

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'I' BENCH,  
NEW DELHI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT, AND  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 2374/DEL/2012 [A.Y. 2010-11]

Cvent India Pvt Ltd  
19<sup>th</sup> Floor, Tower C & D  
Building 14, DLF Cyber City  
Gurgaon

Vs.

TheI.T.O  
Ward - 3(4)  
New Delhi

PAN - AACCC 7667 F

ITA No. 187/DEL/2016 [A.Y. 2011-12]

Cvent India Pvt Ltd  
19<sup>th</sup>Floor, Tower C & D  
Building 14, DLF Cyber City  
Gurgaon

Vs.

TheA.CI.T.  
Circle -6(2)  
New Delhi

PAN - AACCC 7667 F

ITA No. 2505/DEL/2017 [A.Y. 2010-11]

TheDy.CI.T.  
Circle -7(1)  
New Delhi

Vs.

Cvent India Pvt Ltd  
19<sup>th</sup> Floor, Tower C & D  
Building 14, DLF Cyber City  
Gurgaon

PAN - AAACD 6817 F

(Applicant)

(Respondent)

Assessee By : Shri Himanshu Sinha, Adv.  
Shri Prashant Meharchandani &  
Shri Jainender Kataria, Adv.

Department By : ShriDheeraj Kumar Jaiswal, Sr. DR

**Date of Hearing** : **08.01.2025**  
**Date of Pronouncement** : **26.03.2025**

**ORDER**

**PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-**

The above captioned two separate appeals by the assessee and cross appeal by the Revenue are preferred against order dated 30.01.2017 of the Id. CIT(A) -38, New Delhi for A.Y 2010-11 and appeal of the assessee against order of ACIT, Cir 6(2), New Delhi dated 30.09.2015 pertaining to Assessment Years 2011-12 respectively.

2. Since the underlying facts in the captioned cross appeals by the assessee and Revenue are same and were heard together, they are disposed of by this common order for the sake of convenience and brevity.

**ITA No. 2374/DEL/2012 [A.Y. 2010-11]**

3. The assessee has raised the following grounds of appeal:

"1. That on the facts and in the circumstances of the case and in law, the order passed by the Ld. Assessing Officer ("Ld. AO")/ Ld. CIT(A) is bad in law and void ab-initio.

2. That the reference made by the Ld. AO suffers from Jurisdictional error as the Ld. AO has not recorded any reasons in the assessment order based on which he reached the conclusion that it was "expedient and necessary" to refer the matter to the Ld. Transfer Pricing Officer ("TPO") for computation of the arm's length price, as is required under section 92CA(1).

3. The Ld. AO/ Ld. TPO/ Ld. CIT(A) erred on facts and circumstances of the case in determining the arm's length adjustment to the Assessee's international transactions from Associated Enterprises ("AES") and thereby resulting in the enhancement of returned income of the Assessee by INR 19,838,830.

4. The Ld. AO/ Ld. TPO/ Ld. CIT(A) erred on facts and in law in the assessment of the arm's length price of the Assessee's international transactions from associated enterprises in the following manner.

4.1 The Ld. AO/ Ld. TPO/ Ld. CIT(A) erred on facts and in law to modify, based on his subjective grounds and presumptions, the comparability analysis conducted by the Assessee for determining the arm's length price in terms of section 92D of the Act read with Rule 10D of the Income-tax Rules, 1962 ('Rules') as well as fresh search.

4.2 The Ld. AO/ Ld. TPO/ Ld. CIT(A) erred in rejecting the comparable companies adopted by the Assessee on the basis of additional/ modified quantitative filters selected by the Ld. TPO and arbitrary statements that lacked valid and sufficient reasoning.

4.3 The Ld. AO/ Ld. TPO/ Ld. CIT(A) has erred by selecting certain companies which were not comparable by way of functions and assets in order to determine the arm's length margin applicable to the Assessee and also erred by rejecting certain companies which were comparable by way of functions and assets in order to determine the arm's length margin applicable to the Assessee.

4.4 The Ld. AO/ Ld. TPO/ Ld. CIT(A) has erred in incorrectly computing margins of comparable companies.

5. The Ld. AO/ Ld. TPO/ Ld. CIT(A) erred in re-computing the profit level indicator of the Assessee, by erroneously considering foreign exchange gain/ loss as a non- operating item, even though the same had been considered as operating in prior assessment years.

6. The Ld. TPO erred in computing working capital adjusted margins of comparable companies.

7. The Ld. AO/ Ld. TPO/ Ld. CIT(A) erred in arbitrarily rejecting the risk adjustment conducted by the Assessee in its transfer pricing submissions without taking cognizance of the fact that the Assessee does not bear significant business and operational risks while rendering services to its overseas affiliates

8. The Ld. AO/ Ld. TPO/ Ld. CIT-(A) erred in disregarding the multiple year data selected by the Assessee in the TP Documentation and in selecting the current year (i.e. financial year 2009-10) data for comparability despite the fact that at the time of comparison done by the Assessee, the complete data for financial year 2009-10 was not available within the public domain.

9. The Ld. AO/ Ld. TPO/ Ld. CIT(A) has erred in not appreciating the fact that the Assessee is a company incorporated under the provisions of the

Companies Act, 1956 and enjoying the tax holiday benefits conferred under the tax holiday benefits as per the Software Technology Park of India (herein after referred to as "STPI") Scheme.

10. That the Ld. AO/ Ld. CIT(A) erred in facts and in law in charging interest under section 234A, 234B and 234C of the Act

11. That on the facts and circumstances of the case and in law, the Ld. AO has erred in initiating penalty proceedings under section 271(1)(c) of the Act, for disallowances made under section 92CA(3) without recording any adequate reason for such initiation.

That the above grounds are independent and without prejudice to each other.

4. The representatives of both the sides were heard at length, the case records carefully perused and with the assistance of the ld. Counsel, we have considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules and have also perused the judicial decisions relied upon by both the sides.

5. Briefly stated, the facts of the case are that the assessee is an Indian company incorporated on February 16, 2006 at New Delhi and during the F.Y.2007-08 itself registered as a unit under Software Technology Parks Scheme of India (STPI) at STPI NOIDA and commenced

its operation from 13.04.2007. It is a 100% subsidiary of M/s Cvent Inc., USA. During the year the assessee company was engaged of rendering online event registration services and e-marketing services globally in USA. Cvent Inc. enters into contracts with customers and subcontracts a part/whole of the work to Cvent India. The assessee Cvent India is also engaged in the business of providing online event registration and other support services to customers of Cvent Inc. abroad.

6. The assessee filed E-return dated 22.03.2011 declaring Income of Rs. 37,49,100/- income after claiming deduction u/s 10A of the Income Tax Act, 1961 amounting to Rs. 3,37,72,153/-. During FY 2009-10, in conduct of its business, the assessee had provided BPO services to its AEs worth Rs. 19.62 crore. There were other international transactions of interest and reimbursement. The only dispute is in respect of the BPO services. The Assessee has earned a net profit margin of 14.43% on operating expenses.

7.The assessee has selected Transactional Net Margin Method ("TNMM") as the most appropriate method and benchmarked the international transactions using operating profit/operating cost ("OP/OC") as the profit level indicator ("PLI").The assessee selected 35 comparable companies in its transfer pricing ("TP") documentation and arrived at an

arithmetic mean of 14.12%, whereas the assessee earned an OP/OC margin of 14.43%. The assessee also submitted the updated margins of comparables (based on single year data) before the TPO during the TP assessment proceedings, wherein the arithmetic mean came out to be 4.53%,

8. The Ld. Transfer Pricing Officer ("TPO") disregarded the TP analysis of the assessee and arrived at a final set of 8 comparable companies with arithmetic mean of 34.91% and thereby made an adjustment of INR 4,46,25,506/-. The TPO also did not provide working capital adjustment and risk adjustment to the assessee. The TPO re-computed the PLI of the 10.01% instead of 14.43% by considering foreign exchange gain as a non-operating item. The TPO also treated recovery of expenses as part of P/L A/c and applied mark-up on the same. The final assessment order dated 25.03.2014 was passed confirming the adjustment made by the TPO and notice of demand was sent to the assessee raising tax demand of INR 1,87,72,030/-.

9. Aggrieved by this action of the TPO, the assessee filed an appeal against the assessment order before the ld. CIT(A) who after consideration of the facts and submissions, directed the TPO to exclude M/s. TCS E-serve International Ltd and include Motif India Infotech

Private Limited, Axis IT & T Limited, ICRA Online Ltd in the final set of comparable companies selected by the TPO and to examine Omega Healthcare Management Services Pvt Ltd and include it after verification. Further CTT(A) directed the TPO to re-compute the margins of Interglobe Technologies Pvt Ltd. The Id. CIT(A) also directed the TPO to exclude recovery of expenses while computing the operating margin. The CIT(A) provided working capital adjustment to the assessee and directed the TPO to re-compute the margins of the comparable companies.

10. The assessee is now in appeal before us against the inclusion of Cosmic Global Ltd., Eclerx Services Lad. and TCS e-Serve Ltd. and exclusion of Omega Healthcare management services Pvt Lad, and treatment of forex gain as non-operating item by the TPO/CIT(A).

11. At the outset, the Id AR submitted that the Ground Nos. 1, 3 and 4.1 are general in nature. The ground 2 is not pressed. Therefore the same are dismissed as not pressed.

12. It is the say of the Id AR that during the year under consideration, the assessee was engaged in the business of providing back office/offshore business process outsourcing ("BPO") services in relation to online event registration and other support services to Cvent Inc.

USA. Being a BPO services provider, the assessee did not own any valuable non-routine intangibles. The assessee deployed routine tangible assets like computers, office equipment, furniture, and fittings etc. for its operations. The Id AR submitted that as the assessee provides services only to its Associated Enterprise ("AEs"), the assessee is assured of a return of 10% on its costs for services rendered. Therefore, the assessee is insulated from majority of business risks.

13. Ground no 4.2, 4.3 and 4.4 are in respect of rejection and selection of certain companies as comparable and the Id AR addressed the same together.

14. The Id AR addressed the grounds against inclusion of the companies by TPO and upheld by the CIT(A) one by one.

#### Cosmic Global Ltd

15. Cosmic Global has revenue from 3 sources i.e., translation services, accounts BPO services and medical transcription and consulting services. Cosmic has revenue of only 26.97 Lacs from BPO services which is less than Rs. 5 crore, a filter applied by the TPO. Hence, it fails the TPO's filter of revenue from ITeS/BPO services of more than 5 crore.

15.1. The company earns overseas revenue only from medical transcription, translation and consultancy services. Hence, it is clear that revenue from BPO is only from domestic operations. Thus, Cosmic's export revenue from BPO services is 0%, therefore, fails Ld. TPO's own filter of having at least 75% export sales. In fact, Cosmic was rejected by the co-ordinate bench in assessee's own case for AY 2009-10 in ITA No. 4085/Del/2015 on the ground that it fails export filter of 75% and hence cannot be considered.

15.2. The ld. counsel for the assessee has relied on the following decisions where Cosmic Global as a comparable has been excluded:

1. ACIT vs. M/s Reservation Data Maintenance India Pvt. Ltd. [ITA No. 2516/Del/2017 dated 02.02.2022)
2. Evalueserve SEZ (Gurgaon) Pvt. Ltd v. ACIT [2021] 128 taxmann.com 470 (Delhi - Trib.) wherein the ITAT has rejected Cosmic Global.
3. M/s. Schlumberger Global Support Centre Limited v. DCIT (Int. Tax - II) [2015] 64 taxmann.com 322 (Pune Trib.)
4. M/s. Parexel International (India) Private Limited, Hyderabad v. ACIT [2014] 51 taxmann.com 238 (Hyderabad Trib.)
5. PTC Software (India) Pvt. Ltd. v. DCIT [2014] 52 taxmann.com 351 (Pune - Trib.)-affirmed by Hon'ble Bombay High Court in [2019] 101 taxmann.com 117 (Bombay)
6. Ms. Excellence Data Research Pvt. Ltd., Hyderabad (ITA. No. 159/Hyd/2014] dated 31.7.2014
7. Mercer Consulting (India) Pst Ltd v. DCIT (2014) 47 taxmann.com 84 (Delhi Trib.)

15.3. The assessee had selected Cosmic Global in its own TP documentation. However, the assessee submitted that Cosmic Global

should be excluded from the list of comparables on the ground mentioned above. The assessee submitted that an assessee cannot be precluded from seeking exclusion of a company selected by it in its TP study, when the company is otherwise not comparable to the assessee. This has been upheld by Special bench of ITAT, Chandigarh in **DCIT v. Quark Systems P. Ltd.** (2010) 38 SOT 307 (Chandigarh Trik) which has been affirmed by Hon'ble Punjab & Haryana High Court in CIT vs M/s Quark Systems India Pvt. Ltd. (IT Appeal No. 594 of 2016). A similar view has been taken by the Hon'ble High Court of Delhi in **Mentor Graphics (India) (P.) Lal.** (2023) 156 taxmann.com 268 (Delhi).

16. Per contra, the ld. DR strongly supported the orders of the authorities below.

17. We have carefully perused the orders of the authorities below and the decision of the Tribunal in assessee's own case for Assessment Year 2009-10. We find force in the contentions of the ld. counsel for the assessee. On finding parity in the facts with the year under consideration, we direct the Assessing Officer/TPO for exclusion of Cosmic Global from the final list of comparables.

Eclerx Services Ltd

18. The assessee had urged before the TPO against inclusion of Eclerx Services on the ground of functional dissimilarity. The TPO rejected the contention of the assessee without appreciating the fact that the assessee is engaged in the business of BPO and Eclerx is a KPO directed for its inclusion.

18.1. On appeal, CIT(A) rejected the contention of the assessee and recorded that the assessee is also providing Knowledge Process Outsourcing ("KPO") services and hence, it is functionally similar to Eclerx which is also a KPO service provider.

18.2. The ld AR submitted that the CIT(A) was of the view that Eclerx is providing KPO services. However, the CIT(A) without appreciating the fact that the assessee is a BPO, considered the assessee to be a KPO service provider. This wrong characterization of the assessee's business profile by the ld. CIT(A) has led to the inclusion of this comparable. The ld AR submitted that the finding of the CIT(A) is contradictory to its own finding in para 3.4.2 at page 15 of CIT(A) order where it accepts that the assessee is a BPO service provider providing ITeS services. The FAR profile of the assessee presented in the TP report demonstrates that the assessee is a BPO service provider.

18.3. The Id AR further stated that Eclerx is engaged in the provision of high-end Knowledge Process Outsourcing ("KPO") services such as end to end financial transaction support, strategic and process consulting services, product database management and catalogue audit while the assessee is classified as a low risk-bearing contract BPO service provider hence functionally not comparable.

18.4. The Id AR further pointed out that Exclerx has been rejected by CIT(A) in FY 2008-09 wherein it was held by CIT(A) that Eclerx is functionally not comparable to the Appellant since it is engaged in high end KPO services and cannot be classified as a normal BPO service provider and this finding of CIT(A) was not challenged by the Revenue before the ITAT.

18.5 The Id AR relied on the following decisions,Eclerx as a comparable has been excluded:

1. H&S Software Development and Knowledge Management Centre (P.) Ltd. v. ITO [2023] 155 taxmann.com 79 (Delhi-Trib.)
2. Rampgreen Solutions (P.) Ltd. v. DCTT [2023] 154 taxmann.com 541 (Delhi-Trib.)
3. Dunnhumby IT Services India Pvt Ltd [TS-189-ITAT-2021(DEL)-TP) dated 26.04.21 [AY 2010-11]
4. PTC Software (India) Pvt. Ltd. v. DCIT [2014] 52 taxmann.com 351 (Pune - Trib.)

5. Ms. Maersk Global Service Centres (India) PM. Lat. v. DCIT [2015] 56 taxmann.com 129 (Mumbai-Trib.)
6. M/s. Excellence Data Research Pvt. Ltd., Hyderabad [ITA No. 159/Hyd/2014] [AY 2009-10] dated 31.7.2014

19. We find force in the arguments of the ld AR of the assessee. In view of the above discussion, we direct the Assessing Officer/TPO for exclusion of Eclerx Services Ltd from the final list of comparables.

#### TCS e-Serve Ltd

20. The ld AR stated that the assessee had objected before the TPO against inclusion of TCS e-Serve on various grounds including functional dissimilarity, non-availability of segmental data and presence of brand. However, the TPO rejected the contention of the assessee on the ground that TCS e-Serve is also engaged in provision of ITS/BPO services, and that brand value has no correlation with the profitability of the company. The CIT(A) upheld the inclusion of TCS e-Serve.

21. Before us, the ld. counsel for the assessee vehemently stated that TCS e-Serve earns revenue from two business segments i.e. "transaction processing" and 'technical services which includes software testing, verification and validation of software and data centre management activities. However, the segmental information of ITeS/BPO and software development services is not available. The

segments have rather been bifurcated on the basis of industry and geographical location TCS e-Serve operates in. Since BPO/ITES segment details of TCS e-Serve are not available, it should be excluded.

21.1. The ld. counsel for the assessee further submitted that TCS e-Serve was taken over by Tata Consultancy Services Limited (TCS) during FY 2008-09. After the takeover the company was able to utilize TCS's large customer base to achieve greater operational efficiencies. However, as against this, the assessee does not have any brand associated with it. Hence, it cannot be a suitable comparable to the Appellant. Due to the brand association with TCS, TCS e-Serve was able to earn supernormal profits during FY 2009-10 and thus, is not a representative of margin earned by other companies in the industry.

21.2. Moreover, the ld AR states that Schedule N (Operation and other expenses) to the P&L Account of the company indicates that it is distinguishable from the Appellant due to the presence of brand and its associated value. TCS e-Serve is paying TATA Sons Limited, ultimate holding company, a contribution for using its brand name, TATA whereas the assessee has no similar contributions and an associated brand name to augment its operational margins.

21.3. The ld. counsel for the assessee contended further that the scale of operations of the assessee is much larger than that of the Appellant. TCS e-Serve's turnover of 1359.41 cr is 69 times more than that of the assessee whose turnover is 19.62 crores. A comparison of employee base shows the difference in the scale of operations between the assessee and TCS. TCS has employed 13,342 employees whereas employee strength of assessee was 315 at 31 March 2010. The assessee cannot be compared to TCS whose employee base is 42 times that of the assessee. Therefore, TCS is not a suitable comparable to the assessee as the assessee company is pigmy compared to giant TCS.

21.4. The ld. counsel for the assessee relied on the following decisions where TCS e-Serve as a comparable has been excluded:

1. M/s Actis Global Services Private Limited [TS-417-HC-2017(DEL)-TP]
2. M/s B.C Management Services Pvt. Ltd. [2018] 89 taxmann.com 68(Delhi)
3. E-Valueserve SEZ (Gurgaon) Pvt. Ltd. [TS-125-HC-2018(DEL)-TP]
4. BT e-Serv India Pvt. Ltd. [2019] 101 taxmann.com 275 (Delhi - Trib.)
5. M/s Kronos Solutions India Pvt. Ltd. [2017] 88 taxmann.com 310 (Delhi Trib.)

22. Per contra, the ld. DR relied upon the orders of the authorities below.

23. We have heard the rival submissions and have perused the relevant material on record. We find substance in the submissions of

the ld. counsel for the assessee. Accordingly, TCS e-Servecannot be considered to be an appropriate comparable and we direct for exclusion of the same.

24. The ld. counsel for the assessee submitted that the assessee has selected Omega Healthcare Management Services Private Limited for fresh search. The ld. counsel for the assessee submitted that this company is functionally comparable. The CIT(A) had directed TPO to include this comparable, however, the TPO has excluded the comparable on the ground that it has failed the export filter. The ld AR pointed out that the Annual Report of the company shows that the entire turnover of the company is attributed to the exports, therefore, there is no reason for the exclusion of this comparable. The total income of the company as on 31st March, 2010 stood at Rs. 70,97,42,425 and the export earnings as on March 31, 2010 stood at Rs. 70,89,82,739 which is almost 99.99% of the total revenue of the company.

25. We have heard the rival submissions and have perused the relevant material on record. We find that this company is functionally comparable. We, therefore, direct the Assessing Officer to include this company in the set of comparables. We are of the considered view that

to the extent of inclusion/exclusion of comparable companies, discussed as above, the orders of the TPO and the CIT(A) is set aside for fresh adjudication for determination of ALP adjustment of the assessee's BPO services. The assessee's ground no 4.2,4.3 and 4.4 is allowed therefore, for statistical purpose.

26. Vide Ground No. 5, the ld. counsel for the assessee has vehemently contended that the AO/TPO/CIT(A) have erred in re-computing the profit level indicator of the assessee by erroneously considering foreign exchange gain/loss as a non-operating item, even though the same has been considered as operating in prior assessment years.

27. It is the say of the ld. counsel for the assessee that the TPO/CIT(A) erroneously computed the OP/OC of Cvent India at 10.01% instead of 14.43% by treating the foreign exchange gain during FY 2009-10 on account of currency fluctuation as non-operating in nature. The entire foreign exchange gain has accrued to the assessee during the relevant financial year and the same was solely because of the export proceeds in convertible foreign exchange and had direct nexus with the exports of the assessee. Thus, the foreign exchange gain must be considered as operating income for the purpose of computing the

margins, being inextricably linked with the core business operations.  
i.e., provision of business support services to Cvent Inc. USA.

28. The ld. counsel for the assessee contended that the TPO/CIT(A) placed heavy reliance on safe harbor rules brought into force vide notification no. 73/2013 dated September 18, 2013 wherein forex gain/loss arising out of forex fluctuation has been treated as non-operating in nature. The TPO/CIT(A) did not appreciate that safe harbour rules are optional and the assessee did not apply these rules during the relevant year.

29. The ld AR further submitted that the TPO/CIT(A) also did not appreciate that these rules are applicable from AY 2013-14 onwards and hence are not applicable for the year under consideration. Reliance was placed on the decision by Delhi ITAT in the case of *PCIT v. M/s Cashedge India Pvt. Ltd.* [ITA 279/2016], wherein forex gain was treated as operating income.

30. Reliance was also placed on the following decisions:

- Pr. CII v. Ameriprise India (P) Ltd. (2017) 78 taxmann.com 373 (Delhi)
- Pr. CIT v. Fiserv India (P) Ltd. (IT Appeal No. 17/2016, dated 6-1-2016)
- Mix SAP Labs India Pvt. Lad. v. ACIT [2010] 8 taxmann.com 207 (Bangalore)
- Trilogy E-Business Software India Pvt. Ltd. 12 Taxmann.com 464 (Bangalore)

31. We have heard the rival submissions and have perused the relevant material on record. We are of the considered view that considering the business profile of the assessee, this contention raised on behalf of the assessee about inclusion of foreign exchange gains in operating revenue finds merit. We are inclined to agree with the assessee that the foreign exchange gain earned by the assessee is in relation to the revenue earned from its AE in connection with provision of ITES. We find that foreign exchange gain directly results from consideration received from rendering ITES to AE and therefore, we fail to understand how such foreign exchange fluctuation gain should be considered as non-operating. Further the Safe Harbour Rules are not applicable for the impugned AY 2010-11 as held by the hon'ble Delhi Court in the case of *PCIT v. M/s Cashedge India Pvt. Ltd.* wherein the Hon'ble Delhi High Court while upholding the Tribunal's order held that:

"7. As far as the question, i.e., foreign exchange fluctuation element is concerned, the records clearly reveal that the Safe Harbour Rules came into force later whereas the facts of this case pertain to the assessment year 2010-11 (Financial year 2009-10). As a consequence, the impugned order cannot be interfered with. No question of law thus arises. The appeal is consequently dismissed."

Accordingly, we allow this ground of appeal raised by the assessee and direct the Assessing Officer/TPO to treat the forex gains as operating income of the assessee. Ground No. 5 is allowed.

32. Vide Ground No. 6, the ld. counsel for the assessee submitted that the TPO erred in computing the working capital adjusted margins of comparable companies. The ld AR submitted that the assessee had submitted before the before the TPO/Ld. CIT(A) to consider the corrected unadjusted margin of 6.21%. It is the say of the ld AR that the CIT(A) even directed TPO to consider the correct working capital adjusted margins but this was not done by the TPO in the appeal effect order. The ld AR stated that the AO while giving effect to the appeal order, considered the working capital adjusted margin of Interglobe at 8.21%. The ld. counsel for the assessee further contended that correct working capital adjusted margin of Interglobe is 0.76% and therefore, prayed for appropriate directions for correction of the margins.

33. After considering the facts and submissions, we find that the CIT(A) even directed TPO to consider the correct working capital adjusted margins but this was not done by the TPO in the appeal effect order. We accordingly, direct the Assessing Officer/TPO to examine and consider the correct margins of Interglobe in the case of the assessee. Ground No. 6 is allowed for statistical purposes.

34. Ground No. 7 to 9 have not been pressed. The same are dismissed as not pressed. Ground no 10 and 11 are consequential in nature.

35. In the result, the appeal of the assessee is partly allowed for statistical purposes.

**ITA No. 187/DEL/2016 [A.Y. 2011-12](Assessee appeal)**

36. Fact of this A.Y are mutatis mutandis identical to those discussed and disposed in A.Y 2010-11 by us hereinabove. Respectfully following the same, we order accordingly.

**ITA No. 2505/DEL/2017 [A.Y. 2010-11] (Revenue Appeal)**

37. The Revenue has raised the following the grounds of appeal:

"1. Whether on the facts and in the circumstances of the case & in law, the Ld. CIT[A] has erred in rejecting the comparable viz. TCS E-serve International Ltd. by ignoring the facts that the assessee company and the above comparable company have similar functional profile, assets and risk for the year under consideration.

2. Whether on the facts and in the circumstances of the case & in law, the Ld CITIA] has erred in directing the inclusion of comparables rejected by the TPO viz. Axis-IT & T Ltd. & ICRA Online, by ignoring the fact that these two have failed export filter criteria. The filter criteria is technical and need to be carefully applied.

3. Whether on the facts and in the circumstances of the case & in law, the Ld. CIT[A] has erred in directing the inclusion of comparables rejected by the TPO viz. Motif India Infotech Pvt. Ltd., by ignoring the fact that the annual report of the company is not available in public domain."

38. with respect to Ground No. 1, for inclusion of the ld DR submitted that TCS e-Serve International Ltd is engaged in ITeS and technical and software development services and that the brand value has no co-relation with the profitability of the company. The ld DR heavily relied on the orders of TPO and the CIT(A).

39. Per contra, the ld AR of the assessee submitted that though TCS e-Serve International is engaged in ITeS and technical and software development services, however, the segmental information on the bifurcation between ITeS and technical services is not available in the Annual Report. It has been held in various decision that if the relevant segment details of a company are not available, it cannot be accepted as a good comparable.

39.1 The ld AR further stated that the presence of brand has a relation to the profitability of a company. It is the say of the ld AR that TCS e-Serve International possesses brand value due to its acquisition by TATA

group which will tend to influence the pricing policy and thereby directly impacting the margins earned by e-Serve International. The Id AR stated that TCS International has an abnormal growth in the FY 2009-10. Referring to page 376 of the AR compilation, the Id AR stated that FY 2009-10 is the second year of operations for the TCS International and it has recorded enormous all-round growth in volumes of business and profitability in the year.

39.2 The Id AR further pointed out that moreover, Schedule N (Operation and other expenses) to the P&L Account of the company indicates that it is distinguishable from the Appellant due to the presence of brand and its associated value. TCS e-Serve is paying TATA Sons Limited, ultimate holding company, a contribution for using its brand name, TATA (refer page 386 and 393 of the AR compilation) whereas the Appellant has no similar contributions and an associated brand name to augment its operational margins. The Id AR relied on the following decisions for exclusion of TCS E-serve International as comparable:

1. Avaya India (P.) Ltd. v. ACIT [2019] 108 taxmann.com (Delhi) (refer para 23, 24 and 29 of the order)
2. GE India Business Services Pvt. Ltd v. DCIT [2018] 94 taxmann.com 387 (Delhi - Trib.) - affirmed by Hon'ble High Court in [2023] 152 taxmann.com 517 (Delhi) (refer para 11 of the order)

3. M/s. Vertex Customer Services India Private Limited, [2017] 88 taxmann.com 286 (Delhi - Trib.) (refer para 43 of the order)

40. For our findings given while deciding the ground 4.2 to 4.4 therein, we dismiss Ground No. 1 of the Revenue.

41. Ground No. 2 pertains to inclusion of comparables rejected by the TPO viz. Axis-IT & T Ltd. & ICRA Online. The ld DR heavily relied on the orders of TPO and the CIT(A).

Axis- IT & T Ltd.

42. Brief facts are that Axis-IT & T is one of the comparable companies selected by the assessee in the TP documentation. TPO rejected the company on the ground that export earnings are less than 75% of total turnover. On appeal, the ld CIT(A) accepted assessee's contention and directed to include this comparable in final list of comparable. It is the say of the ld AR that Axis-IT & T Ltd. clears all the filters and is functionally comparable to the assessee and hence should be included as a comparable.

43. We have heard the rival submissions and have perused the relevant material on record. We find that the total income of the

company as on 31st March, 2010 stood at 2039.65 lakhs and the export earnings [foreign exchange earnings (accrual basis) + deemed export earnings) as on March 31, 2010 stood at 2008.45 lakhs which is almost 98.47% of the total income of the company. Thus, there is no reason for exclusion of Axis-IT & T from the final set of comparables, Therefore, we are of the considered view that the Id. CIT(A) rightly directed inclusion of Axis-IT & T Ltd. This part of Ground No. 2 is dismissed.

#### ICRA Online Ltd

44. ICRA Online Ltd is one of the comparable companies selected by the assessee in the TP documentation, TPO has rejected the company on the ground that Export earnings are less than 75% of total turnover. On appeal, CIT(A) accepted assessee's contention and directed to include this comparable in the final list of comparables. It is the say of the Id AR that ICRA Online Ltd. clears all the filters and is functionally comparable to the assessee and hence should be included as a comparable. Therefore, the Id. CIT(A) rightly directed inclusion of ICRA Online Ltd.

45. We have heard the rival submissions and have perused the relevant material on record. We find ICRA also passes the export earnings filter of 75%. The earnings from 'outsourced services fees' segment as on March 31, 2010 is Rs. 128,046,000 and the export earnings are Rs. 111,409,000 which are almost 87% of the total revenue from the BPO services. Therefore, ICRA should be retained as a suitable comparable. This Ground No. 2 is dismissed.

Motif India Infotech Pvt Ltd

46. Ground No. 3 pertains to inclusion of the company Motif India Infotech which was rejected by the TPO. The ld DR heavily relied on the orders of TPO and the CIT(A).

47. The ld AR stated that Motif India Infotech Pvt. Ltd. is engaged in the business of providing back- office transaction processing and email response services to its clients which are similar to BPO services provided by the assessee in relation to online event registration/other support services to its AEs. Therefore, Motif India Infotech Pvt. Ltd. is functionally comparable to the assessee and passed all the filters acceptable to TPO. However, this was rejected by TPO on the ground that the annual report of Motif was not available.

48. The Id. CIT(A) directed for inclusion of Motif India Infotech Pvt. Ltd. for the reason that the audited financial statements of the company were available.

49. We have heard the rival submissions and have perused the relevant material on record. We find that the annual report of the company is available. The TPO has not put forward any other argument for the rejection of this comparable. Accordingly, Motif India Infotech Pvt Ltd should be considered for the purposes of TP analysis. Therefore, we are of the considered opinion that the Id. CIT(A) rightly directed inclusion of Motif India Infotech Pvt. Ltd. Ground no 3 is dismissed. We are of the considered opinion that the order of the TPO is set aside to the extent of exclusion of TCS e-Serve International Ltd as comparable and inclusion of Axis-IT & T Ltd.; ICRA Online and Motif India Infotech as comparable for determination of ALP adjustments.

50. In the result, the appeals of the assessee in both the A.Ys are partly allowed whereas the appeal of the Revenue is dismissed.

Order pronounced in the open court on 26.03.2025

**Sd/-**  
**[MAHAVIR SINGH]**  
VICE PRESIDENT

**Sd/-**  
**[NAVEEN CHANDRA]**  
ACCOUNTANT MEMBER

Dated: 26<sup>th</sup> March, 2025.

VL/

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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	
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