

**1IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : 'I : NEW DELHI
BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER
AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

**ITA No.5207/Del /2013
Assessment Year : 2008-2009**

Xchanging Technology Services Vs. ACIT, Circle 18(1),
India Pvt. Ltd. New Delhi.
R-4, Greater Kailash 1, New Delhi 110048

(PAN AABCR 5609 L)

(Appellant)

(Respondent)

Date of Hearing : 23.04.2015
Date of Pronouncement : 10.06.2015

Assessee by : Sri Nageswar Rao, Sri Sandeep S. Karhail And
Sri Aniket D. Agarwal, Advocates
Respondent by: Sri Judy James, Standing Counsel, DR.

ORDER

PER CHANDRA MOHAN GARG, JUDICIAL MEMBER

1. This appeal, by the assessee, has been directed against the assessment order dated 25.10.2012 passed u/s 143(3) r.w.s. 144C(4) of the Income Tax Act, 1961 (for short the Act) in pursuant to order of the Dispute Resolution Panel (DRP)-II, New Delhi dated 24.09.2012 u/s 144C(5) of the Act.

2. The Ground Nos. 1, 2 & 3 of the assessee are of general in nature, which need at no adjudication. Remaining grounds of the assessee on transfer pricing and other consequential issues reads as under:-

“Transfer pricing grounds

4. *The learned AO / Transfer Pricing Officer ("TPO") erred in making an addition of Rs. 2,34,97,662, to the total income of the Appellant on account of adjustment in the arm's length price with respect to the IT enabled services transaction entered into by the Appellant with its associated enterprise.*
 5. *The learned TPO and the learned AO have erred, in law and in facts, by not accepting the economic analysis undertaken by the Appellant in accordance with the provisions of the Act read with the Rules, and conducting a fresh economic analysis for the determination of the ALP in connection with the impugned international transaction and holding that the Appellant's international transaction is not at arm's length.*
 6. *The learned TPO and the learned AO have erred, in law and in facts, by determining the arm's length margin! price using only FY 2007-08 data which was not entirely available to the Appellant at the time of complying with the transfer pricing documentation requirements.*
 7. *The learned TPO and the learned AO have erred, in law and in facts, by accepting / rejecting companies based on unreasonable comparability criteria.*
 8. *The learned TPO and the learned AO have erred, in law and facts, by not making suitable adjustments to account for differences in the working capital position of the Appellant vis-à-vis the comparables .*
 9. *The learned TPO and the learned AO have erred, in law and facts, by not making suitable adjustments to account for differences in the risk profile of the Appellant vis-a-vis the comparables.*
 10. *The learned AO erred, in law and in facts, in initiating penalty proceedings u/s 271(l)(c) of the Act.”*
3. Briefly stated the facts giving rise to this appeal are that the assessee company was incorporated as Rebus India Pvt. Ltd., a wholly own subsidiary of Rebus Technologies Services Ltd., U.K. it provided Software Development Services in the field of Insurance and Human Resources to its group companies. Following the acquisition of Rebus UK by Xchanging Group, the company became a subsidiary of Xchanging Resourcing Services Limited UK, and was renamed as Xchanging India. The Xchanging India is in the business of providing sub contracted IT and IT enabled

services, to its group companies into three segments viz. IT segment, IT enabled segment service and resources segment. In the year under consideration, the International transactions under taken by the assessee with Associated Enterprises i.e. Xchanging Resourcing Service Ltd. UK was carried only in the IT segment and ITES segment. As per business overview placed by the assessee no marketing or business development activities were undertaken by the assessee company in itself or on behalf of its group company under the segment. The assessee company is primarily engaged in the business process outsourcing, software development and research services. Above narrated business over view of the assessee company for AY 2007-08 related to AY 2008-09 have been mentioned in the transfer pricing study as well as TP order available at Pages 125 to 160 of the assessee paper book.

4. For the relevant assessment year, the assessee filed return of income, declaring taxable income of Rs.66,71,933/- and book profit shown by the assessee u/s 115JB of the Act was calculated at Rs.11,43,96,966/-. During the financial year under consideration, the assessee company undertaken mainly two International transactions with the AE (exchanging UK), which were picked up for scrutiny by the TPO. The TPO disputed the International Transactions of the assessee with its AE pertaining to the provision of Software Development Services and provision of IT enabled services. At the level of the DRP, the provision of Software Development Services segmental International transactions were accepted at arm's length but the only dispute remained about the International transactions of ITES segment. The Assessing Officer made an adjustment of Rs.2,34,97,662/- in accordance with the order of the TPO u/s 92CA(3) of the Act dated 20.10.2011 and in pursuant to the directions of DRP.

5. The assessee, in this appeal, has mainly challenged the selection of the inappropriate comparable by the TPO in the final set of comparables by mainly harping that the inclusion of Coral Hub Ltd. (subsequently Vishal Information Technologies Ltd.), Eclerx Services Ltd. and Cosmic Global Ltd. was not justified and all these three comparables are not suitable comparables for the purpose of comparing and benchmarking the International transactions of the assessee in regard to IT enables Services segment for the year consideration, now we find it appropriate to deal with the impugned comparables, as disputed by the assessee, one by one as follows.

Coral Hub Ltd.

6. We have heard rival arguments and perused the relevant material placed before us. Ld. Counsel of the assessee submitted that the DRP in its order dated 24.09.2012 wrongly held that the penal is not convinced by the argument of the assessee as the outsourcing of routine non discretionary function, call center paper entry, claimed processing etc. to other parties is very common feature of ITES segment industries. The Ld. counsel further pointed out that the business model of the Coral Hub Ltd. is different and there are significant outsourcing activity, which were undertaken by the that company as per annual report of Coral Hub Ltd. available at Pages 748 to 752 of the assessee Paper Book Volume-III. Ld. counsel further submitted that the outsourcing charges earned by Coral Hub Ltd. constitute 86% of the total operating expenses and employee cost constitute only 4.4% of the total cost therefore, the same was not a suitable comparable for the assessee company.

7. Ld. counsel contended that the DRP itself in assessee own case for AY 2009-10 has rejected the Coral Hub Ltd. as a suitable comparable. The Ld. counsel placing

reliance on the decision of ITAT Mumbai Bench in the case of ACIT Vs. Maersk Global Service Centre (India) Pvt. Ltd. in ITA No. 3774/Mum/2011 submitted that the ITAT has categorically held that the Coral Hub Ltd. is not a suitable comparable to the ITES segment. The Ld. counsel further drawn our attention towards objections of the assessee placed before DRP Pages 110 to 112 of the assessee Paper Book Volume-I and submitted that on exclusion of the Coral Hub Ltd. for the final set of comparables the net margin of comparables will avail from 27.19% to 23.27% and TP adjustment would reduce to NIL because the International transactions of the assessee in ITES segment would fall within +/-5% range.

8. Replying to the above, Ld. Departmental Representative (DR) supported the action of the TPO/DRP/AO and submitted that the DRP in its order at Page 25 after detailed deliberation rightly held that the Coral Hub Ltd. is a suitable comparables to the ITES segmental transactions of the assessee. However, the Ld. DR was candid enough in accepting that in the subsequent AY 2009-10 the DRP itself directed the TPO to delete this comparable from the final set of comparables.

9. On careful consideration of rival submissions of both the sides, we note that the DRP in assessee's own case AY 2009-10 has directed the TPO to delete Coral Hub Ltd. from the final set of comparable with the following observations:-

“10.4 Coral Hub: The assessee has pointed out that this company is outsourcing its activity whereas the assessee does not outsource. Therefore, the business modal of the assessee is different. Reliance in this regard is also placed on the following decisions of the Tribunal, wherein Vishal Information Technologies Ltd. ('Coral Hub limited') has been directed to be excluded:

- a. *ACIT vs Maersk Service Center (India) Pvt Ltd (145 TIJ 64)*
- b. *Capital IQ Information Systems (India) Pvt. Ltd. (ITA No.1961/Hyd/2011)*

- c. *Nomura Fin Services (India) Pvt. Ltd. vs. ACIT (ITA No. 7046/Mum/2012)*
d. *Google India Pvt. Ltd. vs. DCIT (ITA No. 1368i8ang/2010)*
In view of this, the TPO is directed to delete this comparable.”

10. We further note that in the case of Mercer Consulting (India) Pvt. Ltd. Vs. DCIT for AY 2009-10, ITAT New Delhi Bench order dated 06.06.2014 in ITA No.966/Del/2014, as relied by the Ld. counsel of the assessee, held that the Coral Hub Ltd. was not includable in the list of comparable because of major outsourcing and therefore, the same required to be excluded from the list of comparables for measuring arm's length price of the ITES segmental transactions. The relevant operative part of the order of the Tribunal (supra) reads as under:-

“Coral Hub Ltd.

12.1. This case was earlier included by the assessee in the list of comparables in the transfer pricing study by considering multiple-year data. However, when the TPO required the assessee to furnish data of comparables for the current year alone, the assessee requested for the exclusion of this case from the list of comparables. The ld. DR opposed this contention by urging that the assessee cannot be allowed to resile from its original stand.

12.2. We are disinclined to sustain the legal objection taken by the ld. DR that the assessee should be prohibited from taking a stand contrary to the one which was taken at the stage of the TP study or during the course of proceedings before the authorities below. It goes without saying that the object of assessment is to determine the income in respect of which the assessee is rightly chargeable to tax. As the income not originally offered for taxation, if otherwise chargeable, is required to be included in the total income, in the same breath, any income wrongly included in the total income, which is not otherwise chargeable, should be excluded. There can be no estoppel against the provisions of the Act. Extending this proposition further to the context of the transfer pricing, if the assessee fails to report an otherwise comparable case, then the TPO is obliged to include it in the list of comparables, and in the same manner, if the assessee wrongly reported an incomparable case as comparable in its TP study and then later on claims that it should be excluded then, there should be nothing to forbid the assessee from claiming so, provided the TPO is satisfied that the case so originally reported as comparable is, in fact, not comparable. The Special Bench of the Tribunal

in DCIT vs. Quark Systems Pvt. Ltd. (2010) 132 TTJ (Chd) (SB) 1 has also held that a case which was included by the assessee and also by the TPO in the list of comparables at the time of computing ALP, can be excluded by the Tribunal if the assessee proves that the same was wrongly included.

12.3. Reverting to the facts of the extant case, we find that the position as obtaining in the present case is rather simple inasmuch as the assessee, having originally included this case in the list of comparables, made a categorical claim before the TPO for excluding it because of non-comparability. As no reason has been given by the TPO for accepting or rejecting the assessee's request, it would be worthwhile to take up the reasons now given by the assessee for consideration and decision. The ld. AR has pointed out that Vishal Information Technologies Ltd., now known as Coral Hub Ltd., outsources significant portion of its work from outside vendors. We find from the material on record suggests that outsourcing charges constitute 90% of the total operating cost in this case. On a specific query, the ld. DR admitted that our assessee is engaged in the business of doing activities at its own without any outsourcing. This crucial factor, having a greater bearing on the profitability, makes it distinguishable from the assessee. The Mumbai Bench of the Tribunal in the case of Hapag Lloyd Global Services (supra) has held that Vishal Information Technologies Ltd. cannot be considered as comparable because of the overwhelming outsourcing activity carried out by it. This view was taken by relying on another order passed by the Mumbai Bench of the Tribunal in ACIT vs. Maersk Global Service Centre (India) Pvt. Ltd. (ITA No.3774/M/2011). In the later case also, the Tribunal held that the case of Vishal Information Technologies Ltd. or Coral Hub Ltd. was not includible in the list of comparables because of major outsourcing. Since the facts of the instant case are on all fours with these two cases, we are of the considered opinion that this case is required to be excluded from the list of comparables. We order accordingly."

11. In view of above noted facts, we observe that the DRP in assessee's own case for succeeding AY 2009-10, has held that the Coral Hub Ltd. is not a suitable comparable were ITES segment of the assessee company. We further observe that in the similar set of facts and circumstances, ITAT New Delhi Bench in order dated 06.06.2014 (supra) has categorically held that the outsourcing charges of this company constitute 90% of the total operative cost, therefore, the same is functionally different from the present assessee. In the present case, neither the TPO nor the DRP has brought out any fact or evidence to establish that the present assessee is also earning income from

outsourcing charges, hence, we are inclined to hold that the present assessee undertook ITES segmental activities, during the period under consideration, at its own without any outsourcing. Therefore, we are of the considered opinion that the outsourcing charges, which constitutes more than 90% of the total operating cost of the Coral Hub Ltd., is a very important factor and the same having greater bearing on the profitability of the comparable. In this situation, the Coral Hub Ltd. cannot be considered as a suitable comparable for benchmarking of International transactions of the assessee in ITES segmental activities, because the factum of heavy outsourcing activity carried out by this company loses the tag of suitable comparability. Since, the facts of the present case are similar to the facts of AY 2009-10, wherein the DRP itself not found the Coral Hub Ltd. as a suitable comparable in the assessee company, therefore, respectfully following the view taken by ITAT Delhi Bench in the order dated 06.06.2014 in the case of Mercer Consulting (India) Pvt. Ltd. Vs. DCIT (Supra) we hold that Coral Hub Ltd. deserve to be excluded from the final list of comparables. We ordered accordingly.

Eclerx Services Ltd.

12. We have considered the rival arguments of both the sides and carefully perused the relevant material placed on record. Ld. counsel of the assessee pointed out that the direction of the DRP available at Page 23-24 of the assessee paper book Volume-I and submitted that the DRP wrongly held that there is no significant functional difference in the ITES segmental services of Eclerx Services Ltd. from the present assessee company. The Ld. counsel vehemently contended that the TPO/DRP/AO were grossly erred in holding that no comparable can be rejected on the ground of abnormal profit margin if its functionally similar. Ld. counsel further elaborated that the Eclerx Services Ltd. is

engaged in providing the high services which involves special knowledge, therefore, the same is not comparable with the assessee. Ld. counsel for the assessee further drawn our attention towards page 666 of the assessee paper book Volume-II and submitted that as per annual report of the Eclerx Services Ltd. it is ample clear that the same company is not comparable to a BPO company and profits from different services. Ld. counsel drawn our attention towards detailed objections of the assessee before DRP available at Pages 112-113 of the assessee paper book Volume-I and submitted that on exclusion of Eclerx Services Ltd. the average of the net margin of comparables will fall from 27.19% to 20.74% of the TP adjustment which would reduce the ALP of the ITES segmental transaction of the assessee company. Thereafter the ALP of ITES segmental activities would fall within +/-5% range. Ld. counsel of the assessee further drawn our attention towards various orders of the Tribunal including order dated 28.08.2014 of ITAT New Delhi Bench in ITA No.6312/Del/2012 for AY 2008-09 in the case of United Health Group Information Services Pvt. Ltd. Vs. ACIT submitted that the Eclerx Services Ltd. has not been found as suitable comparable to the ITES segmental International transactions in the similar set of facts and circumstances, therefore, the same should be directed to be deleted for the final set of comparable.

13. Replying to the above, Ld. DR supporting the action of the authorities below and drawn our attention towards comparability chart prepared by the DRP available at Pages 23-24 of the paper book Volume-I and submitted that after detailed deliberation and thoughtful consideration the DRP rightly held that the functional difference pointed out by the assessee is not significant enough to warrant rejection of this company as comparable. Justifying the conclusion of the DRP, the Ld. DR further contended that no

comparable can be rejected on the ground of abnormal profits if it is functionally comparable to the tested party.

14. On careful consideration of above, at the very outset, we respectfully take cognizance of the decision of the ITAT -Bench New Delhi dated 28.08.2014 in the case of United Health Group Information Services Pvt. Ltd. Vs. ACIT (supra), wherein following the view taken by the Tribunal in the case of Toluna India Pvt. Ltd. Vs. ACIT in ITA No. 5645/Del/2013 dated 26.08.2014 it was held that the mergers/demergers in a company make such order is unfit for comprising and the same cannot be considered as suitable comparable because of exceptional final result due to merger/demerger. The relevant operative part of the Tribunal (Supra) for the same AY 2008-09 reads as under:-

“Eclerx Services Ltd.

10.1. This company was included by the TPO in his list of comparables. The assessee objected to its inclusion by pointing out some functional differences. Not convinced, the TPO went ahead with its inclusion, which got the seal of approval from the DRP.

10.2. Having heard the rival submissions and perused the relevant material on record, it is observed that this company is engaged in providing data analytics and customized process solutions to a host of global clients. It provides services to the Banking, Manufacturing, Retail, Travel and Hospitality verticals. The solutions offered by it include data analytics, operation management, audit and reconciliation, metrics management and reporting services. This company also provides tailored process outsourcing and management services along with a multitude of data aggregation, mining and maintenance services. A look at the functional profile of this company from its Annual report, it can be seen that it is nowhere close to the assessee's instant segment of 'manual claim processing services'.

10.3. It is further relevant to note that this company acquired UK based Igenica and Travel Solutions Ltd. on 27.7.2007 and the financial results of that company are also included in its. Recently, the Delhi Bench of the Tribunal in Toluna India Pvt. Ltd. Vs ACIT (ITA No.5645/Del/2013) vide its order dated 26.8.2014 has held that the mergers/de-mergers in a company

make such year as unfit for comparison. In reaching this conclusion, the Delhi Bench followed an order passed by the Mumbai Bench of the Tribunal in Petro Araldite (P) Ltd. Vs DCIT (2013) 154 TTJ (Mum.) 176 in which it has been held that a company cannot be considered as comparable because of exceptional financial results due to merger/de-merger etc. In view of the foregoing discussion, we are of the considered opinion that this company cannot be included in the list of comparables. The assessee succeeds.”

15. In view of above, we note that the Eclerx Services Ltd. is engaged in providing data analytics and customized process to its host of global clients which also provides services to the banking, manufacturing, retail, travel and hospitality business entities. Ld. DRP has not disputed this fact that the ITES segmental solutions offered by it also include data analytics operation management, audit and reconciliation, metrics management and reporting services. Apparently, this company provides tailored process outsourcing and management services in addition to multitude of the data aggregation, and mining and maintenance services from vigilant reading of annual report available at Page 659 to 738 of the assessee paper book Volume-II, it can be easily seen that it is not closed to the assessee ITES segmental services transaction which are impressed by the manual process ITES services. We are also not in agreement with the conclusion of the DRP that no comparable can be excluded on the ground of abnormal margin if its functionally comparable to the tested party because mergers/demergers brings exceptional financial result which make a such order as unfit for comparison. In view of our foregoing discussion, we reach to a logical conclusion that the Eclerx Services Ltd. is not a suitable comparable to the assessee company for AY 2008-09 due to high pitched financial result and the same deserve to be deleted from the final set of comparables. We ordered accordingly.

Cosmic Global Ltd.

16. We have heard rival arguments of both the sides and relevant material placed on record before us. Ld. counsel of the assessee submitted that as per annual report of Cosmic Global Ltd. available from Pages 566 to 583 of the assessee paper book Volume-II, its major share of revenue is generated from Translation charges. Ld. counsel further submitted that the comparable business segmental in the case of Cosmic medical transcription & consultancy services and Accounts BPO constitutes only miniscule share of 6% of its total revenue and, therefore, Cosmic Global Ltd. not a suitable comparable to the ITES segmental International transactions of the assessee. Ld. counsel for the assessee has also placed reliance on the various decision of the ITAT including recent decision of ITAT Delhi in the case of United Health Group Information Services Pvt. Ltd. Vs. ACIT (Supra) wherein it was held as under:-

“Cosmic Global Ltd.

9.1. This company was initially chosen by the assessee as its comparable and resultantly, the TPO included the same in the final list of comparables without any discussion. The ld. AR contended that this company was inadvertently chosen as comparable and hence the same should be eliminated on account of functional differences.

9.2. After considering the rival submissions and perusing the relevant material on record, we find from the Annual Report of this company that the financial results in the Balance sheet and Profit and loss account are available only on entity level. Income from operations has been shown as Rs. 5.86 crore, the break-up of which is available in Schedule 9. It is discernible from the Schedule that the Medical transcription and consultancy services are only to the tune of Rs. 7.04 lac, whereas the major chunk is the amount of Translation charges standing at Rs. 5.59 crore with the last component of revenue from BPO at a figure of Rs.19.63 lac. When we peruse the Expenditure side of the Profit and Loss of this company, it is palpable that it paid Translation charges amounting to Rs. 2.86 crore. Thus, it is manifest that the revenue from Medical transcription services, which could bear somewhat similarity with the assessee, is hardly 1% of the total revenues of this company. The major part is the income from Translation charges at Rs. 5.59 crore out of total revenues of Rs. 5.86 crore, which is totally dissimilar to that of the

assessee. The assessee is not into any Translation business. As the assessee is engaged in rendering insurance claim processing services to it's A.E under this segment, we find no logical comparison of Cosmic Global with that of the assessee.

9.3. We are not agreeable with the ld. DR that this company cannot be excluded because it was initially included by the assessee in its list of comparables. The obvious reason is the differentiation in the functional profiles of two companies. Merely because the assessee inadvertently included this company in the list of comparable, can be no reason to bar the assessee from claiming that it was wrongly included. What is essential in this regard is to see whether the company is, in fact, comparable or not; and not whether it was included by the assessee or the TPO in the list of comparables. We, therefore, hold that Cosmic Global Ltd. is incomparable to the assessee and direct to exclude it from the list of comparables. The assessee succeeds.”

17. In view of above, we are inclined to demolish contention of the Ld. DR that this company is includable as a suitable comparable because it was included by the assessee in its list placed before the TPO in the TP study. We are of the considered view that merely because the assessee company included this company in the list of comparables the functionally different company cannot be accepted at suitable comparables. When the assessee is claiming that the Cosmic Global Ltd. was included due to inadvertent mistake in the set of comparables proposed by the assessee then this bonafide act of the assessee cannot be a reason to prohibit the assessee from claiming and contending that it was included by mistake. In our considered opinion, the Revenue authorities and the Tribunal has to see that whether the company is, in fact, functionally comparable or not. We further make it clear that the objection to the inclusion of a particular comparable cannot be rejected at threshold only because the same was included by the assessee under a bonafide mistake in the list of proposed comparable. On this issue, we respectfully follow the view taken by the ITAT Delhi in the case of Mercer Consulting

(India) Pvt. Ltd. Vs. DCIT (Supra) wherein similar contention of the Revenue has been dismissed in Para 12.2, which reads as under:-

“12.2. We are disinclined to sustain the legal objection taken by the ld. DR that the assessee should be prohibited from taking a stand contrary to the one which was taken at the stage of the TP study or during the course of proceedings before the authorities below. It goes without saying that the object of assessment is to determine the income in respect of which the assessee is rightly chargeable to tax. As the income not originally offered for taxation, if otherwise chargeable, is required to be included in the total income, in the same breath, any income wrongly included in the total income, which is not otherwise chargeable, should be excluded. There can be no estoppel against the provisions of the Act. Extending this proposition further to the context of the transfer pricing, if the assessee fails to report an otherwise comparable case, then the TPO is obliged to include it in the list of comparables, and in the same manner, if the assessee wrongly reported an incomparable case as comparable in its TP study and then later on claims that it should be excluded then, there should be nothing to forbid the assessee from claiming so, provided the TPO is satisfied that the case so originally reported as comparable is, in fact, not comparable. The Special Bench of the Tribunal in DCIT vs. Quark Systems Pvt. Ltd. (2010) 132 TTJ (Chd) (SB) I has also held that a case which was included by the assessee and also by the TPO in the list of comparables at the time of computing ALP, can be excluded by the Tribunal if the assessee proves that the same was wrongly included.”

18. While, we considered the functionally comparability issue of Cosmic Global services with the present assessee company then we find ourselves view taken by the Tribunal in its order in the case of United Health Group Information Services Pvt. Ltd. Vs. ACIT (Supra) wherein for the same AY 2008-09 it was held that the major part of income from translation charges is amounting to Rs.5.59 crores out of total revenues of Rs.5.86 crore, which is totally dissimilar to that of the assessee of that case. In the present case, the DRP/AO has only disputed the International transaction of the present assessee only ITES segment whereas as per annual report of Cosmic Global Ltd. at page 578 of assessee paper book Vol.-II, we clearly note that the Revenue from ITES

segment is very low which creates a great functional difference from present assessee as the present assessee is not indulged into translation segmental business. Hence, we are inclined to accept the contention of the assessee that the Cosmic Global Ltd. is functionally dissimilar to the present assessee and Cosmic Global Ltd. is not a suitable comparable to the present assessee for benchmarking and determining the arm's length price (ALP) of present assessee ITES segmental International transactions for AY 2008-09. Accordingly, we hold that Cosmic Global Ltd. was wrongly included in the final set of comparables which deserves to be deleted. We ordered accordingly.

19. The Ld. counsel of the assessee strenuously contended that if either Coral Hub Ltd. or Eclerx Srvices Ltd. is excluded from the final set of comparables adopted by the DRP and the AO then only nil margin of comparable will fall within the +/-5% range and the TP adjustment would reduce to NIL. Ld. counsel further submitted that the DRP/TPO/AO were not justified in ignoring these three comparables to the final set of comparables which result into unsustainable TP adjustment on ITES segmental International transaction. Since by the earlier part of this order we hold that the Coral Hub Ltd., Eclerx Services Ltd. and Cosmic Global Ltd. are not a suitable comparable to the present assessee and all three are not includable in the final set of comparable while comparable the ALP of the ITES segmental International transaction of the present assessee. Therefore, we set aside the impugned order and direct the DRP/AO to delete these comparables from the final set of comparables for a fresh computation of ALP of ITES segmental International transactions undertaken by the assessee during FY 2007-08 pertaining to AY 2008-09 in conformity with our above order after affording due opportunity of hearing for the assessee.

20. No other issue was argued by the Ld. counsel of the assessee.
21. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 10.06.2015

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

Sd/-
(CHANDRAMOHAN GARG)
JUDICIAL MEMBER

Dated: 10th June, 2015.
Aks/-

- Copy forwarded to
1. Appellant
 2. Respondent
 3. CIT
 4. CIT(A)
 5. DR

Asst. Registrar, ITAT, New Delhi