

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No. 2153/Bang/2024
Assessment Year: 2014-15

M/s Acuity Knowledge Centre (India) Pvt. Ltd., Elixir Chancery Building, 7 th Floor, Municipal Door No. 135/1-2, Residency Road, Bengaluru – 560 025. PAN: AAECA9391H	Vs.	The Deputy Commissioner of Income Tax, Circle – 1(1), Bengaluru.
APPELLANT		RESPONDENT

&

ITA No. 2334/Bang/2024
Assessment Year: 2014-15

The Assistant Commissioner of Income Tax, Circle – 4(1)(2), Bengaluru.	Vs.	M/s. Acuity Knowledge Centre (India) Pvt. Ltd., Elixir Chancery Building, 7 th Floor, Municipal Door No. 135/1-2, Residency Road, Bengaluru – 560 025. PAN: AAECA9391H
APPELLANT		RESPONDENT

Assessee by	:	Smt. Tanmayee Rajkumar, Advocate, Ms. Mansa Ananthan, Advocate & Shri Nirmal Mathew, Advocate
Revenue by	:	Dr. Divya K.J, CIT-DR

Date of Hearing	:	16-12-2025
Date of Pronouncement	:	31-12-2025

ORDER**PER WASEEM AHMED, ACCOUNTANT MEMBER**

These cross appeals filed by the assessee and the Revenue are directed against the order passed under section 250 of the Income Tax 1961 (hereafter the Act) by the learned Commissioner of Income Tax (Appeal)- Bengaluru-4 [hereafter Learned CIT(A), dated 23rd September 2024 for A.Y. 2014-15. Since the issues arising in both the appeals are common and interconnected, they were heard together and are being disposed of by this consolidated order.

2. First, we take up assessee's appeal in ITA No. 2153/Bang/2024

The assessee has raised following grounds of appeal:

"1. That on the facts and circumstances of the case and in law, the Learned CIT(A) erred, in making an addition of INR 60,79,020 to the total income of the Appellant on account of disallowance of expenditure incurred towards incentive payment for executive gain sharing plan.

2. That on the facts and circumstances of the case and in law, the CIT(A) erred in disallowing the aforesaid amount on erroneous presumption that such amount debited to the Statement of Profit and Loss A/c is in the nature of Severance Pay without any cogent reasons.

3. That on facts and circumstances of the case and in law, the CIT(A) has erred by not considering that payment to employees is in the nature of incentive and is accordingly eligible for deduction under section 37 read with section 43B of the Act as the same has been actually paid on or before the due date of filing the return of income.

4. That on the facts and in circumstances of the case and in law, the CIT(A) has erred in directing the Learned AO to compute the consequential interest on the assessed income as against the returned income.

The above grounds of appeal are mutually exclusive and without prejudice to each other,

The Appellant craves leave to add, amend, alter, delete, rescind, forgo or withdraw any of the above grounds of objection either before or during the course of proceedings in the interest of the justice."

3. The assessee vide submission dated 15th December 2025 further filed additional ground of appeal, bearing numbers as Ground 5 & 6 which read as under:

"Ground No. 5: That Vitae International Accounting Services Private Limited ought to be excluded from the final list of comparables since the company is not comparable.

Ground No. 6: That Allsec Technologies Limited, Microgenetics Systems Limited and R Systems International Limited ought to be included in the final list of comparables since the comparables are comparable."

4. The assessee, in the application for admission of additional grounds, argued that the issues raised were fundamental to the resolution of the case. Consequently, the assessee's learned AR requested that the additional ground be admitted for adjudication.

5. On the other hand, the learned DR opposed the admission of the additional grounds of appeal, arguing that these grounds had not been raised before the lower authorities.

6. We have considered the application filed by the assessee seeking admission of the additional ground of appeal challenging the inclusion and exclusion of certain comparables by the learned TPO and the learned CIT(A). We have also heard the submissions of both the parties on this preliminary issue.

7. We find that the additional ground raised by the assessee is purely factual in nature and arises from the facts already available on record. The grievance of the assessee relates to the correctness of the set of comparables selected by the TPO and sustained by the learned CIT(A) for the purpose of benchmarking the international transactions. No fresh investigation of facts is required for adjudicating this ground, as all the relevant financial data and functional details of the comparables form part of the transfer pricing record.

8. It is well settled that the issue relating to inclusion or exclusion of comparables goes to the root of the determination of the arm's length price. Any error in selection of comparables has a direct bearing on the computation of the transfer pricing adjustment. Therefore, such an issue is fundamental to the adjudication of the assessee's appeal and cannot be ignored on technical grounds.

9. In view of the above facts and the settled legal position that additional grounds raising pure questions of law or issues arising from the existing record can be admitted at any stage of appellate proceedings, we admit the additional ground of appeal raised by the assessee. The same is admitted for adjudication on merits.

10. The issue raised by the assessee through **Ground Nos. 1 to 4** of the appeal pertain to disallowances of expenditure being incentive payment for executive share plan amounting to Rs. 60,79,020/-.

11. The facts in brief are that the assessee, a Pvt Ltd company, is engaged in the business of providing ITE Services to AE for which it was compensated at cost plus 18% Markup. During the year under dispute, the assessee has operated 3 Units namely STPL Unit, SEZ Unit-1 and SEZ Unit-2 out of which SEZ unit-1 is claimed as exempted unit under section 10AA of the Act.

12. During the assessment proceeding, the AO observed that the assessee company has claimed an expenditure of ₹8,98,55,020/- towards Executive Gain Sharing Plan. The AO required the assessee to substantiate the claim. The assessee explained that the impugned amount represents payment of additional salary to certain set of employees in the form of incentive on which due tax at source as per the provision of section 192 has been deducted. It also claimed that the impugned expenditure has been considered for the purpose of charging revenue being cost plus 18% Markup. Accordingly, the said expenditure being employee cost liable to be allowed as revenue expenses.

13. However, the AO on examination of the notes to accounts and the submissions made by the assessee, found that the assessee has created an incentive / exit-linked payment scheme for certain specified member of management team. As per the terms of the plan, the specified members were eligible to share in enterprise value of the assessee company on the event of exit. The amount was payable from common pool which was fixed as certain percentage of enterprise value. Hence, the amount was payable only on the occurrence of a future event, namely the exit of the

specified employees. The amount payable is linked to a percentage of the enterprise value and not to the services rendered during the year.

14. It is further noticed that during the relevant previous year, no exit event has taken place. Therefore, the liability towards such incentive has not been crystallised during the year. The payment is contingent upon the occurrence of a future uncertain event and hence does not represent an ascertained liability as on the balance sheet date.

15. The assessee has also failed to furnish proper details regarding the basis of computation of the said incentive, the breakup of the amount, and the manner in which the same has been charged to the profit and loss account. No clear explanation has been given as to how the expenditure relates to the year under consideration.

16. In view of the above facts, it is held that the claimed expenditure is only a provision made for a contingent liability. As per settled law, contingent liabilities are not allowable as deduction under the Income-tax Act. Accordingly, the amount claimed towards the incentive / exit-linked payment is disallowed and added back to the total income of the assessee.

17. The aggrieved assessee preferred an appeal before the learned CIT(A).

18. Before the learned CIT(A), the assessee submitted that during the relevant previous year, it had incurred an expenditure of ₹8,98,55,020 towards incentive / additional remuneration paid to certain key employees. This payment was made in accordance with the incentive scheme approved by the Board of Directors and formed part of the employees' overall remuneration package. The said expenditure was incurred wholly and exclusively for the purposes of business and was directly linked to employee performance and retention.

19. The assessee explains that out of the total incentive amount, a substantial portion was actually paid to the employees during the financial year 2013–14 itself. The balance amount, though paid in August 2014, but the same was paid before the due date of filing the return of income for AY 2014–15. Therefore, the entire expenditure satisfies the condition of payment within the permissible time under the Act.

20. To substantiate the claim, the assessee has furnished detailed employee-wise break-up of incentive payments, supported by pay slips, Form-16 extracts, and annexures forming part of the paper book. These documents clearly show the total incentive payable, the amount paid during the year, and the balance paid before the due date of filing the return. Thus, there is complete transparency, and no dispute was raised by the AO regarding the genuineness of the expenditure.

21. The assessee further submits that the entire incentive amount has been subjected to tax deduction at source under section 192 of the Act, treating the same as salary income in the hands of the employees. The TDS so deducted has been duly deposited with the Government and reflected in the respective Form 16 issued to the employees. Hence, the character of the payment as salary is fully established and accepted by the tax authorities themselves.

22. It is also submitted that the learned AO erred in treating the incentive provision as unascertained or contingent in nature. The liability to pay incentive had crystallized during the relevant financial year based on the approved incentive policy and employee performance. The mere fact that a small portion was paid after the end of the financial year does not make the liability contingent, especially when the payment was made before the due date of filing the return.

23. The assessee relies on settled judicial principles that employee-related expenses such as salary, bonus, and incentive are allowable deductions once the liability has been crystallized and the payment is made within the time prescribed

under the Act. The expenditure in question is revenue in nature, incurred for business expediency, and directly connected with the assessee's operations.

24. Without prejudice, the assessee submits that even assuming the balance amount represents a provision, the same is allowable as the liability is definite and quantifiable, and not a mere estimate. The accounting treatment followed by the assessee is in accordance with the applicable accounting standards and consistently followed in earlier years.

25. In view of the above facts and supporting evidence, the assessee submits that the disallowance of ₹8,98,55,020/- made by the learned AO is unjustified and contrary to law. The assessee therefore humbly prays that the learned CIT(A) may be pleased to delete the disallowance in full and allow the claim of expenditure as deductible while computing the income for AY 2014–15.

26. The learned CIT(A) after considering the facts in totality restricted the disallowances to extent of Rs. 69,79,020/- being the amount unpaid during the year by observing as under:

"5.4 The next ground of appeal relates to disallowance of Rs. 8,98,55,020 which was the 'severance pay' to the employees exiting from the company Amba Investment Services Ltd (the appellant).

5.4.1 The AO treated this payment as incentive and disallowed whereas the appellant has shown that it is the severance pay paid in the financial year itself (in December 2013) and the balance amount of Rs. 60,79,020 was paid in August 2014 i.e. before filing the return of income for subject AY 2014-15. The appellant also submitted that applicable TDS was done on these payments. The appellant has submitted the pay slips and Form 16 in respect of the employees who received the above said 'severance pay'. However, the appellant's contention that the amount paid after the financial year should be allowed in terms of section 43B cannot be accepted as section 43B covers specific payments of which 'severance pay' is not one.

5.4.2 In view of the above, disallowance of Rs. 60,79,020 is sustained."

27. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

28. The Learned AR before us filed paper book running from pages 673, synopsis of argument etc and inter alia submitted that the assessee had incurred an expenditure of ₹8,98,55,020/- during FY 2013–14 towards incentive paid to certain employees under an approved incentive plan. The said amount represents additional remuneration in the nature of bonus and not severance pay. A substantial portion of ₹8,37,76,000 was paid during the relevant financial year itself and the balance amount of ₹60,79,020 was paid in August 2014, which was before the due date of filing the return of income for AY 2014–15. The entire amount was subjected to TDS under section 192 of the Act and the tax so deducted was duly remitted to the Government, treating the payment as salary income in the hands of employees. The Learned AR argued that the liability had crystallized during the year and the payment was made within the time allowed under the Act. Therefore, the disallowance sustained by the Id. CIT(A) on the ground that section 43B of the Act does not cover severance pay is incorrect, as the payment is actually in the nature of bonus covered under section 43B(c) of the Act. Accordingly, the Learned AR prayed that the disallowance of ₹60,79,020 be deleted in full.

29. On the other hand, the learned DR before us vehemently supported the order of the authorities below.

30. We have heard the rival contentions of both the parties and perused the materials available on record. The issue before us is limited to the disallowance of ₹60,79,020.00 being part of the total incentive expenditure of ₹8,98,55,020 incurred by the assessee during FY 2013–14.

31. It is an undisputed fact that the assessee had debited a total amount of ₹8,98,55,020/- towards Executive Gain Sharing / incentive plan in its profit and loss account. It is also not in dispute that a substantial portion of ₹8,37,76,000/- was actually paid during the relevant financial year itself and the balance amount of ₹60,79,020/- was paid in August 2014, which is prior to the due date of filing the return of income for AY 2014–15. The payment details are supported by pay slips,

employee-wise breakup, and Form-16, and the same have not been found to be incorrect or non-genuine by the authorities below.

32. We further note that the entire incentive amount was subjected to deduction of tax at source under section 192 of the Act and the tax so deducted was duly remitted to the Government. This clearly establishes that the assessee itself treated the impugned payment as salary in the hands of the employees and the Revenue has accepted the same as income chargeable under the head "Salaries" in the hands of the recipients.

33. The learned CIT(A), while granting partial relief, sustained the disallowance of ₹60,79,020/- on the ground that the payment was in the nature of severance pay and that section 43B of the Act, does not cover severance pay. In our considered view, this approach of the learned CIT(A) is not justified on the facts of the present case. From the documents placed on record, it is evident that the payment represents additional remuneration in the nature of incentive / bonus paid to certain employees and not severance compensation. Merely because some employees exited subsequently does not alter the true character of the payment, which remains employee remuneration linked to service conditions and incentive plans.

34. Once the payment is held to be in the nature of bonus or incentive, it clearly falls within the scope of section 43B(c) of the Act. As per the first proviso to section 43B, any such sum is allowable as a deduction if it is paid on or before the due date of filing the return of income. In the present case, the balance amount of ₹60,79,020 was admittedly paid in August 2014, i.e., before the due date of filing the return for AY 2014–15. Therefore, the statutory condition for allowance stands fully satisfied.

35. We also find merit in the contention of the assessee that the liability towards incentive had crystallised during the relevant previous year itself. The amount was quantified, allocated employee-wise, and partly discharged during the year. The mere fact that a small portion was paid after the end of the financial year does not

make the liability contingent or unascertained, particularly when the payment was made within the time permitted under the Act.

36. In view of the above discussion, we hold that the learned CIT(A) erred in sustaining the disallowance of ₹60,79,020. The impugned amount being incentive / bonus paid to employees before the due date of filing the return is allowable as a deduction under the Act. Accordingly, the disallowance of ₹60,79,020 is directed to be deleted.

37. Coming to the issue raised by the assessee in the additional ground of appeal raised by the assessee contending exclusion of certain TPO's comparable company and inclusion of certain assessee's comparable company.

38. The relevant facts are that the assessee company was incorporated in the year 2004 providing IT Enabled services to holding and associate companies. The assessee company is providing IT enabled services to its immediate holding company in an arrangement of Cost Plus 18% Markup. The assessee in the TP study adopted TNMM as most appropriate method to benchmark the transaction of Provision of services and under TNMM adopted PLI as OP/OC which was computed at 17.75%. The assessee considered itself a low-end IT service provider (BPO), such as country level financial and accounting function, invoice processing, receivable and collection processing and payroll processing etc. The assessee searched comparable companies from the prowess data base. After applying certain filter, the assessee selected 11 companies as comparable and weighted average margin was computed at 15.86% whereas its PLI for the transaction with the AE was 17.75%. Accordingly, the assessee claimed its transaction with AE at ALP.

39. However, the TPO observed that as per Black Book of outsourcing report 2010, the assessee group is recognised as one the best KPO in the world which implies that the assessee company is providing high end professional services. As per the article, the assessee group employed around 725 out which around 50% are chartered accountants (CA) and Chartered Financial Analyst (CFA) and 75% of

such highly qualified individuals are employed in India. The TPO observed that as per the report, the assessee is engaged in the sophisticated research work and building complex financial model for its client. Accordingly, the TPO concluded that the assessee is KPO providing High End function to the AE and not the low-end function as claimed by the assessee in the TP study. Hence, the TPO rejected the assessee's TP study report and the comparable set of companies selected by the assessee. The TPO applying own search matrix/filter by treating the assessee as KPO, selected 3 companies as comparable which are detailed as under:

S. No.	Name of Company	Margin
1	Smart Cube India Pvt Ltd	11.17%
2	Vitae International Accounting Services Pvt Ltd.	42.48 %
3	eClerx Services Ltd	76.42%
	Average	43.08%

40. As the margin of the TPO's comparable arrived at 43.08%, the TP adjustment of Rs. 26,66,13,390/- was proposed by the TPO. The AO incorporated the same in the draft assessment order under section 143(3) of the Act.

41. The aggrieved assessee preferred an appeal before the learned CIT(A).

42. Before the learned CIT(A), the assessee among other argument, submitted that TPO's comparables namely eClerx Services Ltd is functionally not comparable. The said company specialised in both KPO and BPO services and undertake wide range of activities under the umbrella of Financial Services, sales and marketing services, cable and telecom services etc requiring high level of skill & competence. On the contrary assessee company is providing routine IT enabled services. The TPO observation that the assessee company is a KPO, basing on 2011 news article, is factually incorrect. The assessee submitted that eClerx Service Ltd operate as a full-fledged risk bearing entrepreneur whereas the assessee company is captive service provider. The assessee also placed reliance on various case laws including Hon'ble Delhi High Court ruling in the case of Rampgreen Solutions Pvt Ltd in ITA 102/2015, Bangalore Tribunal decision in the case of Tesco Hindustan Service Centre Private

Ltd in ITTPA No. 191/Bang/2015 where it held that the eClerx Services Ltd cannot be taken comparable for the assessee as it is providing routine IT Enabled services. Furthermore, the assessee submitted that the TPO's another comparable namely Vitae International Accounting Services Pvt Ltd should also be excluded from the comparable. The assessee company submitted that complete report of the said comparable is not available in public domain. Further the impugned company is providing services such as accounting, auditing, superannuation fund management, tax preparation and technical content writing. Therefore, said company is functionally different and cannot be compared.

43. In addition, the assessee company argued that the certain companies selected by it (assessee) should be included in the comparable set which are detailed as under:

- (a) Allsec Technologies Ltd
- (b) Informed Technologies Ltd
- (c) Jindel Intellicom Pvt Ltd
- (d) Microgenetics Ssystems Ltd
- (e) R Systems international Ltd

44. Besides above the assessee also suggested to include Hartron Communication ltd in the list of the comparable companies.

45. The learned CIT(A) after considering facts in totality accepted the assessee contention for exclusion of the TPO's comparable namely eClerx Services Limited and inclusion of the assessee's comparable namely Jindel Intellicom Pvt Ltd, and additional comparable namely Hartron Communication Ltd. However, the learned CIT(A) not accepted the assessee argument for exclusion of TPO's comparable namely Vitae International Accounting Services Pvt Ltd and also not accepted the assessee argument for inclusion of companies namely Allsec Technologies Ltd, RS System International Ltd and Microgenetics Systems Ltd in the set of comparables.

46. Being aggrieved by the order of the learned CIT(A), both the revenue as well as the assessee are in appeal before us.

47. The assessee is in appeal through additional ground for not accepting its argument for excluding TPO's comparable companies namely Vitae International Accounting Services Pvt Ltd and not accepting its argument for inclusion of companies Allsec Technologies Ltd, RS System International Ltd and Microgenetics Systems Ltd in the list of comparables. On the contrary, the Revenue is in appeal against the exclusion of eClerx Services Ltd from comparable set and inclusion of Jindel Intellicom Pvt Ltd and Hartron Communication Ltd in the comparable set vide appeal bearing No. **ITA No. 2334/Bang/2024**

48. The Learned AR before us submitted detailed arguments supporting the learned CIT(A) finding to the extent favourable to the assessee being exclusion of certain TPO's comparable and inclusion of certain assessee's comparable. The Id. AR also sought appropriate relief for inclusion of certain assessee's comparable not accepted by the learned CIT(A) and exclusion of certain TPO's comparable not excluded by the learned CIT(A). The company's wise arguments for exclusion and inclusion are as under:

Exclusion of Eclerx Services Limited

49. The Learned AR submits that the learned CIT(A) has rightly excluded Eclerx Services Limited from the final set of comparables. Eclerx is functionally different from the assessee. It is engaged in providing high-end knowledge process outsourcing services involving complex data analytics, domain-specific research, financial service support and specialised decision-making functions. These services require highly skilled manpower and involve significant intellectual input. In contrast, the assessee is a routine IT enabled service provider rendering low-end back-office support services. The functional dissimilarity between Eclerx and the assessee is fundamental and material. Further, Eclerx enjoys brand value, scale advantages and

a different risk profile. In view of these factors, the learned CIT(A) has correctly held that Eclerx is not a suitable comparable and its exclusion deserves to be upheld.

Inclusion of Jindal Intellicom Private Limited

50. The Learned AR submits that the learned CIT(A) has correctly upheld the inclusion of Jindal Intellicom Private Limited. The Revenue's contention that the assessee is rendering KPO services is factually incorrect. The assessee is engaged in providing routine IT enabled services. Jindal Intellicom is engaged in call centre operations and support services, which fall within the broad category of IT enabled services. The functional profile of Jindal Intellicom is comparable with that of the assessee. Further, this company has been accepted as a comparable in the assessee's own case in earlier assessment years, and there has been no material change either in the facts of the assessee or in the functional profile of Jindal Intellicom. In the absence of any change in facts, the principle of consistency applies, and therefore the learned CIT(A) has rightly retained this company in the final set of comparables.

Inclusion of Hartron Communications Limited

51. The Learned AR submits that the learned CIT(A) has rightly included Hartron Communications Limited. The Revenue's objection that Hartron is rendering office support services and therefore not comparable is without merit. Office support and back-office services clearly fall within the ambit of IT enabled services. The assessee is also rendering similar IT enabled services. The functional similarity is evident from the nature of activities carried out by Hartron. The Revenue has failed to demonstrate any material functional difference. Therefore, the learned CIT(A) has correctly rejected the Revenue's contention, and the inclusion of Hartron Communications Limited deserves to be sustained.

Exclusion of Vitae International Accounting Services Private Limited

52. Without prejudice to the above, the Learned AR submits that the learned CIT(A) erred in not excluding Vitae International Accounting Services Private Limited. This company is functionally not comparable to the assessee. It is engaged in accounting, audit support, tax services, consultancy and advisory functions. These services are professional and consultancy-oriented in nature and cannot be equated with routine IT enabled services rendered by the assessee. Further, there is insufficient segmental and financial information available in the public domain to reliably compute its operating margins. In the absence of adequate financial data and in view of functional dissimilarity, Vitae International Accounting Services Private Limited ought to be excluded from the final list of comparables.

Inclusion of Allsec Technologies Limited

53. The Learned AR submits that the learned CIT(A) has erred in not including Allsec Technologies Limited. Allsec provides IT and BPO services similar to those offered by the assessee. The TPO rejected Allsec on the ground that it is a BPO company, without appreciating that the assessee itself is an IT enabled service provider. Further, Allsec is not a persistent loss-making company, as it has earned operating profits in the relevant and surrounding years. The losses, if any, are not continuous for three consecutive years. Therefore, the rejection of Allsec is unjustified and the company ought to be included as a comparable.

Inclusion of Microgenetics Systems Limited

54. The Learned AR submits that Microgenetics Systems Limited has been wrongly excluded by the learned CIT(A). The TPO rejected this company on the basis of the turnover filter. The turnover of Microgenetics for the relevant year is well within the acceptable range applied by the TPO. Functionally, the company is engaged in providing medical transcription and IT enabled services, which are comparable to the services rendered by the assessee. There is no functional dissimilarity pointed out by the lower authorities. Therefore, Microgenetics Systems Limited ought to be included in the final set of comparables.

Inclusion of R Systems International Limited

55. The Learned AR submits that R Systems International Limited has been wrongly excluded on the ground that it follows a different financial year. It is settled law that a company cannot be rejected merely because it follows a different financial year, provided that reliable quarterly or relevant financial data is available. R Systems is engaged in providing IT solutions and business process outsourcing services, which are functionally comparable to the assessee. The company operates in two segments, namely IT services and BPO services, and relevant segmental data is available. Judicial precedents have consistently held that such companies should be included if they are otherwise comparable. Therefore, R Systems International Limited deserves to be included in the final set of comparables.

56. In view of the above submissions, the Learned AR respectfully prays to uphold the order of the learned CIT(A) insofar as it relates to the exclusion of Eclerx Services Limited and inclusion of Jindal Intellicom Private Limited and Hartron Communications Limited. Further, the Tribunal may be pleased to direct the exclusion of Vitae International Accounting Services Private Limited and inclusion of Allsec Technologies Limited, Microgenetics Systems Limited and R Systems International Limited in the final set of comparables, in the interest of justice.

57. On the contrary, the learned DR before us vehemently supported the order of the lower authorities to the extent favourable to the Revenue.

58. We have heard the rival contentions of both the parties and perused the materials available on record. The dispute before us relates to the determination of arm's length price in respect of provision of IT enabled services rendered by the assessee to its associated enterprise and in particular, the selection and rejection of comparable companies. The facts relevant to the issue are not in dispute and have been elaborately recorded by the lower authorities.

59. At the outset, we note that the assessee is a captive service provider rendering routine IT enabled services to its associated enterprise on a cost-plus basis. The assessee has consistently characterized itself as a low-end ITES/BPO service provider, performing support functions such as accounting support, invoice processing, receivables management and payroll processing, without assuming any significant risk and without owning valuable intangibles. This functional profile has not been controverted by the Revenue on the basis of any cogent material.

60. The TPO rejected the assessee's transfer pricing study primarily on the ground that, based on a third-party article, the assessee group was described as a KPO and therefore the assessee was alleged to be providing high-end services. We find that the reliance placed by the TPO on a general industry article, without correlating the same to the actual functions performed by the assessee during the relevant assessment year, is misplaced. Transfer pricing analysis must be based on the functions actually performed, assets employed and risks assumed by the assessee, and not on general descriptions or reputational characterizations of a group entity.

Exclusion of eClerx Services Limited

61. We find merit in the finding of the learned CIT(A) in excluding eClerx Services Limited. The material on record clearly shows that eClerx is engaged in providing high-end KPO services involving complex data analytics, financial research, domain-specific services and sophisticated decision-making functions. Such services require highly skilled manpower and involve a substantially different risk and value profile. In contrast, the assessee is engaged in routine, low-end IT enabled services. The functional dissimilarity between eClerx and the assessee is significant and goes to the root of comparability. Further, eClerx operates as a full-fledged entrepreneur bearing substantial risks, whereas the assessee is a captive service provider with limited risk. Consistent judicial precedents such Hon'ble Delhi High Court ruling in the case of Rampgreen Solutions Pvt Ltd (supra) and Bangalore Tribunal decision in

the case of Tesco Hindustan Service Centre Private Ltd (supra) have also held that eClerx cannot be compared with routine ITES providers. We therefore uphold the exclusion of eClerx Services Limited.

Inclusion of Jindal Intellicom Private Limited

62. We also find no infirmity in the decision of the learned CIT(A) to include Jindal Intellicom Private Limited. The Revenue's objection that the assessee is rendering KPO services has already been found to be without basis. Jindal Intellicom is engaged in call centre operations and support services, which clearly fall within the ambit of IT enabled services. The functional profile of this company is comparable with that of the assessee. Further, Jindal Intellicom has been accepted as a comparable in the assessee's own case in earlier assessment years and no change in facts has been brought on record by the Revenue. In the absence of any material change, the principle of consistency applies. Accordingly, the inclusion of Jindal Intellicom Private Limited is upheld.

Inclusion of Hartron Communications Limited

63. We agree with the finding of the learned CIT(A) that Hartron Communications Limited is a valid comparable. The services rendered by Hartron, namely office support and back-office services, are in the nature of IT enabled services. The assessee is also rendering similar support services. The Revenue has failed to demonstrate any material functional difference between Hartron and the assessee. Mere nomenclature of services cannot be a ground for rejection when the underlying functions are comparable. Therefore, the inclusion of Hartron Communications Limited is justified and is confirmed.

Exclusion of Vitae International Accounting Services Private Limited

64. As regards Vitae International Accounting Services Private Limited, we find merit in the contention of the assessee. The material available on record shows that this company is engaged in accounting, audit support, tax services, consultancy and advisory functions. These activities are professional and consultancy-oriented in nature and are distinct from routine IT enabled services. Further, complete and reliable financial information of this company is not available in the public domain, which makes it difficult to reliably compute its operating margins. In the absence of adequate financial data and in view of clear functional dissimilarity, we hold that Vitae International Accounting Services Private Limited is not a suitable comparable and deserves to be excluded.

Inclusion of Allsec Technologies Limited

65. We find that Allsec Technologies Limited has been wrongly excluded by the TPO by alleging that the impugned company is persistent loss making and functionally different company. From the material available on record, we note that the Allsec is engaged in providing IT enabled and BPO services, which are similar to the services rendered by the assessee. The rejection of Allsec merely on the ground that it operates in the BPO sector is not sustainable, as the assessee itself is an IT enabled service provider. Further, the record shows that Allsec is not a persistent loss-making company, as it has earned operating profits of 5.4 % in the F.Y. 2013-14 relevant to year under consideration and surrounding years. Therefore, there is no justification for its exclusion, and we, accordingly, direct that Allsec Technologies Limited be included in the final set of comparables.

Inclusion of Microgenetics Systems Limited

66. With respect to Microgenetics Systems Limited, we note that the TPO has rejected the impugned company by holding that its turnover filter is less than 1 crore which we find factually incorrect. The assessee has demonstrated that turnover of this company for the year ending 31st March 2014 is of Rs. 2.25 crore, hence, the same falls within the acceptable range applied by the TPO. Functionally,

Microgenetics is engaged in medical transcription and IT enabled services, which are comparable to the services rendered by the assessee. No specific functional dissimilarity has been pointed out by the lower authorities. Accordingly, we direct that Microgenetics Systems Limited be included in the final set of comparables.

Inclusion of R Systems International Limited

67. We also find merit in the assessee's plea for inclusion of R Systems International Limited. The sole reason for its rejection is that it follows a different financial year. It is well settled that a company cannot be excluded merely because it follows a different financial year, provided reliable data for the relevant period is available. R Systems is engaged in providing IT solutions and business process outsourcing services and is functionally comparable to the assessee. Segmental information is available and can be used for benchmarking purposes. Therefore, we hold that R Systems International Limited should be included in the final set of comparables.

Conclusion

68. In view of the above discussion, we uphold the order of the learned CIT(A) insofar as it relates to the exclusion of eClerx Services Limited and inclusion of Jindal Intellicom Private Limited and Hartron Communications Limited. We further direct the exclusion of Vitae International Accounting Services Private Limited and inclusion of Allsec Technologies Limited, Microgenetics Systems Limited and R Systems International Limited in the final set of comparables. The Assessing Officer/TPO is directed to recompute the arm's length price accordingly. Accordingly, the grounds raised by the Revenue are dismissed and the grounds raised by the assessee are allowed.

69. In the result, the appeal of the assessee is hereby allowed.

Coming to ITA No. 2334/Bang/2024 an appeal by the Revenue.

70. The revenue as has raised as many as 24 Grounds in relation to TP matters and 2 grounds in relation to corporate issues.

The grounds raised in relation to TP matter are interconnected and pertains to the TP adjustment on provision of IT enabled services provided to the AE.

71. At the outset, we note issue raised by the Revenue in relation TP adjustment on the transaction of provision of IT enabled services were connected to the issue raised by the assessee in the additional ground of appeal in ITA No. 2153/Bang/2024. Therefore, the issue raised by the Revenue has been adjudicated along with assessee additional vide paragraph Nos. 58 to 68 of this order wherein we have favoured the assessee and against the revenue. Hence, the ground of appeal raised by the assessee are hereby dismissed.

72. Coming to revenue's ground of appeal on the corporate issue wherein the issue raised is that the learned CIT(A) erred in deleting the addition made on account of allocation of common expenses to different units.

73. The relevant facts are that the assessee during the year operated 3 units namely STPL unit, SEZ unit-1 and SEZ unit-2. The SEZ unit-1 is eligible for exemption under section 10AA of the Act. The assessee for such unit claimed an exemption of Rs. 3,94,51,258/- for the year under consideration.

74. The AO during the assessment proceeding asked the assessee to explain the basis of allocation of common and non-identifiable expenses among its different units, namely the STPI unit, SEZ unit and non-eligible unit. On verification of the details, it was observed that several common expenses such as corporate overheads, top management remuneration, auditors' fees, bank charges and other administrative expenses were largely booked to the STPI and SEZ units. This resulted in lower profits being shown in the non-exempted units and higher profits being reflected in the exempt unit. Accordingly, the AO observed that the allocation

followed by the assessee did not reflect a fair and reasonable distribution of costs and led to a distorted presentation of unit-wise profits.

75. The AO further noted that the assessee, during the course of assessment proceedings, submitted revised workings for allocation of common expenses. However, even as per the revised workings, the basis adopted for allocation was not fully supported by proper documentary evidence and logical justification. Hence, the AO was of the view that common costs should be allocated among the units in a rational manner so that the true profits of each unit can be determined. In the absence of a reliable and consistent basis adopted by the assessee, the AO proceeded to rework the allocation of common expenses among the units.

76. After reallocating the common expenses, the AO found that the profits of the eligible unit were overstated in the return of income by Rs. 1,71,48,501/- only. Consequently, the deduction claimed under section 10AA was reduced to the extent of excess claim arising from improper allocation of expenses. The difference in income, arising due to reallocation of expenses and reduction of deduction, was treated as taxable income. Accordingly, the AO made disallowance of the excess deduction claimed and added the resultant amount to the total income of the assessee. The aggrieved assessee preferred to file an appeal before the learned CIT(A).

77. Before the learned CIT(A), the assessee submitted that it is engaged in providing services through three separate units, namely the STPI unit, SEZ Unit-I and SEZ Unit-II. The assessee explained that it follows a cost-plus mark-up model, under which revenue of each unit is computed by applying a fixed mark-up on the actual costs incurred by that unit. Therefore, allocation of costs directly impacts the revenue and profits of each unit, and any reallocation of expenses automatically leads to a corresponding change in revenue, without altering the overall profitability of the assessee as a whole.

78. The assessee submitted that during the year, certain common and non-identifiable expenses were initially booked mainly in the STPI unit. However, on being asked by the learned AO, the assessee provided revised workings wherein the common expenses were reallocated among all units in a reasonable and scientific manner, based on the ratio of identifiable direct costs. It was emphasized that such reallocation was only for the purpose of correctly reflecting unit-wise profits and did not result in any suppression of income or inflation of deduction. In fact, after reallocation, the taxable income of the assessee as a whole stood reduced, which clearly shows that there was no intention to claim excess deduction.

79. The assessee further argued that the learned AO erred in reallocating the expenses without correspondingly adjusting the revenue of the units. Since the assessee operates on a cost-plus basis, any increase or decrease in costs must necessarily lead to a proportionate change in revenue. By reallocating costs alone and keeping the revenue unchanged, the learned AO distorted the cost-plus model and arrived at an artificial increase in taxable income, which is not supported either by facts or by the accounting model consistently followed by the assessee.

80. It was also submitted that the books of account of the assessee were duly audited, regularly maintained, and not rejected by the learned AO under section 145 of the Act. Once the books are accepted, the learned AO could not selectively alter the cost allocation without disturbing the corresponding revenue figures. The assessee submitted that the allocation of expenses adopted by it was arithmetically correct, reasonable, and supported by workings, and therefore no adverse inference was called for.

81. The assessee further contended that the adjustment made by the learned AO resulted in reduction of deduction under section 10AA of the Act is without any real increase in profits of the eligible units. The assessee submitted that deduction under section 10AA is a profit-linked deduction and once the profits of the eligible unit are enhanced due to reallocation of costs, the corresponding deduction must also be allowed. Denial of such deduction merely because the claim arose during

assessment proceedings is not justified, especially when all relevant facts were already on record.

82. In view of the above facts and submissions, the assessee prayed before the learned CIT(A) that the disallowance and addition made by the learned AO on account of reallocation of expenses be deleted. Alternatively, it was prayed that if the reallocation of expenses is upheld, then the corresponding adjustment to revenue and the consequential enhancement of deduction under section 10AA be allowed, so as to reflect the true income of the assessee in accordance with the cost-plus mark-up model consistently followed by it.

83. The learned CIT(A) after considering the facts in totality deleted the disallowances made by the AO by observing as under:

"5.3.1 The appellant had three units viz. STPI Unit, SEZ Unit-I & SEZ Unit-II which operated under a cost plus revenue model. SEZ Unit-I of the Appellant claimed tax holiday benefits u/s 10AA of the Income Tax Act whereas the other two units were taxable normally. In the assessment order, the AO reallocated the expenses amongst STPI Unit and STPI Unit & SEZ Unit-II in such a way that certain costs were shifted from STPI Unit & SEZ Unit-II to 10AA eligible SEZ Unit-I. In this process the deduction u/s 10AA of SEZ Unit-I was restricted from Rs. 5,94,57,258 to Rs. 2,23,02,758 by also altering the revenue of SEZ Unit-I even though it is a cost plus entity. This reduction in amount of deduction u/s 10AA was treated as an addition of Rs. 1,71,48,501. It is not clear as to how restricting exempted income shall become an addition to taxable income. Moreover, by shifting the expenses from STPI Unit & SEZ Unit-II to 10AA eligible SEZ Unit-I, the income of STPI Unit & SEZ Unit-II gets reduced as these units are also under cost plus revenue model. In fact, the revenue (and thereby the taxable income) of the two taxable units will become less than the declared income in the return. This will lead to an absurd situation of making an addition of restricted exempted amount of 10AA eligible SEZ Unit-I as well as determining the total income of taxable units (STPI Unit & SEZ Unit-II) below the declared amount in ITR.

5.3.2 In view of the above, the addition of Rs. 1,71,48,501 is deleted."

84. Being aggrieved by the order of the learned CIT(A), the revenue is in appeal before us. The learned DR before us vehemently supported the order of the AO.

85. On the other hand, the learned AR before us submitted that the assessee operates all its units under a uniform cost-plus mark-up billing model, wherein the

revenue of each unit is directly linked to the costs incurred by that unit along with a fixed mark-up. Therefore, any shifting of expenses from one unit to another would automatically lead to a corresponding change in revenue, and not to any tax advantage to the assessee.

86. The learned AR further contended that the allegation of the AO that common expenses were not properly allocated is incorrect and ignores the business model of the assessee. Even if certain common expenses such as managerial remuneration, audit fee or depreciation were charged to one unit, it would not result in suppression of taxable income, because under the cost-plus model, higher costs would only lead to higher revenue. Thus, reallocating expenses from non-10AA units to the 10AA unit would not increase the overall profits of the assessee but would merely result in a neutral or absurd outcome with no revenue loss to the department.

87. It was also argued that the overall revenue and profits of the assessee remain unchanged irrespective of such internal reallocations between units. Any decrease in revenue of the STPI unit would necessarily be matched by an increase in revenue of the SEZ unit, and vice-versa. Hence, the action of the AO in treating the reduction of deduction under section 10AA of the Act as an addition to taxable income is wholly misconceived and contrary to the settled principles of taxation.

88. The learned AR placed reliance on the orders passed in the assessee's own case for earlier assessment years, wherein on identical facts, the Tribunal as well as the learned CIT(A) had accepted the assessee's contention and deleted similar disallowances made under section 10AA of the Act. It was pointed out that consistency demands that the same view be followed in the present year as well, particularly when there is no change either in facts or in law.

89. In view of the above submissions, the learned AR prayed that the order of the learned CIT(A) deleting the disallowance made by the AO be upheld and the appeal filed by the Revenue be dismissed in the interests of justice and equity.

90. We have heard rival contentions of both the parties and perused the materials available on record. The assessee operated three units, namely STPI Unit, SEZ Unit-I and SEZ Unit-II, and SEZ Unit-I was eligible for deduction under section 10AA of the Act. The dispute arises because the AO reallocated certain common and non-identifiable expenses between the units and, on that basis, reduced the deduction under section 10AA of the Act and treated the difference as taxable income.

91. On the facts, we find merit in the reasoning adopted by the learned CIT(A). It is an admitted position that the assessee follows a cost-plus mark-up model, and the revenue of each unit is computed by applying a fixed mark-up on the costs incurred by that unit. In such a business model, cost and revenue move together. Therefore, if any common expense is shifted from one unit to another, the revenue of the respective units must also change in the same direction, because the billing itself is cost-linked. If the AO reallocates only the costs but does not make a corresponding and consistent adjustment to the revenue as per the cost-plus mechanism, the unit-wise results become artificial and do not reflect the real working of the assessee's model.

92. We also find force in the Id. CIT(A)'s observation that the AO's approach leads to an illogical outcome. The AO restricted the deduction under section 10AA of the Act and treated such restriction as an "addition" of ₹1,71,48,501/-. In our view, mere restriction of an exempt/deductible amount, by itself, cannot automatically become taxable income unless there is a real finding of suppressed receipts or inflated claim, supported by a correct computation of profits in line with the assessee's operating model. The Id. CIT(A) has rightly noted that shifting expenses to the 10AA unit would, under a cost-plus model, also impact the taxable units' revenue/profits and may even result in taxable income being computed lower than what was declared, which is an absurd result.

93. Further, the assessee's books were audited, and the AO has not rejected the books under section 145 of the Act. Once the books are not rejected, the AO cannot pick and choose only the cost allocation and disturb the unit results in isolation,

without demonstrating that the overall accounts are unreliable or that the computation is inconsistent with the assessee's billing structure. The learned AR has also explained that any shifting of expenses between units does not give a tax advantage because the revenue is linked to cost and the overall position remains neutral. In view of the above discussion, we hold that the learned CIT(A) was justified in deleting the addition of ₹1,71,48,501/-. Accordingly, the grounds raised by the Revenue on this issue are dismissed.

94. In the result, the appeal of the Revenue is hereby dismissed.

95. In the combined result, the assessee's appeal is allowed whereas the revenue's appeal is dismissed.

Order pronounced in the open court on 31st December, 2025.

Sd/-
(SUNDARARAJAN K.)
Judicial Member

Sd/-
(WASEEM AHMED)
Accountant member

Bangalore,
Dated, the 31st December, 2025.
/Vms/

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore