

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**'B' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI , ACCOUNTANT MEMBER**

**AND**

**SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>IT(TP)A No.251/BANG/2016</b>
<b>Assessment Year : 2011 - 12</b>

The Dy. Commissioner of Income Tax, Circle-3(1)(2), Bengaluru.	<b>Vs.</b>	M/s GE BE Pvt. Ltd., No.60, EPIP, Whitefield, Bengaluru.  <b>PAN - AAACG 6714 A</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>IT(TP)A No.317/BANG/2016</b>
<b>Assessment Year : 2011 - 12</b>

M/s GE BE Pvt. Ltd., No.60, EPIP, Whitefield, Bengaluru.  <b>PAN - AAACG 6714 A</b>	<b>Vs.</b>	The Dy. Commissioner of Income Tax, Circle-3(1)(2), Bengaluru.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Appellant by	:	Shri Sachit Jolly, C.A
Respondent by	:	Shri Muzaffar Hussain, CIT (DR)

Date of Hearing	:	26-11-2020
Date of Pronouncement	:	27-11-2020

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present cross appeals has been filed by assessee as well as revenue against final order dated 28/12/2015 passed under section 143(3) read with section 144C of the act passed by Ld.DCIT Circle 3(1)(2), Bangalore for assessment year 2011-12 on following grounds of appeal:

**ITA (TP) A No. 251/B/2016**

- “1.The directions of the Dispute Resolution Panel are opposed to law and facts of the case.*
- 2.Whether the order of the Hon'ble DRP in rejecting comparable cases by insistence on strict comparability under TNMM defeats the very purpose of the law relating to determination of ALP under the IT Act.*
- 3.Whether the Hon'ble DRP was right in seeking exact comparability while searching for comparable companies of the assessee under TNMM method whereas requirement of law and international jurisprudence require seeking similar comparable companies.*
- 4.Whether the Hon'ble DRP is correct in fact and law in concluding that the companies selected by the TPO are not comparable to the assessee overlooking the fact that reasonably accurate adjustments could be made to eliminate the material effects of the differences between them.*
- 5.For these and other grounds that may be urged at the time of hearing, it is prayed that the directions of the Dispute Resolution Panel in so far as it relates to the above grounds may be reversed.*
- 6. The appellant craves leave to add, alter, amend and/or delete any of the grounds mentioned above.”*

**ITA (TP) a No. 317/B/2016**

*“The grounds mentioned herein by the Appellant are without prejudice to one another.*

- 1. That the order passed by the Learned Deputy Commissioner of Income-tax, Circle-3(1)(2), Bangalore Assessing Officer ("Assessing Officer" or "Ld. AO") pursuant to the directions of the learned Dispute Resolution Panel ("DRP" or "Ld. Panel") under section 143(3) read with Section 144C of the Income-tax Act, 1961 ("the Act"), also read with the order passed by the Learned Additional Commissioner of Income-tax (Transfer Pricing)-1(3) ("learned Transfer Pricing Officer" or "Ld. TPO") under section 92CA of the Act, is erroneous on facts and bad in law and is liable to be quashed. [corresponding to ground 1 of original grounds of appeal]*
- 2. That the Ld. AO/ DRP erred both in facts and in law in making an adjustment of INR 1,83,23,932 to the transfer price of the international*

*transaction relating to Services segment of the Appellant. [corresponding to ground 2 of original grounds of appeal]*

*3. That the Ld. AO/ DRP erred in upholding the partial rejection of the TP documentation maintained by the Appellant in respect of the Services segment invoking the provisions of section 92C(3) of the Act and contending that the information or data used in the computation of the arm's length price is not reliable or correct. [corresponding to ground 3 of original grounds of appeal]*

*4. That the Ld. AO/ DRP erred both in facts and in law in holding that the international transactions in the Services segment of the Appellant does not satisfy the arm's length principle envisaged under the Act and in doing so grossly erred in:*

*a) Upholding the determination of the arm's length margin/ price using financial year ('FY) 2010-11 (not following the use of multiple year data as prescribed under Rule 10B(4) of the Income-tax Rules, 1962 ("the Rules") data and considering additional comparables at the time of assessment proceedings, the data pertaining to which was not available to the Appellant at the time of complying with the Transfer Pricing Documentation ("TP Documentation") requirements. [corresponding to ground 4(a) of original grounds of appeal]*

*b) Disregarding the application of multiple year/prior year data as used by the Appellant in the TP documentation and holding that current year (i.e. FY 2010-11) data for comparable companies should be used; [corresponding to ground 4(b) of original grounds of appeal]*

*c) Upholding the non-acceptance of the economic analysis undertaken by the Appellant in accordance with the provisions of the Act read with the Rules, and upholding conducting a fresh economic analysis for the determination of the arm's length price in connection with the impugned international transactions by the Ld. TPO and in holding that the Appellant's international transaction in the services segment is not at arm's length. [corresponding to ground 4(c) of original grounds of appeal]*

*d) Disregarding the functional comparability of the comparables identified by the Appellant with respect to the Services segment. [corresponding to ground 4(d) of original grounds of appeal]*

*e) Upholding the acceptance of companies that fail the parameters / tests of comparability analysis while performing the comparability analysis and arriving at the final set of comparables in the TP order with respect to the Appellant's Services segment.*

*(i) The learned TPO/DRP erred in law and facts in considering Accentia Technologies Ltd. as a functionally comparable company to the service segment of the Appellant even though this company should have been excluded since it is functionally dissimilar being engaged in product development also segmental details are not available. [corresponding to ground 4(e) of original grounds of appeal]*

(ii) *The learned TPO/DRP erred in law and facts in considering ICRA Online Ltd. (outsourced service segment), as a functionally comparable company to the service segment of the Appellant even though this company should have been excluded since it is functionally dissimilar engaged in providing data analytics services etc. [corresponding to ground 4(e) of original grounds of appeal]*

f) *Upholding the action of the learned TPO in rejecting certain companies which pass the test of comparability and are functionally comparable to the Appellant in respect of its Services segment.*

(i) *The learned AO/DRP erred in law and in facts in upholding the action of the learned TPO in rejecting Cades Digitech Private Limited from the final set of comparables even though this company should have been included since it is functionally comparable being engaged in providing services similar to the appellant. [corresponding to ground 4(f) of original grounds of appeal]*

(ii) *The learned AO/DRP erred in law and in facts in excluding Techprocess Solutions Limited (Transaction service segment) as the company is functionally dissimilar being engaged in providing services similar to that of the appellant. [corresponding to ground 4(f) of original grounds of appeal]*

(iii) *The learned AO/DRP erred in law and in facts in excluding Microland Limited because this company falls revenue earning filter whereas this company should have been included as it is functionally comparable to the service segment of the appellant. [corresponding to ground 4(f) of original grounds of appeal]*

g) *Upholding the learned TPO's approach of disregarding certain filters as applied by the Appellant in selection of the comparable at the time of transfer pricing documentation and for the determination of comparables while conducting the search. [corresponding to ground 4(g) of original grounds of appeal]*

h) *Arbitrary adoption of certain filters for the determination of comparables while conducting the search.*

*The learned AO/DRP erred in confirming the action of learned TPO in the application of related party transaction filter of greater than 25% of sales as against 20% as applied by the appellant.*

i) *Rejecting certain companies which otherwise pass the test of comparability and are functionally comparable to the Appellant in respect of its Services segment and were also not particularly disputed by the Appellant.*

(i) *The learned AO/DRP erred in law and in facts in excluding Cosmic Global Ltd. because the company has subcontracting expenses whereas this company should have been included as it is functionally comparable. [corresponding to ground 4(i) of original grounds of appeal]*

(i) The learned AO/DRP erred in law and in facts in excluding Cosmic Global Ltd. because the company has subcontracting expenses whereas this company should have been included as it is functionally comparable. [corresponding to ground 4(i) of original grounds of appeal]

(ii) The learned AO/DRP erred in law and in facts in excluding Mindtree Limited because the company is functionally different and has extra ordinary events during the year whereas this company should have been included as it functionally similar to the Appellant. [corresponding to ground 4(i) of original grounds of appeal]

(iii) The learned AO/DRP erred in law and in facts in excluding e4e Healthcare Business Service Private Limited inconsistency in accounting principles regarding the provision of bad debts written off whereas this company should have been included being functionally similar to the Appellant. [corresponding to ground 4(i) of original grounds of appeal]

j) Computing the working capital adjustments of certain comparable companies selected by the Ld. TPO/ DRP. [corresponding to ground 4(j) of original grounds of appeal]

k) Considering certain expenses like provision for doubtful debts, bad debts written off etc. as non-operating in nature while computing the Operating Profit! Total cost of the comparable companies selected by the Ld. AO / DRP. [corresponding to ground 4(k) of original grounds of appeal]

5. That the Ld. AO/ DRP erred both in facts and in law in ignoring the limited risk nature of the services provided by the Appellant as detailed in the TP documentation and in upholding the conclusion of the learned TPO that no adjustment on account of risk differential is required while determining the Arm's Length Price of the international transactions in the Services segment of the Appellant. [corresponding to ground 5 of original grounds of appeal]

6. That the learned AO erred in charging interest under section 234D of the Act. [corresponding to ground 6 of original grounds of appeal]

All the aforesaid grounds are without prejudice to one another. The Appellant craves leave to alter, amend, modify, amplify or withdraw any or all the above grounds of objection, or add any further grounds, before or at the time of hearing.”

**Brief facts of the case are as under:**

2. Assessee is a company and is engaged in the business of contract manufacturing of components and parts of medical diagnostic imaging equipment and also engaged in provision of engineering design services to its affiliate worldwide. It filed its return of income for year under consideration which was

subsequently revised on 18/11/2011 declaring total income of Rs.86,34,42,657/-. The return was processed under section 143(1) of the Act, and the case was selected for scrutiny. Notices under section 143(2) and 142(1) was issued to assessee. In response to statutory notices, representative of assessee appeared before Ld.AO and filed requisite details as called for.

3. Ld.AO observed that assessee had international transaction exceeding Rs.15 crore and therefore reference was made to the transfer pricing officer to determined arm's length price of the transaction as per provisions of section 92C of the Act.

4. Upon receipt of reference, Ld.TPO called upon assessee to file requisite details of the transaction in Form 3 CEB.

Ld.TPO observed that, assessee had following international transaction with its associated enterprise:

Particulars	Amount (Rs.)
<b>1 Contract Manufacturing</b>	
a) Import of Raw materials	1286411783
b) Purchase of capital goods	6374000
c) Sale of manufactured goods	3716702436
Payment of royalty/technical know-how fees	41780607
<b>iii Engineering design services</b>	216573152
iii) Reimbursement of expenses	5243900
iv) Recovery of expenses	44401743
v) Sale of CTD Line	11485000

5. Ld.TPO noted that, assessee used following 13 comparables in respect of IT enabled services with an average margin of 10.61% as compared to its own margin at 10.01%. Assessee computed its margin by using OP/OC as PLI. It applied TNMM as

most appropriate method and held the transaction to be at arms length.

SN	Name of the comparable	Margin
1	Akshay Software Technologies Ltd	-1.97%
2	CC-Vak Software & Exports Ltd	-3.80%
3	Cades Digitech Pvt. Ltd.	5.47%
4	Larsen & Toubro Infotech Ltd.	21.79%
5	Helios & Matheson Information Technology Ltd	14.77%
6	Mascon Global	-2.57%
7	Mindtree Ltd(Seg)	7.75%
8	Persistent Systems Ltd	22.30%
9	Sonata Software Ltd.	21.20%
10	R S Software (India) Ltd	15.69%
11	R Systems International Ltd	4.88%
12	Sasken Communication Technologies Ltd	24.53%
13	Tata Elxsi Ltd	7.02%

6. Ld.TPO rejected the comparability analysis undertaken by assessee in the TP documentation and selected a set of following 10 comparables with an average margin of 24.77%. Ld.TPO thus computed proposed adjustment at Rs.2,61,59,079/- after granting working capital adjustment.

Sl.No	name of the case	OP/OC
1	Accentia Technologies Ltd.	28.89%
2	Acropetal Technologies	26.86%
3	Cosmic Global Ltd.	9.81%
4	e4e Healthcare(capitaline)	12.38%

5	ICRA Online Ltd.(seg)	34.21%
6	Jeevan scientific technology Ltd	70.66%
7	Infosys B P O Ltd.	17.89%
8	Jindal Intellicom (capitaline)	11.13%
9	Mindtree Ltd (seg)	10.76%
10	iGate Global solutions Ltd	25.07%
	<b>Average Margin</b>	24.77%

7. Aggrieved by the proposed adjustment, assessee raised objection before DRP.

8. DRP in its directions *suo moto* excluded 3 comparables being cosmic global, e4e healthcare and mind tree (SEG).

9. It also agreed to exclusion of Jeevan Scientific Technology Ltd., and iGate Global Solutions Ltd., based on the submissions made by assessee.

10. Upon receipt of the DRP directions, Ld.AO passed final assessment order making TP adjustment in the hands of assessee at Rs.1,83,23,932/-.

11. Aggrieved by the addition, assessee as well as revenue are in appeal before us.

12. Ld.AR submitted that there is one additional ground raised by assessee in its appeal which is as under:

*“Grounds relating to other than transfer pricing matters*

*7. That on the facts and in the circumstances of the case, the Learned AO/DRP erred in not allowing deduction under section 37(1) of the Income Tax Act, 1961, on account of Education Cesses paid by the Appellant while arriving at the assessed income for the year under appeal.*

*The Appellant craves leave to add, alter, amend or withdraw all or any of the Grounds of Appeal and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing.”*



13. He submitted in the application for admission of additional ground that substantial Justice would be rendered to assessee by admitting this ground. It has been submitted that for adjudicating this ground no new facts needs to be referred to as it arises from the records placed before us. He also submitted that the issue stands squarely covered by decision of *Hon'ble Rajasthan High Court* in case of *Chambal Fertilizers and Chemicals Ltd. v. Jt. CIT* IT Appeal No. 52 of 2018 by order dated 31-7-2018.

14. On the contrary Ld. CIT DR though objected for admission of the additional gone could not controvert the submissions made by Ld.AR.

15. We have perused the submissions advanced by both sides in light of records placed before us.

16. We note that issue raised by the assessee in this additional ground is no longer res-integra. The ground raised by assessee under this application is a legal ground and needs to be admitted. We draw our support from the decision of *Hon'ble Supreme Court* in case of *National Thermal Power Corporation Ltd (NTPC) v. CIT* reported in [\(1998\) 229 ITR 383](#).

17. On merits, Ld.AR submitted that, education cess is not tax and hence is not disallowable. We also rely on the judgment of *Hon'ble Rajasthan High Court* in the case of *Chambal Fertilizers and Chemicals Ltd. v. Jt. CIT* (supra), which after taking into account aforementioned CBDT circular held that section 40(a)(ii)

applies only to taxes and not to education cess. Relevant extract of the decision is reproduced for ease of reference:-

*"13. On the third issue in appeal no. 52/2018, in view of the circular of CBDT where word "Cess" is deleted, in our considered opinion, the tribunal has committed an error in not accepting the contention of the assessee. Apart from the Supreme Court decision referred that assessment year is independent and word Cess has been rightly interpreted by the Supreme Court that the Cess is not tax in that view of the matter, we are of the considered opinion that the view taken by the tribunal on issue no. 3 is required to be reversed and the said issue is answered in favour of the assessee."*

**Respectfully following the aforesaid view, we allow the additional ground raised by assessee.**

18. Only issues alleged by both sides are in respect of comparables alleged for inclusion/exclusion by assessee as well as revenue under engineering design services segment.

19. Before we undertake comparability analysis, it is sine qua non to understand the functions performed, assets owned and risks assumed by assessee under this segment.

20. We note that Ld.TPO has analysed the functions performed by assessee as under:

**Functions**

21. As per the Master Services Agreement:

The taxpayer is into contract manufacturing segment and also provides Engineering design services to its AEs.

22. GE is engaged in the management, licensing and funding of the research and development of technology for improved

healthcare, including medical equipment, information technology, contrast agents, protein separations, and discovery Systems.

GE BE Pvt.Ltd. Desires to license from GE through GTC the right to use GE Entity Intellectual Property and GE Intellectual Property as specified herein and to participate in the global technology development efforts managed or funded by GE.

23. GIC shall grant to Collaborator during the term of this Agreement, a non-exclusive, non-transferable right and license:

a. To use the Licensed Intellectual Property as requested by Collaborator to develop, make have made, assemble, or have assembled the Produce(s), and thereafter to use, sell, lease, offer for sale or otherwise dispose of and if applicable service such Products, and

b. To incorporate the Licensed Software, including the right to copy and modify the Licensed Software and to make or have made Software derived from the Licensed Software, into the Product(s).

**As per the TP document:**

24. GE BE manufactures CT Tubes, X-ray tubes, HV Tanks. Detectors and other parts and accessories for medical diagnostic imaging equipment. The said products are manufactured to cater to both domestic and export markets. The products manufactured by GE BE are sold only to AEs whether in India or abroad.

25. GE BE also provides engineering design services to its AEs. Its services include value-engineering design services for GEHC global's customer related problems and issues, and take the form of technical drawings and designs. GE BE uses computer aided design ("CAD"), computer aided manufacturing ("CAM") and other software tools in the provision of these services.”

26. In the trans-apprising study assessee has been categorised as a captive service provider to GE so far as it's engineering design services segment is concerned. Assessee is paid on a full cost +10% basis for the services provided by it.

**Assets owned:**

27. It has also been submitted that assessee do not engage in significant R&D for creation of invaluable IP. It has been submitted that assessee uses tangible assets such as furniture, fixtures, office equipment, vehicles and computers. It does not own any non routine intangible assets.

**Risks assumed:**

28. In the TP study it has been submitted that any exposure to foreign exchange risk is largely mitigated by hedging through GE corporate treasury. It has also been submitted in the TP study that it does not bear any significant risk of technology obsolescence as the AE who owns all manufacturing technologies. It is also been submitted that the AE incurred expenses on behalf of assessee and that all the expenses incurred by assessee is reimbursed on cost basis.

**Classification:**

29. In the TP study assessee has been characterised as contract manufacturer of medical equipment components and provider of engineering design services.

30. Based on the above characterisation, we shall undertake the comparability analysis of the comparables alleged by assessee as well as revenue for exclusion/inclusion.

31. At the outset, Ld.AR submitted that, Ground No.4(i) of assessee's appeal and Ground No.2 partly and Ground No.4 in revenue's appeal is for inclusion of 3 comparables. He submitted that these grounds raised by assessee as well as revenue are for inclusion of following comparables:

- M/s Cosmic Global Ltd,
- M/s e4e Healthcare Business Services Pvt.Ltd,
- M/s Mindtree Ltd.

32. Admittedly both sides submitted that these comparables were never objected by assessee before DRP however the same were excluded *suo moto* by applying filter which was not considered by Ld.TPO.

33. As both sides do not have any objection in inclusion of these comparables, we direct Ld.AO/TPO to include these comparables in the final list.

**Accordingly, Ground No.4(i) of assessee's appeal and Ground No.2 partly and Ground No.4 in revenue's appeal stands allowed.**

**We shall 1<sup>st</sup> take up revenue's appeal:**

34. Ground No. 1, 5, 6 are general in nature and therefore do not require adjudication.

**Ground No.2:**

35. The comparables that remains to be adjudicated in Ground No.2 is M/s.Jeevan Scientific Technology Ltd and M/s.iGate Global Solutions Ltd.

36. Ld.CIT.DR submitted that, Ld.AO wrongly excluded these comparables even though it satisfies all the filters applied by Ld.TPO.

**M/s Jeevan scientific technology Ltd:**

37. Ld.TPO included this comparable as this comparable was one of the comparables accepted by assessee in the preceding year and that assessee is raising issues for the sake of objection which is not acceptable. Ld.CIT.DR thus submitted that DRP wrongly excluded this comparable and prayed for its inclusion.

On the contrary, Ld.AR submitted that, DRP correctly observed that this comparable is engaged in ERP implementation and sales to client which is not the services rendered by assessee. It has been submitted by him that this comparable is not functionally similar with that of assessee and it also fails the service revenue filter applied by Ld.TPO. He also submitted that BPO operation segment is less than 75% of total operating revenue which is also one of the filters applied by Ld.TPO. Ld.AR submitted that the entire foreign exchange revenue pertains to BPO segment and

there is no foreign exchange revenue in ERP segment. Ld.AR placed reliance on the submissions regarding this comparable placed at page 215-219 of paper book.

38. We have perused submissions advanced by both sides in light of records placed before us.

39. Before us, Ld.CIT.DR argued that, for preceding assessment year, assessee alleged before this *Tribunal* for inclusion of this comparable. Nothing has been brought on record by Ld.CIT.DR in support of this argument. DRP excluded this comparable as it failed revenue earning filter of 75% applied by Ld.TPO. We also note that DRP excluded this comparable for one more reason because of huge fluctuation on the margins of the company over many years and for having no foreign exchange earning in respect of ERP segment.

40. We note that, Ld.TPO has considered this comparable at entity level which is not appropriate while it with comparing the engineering design segment of assessee.

**We therefore do not find any infirmity in the order passed by Ld.AO in excluding this comparable.**

**IGate global solutions Ltd**

41. This comparable was included by learnt TPO however DRP rejected it as it was engaged in diverse is filed activities being, software development services, contact Centre services and IT enabled services. DRP also noted that there was no segmental information available in respect of the 3 segments.

42. Ld.CIT DR relied on orders passed by Ld.TPO.

43. We have perused submissions advanced by both sides in the light of records placed before us.

44. We note that for the year under consideration this *Tribunal* has rejected this comparable for identical reason in case of *AON Specialist Services Pvt.Ltd., in IT(TP)A No. 440/B/2016 by order dated 20/02/2020* and *Goldman Sachs Services Pvt.Ltd in IT(TP)A No.581/B/2016 and CO No.21/B/2017 by order dated 12/09/2018.*

45. Nothing contrary to the view taken by this *Tribunal* as recorded herein above has been brought to our notice in order to take a different view.

46. Respectfully following the same we do not find any reason to interfere with the view taken by Ld.AO in excluding this comparable.

**Accordingly we uphold the exclusion of this comparable.**

**In the result appeal filed by revenue stands partly allowed.**

**Assessee's appeal:**

47. Assessee has filed revised grounds of appeal 09/08/2017 filed before this *Tribunal* in on 14/08/2017, which has been considered by Ld.AR for arguments.

48. At the outset, Ld.AR submitted that Ground No.1-3, 4 (a)-(d), (g)-(h), (j) are general in nature and therefore do not require any adjudication.



49. It is also been submitted by Ld.AR that Ground No.4 (f) (ii), (k) and Ground No.5 are not pressed.

**Accordingly these grounds are dismissed as not pressed.**

50. In the remaining grounds which Ld.AR argued are in respect of exclusion of following comparables:

**For Exclusion:**

- Accentia Technologies Ltd
- ICRA Online Ltd
- Cades Digitech Pvt. Ltd.
- Microland Ltd

**For Inclusion**

- Cosmic Global Ltd
- Mindtree Ltd
- e4e-Healthcare Business Services Pvt Ltd.

51. We have already considered following comparables which was commonly raised by revenue for inclusion in para ----- hereinabove.

**Accordingly ground 4 (i) stands allowed.**

**For exclusion**

**Accentia Technologies Ltd**

52. This comparable was included by Ld.TPO by holding that it is functionally comparable with that of assessee. Ld.AR submitted that this comparable is engaged in a knowledge process outsourcing company and also renders healthcare receivable cycle management services. It is also involved in

offering software development as a service model. He submitted that this comparable holds good will and brands whereas, assessee do not own any part of such intangible assets.

53. Whereas, learnt CIT DR submitted that this company by using software like CAD and CAM provides engineering services to its AE which cannot be considered as normal BPO services but services in the nature of high-end. He thus supported the order passed by authorities below.

54. We have perused submissions advanced by both sides in light of records placed before us

55. We note that, this comparable was challenged by assessee before this *Tribunal* for assessment year 2009-10 in ITA (TP) A No. 1 to 5 and 65/B/2014 by order dated 24/04/2019. This *Tribunal* observed as under:

*“10. The other grounds with regard to exclusion of comparables, chosen by the TPO and confirmed by the DRP are taken up for consideration. In Ground Nos. 14, 16) 17 &. 18, the assessee has objected to the action of DRP in retaining the following 04 companies as comparable companies viz.,*

- i Infosys BPO Ltd.,*
- ii Accentia Technologies Ltd.,*
- iii. Cosmic Global Ltd.,*
- iv. Eclerx Services Ltd.,*

*10.1. On exclusion of the aforesaid 04 companies as comparable companies, Ld. Counsel for the assessee drew our attention to the decision of the ITAT, Bangalore Tribunal rendered in the case of MIs. Novo Nordisk India Pvt. Ltd., Vs. DCIT in IT(TP)A No. 122/Bang/2014, AY.2009-10, dt.08-05-2015, wherein the comparability of the aforesaid 04 companies with the company engaged in providing ITES such as the assessee was considered by the Tribunal. In para Nos. 86 and 87, the Tribunal excluded Infosys BPO Ltd., on the ground that it has a huge turnover and was involved in rendering high end integrated services and that it had brand value. Further, there were also some extraordinary*

*events during the relevant previous year, which had an impact on these profits of this company.*

*10.2. Similarly in the aforesaid case, Accentia Technologies Ltd., was so excluded in the list of comparable companies vide para Nos. 86 and 87 of the said order on the ground that it was functionally different and was providing services in the fields of medical transcription, billing and coding was also held that there was an extraordinary event of acquisition of Oak Technologies, incorporated and transmission services during the previous year.”*

*14. We have perused the aforesaid decision and we find that in the aforesaid case, reasons for excluding Accentia Technologies Ltd., was on account of mergers and acquisition that took place in the relevant previous year and to verify that factor, the issue was set aside to the TPO. The Ld.DR submitted before us that by implication of functional comparability of this company has been accepted. We are of the view that such conclusions cannot be drawn and we find that functional comparability has been made in the case of Mis. Novo Nordisk India Pvt. Ltd., Vs. DCII (supra) and it was found that this company was in the field of medical transcription, billing and coding. Therefore, there is no substance in the stand taken by the department.*

56. Respectfully following the same, we do not find any reason to include this comparable in the finalist.

**Accordingly Ld. AO/TPO is directed to exclude this comparable from the finalist.**

**ICRA Online Ltd**

57. This comparable was included by learnt TPO by holding it to be functionally similar. Ld.AR submitted that this company has its operations bifurcated under 3 business segments being outsourced services, information services and served software services. He submitted that learnt TPO considered the outsourced service segment for comparability with assessee that is carrying out with engineering design services. Referring to the

annual report placed at page 462 of paper book volume 1, Ld.AR submitted that this comparable earns income from outsourced services recognised from maintenance and management of data. He submitted that, this comparable also do not satisfy export revenue filter of 75% applied by learnt TPO. Referring to page 461 of annual report, he submitted that the total revenue earned by this comparable is rupees one, 93, 583 which is only 63.59% of the total sales. He also submitted that this company comparable has a huge related party transaction of 29.57% age and therefore do not satisfy the RPT filter of 25% applied by learnt TPO.

58. On the contrary learn CIT DR submitted that this comparable is functionally similar with that of assessee as it is involved in KPO services.

59. We have perused submissions advanced by both sides in light of records placed before us.

60. Admittedly Ld.TPO has considered the operations of outsourced service segment of this comparable for comparing with the engineering design services of assessee. From the annual report placed in the paper book, we do not find any description as to the nature of the services rendered by this comparable under this segment. From the annual report, we note that this comparable is largely engaged in analytical services and support for to clients in the area of data extraction, aggregation, electronic conversion of financial statements, validation and analysis, accounting and finance, research and analytics.

Whereas in the instant case, assessee has been categorised to be rendering engineering design services with the help of software developed by its AE as a captive service provider. Therefore, we do not find any reason to hold it to be functionally similar with that of assessee.

**Accordingly we direct Ld.AO/TPO to exclude this comparable from the finalist.**

**Cades Digitech Pvt. Ltd.**

61. This comparable was excluded by Ld.TPO for the reason that financial information was not available. At the outset, Ld.AR submitted that all the details relevant for comparability was provided by assessee however the same was not considered.

At the outset, both sides submitted that this comparable may be remanded to Ld.AO/TPO for reconsidering it afresh.

62. We note that Ld.TPO has not considered the annual reports and the details that has been filed by assessee during the Transfer Pricing assessment.

63. We accordingly, remand this comparable to Ld.AO/TPO for considering it afresh on the lights of annual reports/evidences filed by assessee. In the event it is found to be functionally similar, the same may be included.

**Accordingly, this comparable is remanded to Ld.AO/TPO.**

**Microland Ltd**

64. Ld.TPO excluded this comparable as it fails revenue earning filter of 75%. Ld.AR submitted that this company has 2 segments being infrastructure management and IT enabled services. Ld.TPO considered both the segments. He submitted that for assessment year 2009-10 DRP had directed inclusion of this comparable and has held this comparable to be functionally similar with that of assessee. Ld.AR referred to the DRP order for assessment year 2009-10 placed at page 1565 of paper book, referring to page 01/06/2003 wherein the observations of DRP have been recorded.

65. On the contrary Ld.CIT.DR placed reliance on orders passed by Ld.TPO.

66. We have perused submissions advanced by both sides in light of records placed before us.

67. We note that this comparable is admittedly having a segment of infrastructure management service which is comparable with the engineering design services segment of assessee. The only objection raised by DRP is non-satisfying the revenue earning filter of 75%. We note that Ld. AO/TPO has considered this comparable at the entity level and therefore has not verified the same at the segmental level.

68. In the interest of justice, we deem it appropriate to remand this comparable back to Ld.AO/TPO to consider this comparable at the segmental level for comparing with assessee.

**Accordingly, this comparable is remanded to Ld.AO/TPO for re-examination.**

**In the result appeal filed by assessee stands allowed.**

Order pronounced in the open court on 27<sup>th</sup> Nov, 2020

Sd/-  
(CHANDRA POOJARI)  
Accountant Member  
Bangalore,  
Dated, the 27<sup>th</sup> Nov, 2020.  
/Vms/

Sd/-  
(BEENA PILLAI)  
Judicial Member

**Copy to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar, ITAT, Bangalore

		<b>Date</b>	<b>Initial</b>	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-11-2020		Sr.PS
3.	Draft proposed & placed before the second member	-11-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-11-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-11-2020		Sr.PS/PS
6.	Kept for pronouncement on	-11-2020		Sr.PS
7.	Date of uploading the order on Website	-11-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-11-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS