

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

BEFORE

**SHRI LALIET KUMAR, HON'BLE JUDICIAL MEMBER
AND
SHRI MANJUNATHA G, HON'BLE ACCOUNTANT MEMBER**

Sl. No	ITA No	Assessment Year	Appellant / Assessee	Respondent
1	1866/Hyd/2014	2010-11	Macromill Research India LLP (Formerly known as Market Tools Research Pvt. Limited), Hyderabad. PAN : AADCM9330M	The Assistant Commissioner of Income Tax, Circle 16(2), Hyderabad.
2	501/Hyd/2016	2011-12	-do-	-do-
3	1935/Hyd/2014	2010-11	The Assistant Commissioner of Income Tax, Circle 16(2), Hyderabad.	Macromill Research India LLP (Formerly known as Market Tools Research Pvt. Limited), Hyderabad. PAN : AADCM9330M
4	424/Hyd/2016	2011-12	-do-	-do-

Appellant by	:	Shri Darpan Kirpalani, C.A. (Appeared through virtual mode)
Respondent by	:	Shri Kumar Pranav, CIT-DR
Date of Hearing	:	10.07.2024
Date of Pronouncement	:	22.07.2024

ORDER

PER LALIET KUMAR, J.M.:

This bunch of four appeals, two by assessee and two by Revenue are directed against separate, but identical final assessment orders dt.28.10.2014 and 29.01.2016 passed by the Assistant Commissioner of Income Tax, Circle 16(2), Hyderabad for the assessment years 2010-11 and 2011-12, respectively. Since facts are identical and issues are common, for the sake of convenience, these appeals filed by the assessee and, as well as the Revenue are being heard together and are being disposed of, by this consolidated order.

2. The assessee has more or less filed common grounds of appeal for assessment years 2010-11 and 2011-12 and therefore, for the sake of brevity, the grounds of appeal filed by the assessee for A.Y. 2010-11 are reproduced as under :

“Transfer Pricing Matters:

Rejection of TP documentation maintained and undertaking fresh economic analysis:

1. Rejecting the transfer pricing documentation maintained by the Appellant in accordance with the provisions of the Act read with the Income Tax Rules, 1962 ('Rules') and making an adjustment of Rs. 4,50,22,242 to the international transactions relating to provision of ITES services to AE;

Rejection of use of multiple year data

2. Rejecting the use of multiple year data and using data for the FY 2009-10 only;

Use of additional filters

3. *Inter-alia use of the following additional/modified filters in undertaking the comparative analysis and rejecting comparable companies having:*

- i) *Diminishing revenues*
- ii) *Persistent losses;*
- iii) *Different financial year-end; and*
- iv) *Export sales less than 75% of the sales.*

Voluntary TP adjustment

4. *Not considering voluntary TP adjustment as part of the operating income, without appreciating the fact that the same has been offered to tax in the revised return.*

Selection of comparables

5. *Not undertaking an objective comparative analysis and inter alia selecting the following companies as comparable to the ITES services of the Appellant:*

- i) *Accentia Technologies Ltd; and*
- ii) *TCS e-Serve International Ltd.*

Rejection of comparables.

6. *Not undertaking an objective comparative analysis and inter alia rejecting the following comparable companies:*

- i) *CG-VAK Software & Exports Limited;*
- ii) *Fortune Infotech Ltd;*
- iii) *Informed Technologies Pvt. Lid;*
- iv) *Jindal Intellicom Ltd and*
- v) *Microland Ltd.*

Adjustment for risk differences

7. *Not adjusting the net margins of the comparable companies taking into account the functional and risk differences between the international transaction of the Appellant and the comparable transactions in accordance with the provisions of Rule 10B(1)(e);*

Interest on Outstanding Receivables

8. *Making adjustment on the consideration receivable in respect of ITES exports to AE, without appreciating the fact that the price of the same is subsumed in the mark-up determined for provision of ITES.*

9. *Incorrect computation of notional interest on outstanding receivables.*

Corporate Tax Matters

10. *Disallowing the amount of Rs 9,70,000 u/s 40(a)(ia) without appreciating the fact that no TDS was deductible on such expenditure.*

11. *Without prejudice to the above, the Ld. AO ought to have allowed 10A deduction on the expenditure disallowed u/s 40(a)(ia).*

12. *Disallowing the income tax expenditure of Rs. 5,91,248 without appreciating the fact that the Appellant has already disallowed such amount, thereby leading to double disallowance.*

13. *Not considering the brought forward MAT credit while Computing the tax liability. Interest and Penalty*

14. *Imposing interest u/s 234B of the Act on:*

a. TP adjustment on provision of IT Enabled Services ; and

b. TP adjustment arising on account of retrospective amendment to the section 92C(2)

15. *Initiating the penalty proceedings u/s 271(1)(C) of the Act.*

16. *Initiating penalty proceedings u/s 271BA and u/s 271AA.”*

2.1. Additional grounds raised by the assessee for A.Y. 2010-11 read as under :

17. *The learned TPO has grossly erred in not appreciating that the outstanding receivables is not covered in the definition of international transaction as defined u/s 92B of the Act in the facts and circumstances of the case.*

18. *Not appreciating the provisions of Chapter-X of the Income Tax Act, 1961 and passing an ad-hoc adjustment without analysing comparables for information on uncontrolled transaction.*

19. *Making adjustment by selecting ad-hoc interest rates without selecting an appropriate method and conducting a benchmarking search.*

20. *Not considering the arm's length credit period being allowed in the industry."*

2.2. The additional grounds raised by the assessee for A.Y. 2011-12 are similar to the additional grounds raised by the assessee for A.Y. 2010-11. Hence, the same are not reproduced for the sake of brevity.

3. The grounds raised by the Revenue for A.Y. 2010-11 are as under :

"1. The order of the DRP is erroneous in facts of the case.

2. The DRP ought to have considered that the 1) Acropetal Technologies Ltd (seg) 2) Eclerx Services Ltd. 3) Crossdomain Solutions Pvt. Ltd. 4) Infosys BPO Ltd from the list of comparables as the brand value in as service industry does not affect revenue.

3. The DRP ought to have retained the Infosys BPO Ltd from the list of comparables as the brand value in as service industry does not affect revenue.

4. The DRP ought to have retained the rate of interest on delayed trade receivables charged by Assessing Officer/ TPO.

5. The DRP erred in deleting the addition towards communication expenses in view of the explanation 2 to section 10A of the Act."

3.1 The grounds raised by the Revenue for A.Y. 2011-12 are as under :

"1. The Ld.DRP erred in deleting the comparables Accentia Technologies Ltd (seg), Cosmic Global Ltd., E4e Healthcare, Eclerx Services Ltd., Informed Technologies Ltd., Infosys BPO Ltd., Jeevan Scientific Technologies Ltd., Mastiff Tech Pvt. Ltd. Microgenetic Systems Ltd and TCS E Serve Ltd., taken by the TPO / Assessing

Officer for TP analysis which resulted in reduction of TP adjustment from Rs.2,08,21,773/- in draft order to Rs.1,24,93,491/- in the final order of assessment.

4. The Ld.DRP ought to have retained the rate of interest on delayed trade receivables charged by Assessing Officer/TPO.

5. The DRP erred in directing the Assessing Officer to exclude communication expenses and insurance charges from the export turnover and also total number for computing deduction u/s 10A of the Income Tax Act.”

4. The brief facts of the case for A.Y. 2010-11 are that the assessee company is engaged in the business of software development and services. It filed its return of income for A.Y. 2010-11 on 12.10.2010 admitting total income of Rs.3,80,474/- after claiming a deduction of Rs.18,01,218/- u/s 10A of the Income Tax Act. Thereafter, filed its revised return on 24.01.2011 admitting total income of Rs.49,19,965/- after claiming a deduction of Rs.2,84,97,1010/- under Section 10A of the Act under normal provisions. Subsequently, the case was selected for scrutiny through CASS and notices u/s 143(2) and 142(1) of the Act along with questionnaire have been issued and served on the assessee. In response, assessee furnished information from time to time and the same was examined.

4.1. During the course of assessment proceedings, on verification of the expenditure debited to the Profit & Loss account, it was found that the assessee-company did not deduct TDS on payments totaling Rs. 9,70,000/- towards Auditors' Remuneration and professional charges. Consequently, this amount was disallowed under Section 40(a)(ia) and added to the total income in the draft assessment. Subsequently, on appeal DRP upheld the said disallowance in its

order dated 26.09.2014 and furthermore, the DRP directed the AO to compute income in such a way that the assessee company does not get double benefit under both Section 40(a)(ia) and Section 10A while computing the income and held that expenses related to business activities cannot be considered while computing deductions u/s 10A of the Act.

4.2. The Assessing Officer further found that the assessee-company had recorded Rs.5,91,248/- as income tax payment. However, this amount does not qualify as an allowable expense under Section 40(a)(ii) of the Income Tax Act. Consequently, Rs. 5,91,248/- was disallowed and included in the total income of the assessee-company in the draft assessment order. Subsequently, on appeal, DRP in its order dated 26.09.2014, instructed the Assessing Officer to re-evaluate the matter and if the assessee had not claimed the income tax payment as a deduction, the DRP directed the AO to remove the addition. Following the DRP's directions, an amount of Rs.5,91,248/- was disallowed based on the audit report of the assessee-company and added back to the total income.

4.3. In the previous year relevant to assessment year 2010-11, the assessee-company engaged in international transactions related to IT-enabled services. Consequently, vide office letter dated 06-08-2012, the matter was referred by the Assessing Officer to the Transfer Pricing Officer (TPO) for determining the Arms Length Price (ALP). The TPO, through an order under Section 92CA(3) of the Income Tax Act dated 31-10-2013, determined the ALP for these international transactions at Rs.7,24,90,047/-. Following this, a

final assessment order u/s 143(3) read with Section 92CA(3) and Section 144C was issued on 23.12.2013. Subsequently, the assessee appealed to the Dispute Resolution Panel (DRP), which on September 26, 2014, directed the TPO to make adjustments under Section 92CA(3). The TPO re-evaluated the ALP as per the DRP's directions and issued an order on October 27, 2014, detailing the revised Arms Length Price and adjustments for all international transactions as under :

S.No.	International Transaction	Arm's Length Price	Adjustment (In Rs.)
1	Provision of ITES	23,70,27,723	4,09,44,188
2	Receivables	40,78,054	40,78,054
	Total	24,11,05,77	4,50,22,242

4.4 During examination, it was found that the assessee incurred Communication and Internet charges totaling Rs. 12,70,791. In computing the exemption under Section 10A, the assessee included these charges in the total export turnover of Rs. 19,60,83,150. However, as per explanation 2(iv) of Section 10A, expenses directly related to communication charges attributable to exports must be excluded from the export turnover for deduction purposes. Consequently, the amount of Rs.12,70,791 for Communication and Internet charges was excluded from the "Export Turnover" in the draft assessment order. Subsequently, on appeal, the DRP directed the Assessing Officer to deduct telecommunication expenses not only from the export turnover but also from the total turnover for computing the deduction under Section 10A of the Income Tax Act. Hence, the same was deducted under Section 10A of the Act. Regarding the availability of MAT Credit, the Hon'ble

DRP directed the Assessing Officer to verify the records and grant MAT credit accordingly. Upon review, it was found that for assessment year 2009-10, the assessment under Section 143(3) resulted in assessed income higher than the income computed as per Section 115JB. Thus, the Assessing Officer completed the assessment and passed order u/s 143(3) r.w.s. 144C(5) of the Act on 28.10.2014 assessing the total taxable income at Rs.5,15,28,975/-.

ITA No.1935/Hyd/2014 & ITA 424/Hyd/2016

5. First we will consider the appeals filed by the Revenue for both the assessment years. It was contended by the Id.AR that the tax effect of both the appeals are below the threshold limit provided by the CBDT. For the above said purposes, he has drawn our attention to the calculation of the tax effect placed on record.

6. The Id.DR has submitted that the Bench may decide the issue after considering the calculation provided by the Id.AR. Further, it was stated that the order may be passed in terms of the CBDT Circular.

6.1 We have heard the rival contentions of the parties and perused the material on record. The tax effect calculation in the appeal of the Revenue, for both the assessment years are as under :

Adjustment and tax effect calculation

Particulars	TPO Order - Post DRP Directions	If Department appeal is upheld	Remarks
Operating cost	19,26,42,818	19,26,42,818	Page 46 of TP order from appeal set
Arm's length margin (%) (AALM)	23.04%	27.90%	
Arm's length operating revenue - to be received	23,70,30,934	24,63,88,862	
Price received (after voluntary adjustment)	22,73,18,909	22,73,18,909	Page 46 of TP order from appeal set
Adjustment Value	97,12,025	1,90,67,753	
Particulars	Amount (in INR)		Remarks
<i>Adjustment contented - By Department</i>			
- Transfer Pricing adjustment (Provision of ITeS)		93,55,728	i.e. difference between INR 1,90,67,753 and INR 97,12,025
- Corporate tax adjustment (communication expenses)		12,70,791	Page 4 of Draft assessment order from appeal set
Total		1,06,26,519	
Tax Effect on the above @ 34%		36,13,016	Not breaching the threshold prescribed for an departmental/revenue appeal before ITAT

Adjustment and tax effect calculation

Particulars	TPO Order - Post DRP Directions	If Department appeal is upheld	Remarks
Operating cost	17,35,05,874	17,35,05,874	Page 47 of TP order from appeal set
Arm's length margin (%) (AALM)	25.42%	31.31%	
Arm's length operating revenue - to be received	21,76,11,067	22,78,30,563	
Price received	20,51,17,576	20,51,17,576	Page 47 of TP order from appeal set
Adjustment Value	1,24,93,491	2,27,12,987	
Particulars	Amount (in INR)		Remarks
<i>Adjustment contented - By Department</i>			
- Transfer Pricing adjustment (Provision of ITeS)		1,02,19,496	i.e. difference between INR 2,27,12,987 and INR 1,24,93,491
- Corporate tax adjustment (communication expenses)		7,81,226	Page 4 of Draft assessment order from appeal set
Total		1,10,00,722	
Tax Effect on the above @ 34%		37,40,245	Not breaching the threshold prescribed for an departmental/revenue appeal before ITAT

6.2 We have heard the rival contentions of the parties and perused the material on record. The tax effect calculation in the appeal of the Revenue, for both the assessment years are as under :

6.3 We find that the Revenue has challenged the order of the Id.CIT(A) in deleting the additions and the tax effect in both the appeals is less than Rs.50.00 lakhs. The above said aspect has not been disputed by the Id.DR. The CBDT vide circular No.17/19

dated 8.8.2019 has raised the monetary limit for filing of the appeal by the Revenue before the Tribunal to Rs.50.00 lakhs. Since the tax effect involved in the grounds raised by the Revenue before the Tribunal in both the appeals is admittedly less than Rs.50 lakhs, therefore, both the appeals filed by the Revenue are not maintainable and accordingly the same are liable to be dismissed as withdrawn. We, therefore, dismiss the appeal filed by the Revenue.

6.4 However, in case, the Revenue at any point of time find that the tax effect is more than Rs.50.00 lakhs or that the same is covered by any of the exceptions mentioned in the said circular, the Revenue is at liberty to move appropriate application before the Tribunal for restoration of the appeals.

6.5. In the result, both the appeals of Revenue are dismissed.

7. Next, we will deal with assessee's case in ITA No.1866/Hyd/2014 for A.Y. 2010-11.

Grounds 1 to 3 :

7.1. The ld. AR has submitted that he wishes to not press grounds 1 to 3. On the other hand, the ld. DR had reported no objection. Heard the parties. In view of the no objection from the ld. DR, these grounds are dismissed as not pressed.

Ground No.4 – Voluntary TP Adjustment

7.2. The ld.AR has submitted that in respect to ground no.4 of the assessee's appeal pertains to the tolerance limit permissible under the Act for the relevant assessment year was 5% as per the provision of Section 92C of the Act. However, the tolerance limit has not been considered and granted by the Assessing Officer/DRP to the assessee while passing the order. In this regard, ld. AR has drawn our attention to the order of the Tribunal for A.Y. 2012-13 wherein, the identical issue has been adjudicated by the Tribunal wherein the Tribunal remit back the matter to the file of Assessing Officer/ TPO to give effect to the order as per the provisions of Section 92C of the Act.

7.3 On the other hand, ld. DR relied upon the orders of lower authorities.

7.4. We have gone through the grounds raised by the assessee and the order passed by the lower authorities. In our view, the assessee is entitled to the voluntary TP adjustment as per the provision of the Act and accordingly, we direct the Assessing Officer / TPO to give effect to the provisions of law and pass appropriate order after giving effect to the TP adjustment. Thus, this ground is allowed.

Ground No.5 – Selection of Comparables :

8. With respect to ground no.5 i.e., selection of comparables, the assessee has submitted that the assessee is only pressing for exclusion of two companies namely, **Accentia Technologies Limited and TCS e-Serve International Limited.**

9. In this regard, the ld. AR has submitted that DRP in the subsequent year 2011-12 at page 6 of the order has excluded these **two comparables** and our attention was drawn to the order of DRP for A.Y. 2011-12. The ld. AR has further submitted that these two companies have been excluded on account of the fact that the same were KPO. Additionally, our attention was drawn by the assessee with respect to the decision of Hyderabad Bench of the Tribunal in the case of ACIT Vs. Hundai Motors India Engineering Pvt. Ltd. (Paper book no.555 to 576.)

9.1. Per contra, ld. DR relied upon the orders passed by lower authorities.

9.2 We have heard the rival submissions and perused the material on record. The DRP for the assessment year 2011-12 at page No.6 of its order had excluded Accentia Technologies Limited, the finding of the DRP is as under :

“... Having considered the submissions, on examination of page 25 of the annual report, it is noticed by us that the company is engaged in e-prescription and document management include coding, billing, bills payments management, account receivables management and adhoc reporting. Coding is nothing but a service module in which physicians, diagnosis is fed into the coding module which automatically generates procedures and diagnostics codes however, as the assessee company is providing the routine ITeS services which cannot be compared with the function of the above company. The above company was excluded by the Hon'ble Mumbai TIAT in the case of Vodafone India Servies Private Limited (ITA No.740/Mum/2012) due to above functional differences, accordingly, we direct the AO to exclude the above company from the comparables.”

9.3. However, we find that in the case of the assessee for the assessment year 2008-09, the Tribunal in ITA No.1811/Hyd/2012 had remanded back the issue to the file of Assessing Officer for reconsidering the exclusion of these comparables. The Tribunal at page 13 of the order (running page 20 of Volume 5) had held as under :

“(f) Accentia Technologies Limited.

9.1 Objecting to the aforesaid comparable, the learned Authorised Representative for the assessee submitted that the aforesaid company cannot be treated as a comparable since the annual report of the aforesaid company clearly reveals the fact that exceptional event like merger/demerger has taken place during the financial year 2007-08, relating to the assessment year in dispute. It was submitted that during the financial year, the said company has an amalgamation of its unit as well as has acquired a company. It was submitted that the financial statement of the said company also shows a remarkable growth of the revenue to the tune of 78% and profitability by 110% after the acquisitions/amalgamations, which has increased the mark up of the company from 32% to 42.11% during the year under dispute. It was further submitted that apart from the fact that exceptional events have taken place, the aforesaid company is functionally different and cannot be compared with the assessee. It was submitted that the annual report of the said company of the financial year 2007-08 clearly shows that it is engaged in the development of software product. In support of his contentions, the learned Authorised Representative for the assessee

relied on the decisions of the Hyderabad Bench or the Tribunal in the cases of Cognizant Technologies Ltd. (supra) and Capital IQ Information Systems I P. Ltd. (supra) and the decision of the Bangalore Bench in the case of Symphony India Marketing P. Ltd. (supra).

9.2 The learned Departmental Representative, on the other hand, supported the orders of the DRP and TPO, and submitted that the aforesaid company was rightly selected as comparable.

9.3 We have heard submissions of the parties and perused the materials on record. As can be seen, the coordinate bench of the Tribunal in the case of Cognizant Technologies P. Ltd. (supra), following the decision in the case of Capital IQ Information Systems P Ltd. (supra) held as follows-

"46. We have considered the rival submissions and perused the material on record. We find that in case of Capital IQ (supra) objection with regard to the very same company was raised by the assessee. The coordinate bench after considering the submissions of the parties observed in the following manner:

10. It is the submission of the assessee that this company cannot be treated as a comparable because of uncomparable financial results arising out of amalgamation in the company. In this regard, the assessee has relied upon the order of the DRP for the assessment year 2008-09 in assessee's own case. It is seen that the DRP while considering similar objection placed by the assessee in the case of another company, viz. Mold Tek Technologies Ltd., in the proceedings relating to the assessment year 2008-09, has observed in the following manner-

"17.5. In addition to the above, the Director's Report of the company for the FY 2007-08 revealed the merger and the demerger. A company known as Techmen Tools Pvt. Ltd. had amalgamated with Mold-Tek Technologies Ltd. with effect from 1st October, 2006. There was a de-merger of Plastic Division of the company and the resulting company is known as Moldtek Plastics Limited. The de-merger from the Moldtek Technologies took place with effect from 1st April, 2007. The merger and the de- merger needed the approval of the Hon'ble High Court of Andhra Pradesh and also the approval of the shareholders. The shareholders of the company gave approval for the merger and the de-merger on 25.01.2008 and the Hon'ble High Court of Andhra Pradesh had approved the merger and de- merger on 25th July, 2008. Subsequently, the accounts of Moldtek Technologies for FY 2007-08 were revised. On a perusal of the annual report it is noticed that Teckmen Tools Pvt. Ltd. and the Plastic Division of the company were demerged and the resulting company was named as Moldtek Plastics Ltd. The KPO business remained with the company. A perusal of the Annual report revealed that to give effect to the merger

and demerger, the financial statements were revised and restated after six months from the end of the financial year 31.3. 2008. The assessee filed Form No.21 under the [Companies Act](#) with the Registrar of Companies on 26th August, 2008. Thus the effective date of the scheme of merger and demerger was 26th August, 2008. The Annual Report supported the argument of the assessee that there were merger and demerger in the financial year and it was an exceptional year of performance as financial statements were revised by this company much after the closure of the previous year. The Panel agrees with the contention of the assessee that it is an exceptional year having significant impact on the profitability arising out of merger and demerger."

11. On careful consideration of the matter, we also agree with the aforesaid view of the DRP that extra-ordinary event like merger and de-merger will have an effect on the profitability of the company in the financial year in which such event takes place. It is the contention of the assessee that in case of the aforesaid company, there is amalgamation in December, 2006, which has impacted the financial result. This fact has to be verified by the TPO. If it is found upon such verification that the amalgamation in fact has taken place, then the aforesaid comparable has to be excluded.

47. Facts being identical, we remit the matter to the Assessing Officer to verify the fact of amalgamation and acquisition and take a decision in the matter after considering the submissions of the assessee. The Assessing Officer while deciding the acceptability of the aforesaid company shall also consider the contentions of the assessee with regard to functional difference between the two."

It is no doubt true that exceptional events like merger/demerger does impact the profitability of a company. Hence, it is necessary to look into this aspect before selecting a particular company as comparable. In the aforesaid circumstances and keeping in view the decisions of the coordinate benches as aforesaid, we remit the matter back to the file of the Assessing Officer, who shall verify the fact whether in fact, the exceptional events like amalgamation and acquisition, which have taken place in this case, has any impact on the profitability of the company as claimed by the assessee, and thereafter decide the issue of the acceptability or otherwise of the aforesaid company as a comparable. While doing so, the Assessing Officer shall also consider the contention of the assessee with regard to the functional difference of the said company with the assessee. The Assessing Officer shall accordingly redecide this issue in accordance with law after giving reasonable opportunity of hearing to the assessee."

9.4. In our considered view, once the Tribunal in the case of the assessee, for the assessment year 2008-09 has remanded back the matter to the file of Assessing Officer for fresh examination, then it was not appropriate for the DRP to exclude the Accentia by relying upon the decision in the case of Vodaphone India Services Pvt. Limited, (ITAT Mumbai supra). Once the case is covered in favour of the Revenue by the decision of the Tribunal in the earlier year, then the Tribunal is bound to follow the decision of Co-ordinate Bench of the Tribunal. In our view, once the functionality and profile of the assessee company is to be examined afresh, then the principle of consistency is required to be followed by the Bench. Accordingly, the issue of exclusion of comparables namely Accentia Technologies Limited is sent back to the file of Assessing Officer/TPO.

TCS e-Serve International Limited

9.5. Coming to other comparable company namely, **TCS e-Serve International Limited**, the ld. AR has drawn our attention to the order of DRP wherein the DRP has included this company as comparables without making any consistent comparative analysis and undertaking an objective of the company. In this regard, ld. AR has submitted that this company is functionally different from the assessee company and for that purposes, our attention was drawn to the order of DRP. The ld. AR has also drawn our attention to the pages 223 and 225 of the paper book wherein it was submitted that there is an abnormal increase in the profit of the assessee whereas the account is in losses, however, due to extra ordinary

circumstances, this company has earned profit. Our attention was drawn to page 217 of the paper book i.e., Directors' Report.

DIRECTORS' REPORT

To the Members,

The Directors have pleasure in presenting the third Annual Report of the Company together with the audited statement of accounts for the year ended March 31, 2010.

FINANCIAL RESULTS

Summary of the financial performance of the Company during the year is as follows –

	<i>(Rupees in lakh)</i>	
	Year ended March 31, 2010	Year ended March 31, 2009
Total Income for the year	15040.09	5464.37
Profit before Taxes	4516.79	(2426.12)
Profit after Taxes	4495.64	(2454.12)
Balance Brought forward from Previous Year	(2718.15)	(264.03)
Amount Available for Appropriation	1777.49	(2718.15)
Balance carried to Balance Sheet	1777.49	(2718.15)

DIVIDEND

Your Directors do not recommend any dividend for the financial year ended March 31, 2010.

OPERATIONS & BUSINESS REVIEW

Financial Year 2009-10 is the second year of operations for the Company and first full-year as a step-down subsidiary of Tata Consultancy Services Limited (TCS). Company has recorded all-round growth in volume of business and profitability in the year. Total income at Rs.150.40 crore was nearly three times higher as compared with last year income of Rs.54.64 crore. Of this, the operating income constituted Rs.149.29 crore, higher by 173% over previous year figure of Rs.54.46 crore and is entirely constituted of exports income. Other income amounting to Rs. 110.53 lakhs is essentially the income earned from investment of surplus funds as against the previous year's Other Income of Rs.18.59 lakhs and is in line with the growth in operational income.

Reflecting growth in business, your Company registered a Profit after Tax of Rs.44.95 crore as previous year loss of Rs.24.54 crore. Your Company was able to expand its margins in this fiscal on the back of improved operational performance and increased utilization of infrastructure capacities created in the last year. The SEZ units of the Company at Gurgaon and Chennai have retained the status of "Net Foreign Exchange earner" within the meaning of the Special Economic Zones, Act, 2005. As on March 31, 2010, 1592 employees were on rolls of the Company.

9.6 The Id. AR has also drawn our attention to the decision of Hyderabad Bench of the Tribunal in the case of ACIT Vs. Hyundai Motors India Engineering Pvt. Ltd (supra), wherein the Tribunal has excluded this company from the list of comparables for A.Y. 2010-11.

9.7. Per contra, Id. DR had relied upon the orders passed by the lower authorities. The Id. DR has pointed out that DRP while passing the order has given finding with respect to objections of the assessee for exclusion of this company, which read as under :

- “the company clearly made disclosure in the annual report that, as it become part of TCS/Tata group, it is backed by TCS’s large scale and client base has enhanced in service offerings and has also stated servicing new clients during the year.
- As a result of merger and brand value of TCS, the overseas business expenditure also reduced for the company.

9.8 We have gone through the record and considered the rival contentions of the parties. From the perusal of the financial statement and the functions performed by TCS e-Serve International Limited, we are not in agreement with the submissions of the assessee that this company is financially different from that of the assessee. In fact, the activities of the assessee company are broadly matching with the company namely, TCS e-Serve International Limited. Further, the case law i.e., ACIT Vs. Hyundai Motors India Engineering Pvt. Ltd (supra) relied upon by the assessee is not in favour of the assessee as in the said order it was mentioned that exceptional circumstances were happened during

the year under consideration. The perusal of page 217 of the paper book mentions about the Directors Report wherein, it is mentioned that the financial year of 2009-10 is the second year of operation of the company as the step down subsidy of TCS and it has earned total income of Rs.150.40 crores which is more than three times higher than that of the previous year. At page 219, it is mentioned that this company is into the broad range of services, catering to the process management, requirement of wide range of financial products, and enterprise support system. Further, at page 225, against the background and principle activities, it is mentioned that the company is into ITeS /BPO services primarily to City group entities globally. Thus, it is clear that the documents referred by the assessee nowhere shows any extra ordinary events happened during the year and on the contrary, it shows that the assessee company is offering services to City Group to its corporate and its retail clients. Thus, the objection of the assessee that is without any basis. In the light of the above, the objection of the assessee for exclusion of this company is rejected. In our view, the above said facts have not been brought to the notice of the Tribunal in the case of Hundai (supra) and therefore, the same is not binding on the Tribunal. Thus, ground no.5 of the assessee is partly dismissed.

Ground No.6 – Rejection of comparables

9.9. With respect to ground no.6 i.e., Rejection of comparables, it was submitted by the ld. AR that the assessee is not pressing this ground as the appeal of the Revenue is bound to be dismissed on account of low tax effect. The ld. AR had filed the following calculation sheet (reproduced hereinabove) to assert that the appeal of Revenue is liable to be dismissed on account of low tax.

9.10. Per contra, ld. DR has submitted that the Tribunal may pass appropriate order.

9.11. We have heard the rival submissions and perused the material on record. We found that this ground has not been urged by the assessee submitting that the same has to be dismissed on account of the low tax effect. In view of the above, this ground is dismissed as not maintainable.

Ground No. 7.

10. The ld. AR has not pressed grounds 6 and 7 for which the ld. DR had reported no objection. Heard the parties. In view of the no objection from the ld. DR, ground nos.6 and 7 are dismissed as not pressed.

Ground nos.8 and 9 – Interest on Outstanding Receivables.

11. The ld.AR has submitted that the Tribunal in subsequent assessment year for A.Y. 2012-13 has allowed the ground of the appeal and therefore, the LIBOR Plus 200 basis points is required to be applied.

12. Per contra, ld. DR had relied upon the various orders passed by the Tribunal.

12.1. We have heard the rival submissions and perused the material on record. On pages 34 and 35 of the DRP order, the DRP, in the peculiar facts of the case, has restricted the interest on trade receivables to LIBOR plus 250 basis points. In our view, once the issue has been adjudicated by the DRP by directing the Assessing Officer to adopt LIBOR plus 250 basis points, we do not find any reason to deviate from that. Though the co-ordinate Bench of the Tribunal in A.Y. 2012-13 has restricted to LIBOR plus 200 basis points, however, while passing the order, the finding of the DRP for the assessment year 2010-11 has not been brought to the notice of the Bench. Therefore, we are of the opinion that it will be appropriate to restrict the interest on trade receivables at LIBOR plus 250 basis points. Further, we may point out that this Bench has been taken the view of SBI bank rate of 6% on trade receivables with 60 days credit period, which has been held by the Bench in many cases including Satyam Ventures Engineering Services Vs. ACIT, Zeta Interactive Systems India Private Limited, M/s. Apache Footware India Pvt. Ltd. etc. However, since the Revenue has not filed the appeal against the order of DRP on the ground of trade

receivables, therefore, we are not deciding the issue in the light of our decision in the case of Satyam Ventures (supra) and only upholding the decision of the DRP. Further, the Id.AR has failed to find out any error in the finding given by the DRP. Thus, these grounds are dismissed.

Ground Nos.14 and 16 - Disallowance of expenditure

13. The Id.AR has submitted that the Assessing Officer had made the disallowance of provision made for auditor remuneration and professional charges on account of non deduction of TDS. In our view the above said facts needs verification and therefore, we deem it appropriate to remand back the matter to the file of Assessing Officer for adjudication of these grounds. Thus, these grounds are allowed for statistical purposes.

13.1. In the result, the appeal of assessee in ITA No.1866/Hyd/2014 for A.Y. 2010-11 is partly allowed for statistical purposes.

14. Next, we will deal with assessee's case in ITA No.501/Hyd/2016 for A.Y. 2011-12.

14.1. The brief facts of the case for A.Y. 2011-12 are that assessee company is engaged in the business of providing data processing and back office services to Market Tools Inc. U.S. It filed its return of income for A.Y. 2011-12 on 28.11.2011 declaring an income of Rs.2,39,752/-. The case was taken up for scrutiny and notice u/s 143(2) of the Act dt.07.09.2012 was issued and served on

the assessee and in response, assessee furnished information. After examining the information furnished by the assessee company, Assessing Officer completed the assessment.

14.2. During the course of assessment proceedings, the issue of International Transactions entered by the assessee company was referred to the TPO after obtaining prior approval from the Commissioner of Income Tax-I, Hyderabad. The TPO, in his order u/s 92CA(3) of the Act dated 30.09.2014, determined the arm's length price for the provision of IT-enabled services, finding a shortfall of Rs. 2,08,21,773/- from these international transactions. The TPO also noticed that the assessee company had some receivables at the end of the year and the TPO charged interest on receivables of Rs. 20,47,36,916/- for the delayed period at 12% p.a., amounting to Rs. 2,01,52,105/- as the same was not reported in Form 3CEB. Additionally, no study was conducted by the assessee regarding these receivables. Since the assessee company failed to report the transactions relating to receivables and furnish the same in Form 3CEB, the TPO suggested penalties u/s 271AA and 271BA of the IT Act. Therefore, in concurrence with the order u/s 92CA(3), the difference in the Arm's Length price, as detailed below was proposed to be disallowed and added back to the total income of the assessee.

S.No.	International Transaction	Arm's Length Price	Adjustment (In Rs.)
1	Provision of ITES	22,59,39,349	2,08,21,773
2	Receivables	2,01,52,105	2,01,52,105
	Total	24,60,91,454	4,09,73,878

14.3 Aggrieved with the above draft assessment order, assessee filed petition before the DRP and thereafter, DRP vide its order dt.29.12.2015 directed the Assessing Officer to charge interest on receivables @ 5% instead of 12% charged by the TPO, under provision for SDS and to recalculate the operating margin of Jindal Intellicom after excluding the operating cost, miscellaneous balances written off, provision for bad and doubtful debts etc. Thereafter, the order of DRP was forwarded to the TPO who vide his letter dt.27.01.2016 recomputed the ALP both under the provisions for SDS and ITES and recomputed ALP as under :

Description	Amount
Arm's Length Margin	19.19%
Less : WCA	-6.23%
Adjusted Arm's Length Margin	25.42%

Operating cost	173,505,874
Adjusted Arm's Length Margin (%) (AALM)	25.42%
Arm's Length Price = (100+AALM)	217,611,067
Price Received (OR)	205,117,576
Adjustment u/s 92CA	12,493,491

14.4. Accordingly, worked out ALP at Rs.21,76,11,067 and adjustment thereon at Rs.1,24,93,491/-. Regarding outstanding receivables, the interest was worked out as under :

Interest @5% on outstanding receivables of Rs.32158636 for 9 months (2894277*5/12)	Rs.12,05,949
Interest @5% on outstanding receivables of Rs.172578280 for 10 months (17257828*5/12)	Rs.71,90,762
	Rs.83,96,711

14.5 The total adjustment on international transaction was as under :

S.No.	International Transaction	Adjustment (In Rs.)
1	Provision of ITES	1,24,93,491
2	Receivables	83,96,711
	Total	2,08,90,202

14.6 Exclusion of communication costs from export turnover for the purchase of computation of deduction u/s 10A.

14.7 The assessee filed Form 56F claiming a deduction under Section 10A, wherein the assessee declared the Export Turnover at Rs. 20,47,36,932/-. It was noted that the assessee incurred expenditure towards communication costs of Rs. 14,29,432/- and insurance costs of Rs. 31,88,479/-. As per clause (iv) of Explanation 2 of Section 10A, the communication costs of Rs. 14,29,432/- and insurance costs of Rs. 31,88,479/- are to be reduced from the 'Export Turnover'. However, the assessee-company did not make this reduction. Consequently, the Export Turnover declared by the assessee as per Form 56F was adjusted after reducing the aforementioned expenditure incurred towards communication costs and insurance and after computations, the Assessing Officer worked out the eligible deduction u/s 10A at Rs.3,38,54,748/-. However, the ass claimed Rs.3,46,35,975/- as deduction u/s 10A. Hence, the difference of Rs.7,81,226/- being the excess deduction claimed by the ass was proposed to be disallowed.

14.8. Aggrieved by the same, assessee company approached the DRP, who in turn directed the Assessing Officer to exclude the same from export turnover following the decision of Hon'ble Karnataka High court in the case of CIT Vs. Tata Elxsi Limited and Others. Hence, following the directions of DRP, the deduction claimed by the assessee company was allowed after excluding the communication charges and insurance from the export turnover. Thereafter, Assessing Officer passed the final assessment order u/s 143(3) r.w.s 92CA(3) r.w.s 144C(5) of the Act dt.29.01.2016 assessing the total income at Rs.2,11,29,954/-.

Grounds 1 to 3.

16. The ld. AR has submitted that he wishes to not press grounds 1 to 3. On the other hand, the ld. DR had reported no objection. Heard the parties. In view of the no objection from the ld. DR, these grounds are dismissed as not pressed.

Ground Nos. 4 and 5 – Selection of comparables

17. During the course of argument, the ld.AR for the assessee has pressed for exclusion of Crossdomain Solutions Private Limited only. It is the contention of the assessee that the company M/s. Crossdomain is engaged in range of services including human resources, finance and marketing. It was further submitted that the issue is covered in favour of the assessee in assessee's own case for the assessment year 2008-09 and 2012-13. The ld. AR has submitted that this company comes under the category of KPO and

hence, the same is required to be accepted as comparable company and relied on its own case for A.Y. 2008-09 wherein the Tribunal at page 17 (running page 24 of the volume 5) of the order, has directed to exclude Crossdomain Solutions Private Limited and the relevant portion of the order is extracted hereinbelow :

“11.3 We have heard the submissions of the parties and perused the material on record with regard to the aforesaid company. As can be seen from the website extract of the aforesaid company, it is engaged in providing services which are in the nature of KPO. Further, on perusal of the annual report of the company, furnished in the paper-book, it is seen that the said company is engaged in providing Niche services, as well as developed its own brand 'Exdion' to target the insurance industry in US. The Annual Report further reveals that the company has been running marketing campaigns in the US for expanding its plant base in relation to the brand developed by it. The assessee however, is only providing IT Enabled Services to its AE and does not have the diversified activities like the aforesaid company. The Bangalore Bench of the Tribunal in the case of Symphony Marketing Solutions India P. Ltd. V/s. ITO (supra), while considering the issue of aforesaid company as a comparable accepted the assessee's contention that Crossdomain cannot be compared to a routine ITES provider and directed for exclusion of the same from the list of comparables. Respectfully following the aforesaid decision of Income-tax Appellate Tribunal Bangalore in the case of Symphony Marketing Solutions (supra), we also direct the Assessing Officer to exclude the aforesaid company from the list of comparables for the purpose of determining ALP.”

17.1. Per contra, ld. DR has relied upon the orders of the lower authorities and our attention was drawn to the order of DRP. DRP at page 7 of its order after relying upon the decision of ITAT, Hyderabad in the case of M/s. Excellence Data Research Pvt Limited (ITA No.159/Hyd/2015) held that this company is functionally similar to that of the assessee company.

17.2. We have heard the rival submissions and perused the material on record. During the course of arguments, we have enquired from the ld. AR that what is the service agreement with its AE and what kind of services were being rendered by the assessee to its AE whether it is in the nature of ITeS or not. The ld.AR has fairly submitted that this question has not been examined by the Tribunal in the assessment years 2008-09 and 2012-13. In our considered opinion, it is essential for the lower authority to examine the profile of the assessee company and services rendered by it to its AE having regard to service agreement, man power requirement, their qualifications and the terms and conditions of the employment. Since needless has not been done by the lower authorities and neither the Tribunal was having the benefit of examining this issue, therefore, we deem it appropriate to remand this issue to the TPO to examine the service agreement of the assessee with its AE and find out whether the assessee is comparable with that of the Crossdomain Solutions Private Limited or not. The reliance on the co-ordinate Bench of the Tribunal's decision is of no use as the above said clinching issue has not been examined by the Bench and therefore, the decision is not binding on this Bench. Hence, we remand back the issue of exclusion of Crossdomain Solutions Private Limited to the file of Assessing Officer / TPO. Thus, this ground is allowed for statistical purposes.

Ground No.6 – Rejection of comparables

18. With respect to ground no.6 i.e., Rejection of comparables, it was submitted by the ld. AR that the assessee is not pressing this ground as the appeal of the Revenue is bound to be dismissed on

account of low tax effect. The ld. AR had filed the following calculation sheet (reproduced hereinabove) to assert that the appeal of Revenue is liable to be dismissed on account of low tax.

18.1. Per contra, ld. DR has submitted that the Tribunal may pass appropriate order.

18.2. We have heard the rival submissions and perused the material on record. We found that this ground has not been urged by the assessee submitting that the same has to be dismissed on account of the low tax effect. In view of the above, this ground is dismissed as not maintainable.

Ground No.7

19. The ld. AR has not pressed this ground, for which the ld. DR had reported no objection. Heard the parties. In view of the no objection from the ld. DR, this ground is dismissed as not pressed.

Ground No.8 – Negative working capital adjustment

20. Ground no.8 is with respect to negative working capital adjustment. In this regard, ld. AR has drawn our attention to the order of Tribunal in its own case (ITA No.308/Hyd/2017 for A.Y. 2012-13) whereby the Tribunal has decided the issue in favour of the assessee in para 11 of its order (placed at page 5 of volume 5), wherein it was held as under :

“11. Now, coming to the issue relating to negative working capital adjustment covered by Ground No. 8, learned AR brought it to our notice that in assessee’s own case for the assessment year 2010-11, learned DRP while following its decision in the case of Cordys Software India P. Ltd., directed that negative working capital adjustment to the arithmetic mean margin of the comparables shall not be made. On a perusal of the same, we do not find any reason not to apply the same for this assessment year also because there are no factors which suggest a contrary view for this year, are brought to our notice by the Revenue. We, therefore, direct that negative working capital adjustment to the arithmetic mean margin of the comparables shall not be made. Ground No. 8 is allowed accordingly.”

20.1. Per contra, ld. DR relied upon the orders of lower authorities.

20.2. Respectfully, following the decision of co-ordinate Bench of the Tribunal in the case of assessee in ITA No.308/Hyd/2017, we also hold that negative working capital adjustment to the arithmetic mean margin of the comparables shall not be made. Thus, ground no.8 is allowed.

Ground No.9 - Interest on Outstanding Receivables

21. An identical issue has been considered by us in the case of assessee for A.Y. 2010-11. Hence, the reasons given by us in Para no.12.1 in ITA No.1866/Hyd/2014 for A.Y. 2010-11 shall apply mutatis and mutandis to this ground as well. Therefore, for similar reasons, we are inclined to dismiss this ground. Thus, this ground is dismissed.

22. In the result, the appeal of assessee in ITA No.501/Hyd/2016 for A.Y. 2011-12 is partly allowed for statistical purposes.

23. In the combined result, the appeals of assessee are partly allowed for statistical purposes and the appeals of Revenue are dismissed.

Order pronounced in the Open Court on 22nd July, 2024.

Sd/- (G. MANJUNATHA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 22nd July, 2024.

TYNM/sps

Copy to:

S.No	Addresses
1	Macromill Research India LLP (Formerly known as Market Tools Research Pvt. Limited), 1 st Floor, Phase 1 and 3 rd Floor, Phase 1 B, Cyber Pearl, Hitech City – 500 081, Hyderabad, Telangana.
2	The Assistant Commissioner of Income Tax, Circle – 5(1), Hyderabad.
3	Dispute Resolution Panel, Bangalore.
4	The Director of Income Tax (IT-TP)- Hyderabad
5	The Addl.CIT (Transfer Pricing), Hyderabad
6	DR, ITAT Hyderabad Benches
7	Guard File

By Order