

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, H: NEW DELHI
BEFORE SHRI YOGESH KUMAR US, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER
ITA No.- 511/Del/2022
[Assessment Year: 2017-18]**

Compass India Support Services Pvt. Ltd., 401, 4 th Floor, Tower A, Spaze I-Tech Park, Sohna Road, Gurugram, Haryana-122018.	Vs	Additional / Joint / Deputy/Assistant Commissioner of Income Tax/ Income-tax Officer, National Faceless Assessment Centre, DCIT, Circle 4(2),C.R. Building, Delhi-110002.
PAN- AABCV4229N		
Assessee		Revenue

**ITA No.- 1383/Del/2022
[Assessment Year: 2018-19]**

Compass Group (India) Pvt. Ltd., (formerly known as Compass India Support Services Pvt. Ltd.) 7 th Floor Spaze I Tech Park Tower B, Sector 49, Gurugram South city II S.O., Gurugram-122018, Haryana.	Vs	Deputy Commissioner of Income Tax, Circle 4(2), Delhi-110002.
PAN- AABCV4229N		
Assessee		Revenue

Assessee by	Shri KM Gupta, Adv. & Ms. Kashish Gupta, CA
Revenue by	Shri S.K. Jadhav, CIT(DR)

Date of Hearing	11.11.2025
Date of Pronouncement	04.02.2026

ORDER

PER BRAJESH KUMAR SINGH, AM,

These two appeals have been preferred by the assessee against the Final Assessment Order dated 28.01.2022 and 30.04.2022 respectively, passed by the Learned Assessing Officer (AO) under Section 143(3) read with Sections 144C(13) of the Income-tax Act, 1961 ("the Act"), pursuant to the directions of the Hon'ble Dispute Resolution Panel (DRP) order dated 26.11.2021 and 15.03.2022 for the Assessment Year 2017-18 and 2018-19 respectively.

ITA No.- 511/Del/2022(A.Y. 2017-18)

2. The Assessee e-filed its return of income ('ROI') for AY 2017-18 on November 30, 2017 declaring a total income at INR Nil after set off of current year's loss of INR 86,67,652.

2.1 The assessee is a company, engaged in providing integrated facility management ('FM') and catering services in India. In addition, it also provides low end IS&T to its Associated Enterprises ('AE'). Further, during the year, the Company had received certain allocation of expenses pertaining to third party software licenses ("hereinafter referred as allocation of software expenses/ charges") from its AEs to assist the Assessee in regular conduct of its business operations.

2.2 The TPO noted that in Form 3CEB, the Assessee had shown following intra group services (i.e. IT software license and support services or 'IT software license') from its foreign AEs.

Particulars	Amount in INR
Receipt of services (IT Software license)	59,30,009/-
Total	59,30,009/-

2.3 On the basis of the information furnished during the TP audit proceedings, a show cause notice (SCN) was issued to the taxpayer on 11-12-2020 by the AO, the relevant extract of the SCN is reproduced hereunder:

“4) In respect of the transaction of receipt of services, please provide the following details.

4.1. Details and documentary evidence of the amount (this shall include the break-up) paid for the Intra-Group Services rendered by the Non-Resident AE during the A.Y. concerned.

4.2. A copy of the agreement(s) executed in between your company and the Non-Resident AE (s) in regards to the Intra-Group service(s) rendered by the AE for the A.Y. concerned. In case any addendum to the agreement exists, you have to provide a copy of that as well.

4.3. Details and documentary evidence of cost incurred by the Non-Resident AE for rendering each type of services purportedly received by the assessee company and the mark up applied if any by the AE Please also state as to whether the cost incurred by the AE is audited.

4.4. Description/details of any cost-benefit analysis/ benchmarking have done while entering into the agreement/ requisitioning the Intra-Group Services. The cost-benefit analysis should include the (a) expected benefits and (b) resultant tangible and direct benefits from the IGS vis-a-vis the payment made for the same.

4.5. Whether the Non-Resident AE is rendering such services to any other AEs/independent parties as well. If yes, the (a) details thereof including the rates/amount charged from such AEs along with mark up (if any) (b) basis of allocation among various entities and the basis of choosing a particular allocation key.

4.6. Whether your company has rendered services similar to the one rendered by the Non-Resident AE to your company during the A.Y. concerned either to the Non-Resident AE or any other unrelated third party. If yes, provide the relevant details like expenditure incurred and the details of payment received.

4.7. Details of the updated margin of the comparables along with the line by line margin calculation of comparables and the tested party. This should be reconciled with the audited accounts.

Please note that if the above information/ documents are not furnished by 18.12.2020, along with contemporaneous documentary evidence, the arm's length pricing for these intragroup services would be treated as Nil by applying CUP method.”

2.4 In response, the assessee submitted its reply vide letter dated 13.01.2021, wherein it submitted that during AY 2017-18, the assessee had received allocation of expenses, incurred by its associated enterprise ('AE'), namely Compass Group Holding Plc on behalf of its affiliates and such expenses were incurred towards information technology ('IT') software licenses and support services (referred to as 'IT software licenses') which had been rendered by third party service providers to Compass Group affiliates, under an arrangement between the AE and such third party. The assessee also submitted the details of 'allocation for IT software licenses', 'benefits of receiving the IT software licenses', 'better IT platforms' and about 'cost benefit'. Further, the assessee also submitted legal arguments submitting that benefit test is not a method prescribed under the realm of the Act and placed various judicial

pronouncement in this regard. The assessee also submitted that the tax authorities cannot question the commercial expediency of the transaction and benefits are not something that can be quantified and measured accurately in terms of pounds or shilling.

2.5 After considering the explanation of the assessee the TPO noted that in order to examine the arm's length price of intra group services received by the Assessee company from its foreign AEs, following essential information should be available:

- a. *Whether the Assessee has received intra group services?*
- b. *What are the economic and commercial benefits derived by the recipient of intra group services?*
- c. *In order to identify the charges relating to services, there should be a mechanism in place which can identify (i) the cost incurred by the AE in providing the intra group services and (ii) the basis of allocation of cost to various AEs.*
- d. *Whether a comparable independent enterprise would have paid for the services in comparable circumstances?*

2.6 The TPO on the basis of material available noted that in this case, the assessee had failed to substantiate that benefit has actually been derived by it on the basis of documentary evidence. The TPO noted that no detail was filed by the assessee to establish the requirement/specific need of the taxpayer for their services, the benefit which had accrued to the taxpayer, or that an independent party would have been willing to pay another independent party for the services purported to be received by the taxpayer.

2.7 The TPO further noted that the taxpayer did not file any evidence to support a claim that these services were actually provided to the taxpayer at its request to meet the specific need of the taxpayer and that certain tangible and concrete benefits had actually accrued to the taxpayer.

2.8 The TPO noted that in support of its contention to intra group services, the assessee had merely furnished copies of certain mails exchanged between the personnel of the Group. On perusal of the aforesaid emails, the TPO observed that these emails do not prove the availing of the services by the Assessee company.

2.9 The TPO after noting that the Assessee had not been able to provide any details or documentation of the intra group services received by it and, therefore, in such a situation, it was held by the TPO that in a third-party scenario no amount would be payable for such kind of transaction and in such a situation the arm's length price of the transaction had to be benchmarked at 'NIL'.

2.10 Accordingly, the arm's length price of these intra group services was held to be Rs. Nil on application of CUP method as the TPO observed that no uncontrolled enterprise would have paid any such amount for services and the arm's length price of the international transaction related to provision of software related services was computed by the TPO as below:

<i>Particulars</i>	<i>Amount in INR</i>
<i>Operating costs</i>	<i>7,77,51,318</i>
<i>ALP at 18.34%</i>	<i>9,20,10,910</i>
<i>Price Received</i>	<i>8,69,67,185</i>
<i>Adjustment U/s 92CA</i>	<i>50,43,725</i>

2.11 In pursuance of the above direction the AO proposed an adjustment of Rs. 50,43,725/- in the draft order u/s 144C of the Act, dated 25.04.2021.

3. Aggrieved with the said order, the assessee filed its objection before the DRP.

4. The Ld. DRP dealt the matter in para no. 4.4. to 4.4.2 of its order and sustained the order of the AO / TPO. Further, the Ld. DRP in respect of ground no. 4.4. directed the AO to verify about the erroneous adjustment of Rs. 50,43,725/- instead of the correct amount of Rs. 59,30,009/-. The relevant extract of the directions of the Ld. DRP are reproduced as under:

“ 4.4. Ground 4: That on the facts and circumstances of the case, and in law, the Ld. AO/ Ld. TPO has erred in enhancing the income of the Assessee by INR 50,43,725 by holding that the international transaction pertaining to allocation of software expenses do not satisfy the arm's length principle envisaged under the Act and in doing so, have grossly erred in:

4.1. holding that the Assessee did not receive any tangible benefit in lieu of the services availed; thereby challenging the commercial wisdom of the Assessee in making payment for services availed;

4.2. disregarding the elaborate documentary evidence submitted as part of assessment proceedings to erroneously assume that "no benefit" has been conferred upon the Assessee from the impugned international transactions pertaining to allocation of software expenses and thereafter re-determining the ALP of the said transaction as "NIL";

4.3. disregarding 'Other Method' and applying Comparable Uncontrolled Price ('CUP') method to benchmark the impugned international transaction under

consideration, without undertaking any economic analysis and in contravention of provisions provided in Rule 10B of the Rules and Section 92C of the Act; and

4.4 not giving effect to the rectification order passed u/s 154 of the Act by the Ld. TPO and erroneously making an adjustment of INR 50,43,725 instead of INR 59,30,009.

DRP Direction:

Grounds 4.1 to 4.4 relate to adjustment of INR 50,43,725 by AO/TPO on account of Receipt of Services (Software license) by the assessee from its foreign AE. The TPO, after making a detailed discussion on factual and legal position as well the relevant OECD guidelines in this regard in para 13 concluded as under:

"para 13.5.13: From the above discussion, it is clear that the assessee has not been able to provide any details or documentation as mentioned above. In such a situation, it is held that in a third party scenario no amount would be payable for such kind of transaction, Therefore, the ALP of the transaction has to be benchmarked as NIL"

*4.4.1 The DRP has considered the relevant part of the TPO order as well as the detailed submissions of the assessee. During the proceeding before TPO, the TPO raised a number of queries vide para 13.2.2 to 13.2.5 of his order to ascertain the nature and extent of intra group services received by the assessee from its AE and the benefits derived by the assessee from the same. In the DRP proceedings the assessee has submitted detailed justification in support of its contention that the intra group services were indeed received by the assessee. The assessee also relied on a number of case laws in support of its contention. The DRP has examined the detailed justification for adjustments made by TPO on account of intra group services as well as the submission of the assessee. At the outset there are two issues in the analysis of transfer pricing for intra-group services. One whether intra-group services have in fact been provided and second whether such services were charged for at ALP. The TPO's conclusion is that the taxpayer has not been able to prove that any tangible benefit was derived from the services and taxpayer has also not been able to demonstrate that the payment was at ALP. The TPO has marshalled considerable factual material after following due process. The taxpayer has been allowed adequate opportunity to place on record tangible evidence to prove that benefit was received from services rendered, and that these were necessary, not in the nature of shareholders services and not duplicative and that these were at ALP. But Taxpayer failed to discharge the onus of proving this. On similar facts in the case of *Bombardier Transportation India P Ltd v DCIT*, dt 4 November 2015, Tribunal has held confirming DRP and TPOs orders that,*

*Extract from *Bombardier Transportation India P Ltd v DCIT**

"From the review of the services and benefit report and the supporting documents submitted by the Assessee company, it can be seen that the assessee company is benefited from the supervision and guidance of the group's functional experts which help the Assessee company in efficiently carrying its business operations by leveraging on group synergies. In this regard, the Assessee company has attached as Annexure-2

to the synopsis submitted at the time of hearing, brief overview on the various intra-group services received by it during the year from the various Hub divisions and from the Group entities which were substantiated and validated by the intercompany service agreements entered into by the assessee company with its Associated Enterprises' (AEs) along with various documentary evidences submitted before the id. TPO and the Id. DRP. The said Annexure also provides the resultant benefits derived by the Assessee company by availing the intra-group services- Though, the said Annexure-it show that the Assessee company was benefitted significantly from the intra-group services received from its AEs, it failed to give the supporting evidence such as invoice, confirmation from parties to prove the same. The assessee company has also undertaken a detailed cost benefit analysis in order to demonstrate the cost savings achieved by the Assessee company by availing the said services from the AEs. Therefore, when AEs transact with each other, for the purpose of transfer pricing they must replicate the dynamics of market forces, as there is no concept of free lunch in business dealings. Thus, Id. DRP rightly held that the benefit test which is well recognized by OECD and other developed countries Tax regime have to be seen for allowing the payment in case of intra-Group Services. The expected benefit must be sufficiently direct and substantial so that an independent entity in similar circumstances, would be prepared to pay for it. If no benefits have been provided (or was expected to be provided), then the services cannot be charged for. Since the assessee just explained in generic nature about the benefits vis-a-vis the intra-group services payment to its AEs, therefore, we uphold the orders of id. DRP and Id. TPO."

Perusal of the above will show that the Tribunal has affirmed that the benefit test is well recognized and the expected benefits from intra-group services must be sufficiently direct and substantial, so that an independent entity in similar circumstances, would be prepared to pay for it. If no benefits have been provided then the services cannot be charged for, and mere explanations in generic terms about the benefits are inadequate for allowability.

4.4.1.1 The query raised by the TPO as mentioned in para 13.2.2 to 13.2.5 of his order, regarding the need, the nature, the extent and the mode of availing benefits from the services by the assessee from its AE remains unsubstantiated even during the DRP proceedings. The primary onus to substantiate that the services were actually availed by the assessee from its AE and the payments made by the assessee was actually for this purpose, and was at ALP, lies on the assessee. In the instant case, the assessee has failed to substantiate the same by providing satisfactory explanation, supported by necessary documents. Hence, the DRP finds no grounds to interfere with the conclusion of the TPO as regards adjustment made by him on account of intra group services from the AE. In the light of the factual matrix and support from judicial decisions supra, the objections of the taxpayer are rejected. Ground number 4.1 to 4.3 are accordingly dismissed.

4.4.2: In ground 4.4 the assessee has agitated not giving effect to the rectification order passed u/s 154 of the Act by the Ld. TPO and erroneously making an adjustment of INR 50,43,725 instead of INR 59,30,009. The DRP has considered the submissions of the assessee. The AO is directed to verify the claim of the assessee from the facts available on record and pass necessary rectification order, if admissible in the case. The Ground 4.5 is disposed off accordingly.”

5. Upon receipt of the said direction, the AO passed the Final Assessment Order u/s 143(3) r.w.s. 144C(13) r.w.s. 144B of the Act on 28.01.2022 making an adjustment of Rs. 59,30,009/- on account of Receipt of IT services (IT Software license).

6. Aggrieved with the said order, the assessee is in appeal before us on the following grounds of appeal:

“ “ Transfer Pricing adjustment with respect to allocation of software expenses

1 On the facts and circumstances of the case, & in law, the Ld. Assessing Officer ("Ld. AD") Learned Transfer Pricing Officer ("Ld. TPO) (in pursuance to the directions of the Dispute Resolution Panel ("DRP")), erred in enhancing the income of the Appellant by INR 59,30,009 holding that the international transaction pertaining to allocation of software expenses do not satisfy the arm's length principle envisaged under the Income-tax Act, 1961 ('the Act"), and in doing so have grossly erred in

1.1. holding that the Appellant did not receive any tangible benefit in lieu of the services availed. thereby challenging the commercial wisdom of the Appellant in making payment for services availed,

1.2. disregarding the documentation submitted and holding that the Appellant has not demonstrated that it received any services performed by the Associated Enterprises

1.3 disregarding the elaborate documentary evidence submitted as part of assessment proceedings to erroneously assume that 'no benefit has been conferred upon the Appellant from the impugned international transactions pertaining to allocation of software expenses and thereafter re-determining the ALP of the said transaction as "NIL":

1.4. disregarding Other Method and applying Comparable Uncontrolled Price ("CUP") method to benchmark the impugned international transaction under consideration, without undertaking any economic analysis and in contravention of provisions provided in Rule 108 of the Rules and Section 92C of the Act, and

2 That on the facts and circumstances of the case, and in law the Ld. AO has grossly erred in proposing to initiate penalty proceedings under section 270A of the Act

All the above grounds are without prejudice to each other The Appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.”

7. The Ld. AR reiterated its submission before the AO/ Ld. DRP and filed a short synopsis and the relevant extract of the same is reproduced as under:

“ In the case of: Compass India Support Services Private Limited

ITA No. 511/Del/2022 ('AY') 2017-18

Short Synopsis

In reference to the matter heard by the Hon'ble Bench on November 11, 2025, the Appellant respectfully submits a brief synopsis as directed -

1. The Appellant is a wholly owned subsidiary of Compass Group Netherlands B. V. (during AY 2017-18, it was a wholly owned subsidiary of Compass Group (Singapore) Pte Ltd) and ultimately owned by Compass Group PLC (Compass UK'). It is primarily engaged in providing integrated facility management ('FM") and catering services in India.

2. The Appellant filed an appeal before the Hon'ble Bench contesting the solitary issue of transfer pricing adjustment proposed w.r.t. Receipt of third party software cost of INR 59,30,009 (refer Page 224 of appeal set for the findings of the Ld. TPO and Page 38 of appeal set for the findings of the Ld. DRP)

3. The Appellant benchmarked the international transaction of allocation of software expenses by applying Other Method ('OM') (refer Page 195-196 of Paperbook for transfer pricing analysis).

4. It is submitted that during the captioned AY, in order for smooth business functions and rendering services to its customers, the Appellant received allocation of cost pertaining to software licenses from its AEs for INR. 59,30,009. Such expenses were incurred towards IT software licenses and support services (referred to as 'IT software licenses') which have been rendered by third party service providers to Compass Group affiliates, under an arrangement between the AE and such third party i.e. Microsoft.

5. During the course of the assessment proceedings, the Ld. TPO/DRP completely disregarded the submission filed by the Appellant and erroneously determined the arm's length price (ALP) of the said transaction as NIL, which is against the principles of transfer pricing. The Ld. TPO/DRP further stated that the Appellant has failed to demonstrate the tangible benefit derived from such services. The Ld. TPO/DRP erred as under-

a) Not concurred with the Other Method analysis undertaken by Appellant in its TP study and instead proceeded to arbitrarily apply CUP method as the most appropriate method for benchmarking without providing the comparable cases as warranted for applying 'CUP' method.

b) Not given due cognizance to following documentary evidences and supporting submitted by Appellant:

I. Back-to-back invoices (Refer page 130 to 140 of paperback)

II. Product catalog of the third-party vendor (Refer page 56 to 77 of Paperback for product catalog).

III. Agreed rates charged by the third party (Refer page 78 to 124 of the Paperback for agreement)

IV. Submission on Cost Allocation and Cost Benefit Analysis (Refer page 125 to 159 of Paperback)

c) Stating that the taxpayer has not been able to prove that it has received services of IT software license without appreciating the fact that the Appellant had duly provided the aforementioned documents before the Ld. TPO.

d) Analyzed the nature and remuneration paid in respect of each service availed by the Appellant from its AE separately to determine the ALP and opined that such services are quite general, vague and duplicative in nature, thereby failing the benefits test. The Ld. TPO further noted that any benefit from these services is incidental and does not warrant payment, without appreciating the fact that the payment was for

software licenses used by the Appellant in the ordinary course of business during the relevant AY and the same was duly evidenced;

6. During the course of the hearing, the Appellant substantiated the receipt of business through following evidences/documentation:

S.NO.	Description	Paperbook Reference
1	<u>Inter-Company invoice no. 8721 dated 28 February 2017:</u> During the year, the Appellant received recharge of licensing cost from the Group. The invoice mentions the recharge amount as well as nature/ type of license.	159
2	Microsoft- Volume Licensing agreement costs: a) Copy of agreement entered into with Microsoft for providing IT software licenses i.e. license a suite of online services and software as described in the product catalog. b) The agreement between Microsoft and the AE was provided to Ld. TPOO clearly provides the rate charged by the third party. c) The breakup of cost allocated to the Appellant and the detailed working to substantiate the allocation on a cost-to-cost basis were also provided to the	56-77 78-124 125-159
3	Azure cost: Sample Third Party invoice and Break-up of above a) Sample third-party invoice for an amount of USD 21,992 is submitted to substantiate actual receipt of services by the group with respect to line item "Azure 2016 charges" b) The Appellant had submitted that the third-party license cost is allocated on the basis of number of users. c) Break-up of "Azure charges" as appearing in Inter-Company invoice for USD 8,135 which was further split in the ratio 50:50 for two Indian entities i.e. the Appellant and Compass Group India Support Services P. Ltd.	130-140 128
4	Microsoft CRM license: Break-up of Microsoft CRM license cost for USD 5,188 allocated to Appellant along with the agreed rates.	125-159

7. In light of the above, it is humbly prayed that the impugned addition is liable to be deleted as the Appellant has duly demonstrated the rendition of services and the economic benefit arising on the global arrangement by the AE for software licenses which resulted in substantial saving to the Appellant. In addition to the above, the Appellant further submits that the determination of ALP of the aforesaid transaction at NIL is against the TP principles.”

(emphasis supplied by us)

8. On the other hand, the Ld. CIT(DR) relied upon the order of the authority below.

9. We have heard both the parties and perused the material available on record. On perusal of the submission of the assessee as reproduced above, we notice that the assessee had submitted the complete details about the arrangements of the intra-company services (i.e. receipt license), the basis and the agreement for providing the said services by, sample third party invoice and break-up of the above has detailed in para 5(b) and para 6 of the written submission as reproduced above. The cost allocated to the assessee during the year amounts in USD 74,280 which in Indian currency amounts to Rs. 59,30,009/-. The ‘Breakup of computer maintenance cost’ for which the said amount has been paid by the assessee is mentioned at page no. 125 -126 of the paper book filed by the assessee. The relevant extract of the same is reproduced as under:

Compass India Support Services Private Limited
Assessment proceedings - AY 2017-18
Breakup of computer maintenance cost

Annexure D

S.No.	Particular	Amount in USD	Reference to backup
1.	Microsoft Enterprise Agreement - licences and associated Office365 support costs	74,280	Item 1
2.	Microsoft CRM licences and support charges	5,188	Item 2
3.	Azure charges	8,135	Item 3
4.	Microsoft cost specific to India	3,723	Item 4
		91,326	
		71	
	Exchange rate		
	Amount in INR (as disclosed in Form 3CEB and RPT schedule of financial statements)	6,451,077	

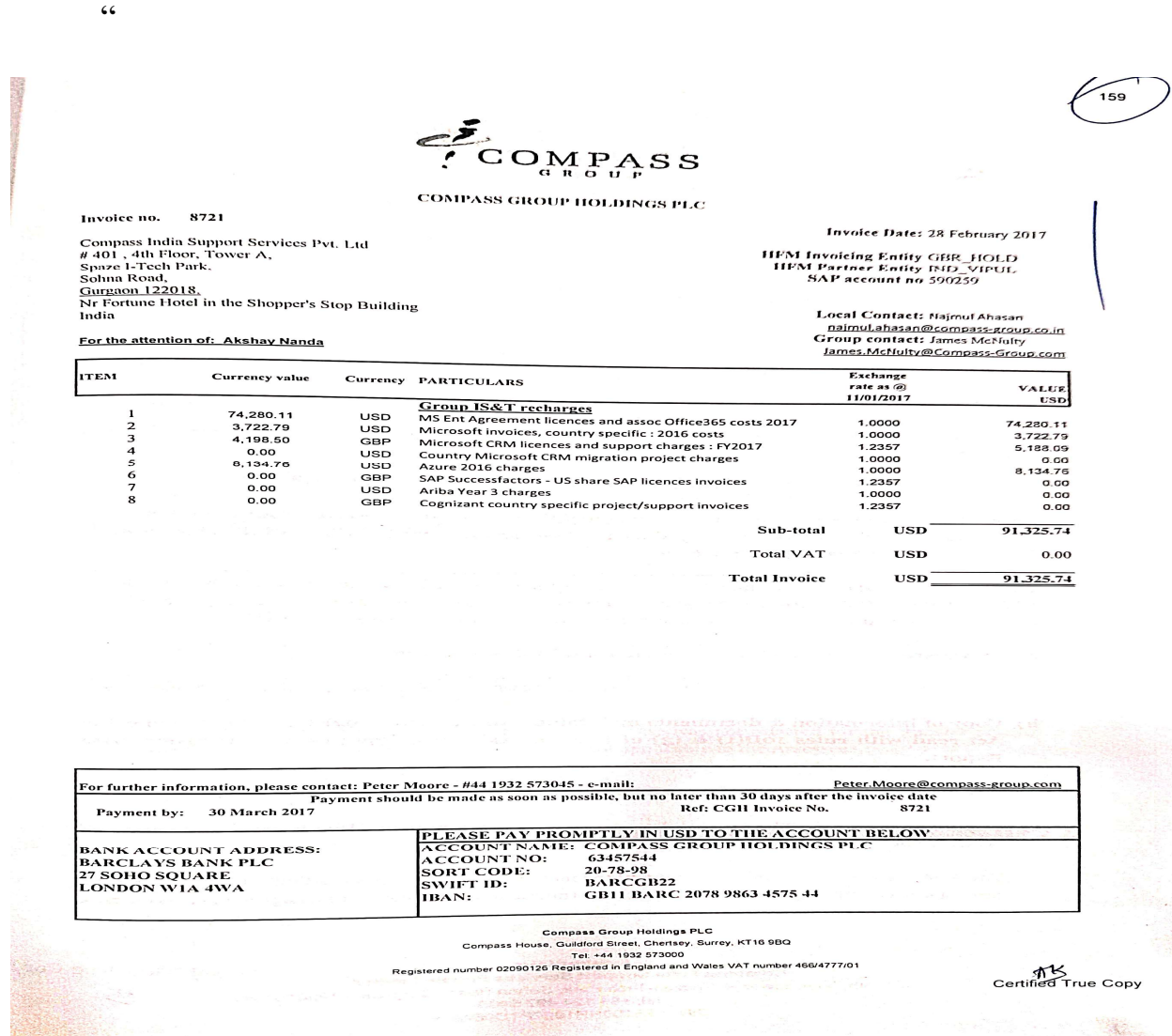
Compass India Support Services Private Limited
Assessment proceedings - AY 2017-18
Microsoft Enterprise Agreement - licences and associated Office365 support costs
Invoice date: 28 February 2017

Product	Quantity	Net Unit Price per month USD	Net Unit Price per year USD	Total charge	Reference
Kiosk Productivity USL	10	3.25	39.00	390	Microsoft - Volume Licensing Agreement
Cloud Productivity S0 from SA	79	8.29	99.48	7,859	Microsoft - Volume Licensing Agreement
Cloud Productivity S0	135	9.82	117.84	15,908	Microsoft - Volume Licensing Agreement
Cloud Productivity S3	184	17.24	206.88	37,962	Microsoft - Volume Licensing Agreement
Other products				10,097	
Premier Support				806	Support costs are split proportionally based on each countries share of Microsoft Office 365 spend. No mark-up is applied to any support costs.
Firewall				38	
Group Azure				616	
o365 support				605	
				74,280	

Screenshot of third party agreement enclosed as Annexure C to the submission is given below for your goodself ready reference

9.1 Further, the assessee also filed the Inter-Company invoice no. 8721 dated 28 February 2017, at page no. 159 of the Paper book, which reconciles with the amount mentioned with eh above documents placed at page no. 126-125 of the paper book.

The said invoice no. 8721 placed at page no. 159 of the paper book is reproduced as under:



9.2 On the basis of the above documents, we are satisfied that the assessee has provided the necessary explanation for availing of the said services and also demonstrated about the availing of the said services by furnishing the necessary documents / evidences as mentioned above. We, therefore, hold that adjustments of

Rs. 59,30,009/- made by the Assessing Officer is not justified in this case, and the same is deleted. Ground nos. 1 to 1.4 of the appeal is allowed.

10. Ground no. 2 of the appeal is against the initiation of penalty proceedings u/s 270A of the Act. This ground of appeal is premature at this stage and hence dismissed.

11. In the result, this appeal in ITA No. 511/Del/2022 is partly allowed.

ITA No.- 1383/Del/2022 (A.Y.- 2018-19)

12. The AO noted the summary of International Transactions for the year as under:

<i>S. No.</i>	<i>Nature of transaction</i>	<i>Amount (in INR)</i>
<i>1</i>	<i>Provision of Information system and technology services</i>	<i>111120776</i>
<i>2</i>	<i>Allocation of expenses</i>	<i>10708641</i>
<i>3</i>	<i>Reimbursement of expenses paid</i>	<i>4465958</i>
<i>4</i>	<i>Payment of fee against letter of comfort</i>	<i>NIL</i>
<i>5</i>	<i>Issue of equity shares</i>	<i>250000000</i>

13. The TPO noted that in the TP study TNMM with PLI as OP/OC has been used as MAM for ascertaining ALP for the provision of IT enabled back office support services and the margin earned was shown as 15%. The TPO further noted that the company itself mentioned that it was taken as the "tested party" for the purpose of ascertaining ALP. Further, the TPO noted that it was also been mentioned in the TP

study that certain ITES costs has been recovered on cost-to-cost basis and the assessee was not charging any markup on these ITES services which according to the TPO was not appropriate as both were similar services. Accordingly, the TPO clubbed these transactions and benchmarked as a whole and worked out the computation below: -

<i>Particulars</i>	<i>IT Enabled Services</i>	<i>IT enabled Services</i>	<i>Total</i>
<i>Operating revenues</i>	86363514	24,757,262	111,120,776
<i>Operating costs</i>	74520333	24,757,262	99,277,595
<i>Operating profit</i>	11843181	0	11,843,181
<i>OP/ OC</i>	15%	0%	11.93%

13.1 The TPO thereafter discussed about the certain filters applied by the assessee and analyzed the same about its acceptability / non-acceptability as per details in the order. Thereafter, the AO also considered additional filters and after further analysis determined the Median at 21.53 and proposed an adjustment of Rs. 95,31,285/- vide show cause notice dated 20.07.2021.

“13.2 Accordingly, the arm's length price of the international transaction related to provision of ITES is computed as below:

	<i>Amount (in Rs.)</i>
<i>Operating costs</i>	99,277,595
<i>Arms Length Margin</i>	21.53%
<i>Arms Length Profit</i>	2,13,74,466
<i>Arms Length Price</i>	12,06,52,061
<i>Price Received</i>	11,11,20,776

<i>Adjustment amount</i>	<i>95.31.285</i>

13.3. Accordingly, an adjustment of Rs. 95,31,285/- is proposed w.r.t. to IS&T services.”

13.2 In reply the assessee submitted its reply vide letter dated 24.07.2021 and the relevant extract of the summary of the reply as noted by the TPO in para no. 5 of its order is reproduced as under:

“5. The assessee made a reply dated 24.07.2021 in response to the show cause notice. The replies that have been made by the assessee have been carefully considered. The reply of the assessee has not been reproduced for the sake of brevity of the case. However, the main contentions raised by the assessee as regards the SCN issued are summarized as under:

The Assessee had maintained the TP documentation in respect of the above international transactions in conformity with the requirement under Section 92D of the Act read with Rule 100 of the Income-tax Rules 1962 ('the Rules'). The same should be accepted.

Rejected the comparability analysis conducted by the Assessee and conducted a fresh search based on the recent cut-off date. The Assessee had conducted the comparability analysis on the basis of contemporaneous data and same should be accepted

Rejected the filters applied by the Assessee based on inappropriate assumptions for doing so and applied additional filters in its search process. The Assessee is not in agreement with the approach adopted by your goodself.

Rejected certain comparable companies selected by the Assessee in the TP study by application of additional filters and on ground of functional dissimilarity. The Assessee is not in agreement with the rejection of these companies.

Selected certain additional companies as comparable to the Assessee based on a fresh search. The Assessee is not in agreement with the comparability analysis of these companies.

Disregard of segmental information provided by the assessee

Working Capital Adjustment

Risk Adjustment”

13.3 Further, the TPO also noted that in the TP study TNMM with PLI as OP/OC has been used as MAM for ascertaining ALP for the provision of IT enabled back-office support services and the margin earned by your company has been shown as 15% Further, Certain ITES costs have been recovered on cost-to-cost basis. The assessee is not charging any markup on these ITES services which is not appropriate as both are similar services. Accordingly, these transactions were clubbed and benchmarked as a whole. Now the assessee has merely submitted a reconciliation of the above transactions. Further, the TPO noted that it remained an undoubted fact that the assessee had not charged any markup of certain ITES which has been performed by the third parties and the same was provided to the AE on cost to cost basis. It was further noted by the TPO that the assessee had stated that it had not performed any value-added functions for the services provided by the third party vendors and merely acted as an administrative facilitator. The TPO further noted that in this regard, it is stated that assessee itself is stating that it is providing administrative facilities to its AE in the form of outsourcing of ITES services and assessee had not charged any markup on these services. Noting these facts, no uncontrolled entity would provide services (either directly or through outsourcing) to anyone without charging an

appropriate mark-up and therefore, to keep the transaction at arms length, an appropriate markup should also have been charged by the assessee company. The TPO further noted that since the services provided by the assessee are in the nature of ITES, therefore, the same were clubbed with ITES services segmental data provided by the assessee and rejected the contentions of the assessee.

13.4 Thereafter, the TPO after rejecting the submissions of the assessee determined the ALP as under:

“13. Determination of Arm’s Length Price

13.1 In the light of discussion made aboe, the comparable that shall be finally selected for benchmarking the international transactions relating to provision of IS & T Services are as follows:

<i>Sr. Np</i>	<i>Name of the company</i>	<i>Recomputed OP / TC</i>
<i>1</i>	<i>Athen BPO Pvt.Ltd</i>	<i>4.11</i>
<i>2</i>	<i>One point One solution Ltd.</i>	<i>10.76</i>
<i>3</i>	<i>Cyfuture India Pvt. Ltd.</i>	<i>13.78</i>
<i>4</i>	<i>Jindal Intellicom Ltd</i>	<i>14.16</i>
<i>5</i>	<i>Allsec Technologies Ltd.</i>	<i>14.62</i>
<i>6</i>	<i>Tech Mahindra Business Services Ltd.</i>	<i>18.52</i>
<i>7</i>	<i>Surevin BPO Services Ltd.</i>	<i>21.53</i>
<i>8</i>	<i>Netscibes (India) Pvt. Ltd.</i>	<i>22.22</i>
<i>9</i>	<i>Wipro Ltd.</i>	<i>22.75</i>
<i>10</i>	<i>Suma Soft Pvt Ltd.</i>	<i>30.09</i>
<i>11</i>	<i>CES Ltd</i>	<i>31.12</i>
<i>12</i>	<i>Ultramarine & Pigments Ltd</i>	<i>39.36</i>
<i>13</i>	<i>Eclerx Services Ltd</i>	<i>45.94</i>

		<i>OP/ OC</i>
<i>35th Percentile</i>	<i>5th</i>	<i>14.62%</i>
<i>65th Percentile</i>	<i>9th</i>	<i>22.75%</i>
<i>Median</i>		<i>21.53%</i>

“13.2 Accordingly, the arm's length price of the international transaction related to provision of ITES is computed as below:

	<i>Amount (in Rs.)</i>
<i>Operating costs</i>	<i>99,277,595</i>
<i>Arms Length Margin</i>	<i>21.53%</i>
<i>Arms Length Profit</i>	<i>2,13,74,466</i>
<i>Arms Length Price</i>	<i>12,06,52,061</i>
<i>Price Received</i>	<i>11,11,20,776</i>
<i>Adjustment amount</i>	<i>95.31.285</i>

13.3. Accordingly, an adjustment of Rs. 95,31,285/- is proposed w.r.t. to IS&T services.”

14. In pursuance of the above direction the AO proposed an adjustment of Rs. 95,31,285/- in the draft order u/s 144C of the Act, dated 15.09.2021 w.r.t. to IS&T services. Further, the AO considered the total income as per the order u/s 143(1) of the Act, dated 14.11.2019 at Rs. 26,68,330/-, which included disallowances of Rs. 21,08,699/- and Rs. 5,60,128/- on account of bonus and delay in deposit of PF/ ESI respectively for making addition to the returned income.

15. Aggrieved with the said adjustment the assessee filed its objections before the DRP.

16. The DRP inter alia directed the Ld. TPO to follow the order of the DRP in the AY 2017-18 mutatis mutandis The relevant extract of the DRP directions is reproduced below:

“4.3.9 In ground 3.10 the assessee has alleged that the TPO disregarded the segmental financial information submitted by the assessee and held that recovery of IT expenses tantamount to services on which mark-up is to be earned. The objection raised in this ground are identical to that in the case of assessee for the AY 2017-18 wherein the DRP directed as under:

“During DRP proceedings, the assessee has submitted that the value of international transaction pertaining to low end IS&T services reconciles with the segment revenue and therefore, should be considered to compute the margin. The AO/TPO is directed to verify the claim of the assessee from its audited accounts and re-compute OP/OC after passing a speaking order.”

4.3.10 Since there is no change in factual matrix from the AY 2017-18 the AO/TPO is directed to follow the order of the DRP on this issue in the AY 2017-18 mutatis mutandis.”

(emphasis supplied by us)

17. The TPO after considering the above directions of the DRP in the OGE dated 21.04.2022 recalculated the Median at 20.02 as against 21.53 in the order u/s 92CA(3) of the Act dated 29.07.2021 and accordingly reduced the adjustment to Rs. 80,32,194/- from the 95,31,385/-. The relevant extract of the working by the TPO is reproduced as under:

“4. After considering the above facts, the final set of comparables in respect of above directions is as follows:

<i>Sr. No</i>	<i>Name of the company</i>	<i>Recomputed OP / TC</i>
<i>1</i>	<i>Athen BPO Pvt.Ltd</i>	<i>4.11</i>
<i>2</i>	<i>One point One solution Ltd.</i>	<i>10.76</i>
<i>3</i>	<i>Cyfuture India Pvt. Ltd.</i>	<i>13.78</i>
<i>4</i>	<i>Jindal Intellicom Ltd</i>	<i>14.16</i>

5	<i>Allsec Technologies Ltd.</i>	14.62
6	<i>Tech Mahindra Business Services Ltd.</i>	18.52
7	<i>Surevin BPO Services Ltd.</i>	21.53
8	<i>Netscibe (India) Pvt. Ltd.</i>	22.22
9	<i>Suma Soft Pvt. Ltd.</i>	30.09
10	<i>CES Ltd-IT Enabled Services</i>	31.12
11	<i>Ultramarine & Pigments Ltd-IT enabled Services & BPO activity</i>	39.36
12	<i>Eclerx Services Ltd</i>	45.94
	<i>35th Percentile</i>	14.62%
	<i>65th Percentile</i>	22.22%
	<i>Medianq</i>	20.02%
	<i>Assessee's Margin</i>	11.93%

5. *In pursuance of the above final set of comparables, the computation of Arm's length price and adjustment made in Provision of the IS & T services:-*

<i>Particulars</i>	<i>Amount (INR)</i>
<i>Operating Cost</i>	9,92,77,595
<i>Arms Length Margin</i>	20.02%
<i>Arms Length Profit</i>	1,98,75,374
<i>Arms Length Price</i>	11,91,52,969
<i>Price received</i>	11,11,20,776
<i>Adjustment Amount</i>	80,32,194

6. *Therefore, as per the directions of the Hon'ble DRP, the earlier adjustment of Rs. 95,31,285/- made to the income of the taxpayer u/s 92CA is revised to Rs. 80,32,194/-. The assessing Officer shall adjust the income of the assessee accordingly."*

18. Upon receipt of the said direction, the AO passed the Final Assessment Order u/s 143(3) r.w.s. 144C(13) r.w.s. 144B of the Act on 30.04.2022 making an adjustment of Rs. 80,32,194/- on account of provision of IS & T Services.

19. Aggrieved with the said order, the assessee is in appeal before us on the following grounds of appeal:

4. On the facts and circumstances of the case, & in law, the Ld. Assessing Officer (Ld. AO)/Learned Transfer Pricing Officer (Ld. TPO) (in pursuance to the directions of the Dispute Resolution Panel (DRP)), erred in enhancing the income of the Appellant by INR 80.32.194 holding that the international transaction pertaining to provision of IS&T services do not satisfy the arm's length principle envisaged under the Act, and in doing so have grossly erred in

4.1 not appreciating that none of the conditions set out in section 92C(3) of Act are satisfied in the present case and disregarding the arm's length price (ALP) as determined by the Appellant in the TP documentation maintained by it in terms of Section 92D of the Act read with Rule 100 of the Income Tax Rules, 1962 (the Rules);

4.2 rejecting certain filters applied by the Appellant in the TP documentation maintained as per the section 92D of the Act read with Rule 10D of Rules,

4.3 modifying comparability analysis in the TP documentation and in conducting a fresh comparability analysis based on application of the additional revised filters in determining the ALP

4.4 not providing the search strategy and accept-reject reasons of the fresh economic analysis conducted by Ld. TPO which tantamount to choosing adhoc companies as comparable.

4.5 including certain companies in the final comparable set that are not comparable to the Appellant in terms of functions performed, assets employed and risks assumed

4.6 excluding certain companies including additional comparables on arbitrary/frivolous grounds even though they are comparable to the Appellant in terms of functions performed, assets employed and risks assumed

4.7 computing the mark-ups of comparable companies based on erroneous computation methodology.

4.8 considering foreign exchange gain/ loss as operating in nature for the Appellant as well as comparable companies.

4.9 not following the principle of consistency by disregarding the segmental financial information submitted by the Appellant and holding that recovery of IT expenses tantamount to services on which mark-up is to be earned whereas in AY 2017-18, the Ld. TPO has accepted the segmental information submitted by the Appellant, and

20. During the course of hearing before us, the Ld. AR reiterated its submissions made before the AO / Ld. DRP and also filed a written submission, the relevant extract of which are reproduced as under:

“ In reference to the matter heard by the Hon'ble Bench on November 11, 2025, the Appellant respectfully submits a brief synopsis as directed -

1. The Appellant, being a part of the Compass Group, is primarily engaged in providing integrated Facility Management ('FM') and catering services in India. In addition, it also provides low end Information System and Technology services ('IS&T') to its Associated Enterprises ('AE').

2. The Appellant filed an appeal before the Hon'ble Bench contesting the aforementioned issues -

a) the transfer pricing adjustment proposed w.r.t. provision of low-end IS&T services of INR 80,32,194 (refer Ground No. 4) and;

.....

Ground No. 4 - Transfer pricing adjustment on provision of low-end IS&T services

3. During the course of hearing, it was submitted that the Appellant is maintaining segmental accounts for each of its business segments, namely - Facility Management, Catering Services and Information System and Technology Services (IS&T Services). The same were duly reported in the audited financial statements for the captioned AY (the screenshot of segmental information reported is extract as under):

Primary segment information

Particular	For the year ended 31 March 2018				
	Business segments			Unallocated	Total
	Facility management	Catering services	Information system and technology services		
Segment revenue	2,945,313.663	130,470.317	86,363,514		3,162,147.494
Results					
Segment result,	99,482,699	16,762.872	11,843,181		128,088,752

Unallocated expenses (net of unallocated income)				(132,645,386)	(132,645,386)
	99,482.699	16,762.872	11,843,181	(132,645,386)	(4,56,634)
Operating profit / loss					
Less unallocated interest expense				2,164,348	2,164,348
Add. Unallocated interest income				5,426,483	5,426,483
Add. Unallocated non-operating income				63,343	63,343
Profit / (Loss) before exceptional items	99,482.699	16,762,872	11,843,181	(129,319,908)	(129,319,908)

(refer Page No. 36 of Paperbook)

4. It was also highlighted that the Appellant was involved in provision of low end IS&T services to its AE which includes understanding the need of AEs business and providing low end administrative/ coordination services on a regular basis, for which the Appellant has a pricing policy to charge 15% mark-up on the cost incurred by it. It is submitted that under the arrangement for provision of IS&T services, the Appellant received a total revenue of INR 8,63,63,514 which was duly disclosed in the segmental financial statements of the Appellant and the operating profit from such segment was INR 1,18,43,181 (15% mark-up on the cost incurred for the segment, i.e., 7,45,20,333).

5. Furthermore, the Appellant coordinates with third-party vendors that directly render IT services to the AE and recovers the cost of such vendors from its AEs on a cost-to-cost basis. During the captioned AY, the Appellant received reimbursements of INR 2,47,57,262 for costs incurred on behalf of its AE to procure these third-party services.

6. It is pertinent to note that Appellant does not perform any value-added functions for the services provided by third party vendors and merely acts as an administrative facilitator. Hence, such third-party vendor cost is in a nature of pass-through cost for the Appellant and did not provide any service to the AE that warrants a mark-up.

7. However, the Ld. TPO has erroneously characterized the above as services similar to the aforementioned low end IS&T services provided by the Appellant without appreciating that under the arrangement, the Appellant has no right to charge markup on such third

party costs. Hence, the same could not be aggregated with low end IS&T services provided by the Appellant. Hence, the action of the Ld. TPO resulted in reduction of margin of the Appellant from 15% to 11.93% (refer Page 19 and 169 of the Appeal Set)

8. At the outset, it is humbly submitted before the Hon'ble Bench that identical issue was raised by the Ld. TPO in the immediately preceding AY (i.e., (i.e. AY 2017-18). The Appellant filed objections before the Ld. DRP and the Ld. DRP directed the Ld. TPO to verify the segmental revenue from its audited accounts and to recompute the margin of the Appellant. The relevant extract of DRP directions for AY 2017-18 is reproduced as under:

4.3.6.1 The assessee filed a detailed submission in this regard in para 396 to 515 of their submission dated 30-06-2021. The DRP has gone through the order of the TPO as well as the submissions of the assessee. During DRP proceedings, the assessee has submitted the value of international transaction pertaining to low end IS&T services reconciles with the segment revenue and therefore, should be considered to compute the margin. The AO/TPO is directed to verify the claim of the assessee from its audited accounts and re-compute OP/OC after passing a speaking order.

(refer Page No. 688 of Paperbook)

9. Following the aforesaid directions of the Ld. DRP, the Ld. TPO passed the order giving effect in AY 2017-18 accepting the contentions of the Appellant and computed the margin of the Appellant at 15% for AY 2017-18. The relevant extract of DRP directions for AY 2017-18 is reproduced as under:

D. In respect of contention of the assessee on margin re-computation by the TPO on IS&T Services, the TPO has verified the contention of the assessee. Therefore, in view of it, the contention of the assessee stands accepted.

refer Page No. 694 of Paperbook).

10. In the instant case, the Ld. DRP directed the Ld. TPO to follow the directions passed by the Ld. DRP for AY 2017-18, there being no change in the factual matrix from AY 2017-18. The relevant extract of the directions issued by the Ld. DRP is reproduced as under –

stands rejected.

4.3.9 In ground 3.10 the assessee has alleged that the TPO disregarded the segmental financial information submitted by the assessee and held that recovery of IT expenses tantamount to services on which mark-up is to be earned. The objection raised in this ground are identical to that in the case of assessee for the AY 2017-18 wherein the DRP directed as under:

"During DRP proceedings, the assessee has submitted that the value of international transaction pertaining to low end IS&T services reconciles with the segment revenue and therefore, should be considered to compute the margin. The AO/TPO is directed to verify the claim of the assessee from its audited accounts and re-compute OP/OC after passing a speaking order."

4.3.10 Since there is no change in factual matrix from the AY 2017-18 the AO/TPO is directed to follow the order of the DRP on this issue in the AY 2017-18 mutatis mutandis.

(refer Page 37 of the Appeal Set)

11. However, Ld. TPO ignoring the binding directions of the Ld. TPO to follow the order of the Ld. DRP for AY 2017-18, held that that the cost-to-cost reimbursements are similar to the services low end IS&T provided with a markup of 15%. The Ld. TPO disregarded and violated the rules of consistency without any reason and there being no change in the underlying factual matrix.

12. In view of the above directions of the Ld. DRP and the material placed on record, the value of international transaction pertaining to low end IS&T services for AY 2017-18 reconciles with the segment revenue and therefore, should be considered to compute the margin. Hence, the aggregation of the provision of low end IT services and recovery of IT Expenses should be rejected and the margin of the Appellant for the instant AY shall be computed at 15%.

13. **Without prejudice to the above**, the Appellant is hereby also submitting the alternate contentions in case the first issue is not decided in favor of the taxpayer -

Recomputation of margin of comparable companies

14. It was submitted during the course of hearing that the Ld. TPO has erred in computing the margins of comparable companies selected in the final set for benchmarking the disputed international transaction. The corrected margins from their annual report are tabulated as under:-

Sr. No.	Comparable Company	OP/OC as per the Ld. TPO	Corrected OP/ OC
1	Cyfuture India Pvt. Ltd.	13.78%	4.12%
2	Jindal Intellicom Ltd.	14.16%	10.24%
3	One Point One solution Ltd.	10.76%	10.46%

4	Allsec Technologies Ltd.	14.62%	14.13%
5	Tech Mahindra Business Services Ltd.	18.52%	18.49%
6	Surevin BPO Services Ltd.	21.53%	19.66%
7	Netscibe (India) Pvt. Ltd.	22.22%	21.66%
8	CES Ltd-IT Enabled Services	31.12%	23.66%
9	Ultramarine & Pigments Ltd-ITeS & BPO activity	39.36%	35.91%
10	Suma Soft Pvt. Ltd.	30.09%	29.35%

15. In view of the above, it is humbly prayed that a specific direction may be given to the Id. TPO to recompute the margins of the comparable companies based on the annual reports.

Exclusion of certain comparable companies

a) Eclerx Services Ltd

- i. **Engaged in diversified operations** such as nature of quality monitoring/insights, advanced analytics, automation, superior technical operations support, digital care services, consulting, technological innovation, process management, business Intelligence and Analytics, etc.

eClerx Customer Operations specializes in providing operational expertise and process excellence throughout the customer journey. We create solutions and services, utilizing a blend of technology and domain knowledge that support our clients' evolving needs. Our suite of offerings enhances the customer experience by providing quality monitoring/insights, advanced analytics, automation, superior technical operations support and digital care services. We assist companies in developing, implementing and operating multichannel customer interaction capabilities -transforming everyday touch-points into a superior customer experience.

- ii. **Functionally dissimilar:** Engaged in provision of KPO services to its clients which is high end IT services.

Sr. No.	Name and Description of main products / Services	NIC Code of the product / service	% of total turnover of the company
1)	Knowledge Process Outsourcing	Group Class 631 6311	100

iii. *Abnormally high turnover of INR 1144 crores whereas the Appellant's turnover under ITeS segment is only INR 11.1 Crores*

	Noes	For the year ended March 31, 2018	For the year ended March 31, 2017
		Rupees In Millon	Rupees in Million
Revenue form operation	21	11,440.21	11,620.22
Other Income	22	438.27	284.79
Total Income	22	11,878.48	11,905.01

iv. *High advertisement, marketing and promotion cost of INR 211 crores while the Appellant does not undertake any marketing or advertising activity. High AMP expenditure results in creation of market intangibles.*

v. *Involved in R&D activities Eclerx incurs expenses to develop technologies to differentiate themselves from the industry.*

vi. *Non-availability of segmental information*

vii. *Judicial precedents wherein Eclerx is rejected*

- *Rampgreen Solutions Pvt. Ltd. v/s CIT (ITA 102/2015) (Delhi High Court)*
- *MD Everywhere (India) Pvt. Ltd. (ITA no. 323/Del/2016) (Delhi Tribunal)*
- *Symphony Marketing Solutions India Pvt. Ltd. (TS-234-ITAT 2013(Bang)-TP) (Bangalore Tribunal)*
- *Ariba Technologies India (P.) Ltd. V. DCIT [2023] 153 taxmann.com 607 (Bangalore - Trib.)*

viii. *In view of the above, the Appellant contended that the Appellant is a KPO and the comparable company has been rejected by various courts as cited above. During the course of hearing, the Ld. DR placed reliance on the contention of the Id. TPO at Page No. 187 of the Appeal Set. It is submitted that the Appellant has consistently made the same arguments that the nature of activities rendered by E-clers are diversified and functionally dissimilar to that of the Appellant. Hence, the comparable should be rejected.*

b) Suma Soft Pvt. Ltd.

i. Functionally dissimilar: *The Company is engaged in the diversified business activities of BPO Services, Software Developments, technical support and other IT enabled services.*

ii. Segmental information not available

Hence, the comparable should be rejected.

c) Netscibe (India) Pvt Ltd. - Functionally dissimilar: engaged in business of providing high end IT services such as research and intelligence solutions, investment and business research, market, competitive and social media intelligence and communication services which are not comparable to the low-end IS&T services provided by the Appellant. Hence, the comparable should be rejected.

d) Cyfuture India Private Limited Functionally dissimilar and engaged in diversified activities, as it is providing high end IT services such as global technology services and solutions specializing in Data Centre, engineering design and IT solutions including BPO solutions. Hence, the comparable should be rejected.

21. On the other hand, the Ld. CIT(DR) relied upon the orders of the authorities below.

22. We have heard both the parties and perused the material available on record.

As noted above, the assessee submitted before the Ld. DRP that the value of international transaction pertaining to low end IS&T services reconciled with the segment revenue and therefore, should be considered to compute the margin and directed the AO / TPO to verify the claim of the assessee from its audited accounts and re-compute OP/OC after passing a speaking order. However, it is submitted by the Ld. AR that the TPO ignored the binding directions of the Ld. TPO to follow the order of the Ld. DRP for AY 2017-18 and held that that the cost-to-cost reimbursements are similar to the services low end IS&T provided with a markup of 15% and the TPO disregarded and violated the rules of consistency without any

reason and there being no change in the underlying factual matrix. We find that the above contentions of the assessee are correct as the TPO as per law is bound by the directions of the DRP. We, therefore, set aside the order of the AO / TPO and direct him to follow the directions of the DRP and pass a fresh order accordingly. Further, as submitted by the assessee that there is a mistake in adopting the OP / OC by the TPO as against the corrected OP/ OC reported by the assessee from the annual report of the said comparables. Further, there is also a merit in the submissions of the assessee to exclude M/s Eclerx Services Ltd. as the business profile and the scale of operations of M/s Eclerx Services Ltd. and the assessee company are entirely different. Therefore, we direct the AO / TPO to exclude M/s Eclerx Services Ltd. as a comparable which was included by the AO. With the above observations, we allow the ground nos. 4 to 4.9.

23. Further, in the final assessment order, the AO considered the total income as per the order u/s 143(1) of the Act, dated 14.11.2019 at Rs. 26,68,330/-, which included disallowances of Rs. 21,08,699/- and Rs. 5,60,128/- on account of bonus and delay in deposit of PF/ ESI respectively.

24. In this regard, the assessee filed ground no. 2, regarding the disallowance of Rs. 21,08,699/- on account of bonus which is reproduced as under:

2. That on the facts and in the circumstances of the case and in law, the Ld. AO has grossly erred in making additions on account of reversal in provision for bonus amounting to INR 21,08,699 claimed in the return of income as per "Part B-Other

Information in accordance with section 43B of the Act but not reported in clause 26(i)(A) of the Tax Audit Report (TAR) without appreciating that:

- i. the said provision was duly disallowed in the year in which such provision was created*
- ii. the said reversal was duly reported in the signed TAR and there was a mere difference in presentation of amount of bonus in TAR uploaded by tax auditor vis-à-vis signed by tax auditor*

2.1 That on the facts and in the circumstances of the case and in law, the Ld. AO erred in making the additions without giving the Appellant an opportunity of being heard and without issuing show cause notice for the disallowance/additions made

24.1 In this regard, the assessee filed a written submission, which is reproduced as under:

“ Ground No. 2 - Disallowance of bonus amounting to INR 21,08,699

16. In the intimation issued under section 143(1) of the Act dated 14 November 2019 (refer Page No. 551 of Paper book), an inconsistency was reported with respect to the amounts disallowed in earlier years but allowable under section 43B of the Act during AY 2018-19. Variance of INR 21,08,699 was intimated in amounts reported in income tax return vis-à-vis amounts reported in the tax audit report.

17. It is submitted that the bonus amounting to INR 21,08,699 was claimed as deduction/allowance in the return of income for the year under consideration. Disclosure of the bonus was duly reported under clause 26(1)(A) of the Tax Audit report ('TAR') for AY 2018-19, signed physically by the tax auditor (refer Page No. 292-299 of Paperbook). However, owing to the disclosure format of the e-filed TAR (refer Page No. 228 of Paperbook), the same could not be reported in clause 26(i)(A)(a) of the e-filed TAR for AY 2018-19.

18. Further, it is respectfully submitted that an amount of INR 24,99,522 has been disallowed in the computation of income for AY 2017-18 (refer Page No. 553-557 of Paperbook) and duly reported in the tax audit report for AY 2017-18 (refer Page No. 621 to 645 of Paperbook).

19. In view of above, it is may be appreciated that the inadvertent omission for non-disclosure of the amount of INR 21,08,699 on account of deduction claimed for bonus amount written back is on account of disclosure format of the TAR which do not provide

for the disclosure of the amounts reversed/ written back during the year, rather it only provides for the disclosure of the payments made during a financial year.

20. Accordingly, in view of above, it is most humbly and respectfully prayed that the deduction/ allowance of the bonus amounting to INR 21,08,699 be allowed to the Appellant by the return of income for AY.”

24.2 On the other hand, the Ld. CIT(DR) relied upon the orders of the authorities below.

24.3 We have heard both the parties and perused the material available on record. In this regard, on verification, of the computation of income of the assessee for A.Y. 2017-18, placed at page no. 553 to 555 of the paper book, it is seen that an amount of Rs. 24,99,522/- has been disallowed by the assessee (page 554 of the paper book) on account of bonus. Therefore, we find merit in the contention of the assessee for its claim for allowance of Rs. 21,08,699/- out of the said disallowance of Rs. 24,99,522/- for the present assessment year. We, therefore, set aside the order of the AO and restore the matter to his file with the direction to allow the said claim after necessary verification. Ground nos. 2 to 2.1 are allowed for statistical purposes.

25. The ground no. 3 of the appeal is reproduced as under:

3. That on the facts and in the circumstances of the case and in law, the Ld. AO has grossly erred in making additions on account of delay in the payment of employee's contribution towards PF and ESI aggregating to INR 5,60,128 without appreciating the fact that the same was deposited before the due date of filing the return of income.

3.1 That on the facts and in the circumstances of the case and in law, the Ld. AO erred in making the additions without giving the Appellant an opportunity of being heard and without issuing show cause notice for the disallowance/additions made

25.1 The Ld. AR submitted as below:

“ Ground No. 3: Delay in deposit of PF/ESI amounting to INR 5,60,128

21. The Appellant is not pressing this ground of appeal in view of Hon'ble Apex Court decision in the case of Checkmate Services (P) Ltd. vs CIT [(2022) 448 ITR 518 (SC)].”

25.2 This ground is dismissed as not pressed.

26. The ground no. 5 of the assessee is reproduced as under:

“ 5 Without prejudice to the grounds above, in the facts and circumstances of the case. & in law. the Ld. AO as erred in raising a demand of INR 32,98, 152 without providing for set off brought forward losses and unabsorbed depreciation.”

26.1 The Ld. AR submitted as below:

“ Ground 5: Denial of benefit of Brought forward losses set-off

22. This ground of appeal is not being pressed by the Appellant.”

26.2 This ground is dismissed as not pressed.

27. Ground no. 6 of the appeal is against the initiation of penalty proceeding. This ground of appeal is premature at this stage and hence, dismissed.

28. Ground no.1 of the appeal is reproduced as under:

1. On the facts and circumstances of the case, & in law, the Ld. Assessing Officer (Ld. AO) has erred in passing the subject order by making Transfer Pricing (TP)

adjustments to the amount of income computed as per intimation under section 143(1) of the Income-tax Act, 1961 (Act) dated 11 November 2019 without considering the rectification application dated 22 July 2020 filed by the Company against subject intimation

28.1 The AO is directed to look into the above matter and decide the rectification application dated 22.07.2020 before passing the order afresh in this case. Ground no. 1 of the appeal is allowed for statistical purposes.

29. In the result, appeal of the assessee in ITA No. 1383/Del/2022 is partly allowed.

30. To sum up, both the appeals of the assessee in ITA No. 511/Del/2022 and ITA No. 1383/Del/2022 are partly allowed.

Order pronounced in the open court on 04th February, 2026.

Sd/-
[YOGESH KUMAR US]
JUDICIAL MEMBER

Dated: 04.02.2026.

Pooja

Copy forwarded to:

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

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi,