

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.99/Del/2016

निर्धारणवर्ष/Assessment Year:2011-12

BT e-Serve (India) Pvt. Ltd., 11 th Floor, Eros Corporate Tower, Nehru Place, New Delhi. PAN No.AADCB2533M	<u>बनाम</u> Vs.	ITO, Ward 5(2), New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri Nageswar Rao, Adv. and Shri Parth, Adv.
Revenue by	Shri Ashish Tripathi, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	07.03.2025
उद्घोषणाकीतारीख/Pronouncement on	21.03.2025

आदेश /O R D E R

PER C.N. PRASAD, J.M.

In this case the appeal of the Assessee was disposed of by the Tribunal in ITA No.99/Del/2016 for the AY 2011-12 in a common order dated 30/10/2017 along with appeal in ITA No.565/Del/2015 for the AY 2010-11. However, the assessee filed a miscellaneous application in MA No.279/Del/2018 in ITA No.99/Del/2016 for the assessment year under consideration i.e. AY 2011-12 pointing out

certain defects in the order passed by the Tribunal dated 30/10/2017. The Tribunal after considering the miscellaneous application filed by the assessee via order dated 03/12/2021 recalled its order in ITA No.99/Del/2016 for AY 2011-12 dated 30/10/2017 for the limited purpose of adjudicating one of the comparables (Infosys BPO Ltd.) which was inadvertently overlooked while passing the order. The Tribunal also recalled its order to adjudicate on working capital adjustment which was omitted to consider while disposing of the appeal. Therefore, in this appeal only the following two issues have to be decided as per the order of the Tribunal in MA No.279/Del/2018 dated 03/12/2021:

- i) Infosys BPO Limited whether to be included or excluded from the final set of comparables;
- ii) for granting working capital adjustment.

2. In so far as the Infosys BPO Limited is concerned the Ld. Counsel submits that, Infosys BPO Limited is functionally dissimilar, it has significantly high turnover and high brand value. Referring to the annual report of Infosys BPO Limited the Ld. Counsel submits that the company is engaged in providing wide array of services. Referring to page 41 Ld. Counsel submits that significantly reporting

of the company shows the Industry segment in which the company operates and page 67 of the annual report shows that the company is engaged in Software and others. Ld. Counsel submits that income statement on page 68 also does not provide any further details. Referring to page 70 Ld. Counsel submits that there is no clarity, as it shows the same Revenue under Software Development and ITES. It is submitted that Infosys BPO Ltd. incurs expenses in nature of technical services costs, which is linked to consultancy charges thereby indicating that the company is engaged in outsource activities as opposed to the assessee which is engaged in providing routine support services in nature of data collection and analysis to its AE which is in nature of low end services as shown by the assessee at page 301 of appeal set. Ld. Counsel further referring to financials of the assessee at page 141 to 164 and at page 149 of profit and loss account and page 159 the relevant schedule, submitted that there is no outsourcing involved by the assessee. Therefore, Ld. Counsel submits that this difference in business models itself has been found a sufficient reason for non-comparability of companies, in the case of Ramp Green by Delhi High Court.

3. Reliance was also placed on the decision of the Hon'ble Delhi High Court in PCIT Vs. Cadence Design Systems (India) Pvt. Ltd. in ITA No.333/2019 dated 06/08/2019 which is placed at 310 of the Paper Book, wherein Infosys BPO Ltd. has been excluded from the final set of comparables. Ld. Counsel finally submitted that in assessee's own case for the AY 2012-13 the Tribunal in ITA No.6690/Del/2016 excluded Infosys BPO Ltd. from the final set of comparables.

4. With respect to working capital adjustment, Ld. Counsel for the assessee submitted that working capital adjustment should be allowed after verification for which necessary details were already placed on record before the DRP at page no.35 & 36 of the Paper Book as well as before the Tribunal at pages 202 & 203 of the Paper Book. Therefore, Ld. Counsel prays that a direction may be given to AO/TPO for allowing working capital adjustment.

5. On the other hand, Ld. DR strongly supported the orders of the authorities below.

6. Heard rival submissions, perused the orders of the authorities below. In so far as the Infosys BPO Ltd. as comparable company is concerned, we find that in assessee's own case for the AY 2012-13

the Tribunal in ITA No.6690/Del/2016 has excluded this company from the final set of comparables observing as under: -

“5.1 Infosys BPO Limited

It is assessee’s contention that this company was functionally dissimilar to the assessee company as this company was engaged in providing high-end integrated services. It has been submitted and demonstrated from the annual report of BPO Infosys Ltd. that this company is rendering a wide array of BPO services in the nature of business platforms, customer service outsourcing, finance and accounting, human resources outsourcing, legal process outsourcing, sales and fulfillment sourcing and procurement outsourcing etc. On the other hand, it is seen that the assessee provides only back office support services in the nature of IT enabled services and it is essentially a captive service provider. Although, the assessee has pleaded for exclusion of BPO Infosys Ltd. on other grounds also, it is our considered opinion that the wide functional dissimilarity between the two companies is sufficient to accept the assessee’s plea for exclusion of this company from the final set of comparables. We also find that BPO Infosys Ltd. was directed to be excluded by ITAT Delhi Bench in the case of Baxter India Pvt. Ltd. vs. ACIT in ITA 6158/Del/2016 which also provided captive IT Enabled Services to its AE. The year under consideration before the ITAT in the case of Baxter India (P) Ltd. was also AY 2012-13. The relevant observations are contained in para 23 of the said order and the same are being reproduced for a ready reference:

“23. In so far as exclusion of Infosys BPO Ltd. is concerned, we find from the submissions made by the assessee before the Assessing Officer/TPO/DRP is that Infosys BPO Ltd. is predominantly into areas like Insurance, Banking, Financial Services, Manufacturing and Telecom which are in the niche areas, unlike the assessee. Further it was also submitted that the Infosys BPO Ltd. comprises brand value which will tend to influence its business operation and the pricing

policy thereby directly impacting the margins earned by the Infosys BPO Ltd. We find the submissions of the Ld. Counsel for the assessee before TPO/DRP that in order to maintain the brand image of Infosys BPO Ltd. in the market, the company incurs substantial selling and marketing expenditure whereas the assessee being a contract service provider does not incur such expenses to maintain its brand has not been controverted by them. Further, Infosys BPO Ltd. being a subsidiary of Infosys has an element of brand value associated with it. This can be further confirmed by the presence of brand related expenses incurred by Infosys BPO Ltd. Further, Infosys BPO Ltd. has acquired Australian based company M/s Portland Group Pvt. Ltd. during financial year 2011-12. They provide sourcing and category management services in Sydney, Australia. Therefore, his company also failed the TPO's own filter of rejecting companies with peculiar circumstances. In view of the above i.e. functionally not comparable, presence of brand and extraordinary event that has taken place during the year on account of acquisition of Australian based company, we are of the considered opinion that Infosys BPO Ltd. should not be included in the list of comparables. We accordingly direct the Assessing Officer/TPO to exclude Infosys BPO Ltd. from the list of comparables for the purpose of computing the average margin."

5.1.1 Respectfully following the order of the coordinate bench, on identical facts, we direct the AO/TPO to exclude BPO Infosys Ltd. from the final set of comparables."

7. Facts being similar, respectfully following the decision of the coordinate bench, we direct the AO/TPO to exclude Infosys BPO Ltd. from final set of comparables for this assessment year also.

8. In so far as working capital adjustment is concerned, the AO/TPO is directed to look into the workings furnished by the assessee and appropriate relief may be granted in accordance with law after providing adequate opportunity of being heard to the assessee. With these observations, the recalled grounds in ITA No.99/Del/2016 dated 30/10/2017 are disposed of accordingly.

9. In the result, appeal of the assessee is partly allowed as indicated above.

Order pronounced in the open court on 21.03.2025

Sd/-
(NAVEEN CHANDRA)
ACCOUNTANT MEMBER

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

Dated: 21.03.2025

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi