

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

BEFORE

**SHRI VIJAY PAL RAO, HON’BLE VICE PRESIDENT
AND
SHRI MADHUSUDAN SAWDIA, HON’BLE ACCOUNTANT MEMBER**

ITA No.194/Hyd/2023		
Assessment Year: 2014-15		
ADP Private Limited, Hyderabad. PAN: AANCA8983A	Vs.	Deputy Commissioner of Income Tax, Circle-1(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	CA KC Devdas, CA Kranthi Palivela & CA Mrudulatha	
Revenue by:	M. Narmada, CIT-DR	
Date of hearing:	04/02/2025	
Date of pronouncement:	15/04/2025	

ORDER

PER MADHUSUDAN SAWDIA, A.M.:

This appeal is filed by M/s. ADP Private Limited (“the assessee”), feeling aggrieved with the final assessment order of the Learned Assessing Officer (“Ld. AO”) passed U/s. 143(3) r.w.s 254 of the Income Tax Act, 1961 (“the Act”) as per the direction of the Learned Dispute Resolution Panel (“Ld. DRP”), Bangalore on 31/01/2023 for the Assessment Year 2014-15.

2. The assessee has raised the following Grounds of Appeal:

“Based on the facts and circumstances of the case, ADP Private Limited respectfully craves to prefer an appeal against the order passed by the Hon’ble DCIT, Circle1(1), Hyderabad (‘Ld. AO’) U/s. 143(3) r.w.s 254 of the Income Tax Act, 1961 (‘the Act’) dated 31st January, 2023 on the following grounds:

1. *The Ld. AO/ Learned Transfer Pricing Officer (‘Ld. TPO’) and the Hon’ble Dispute Resolution Panel (‘Ld. DRP’) erred in not undertaking an objective comparative analysis and inter alia rejecting the following comparable companies as not comparable to the IT Enabled Services rendered by the assessee, which are functionally comparable and / or qualify all the filters and hence, should not be rejected:*

- (i) Informed Technologies Private Limited*
- (ii) ACE BPO Services Private Limited*

2. *The Ld. AO/ Ld. TPO/ Hon’ble DRP erred in not undertaking an objective comparative analysis and inter alia selecting the following companies as comparable to the IT Enables Services rendered by the assessee, which are functionally different and / or do not qualify all the filters and hence, should be rejected.*

- (i) MPS Limited*

3. *The Ld. AO/ Ld. TPO/ Hon’ble DRP erred in computing operating margin of certain comparable companies used in the determination of the Arm’s Length Price (‘ALP’) resulting in incorrect margins of the comparable companies and other computational errors to arrive at adjustment amount.*

- (i) Microland Limited*

4. *The Ld.AO was not justified and rather grossly erred in law and in facts by initiating penalty proceedings U/s. 271(1)(c) of the Act by falsely stating that the assessee has concealed particulars of income.*

The appellant prays for leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at the time of hearing of the appeal, to enable your Honour to decide the appeal according to law.”

3. Brief facts of the case are that the assessee-company is engaged in the business of development of software and IT Enables Services (“ITES”). The assessee filed its return of income for the AY 2014-15 on 28/11/2014 declaring total income at Rs. 144,212,34,890/- under normal provisions of the Income Tax Act, 1961 (“the Act”) and book profits at Rs. 148,81,42,550/- U/s. 115JB of the Act. This is the second

round of litigation of the assessee. In the first round of litigation, the Tribunal vide its order dated 18/12/2020 had set-aside the issue to the file of the Ld.AO/TPO with a direction to re-examine the facts / contentions of the assessee. Adhering to the directions of the Tribunal, the Ld. TPO vide order dated 28/01/2022 suggested the TP adjustments to Rs. 27,11,05,479/-. Accordingly, the Ld. AO passed the draft assessment order on 24/03/2022 and determined the total income of the assessee at Rs. 171,32,40,363/- and book profit of Rs. 148,81,42,554/-. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. DRP. Accordingly, in compliance with the directions of the Ld. DRP, the Ld. AO determined the total income of the assessee at Rs. 171,32,40,369/- which includes the addition of Rs. 27,11,05,479/- on account of ALP and passed the final assessment order U/s. 143(3) r.w.s 254 of the Act on 31/01/2023.

4. Aggrieved with the final assessment order of Ld. AO, the assessee is in appeal before us.

5. Ground No.1 of the assessee is related to seeking inclusion of Informed Technologies Private Limited (“Informed Technologies”) and ACE BPO Services Private Limited (“ACE BPO”) in the list of comparable. As far as the inclusion of ACE BPO is concerned, the Learned Authorized Representative (“Ld. AR”) invited our attention to para 42 and 43 of the earlier order of the Tribunal in the first round of litigation. The Tribunal

had then remanded the issue to Ld.AO/TPO for fresh examination. In the second round of litigation, the Ld. DRP had accepted the inclusion of ACE BPO as comparable by passing a Corrigendum Order dated 30/01/2023. On the basis of the Corrigendum Order of Ld. DRP, the assessee filed a rectification application before the Ld. AO. However, despite the loss of time, the Ld. AO has not yet passed the rectification order. The Ld. AR, therefore, prayed before the Bench for a suitable direction to be issued to the Ld. AO/TPO to give effect to the findings of the Ld. DRP. The Learned Departmental Representative ("Ld. DRP") fairly accepted the assessee's contention. As the Ld. DR has also accepted the contention of the Ld. AR, we direct the Ld. AO/TPO to pass the rectification order in accordance with the Corrigendum Order of Ld. DRP, dated 30/01/2023 with regard to inclusion of ACE BPO in the list of comparable.

6. As far as the inclusion of Informed Technologies is concerned, the Ld. AR submitted that, the Ld. TPO has excluded the same from the list of comparable on the ground that 29% of its total revenue was derived from other income. Consequently, as per Ld. TPO the company failed to pass the filter requiring at least 75% of total income to be from operative revenue. The Ld.AR submitted that, the Ld. TPO has erred in considering the other income for working out of percentage of revenue from ITES. However, the other income should not be considered for this

purpose. In support of their contention, the Ld. AR invited our attention to page 689 of the Paper Book citing a decision of Coordinate Bench of the Tribunal in the case of Ocwen Financial Solutions Pvt Ltd vs. JCIT in IT(TP)A No. 3068/Bang/2018 for AY 2014-15, dated 17/07/2019, wherein it was held that other income should not be considered while computing the percentage of income from operating revenue. The Ld. AR further submitted that, if other income is excluded, then Informed Technologies has 100% revenue from ITES, thus, meeting the criteria for inclusion as a comparable.

7. Per contra, the Ld. DR, relying on the order of Ld. TPO contended that other income accounted for more than 25% of total revenue. Additionally, the company's annual report does not provide a specific bifurcation of expenditure related to other income, particularly expenses on depreciation, repairs to building, rates and taxes which are associated with rental income included under other income. Finally, the main contention of the Ld. DR was that, the expenses which are directly related to the other income should be excluded from opening cost for the working of the Profit Level Indicator ("PLI").

8. We have heard the rival contention and also gone through the record in light of the submissions made by either side. We have gone through the decision of Coordinate Bench of ITAT in the case of Ocwen

Financial Solutions Pvt Ltd vs. JCIT (supra) wherein at Para-10 to

10.4.1, the Tribunal has held as under:

“10. *Informed Technologies Ltd., ('Informed')*

10.1 *This company 'Informed' was selected by the assessee as a comparable company in its TP study. The TPO in his order rejected this company stating that since 'Informed' is being primarily engaged in the business of Business Process Outsourcing, it fails the service income filter. On the objections filed by the assessee, the DRP concurred with the finding of the TPO by observing that the Annual Report shows that the sale of services is Rs.2,58,53,362/- as against the total revenue of Rs.3,81,86,665/- which comes to only 67.7% and therefore fails the service income filter applied by the TPO.*

10.2 *Before us, the learned AR for the assessee contended that this company 'Informed' is functionally comparable to the assessee as it is an ITES provider and qualifies the service income filter of 75% applied by the TPO. It was submitted that the entire service income of 'Informed' at Rs.2,58,53,362/- is from rendering of ITES only and the TPO/DRP have wrongly considered "other income" of Rs.1,22,85,303/- as "Service Income". In support of this contention, the learned AR drew the attention of the Bench to the relevant portion of the Annual Report of 'Informed' (placed at pages 391 to 443 of Paper Book). In this regard, reliance was placed on the decision of the Co-ordinate Bench of this Tribunal in the case of CGI Information Systems and Management Consultants (P) Ltd., (2018) 94 taxmann.com 97 (Bang – Trib) wherein this company 'Informed' was held to be comparable to companies rendering ITES. It was prayed that, in the light of the above, this company 'Informed Technologies Ltd.,' be included in the final set of comparables in the case on hand.*

10.3 *Per contra, the learned DR for Revenue supported the orders of the authorities below.*

10.4.1 *We have considered the rival submissions and carefully perused the material on record. On a perusal of the Annual Report of this company 'Informed', it is seen that at page 12 thereof it is stated that this company is engaged in and operating as an ITES provider. A perusal of the TPO's order also indicates that the TPO has not disputed that this company is functionally comparable to the assessee in the case on hand; which is rendering back office ITES. From a perusal of the profit and loss account at page 30 of the Annual Report of 'Informed' it is seen that the total revenue is shown as Rs.3,81,38,665/- and 'other income' of Rs.1,22,85,303/-. As can be seen from Schedule 19 on page 40 of the Annual Report, the 'other income' comprises of non-operating income, interest, dividend, sale of current investments and miscellaneous income and evidently these incomes cannot be considered as operating income. The percentage of 67.7% worked out by the TPO is after*

considering these “other income” as service income; which is factually incorrect. It is evident from a perusal of the profit and loss account of ‘Informed’ that the service income is Rs.2,58,53,362/- which is entirely the revenue from operations and therefore in our considered view, the service income filter of 75% of service income to be from ITES as applied by the TPO, is satisfied in this case. In view of this factual finding rendered in the matter, we hold that this company ‘Informed Technologies Ltd.,’ satisfies the service income filter and is therefore to be included in the final set of comparables. We hold and direct the AO/TPO accordingly.”

9. From a perusal of above, we found that, the Tribunal supports the inclusion of Informed Technologies as a comparable and provided that other income is to be excluded from the computation of operative revenue. Further, as rightly pointed out by the Ld. DR, expenses directly related to rental income such as depreciation, repairs to building, rates and taxes should also be excluded from operative expenses for the purpose of computing the PLI. Accordingly, we direct the Ld. AO / TPO to include Informed Technologies as a comparable following the decision of the Coordinate Bench of ITAT in the case of Ocwen Financial Solutions Pvt Ltd vs. JCIT (supra). However, for a correct computation of PLI, the Ld. AO / TPO shall verify and exclude expenses directly related to rental income i.e., depreciation, building repairs, rates and taxes from the operative expenses.

10. Accordingly, Ground No.1 of the assessee is partly allowed.

11. Ground No.2 of the assessee is related to exclusion of MPS Limited (“MPS”) from the list of comparable. The Ld. AR submitted that MPS is engaged in Data Utilization and Content Development, thereby making

it a high-end service provider. In support of their claim, the Ld. AR filed before us prospectus of MPS running from Page No. 838 to 994 of the Paper Book as additional evidence, which was admitted by us. Further, the Ld. AR invited our attention to Pages No. 895, 917, 918, 920, 922, 923 and 925 of the Paper Book containing the details of company's functional profile. Accordingly, the Ld. AR argued that these documents demonstrate that MPS provided high-end development services and therefore, should be excluded from the list of comparable. In support of their contention, the Ld. AR relied on the following decisions viz., (i) Primera Medical Technologies Private Limited for AY 2018-19, ITA No. 381/Hyd/2022 dated 28/06/2024; (ii) E-Clinical Works India Pvt Ltd for AY 2014-15, ITA No.4106/Mum/2019 dated 31/03/2023; (iii) Schlumberger India Technology Centre Pvt Ltd for AY 2014-15, ITA No.09/PUN/2020 dated 17/06/2022; (iv) FIS Solutions Software (India) Private Limited for AY 2014-15, ITA No.1756/PUN/2018 dated 22/06/2021; (v) Symantec Software India Private Limited for AY 2014-15, ITA No. 1824/PUN/2018 dated 17/02/2020; (vi) Emerson Electric Company (India) Private Limited for AY 2013-14 & 2014-15, ITA No. 6098/Mum/2018 & ITA No. 531/Mum/2018 dated 14/06/2019; and (vii) Brady Company India Pvt Ltd for AY 2014-15, IT(TP)A No. 103/Bang/2019 for AY 2014-15, IT(TP)A No. 790/Bang/2019 for AY 2014-15 dated 22/03/2022 and submitted that in all such cases the Tribunal has excluded MPS.

12. Per contra, the Ld. DR opposed the assessee's claim arguing that the services cited by the Ld. AR pertain to the subsidiary of MPS and not related to MPS. In the present case, for the purpose of showing the work profile at the group, MPS has included the work performed by its subsidiary in their prospectus. However, MPS is not involved in any Content Development Services. In support of their claim, the Ld. DR invited our attention to Pages No. 738, 739 and 754 of the Paper Book, which form part of the annual report of MPS and pointed out that, nowhere in the annual report of the company, the company has mentioned that they are engaged in Content Development or high-end services. Additionally, the Ld. DR relied on the decision of this Tribunal in the case of OSI Systems Private Limited vs. Dy. Commissioner of Income Tax in ITA No. 2379/Hyd/2018 for AY: 2014-15 dated 09/10/2024 wherein it was categorically held that MPS is not engaged in high-end service activities.

13. We have heard the rival contention and also gone through the record in light of the submissions made by either side. We have gone through the prospectus and we are of the view that, the reliance of the assessee on the prospectus, does not establish that the MPS itself is engaged in high-end service provision. We have also gone through the Page Nos. 738, 739 and 754 of the paper book which form part of annual report of MPS and found that MPS it is not engaged in Content

Development or high-end services. Further, we have also gone through the decision of this Tribunal in the case of OSI Systems Private Limited vs. Dy. Commissioner of Income Tax (supra), wherein at Paragraphs 16 to 18, the Tribunal has held as under:

“16. Coming to the request of the assessee to exclude MPS Ltd in the ITeS segment, according to the assessee this company is engaged in providing publishing solutions, namely, typesetting and data digitization services; that the company serves international publishers through author to reader publishing process; that the company has developed an end-to-end publishing platform DIGI core; that it developed automated solutions such as Digi track, MPS Digi comp, automated solutions and the company is a full-fledged and Revenue bearing substantial risks and concerns. Learned AR drew our attention to the view taken by a coordinate Bench in the case of Symantec software India private Ltd (supra) and submitted that this company is engaged in carrying out content development activity which is in the nature of KPO service and therefore it is functionally not comparable to the technical support service segment of the assessee. Learned AR drew our attention to the Balance Sheet as on 31/3/2014 wherein under the current assets certain inventory is shown.

17. Learned DR submits that the assessee himself did not wait before the learned TPO or learned DRP that the MPS Ltd. is into any content and product development at all apart from this the consistent plea taken by the assessee is that this MPS Ltd. is engaged in the business of providing publishing solutions, namely, typesetting and data digitisation services. Absolutely no evidence is produced before any of the authorities to the aspect of any content or product development by this MPS Ltd. When it's not the case of MPS Limited themselves in their annual report that they are into the product of content development, is not open for the assessee to argue so before this Bench. Learned DR drew our attention to the annual report of MPS Ltd. to its report of the Board of Directors clause (D) wherein it is stated that MPS Ltd. is currently operating in a single segment of outsourced publishing services. Basing on this he submits that outsourced publishing services is a different from acting as a publisher or creator of product or content. Learned DR submits that mere presence of inventories does not automatically prove that MPS Ltd. is into manufacture of products also. Those could be the inventory is relating to the tools employed by the MPS Ltd. in its outsourcing publishing services.

18. On a careful consideration of the annual report of MPS Ltd. we find that the company itself declared that currently it operates only in one segment of outsourced publishing services like typesetting and data digitisation services, which are to be classified only as IT enabled services. Nowhere in the annual report MPS Ltd. claimed to have been providing product or content development activity took place in the category of knowledge processing activity. Merely an entry in the Balance Sheet to show that certain inventory is there, will not automatically make this entity as not comparable to other ITeS companies. Apart from this the

learned TPO categorically observed that the contention of the assessee that the outsourced publishing solutions is different from operation of ITeS, cannot be countenanced. According to the learned TPO it should not matter how many types of ITeS services are provided by each company. Both the authorities have carefully gone through the financials of this company, combat the same with the functional profile of the assessee and reached a right conclusion that MPS Ltd. is functionally comparable to the assessee and there are no reasons to exclude the same. We do not find any material to come to a different conclusion. MPS Ltd. is not a publisher on its own. MPS Ltd. only provides outsourced publishing services by providing typesetting and digitization services. For these reasons, we do not find anything contrary to the finding of the authorities. We accordingly uphold the same.”

14. On a perusal of above, we found that the Tribunal has held MPS to be a suitable comparable to a company engaged in ITES. As far as reliance of the assessee on the decision of various Tribunal in the case of (i) Primera Medical Technologies Private Limited for AY 2018-19, ITA No. 381/Hyd/2022 dated 28/06/2024; (ii) E-Clinical Works India Pvt Ltd for AY 2014-15, ITA No.4106/Mum/2019 dated 31/03/2023; (iii) Schlumberger India Technology Centre Pvt Ltd for AY 2014-15, ITA No.09/PUN/2020 dated 17/06/2022; (iv) FIS Solutions Software (India) Private Limited for AY 2014-15, ITA No.1756/PUN/2018 dated 22/06/2021; (v) Symantec Software India Private Limited for AY 2014-15, ITA No. 1824/PUN/2018 dated 17/02/2020; (vi) Emerson Electric Company (India) Private Limited for AY 2013-14 & 2014-15, ITA No. 6098/Mum/2018 & ITA No. 531/Mum/2018 dated 14/06/2019; and (vii) Brady Company India Pvt Ltd for AY 2014-15, IT(TP)A No. 103/Bang/2019 for AY 2014-15, IT(TP)A No. 790/Bang/2019 for AY 2014-15 dated 22/03/2022 are concerned, the decision of this Tribunal

in the case of Primera Medical Technologies Private Limited (supra) is related to AY 2018-19, which is not relevant in the case of the assessee for the year under consideration, hence not considered. The other Tribunals exclude MPS from the list of comparable contending that MPS is engaged in Content Development Services. However, we find that in the present case the Ld. DR has brought to our notice the vital fact that the engagement in high-end services, based on which the other Tribunals had rendered their findings, is stated only in the prospectus of MPS. In contrast, as per its annual report the company is not engaged in any Content Development Services. Further, this Tribunal for the same Assessment Year i.e., AY 2014-15 in the case of OSI Systems Private Limited (supra) has after properly analysing the annual report of MPS concluded that MPS is not engaged in high-end services and therefore should not be excluded from the list of comparable. Accordingly, without accepting the contention of the Ld. AR regarding reliance on the decision of the other Tribunal, we respectfully follow the decision of this Tribunal in OSI Systems Private Limited (supra) and hold that MPS is not engaged in any high-end services, hence we reject the contention of the assessee.

15. Accordingly, Ground No.2 of the assessee is dismissed.

16. Grounds No.3 and 4 are not pressed by the assessee. Accordingly, Grounds No. 3 and 4 are dismissed being not pressed.

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

Order pronounced in the Open Court on 15th April, 2025.

Sd/- (VIJAY PAL RAO) VICE PRESIDENT	Sd/- (MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER
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Hyderabad

Dated : 15/04/2025

OKK/spc

Copy to:

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2	Deputy Commissioner of Income Tax, Circle-1(1), Income Tax Towers, AC Guards, Hyderabad, Telangana-500004.
3	Pr. CIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order