership of the asset and use of assets for the purpose of business. As regards the location of the asset, the physical shifting of the relevant plant and machinery from its present location to the location of the lessee was carried out for better utilisation of the asset in the business which has been leased out, otherwise the AO has never disputed the fact of the ownership of the asset i.e. remains with the assessee and also use of such asset is in the business of the assessee.

18. The fact with regard to claim of depreciation by the assessee for earlier two years is not disputed by the revenue. In fact, even after lease from 31/12/2008, the assessee continued to claim depreciation on leased asset for AY 2009-10 and 2010-11 and same has been allowed in assessment under section 143(3) of the Act, for AY 2010-11. Although, the id CIT(A) invoked revisional jurisdiction u/s 263 of the Act to withdraw depreciation claimed on leased asset, the Tribunal has quashed 263 proceedings in ITA No.2748/Mum/2015, where it was observed that the ownership of the asset has not been passed on to the lessee during the period of lease. The Tribunal further observed that the assessee had also filed a copy of confirmation from the lessee, wherein it has been stated that the lessee has not claimed depreciation on the leased/plant and machinery and this fact has not been rebutted by the Revenue. We further note that having accepted claim of depreciation in earlier years, there is no reason for the Revenue to deviate from the issue for subsequent years, even though there is no change in facts for the subsequent years in case of depreciation on leased asset. Further, on a conjoint reading of section 32(1)(i) r.w.s. 43(6)(c) of the Act makes it clear that entitlement of asset eligible for depreciation has to be examined in year one but not in subsequent year. Since, the Revenue has allowed depreciation claimed for earlier years, the same cannot be denied in the assessment year 2011-12 unless there is change in facts. We further noted that the assessee has Offered to tax total lease rental of Rs.36.4 crores as business income, even though, it has considered a sum of Rs.19.5 crores in its books of account by following AS-19 issued by the Department. When the department has accepted the income offered for taxation, it cannot be turnaround to deny depreciation only for the reason that in finance lease, the ownership of the asset was transferred to the lessee. Although, AS 19 issued by ICAI is

required to be followed mandatorily for preparation of financial statements, but when it comes to taxation of income, what is relevant is the provision of the Act which deals with taxability of income, but not guideline issued by the ICAI. This fact has been further reiterated by CBDT vide its Circular No.2 dated 09/02/2001, where it was clarified that AS-19 will not have any implication on allowance of depreciation on assets under the provisions of the Income Tax Act. Further, the assessee has also filed a confirmation from the lessee, where it was stated that lessee did not claim depreciation on leased asset. From the above facts, it is very clear that the assessed is continued to be owner of the asset even after the lease. Further, the entries in books of account is not determinative for deciding the nature of income which is assessable under the Act, what is relevant is statute as per which ownership of an asset is must for claiming depreciation and in this case, there is no doubt of whatsoever with regard to ownership which is clearly evident from the lease agreement and accordingly we are of the considered view that the assessee is rightly claimed depreciation on leased asset under the Income Tax Act.

19. Coming back to the case laws relied upon by the assessee. The assessee has relied upon the decision of Hon'ble Supreme Court in the case of ICDS vs CIT(supra). We find that Hon'ble Supreme Court had considered an issue of depreciation in case of leased asset, where it was held that in case of lease transaction, the leasing company was held to be owner of the asset and accordingly entitled to claim depreciation, the relevant findings of the Court are as under:-

"19. We may now advert to the first requirement i.e. the issue of ownership. No depreciation allowance is granted in respect of any capital expenditure which the assessee may be obliged to incur on the property of others. Therefore, the entire case hinges on the question of ownership; if the assessee is the owner of the vehicles, then he will be entitled to the claim on depreciation, otherwise, not.

20. In Mysore Minerals Ltd. v. CIT [1999] 106 Taxman 166 (SC), this Court said thus:

"...authorities shows that the very concept the depreciation suggests that the tax benefit on account of depreciation legitimately belongs to one who has invested in the capital asset is utilizing the capital asset and thereby losing gradually investment caused by wear and tear, and would need to replace the same by having lost its value fully over a period of time."

21. Black's Law Dictionary (6th Edn.) defines 'owner' as under:

"Owner. The person in whom is vested the ownership, dominion, or title of property; proprietor. He who has dominion of a thing, real or personal, corporeal or incorporeal, which he has a right of enjoy and do with as he pleases, even to spoil or destroy it, as far as the law permits, unless he be prevented by some agreement or covenant which restrains his right.

The term is, however, a nomen generalissimum, and its meaning is to be gathered from the connection in which it is used, and from the subject-matter to which it is applied. The primary meaning of the word

as applied to land is one who owns the fee and who has the right to dispose of the property, but the terms also included one having a possessory right to land or the person occupying or cultivating it.

The term "owner" is used to indicate a person in whom one or more interests are vested his own benefit. The person in whom the interests are vested has 'title' to the interests whether he holds them for his own benefit or the benefit of another. Thus the term "title" unlike "owner".

It defines the term 'ownership' as

"Collection of right to use and enjoy property, including right to transmit it to others.... The right of one or more persons to possess or use a thing to the exclusion of others. The right by which a thing belongs to some one in particular, to the exclusion of all other persons. The exclusive right of possession, enjoyment or disposal; involving as an essential attribute the right to control, handle, and dispose."

The same dictionary defines the term "own" as "To have a good legal title!.

These definitions essentially make ownership a function of legal right or title against the rest of the world. However, as seen above, it is "nomen generalissimum, and its meaning is to be gathered from the connection in which it is used, and from the subject matter to which it is applied."

22. A scrutiny of the material facts at hand raises a presumption of ownership in favour of the assessee. The vehicle, along with its keys, was delivered to the assessee upon which, the lease agreement was entered into by the assessee with the customer. Moreover, the relevant clauses of the agreement between the assessee and the customer specifically provided that:

(1) The assessee was the exclusive owner of the vehicle at all points of time;

(ii) If the lessee committed a default, the assessee was empowered to re-possess the vehicle (and not merely recover money from the customer);

(iii) At the conclusion of the lease period, the lessee was obliged to return the vehicle to the assessee;

(iv) The assessee had the right of inspection of the vehicle at all times.

For the sake of ready reference, the relevant clauses of the lease agreement are extracted hereunder:

"2. Lease Rent

The lessee shall, during the period of lease punctually pay to the lessor free of any deduction whatsoever as rent for the assets the sum of moneys specified in the Schedule 'B' hereto. All rents shall be paid at the address of the Lessor shown above or as otherwise directed by the Lessor in writing. The rent shown in Schedule 'B' shall be paid month on

1st day of each month and the first rent shall be paid on execution thereof.

4. Ownership

The assets shall at all times remain the sole and exclusive property of the lessor and the lessee shall have no right, title or interest to mortgage, hypothecate or sell the same as bailee.

9. Inspection

The Lessor shall have the right at all reasonable time to enter upon any premises where the assets is believed to be kept and inspect and/or test the equipment and/or observe its use.

18. Default

If the lessee shall make default in payment of moneys or rent payable under the provisions of this agreement, the Lessee shall pay to the Lessor on the sum or sums in arrears compensation at the rate of 3% per month until payment thereof, such compensation to run from the day to day without prejudice to the lessor's rights under any terms, conditions and agreements herein expressed or implied. All costs incurred by the Lessor in obtaining payment of such arrears or in endeavoring to trace the whereabouts of the equipments or in obtaining or endeavouring to obtain possession thereof whether by action, suit or otherwise, shall be recoverable from the lessee in addition to and without prejudice to the lessors right for breach of this lease.

19. Expiration of Lease:

Upon the expiration of this Lease, the Lessee shall deliver to the Lessor the assets at such place as the Lessor may specify in good repair, condition and working order. As soon as the return of the asset the Lessor shall refund the amount of security deposit. If the lessee fails to deliver the equipment to the Lessor in accordance with any direction given by the Lessor, the Lessee shall be deemed to be the tenant of the assets at the same rental and upon the same terms herein expressed and such tenancy may be terminated by the Lessor immediately upon default by the lessee hereunder or upon 7 days notice previously given.."

23. The Revenue's objection to the claim of the assessee is founded on the lease agreement. It argued that at the end of the lease period, the ownership of the vehicle is transferred to the lessee at a nominal value not exceeding 1% of the original cost of the vehicle, making the assessee in effect a financier. However we are not persuaded to agree with the Revenue. As long as the assessee has a right to retain the legal title of the vehicle against the rest of the world, it would be the owner of the vehicle in the eyes of law. A scrutiny of the sale agreement cannot be the basis of raising question against the ownership of the vehicle. The clues qua ownership lie in the lease agreement itself, which clearly point in favour of the assessee. We agree with the following observations of the Tribunal in this regard:

"20. It is evident from the above that after the lessee takes possession of the vehicle under a lease deed from the appellant-company it (sic) shall be paying lease rent as prescribed in the schedule. The ownership of the vehicles would vest with the appellant-company viz., ICDS as per clause (4) of the agreement of lease. As per clause (9) of the Lease agreement, M/s. ICDS is having right of inspection at any time it wants. As per clause (18) of the Lease agreement, in case of default of lease rent, in addition to expenses, interest etc. the appellant company is entitled to take possession of the vehicle that was leased out. Finally, as per clause (19), on the expiry of the lease tenure, the lessee should return the vehicle to the appellant company in working order.

21. It is true that a lease of goods or rental or hiring agreement is a contract under which one party for reward allows another the use of goods. A lease may be for a specified period or in perpetuity. A lease differs from a hire purchase agreement in that lessee or hirer, is not given an option to purchase the goods. A hiring agreement or lease unlike a hire purchase agreement is a contract of bailment, plain and simple with no element of sale inherent. A bailment has been defined in S.148 of the Indian Contract Act as "the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed off according to the directions of the person delivering them.

22. From the above discussion, it is clear that the transactions occurring in the business of the assessee appellant are leases under agreement, but not hire purchase transactions. In fact, they are transactions of 'hire Even viewed from the angle of the author of 'Lease Financing and Hire Purchase, the views of whom were discussed in pages 16 and 17 of this order, the transactions involved in the appellant business are nothing but lease transactions.

23. As far as the factual portion is concerned now we could come to a conclusion that leasing of vehicles is nothing but hiring of vehicles. These two aspects are one and the same. However, we shall discuss the case law cited by both the parties on the point."

27. Finally, learned senior counsel appearing on behalf of the assessee also pointed out a large number of cases, accepted and unchallenged by the Revenue, wherein the lessor has been held as the owner of an asset in a lease agreement. CIT v. A.M. Constructions [1999] 238 ITR 775 (AP); CIT v Bansal Credits Ltd. [2003] 259 ITR 69/126 Taxman 149 (Delhi); CIT v. M.G.F. (India) Ltd. [2006] 285 ITR 142/[2007] 159 Taxman 335 (Delhi); CIT v. Annamalai Finance Ltd. [2005] 275 ITR 451/146 Taxman 627 (Mad.). In each of these cases, the leasing company was held to be the owner of the asset, and accordingly held entitled to claim depreciation and also at the higher rate applicable on the asset hired out. We are in complete agreement with these decisions on the said point.

20. The assessee has relied upon the decision of ITAT, Delhi in the case of Minda Corporation Ltd. vs ACIT (2016) 69 TMC 317(Del Trib). We find that the Tribunal has considered identical issue in light of AS-19 issued by ICAI and held that AS-19 on accounting of lease issued by ICAI only applicable for the accounting lease transactions in the books of account. We further noted that it is settled law that treatment in the books of account is not determinative of

liability towards income tax and the liability under the Act is governed by the provisions of the Act. A similar view has been considered by ITAT Delhi 'A' Bench in the case of Bharti Hexacom Ltd. Vs ACIT (2016) 68 TMC 357 Del Tre) where it was held that merely because assessee in books of accounts had given some treatment to the transaction, the claim of the revenue expenditure are on account of lease rental paid including depreciation on the asset treating the whole transaction as capital in nature could not disentitled the assessee's claim in computation of Income on the basis of true nature of the transactions.

21. Coming back to the case laws relied by the Ld DR. The Ld DR has also relied upon the decision of the Hon'ble Delhi High Court in the case of Industrial Financial Corporation of India vs CIT(supra), we find that fact of the case relied upon by the Ld AO is supports the case of the assessee, where it was categorically held that in order to claim depreciation ownership of an asset must be with the person to who claim depreciation. The Hon'ble Court in that case, after considering the facts that the assessee is not owner of the asset held that ownership of asset must for claiming depreciation. In this case, on perusal of facts available on record, we find that the assessee is continued to have ownership of the asset even after leave and license agreement with Reliance Industries Ltd and the assessee has claimed depreciation for earlier two years. In fact, it has been accepted by the Department in assessment proceedings. The assessee further explained that the lessee did not claim depreciation on the leased asset. Therefore, considering over all facts of this case and also by following the ratio of the Hon'ble Supreme Court in the case of ICDS vs CIT (supra), we are of the considered view that the assessee is entitled for depreciation on the leased asset as per provisions of section 32(1)(i) of the Act. The Ld CIT(A) after considering relevant facts has rightly deleted additions made by the AO towards disallowance of depreciation, hence, we are inclined to uphold the findings of the Ld CIT(A) and reject the ground taken by the Revenue."

7. We further find that the coordinate bench of the Tribunal in assessee's own case in ACIT vs Reliance Corporate IT Park Ltd, in ITAs No. 1893 and No. 1894/Mum./2020, vide order dated 17/02/2022, for assessment years 2013 – 14 and 2014 – 15, by following earlier decision in assessment year 2011 – 12, rendered similar findings. The learned DR could not show us any reason to deviate from the aforesaid orders and no change in facts and law was alleged in the relevant assessment year. The issue arising in the present case is recurring in nature and has been decided by the coordinate bench of the Tribunal in assessee's own case for preceding as well as subsequent

assessment years. Thus, respectfully following the judicial precedents in assessee's own case cited supra, we find no infirmity in the impugned order passed by the learned CIT(A) on this issue. Accordingly, ground no. (a) raised in Revenue's appeal is dismissed.

8. The issues arising in grounds no. (b) to (h), raised in Revenue's appeal, are pertaining to transfer pricing adjustment qua the comparables.

9. The brief facts of the case, as emanating from the record, are: During the year under consideration, assessee was engaged in providing Information Technology Enabled Support (ITeS) services and Business Support services to its associated enterprises viz. GAPCO Kenya Ltd, GAPCO Tanzania Ltd, GAPCO Uganda Ltd and GAPCO Rwanda Ltd. As per the terms of engagement letter entered into with aforesaid associated enterprises, the scope of work for ITeS services, provided by the assessee, includes the following:

- *IT software implementation,*
- *Evaluation, testing and hosting various IT -related software,*
- *Operate and maintain IT software,*
- *Improvement and upgradation of the IT software,*
- *System network management services,*
- *Telecommunication system operations and maintenance,*
- *Maintenance of computer hardware, internet and intranet facilities*
- *Database design and security,*
- *Training on functional and technical aspects and end user training etc.*

10. As per the assessee, the ITeS services provided by the assessee include low end services in the nature of email related services; SAP related services (ERP package); maintenance of IT software and computer hardware; Internet and intranet facilities, training on functional and technical aspects and end user training. For benchmarking the international transaction pertaining to

ITeS services, the assessee used Transactional Net Margin Method (*'TNMM'*) as the most appropriate method with Profit Level Indicator (*'PLI'*) of operating profit/operating costs. By considering itself as the tested party, the assessee identified 4 comparable companies having arithmetic mean of operating margins on operating cost of 2.81%. As the assessee computed its own PLI at 10%, accordingly, it claimed that the international transaction of *'provision of ITeS services'* is at arm's length price.

11. Further, in respect of business support services provided by the assessee to its aforesaid associated enterprises, the scope of work included the following:

- *"Back office support on transaction processing & analysis,*
- *Maintenance of accounting books in ERP system,*
- *Support on functional & technical aspects to the end user,*
- *Providing support by way of evaluation & recommendation for finalization of contracts of procurement of goods & services,*
- *Providing back office support in matters relating to accounting, taxation, insurance, HR & administration.*
- *Generating daily report on sales, collection and stock for Management dashboard,*
- *Generating daily report on receivable outstanding, age-wise analysis of receivables as well as overdue debtors,*
- *Report on performance review of Business Operations,*
- *Monitoring insurance policy, support for insurance claims,*
- *Updation of HR policy on employee performance,*
- *Introduction of Balance Score Card for Management Employees,*
- *Evaluation of employee performance on periodic basis,*
- *Providing training support for functional role as well as for employee development,*
- *System network management services,*
- *Telecommunication system operations and maintenance,*
- *Infrastructural support services, Operational or administrative assistance in any manner;*
- *Maintenance of computer hardware, internet and intranet facilities."*

12. As per the assessee, the business support services includes back office support services relating to accounts payable (e.g. supplier master

maintenance; supplier invoice management; payment processing, reconciliation, etc.), accounts receivable (e.g. customer master maintenance; billing, collection of payments; banking and cash application), reconciliation services and support in accounting, taxation, insurance, HR & administration areas. For benchmarking the international transaction pertaining to business support services, the assessee used TNMM as the most appropriate method with PLI of operating profit/operating costs. By considering itself as the tested party, the assessee identified 4 comparable companies having arithmetic mean of operating margins on operating cost of 8.14%. As the assessee computed its own PLI at 7%, accordingly, it claimed that the international transaction of '*provision of business support services*' is at arm's length price.

13. The AO made reference to Transfer Pricing Officer ('TPO') for determination of arm's length price of aforesaid international transactions pertaining to '*provision of ITeS services*' and '*provision of business support services*'. In respect of international transaction pertaining to ITeS services, the TPO proposed to exclude all the companies considered as comparable by the assessee. Further, the TPO proposed to include certain companies, which were considered as comparables by the TPO for assessment year 2011 - 12. Accordingly, the TPO vide order dated 27/01/2016 passed under section 92CA(3) of the Act selected following 5 companies as comparables for benchmarking the international transaction pertaining to '*provision of ITeS services*':

Sr. no.	Company Name	Year	OP/OC %
1.	Accentia Technologies Ltd.	March 12	11.09%

2.	<i>Eclerx Services Ltd.</i>	<i>March 12</i>	<i>61.21%</i>
3.	<i>Infosys BPO Ltd.</i>	<i>March 12</i>	<i>33.92%</i>
4.	<i>Excel Inforways Ltd. (Segment)</i>	<i>March 12</i>	<i>49.38%</i>
5.	<i>Acropetal Technologies Ltd (Healthcare BPO segment)</i>	<i>March 12</i>	<i>29.78%</i>
	<i>Arithmetic Mean</i>		<i>30.90%</i>

14. The average operating profit to operating cost of aforesaid comparables selected by the TPO was computed at 30.90%. By applying the arm's length margin, the TPO proposed an upward adjustment of Rs. 2,02,86,420, in respect of international transaction of '*provision of ITeS services*'.

15. Further, in respect of international transaction pertaining to '*provision of business support services*', the TPO only selected one comparable from the assessee's set and proposed inclusion of 5 more comparables for benchmarking the aforesaid international transaction. Accordingly, the TPO arrived at a set of following 6 comparables for benchmarking the international transaction pertaining to '*provision of business support services*':

<i>Sr. no.</i>	<i>Company Name</i>	<i>Year</i>	<i>OP/OC %</i>
1.	<i>Murugappa Management Services Ltd.</i>	<i>March 12</i>	<i>3.00</i>
2.	<i>ICRA Management Consulting Services Ltd.</i>	<i>March 12</i>	<i>6.70</i>
3.	<i>Killick Agencies And Marketing Ltd.</i>	<i>March 12</i>	<i>9.04</i>
4.	<i>BVG India Ltd.</i>	<i>March 12</i>	<i>24.22</i>
5.	<i>Axis Integrated Systems Ltd.</i>	<i>March 12</i>	<i>10.27</i>
6.	<i>Inmacs Management Services Ltd.</i>	<i>March 12</i>	<i>50.98</i>
	<i>Arithmetic Mean</i>		<i>17.39%</i>

16. The average operating profit to operating cost of aforesaid comparables selected by the TPO was computed at 17.39%. By applying the arm's length

margin, the TPO proposed an upward adjustment of Rs. 1,16,04,109, in respect of international transaction of '*provision of business support services*'. Accordingly, the TPO vide order passed under section 92CA(3) of the Act proposed a total adjustment of Rs. 3,18,90,529. In conformity, the AO passed the assessment order under section 143(3) read with section 144C(3) of the Act, inter-alia, after incorporating the adjustment proposed by the TPO. In appeal, learned CIT(A) vide impugned order dated 15/11/2019, inter-alia, partly allowed the appeal filed by the assessee qua the selection of comparables in respect of international transactions pertaining to '*provision of ITeS services*' and '*provision of business support services*'. Since, pursuant to the impugned order, mean margin of the final set of comparables in '*provisions of ITeS services*' was 6.92%, which was lower than the margin of 10% earned by the assessee, therefore, the international transaction was held to be at arm's length. Similarly, the mean margin of the final set of comparables in '*provision of business support services*' was 5.26%, which was lower than the margin of 7% earned by the assessee, therefore, the international transaction was held to be at arm's length. Being aggrieved, the Revenue is in appeal before us.

17. In grounds no. (b) to (e), the Revenue has challenged exclusion of Excel Infoways Ltd., Eclerx Services Ltd and Acropetal Technologies Ltd, and inclusion of Sparsh BPO Services Ltd, for the purpose of benchmarking of international transaction pertaining to '*provision of ITeS services*'. Further, in grounds no. (f) to (h), the Revenue has challenged exclusion of BVG India Ltd and Inmacs Management Services Ltd, and inclusion of Techprocess Solutions

Ltd. for the purpose of benchmarking of international transaction pertaining to '*provision of business support services*'. Thus, we have confined our findings only in respect of these comparables in Revenue's appeal.

(i) Excel Infoways Ltd.

18. The first comparable under dispute is Excel Infoways Ltd. for the purpose of benchmarking of international transaction pertaining to '*provision of ITeS services*'. Excel Infoways Ltd. was selected as a comparable by the TPO vide order passed under section 92CA(3) of the Act on the basis that ITeS segment of this company is comparable to the services provided by the assessee. In appeal, learned CIT(A) vide impugned order accepted the contention of the assessee and rejected this company as comparable for benchmarking the international transaction pertaining to '*provision of ITeS services*'. Being aggrieved, the Revenue is in appeal before us.

19. During the course of hearing, learned DR vehemently relied upon the order passed by the TPO. On the other hand, learned AR submitted that this company fails employee cost to operations cost filter. Further, the company is also having fluctuating margins and hence, not a good comparable.

20. We have considered the rival submissions and perused the material available on record. From the perusal of annual report of Excel Infoways Ltd., forming part of the paper book from page no. 581 to 642, we find that for the relevant financial year, the company has earned revenue from Information Technology/BPO related services and sales from infra activities. The TPO has

claimed to have considered only ITeS segment of this company for purpose of benchmarking the impugned international transaction. We further find from the financials of this company that expenditure incurred on purchase of stock in trade amounting to Rs. 7,48,53,060 has only been debited against the revenue earned from '*sales from infra activities*' segment at internal page 43 of the annual report. We further find that apart from this cost no other expenditure has been debited against the income from this segment. It is surprising that only one item of cost pertains to this segment, which generates around 48% of the gross revenue from operations of this company and no other expenditure including common expenditure has been incurred in this regard. Thus, the segmental result, sought to be relied upon by the TPO for considering this company as a comparable, appears to be incorrect. Further, the employee cost also cannot be computed for the alleged relevant segment on the basis of available segmental data. Therefore, due to non-availability of reliable segmental data, Excel Infoways Ltd. cannot be considered to be comparable to the assessee. Accordingly, we find no infirmity in the impugned order passed by the learned CIT(A) on this issue. As a result ground no.(b) raised in Revenue's appeal is dismissed.

(ii) Eclerx Services Ltd.

21. The next comparable under dispute is Eclerx Services Ltd. for the purpose of benchmarking of international transaction pertaining to '*provision of ITeS services*'. Eclerx Services Ltd was selected as a comparable by the TPO vide order passed under section 92CA(3) of the Act on the basis that this company is engaged in providing data processing and data analytics services,

which are in the nature of ITeS. In appeal, learned CIT(A) vide impugned order accepted the contention of the assessee and rejected this company as comparable for benchmarking the international transaction pertaining to 'provision of ITeS services' by following the decision of coordinate bench of the Tribunal in assessee's own case for assessment year 2011 - 12. Being aggrieved, the Revenue is in appeal before us.

22. During the course of hearing, learned DR vehemently relied upon the order passed by the TPO. On the other hand, learned AR submitted that this company has been held to be functionally not comparable to the assessee in its own case for assessment year 2011 - 12 by the coordinate bench of the Tribunal.

23. We have considered the rival submissions and perused the material available on record. We find that the coordinate bench of the Tribunal in assessee's own case in Reliance Corporate IT Park Ltd vs DCIT, in ITA No. 4717 and 4873/Mum/2017, vide order dated 26/06/2019, for assessment year 2011 - 12, while directing rejection of Eclerx Services Ltd as a comparable to the assessee, observed as under:

"29. We have heard both parties, perused the material available on record and gone through orders of the authorities below. The Ld. CIT(A) has recorded categorical fact to the effect that Eclerx Services Ltd. is a KPO company providing data analytics services and process solutions to verticals like financial services, sales and marketing divisions of largest fortune 500 scale companies. The Ld. CIT(A) further noted KPO services rendered by the Eclerx services Ltd. cannot be functionally comparable to the low-end ITES services rendered by the assessee, more so that the turnover of the assessee in rendering these services is merely Rs.7.6 crores. Further, out of a total revenue, 59% of the revenue of the comparable is from SEZ facilities. Since, SEZ units eared tax exemptions and benefits, their profit margins are higher as compared to operating margins of non-SEZ units. Therefore, the same

cannot be compared to the profits earned by the assessee which is providing captive services to its AE. We further noted that the Eclerx Services Ltd. has been excluded on account of functionally not comparable to companies provided ITeS services to its AE. The Hon'ble Delhi High Court in the case of Rampgreen Solutions Pvt. Ltd. vs DCIT (TS 387-HC-2015-(Del) had considered Eclerx Services Ltd. and held that company providing captive services to its AE cannot be comparable to company which is rendering high and KPO services. The ITAT, Mumbai, in the case of Maersk Global Services Centres (India) Pvt. Ltd. vs DCIT (supra) had taken similar view and excluded Eclerx Services Ltd. from the list of comparable where the tax payer is engaged in providing captive services to its AE in the area of ITeS service. The Id. CIT(A), after considering relevant facts has rightly rejected Eclerx Services Ltd, from the list of comparables and we are inclined to uphold the findings of the Ld. CIT(A) and reject ground taken by the Revenue."

24. From perusal of annual report of Eclerx Services Ltd, forming part of the paper book from page No. 431 to 550, we find that even during the year under consideration the company earns income from operations consist of revenue from data analytics services and process solutions, which comprises of both time/unit price and fixed fee-based service contracts. We further find that the income from operations of the company increased by 38.23% to Rs. 4728.85 million during the year under consideration. Further, the company has again featured as a top 5 KPO vendor in Global Services 100. Thus, in view of the above and respectfully following the decision of the coordinate bench of the Tribunal in assessee's own case cited supra, we find no infirmity in the impugned order passed by the learned CIT(A) rejecting Eclerx Services Ltd as comparable to the assessee for benchmarking the international transaction pertaining to '*provision of ITeS services*'. As a result, ground no. (c) raised in Revenue's appeal is dismissed.

(iii) Acropetal Technologies Ltd.

25. The next comparable under dispute is Acropetal Technologies Ltd for the purpose of benchmarking of international transaction pertaining to '*provision of ITeS services*'. Acropetal Technologies Ltd was selected as a comparable by the TPO vide order passed under section 92CA(3) of the Act on the basis that Healthcare BPO segment of the company is comparable to the assessee. In appeal, learned CIT(A) vide impugned order accepted the contention of the assessee and rejected this company as comparable for benchmarking the international transaction pertaining to '*provision of ITeS services*'. Being aggrieved, the Revenue is in appeal before us.

26. During the course of hearing, learned DR vehemently relied upon the order passed by the TPO. On the other hand, learned AR submitted that segmental results are not reliable as it has huge un-allocable expenditure.

27. We have considered the rival submissions and perused the material available on record. From the perusal of annual report of Acropetal Technologies Ltd, forming part of the paper book from page No. 643 – 797, we find that the company operates in 3 segments i.e. engineering design services, information technology services and healthcare services. Further, from the perusal of notes forming part of the financial statement, we find that the company has un-allocable expenses of Rs. 23,76,51,122 during the relevant financial year, which has not been allocated to any of the aforesaid operating segment, and therefore renders the financial information relating to the aforesaid 3 segments unreliable. Further, the employee cost also cannot be computed for the alleged relevant segment on the basis of available

segmental data. Thus, due to non-availability of reliable segmental data, Acropetal Technologies Ltd. cannot be considered to be comparable to the assessee. Accordingly, we find no infirmity in the impugned order passed by the learned CIT(A) on this issue. As a result ground no.(d) raised in Revenue's appeal is dismissed.

(iv) Sparsh BPO Services Ltd.

28. The next comparable under dispute is Sparsh BPO Services Ltd for the purpose of benchmarking of international transaction pertaining to '*provision of ITeS services*'. Sparsh BPO Services Ltd was selected as a comparable by the assessee while benchmarking of aforesaid international transaction. The TPO, vide order passed under section 92CA(3) of the Act rejected the company as a comparable on the basis that it is negative net worth company. In appeal, learned CIT(A) vide impugned order accepted this company as a comparable to the assessee. Being aggrieved, Revenue is in appeal before us.

29. During the course of hearing, learned DR vehemently relied upon the order passed by the TPO. On the other hand, learned AR submitted that Sparsh BPO Services Ltd was considered as a comparable by TPO in preceding assessment year and the net worth of the company was incorrectly computed by the TPO in the year under consideration.

30. We have considered the rival submissions and perused the material available on record. Sparsh BPO Services Ltd provides business process outsourcing, technology and consulting services in India. There is no objection regarding the functional profile of this company. We find that TPO

considered Sparsh BPO Services Ltd as a comparable to the assessee while benchmarking the international transaction of 'provision of ITeS services' for assessment year 2011 – 12. Even in the year under consideration, the TPO has not doubted the functional comparability of this company with the assessee. In its order passed under section 92CA(3) of the Act, the TPO rejected this company as a comparable on the basis that it has negative net worth. Before the learned CIT(A), assessee submitted that the TPO has computed the net worth of this company at INR (73.98 crore), as under:

<i>Particulars</i>	<i>Amount In INR (Crore)</i>
<i>Total Assets (A)</i>	<i>200.84</i>
<i>Preference share capital</i>	<i>100.00</i>
<i>Non-Current Liabilities</i>	<i>129.96</i>
<i>Current Liabilities</i>	<i>44.86</i>
<i>Total Liabilities (B)</i>	<i>274.82</i>
<i>Net Worth (A-B)</i>	<i>(73.98)</i>

The assessee further submitted that the net worth as computed by the TPO is erroneous as the TPO has considered owner's fund i.e. preference shares as liabilities. Assessee submitted that preference shares of Rs. 100 crore is part of owner's/share capital and same is not liability. Therefore, same should be excluded from total liabilities and accordingly, correct net worth of the company is Rs. 26.02 crores. The learned CIT(A) vide impugned order accepted the contention of the assessee and included this company as a comparable. Since, in the present case, functional comparability of this company is not in dispute, therefore, in view of the aforesaid submission of the assessee before the learned CIT(A), we are of the considered opinion that the TPO has computed the net worth of the company incorrectly and for the year under consideration, the correct net worth of the company is not

negative. Accordingly, we find no infirmity in the impugned order passed by the learned CIT(A) in accepting Sparsh BPO Services Ltd as comparable to the assessee for benchmarking the international transaction pertaining to '*provision of ITeS services*'. As a result, ground no.(e) raised in Revenue's appeal is dismissed.

(iv) BVG India Ltd.

31. The first comparable under dispute is BVG India Ltd for the purpose of benchmarking of international transaction pertaining to '*provision of business support services*'. BVG India Ltd was selected as a comparable by the TPO vide order passed under section 92CA(3) of the Act. In appeal, learned CIT(A) vide impugned order accepted the contention of the assessee and rejected this company as comparable for benchmarking the international transaction pertaining to '*provision of business support services*'. Being aggrieved, the Revenue is in appeal before us.

32. In the course of hearing, learned DR vehemently relied upon the order passed by the TPO. On the other hand, learned AR submitted that the company operates in various business verticals and wallets operations are in domestic market segment.

33. We have considered the rival submissions and perused the material available on record. From the perusal of annual report of BVG India Ltd, forming part of the paper book from page No. 950 – 1088, we find that the company is engaged in providing and undertaking facility management, mechanised housekeeping, transportation, plant relocations, attendance

services and labour supply. As per the disclosure of general information about the company at page 1066 of the paper book, the company also undertakes various projects for garden development, slum rehabilitation, landscaping, beautification projects, rural electrification and other contracts for government and private organisations. Thus, from the above it is evident that the company is functionally different as it has too many business verticals. Further, from the financials at page 1059 of the paper book, it is evident that the entire Revenue of the company from services i.e. Rs. 206,90,73,302 is from the domestic contracts, whereas assessee's entire earnings is from export of services under international transaction of '*provision of business support services*'. Therefore, BVG India Ltd cannot be considered to be functionally comparable to the assessee. Accordingly, we find no infirmity in the impugned order passed by the learned CIT(A) rejecting BVG India Ltd as a comparable to the assessee for benchmarking the international transaction pertaining to '*provision of business support services*'. As a result, ground no. (g) raised in Revenue's appeal is dismissed.

(v) Inmacs Management Services Ltd.

34. The next comparable under dispute is Inmacs Management Services Ltd for the purpose of benchmarking of international transaction pertaining to '*provision of business support services*'. Inmacs Management Services Ltd was selected as a comparable by the TPO vide order passed under section 92CA(3) of the Act. In appeal, learned CIT(A) vide impugned order accepted the contention of the assessee and rejected this company as comparable for

benchmarking the international transaction pertaining to '*provision of business support services*'. Being aggrieved, Revenue is in appeal before us.

35. During the course of hearing, learned DR vehemently relied upon the order passed by the TPO. On the other hand, learned AR submitted that annual report of the company is not available in public domain.

36. We have considered the rival submissions and perused the material available on record. From the record it is evident that this company was proposed to be considered as a comparable by the TPO. During the course of transfer pricing assessment proceedings, assessee submitted that the annual report of this company for the year ending 31/03/2012 is not available in public domain and therefore no information is available on the services rendered by Inmacs Management Services Ltd. However, as is evident from the record, despite the above submission, the data pertaining to this company was not provided to the assessee by the TPO and this company was considered for benchmarking the international transaction pertaining to '*provision of business support services*'. In appeal before the learned CIT(A), in absence of annual report of the company being available in public domain, the assessee referred to the website extracts of this company and submitted that the services performed by this company are high-end in nature. During the hearing before us, the learned AR also referred to the response from Prowess regarding non-availability of annual report of Inmacs Management Services Ltd. Even, during the hearing before us, annual report of this company was not brought on record by the Revenue in order to justify

inclusion of this company as a comparable by the TPO. Thus, in view of above, we are of the considered opinion that in absence of data being available in public domain, this company cannot be considered as comparable to the assessee. Therefore, we find no infirmity in the impugned order passed by the learned CIT(A) on this issue. As a result, ground no. (h) raised in Revenue's appeal is dismissed.

(vi) Techprocess Solutions Ltd.

37. The next comparable under dispute is Techprocess Solutions Ltd. for the purpose of benchmarking of international transaction pertaining to '*provision of business support services*'. Techprocess Solutions Ltd. was selected as a comparable by the assessee for benchmarking of aforesaid international transaction. The TPO vide order passed under section 92CA(3) of the Act rejected this company as a comparable on the basis that the company is having high intangibles which is not a normal feature of a company involved in providing normal support services. The TPO also held that certain functions performed by this company are totally different and not comparable to the assessee. In appeal, learned CIT(A) vide impugned order included this company as comparable to the assessee after examination and verification of the annual report. Being aggrieved, the Revenue is in appeal before us.

38. During the course of hearing, learned DR submitted that this company cannot be considered as a comparable as there has been an amalgamation of M/s Techprocess Payment Services Ltd. with M/s Ingenico, which is an

extraordinary event and thus the margins of this company are not reliable. Subsequently, vide written submission dated 08/06/2022, learned DR clarified that the information about amalgamation was gathered from public domain i.e. Google search. However, upon verification, it was found that the amalgamation took place in the year 2017 i.e. much after the year under consideration. In any way, vide aforesaid written submission, learned DR emphasised on the aspect that this company is not functionally comparable to the assessee.

39. On the other hand, learned AR submitted that this company was considered as comparable by the TPO in the immediately preceding assessment year and there is no change in functional profile of this company in the year under consideration.

40. We have considered the rival submissions and perused the material available on record. From the perusal of annual report of Techprocess Solutions Ltd., forming part of the paper book from page No. 1173 – 1251, we find that the company is online payment service provider. For the year under consideration, the company has claimed to have significantly enhanced its capacity in online payment space by integrating more banks and payment options on its online platform. We further find that the TPO considered this company as a comparable to the assessee for benchmarking the international transaction pertaining to '*provision of business support services*' for assessment year 2011–12. In the present appeal, nothing has been brought on record by the Revenue to suggest any change in functional profile of this

company during the year under consideration. Though, vide aforesaid written submission, the learned DR submitted that this company is providing high-end services, however, compared the same with the low end ITeS services provided by the assessee. It is pertinent to note that this company is considered as a comparable by the assessee for benchmarking the transaction pertaining to '*provision of business support services*' and not '*provision of ITeS services*'. Further, we find that this company owned intangible assets even in preceding assessment year, in which it was considered to be comparable to the assessee by the TPO. Thus, in view of the above, we find no infirmity in the impugned order passed by the learned CIT(A) in accepting Techprocess Solutions Ltd. as a comparable to the assessee for benchmarking the international transaction pertaining to '*provision of business support services*'. As a result, ground no. (f) raised in Revenue's appeal is dismissed.

41. In the result, the appeal by the Revenue is dismissed in terms of our aforesaid findings.

42. As we have dismissed the appeal filed by the Revenue, the cross-objection filed by the assessee becomes infructuous and is accordingly dismissed.

Order pronounced in the open Court on 05/09/2022

Sd/-
PRAMOD KUMAR
VICE PRESIDENT

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 05/09/2022

Copy of the order forwarded to:

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The CIT(A);*
- (4) The CIT, Mumbai City concerned;*
- (5) The DR, ITAT, Mumbai;*
- (6) Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Assistant Registrar
ITAT, Mumbai