

IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH "I" NEW DELHI ]

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

AND

SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं .I.T.A No. 5351/Del/2017  
निर्धारण वर्ष/Assessment Year: 2010-11

DCIT, Circle : 21 (1) New Delhi.	<u>बनाम</u> Vs.	M/s. Reservation Data Maintenance India Pvt.Ltd., E-9, Connaught House, Connaught Place, New Delhi - 110 001.
		PAN No. AAACR0121L
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारितकीओरसे / Assessee by :	Shri Tarandeep Singh, Adv.; & Shri Sandeep Yadav, Adv.;
राजस्वकीओरसे / Department by :	Shri Manu Chaurasia, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	24.07.2023
उद्घोषणाकीतारीख/Pronouncement on :	16.10.2023

आदेश / O R D E R

PER C. N. PRASAD, J.M.

1. This appeal is filed by the Revenue against the order of the Id. Commissioner of Income Tax (Appeals)-38 [hereinafter referred

to CIT (Appeals)] New Delhi, dated 19.05.2017 for assessment year 2010-11.

2. The Revenue has raised the following substantial grounds of appeal:-

“1. That on facts and circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the adjustment of Rs.2,01,00,673/- u/s 92C(2) of I.T. Act and directing the TPO to remove the M/s Accentia Technologies Ltd., M/s TCS E-Services Ltd. and M/s TCS E- service International Ltd. from the final list of comparables.

2. That on facts and circumstances of the case the Ld. CIT (A) has erred by relying on the decision of Delhi High Court in the case of M/s. Rampgreen Solutions(P) Ltd. V CIT [2015] 377 ITR 533 (Delhi) without appreciating the facts and circumstances of the case under consideration.

3. That on facts and circumstances of the case the Ld. CIT (A) was legally not justified in holding that loss or profit can be a criterion for acceptance/rejection of a comparable.”

3. The Revenue challenges the order of the Ld. CIT (Appeals) in directing the TPO to exclude the following comparables from the final list of comparables:-

- (i) Accentia Technologies Ltd.;
- (ii) TCS E-Serve Ltd.;
- (iii) TCS E-Serve International Ltd.

The Ld. Counsel for the assessee, at the outset, submits that in so far as the Accentia Technologies Ltd. is concerned the Tribunal in assessee's own case for assessment year 2009-10 in ITA. No. 2516/Del/2017 excluded Accentia Technologies Ltd. as a comparable. Referring to page 15 of the ITAT order the Ld. Counsel

for the assessee submits that it is the finding of the Tribunal that Accentia Technologies Ltd. is provided KPO services and, therefore, it is not comparable with the assessee company, which is carrying on BPO activities. In so far as TCS E-Serve Ltd. and TCS E-Serve International Ltd., the ld. Counsel submits that there is no error in the reasoning given by the ld. CIT (Appeals) in rejecting these two companies as comparables. He strongly placed reliance on the order of the ld. CIT (Appeals).

4. The ld. DR supported the order of the TPO.

5. Heard rival submissions perused the orders of the authorities below. In so far as the Accentia Technologies Ltd. is concerned, we find that the Tribunal in the immediately preceding assessment year excluded this company as comparable vide order in ITA. No. 2516/Del/2017 dated 2.12.2022. It is further observed that the ld. CIT (Appeals) after considering the submissions of the assessee and the averments of the TPO's order, excluded all these three comparables observing as under:-

“4.2.1 I have carefully considered the submissions made by the appellant and have also considered the findings recorded by the TPO in this regard. It is clearly evident from the annual accounts of this company, there has been an extraordinary activity of amalgamation in the year under consideration. M/s. Accentia has amalgamated with M/s Asscent Infoserve. Even the auditors note that owing to amalgamation the financial results of M/s Accentia are not comparable with its results for earlier years. Moreover M/s Accentia is into providing KPO services and even otherwise is not comparable with the appellant which is carrying on BPO Activities. Ld. ITAT in case of Equant Solutions India Pvt. Limited (supra) dealing with a case for Assessment

Year 2010-11 has rejected use of this company as a comparable for this very reason by holding as under:

"We have considered the rival contention. During the year this comparable has been gone into substantial business restructuring resulting into extraordinary circumstances during the FY 2009-10 subsidiary of Ascentia got amalgamated with this company and the figures of the business results for the year ending 31st March 2010. In this case also excluded the figures of amalgamated company and due to which the comparable has high OP by TC margin. The relevant observations of the Tribunal as recorded in para 19.2 of the order passed in the case of Excellence Data Research (P) Ltd. v. ITO 66 SOT 15(URO) (Hyd.); being relevant in this case, are reproduced below:

"19.2 We have considered the rival contentions and noticed that this company operates in a different business strategy of acquiring companies for inorganic growth as its strategy. In earlier years on the reason of acquisition of various companies, being an extraordinary event which had an impact on the profit, this company was excluded. As submitted by the learned counsel, this year also, the acquisition of some companies by that company may have impact on the profit. Considering the profit margins of the company and insufficient segmental data, we are of the opinion that this company cannot be selected as a comparable. Moreover, this is also not a comparable in the case of M/s. Mercer Consulting (India) P. Ltd. (supra), which indicates that the TPO therein has excluded it at the outset. In view of this, we direct the Assessing Officer/TPO to exclude this comparable, from the list of comparables selected."

As pointed out by the learned counsel for the assessee, there was amalgamation of a company during the relevant year, and the said company, therefore, cannot be considered as comparable due to this extraordinary event which occurred in the relevant year as rightly held by the Tribunal inter alia in the case of Excellence Data Research (P) Ltd. (supra). We, therefore, follow the decision of the coordinate bench of this Tribunal in the case of Excellence Data Research (P) Ltd(supra) and direct the AO/TPO to exclude the Accentia Technologies Limited from the list of comparables on this ground. Further, this company also provides KPO services, LPO and DPO besides

offering software services. Therefore as this enrolled in knowledge processing outsourcing it is functionally dissimilar to the assessee. Further, it does not contain segment wise functional results and in absence of such segmental information, it cannot be used for comparing the PLI of the assessee. It is also noted that it is also having significant amount of brands, intellectual property rights and goodwill as compared to the assessee. Therefore, in view of the above reasons this company is required to be excluded. Further relying on the decision of Jurisdictional high court in case of Rampgreen Solutions (P) Ltd. v. CIT [2015] 377 ITR 533 (Delhi) where in it is held that KPO are ITeS where the service providers have to employ advanced level of skills and knowledge. This is absent in this case of assessee which is low end ITES service provider such as which enables network management and other back office support services performed by assessee which primarily include remote monitoring and maintenance of Equant global network platforms and services, coordination, remote configuration, and implementation of quality customer networking solutions. Therefore this comparable is ordered for its exclusion accordingly."

4.2.2 Similar view has been expressed by Hon'ble ITAT in other decisions relied upon by the Ld. AR. Respectfully following the above decision the TPO is directed to exclude M/s. Accentia from the final list of comparable companies.

4.2.3 TCS E-Serve International Ltd & TCS E-serve Ltd - These companies have also been selected by the TPO. In this regard, it was submitted by the appellant as under:

As regards TCS E-Serve Limited it is submitted that this company provides business process management services in banking and financial services and also renders services comprising transaction processing and technical services. Transaction processing includes processing, collections, customer care and payments in relation to the services by Citi Group to its corporate and retail clients. Technical services involve software testing, verification and validation of software at the time of implementation and data center management activities (Refer page 958 of paper book) Segmental details for income from transactions processing services are not available in annual

report TCS E-Serve Limited is engaged in the business process outsourcing (transaction processing) services to the Banking & financial services industry, which is single segment and there is no separate segmental report of ITeS segment. Moreover, turnover of this company is Rs.1441 crores, whereas RDM's IT segment turnover is only Rs. 39 crores. Further, this company has the economic benefit on account of payment for TATA brand equity. Brand equity payment made by the company is Rs. 4.2 crores (refer page 957 of paper book) whereas no branded or proprietary products are owned by RDM. Further AMP spent of this company is 0.15 crores whereas RDM has not incurred any expenditure on advertisement. Lastly it is also worth noting that TCS E-serve Limited largely renders services to worldwide Citi Group entities. Such services are rendered in continuation of the related party agreements which were executed when the company was under the management of Citi Group. As regards risk profile of this company, it may be noted that this company operates as full-fledged risk taking entrepreneur.

10.1 As regards TCS E-Serve International Limited it is submitted that it is engaged in the business of providing Information Technology - Enabled Services (ITES)/Business Processing Outsourcing (BPO) services, primarily to Citigroup entities globally. The Company's operations broadly comprise of transaction processing and technical services. Transaction Processing includes the broad spectrum of activities involving the processing, collections, customer care and payments in relation to the services offered by Citigroup to its corporate and retail clients. Technical services involve software testing, verification and validation of software at the time of implementation and data centre management activities. (refer page 457 of paper book) As such in addition to BPO services this company is also engaged in providing technical services, therefore it is functionally dissimilar. Further it is also worth noting that there is no segmental bifurcation of ITES and software development activity for this company. Moreover, TCS E-Serve International Limited also owns substantial amount of intangibles in the form of software licenses and it owns Tata Brand in which company is making payment. (refer page 456 of paper book) Company also has a volatile margin as its profitability has gone up by 173% on account increased in infrastructure."

During the course of appellate Ld AR relied upon following decision s to canvass his point on rejection of TCS E-Serve International Ltd. & TCS E- serve Ltd. as a comparable:

- FIL India Business Services (P) Ltd reported in (2016) 70 taxmann.com 42 (Del)
- Bechtel India (P) Limited reported in (2016) 66 taxmann.com 6 (Del)
- Equant Solutions India (P) Ltd reported in (2016) 66 taxmann.com 192 (Del).

4.2.4 I have carefully considered the submissions made by the appellant and have also considered the findings recorded by the TPO in this regard. From the annual accounts of these companies it is apparent that in addition to BPO services these companies are also engaged in providing technical services and are therefore functionally dissimilar. Further there is also no segmental bifurcation given. Both these companies are also making contribution towards TATA Brand and are therefore economically benefiting from use of TATA brand equity. Appellant cannot be made comparable with a company which is engaged in software development and deriving benefit from a big brand like TATA. Precisely for this very reason, Ld. ITAT in case of Equant Solutions India Pvt. Limited (supra) dealing with a case for AY 2010-11 has rejected use of these companies as a comparable by holding as under:

"23. TCS E Serve International Ltd,

.....

We have considered the rival contention regarding the exclusion of TCS E-service International Ltd. the comparable is engaged in the business of BPO service and provides high-end technology services such as software testing, verification and validation of the software. Therefore, it is functionally dissimilar to the assessee. Further annual report of the company does not provide any segmental information related to ITES as well as software development services. The company also owns

intangible of substantial amount and is benefitted usually by the Tata Brand. The company is also making appellant for use of such brand. Therefore this aspect also makes this comparable is inappropriate and therefore we order to exclude this comparable.

24. TCS E Serve Limited.

We have also considered the rival contention for exclusion of TCS e-service Ltd. It is mainly involved in transaction processing and technology services. It carries on business of providing technology service such as software testing, verification and validation. It is also developed a software such as transport management software therefore functionally this company is dissimilar to the assessee company. It also owns huge intangible and use of 'Tata Brand, which has definitely benefitted this comparable, it is directed to be excluded." Similar view has been expressed by Hon'ble ITAT in other decisions relied upon by the Ld. AR. Respectfully following the above decision the TPO is directed to exclude M/s TCS E-Serve International Ltd. & M/s. TCS E-serve Ltd from the final list of comparable companies. “

6. On careful reading of the order of the ld. CIT (Appeals) we do not find any valid reason to interfere with the findings of the ld. CIT (Appeals) in excluding the above comparables from the final list of comparables for the very detailed reasoning of the ld. CIT (Appeals). Grounds of appeal raised by the Revenue are rejected.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on : 16/10/2023.

Sd/-  
( SHAMIM YAHYA )  
ACCOUNTANT MEMBER

Sd/-  
( C. N. PRASAD )  
JUDICIAL MEMBER

Dated : 16/10/2023

\*MEHTA\*

Copy forwarded to :

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

ASSISTANT REGISTRAR  
ITAT, New Delhi.

Date of dictation	11.10.2023
Date on which the typed draft is placed before the dictating member	12.10.2023
Date on which the typed draft is placed before the other member	16.10.2023
Date on which the approved draft comes to the Sr. PS/ PS	16.10.2023
Date on which the fair order is placed before the dictating member for pronouncement	16.10.2023
Date on which the fair order comes back to the Sr. PS/ PS	16.10.2023
Date on which the final order is uploaded on the website of ITAT	16.10.2023
Date on which the file goes to the Bench Clerk	16.10.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	