

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I' : NEW DELHI)**

**BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER
and
SHRI A.T. VARKEY, JUDICIAL MEMBER**

**ITA No.6381 /Del./2012
(ASSESSMENT YEAR : 2008-09)**

IHG IT Services (India) Pvt. Ltd.,
11th Floor, Tower C, Building No.10,
DLF Cyber City, DLF Phase – II,
Gurgaon – 122 002 (Haryana)
(PAN : AAHCS8349E)

vs. DCIT, Circle 11 (1),
New Delhi.

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : S/Shri Atul Jain & Vasanth Vasudevan, CA
REVENUE BY : Ms. Y. Kakkar, Senior DR

Date of Hearing : 11.08.2015

Date of Pronouncement : 30.09.2015

ORDER

PER A.T. VARKEY, JUDICIAL MEMBER :

This appeal, at the instance of the assessee, is directed against the Order dated 18.10.2012 under section 143 (3) read with section 144C (5) of the Income-tax Act, 1961 (hereinafter referred to 'the Act') in pursuance to the direction of the Dispute Resolution Panel (DRP) – I, New Delhi for the assessment year 2008-09.

2. The assessee filed e-return of income on 29.09.2009 declaring an income of Rs.3,64,378/- under the Act and Rs.2,03,77,803/- as per

the provisions of section 115JB of the Act which was processed u/s 143 (1) of the Act. Later, the case was selected for scrutiny.

3. The assessee company, a wholly owned subsidiary of Intercontinental Hotels Group (Asia Pacific) Pte. Ltd., Singapore, is engaged inter alia in the business of providing back office accounting support to group's various hotels and corporate offices all over the world and registered as 100% export oriented unit for export of computer software/IT Enabled Services (ITES). This assessment year is the first year of commencing its operation. During the year, receipts from the exports of Rs.16,87,42,181/- and other income of Rs.3,64,378/- has been shown.

4. During the year under consideration, the assessee had entered into international transaction (as mentioned in the 92CE report) as under :-

S.No.	Description of the transactions	Amount (in Rupees)
1	Provision of IT Enabled Services	16,87,42,180
2	Cost Reimbursement	37,71,220

The case was referred to the Transfer Pricing Officer (TPO) for computation of Arm's Length Price (ALP) for international transaction.

5. The ALP of the international transactions representing the ITES provided to the Associated Enterprises (AE) is determined by applying of Transactional Net Margin Method (TNMM) which is stated to be the most appropriate method in the facts and circumstances of the case. The operating profit to total cost (OP/TC) ratio is taken as Profit Level Indicator (PLI) in the TNMM analysis. For comparing assessee's net profit, the assessee had identified 13 comparable companies and three years average PLI of these seven (7) companies was computed as 14.62% (page 3 of the TPO). The TPO vide order dated 27.10.2011 rejected the transfer pricing study of the assessee and took the following comparables to arrive at the PLI for computation of ALP :-

Sl.No.	Company	PBIT/ Cost (%)
1.	Accentia	44.5
2.	Aditya Birla Minacs	-0.55
3.	Asit C Mehta	9.42
4.	Caliber Point Business Solution (seg)	10.97
5.	Coral Hub (Vishal Inf)	51.84

6.	Cosmic Global	24.3
7.	Crossdomain Solution P Ltd.	26.96
8.	Datamatics Financial (BPO Div)	34.87
9.	E4e (earlier known Nitanny)	16.87
10.	Eclerx	66.5
11.	Genesys International	48.15
12.	HCL Comnet Systems & Services Ltd. (seg.)	32.97
13.	ICRA (Seg.)	11.22
14.	Infosys BPO	20.03
15.	I-Service Ind P Ltd.	9.73
16.	Mold Tex	96.66
17.	Spanco Ltd. (seg.)	8.94
18.	Acropetal Technologies Ltd. (seg.)	35.3
19.	Wipro BPO	30.23
20.	R System International Ltd. (seg.)	4.3
	AVG	29.16

Thereafter, the TPO computed the ALP as under :-

“Arithmetic mean PLI	:	29.16%
Less : Working Capital Adjustment	:	<u>3.89%</u>
Arm’s Length Price	:	<u>25.27%</u>

Operating Cost	Rs.146,383,404
Arms Length Margin	25.27% of the Operating cost
Arms Length Price (ALP)	Rs.183,374,490

b. Price received vis-à-vis the Arms Length Price :

The price charged by the tax payer to its Associated Enterprises is compared to the Arms Length Price as under :-

Arms Length Price	Rs.183,374,490
Price shown in the international transactions	Rs.168,742,180
Shortfall being adjustment u/s 92CA	Rs. 14,632,310

The above shortfall of Rs.14,632,310 is treated as transfer pricing adjustment u/s 92CA.

Based on the above detailed discussion, the arm's length price of three international transactions pertaining to providing IT enabled services is determined at Rs.183,374,490 instead of Rs.168,742,180 charged in its international transactions, resulting in an adjustment to the extent of Rs.14,632,310.”

Thereafter, the DRP vide order dated 03.09.2012 directed the TPO to recompute the transfer pricing adjustment after reexamining the ALP and excluded Moldtek from the list of comparables. As per the said direction, the revised final list of comparables is as under :-

Sl.No.	Name of Company	NCP (%)
1.	Caliber Point Business Solutions Limited	6.46
2.	Cosmic Global Limited	23.24
3.	R System International Ltd.	2.37
4.	Spanco Telesystem & Solutions Ltd.	2.83
5.	Accentia Technologies Limited	39.52
6.	Aditya Birla Minacs	-9.49
7.	Asit C Mehta	6.68
8.	Coral Hub (previously Vishal Info Tech)	39.04
9.	Crossdomain Solution Private Ltd.	25.24
10.	Datamatics Financial Services	32.37
11.	e4e Healthcare (Nittany)	13.86
12.	Eclerx Services Limited	64.05
13.	Genesys International	44.01
14.	HCL Comnet Systems & Services	29.46
15.	ICRA Techno Analytics	7.39
16.	Infosys BPO	17.96
17.	I-Service Private Limited	7.53
18.	Acropetal Technologies Limited	27.85
19.	Wipro BPO	35.39
	Average	21.88

Accordingly, the TPO has given the effect to the directions issued by the DRP and determined the ALP at Rs.96,69,913/- instead of Rs.1,46,32,310/-.

6. As a result of the final assessment completed vide order dated 18.10.2012 passed u/s 143(3) r.w.s. 144C of the Act assessing the total income of the assessee at Rs.96,69,913/- which is as under :-

Particulars	Details
Assessee's cost base	Rs.14.6 crores
Assessee's revenue	Rs.16.8 crores
IHG IT's Net Cost Plus (NCP) Margin	15.27%
Arm's length cost-plus margin determined by AO	21.88%
Adjustment amount	Rs.9,669,913

7. During the course of the hearing, the ld. Counsel for the assessee submitted that all his contentions vis-à-vis raised in the memo of appeal are confined to the inclusion / exclusion of certain comparables.

(i) CORAL HUB (PREVIOUSLY VISHAL INFO TECH)

8. The assessee is aggrieved by the inclusion of this company in the final list of comparables though the said company was included by

the assessee in its list of comparables to calculate the ALP. The assessee though had included the said company in its list of comparables has every right to object to its inclusion before the TPO because there is no estoppel against law. So the contention of the Id. DR against the assessee turning around to object to the said company being included in the list of comparables is rejected.

9. The objection of the assessee that this company is functionally dissimilar and has peculiar economic circumstances was rejected by the TPO as under:-

“The taxpayer contention for functionality of the company is not acceptable as neither the TPO nor the taxpayer considered functional lines within IT enabled services. Final comparables considered by the taxpayer as well as the TPO consists of companies engaged in both high end and low end IT enabled services. The taxpayer is also not denying the fact that the company is into IT enabled services. Thus the company is considered as a comparable as the TPO as well as the taxpayer did not go into horizontal or functional lines within the ITES industry.”

Referring to a letter from the Coral Hub, the TPO repelled the contention of the assessee in respect to high outsourcing of the services by the said company as under :-

“That data conversion services (ITES) rendered by the taxpayer involved 9 – 10 steps. Of this process, stages 1 to 5 are performed

by manpower vendors' personnel in the office premises of the company and stages 6 to 9 are performed by the employees of the company. The expenses incurred for Vendors' personnel are debited to data entry charges, vendor payments etc. Thus, as clarified by the company, the expenses under the head 'data entry and vendor payments' are towards personnel of vendors' working from the premises of the company. Hence, the taxpayers' argument that the company outsources its major work is incorrect and also clarified by the company as above. The company is thus rendering IT enabled services using its own assets and human resources (may not be on the roll of the company), and is functionally similar to the taxpayer.

10. Ld. AR submitted that the said comparable company has an expenditure head of 'data entry charges and vendor payments' amounting to Rs.21.68 crores which is 84.52% of the total expenditure. He submitted that in other words, it is engaged in 'trading of services' on it's own. He submitted that the employee costs of comparable company is merely 4.40% of the operating revenue. The ld. AR submitted that the main Asset used in ITES industry is manpower only, so the wages/ sales ratio should be a primary filter for selecting comparable in ITES industry He further submitted that the assessee's wages to sales is 53.09% which cannot be considered as comparable to Vishal at 4.40%.

11. Ld. DR relied on the order of the TPO.

12. Having considered the above objection, we are in agreement with the submission of the Id. Counsel that Vishal Information Technologies Ltd. is not a valid comparable as held in Google India Pvt. Ltd. vs. DCIT, Bangalore (ITA No.1368/Bang./2010 for AY 2006-07) wherein Google India was engaged in the business of software development services and ITES. The objection in regard to exclusion of the said company from the list of comparables was accepted by the Tribunal and held as under :-

“15. As regards the issue of (8) Vishal Information Technologies Ltd., we find that, it is adopted by the TPO. The DRP held that Vishal Information Technologies has outsourced its call centre work and, therefore, the employee cost is less than 25% as is the common practice among other ITES services. The TPO as well as the DRP have recorded that in the ITES sector, employees filter of less than 25% alone is not applicable for the reason that in addition to the ample costs, the commission costs are also important. When company has outsourced its ITES services, it cannot be said that its business results would be comparable to any other ITES service provider rendering the services entirely on its own. In such circumstances, the net margins of the two comparables cannot be on the same basis. The decisions relied upon by the learned counsel for the assessee also held that the employee cost filter is important filter to be adopted for the purpose of computing ALP. In the case of Maersk Global Services Centre (India) Pvt. Ltd., in ITA No.3774/M/2011, the Tribunal at Mumbai has held that Vishal Information Technologies Ltd. has to be excluded from the list of comparables of ITES company as it has outsourced its services. In view of the same, we direct the AO to exclude this company also from the list of comparables.”

Having regard to the above decision and having gone through the annual report, we concur that when the company has outsourced its service, it cannot be said that its business results would be comparable to any other ITES provider rendering the services entirely on its own. So, the net margins of the two companies cannot be on the same basis. We rely on the Hon'ble jurisdictional High Court decision in the case of Rampgreen Solutions Pvt. Ltd. vs. CIT (ITA 102/2015 order dated 10.08.2015) wherein the Hon'ble High Court held as under :-

“38. In our view, even Vishal could not be considered as a comparable, as admittedly, its business model was completely different. Admittedly, Vishal's expenditure on employment cost during the relevant period was a small fraction of the proportionate cost incurred by the Assessee, apparently, for the reason that most of its work was outsourced to other vendors/service providers. The DRP and the Tribunal erred in brushing aside this vital difference by observing that outsourcing was common in ITeS industry and the same would not have a bearing on profitability. Plainly, a business model where services are rendered by employing own employees and using one's own infrastructure would have a different cost structure as compared to a business model where services are outsourced. There was no material for the Tribunal to conclude that the outsourcing of services by Vishal would have no bearing on the profitability of the said entity.”

13. In the light of the above, we are of the opinion that Coral Hub (previously known as Vishal) cannot be used as a comparable and so

we direct the AO to exclude this company from the list of comparables.

(ii) ECLERX SERVICES LIMITED

14. Ld. AR submitted that Eclerx is a provider of Knowledge Process Outsourcing (KPO) services. He submitted that the said comparable company is leading Indian provider of KPO services and was established in 2001. He further submitted that the said comparable company provides data analytics and customized process solution to a host of global clients and in this regard, refer to page 13 of the Management Discussion Analysis in the Annual Report. He submitted that Eclerx incurred expenses under the head 'Contract for services' and 'Outsourced services' amounting to INR 150.72 million which is 20.39% of total cost of the company.

15. Ld. DR relied on the order of the TPO.

16. We have heard both the sides and perused the material available on record. The Hon'ble jurisdictional High Court in the case of Rampgreen Solutions Pvt. Ltd. (supra) has held as under :-

“36. As pointed out earlier, the transfer pricing analysis must serve the broad object of benchmarking an international transaction for determining an ALP. The methodology necessitates that the comparables must be similar in material aspects. The comparability must be judged on factors such as product/service characteristics, functions undertaken, assets used, risks assumed. This is essential to ensure the efficacy of the exercise. There is sufficient flexibility available within the statutory framework to ensure a fair ALP.

37. Applying the aforesaid principles to the facts of the present case, it is once again clear that both Vishal and eClerx could not be taken as comparables for determining the ALP. Vishal and eClerx, both are into KPO Services. In *Maersk Global Centers (India) Pvt. Ltd. (supra)*, the Special Bench of the Tribunal had noted that eClerx is engaged in data analytics, data processing services, pricing analytics, bundling optimization, content operation, sales and marketing support, product data management, revenue management. In addition, eClerx also offered financial services such as real-time capital markets, middle and back-office support, portfolio risk management services and various critical data management services. Clearly, the aforesaid services are not comparable with the services rendered by the Assessee. Further, the functions undertaken (i.e. the activities performed) are also not comparable with the Assessee. In our view, the Tribunal erred in holding that the functions performed by the Assessee were broadly similar to that of eClerx or Vishal. The operating margin of eClerx, thus, could not be included to arrive at an ALP of controlled transactions, which were materially different in its content and value. In *Maersk Global Centers (India) Pvt. Ltd. (supra)*, the Special Bench of the Tribunal had noted the same and had, thus, excluded eClerx as a comparable. It is further observed that the comparability of eClerx had also been examined by the Hyderabad Bench of the Tribunal in *M/s Capital Iq Information Systems(India) (P.) Ltd. v. Additional Commissioner of Income-tax (supra)*, wherein, the Tribunal directed the exclusion of eClerx as a comparable for the reason that it was engaged in providing KPO Services and further that it had also returned supernormal profits.”

In the light of the aforesaid decision of the Hon'ble jurisdictional High Court in the case of Rampgreen Solutions Pvt. Ltd. (Supra) wherein concurring with the view of Special Bench of the Tribunal in Maersk Global Centres (India) Pvt. Ltd. (supra) it was held that eClerx need to be excluded taking into consideration the fact that eClerx is engaged in data analytics, data processing services, pricing analytics, bundling optimization, content operation, sales and marketing support, product data management, revenue management and in addition, eClerx also offered financial services such as real-time capital markets, middle and back-office support, portfolio risk management services and various critical data management services and the Hon'ble High Court held that this company is engaged in KPO services and so, this company cannot be compared with the low end service provider like the assessee in this case. We order the exclusion of this company from the set of comparables.

(iii) INFOSYS BPO

17. Ld. AR submitted that the brand value of Infosys is at Rs.31,863 crores and the said company incurred 6.17% of the total revenue as

sales and marketing expenses and referred to page 20 & 25 of the Annual Report. He further submitted that the said comparable company charges premium being a market leader and the assessee is not a market leader and does not enjoy any such advantages. He submitted that the said comparable company has a turnover of more than 49 times to that of the assessee company and in this regard, he referred to page 20 of the Annual Report of Infosys BPO. He further submitted that during the year, Infosys BPO concluded a sale and purchase agreement with Koninklijke Philips Electronics N.V. (Philips) by means of which it made a 100% investment in the share capital amounting to Rs.107 crores in P-Financial Services Holding B.V., the Netherlands entity (Holding Company) and this acquisition will help the said comparable in acquiring domain skill sets in the finance and administration space as well as enhance its global presence with centres in Thailand as well as Poland.

18. Ld. DR relied on the order of the TPO.

19. We have heard both the parties and perused the records. The contention of the ld. AR that this company cannot be used as

comparable because the operating revenue of the Infosys BPO is 49 times than that of the tested party (assessee), cannot be countenanced in view of the Hon'ble jurisdictional High Court's decision in the case of ChrysCapital Investment Advisors (India) Pvt. Ltd in ITA 417/2014 judgment dated 27.04.2015. Though we have held in the case of Avaya India (P) Ltd. vs. Addl.CIT, Range 2, New Delhi in ITA No.5528/Del./2011 order dated 18.09.2015 for AY 2007-08 that the Infosys BPO is a comparable company to Avaya, since it is rendering ITES services, however, we take note that an extra-ordinary event has been reported at page 36 of the Annual Report for financial year 2007-08, which has been recorded as given below :-

“Infosys BPO Limited has acquired the shared service centres of Philips at Poland, Thailand and Chennai through its investment in P – Financial Services Holding B.V. Netherlands as per sale and purchase agreement dated July 25, 2007 with Koninklijke Philips Electronic N.V. for a purchase consideration of 107.12 crores of which Rs.5.59 crores is yet to be paid towards additional purchase consideration. The shared service centres at Poland and India have become 100% subsidiary of the company on October 1, 2007 where as the shared service centre at Thailand has become a wholly owned subsidiary on December 3, 2007, the date on which all necessary conditions in the agreement were fulfilled.”

We take note that the aforesaid extra ordinary event of amalgamation during the year has helped Infosys BPO in acquiring domains skill sets in the finance, administration space as well as enhanced its global presence with centers at Thailand and Poland. In view of the said extra ordinary event brought to our notice, we exclude Infosys BPO from the list of comparables.

(iv) **WIPRO BPO**

20. The case of the assessee is that Wipro BPO should be excluded from the list of comparable since complete annual report of the company is not available in public domain and it has huge turnover. The TPO repelled the contention of the assessee by stating that he had called for segmental information on standalone basis and the same was provided by the Wipro. Therefore, he considered this company as a comparable.

21. Before us the learned counsel, vide written submissions, submitted as under :-

- (i) **Annual Report not available in public database :** The annual report of Wipro BPO was not available in public database for FY 2007-08. We have relied upon the

segment wise financial statements on standalone basis of Wipro Limited. Directors Report and Notes to the Accounts are available in the public domain;

- (ii) **High Turnover** : Industrial giants considering turnover and market leaders; turnover of INR 1158.80 crores for FY 2007-08 vis-à-vis INR 16.87 crores of assessee (nearly 68 times of the assessee);
- (iii) **Data used not contemporaneous** : Wipro BPO did not appear in the assessee's search process;
- (iv) **Company not comparable on turnover criterion** : The turnover of Wipro BPO for FY 2007-08 is around INR 1158.80 crores against INR 16.87 crores of the assessee. Hence, the company is not comparable on the basis of high turnover;
- (v) **Substantial sales and marketing expenses and brand premium** : Wipro BPO is a market leader in its industry which incurred substantial quantum as selling and marketing expenses. Due to this fact, customers pay a premium on their services, therefore, should be excluded.”

22. The Ld. DR, on the other hand, relied upon the orders of the lower authorities and submitted that Wipro BPO is a good comparable.

23. We have considered the rival submissions and perused the material on record. The arguments of the ld. AR that only on account of super normal profit this comparable should be excluded is not tenable in the light of the Hon'ble jurisdictional High Court decision

in the case of ChrysCapital Investment Advisors (India) Pvt. Ltd in ITA 417/2014 judgment dated 27.04.2015. The DRP is silent to the objections i.e. this company is rendering different services and there is insufficient segmental information and it fails RPT filter. So, when the assessee asked for the complete annual report at the time of the original TP proceedings or the proceedings pursuant to the DRP, the TPO failed to provide the complete annual report of the said comparable to the assessee. If the TPO wanted to use Wipro BPO as a comparable, the onus was on him to provide the complete annual report to the assessee. It is a settled law that onus is on the person who asserts the facts. In any case, we fail to see how without the complete annual report of Wipro BPO, the DRP upheld the inclusion of the said company. From the Annual Report, which is few pages of the extract, we take note that no revenue or segmental break up is available between software services and infrastructure support services and no information about the nature of business is available in the annual report. We find force in the submissions advanced by Id. AR that in the absence of the Director's Report and Notes to Account for this comparable are not available in public domain it would not be prudent

to take this company as a comparable. Ld. DR has not been able to controvert this fact. Since sufficient information for this comparable is not available, we direct exclusion of this company as a comparable as we have done in the case of Avaya India (P) Ltd. vs. Addl.CIT, Range 2, New Delhi in ITA No.5528/Del./2011 for AY 2007-08 order dated 18.09.2015.

(v) HCL COMNET SYSTEMS & SERVICES LTD.

24. Ld. AR submitted that the HCL is an industrial giant considering its turnover and market leaders and its turnover is of 29 times to the assessee company i.e. INR 495.1299 for FY 2007-08 vis-à-vis INR 16.87 crores of the assessee. The said comparable is market leader in its industry and incurred substantial selling and marketing expenses and has a brand value. He submitted that the customers of the said comparable pay a premium on their services and, therefore, the same should be excluded. He submitted that financials for FY 2007-08 are not available in public domain, hence it would not have been possible for the assessee to identify the company and at its functional profile for selection as comparable. He further

submitted that the said comparable did not appear in the search process of the assessee during the preparation of documentation u/s 10(d), hence, it would not have been possible for the assessee to select the company as a comparable. Ld. AR also submitted that the company had a different year ending than March 2008 and the TPO considered clubbing the data of three quarters from April 2007 to December 2007 with data of quarter one of 2008 i.e. January 2008 to March 2008 and it would not have been possible for the assessee to undertake such an arbitrary activity while performing its search process.

25. Ld. DR relied on the order of the TPO.

26. We have heard both the sides and perused the material on record. We find that the HCL is functionally similar to that of the assessee. Ld. AR could not point out any functional difference to our attention. In the said scenario, we uphold the inclusion of the said company in the set of comparables. The assessee fails.

(vi) GENESYS INTERNATIONAL

27. The assessee's grievance is that the said company has been included by the TPO by holding as under :-

“The TPO is in disagreement with the taxpayer regarding horizontals or functional lines within IT enabled services. Neither the taxpayer nor the TPO did go into functional lines / horizontals within IT enabled services. Thus the taxpayer cannot take the plea that the data conversion, migration, maintenance services being provided by Genesys are not similar to the IT enabled services being performed by the taxpayer. As discussed above under the head "Definition of IT Enabled Services", the services rendered by the company comes within the purview of the CBDT circular SO 890 (E) dt. 26.9.2000, which had given a detailed list of products or services that, could be claimed under ITES for the purpose of 10A and 10B as under.

"The information technology enabled products or services to mean:

- (i) Back Office operations
- (ii) Call centers
- (iii) Content development or animation;
- (iv) Data processing
- (v) Engineering and design
- (vi) Geographic Information System services.
- (vii) Human Resources services.
- (viii) Insurance Claim Processing.
- (ix) Legal databases.
- (x) Medical Transcription;
- (xi) Payroll;

- (xii) Remote Maintenance;
- (xiii) Revenue accounting,
- (xiv) Support Centers, and
- (xv) Web site services.”

As discussed above under the head "Verticals/Horizontal, the taxpayer did not consider different functional lines within IT enabled services for selection of comparable companies. Thus the company cannot be rejected on the basis that it is into different functional line within ITES. Hence the company is retained as a comparable. The taxpayer further contends that the company has intangibles, research and development activities and it owns products which make the company un comparable to the taxpayer in terms of functions. These objections of the taxpayer also deserve rejection on the same ground that the TPO has not gone into the functional and vertical lines of the comparable companies on which issue the taxpayer has not raised objections.

The taxpayer has not stated anything regarding the peculiar circumstances faced by this comparable. Therefore the company is retained as comparable.”

28. Ld. AR submitted that the said comparable company is engaged in provision of geospatial and content providing services and it also provides geographical information services comprising of photogrammetry, remote sensing, cartography, data conversion, related computer based services. He submitted that the said comparable company also works in a single segment i.e GIS based service. Therefore, he submitted that the said comparable company is functionally different. He submitted that the comparable company

has intangible assets constituting 22.57% of total fixed assets of the company. For buttressing his argument, the Id. AR took our attention to the Annual Report of Genesys International Corporation Ltd. wherein Schedule M – Company’s Background is stated that Genesys International Corporation Ltd. is engaged in providing Geographical Information Services comprising Photogrammetry, Remote Sensing, Cartography, Data Conversion, related Computer based Services and Information Technology enabled and other related Services, whereas the assessee is only engaged in back office support i.e. ITES to its AE and pointed out that the functional profile of this company, Genesys International Corporation Ltd., is technology driven. So, therefore, it is not functionally similar and, therefore, the TPO rightly did not include the said company in the list of comparables though has not commented upon the functional dis-similarity with the assessee.

29. We have heard both the parties, have gone through the records and gone through the Annual Report of Genesys International Corporation Ltd. We find that the assessee is engaged in the back office support ITES system for its AE in respect of accounting support for hotels and its corporate offices whereas we find that

Genesys International Corporation Ltd. is into mapping business and it provides geographical information services comprising Photogrammetry, Remote Sensing, Cartography, Data Conversion, related Computer based Services and Information Technology enabled and other related services, which cannot be by any stretch of imagination be said to be comparable to that of the assessee. Since Genesys International Corporation Ltd. is functionally dis-similar with that of the assessee, we direct the TPO to exclude the said company from the list of comparables.

(vii) ACROPETAL

30. According to the assessee, this company is into engineering services being in the nature of design and drawing and so, these services are high end in nature and cannot be compared with the back office services provided by the assessee. The TPO rejected the same, by harping on the CBDT Circular No.SO 890 (E) dated 26.09.2000 which has given the detailed list of product and services that could be claimed under ITES wherein engineering and design as Item No.5, as under :-

“As can be seen from above, engineering and design services as rendered by the company are in the nature of IT enabled services. Thus, the taxpayer’s argument that engineering services rendered by the company are not IT enabled services is incorrect. Hence, all the three services – engineering services, BPO and data processing – rendered by the company for the FY 2007-08 forms part of IT enabled services and thus, the company’s IT Division is comparable to the taxpayer.

Hence, the company is retained as a comparable.”

31. The Id. AR took our attention to page 62 wherein the TPO has issued 133(6) notice to the said company pursuant to which a reply was sent to the TPO vide letter dated 08.03.2011 which has been made part of the TPO order at page 43 of his order. He took our attention to the said page where, in para 3, the said company has written as follows :-

“3. During those financial years our software development services were primarily confined in the field of Application Software Development, System Software Development and Web Development. Apart from the same we also used to provide Engineering Design Services which may be considered as Information Technology Enabled Services (ITES).”

32. The Id. AR referred to the said para and pointed out that the said company is into software development. Since segmental information is not available for the relevant financial year and the assessee is not

into developing any software, the same cannot be used as a comparable.

33. The ld. DR could not controvert the said facts which have been brought to our notice and he relied on the order of the TPO.

34. We have heard both the parties and perused the records. We find from a perusal of the said letter dated 08.03.2011 to the TPO that Acropetal is into software development also and since the segmental information is not available, it would not be safe to rely on the finance of this company. Therefore, we order exclusion of this comparable from the set of comparables.

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

Order pronounced in the Open Court on this 30th day of September, 2015.

**Sd/-
(R.S. SYAL)
ACCOUNTANT MEMBER**

**sd/-
(A. T. VARKEY)
JUDICIAL MEMBER**

**Dated: the 30th day of September, 2015
TS**

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)-IX, New Delhi.
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi