

IN THE INCOME TAX APPELLATE TRIBUNAL “K” BENCH MUMBAI

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 4907/MUM/2025
Assessment Year: 2011-12**

Deputy Commissioner of Income Tax , Circle-1(2)(1), Mumbai	Vs.	BP India Pvt. Ltd. P B No 19411, Technopolis Knowledge park, Andheri, Mumbai - 400043 (PAN: AACCB2030Q)
(Appellant)		(Respondent)

**C.O. No. 276/MUM/2025
Assessment Year: 2011-12**

BP India Pvt. Ltd. P B No 19411, Technopolis Knowledge park, Andheri, Mumbai - 400043 (PAN: AACCB2030Q)	Vs.	Deputy Commissioner of Income Tax , Circle-1(2)(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Ms. Chandni Shah, Mr. Amol Mahajan
and Ms. Nidhi Agarwal, CAs
Revenue : Shri Bhagirath Ramawat, Sr. DR

Date of Hearing : 18.12.2025
Date of Pronouncement : 10.03.2026

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue and cross objection filed by the assessee against the order of CIT (A) 55, Mumbai, vide order no. ITBA/APL/S/250/2025-26/1076574916(1), dated 30/05/2025, passed against the assessment order by ACIT - 9(2)(1), Mumbai, u/s. 143(3) r.w.s 144(C)(3)(b) of the Income-tax Act (hereinafter referred to as the “Act”), dated 13.04.2015, for Assessment Year 2011-12.

2. Grounds taken by Revenue and assessee are reproduced as under:

ITA No. 4907/MUM/2025

1. *"Whether on the facts and circumstances of the case and in law, the ld. CIT(A) has not erred in not appreciating the selection of functionally similar comparables as that of the assessee and making the adjustment by the ld.TPO, based on the TNMM Method."*

2. a) *"Whether on the fact and circumstances of the case and in law, the ld. CIT(A) is erred by relying on the stand of the Hon'ble ITAT in assessee's own case in AY 2008-09 regarding the comparable company Acropetal Technologies Ltd, without appreciating the fact that each year's transfer pricing proceeding is distinct and based on the facts and circumstances on that year only."*

b) *"Whether on the fact and circumstances of the case and in law, the ld. CIT(A) has not erred by excluding the comparable M/s Acropetal Technologies Ltd based on application of "Employee cost filter-'a filter which neither has been used by the TPO for selection/rejection of comparables, nor has been applied to the assessee (tested party), while conducting transfer pricing analysis in the case?"*

3. *"Whether on the fact and circumstances of the case and in law, the ld. CIT(A) is erred in not appreciating the exclusion of comparables which are functionally dissimilar comparables to the assessee's comparables ie e4e Healthcare Business Services Pvt Ltd by the ld.TPO."*

C.O. No. 276/MUM/2025

"1. On the facts and in the circumstances of the case and in law, the ld. Transfer Pricing Officer (ld. TPO)/ Assessing Officer ('AO') made a TP adjustment to the arm's length price ('ALP') of the assessee's international transaction.

While making the TP adjustment, the ld. TPO/AO erred in:

1.1. *rejecting the economic analysis undertaken by the assessee in the transfer pricing study report ("TPSR) and disregarding the submissions made by the assessee.*

1.2. *disregarding certain quantitative filters applied by the assessee while selecting the comparables and applying certain additional filters.*

1.3. *including certain functionally dissimilar companies in the final set of comparables for computing the arm's length price.*

1.4. *excluding certain functionally similar companies in the final set of comparables for computing the arm's length price.*

1.5. *disregarding the provisions of Rules 101B(2) and (3) read with Rule 10C of the Income-tax Rules, 1962 (the Rules).*

1.6. not allowing the working capital adjustment to eliminate the differences on account of varying working capital position between the assessee and the comparable companies, and

1.7. not allowing the risk adjustment to account for the differences in the risk profile between the assessee and the comparable companies.

1.8. not allowing the use of multiple year data of comparable companies, as prescribed under Rule 10B(4) of the Rules and determining the arm's length price on the basis of financial information for the FY 2010-11, which was unavailable in the public domain at the time of determination of the arm's-length price.

The assessee prays that the relief granted by the ld. CIT(A) be granted and the adjustment made by the ld. TPO/AO be deleted.

2. On the facts and in the circumstances of the case and in law, the ld. TPO/AO erred in disregarding the concept of base erosion and raising the income of the assessee by adjustment with regards to services rendered to BP Exploration (Alpha) Limited-CBM India ('BPXA').

The assessee prays that charging a higher mark-up with regards to service rendered to BPXA will erode the tax base of India and accordingly, the adjustment if any, should be restricted to the service rendered to the AEs other than BPXA.

3. On the facts and in the circumstances of the case and in law, the final assessment order, dated 13 April 2015, having been passed beyond limitation period provided in terms of section 153 of the Act, is invalid, bad in law and therefore ought to be quashed.

The assessee prays that assessment order should be quashed as the same is passed beyond the time limit of passing the assessment order.

4. On the facts and in the circumstances of the case and in law, the ld. AO erred in levying interest u/s 234A, 234B, 234C and 234D of the Act.

The assessee prays that the ld. AO be directed to delete/appropriately reduce the interest u/s 234A, 234B, 234C and 234D of the Act.

5. On the facts and in the circumstances of the case and in law, the ld. AO erred in proposing to initiate penalty proceedings u/s.271(1)(c) of the Act.

The assessee prays that the ld. AO be directed to drop the penalty proceedings u/s.271(1)(c) of the Act.”

2.1. Grounds raised by the Revenue in its appeal essentially relates to exclusion and inclusion of comparable adopted by ld. Transfer Pricing Officer at the time of benchmarking of the transaction undertaken by the assessee with its Associated Enterprises.

3. Brief facts of the case are that assessee is an indirect subsidiary of British Petroleum PLC (BP). Assessee primarily provides business support services to various Associated Enterprises (AEs) in the BP group. Return of income for the year was filed on 16.11.2011, reporting total income at Rs.9,46,70,392/-. Assessee had undertaken international transactions with its AEs which were duly in Form No.3CEB filed along with the return of income. In order to determine the Arm's Length Price (ALP) of the said international transactions, a reference was made u/s.92CA(1) to the ld. TPO. International transactions reported by the assessee in its Form 3CEB are as under:

Sr. No	Description of the transactions	Amount (In Rupees)
1.	Provision of Business support services to its AEs	62,84,91,471/-
2.	Recovery of provident fund contribution/retirement and other benefits	6,03,99,121/-

3.1. For comparability purposes, assessee had identified eight companies that were functionally comparable to back office support services whose functions, assets, and risks (FAR) were broadly comparable to those of the assessee. The said analysis undertaken by the assessee determined a mean operating profit to total cost (OP/TC) of 12.74% using multiple year data. Effective OP/TC of the assessee was 9.09% after excluding pass-through cost, duly considered in the Transfer Pricing Study Report (TPSR) submitted before the ld. TPO. Based on this analysis, assessee concluded that the ALP of the international transaction should be taken to be the book value of the transactions.

3.2. Ld. TPO rejected the entire search process conducted by the assessee comprising of eight comparable companies on the ground that

the comparables selected were predominantly domestic companies whereas the assessee is an export-oriented IT-enabled service provider. Thereafter, ld. TPO conducted a fresh search on the databases to identify the comparables which are functionally similar to that of the assessee. Accordingly, ld. TPO identified six comparable companies for the purpose of benchmarking. Out of the comparables selected by the ld. TPO, assessee disputed three such comparables and accepted the two other comparables. The comparable being disputed by the assessee before the Tribunal is Acropetal Technologies Ltd. for its exclusion. Further, assessee also contended that even though the comparable e4e Healthcare Business Services Pvt. Ltd. was proposed by the ld. TPO in his show cause notice and accepted by the assessee, however the same was ultimately not considered as suitable comparable for the reason that this company operated in healthcare management cycle, hence its services provided are different from that of the assessee. Thus, assessee disputed non-inclusion of this comparable and requested for its inclusion. Ld. CIT(A) has considered the factual position and judicial precedents relied upon by the assessee to accept the contentions whereby Acropetal Technologies Ltd. was excluded and e4e Healthcare Business Services Comparable was directed to be included against which Revenue is in appeal before the Tribunal.

3.3. Assessee through its cross objection is defending the order of ld. CIT(A) whereby relief has been granted in respect of the two comparables for which Revenue is in appeal before the Tribunal. Ground No.3 in the cross objection is regarding jurisdictional issue on account of limitation in terms of section 153 of the Act.

4. We first take up the appeal filed by Revenue on the merits of the case and thereafter will deal with the cross objections filed by the

assessee. Before we delve into the exclusion and inclusion of 2 comparables as contested by the Revenue, we first look at the functional analysis to understand the functions performed, assets employed and risks assumed by the assessee as contained in its TPSR forming part of the paper book.

4.1. From the perusal of the same, we note that assessee is engaged into performing of functions which includes accounting and control support services, legal and tax support services, management HSE, i.e., health safety and environment and human resource services, lubricant supply support services, technical support services, marketing support services, IT systems development and support services and sales related support services which includes exploring business opportunities. Thus, assessee provides services which are in the nature of support services to various AEs in the BP group.

4.2. For the assets employed, assessee utilizes its office premises, equipments and computers etc. for the purpose of its business, since it provides services only to its AEs and therefore, assessee does not own nor use any intangibles of the BP group.

4.3. For the risk profile, it is noted that market risk exposure does not exist in the case of the assessee because assessee renders services exclusively to its AEs which are ultimately used within the group. In respect of product/service liability risks, assessee is required to render the services in a diligent, skillful, safe and workman like manner as per the terms of the agreement and is responsible for the result. For the credit risk, assessee is not impacted since it renders services only to its AEs. Accordingly, the risk from non-payment of dues is mitigated. For the foreign exchange risk, assessee and its AEs face the risk of

fluctuations in the forex since business done is in US dollars. For the manpower risk, assessee faces it to the extent it has the ability to organize and maintain the relevant expertise to deliver services to its AEs.

4.4. Thus, in conspectus of the above discussion, assessee is a service provider exposed to less than normal risk associated with carrying out such business.

5. Keeping the above FAR profile in perspective of the assessee, we now delve into the comparable Acropetal Technologies Limited (Acropetal) for consideration in terms of the ground raised by the Revenue. This is the comparable which formed part of the six shortlisted comparables by the ld. TPO after rejecting the eight comparables of the assessee. Assessee had gone before the ld. CIT(A) for its exclusion which was allowed and therefore, Revenue is in appeal before the tribunal for its restoration. We look at the basis on which ld. CIT(A) allowed the contention of the assessee for its exclusion, which are primarily on the following parameters:

- i. Low employee cost,
- ii. Already excluded by the Coordinate bench in assessee's own case for AY 2008-09. Also, on similar reasons, excluded by ld. TPO in assessment year 2010-11,
- iii. Inorganic growth strategy, functionally different on account of onsite development expenses and performance of research and development activities as well as provision of highly sophisticated and technological services.

5.1. On each of the above parameters, the observations are noted as under.

i) Low employee cost: It is pointed out from the material on record that employee cost to total sales ratio of Acropetal is 9.81% as against 44.74% of the assessee, details in this respect is tabulated below:

(Amount in INR)

Particulars	Acropetal Technologies Limited	Assessee
Employee Cost (A)	14,04,08,003/-	27,98,80,000/-
Total Sales (B)	1,41,65,28,936/-	62,55,02,000/-
Employee Cost/Sales (C = A/B)	9.91%	44.74%

ii) It is pointed out that the employee cost incurred by Acropetal is substantially low for a service company as against the assessee which provides support services and hence, cannot be taken as a comparable company to that of the assessee. This factual position has been considered by the Coordinate bench in assessee's own case for AY 2008-09 in ITA No. 6977/Mum/2012 dated 21.01.2015. On the same parameter of low employee cost, Acropetal was rejected by the Coordinate Bench. Relevant extract of the order is reproduced for ready reference.

25. L. AR has also contended for exclusion of Acropetal Technologies Ltd. on the plea that the low employee's cost to sales is 8.20% as against assessee's employee cost to sales is 48.54%, therefore, this company cannot be treated as comparable, Ld. AR placed reliance the decision of Tribunal in the case of Stream International Services India Private Ltd. v. ACIT, ITA No. 8200/Mum/2011 (AY: 2007-08) and Brigade Global Services Private Limited, ITA No. 1494/Hyd/2010, 088/Hyd/2011.

20. We have considered rival contentions and carefully perused the record. In view of the judicial pronouncements, as cited above, we accept the contention of the assessee that this company cannot be treated as comparable. Accordingly, we direct the TPO to exclude Acropetal Technologies from the list of comparables..."

(Emphasis supplied)

iii) It is also observed that in assessee's own case for AY 2010-11, ld. TPO himself has not included Acropetal in the final set of comparables while conducting the transfer pricing assessment. He observed in his order in Para 7.6 in respect of Acropetal that *“the contentions of the assessee is that this company does not form part of the Accept Reject matrix given by the TPO, hence the same cannot be taken as comparable, the contentions of the assessee are accepted and the comparable is rejected”*.

iv) From the annual report of Acropetal for AY 2011-12, it is pointed out that it adopts an inorganic growth strategy by acquiring other companies in order to expand its client base. In the year under consideration, Acropetal made acquisition of certain US companies which were aimed at significant expansion of the company's addressable market and improve its growth potential. Accordingly, Acropetal follows an inorganic growth strategy and has acquisitions in the year under consideration which is an extraordinary event, rendering the same as not comparable to that of the assessee.

v) It is also observed that Acropetal is functionally different on account of parameters listed above, first being on-site development expenses. Acropetal has incurred expenditure in relation to on-site development paid towards technical subcontractors. It outsources its business activities and does not perform operations on its own since the employee cost incurred by it is substantially low i.e., 9.91% of the total sales. On the other hand, assessee performs its own business activities and are not outsourced, fact of which is substantiated from the high employee cost incurred by the assessee which is at 44.74% of the total sales. Thus, Acropetal has a different business model than that of the assessee and hence rendering it as not comparable being functionally

different. Another parameter which makes Acropetal functionally different is performance of research and development activities by it as reflected in its financial statements. From the annual report under the heading 'Research and Development', it is stated that research and development is an integral part of the business operations of Acropetal and is carried on continuously in all the areas of operations. R&D is carried on by it as a part of ongoing business activity and expenditure thereof is considered as part of operating expenditure and hence cannot be shown separately. Contrary to this, assessee provides only support services and does not perform any research and development activities. By referring to foreign exchange earnings and outgo from the annual report of Acropetal, it is pointed out that Acropetal has internally developed and built a strong product and services portfolio by using new and advanced technologies. Acropetal has implemented several healthcare case management and patient information systems that merge sophisticated technologies with user friendly interfaces. It provides end to end solutions in many areas. As against this, assessee is engaged in provision of support services to its AEs which does not involve such provision of high end and sophisticated services. Accordingly, considering the difference in functionality, Acropetal is not comparable to with the assessee for the purpose of benchmarking.

5.2. It has been pointed out before us that Acropetal has been excluded in several other judicial precedents also pronounced by various Coordinate Benches, some of which are listed below.

- i. In the case of Hapad Lloyd Global Services Pvt. Ltd. Vs. ACIT in ITA No. 407/Mum/2016, dated 15.03.2019, wherein it was excluded on account of onsite development expenses which rendered it as not comparable.

- ii. JCIT Vs. Steria India Pvt. Ltd. in ITA No.512 and 511/Del/2016, dated 17.11.2020 for AY 2010-11 and 2011-12. In this judicial precedent also, Acropetal was excluded on account of low employee cost which is less than 25% of the total cost and that it is engaged in significant R & D activities as noted by the Coordinate Bench in Para 108 of its order.
- iii. DCIT vs. Daiwa Capital Markets India (P) Ltd. [2020] 113 taxmann.com 337 (Mum) wherein also Acropetal was excluded after examining its annual report for AY 2011-12, wherein employee cost was noted to be less than 25%. Further, foreign currency expenses were taken into account for the purpose of its exclusion.

5.3. By considering the overall factual matrix as discussed above on various parameters as well as judicial precedents, we do not find any reason to interfere with the finding arrived at by Id. CIT(A) for the exclusion of Acropetal as a comparable from the final list for the purpose of benchmarking. Accordingly, ground No. 2 raised by the Revenue is dismissed.

6. We now take up the comparable of e4e Healthcare Business Services Private Limited, which was excluded by Id. TPO from the final list of comparables, though he himself had shortlisted while issuing a show cause notice to the assessee. Assessee seeks its inclusion which has been upheld by Id. CIT(A) against which Revenue is in appeal before the Tribunal. In this regard, it is noted that this comparable has been accepted by the Id. TPO himself in the transfer pricing assessment for AY 2008-09 in assessee's own case. Relevant extract from the order of Id. TPO for AY 2008-09 is reproduced for ready reference.

ITES-FINAL SET OF COMPARABLES-AY 2008-09
Brief Description

<i>Sl.No.</i>	<i>Name of the Comparable</i>	<i>Brief Description</i>
1.	<i>Accentia Technologies Ltd (Seg.)</i>	<i>The BPO segment of the company is mainly engaged in medical transcription, medical billing and coding.</i>
2.	<i>Acropetal Technologias (Seg)</i>	<i>The ITES segment of the company engineering design services.</i>
3.	<i>Aditya Birla Minacs Worldwide Ltd</i>	<i>The company is mainly engaged in rendering back office, call centre and data processing services.</i>
4.	<i>Axit C Mehta Financial Services Lid (Seg)</i>	<i>The company is mainly engaged in rendering transaction processing and data processing services</i>
5.	<i>Caliber Point Business Solutions Ltd</i>	<i>Transaction processing services In Healthcare, Human Resources and Finance & Accounting Domains.</i>
6.	<i>Coral Hubs Ltd (Formerly Vishal Information Technologias Ltd)</i>	<i>Data processing services</i>
7.	<i>Cosmic Global Ltd</i>	<i>Medical transcription and translation services</i>
8.	<i>Crossdomain Solutions Ltd</i>	<i>Data processing, insurance claims processing and payroll processing services</i>
	<i>Datamatics Financial Services Ltd (Seg)</i>	<i>Financial accounting and internet based research services.</i>
	<i>e4e Healthcare Solutions Lad</i>	<i>Healthcare outsourcing services</i>

6.1. Also, in AY 2010-11, ld. TPO had accepted this comparable in the final set of comparable companies while determining the ALP of international transaction of provision of business support services. Relevant extract from the order of ld. TPO in this regard is extracted below:

7.7 **e4e Healthcare Ltd. [now known as Nittani Outsourcing Ltd.]**

The assessee has not objected for this comparable. Hence the company is selected as a comparable.



- 15 -

M/s. BP India Services Pvt. Ltd.,
A.Y. 2010-11

The final comparables accepted by the TPO are as under:

S. No.	Name of company	Operating Margin (OP /TC)
1	Accentia Technologies Limited	43.06
2	Cosmic Global Limited	14.97
3	Infosys BPO Limited	31.20
4	E4e Infotech	19.46
	Arithmetic Mean	27.19

6.2. Reference is made to the decision of Coordinate Bench in the case of Hapad Lloyd Global Services (supra), where in Para-15 it has observed that from the profit and loss account for AY 2011-12 of this comparable, it is engaged in providing healthcare outsourcing services which is comparable to ITeS provider. Also, from the perusal of the annual report of e4e, it is evident that it is primarily engaged in business of providing outsourcing services. The activities of e4e are similar to support services provided by the assessee. It is not engaged in research and development activities in any specific area.

6.3. In the conspectus of the above factual position as well as the judicial precedent noted above, ld. CIT(A) has upheld for its inclusion for the purpose of benchmarking exercise in the final list of comparables. On the factual position as noted above, we do not find any reason to interfere with the findings so arrived by the ld. CIT(A). Accordingly, ground No.3 raised by the Revenue is dismissed.

7. Ground No. 1 raised by the Revenue is general in nature and therefore needs no separate adjudication.

8. In the result, appeal of the Revenue is dismissed.

9. Now, coming to the cross objection filed by the assessee, we note that ground no. 1 which is in respect of the two comparables already dealt by us in ground nos. 2 and 3 of the Revenue appeal. Hence, it needs no separate adjudication. Ground No. 1 raised by the assessee in its cross objection is allowed.

9.1. Ground no. 2, which is general in nature is rendered infructuous, in view of our observations and findings while adjudicating upon ground No. 2 and 3 of Revenue appeal and ground No. 1 of cross objection of the assessee.

9.2. Ground no. 3 deals with jurisdictional issue on the aspect of limitation in terms of section 153 which is left open and not adjudicated upon, more particularly, in view of the proposed amendment by Finance Act 2026, in this regard. Liberty is granted to the assessee to raise the same if circumstances so warrant, at appropriate forum.

10. In the result, cross objection filed by the assessee is partly allowed.

11. In the result, appeal by Revenue is dismissed and cross objection by the assessee is partly allowed.

Order is pronounced in the open court on 10 March, 2026

Sd/-
(Pawan Singh)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 10 March, 2026

MP, Sr.P.S.

Copy to:

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BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai