

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

**BEFORE MS. PADMAVATHY S, ACCOUNTANT MEMBER
AND
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

ITA Nos. 2127 & 2036/Bang/2024
Assessment Years : 2012-13 & 2013-14

The Assistant / Deputy Commissioner of Income Tax, Circle – 1(1)(1), Bangalore.	Vs.	M/s. Amazon Development Centre (India) Pvt. Ltd., No. 26/1, 10 th Floor, World Trade Centre, Brigade Gateway, Dr. Rajkumar Road, Malleswaram (W), Bengaluru – 560 055. PAN: AAECA7705P
APPELLANT		RESPONDENT

Assessee by	:	Shri Ajay Vohra, Sr. Advocate, Ms. Deepashree Rao & Ms. Aditi Garg, CA
Revenue by	:	Dr. Divya K.J, CIT-DR

Date of Hearing	:	26-11-2025
Date of Pronouncement	:	27-01-2026

ORDER

PER PADMAVATHY S, ACCOUNTANT MEMBER

These appeals are filed by the revenue against separate orders of the Commissioner of Income Tax (Appeals)-12, Bengaluru passed u/s. 250 of the Income Tax Act (“the Act”) dated 04.09.2024 for A.Ys. 2012-13 and dated 07.08.2024 for 2013-14.

ITA Nos. 2127/Bang/2024

2. The assessee is a private limited company engaged in the business of providing software development services and information technology enabled services i.e. ITeS comprising of customer and seller support services,

transaction, risk management services and other back office support services to its Associated Enterprises (AE). The assessee filed the return of income for the A.Y. 2012-13 on 30/11/2012 declaring a total income of Rs. 1,18,95,75,690/-. The case was selected for scrutiny and a statutory notices were duly served on the assessee. The assessing officer made a reference to the transfer pricing officer to determine the arms length price of the transactions that the assessee is having with its AE. The TPO made an adjustment in the ALP to the tune of Rs. 22,18,05,726/-. On further appeal, the Ld.CIT(A) allowed the appeal of the assessee by allowing the inclusions / exclusions of various comparables as sought by the assessee.

3. The revenue is in appeal against the order of the Ld.CIT(A) raising the following grounds of appeal –

“1) Whether the CIT (A) is right in adopting an overly narrow interpretation of functional similarity by excluding companies that are reasonably comparable in terms of primary business functions. It is a well-established principle in transfer pricing that the comparables should reflect similar core business functions, even if there are minor variations or ancillary services.

2) Whether CIT(A) is right in exclusion of comparables such as Universal Print Systems Limited, Infosys BPO Limited, Excel Infoways Limited on the grounds of functional dissimilarity, when on adequately considering the fact that these companies' core operations involve ITeS, which is the primary function of the assessee.

3) Whether the CIT (A) is right in excluding comparables like Universal Print Systems Limited, Infosys BPO Limited, Excel Infoways Limited on the basis of functional dissimilarity, despite their primary business activities being comparable to the IT-enabled services (ITeS) provided by the assessee.

4) Whether the CIT(A) is right in demanding comparability standards that may itself defeat the purpose of law relating to determination of ALP under the income tax Act.

5) Whether the CIT(A) correct in imposing conditions is beyond the scope of law and business reality by rejecting all close comparables on one or the other ground, without appreciating that not two companies can ever be same.

6) Whether the CIT(A) is right in trying to find out exact replica of the assessee for determining the Arm's length price based on such replica, even when the law and the international jurisprudence itself recognize that there cannot be an exact comparable to a given situation, especially with TNMM as the most appropriate method.

7) Whether the CIT(A) is right in not following the decision of ITAT, Bangalore rendered in the case of M/s Societe Generale Global Solution Centre Pvt Ltd. in IT (TP) A No. 1188/BANG/2011 and M/s. Vmoksha Technologies Pvt. Ltd. in IT (TP) A No. 595/BANG/2013 dated 26.08.2016 for AY 2005-06 where the Tribunal has held that turnover is not a relevant criteria for deciding the comparability

8) Whether the CIT(A) is right in holding that there exists a co-relation between turnover and operating margin of an entity.

9) Whether the transfer pricing guidelines mandate the exclusion of comparables purely based on turnover differences unless the turnover has a direct impact on profitability (e.g., economies of scale). In the case of Infosys BPO Limited and TCS E-Serve Limited, no evidence has been provided to suggest that turnover affects its ITeS margins to the extent that it becomes incomparable with assessee.

10) The Appellant craves to add, alter, delete, modify or withdraw any of the above grounds of appeal.”

4. The assessee in the transfer pricing study, has adopted the Transaction Net Margin Method (TNMM) as the most appropriate method and the Profit Level Indicator (PLI) is considered as (operating profit/ operating cost. The assessee has chosen five comparables as listed below with an arithmetic mean of which was 17.51% for the purpose of TP study.

#	Name of the Company	Database	FY 2011-12	FY 2010-11	FY 2009-10	Weighted Average
1.	Informed Technologies India Ltd.	Prowess	6.08 %	9.59 %	26.75 %	14.00%
2.	Jindal Intellicom Limited	Prowess	NA	11.14%	15.24%	13.27%
3.	Accentia Technologies	Prowess	11.76%	28.89%	43.06%	24.99%

4.	<i>ICRA Online Limited (segmental info)</i>	<i>Prowess</i>	<i>NA</i>	<i>12.01%</i>	<i>40.82%</i>	<i>24.01%</i>
5.	<i>Cameo Corporate Services Ltd.</i>	<i>Prowess</i>	<i>NA</i>	<i>14.97 %</i>	<i>8.06 %</i>	<i>11.27%</i>
<i>Arithmetic Mean</i>			<i>8.92%</i>	<i>13.94%</i>	<i>28.17%</i>	<i>17.51%</i>

5. Since the margin of the assessee was at 14.68%, the assessee concluded that its transactions with AE are at arms length. The transfer pricing officer vide order dated 07/01/2016 rejected the transfer pricing documentation maintained by the assessee. The TPO chose revised filters to arrive at fresh comparables as listed below:

Sr. No	Name of company	OP/OC as per TP Order
1	<i>Informed Technologies India Ltd</i>	<i>6.08%</i>
2	<i>Jindal Intellicom Limited</i>	<i>-0.05%</i>
3	<i>Accentia Technologies Ltd</i>	<i>11.75%</i>
4	<i>ICRA Online Limited (Segmental)</i>	<i>Rejected</i>
5	<i>Cameo Corporate Services Ltd</i>	<i>Rejected</i>
6	<i>Universal Print Systems Ltd (seg)</i>	<i>52.46%</i>
7	<i>Infosys BPO Ltd</i>	<i>36.30%</i>
8	<i>Microgenetics Systems Ltd</i>	<i>19.61%</i>
9	<i>TCS E Serve Ltd</i>	<i>63.69%</i>
10	<i>BNR Udyog Ltd (Segmental)</i>	<i>41.58%</i>
11	<i>Excel Infoways Ltd (segmental)</i>	<i>29.79%</i>
12	<i>e4e Healthcare Ltd (segmental)</i>	<i>19.85%</i>
	<i>Average</i>	<i>28.11%</i>

6. Accordingly, the TPO made an adjustment to the tune of Rs. 22,18,05,756/-. On further appeal, the Ld.CIT(A) directed the TPO to exclude the following 5 comparables:

- 1) Universal Print Systems Ltd.
- 2) Infosys BPO Ltd.
- 3) TCS E Serve Ltd.
- 4) BNR Udyog Ltd.
- 5) Excel Infoways Ltd.

7. The Ld.AR submitted that out of the above five exclusions, the revenue is contending the exclusion of 1 to 3 and 5 and if the same is dismissed then the assessee's margin be at arms length. The Ld.AR in this regard submitted that the exclusion of these comparables have been considered by the Coordinate Bench in various cases and accordingly the exclusions of above comparables is a covered issue. The ld AR further submitted that the above comparables are functionally dissimilar to assessee and they fail certain filter applied by the TPO. Accordingly the ld AR argued that the CIT(A) has rightly directed exclusion of these comparables.

8. The Ld.DR on the other hand submitted that the TPO has issued notice u/s. 133(6) to the other companies and they have responded stating that they are doing the same as compared to that of the assessee. The Ld.DR therefore argued that the TPO has correctly included the above comparables.

9. We have heard the parties and perused the materials on record. The submission of the assessee before us is that if the following exclusions as directed by the CIT(A) are upheld then the margin of the assessee would be at arm's length. One of main contentions of the assessee is that these comparables included by the TPO are functionally dissimilar to that of the assessee. Therefore we will first look at the functions of the assessee as per the Transfer Pricing Study Report (TPSR) –

“5.2.1 Functional Analysis-Software Development Services

ADC India has entered into agreements with Amazon Group Companies for provision of software development services primarily in the following areas:

a) Web Services

ADC India assists with enhancing Amazon web services, which include the Amazon Group's offering of product data and e-commerce technology to external software developers. Amazon Group Companies undertake constant research and analysis and provide a project plan to ADC India based on the requirements identified by the Amazon Group Companies.

ADC India provides developmental support including coding, testing and prepares the necessary documentation.

Amazon Group Companies oversee the work of ADC India and periodically review the work based on reports to be provided by ADC India by performing quality assurance and testing to ensure that the product meets the technical specifications and requirements and to ensure quality of the work product and compatibility for integration with its existing systems.

b) Search Services

ADC India provides services pertaining to software development services to A9.com Inc., which is an Amazon Group Company. A9.com offers search, yellow pages and map services. ADC India's focus in this segment is in the areas of Text-Mining Algorithms, Distributed Systems, Storage Systems, Information Retrieval and Machine Learning.”

5.3.1 Function analysis-Back-Office Support Services

ADC India is engaged in providing the following services:

a) Customer and Seller Support

ADC India's Hyderabad centre is engaged in providing customer support services exclusively to the customers of Amazon Group Companies. These services include pre-sale and post-sale support to satisfy e-commerce customers or interested website visitors via electronic mail or telephone. Pre-sale activities include queries of the customers regarding sales price, promotions, delivery time etc. Post-sales queries typically include queries regarding information on returns, delay in consignments or tracking, defective products and the replacement process. The services of ADC India are limited to providing the services listed above to the customers and do not include entering into or negotiating any contracts or securing orders for sale of products or services.

b) Shared Services

The back-office support centre provides services for the Global Accounts Payable ("AP") function of Amazon Group Companies by providing invoice-processing services."

Based on the above functional analysis, assets employed and risk assumed the assessee is characterised as a routine/captive service provider that assumes lower than the normal risks associated with the business of providing software development & Information Technology enabled Services (ITeS) and back office support services. In this background we will now consider the exclusions as directed by the CIT(A) -

Universal Print Systems Ltd (Universal)

10. We notice that the coordinate bench in the case of XLHealth Corporation India (P.) Ltd. vs. Assistant Commissioner of Income Tax, Circle 7(1)(2), Bangalore [2018] 91 taxmann.com 310 (Bangalore - Trib.)(09-02-2018] has considered the exclusion of this comparable and held that –

"(ii) Being aggrieved, the assessee-company is before us. It is contended by the assessee that this company fail revenue filter more than 75% from ITES segment and also functionally not comparable with that of the assessee-company and also fails the filter of earnings from export against 75% of the total revenue and also fails the employee cost filter as employee cost is only 18.56% of the sales.

(iii) We heard the rival submissions and perused the material on record. We have perused the Annual Report of this company placed at pages 352 to 463 of paper book. From the page no. 354 it is stated as under.

"In 2011-12, Your Company faced many challenges ranging from historically steep fuel price increases, non-availability of power throughout the year and high raw material costs.

The Labels and Offset divisions in particular were negatively impacted due to non-availability of power. Tamil Nadu on the whole, faced drastic power outages and restrictions, which were mainly directed at industries in order to keep the vote banks happy. The two divisions saw as much as 6 hours of power cuts in a day in addition to two days of "power holidays" in a week. Although this situation is expected to ease in the coming months, it has had an adverse impact on operations in 2011-12.

The periodic fuel price increases through our 2011-12 not just ensured high inflation cutting across every input element, but also adversely affected our cost of captive power generation which became the only source of power during certain periods in 2011-12. In addition, procurement cost of raw

materials such as paper, film and ink rose substantially along with market expectation regarding price reduction of printed products."

From this it is very clear that this company is into the business of printers whereas the assessee-company is into the Business Process Outsourcing. Therefore by no structure of imagination these two companies can be considered to be functionally similar and therefore we direct the AO/TPO to exclude this company from the list of comparables."

11. From the above observations of the coordinate bench, it is clear that during the financial year relevant to assessment year 2012-13, the comparable company had an extraordinary event and that the functions of the company is mainly into Repro, label printing, off-set printing and pre-press BPO. Further we notice that the coordinate bench has excluded the company stating that the company fails the ITeS service income being more than 75% of operating revenue filter. It is also notices that the TPO has made the comparison with the pre-press BPO segment with the assessee and that it is relevant to consider that in the said segment the company is rendering integrated print solutions to its customers. Accordingly we see merit in the contention of the assessee that the company is functionally different from that of the assessee. Therefore respectfully following the decision of the coordinate bench we see no infirmity in the decision of CIT(A) is directing the TPO to exclude the company from the list of comparables.

Infosys BPO Ltd (Infosys BPO)

12. The exclusion of this company is sought mainly on the ground that it is functionally different, carries substantial brand value, occurrence of extraordinary event during the year and that the company fails the upper turnover filter. In this regard we notice that the coordinate bench in the case of Mobility Infotech India Pvt Ltd vs DCIT [(2018) 97 taxmann.com 2 (Bang-Trib)] where it has been held that –

7.3 We have heard the rival contention and perused and carefully considered the material on record; including judicial pronouncement cited. We find that on similar facts, a co-ordinate bench of this Tribunal in the case of CGI Information Systems & Management Consultants (P.) Ltd., (supra) directed that Infosys BPO Ltd., be excluded from the final list of comparables as it is not comparable with a company merely providing ITES, because of its brand value and extraordinary events in the previous years relevant to asst. year 2012-13 viz., the acquisition of an Australia based company which had effect on its profits. Following the aforesaid

decision of the co-ordinate bench in the case of CGI Information Systems & Management Consultants (P.) Ltd., (supra), we hold and direct that M/s Infosys BPO Ltd., be excluded from the final set of comparables.

Considering the grounds on which the coordinate bench has upheld the exclusion, we are of the view that the same is applicable to the assessee's case also. Revenue in the present case did not bring any new material on record for us to take a different view. Accordingly we see no reason to interfere with the decision of the CIT(A) to exclude Infosys from the list of comparables.

TCS E Serve Ltd (TCS)

13. The Id AR with regard to exclusion of this comparable submitted that TCS is functionally not comparable to the ITeS segment of the Assessee as, unlike the Assessee, TCS offers a variety of services which includes business processing and outsourcing services to the financial sector, bank and it provides last to last process management to the BFSI spectrum and global wealth management business to the world. It is also submitted that TCS is also engaged in providing technical services such as software testing, verification and validation of software at the time of implementation of data center management activities. The Id AR also submitted that the "Tata" brand value contributes to the volume of business and pricing and therefore cannot be compared with the assessee.

14. We notice that the exclusion of TCS has been consistently upheld by the coordinate benches of the Tribunal on the ground that the company has a high brand value and cannot be a comparable. The Hon'ble Delhi High Court in the case of Avaya India (P.) Ltd. vs. Assistant Commissioner of Income Tax [2019] 108 taxmann.com 222 (Delhi) has while considering the exclusion of TCS and Infosys BPO has held that –

23. It appears therefore that this Court has consistently upheld decisions of the ITAT excluding both these very comparables. The ITAT itself appears to have taken a consistent view in a large number of cases excluding these two comparables and its decisions have been upheld by this Court. Illustratively reference may be made to the decision of the Tribunal in Vertex Customer Services India (P.) Ltd. v. Dy. CIT [2017] 88

taxmann.com 286 (Delhi - Tri.), Stryker Global Technology Centre (P.) Ltd. v. Dy. CIT [2017] 87 taxmann.com 43 (Delhi - Tri.), Samsung Heavy Industries India (P.) Ltd. v. Dy. CIT [2017] 84 taxmann.com 154 (Delhi - Tri.) and Equant Solutions India (P.) Ltd. v. Dy. CIT [2016] 66 taxmann.com 192/157 ITD 292 (Delhi - Trib.).

24. *All of these decisions pertained to AY 2010-2011. What weighed invariably is the fact that both companies had huge turnovers when compared to the tested entity. Both entities had close connection of the Tata Group of Companies and TCS E-Serve International had given a huge amount to TCS towards brand equity. Further there was no segmental bifurcation between the transaction processing and technical services. The assets employed by TCS E-Serve along with huge intangibles in the form of brand value were found to have a definite considerable effect on its PLI. These factors vitiated its comparability under the FAR analysis with the tested company, which could be a capital service provider without much intangible and risks.*

25. *In this context it requires to be noted that the ITAT also referred to the decision of this Court CIT v. Agnity India Technologies (P.) Ltd. [2013] 36 taxmann.com 289/219 Taxman 26.*

26. *The Court may also note that the Karnataka High Court has in Pr. CIT v. Softbrands India (P.) Ltd. [2018] 94 taxmann.com 426/406 ITR 513 (Kar.) noted as under:*

"48. The Tribunal of course is expected to act fairly, reasonably and rationally and should scrupulously avoid perversity in their Orders. It should reflect due application of mind when they assign reasons for returning the particular findings.

49. For instance, while dealing with comparables of filters, if unequals like software giant Infosys or Wipro are compared to a newly established small size Company engaged in Software service, it would obviously be wrong and perverse. The very word "comparable" means that the Group of Entities should be in a homogeneous Group. They should not be wildly dissimilar or unlike or poles apart. Such wild comparisons may result in the best judgment assessment going haywire and directionless wild, which may land up the findings of the Tribunal in the realm of perversity attracting interference under section 260-A of the Act."

27. *There is merit in the contention of the Assessee that the scale of operations of the comparables with the tested entity is a factor that requires to be kept in view. TCS E-Serve has a turnover of Rs. 1359 crores and has no segmental revenue whereas the Assessee's entire segmental revenue is a mere 24 crores. As observed by this Court in its decision in Pr. CIT v. Actis Global Service (P.) Ltd. [IT Appeal No. 417 of 2016, dated 5-8-2016]"Size and Scale of TCS's operation makes it an inapposite comparable vis-a- vis the Petitioner." As already pointed out earlier there is a closer comparison of TCS E-Serve Limited with Infosys BPO Limited with each of them employing 13,342 and 17,934 employees respectively and making Rs. 37 crores and Rs. 19 crores as contribution towards brand*

equity. When Rule 10(B) (2) is applied i.e. the FAR analysis, namely, functions performed, assets owned and risks assumed is deployed then brand and high economic upscale would fall within the domain of "assets" and this also would make both these companies as unsuitable comparables.

28. The Director's report of TCS E-Serve Limited bears out the contention of the Assessee that both entities have been leveraging TCSs scale and large client base to increase their business in a significant way. The submission that the two comparables offer an illustration of "an identical transaction being conducted in an uncontrolled manner" overlooks the effect of the Tata brand on the performance of the impugned comparables. The question was not merely whether the margins earned by the Tata group in providing captive service to the Citi entities were at arm's length. The question was whether they offered a reliable basis to re-calibrate the PLI of the Assessee whose scale of operations was of a much lower order than the two impugned comparables. The mere fact that the transactions were identical was not, in terms of the law explained in the above decisions, either a sole or a reliable yardstick to determine the apposite choice of comparables.

29. For all of the aforementioned reasons, the Court finds merit in the contention of the Assessee that both the impugned comparables viz., TCS E- Serve Limited and TCS E-Serve International Limited ought to be excluded from the list of comparables for the purposes of determining the ALP of the international transactions involving the Assessee and its AEs.

Respectfully following the judicial precedence, we hold that there is no infirmity in the order of the CIT(A) in directing the exclusion of TCS from the list of comparables.

Excel Infoways Ltd (Excel)

15. From the perusal of annual accounts of Excel we notice that as it is engaged in customer care services and handling client business relations. We further notice that Excel has diversified activities in construction, real state and diversified business and is also engaged in telemarketing and selling functions. We further notice that the coordinate bench in the case of Honeywell Technology Solutions Lab (P.) Ltd Vs JCIT - [2022] 143 taxmann.com 352 (Bangalore – Trib.) has excluded Excel on the ground of functional dissimilarity. We also notice that the Delhi Bench of the Tribunal in the case of Baxter India (P.) Ltd. vs. ACIT, Circle-4(1), New Delhi [2017] 85 taxmann.com 285 (Delhi - Trib.) for AY 2012-13 has considered the exclusion of Excel by holding that –

24. So far as exclusion of Excel Infoways Ltd. is concerned, we also find merit in the submissions of the ld. counsel for the assessee that the above company should be excluded from the list of comparables. This company fails TPO's own filter of diminishing revenue and abnormal volatility in revenue and margins. We find from the order of the TPO at para 7.5 (page 24 - 25 of the TPO order) where the TPO has observed that the department has applied consistent diminishing revenue/loss making filter wherein the companies with losses/diminishing revenue for the last three years upto and including the financial year 2010-11 were rejected as comparables. The department has excluded such companies with consistent losses/diminishing revenue in an environment where Indian economy is growing at consistent rate. Having held so, the Assessing Officer included Excel Infoways Ltd. as a comparable without considering the fact that the said company does not pass the diminishing revenue filter. From the submissions of the assessee before the TPO (at page 232 of Volume - I of the Paper Book) we find the details of the operating margin of the company from financial years 2009-10 to 201-15 are as under :-

Particulars	Financial Year					
	2009-10 (INR'000)	2010-11 (INR'000)	2011-12 (INR'000)	2012-13 (INR'000)	2013-14 (INR'000)	2014-15 (INR'000)
Revenue	204,161.34	203,526.39	79,096.95	76,098.54	52,792.12	22,994.38
Operating Cost	43,986.99	50,751.24	55,991.57	47,539.99	41,355.78	22,895.57
Operating Profit	160,174.35	152,775.14	23,105.38	28,558.55	11,436.34	98.81
OP/OC (%)	364.14%	301.03%	41.27%	60.07%	22.65%	0.43%

25. From the above, it is clear that above company does not pass the diminishing revenue filter as adopted by the TPO himself since its revenue has decreased consistently from financial years 2009-10 to 2011-12 i.e. including the year under consideration. Further, the above company has super normal profits. We further find the submissions of the assessee that Excel Infoways Ltd. has super normal profits during the current year has not been controverted by the Revenue. We find the Mumbai Bench of the Tribunal the case of Willis Processing Services (India) Pvt. Ltd. (supra) has upheld the order of the DRP rejecting Excel Infoways Ltd. as comparable company on the ground that the company has a super normal profit of 203.80% and low employee cost 10.02%. We, therefore, find merit in the submissions of the ld. counsel for the assessee that Excel Infoways Ltd. should be excluded from the list of comparable on account of super normal profit of the said company in the preceding year.

25.1 Further, from the order of the TPO we find he has obtained the employee cost and the sale for the ITES segment by exercise of his powers u/s. 133(6), wherein the said company has allocated entire employee cost to IT - BPO segment with no allocation to Infra Activity segment which accounts to 49% of Excel's total revenue. In our opinion, it is highly impractical that no employee has been hired by Excel for Infra Activity segment. We, therefore, find merit in the argument of the ld. counsel for the assessee that the information provided as per section 133(6) by Excel Infoways Ltd. is unreliable and should not be used to compute employee cost for ITES segment. The Delhi Bench of the Tribunal in the case of Motorola Solutions India (P.) Ltd. v. Asstt. CIT [2014] 48 taxmann.com 248/[2015] 152 ITD 158 (Delhi) has held that a company should be rejected as comparable in case there is contradiction in the facts or data sourced from annual report and as

per the information gathered u/s. 133(6). In view of above discussion, we hold that Excel Infoways Ltd. cannot be considered as comparable and should be excluded from the list of comparables. We hold and direct accordingly.

Considering the above decision and the decision of coordinate bench in the case of Honeywell Technology Solutions Lab (P) Ltd (supra), we are convinced that there is no reason for us to interfere with the decision of the CIT(A) in directing the exclusion of Excel from the list of comparables.

16. We direct the TPO to re-compute the ALP in accordance with the directions given in this order.

ITA No.2036/Bang/2024 - AY 2013-14

17. The assessee filed the return of income for A.Y. 2013-14 on 29/11/2013 declaring a total income of Rs. 1,83,73,30,760/-. The assessing officer made a reference to the TPO to compute the arms length price and the TPO made a TP adjustment of Rs. 10,22,68,832/-. The assessing officer passed the draft assessment order including the TP adjustment. The assessing officer also made a disallowance of relocation expenses u/s. 40(a)(i) of the Act stating that the assessee failed to deduct tax at source on the payments made to M/s. Graebel Relocation Services Worldwide Inc. Since the assessee chose to file appeal before the Ld.CIT(A), the assessing officer passed the final assessment order. The Ld.CIT(A) allowed the contention of the assessee with regard to inclusion and exclusions towards TP adjustments. The Ld.CIT(A) also deleted the disallowance made by the AO u/s. 40(a)(i). The revenue is in appeal against the order of the Ld.CIT(A) raising the following grounds –

“1. Whether in the facts and circumstances of the case, the Ld. CIT is right in law in deleting disallowance of expenditure claimed towards relocation services by relying upon decision of jurisdictional Hon'ble ITAT, Bengaluru Bench rendered in the case of IDS Software Solutions (India) Private Ltd vs. ITO [2009] 32 SOT 25 (Bangalore), without appreciating that the facts of the present case are distinguishable?”

2. *Whether in the facts and circumstances of the case, the Ld. CIT is right in law in deleting disallowance of expenditure claimed towards relocation services by relying upon ruling of AAR without appreciating that ruling pronounced by AAR shall be binding only on the applicant and on the jurisdictional officer in respect of the applicant?*

3. *Whether the CIT (A) is right in adopting an overly narrow interpretation of functional similarity by excluding companies that are reasonably comparable in terms of primary business functions. It is a well-established principle in transfer pricing that the comparables should reflect similar core business functions, even if there are minor variations or ancillary services.*

4. *Whether CIT(A) is right in exclusion of comparables such as Capegemini Business Services (India) Pvt. Ltd., Infosys BPO Ltd., Hartron Communication Ltd. on the grounds of functional dissimilarity, when on adequately considering the fact that these companies' core operations involve ITeS, which is the primary function of the assessee.*

5. *Whether the CIT (A) is right in excluding comparables like as Capegemini Business Services (India) Pvt. Ltd., Infosys BPO Ltd., Hartron Communication Ltd. on the basis of functional dissimilarity, despite their primary business activities being comparable to the IT-enabled services (ITeS) provided by the assessee.*

6. *Whether the CIT(A) is right in demanding comparability standards that may itself defeat the purpose of law relating to determination of ALP under the income tax Act.*

7. *Whether the CIT(A) correct in imposing conditions is beyond the scope of law and business reality by rejecting all close comparables on one or the other ground, without appreciating that not two companies can ever be same.*

8. *Whether the CIT(A) is right in trying to find out exact replica of the assessee for determining the Arm's length price based on such replica, even when the law and the international jurisprudence itself recognize that there cannot be an exact comparable to a given situation, especially with TNMM as the most appropriate method.*

9. *Whether the CIT(A) is right in not following the decision of ITAT, Bangalore rendered in the case of M/s Societe Generale Global Solution Centre Pvt Ltd. in IT (TP) A No. 1188/BANG/2011 and M/s. Vmoksha Technologies Pvt.*

Ltd. in IT (TP) A No. 595/BANG/2013 dated 26.08.2016 for AY 2005-06 where the Tribunal has held that turnover is not a relevant criteria for deciding the comparability

10. *Whether the CIT(A) is right in holding that there exists a co-relation between turnover and operating margin of an entity.*

11. *Whether the transfer pricing guidelines mandate the exclusion of comparables purely based on turnover differences unless the turnover has a direct impact on profitability (e.g., economies of scale). In the case of Infosys BPO Limited and TCS E-Serve Limited, no evidence has been provided to suggest that turnover affects its ITcS margins to the extent that it becomes incomparable with assessee.*

12. *The Appellant craves to add, alter, delete, modify or withdraw any of the above grounds of appeal.”*

18. In the transfer pricing study, the assessee chose the following comparables whose arithmetic mean is 9.17%

Sl.No	Name of the company	2011	2012*	2013*	Weighted Average
1	Caliber Point Business Solutions Limited	16.90	8.04	6.86	10.04
2	Cosmic Global Limited	8.06	40.73	-	26.49
3	In House Productions Limited	10.50	7.89	-	9.04
4	Informed Technologies India	11.67	8.63	-	10.06
5	Jindal Intellicom Pvt. Limited	11.04	-	-	11.04
6	Savi Infoservices India Pvt	12.74	-	-	12.74
7	Sparsh BPO Services Limited	1.61	-26.66	-	-12.72
8	Techprocess Solutions Limited	4.80	-	-	4.80
9	Wisec Global Limited	4.75	18.69	-	11.06
	Arithmetic mean	9.12	9.55	6.86	9.17

19. Since the operating margin of the assessee for the year under consideration is at 14.63%, the assessee concluded that the pricing of the international transaction is at arms length. The TPO vide order dated 18/10/2016 rejected the TP documentation of the assessee. The TPO applied revised filters to choose fresh comparables. The final list of comparables as chosen by the TPO are as under:

<i>Sr No</i>	<i>Name of company</i>	<i>Comparable companies considered by TPO</i>
1	<i>Caliber Point Business Solutions Limited</i>	<i>Rejected</i>
2	<i>Cosmic Global Limited</i>	<i>Rejected</i>
3	<i>In House Productions Limited</i>	<i>Rejected</i>
4	<i>Informed Technologies India Limited</i>	<i>Rejected</i>
5	<i>Jindal Intellicom Pvt Ltd.</i>	<i>-3.00%</i>
6	<i>Savi Infoservices India Pvt. Limited</i>	<i>Rejected</i>
7	<i>Sparsh BPO Services Limited</i>	<i>Rejected</i>
8	<i>Techprocess Solutions Limited.</i>	<i>Rejected</i>
9	<i>Wisec Global Limited</i>	<i>Rejected</i>
10	<i>Acropetal Technologies Ltd.</i>	<i>24.16%</i>
11	<i>Microgenetic Systems Ltd.</i>	<i>16.34%</i>
12	<i>Harton Communications Ltd.</i>	<i>44.07%</i>
13	<i>Microland Ltd.</i>	<i>8.62%</i>
14	<i>Capgemini Business Services (India) Pvt. Ltd.</i>	<i>26.78%</i>
15	<i>Tech Mahindra Ltd.</i>	<i>22.27%</i>
16	<i>E4e Healthcare Services Pvt Ltd</i>	<i>17.26%</i>
17	<i>Infosys BPO Ltd.</i>	<i>29.28%</i>
	<i>Average</i>	<i>20.64%</i>

20. The Ld.CIT(A) directed the TPO to exclude the following 3 companies from the above listed comparables.

- 1) Harton Communications Ltd.
- 2) Capgemini Business Services (India) Pvt. Ltd.
- 3) Infosys BPO Ltd.

21. The Ld.AR submitted that the exclusion of the above 3 comparables have been considered by the Coordinate Bench in various cases and therefore there is no infirmity in the order of the Ld.CIT(A). The Ld.AR submitted the following table in support of the said contentions.

<i>S. No.</i>	<i>Companies selected by TPO</i>	<i>Assessee's arguments for rejection of companies</i>	<i>Cases relied upon</i>
1	<i>Harton</i>	<i>(i) Functionally not</i>	<i>Reliance is placed on the</i>

	<p><i>Communications Ltd.</i> TPO order @ Pg.19-20</p> <p><i>CIT(A) order @ Pg 12-14</i></p>	<p><i>comparable - Hartron is engaged in providing services in the nature of Business Process Outsourcing ('BPO'), Legal Process Outsourcing ('LPO'), Information Technology ('IT') and back-office support services. Hartron is also engaged in providing Intellectual Property ('IP') services in the nature of patent search, patent protection, trademark services, and IP management. Further, Hartron is also engaged in software development services such as web-based applications, standalone software applications, distributed applications, desktop/ laptop applications and mobile applications.</i></p> <p><i>[Refer. detailed submission filed before CIT(A) @ Pg. 407 - 409 of Paperbook]</i></p>	<p><i>following decisions rendered for the same AY, where Universal Print Systems was excluded on similar grounds:</i></p> <ul style="list-style-type: none"> <i>- ISG Novasotijssimalogies Ltd. vs. DCIT P0231 151 taxmann.com 255 (Bang. Trib)</i> <i>- Dell International Services India (P.) Ltd. v. ACIT: [2022]140 taxmann.com 259 (Bangalore - Trib.)</i> <i>- Arctern Consulting (P.) Ltd v. DCIT: [2022] 135 taxmann.com 300 (Bangalore - Trib)</i> <i>- M/s. Acusis Software India Pvt. Ltd v. DCIT: IT(TP)A No. 2702/Bang/2017</i>
2	<p><i>Capgemini Business Services (India) Pvt. Ltd.</i> TPO order @ Pg.15 CIT(A) order @ Pg. 7-9</p>	<p><i>(f) Functionally not comparable - Capgemini is engaged in providing diversified services, offering business process management services, assurance and compliance services. The assurance and compliance services offered by Capgemini are functionally dissimilar to the activities performed by the Assessee. I he functions performed by Assessee are in the nature of shared services like payment processing etc., customer and seller support services, transaction risk management services at all Amazon marketplaces</i></p>	<p><i>Reliance is placed on the following decisions rendered for the same AY, where Universal Print Systems was excluded on similar grounds:</i></p> <ul style="list-style-type: none"> <i>- ISG Novasoft Technologies Ltd. vs. DCIT [20231 151 taxmann.com 255 (Bang. Trib)</i> <i>- Dell International Services India (P.) Ltd. v. ACIT: 12022/ 140 taxmann.com 259 (Bangalore -Trib.)</i> <i>- Arctern Consulting (P.) Ltd. v. DCIT: [2022] 135 taxmann.com 300 (Bangalore - Trib)</i>

		<p>whereas the functions performed by Capgemini are in the nature of devising and implementing transformation methodology for supply chain, applying innovative technological solutions, integration of business processes through automation etc.</p> <p>[Refer, detailed submission filed before CIT(A) @ Pg. 399 of Paperbook]</p>	<p>– M/s. Acusis Software India Pvt. Ltd v. DCIT: IT(TP)A No. 2702/Bang/2017</p>
3	<p>Infosys BPO Ltd. TPO order @Pg. 18-19 CIT(A) order Pg. 9-12</p>	<p>(i) Functionally not comparable - Infosys BPO also provides customer service and electronic discovery in cloud apart from their other services which includes LPO, benchmarked processes, technology Solutions and domain capabilities.</p> <p>(ii) Presence of Brand - Infosys BPO Ltd is a part of the Infosys group, a giant in the field of IT services. The company, as a result of being a part of the Infosys group, enjoys the benefits such as use of brand 'Infosys', availability of skilled manpower and technical know how etc. Company exploits a valuable and internationally well recognized brand namely 'Infosys' which leads to higher profitability. It also incurs huge expenditure on marketing.</p> <p>(iii) Upper turnover filter - Infosys BPO has a sales turnover of INR 1,831 crores for FY 2012-13, whereas the turnover of the assessee was INR</p>	<p>In the following cases, Infosys BPO was rejected on account of high brand value:</p> <p>– PCIT v. Evalueserve SEZ (Gurgaon) Pvt. Ltd: ITA 241/2018 (Del.)</p> <p>– CIT v. Agnity India Technologies (P.) Ltd. (2013) ITA 1204/2011</p> <p>– Cadence Design Systems (India) v. DCIT: 482 ITR 415 (Del.)</p> <p>– PCIT vs. New River Software Services (P.) Ltd.: [2017]185 taxmann.com 302 (Del)</p> <p>Reliance is placed on the following decisions rendered for the same AY, where Infosys BPO Ltd was excluded on similar grounds.</p> <p>– ISG Novasoft Technologies Ltd. vs. DCIT 120231 151 taxmann.com 255 (Bang. Trib)</p> <p>– Dell International Services India (P.) Ltd. v. ACIT: 12022] 140 taxmann.com 259 (Bangalore -</p>

		<p>313.85 with respect to ITeS services rendered for the said year. The TPO had failed to appreciate the fact that the ITeS industry is clearly demarcated based on size and that assessee cannot be compared to companies having sales disproportionate to the sales generated by the assessee.</p> <p>[Refer, detailed submission filed before CIT(A) @ Pg. 402-407 of Paperbook]</p>	<ul style="list-style-type: none"> - Trib.) - Arctern Consulting (P.) Ltd. v. DCIT: 120221 135 - <u>taxmann.com</u> 300 (Bangalore - Trib.) - M/s. Acusis Software India Pvt. Ltd. v. DCIT: - IT(TP)A No. 2702/Bang/2017
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22. The Ld.DR on the other hand argued that the ground on which the Ld.CIT(A) has excluded these comparables being functionally different is not correct and accordingly the Ld.DR relied on the order of the TPO.

23. We have heard the parties and perused the materials available on record. We notice that the CIT(A) has directed the exclusion of these comparables by placing reliance on the decision of the coordinate bench in the case of ISG Novasoft Technologies Ltd. vs. DCIT 120231 151 taxmann.com 255 (Bang. Trib). The relevant findings of the CIT(A) in this regard are extracted herein below –

“5.1.1 Exclusion of comparable Universal Print Systems Limited

5.1.1.1 The appellant contended that this comparable is functionally different and relied on the decision of ITAT, Bengaluru in the case of M/s XL Health Corporation India Pvt Ltd. for A.Y.2012-13 wherein it is held that:

“C. Universal Print Systems Ltd.:-

This company was selected by the TPO by obtaining information by exercising of the power vested with him under the provisions of section 133(6) of the IT Act. The TPO held that this company satisfies all the filters selected by him. However, this company was objected by the assessee-company before the TPO on the grounds of functional differences as it is engaged in the business activities such as printing and allied activities, high profit-making company and also fails the employee cost filter, the objections of the assessee-company were over ruled by the TPO by holding as under:

"Counter to the objection on Functional Comparability: The functions of the comparable are similar in the sense that the Pre-Press BPO unit provides backoffice support services.

Counter to the objection on High Margins:

Reliance is placed on the decisions of the Hon'ble Delhi High Court in the case of Chryscapital Investment Advisors and the Delhi Tribunal in Nokia India Pvt Ltd (ITA No. 242/D/2010). Counter to the objection on Employee Cost Filter: The company operates in four major segments viz., Repro, Label Printing, Offset Printing and Pre-press BPO and for our study, only the Pre-press BPO segment has been considered. Therefore, filters are to be applied only on the figures of this segment. The company was specifically asked to furnish the details of employee IT(TP)A No. 2311/Bang/2016 cost u/s 133(6) of the Act. Vide its letter dated 18/12/2015, the company has furnished P&L a/c of Pre press BPO segment, from which it is seen that the employee cost relating to Pre-Press BPO segment is Rs. 268.76(Lacs). The employee cost of Rs. 268.76(Lacs) on a turnover of Rs. 611.96 (Lakhs) works out to 44%. Therefore, this comparable clears the employee cost filter. The response received from the company u/s 133(6) of the Act has been attached with this order. (Annexure-G) The TPO has used only current data for the F.Y 2011-12. The corrected margin is 52.46%."

The Hon'ble DRP also confirmed the findings of TPO.

ii) Being aggrieved, the assessee-company is before us. It is contended by the assessee that this company fail revenue filter more than 75% from ITES segment and also functionally not comparable with that of the assessee-company and also fails the filter of earnings from export against 75% of the total revenue and also fails the employee cost filter as employee cost is only 18.56% of the sales.

iii) We heard the rival submissions and perused the material on record. We have perused the Annual Report of this company placed at pages 352 to 463 of paper book. From the page no. 354 it is stated as under.

"In 2011-12, Your Company faced many challenges ranging from historically steep fuel price increases, non-availability of power throughout the year and high raw material costs. The Labels and Offset divisions in particular were negatively impacted due to non-availability of power. Tamil Nadu on the whole, faced drastic power outages and restrictions, which were mainly directed at industries in order to keep the vote banks happy. The two divisions saw as much as 6 hours of power cuts in a day in addition to two days of "power holidays" in a week. Although this situation is expected to ease in the coming months, it has had an adverse impact on operations in 2011-12. The periodic fuel price increases through our 2011-12 not just ensured high inflation cutting across every input element, but also adversely affected our cost of captive power generation which became the only source of power during certain periods in 2011-12. In addition, procurement cost of raw materials such as paper, film and ink rose IT(TP)A No. 2311/Bang/2016

substantially along with market expectation regarding price reduction of printed products."

From this it is very clear that this company is into the business of printers whereas the assessee-company is into the Business Process Outsourcing. Therefore, by no structure of imagination these two companies can be considered to be functionally similar and therefore we direct the AO / TPO to exclude this company from the list of comparables."

5.1.1.2 Respectfully following the jurisdictional ITAT, Bengaluru decision for the same A.Y.2012-13 in the above case, this comparable is excluded from the list of comparables. 5.1.2 Exclusion of comparable Infosys BPO Limited

5.1.2.1 The appellant contended that this comparable is functionally different, has presence of brand, has selling and marketing expenses, has presence of extraordinary events in FY 2011-12 and has failed upper turnover filter, and relied on the decision of ITAT, Bengaluru in the case of M/s Mobily Infotech India Pvt Ltd. for A.Y.2012-13 wherein it is held that:

"7. Infosys BPO Ltd., 7.1 The ld AR for the assessee submitted that this company, Infosys, BPO Ltd., should be rejected/excluded from the list of comparables for the following reasons:-

(i) Brand Value, intangibles, functionally different According to the ld AR, this company has its delivery centres around the globe, whereas the assessee renders services only from India. It is submitted that while the assessee only provides call centre services, Infosys BPO Ltd., has multiple lines of business and renders high end services in the nature of KPO services. It is also submitted that Infosys BPO Ltd., has huge intangible amounts and high brand value. As per the FAR analysis, Infosys BPO Ltd., bears full-fledged risk, whereas the assessee operates at minimal risk. It is submitted that on the basis of the above facts, Infosys BPO Ltd., is functionally different and IT(TP)A No.2055/B/16 not comparable to the assessee and therefore should be rejected as a comparable.

(ii) Extraordinary event during the year The AR submitted that during the year, Infosys BPO Ltd., acquired the Portland Group PTY Ltd., which is an extraordinary event and could affect its comparability.

In support of assessee's claim for rejection/exclusion of M/s Infosys BPO Ltd., from the list of comparables, the ld AR placed reliance on, inter alia, the decision of the coordinate bench in the case of (i) CGI Information Systems & Management Consultation Pvt. Ltd., in ITA No.183/Bang/2017 dated 11/4/2018 for asst. year 2012-13.

7.2 *Per contra, the ld DR for revenue supported the orders of the authorities below in including this company in the final set of comparables.*

7.3 *We have heard the rival contention and perused and carefully considered the material on record; including judicial pronouncement cited. We find that on similar facts, a co-ordinate bench of this Tribunal in the case of CGI Information Systems & Management Controls Pvt. Ltd., for asst. year 2012-13 (Supra) directed that Infosys BPO Ltd., be excluded from the final list of comparables as it is not comparable with a company merely providing ITES, because of its brand value and extraordinary IT(TP)A No.2055/B/16 events in the previous year's relevant to asst. year 2012-13 viz., the acquisition of an Australia based company which had effect on its profits. Following the aforesaid decision of the co-ordinate bench in the case of CGI Information Systems & Management Consultants Pvt. Ltd., for asst. year 2012-13, we hold and direct that M/s Infosys BPO Ltd., be excluded from the final set of comparables.”*

5.1.2.2 *Respectfully following the jurisdictional ITAT, Bengaluru decision for the same A.Y.2012-13 in the above case, this comparable is excluded from the list of comparables.*

5.1.3 *Exclusion of comparable TCS E-Serve Limited*

5.1.3.1 *The appellant contended that this comparable has significant brand presence, has bundled services to the customers of TCS and has failed upper turnover filter of 200 Cr., and relied on the decision of ITAT, Bengaluru in the case of M/s Goldman Sachs Services Pvt Ltd. for A.Y.2012-13 wherein it is held that:*

“12. The learned counsel for the assessee submitted before us that the assessee seeks the following relief from the Tribunal:

(i) Exclude 3 companies from the final list of comparable companies post DRP directions viz., Infosys BPO Ltd., TCS E-Serve Ltd., BNR Udyog Ltd., and Excel Infoways Ltd. from list of comparable companies on the ground that functionally these companies are not comparable with the assessee.

13. The learned counsel for the assessee submitted before us that 2 out of the 3 companies which the assessee seeks to exclude from the list of comparable companies viz., Infosys BPO Ltd., TCS E-service Ltd., were considered for exclusion by the Tribunal in the case of a similar assessee such as the assessee engaged in providing ITES in the case of Baxter (I) Pvt. Ltd. Vs. ACIT (2017) 85 Taxmann.com 285 (DelhiTrib.). The learned DR relied on the order of the DRP/TPO.

14. We have considered the rival submissions. In the case of Baxter (I) Pvt. Ltd., (supra) the Delhi ITAT Bench considered comparability of the

aforesaid three companies with a company engaged in providing ITES such as the assessee. The functional profile of the assessee and the assessee in the case of Baxter (I) Pvt. Ltd. (supra) are identical in as much as 7 out of the 10 companies chosen by the TPO in the case of the assessee were chosen as comparable in the case of Baxter (I) Pvt. Ltd. (supra). The Tribunal held on the comparability of the two companies Infosys BPO Ltd., and TCS E-service Ltd., as follows:

(i) In paragraph 23 of its order the Tribunal held that Infosys BPO Ltd., is not comparable with a company providing ITES because of brand value and extraordinary events in the previous year relevant to AY 2012-13 viz., acquisition of an Australia based company which had effect on its profits.

(ii) In paragraphs 21 & 22 of its order the Tribunal held that TCS E-service Ltd. was liable to be excluded because it was also engaged in the business of software testing, verification and validation of software at the time of implementation and data centre management activities.

15. Respectfully following the decision of the Tribunal we hold that the aforesaid 3 companies be excluded from the final list of comparable companies for the purpose of arriving at the arithmetic mean of comparable companies for the purpose of comparison with the profit margins.”

5.1.3.2 Respectfully following the jurisdictional ITAT, Bengaluru decision for the same A.Y.2012-13 in the above case, this comparable is excluded from the list of comparables.”

24. From the perusal of the above findings of the CIT(A), we notice that the relief is given on the ground of functional dissimilarity and considering the functional profile of the assessee, the decision of the coordinate bench relied on by the CIT(A) is applicable to assessee's case also. Further during the course of hearing the revenue did not bring any new material on record for us to take a different view. Accordingly we hold that there is no infirmity in the order of the CIT(A) in directing the TPO to exclude the above comparables from the list of comparables. The grounds of the revenue in this regard are thus rejected.

Disallowance of Relocation expenses u/s. 40(a)(i) of the Act

25. The facts pertaining to the impugned issue are that M/s. Graebel Relocation Services Worldwide Inc. (Graebel) has entered into an agreement dated 21/01/2008 with Amazon Corporate LLC and Amazon EU-SARL and

its affiliates for provision of relocation services. Under the aforesaid agreement, Graebel provided certain services to the assessee in connection with relocation of employees of Amazon group entity including assessee in India and the services included household goods shipment and valuation, interim accommodation, relocation allowance, temporary car rental etc. depending on employees requirement. For providing the above services, Graebel has engaged independent service providers in India. Under this arrangement, independent service providers provide the above services to the relocated employees on behalf of Graebel. Though the above services are rendered by the independent service providers, under the contractual arrangement, Graebel is ultimately responsible for provision of relocation services to the relocated employees of Amazon group entities. In consideration for provision of above services to the relocated employees, Graebel raises invoices on the assessee which include reimbursement of expenses incurred for such services and service fee for provision of such services. The assessing officer disallowed the payments made by the assessee to Graebel on the ground that the payment is in the nature of fees for technical services u/s. 9(1)(vii) of the Act. The AO further held that if the assessee has not deducted tax at source on the payments, the same is to be disallowed u/s. 40(a)(i) of the Act. The Ld.CIT(A) deleted the disallowance by placing reliance on the decision of the Coordinate Bench in the case of IDS Software Solutions India Ltd. vs. ITO reported in 122 TTJ 410 (Bangalore – Trib.). The revenue is in appeal against the order of the Ld.CIT(A).

26. The Ld.DR at the outset argued that the Ld.CIT(A) has simply relied on the decision of the Authority for Advance Ruling and the decision of the Tribunal without according any reason and that the CIT(A) has passed a non-speaking order. The Ld.DR further argued that the ruling of AAR are applicable only to the specific assessee and therefore cannot be applied directly in assessee's case. The Ld.DR also argued that the facts in the case of IDS Software Solutions India Pvt. Ltd. (supra) is distinguishable and the Ld.CIT(A) has incorrectly relied on the same. The Ld.DR submitted that the amount paid by the assessee to Graebel includes charges towards services

rendered which are in the nature of fees for technical services and therefore the assessing officer has correctly made the disallowance. The Ld.DR further submitted that the assessee's submission that the amount reimbursed to Graebel by the assessee are included as per perquisites in the hands of the employees not substantiated and therefore cannot be accepted.

27. The Ld.AR presented arguments stating that there is no liability to withhold tax on reimbursement of expenses by placing reliance on various decision of the Coordinate Bench. The Ld.AR further submitted that under Article 12(4) of the DTAA defines the "fees for included services" provides that only if such services "make available", technical knowledge, experience, skill, know-how or processes etc. and that the nature of services rendered by Graebel is purely with regard to relocation of employees of the Amazon group entities. Accordingly the ld AR argued that by rendering such services, Graebel does not make available any technical knowledge, experience, skill or know-how and therefore the amount received by Graebel in India are not taxable under Article 12(4) of the DTAA between India and USA. The Ld.AR accordingly submitted that when the amount received is not taxable, there is no liability on the part of the assessee to deduct tax at source on the impugned transactions and therefore the disallowance made u/s. 40(a)(i) cannot be sustained.

28. We have heard the parties and perused the materials available on record. As per the global agreement entered Graebel provides services towards relocation to the employees of the group including the employees of the assessee. The nature of payment made by the assessee includes reimbursement of expenses actually incurred by Graebel household goods shipment and valuation, interim accommodation, relocation allowance, temporary car rental etc., and also the service charges. The argument of the ld AR is that the impugned payments are reimbursement in nature and therefore no liability to deduct tax would arise. It is also argued that the A.O. has treated the impugned payment as fees for included services as per Article 12(4) of India-US DTAA which is provides for "make available" and

considering the nature of services provided by Graebel the finding of the AO is misplaced. In this regard the Id AR placed reliance on the various decision including the decision of the coordinate bench in the case of Goldman Sachs Services (P) ltd vs DCIT [2022] 138 taxmann.com 162 (Bang Trib). From the perusal of the decisions relied on by the Id AR we notice that the facts in the present case are distinguishable for the reason that in the said decisions the issued considered was reimbursement of salary cost of the seconded employees by the assessee to its AE. Further, even in the findings of the AAR which is relied by the CIT(A), the issue considered pertain to salary paid to seconded employees. In the present case the impugned issue pertain to payment towards relocation services provided by third party to the assessee and accordingly to this extend we see merit in the argument of the Id DR that the reliance placed by the CIT(A) is not correct. We notice that the ground on which the AO has made the disallowance is that the impugned payments are taxable in the hands of the recipient as "fees for included services". Article 12(4)-(5) of India USA, DTAA deals with "Fees for technical services', as under:

"4. For purposes of this Article, "fees for included services" means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) if such services :

(a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3 is received; or

(b) make available technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design.

5. Notwithstanding paragraph 4, "fees for included services" does not include amounts paid :

(a) for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property other than a sale described in paragraph 3(a);

(b) for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or

aircraft in international traffic;

(c) for teaching in or by educational institutions;

(d) for services for the personal use of the individual or individuals making the payment; or

(e) to an employee of the person making the payments or to any individual or firm of individuals (other than a company) for professional services as defined in article 15 (Independent Personal Services)."

29. In our considered view, the taxability of impugned payments in the hands of third party i.e. Graebel need to be examined under applicable article India US DTAA which has not been done in the present case. As already stated the CIT(A) while allowing the appeal has relied on decision which is factually distinguishable. Therefore in our considered view, the impugned payments need to be examined afresh in the light of Article as applicable and the taxability need to be decided accordingly. Accordingly we are remitting the issue back to CIT(A) to consider the same afresh considering the facts with regard to the nature of payment and the relevant Articles of the India US DTAA and decide the claim of the assessee in accordance with law. Needless to say that the assessee be given a reasonable opportunity of being heard. It is ordered accordingly. The grounds of the revenue in this regard are allowed for statistical purposes.

30. In the result, the appeal of the revenue for A.Ys. 2012-13 is dismissed and the appeal for AY 2013-14 is partly allowed for statistical purposes.

Order pronounced in the open court on 27th January, 2026.

Sd/-
(RAHUL CHAUDHARY)
Judicial Member

Sd/-
(PADMAVATHY S)
Accountant Member

Bangalore,
Dated, the 27th January, 2026.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. DR, ITAT, Bangalore
5. Guard file

By order

Assistant Registrar,
ITAT, Bangalore