

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I': NEW DELHI
BEFORE,
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.516/Del/2015
(ASSESSMENT YEAR 2010-11)**

H & S Software Development and Knowledge Management Centre Private Limited MVLi Park Unit No.501 & 502, 5 th Floor, Near Red Cross Society Sector-15, Part-II Gurgaon-122 001 Haryana PAN-AABCH 2697E	Vs.	Income Tax Officer Ward-11(1) New Delhi
(Appellant)		(Respondent)

Appellant by	Mr. Vishal Kalra, Ankit Sahani, Advocates & Mr. Yishu Goel, AR
Respondent by	Mr. R.D.Burman, CIT-DR

Date of Hearing	27/06/2023
Date of Pronouncement	11/09/2023

ORDER

PER M. BALAGANESH AM:

This appeal is preferred by the Assessee against the final assessment order dated 27/11/2014 passed u/s 143(3) r.w.s.144C

(13) of the Income Tax Act, 1961 (hereinafter called 'the Act') subsequent to the direction of the Ld. Dispute Resolution Panel (DRP) vide direction dated 23/09/2014 for Asst. Year 2010-11.

2. We find that this appeal was originally disposed off by this Tribunal in ITA No.516/Del/ 2015 for AY 2010-11, dated 20/03/2018. Later the Miscellaneous Application was preferred by the assessee stating that ground No.3.5 seeking exclusion of Eclerx Services Limited from the set of comparable companies while determining Arm's Length Price (ALP), was not adjudicated by the Tribunal while passing the order dated 20/03/2018. Accordingly, this Tribunal vide its MA order in MA No.251/Del/2018 dated 09/09/2022 had recalled the order only for the limited purpose of adjudication of ground No.3.5 raised by the assessee in seeking exclusion of Eclerx Services Limited from the final set of comparables. For this purpose, it would be relevant to understand the service rendered by the assessee company to its Associated Enterprises (AE), which are as under:

"H&S KMC India performs back-office functions related to creation and maintenance of database of prospective employers and candidates who have sent their resumes to Heidrick & Struggles group. This database is Search Palace, Heidrick & Struggles group's proprietary software tool, used to perform all of Heidrick & Struggles group's services. HSI is the

owner of intangibles associated with the Search Palace. It is also responsible for maintaining and developing this software and other related tools. Thus, H&S KMC India activities are limited to supporting HSI's intangible creation and maintenance activities, especially as it applies to the software tools.

Heidrick & Struggles group has set up mailboxes where candidates submit their resumes for actual or potential vacancies with Heidrick & Struggles group clients. H&S KMC India is responsible for retrieving the applications from the following mailboxes:

- *Active CVs,*
- *Job Seekers; Shortlists;*
- *Candidate Reports,*
- *One-Pagers,*
- *Board CDM requests;*
- *Contact Research, and*
- *Research Update.*

H&S KMC India is responsible for processing information contained in the resumes according to the preset criteria developed by HSI and including it into Search Palace. Search Palace and the database of resumes are accessible by Heidrick & Struggles group's global operations.

There are 2 categories of applications received in the mailboxes-solicited and unsolicited applications. The solicited applications are those for which Heidrick & Struggles group has a prospective employer and on whose request a search process has been initiated. In this case the applications are sought from candidates in respect of the particular vacancy. Both solicited and unsolicited applications are stored in the Search Palace database and reviewed by the executive search consultants for their specific projects.

H&S KMC India is responsible for ensuring quality and consistency in data entry for Search Palace database; minimize duplication of effort; and maximize re-use of information and to move into more proactive research work for business development.

In addition to maintaining data for the Search Palace database, H&S KMC India also supports for its AEs in performing adhoc research projects and news alerts.

H&S KMC India comprises three operating divisions:

- *Database Support*
- *Database Associate*
- *Quality Assurance*
- *Research*
 - *Executive Identification*
 - *Business Development Research*

- *Administration*

The following section describes these three divisions.

- *Database Support Division*

Database Support division comprises the Database Associate and Quality Assurance teams

Database Associates

The primary responsibility of the database associates is to access the mailboxes and retrieve applications submitted by candidates. These applications are processed based on pre-defined coding systems as defined by HSI. The processed applications and research results are included in the Search Palace. 63 people are involved in this activity.

Quality Assurance

This team is responsible for quality of the work performed by the database associates. This team eliminates duplicative information. It also reviews aging searches and follows ups with consultants in various Heidrick & Struggles group offices on searches that have been open or on hold for more than 12 months to see if these searches should be cancelled/terminated. This activity improves the quality of the data available through the Search Palace. 13 people are involved in this function.

- *Research Division*

The research organization is divided into the following functional areas, which include Executive Identification, and Business Development ("BD") Research. 64 people are involved in following activities:

Executive Identification

Based on the existing or future requirements of the AES, H&S KMC India Research team finds information about executives, various job profiles, compensation and benefit packages, relevant expertise required, specific technical skills required etc. The results of this activity may be included in the Search Palace.

Business Development Research

Business development research is business initiative for all the industry practices. This business initiative includes issuing News Alerts and company information packs, industry analysis related to these Service Practices HSI is using H&S KMC India to perform initial market research work in this area. It collects relevant information from electronic or non-electronic media and provides the information to HSI's offices. The results of this activity may be included in the Search Palace.

- *Administration Division*

The administration division provides support to the other two divisions, including management, administrative, finance, budgeting, accounting, and logistics).

3. Hence, it could be seen that the assessee is rendering back office support service to its AE. There is no change in the services performed by the assessee right from the AY 2007-08 onwards. We find that this Tribunal in assessee's own case for AY 2007-08 in ITA No.6455/Del/2012 dated 18/01/2017 had excluded Eclerx from the list of comparable companies as functionally not comparable with the assessee. The relevant portion of the order for AY 2007-08 is reproduced herein under:

*"23 information obtained us 133 (6) and annual report for FY 2006-07, Assessee raised objection for the inclusion of this company in the list of final comparables on ground of functional dis-similarity and relied upon order passed by ITAT, Delhi Bench in the case of **Copal Research India Pvt. Ltd. (ITA No.1713/Del.2014)** (available at pages 741 to 757 of the Paper Book-III). Assessee also raised objection that this company is a Knowledge Processing Outsourcing (KPO) company rather than routine service provider.*

*24 Comparability of ECLERX has been examined by the coordinate Bench in case of **Copal Research India Pvt. Ltd.** (supra) which is also engaged into ITES services similar to that of the assessee.*

25. When we examine the functional profile of the assessee company which is into providing Information Technology (IT) Enables Back Office Support Services related to creation and maintenance of data base of prospective employers and candidates who sent their resumes to Hendrick & Struggles International Inc (HSI), the assessee provides services to HSII only having minimal risks whereas as per the information supplied by ECLERX u/s 133 (6), it is into data analytical services, operation management services; accounts reconciliation services which are aimed at reducing process errors and operational risks and that it is KPO rather than routine service provider as is evident from the annual report.

26. Comparability of ECLERX has been examined by the coordinate Bench with Copal Research India Pvt. Ltd. (supra), a similarly situated company, by making following observations:-

"11. We have considered the submissions of both the parties and have perused the record of the case. We find that in the case of Maersk Global Centres (India) Pvt. Ltd, which company was, inter alia, engaged in the business as shared service centre and rendering transaction processing, data entry, reconciliation of statements, audit of shipping documents and other similar support services; and also rendering IT services such as process support, process optimization and technical support services, the Tribunal in para 82 of its order observed as under:

"In so far as M/s eClerx Services Limited is concerned, the relevant formation is available in the form of annual report for financial year 2007 05 placed at page 166 to 183 of the paper book. A perusal of the same shows that the said company provides data analytics and data process solutions to some of the largest brands in the world and is recognized as experts in chosen markets-financial services and retail and manufacturing It is claimed to be providing complete business solutions by combining people, process improvement and automation It is claimed to have employed over 1500 domain specialists working for the clients. It is claimed that eClers is a different company with industry specialized services for meeting complex client needs, data analytics KPO service provider specializing in two business verticals financial services and retail and manufacturing It is claimed to be engaged in providing solutions that do not just reduce cost, but help the clients increase sales and reduce risk by enhancing efficiencies and by providing valuable insights that empower better decisions. M/s eClerx Services Pvt. Ltd is also claimed to have a scalable delivery model and solutions offered that include data analytics, operations management, audits and reconciliation, metrics management and reporting services. It also provides tailored process outsourcing and management services along with a multitude of data aggregation, mining and maintenance services. It is claimed that the company has a team dedicated to developing automation tools to support service delivery. These software automation tools increase productivity, allowing customers to benefit from further cost saving and output gains with better control over quality. Keeping in view the nature of services rendered by M/s eClerx Services Pvt. Ltd and its functional

profile, we are of the view that this company is also mainly engaged in providing high-end services involving specialized knowledge and domain expertise in the field and the same cannot be compared with the assessee company which is mainly engaged in providing low-end services to the group concerns."

11.1. We find that the assessee also cannot be said to have relatable degree of comparability because primarily assessee was engaged in providing primary data for various field of activities but not complete business solutions. Therefore, this company could not be treated as comparable for the purpose of determining ALP of the transactions between the assessee company with its AES. We, accordingly, direct that this company be excluded from the list of comparables finally taken by the AO/ TPO as per the direction of the DRP"

27. So, keeping in view the functional dis-similarity of assessee company with ECLERX, which is a knowledge process outsourcing company engaged in providing consulting services, process outsourcing, process re-engineering and automation services, we do not find ECLERX as a valid comparable for benchmarking the international transaction qua ITES services undertaken by the assessee."

4. Similar decision was taken in assessee's own case for AYs 2008-09, 2009-10 & 2011-12. Hence, we direct the Ld. AO to exclude Eclerx Service Limited from the final list of comparables while determining the ALP of International Transactions of the assessee. Accordingly, Ground No.3.5 raised by the assessee is allowed.

5. This order should be read as part and parcel of order passed by this Tribunal adjudicating other grounds dated 20/03/2018.

6. Accordingly, the appeal of the assessee is allowed in respect of ground No.3.5.

Order pronounced in the open court on 11th September, 2023.

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 11/09/2023

Pk/sps

Copy forwarded to:

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

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI