

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I', NEW DELHI**
**BEFORE, SH. SAKTIJIT DEY, VICE PRESIDENT
AND
SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.3539/Del/2018
(Assessment Year : 2011-12)

ACIT Circle – 21(1) New Delhi PAN No. AAACR 0121 L (APPELLANT)	Vs.	Reservation Date Maintenance India (Pvt.) Ltd., E-9, Connaught House, Connaught Place, New Delhi-110 001 (RESPONDENT)
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Assessee by	Shri Tarandeep Sing, Adv.
Revenue by	Shri Manu Chaurasia, Sr. D.R.

Date of hearing:	09.11.2023
Date of Pronouncement:	20.11.2023

ORDER

PER PRADIP KUMAR KEDIA, AM :

The captioned appeal has been filed by the Revenue against the First Appellate Order of the learned Commissioner of Income Tax (Appeals) – 38, New Delhi ('CIT(A)' in short) dated 11.12.2017 arising from the assessment order dated 01.05.2015 passed by the Assessing Officer (AO) under Section 143(3) r.w.s 144C r.w.s 92CA(4) of the Income Tax Act, 1961 (the Act) concerning Assessment Year 2011-12.

2. The grounds of appeal raised by the revenue read as under:

- *“On facts and under circumstances of the case, the ld CIT(A) was justified in rejecting M/s. Accentia Technologies Limited M/s. Eclerx Services Ltd., and M/s. TCS E-Serve as comparables even though the assessee has functional profile similar to such comparable.”.*

3. Briefly stated, the assessee is an Information Technology enabled Services (ITeS) company providing online data processing services which are stated to be in the nature of routine BPO activities. The nature of data processing services are; (a) Flight Screening (b) Fare Audit (c) Fare Encoding (d) Teletype Reject Processing (e) Revenue Accounting (f) Call-centre operations (g) Loyalty Program Management. The assessee filed return of income declaring total income at Rs.6,10,75,580/- for the A.Y. 2011-12 in question. The return filed by the assessee was subjected to scrutiny assessment. In the course of scrutiny assessment, a reference was made to Transfer Pricing Officer (TPO) to determine the Arm's Length Price (ALP) under section 92CA(2) of the Act. The TPO vide order dated 22.01.2015 passed an order proposing adjustment of Rs.3,03,12,644/- under Chapter-X of the Act. The AO consequently passed final assessment order dated 01.05.2015 giving effect to the directions issued by TPO and the return income was accordingly enhanced to the extent of adjustments suggested by the TPO.

4. Aggrieved, the assessee preferred appeal before the CIT(A). Before the CIT(A), the assessee assailed the comparables newly selected by the TPO and rejection of comparables selected by assessee for computing Arm's Length Price (ALP) by disturbing the TP study of the assessee. The CIT(A) took note of the detailed submissions made on behalf of the assessee and found merit in the plea of the assessee. The relevant operative para of the order of the CIT(A) is reproduced hereunder:

"4.2 I have carefully perused the TP study of appellant, the order of TPO, the submissions of appellant and the facts on record. My findings on each of the comparables which are subject matter of this appeal are as under:-

4.2.1 Accentia Technology Limited ("Accentia")

Ld. AR of appellant has submitted that M/s Accentia Technology Limited ("Accentia" in addition to Medical Transcription and Billing and Coding is also involved in Software sales. Unlike appellant which is rendering routine BPO services, Accentia is engaged in rendering KPO services. It has been submitted that even otherwise M/s Accentia is not comparable with the appellant which is engaged in BPO activities. Hon'ble ITAT Delhi in the case of BC

Management Services (P) Limited (supra) for AY 2011-12 has rejected use of this company as a comparable for this very reason by holding as under: "We have considered the rival submissions and also perused the relevant finding given in the impugned order. It is an undisputed fact that during the financial year 2010-11, Accentia acquired strategic Targent Corporation which was a software development company having expertise in development of software relating to EMR-SaaS Due to this acquisition, the revenue of Accentia has been increased significantly....a very vital factor affecting the pricing and consequently the comparability as well as the profit margin. Apart from that, Accentia is also engaged in development and sale of products for the US market and there are no separate segments of the financials providing details of revenue/ profit from software product division and medical transcript division. On these circumstances also it would be very difficult to include Accentia for comparability analysis. Accordingly, on these grounds we uphold hold the order of the DRP excluding the said company. In the result, ground no.2 as raised by the department is dismissed. In the result, appeal of the Revenue is dismissed. The Ld. AR of appellant has also relied on decisions of the Tribunal in the case of Evalueserve SEZ (Gurgaon) (P) Ltd. vs ACIT 2017] 83 taxmann.com 371 (Delhi Trib.) (AY 2010-11) in which this company has been held to not be a suitable comparable.

Respectfully following the decision of the Delhi bench of Hon'ble ITAT in the cases cited above, the AO/TPO is directed to exclude M/s Accentia Technologies Limited from the list of final comparables.

4.2.2e-Clerx

Ld. AR of appellant has submitted that eClerx is in the business of consultancy and advisory service and provides only analytical data. It is also involved in quality monitoring and offers solutions that include data analytics, operations management, audits and reconciliation and therefore has to be classified as a high end KPO. Appellant has also stated that eClerx is a Knowledge Process Outsourcing (KPO) company providing data analytics, data management and process improvement solutions to global enterprise clients. eClerx supports its clients through two business units financial services and sales and marketing support. In financial services unit, this company is rendering services like trade processing support, reference data maintenance, contract risk review, conciliation and controls, margin and exposure management, matrix and reporting, expense management accounting and finance consulting services whereas under sales & marketing services unit, this company is rendering services like online operations and web analytics, CRM and business intelligence, data management and reporting, competitor benchmarking and pricing, quality and compliance and business process consulting. In support of this contention Ld. AR relied on the decision of Hon'ble ITAT Delhi for AY 2011-12 in the case of Actis Global Services (F) Ltd v. ITO [2016] 76 taxmann.com 41 in which Hon'ble ITAT Delhi has held that eClerx Services Private Limited being functionally different as per its business profile and requires to be excluded from the final list of comparable companies. Respectfully following this order of Hon'ble ITAT Delhi,

AO/TPO is directed to exclude eClerx Services Private Limited from the final list of comparable companies.

4.2.3 TCS E-Serve

Appellant has contended that TCS e-service Ltd. mainly provides business process management services in banking and financial services and also renders services comprising transaction processing and transaction processing and technology services, TCS E-Serve is engaged in the business process outsourcing (transaction processing) services to the Banking & financial services industry and there is no separate segmental report of les segment. TCS E-Serve also owns huge intangible and use of 'Tata' Brand, which has definitely benefited this comparable. Similar view has been expressed by Hon'ble I'AT in other decisions relied upon by the Ld. AR of appellant Respectfully following the above cited decision, the AO/TPO is directed to exclude M/s TCS E serve Ltd from the final list of comparable companies.

4.2.4 R-System International

This comparable has been rejected by the Ld. TPO for the reason that the financial year is other than that ending with 31 March and hence data is not strictly comparable. In support of this finding, Ld. TPO has relied upon the decision of Pune Tribunal in the case of M/s Honeywell Automation India Ltd. reported in 2009-TIOL- 104-ITAT-PUNE. However, it has been submitted by the appellant that the FAR profile of M/s R. Systems is akin to that of the appellant. Appellant relied upon findings of ITAT Delhi in earlier AY that the FAR of M/s R-System International is similar to that of appellant and since quarterly financial statements are available in the public domain, it may be included in the final list of comparable companies. Accordingly, AO/Ld. TPO is directed to consider M/s R. Systems in the final list of comparable companies by considering its quarterly results and include the same in the final list of comparable companies. Accordingly, these grounds of appeal are decided in favour of appellant.”

5. Aggrieved, by the relief granted by CIT(A), the Revenue is in appeal before the Tribunal.

6. We have carefully considered the rival submissions and perused the material placed on record and case laws cited. The Revenue has challenged the rejection of three

comparable companies identified by the AO/TPO for the purposes of ALP determination of the international transactions.

7. The AO/TPO introduced 'Accentia Technologies Limited' as one of the comparables for the purposes of ALP determination. The Co-ordinate Bench of Tribunal in assessee's own case concerning A.Y. 2009-10 in ITA No.2516/Del/2017 order dated 02.12.2022 has made reference to the judgment delivered by Hon'ble Bombay High Court in the case of DCIT vs. PTC Software India Pvt. Ltd. [101 taxmann.com 117] and noticed that Accentia develops its own software and rendered Medical transcription services while the assessee is providing BPO services. It was thus observed that functional profile of the assessee company was quite different from that of Accentia and therefore, the comparable selected by the AO/TPO is not justified. Similar view has been taken by the Co-ordinate Bench in assessee's own case in A.Y. 2010-11 in ITA No.5351/Del/2017 order dated 16.10.2023. Accentia being KPO as held in Rampgreen Solutions (P.) Ltd. vs. CIT [2015] 377 ITR 533 (Delhi) and quite different from the BPO profile of the assessee, we see no error in the conclusion drawn by the CIT(A) for rejecting this comparable.

8. Second comparable in dispute is 'Eclerx Services Limited'. The Co-ordinate Bench in A.Y. 2010-11 in assessee's own case observed that activities of 'Eclerx' is that of a KPO providing specialized services whereas the activities of the assessee are in the nature of routine BPO services. A reference was made to the judgment in Rampgreen (supra) to hold that the business model of the assessee is quite different from 'Eclerx' which provides data analytics and processing solutions to some of the largest brands in the world and is recognized as experts in chosen markets financial services, retail and manufacturing and is a KPO. In view of different functioned profile, we thus see no justification in the action of the Revenue to introduce such company in the final set of comparables as rightly held by the CIT(A). We thus decline to interfere.

9. The third comparable in question is 'TCS E Serve Ltd'. The Co-ordinate Bench in assessee's own case in ITA No.5331/Del/2017 A.Y. 2010-11 order dated 16.10.2023 has dealt with the dispute on inclusion of such comparable. It was noticed that TCS E Serve Ltd. is mainly involved in transaction processing and technology services. It carries on business of providing technology services such as software testing, verification and validation. TCS has also develop a software such as Transport Management Software and therefore, functionally this company is dissimilar to assessee company. Besides, TCS also owns huge intangible and use of Tata brand which definitely benefited this comparable and is in a different league. Furthermore, relevant segmental data not being available, such comparable cannot be used for determination of ALP.

10. The Revenue has objected to exclusion of 'TCS E Serve' and insisted that the company is quite comparable in the light of the decision of Co-ordinate Bench in the case of Techbooks International (P.) Ltd. vs. DCIT [2023] 147 taxmann.com 561 (Delhi). In that case, TCS E-Serve was found to be functionally comparable with the assessee company therein on overall basis and higher profit/turnover was found to be not a criteria to exclude an otherwise comparable company. In the instant case, the factual matrix are little different firstly; segmental data is not available and secondly; the factual matrix was found to be on a different footing by the Co-ordinate Bench in A.Y. 2010-11 in assessee's own case. We thus see no reason to disturb the first appellate order.

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

Order was pronounced in the open court on 20.11.2023

Sd/-

**(SAKTIJIT DEY)
VICE PRESIDENT**

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**