

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: 'I' : NEW DELHI

Before Sh. R. S. Syal, AM And Sh. A. T. Varkey, JM

ITA No. 5271/Del/2012 : Asstt. Year : 2007-08

Calibrated Healthcare Systems India Pvt. Ltd., Space No. 309, Aggarwal Plaza, Plot No. 11, Sector-10, Dwarka, New Delhi-110075	Vs	ACIT (OSD), CIT-I, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AACCC3110C		

Assessee by : Sh. Pankaj Gupta, CA  
Revenue by : Sh. Peeyush Jain, CIT DR

Dt. of Hearing : 03.12.2014	Dt. of Pronouncement: 04.12.2014
-----------------------------	----------------------------------

ORDER

Per R. S. Syal, AM:

This appeal by the assessee is directed against the order passed by the CIT(A) on 13.08.2012 in relation to the assessment year 2007-08.

2. Briefly stated the facts of the case are that the assessee is a wholly owned subsidiary of Calibrated Healthcare Systems LLC, USA and is engaged in providing I.T enabled services to its foreign entity. Its activities primarily comprise of processing of insurance

claims, data entry and other support services in the healthcare sector. An international transactions of export of I.T enabled services amounting to ₹ 2,42,55,000/- was reported. The assessee chose ten companies as comparable to demonstrate that the international transaction was at Arm's Length Prices (ALP). The Transfer Pricing Officer (TPO) discarded the choice of comparables made by the assessee with reasons. He chose twenty five fresh comparable companies and applied Transactional Net Margin Method (TNMM) to benchmark this international transaction. That is how, he determined Arm's Length Margin of the comparables at 26.11% of operating cost. Applying the same to the assessee's international transaction, the transfer pricing adjustment of ₹ 23,85,223/- was proposed. The Id. CIT(A) directed to exclude two companies from the list of comparables thereby retaining twenty three companies chosen by the TPO as comparable. The assessee in the instant appeal is aggrieved only against the inclusion of following six companies in the final list of comparables:

- i) Infosys BPO Ltd.
- ii) Wipro Ltd. (Seg.)

iii) HCL Comnet Systems & Services Ltd. (Seg.)

iv) Eclerx Services Ltd.

v) Maple Esolutions Ltd.

vi) Triton Corp. Ltd.

3. We have heard the rival submissions and perused the relevant material on record. It is observed that the short controversy taken up before us is only regarding the inclusion of six companies by the TPO, which the assessee urges for exclusion. There is no objection to any other facet of the computation of the ALP of this transaction. We will deal with these six companies, one by one, to determine their comparability.

i) Infosys BPO Ltd.

4. The Id. AR contended that there is a vast difference not only in the size but also the functional profile, assets employed and risks undertaken by Infosys *vis-a-vis* the assessee. Per contra, the Id. DR supported the inclusion of this company in the list of comparables.

5. We find that whereas the assessee is a captive unit providing back office support services to its AE alone, which are basically in the nature of processing of insurance claims and the data entry, it can have no valid comparison with Infosys Ltd., as the latter is a full-fledged risk taking entrepreneur with diversified business including software product, consulting application, design development, re-engineering and maintenance etc. Infosys Ltd. has developed/owns proprietary products like Finacle, whereas the assessee, being a captive unit, does not own any such proprietary product. Unlike Infosys, the assessee does not have any substantial intangible assets. Similarly, Infosys has spent a lot on Research and development, whereas the assessee has not undertaken any such activity in rendering services to its AE. Apart from the above, there are several other factors which make Infosys as incomparable with the assessee. The Hon'ble Delhi High Court in *CIT Vs Agnity India Technologies Pvt. Ltd. (2013) 219 Taxman 26 (Delhi)* has directed the exclusion of Infosys Technologies from the list of comparables of Agnity India, facts of which company are more or less similar to that of the assessee as both are captive units providing broadly similar services.

Respectfully following the above judgment of the Hon'ble jurisdictional High Court, we direct the exclusion of this company from the list of comparables.

ii) Wipro Ltd. (Seg.)

6. After hearing both the sides, here again we find that the facts and circumstances of this company nowhere match with the assessee company. This company is also a giant entity in comparison with the assessee company with marked differences as regards risk profile, nature of services, ownership of IP rights, expenditure on R & D etc. Drawing the strength from the judgment of *Agnity India Technologies Pvt. Ltd. (supra)*, we hold this company to be incomparable with the assessee. The same is, ergo, directed to be not treated as comparable.

iii) HCL Comnet Systems & Services Ltd. (Seg.)

7. After considering the rival submissions and perusing the relevant material on record, we find that the TPO included the relevant segment of this company in the list of comparables. The

Id. AR was fair enough to accept that there is no difference in the functional profile of this company with the assessee company. He, however, sought the exclusion of this company on the basis of high turnover. We do not approve the view canvassed by the Id. AR in this regard. When a company is functionally similar to that of the assessee company, the same cannot be excluded merely because of its turnover at a higher or lower level. Here it is important to mention that sec. 92C(1) of the Income-tax Act, 1961 provides for the computation of Arm's Length Prices by one of the methods prescribed therein. First proviso to sec. 92C(2) clearly provides that when more than one price are determined by the most appropriate method, then the Arm's Length Prices shall be taken to be the arithmetic mean of such prices. It does not talk of excluding the companies with high or low turnover or high or low profit rate. Recently the Delhi Tribunal in *Nokia India Pvt. Ltd. Vs DCIT (ITA No. 242/D/2010 etc.)*, vide its order dated 31.10.2014, has held that a potentially comparable case cannot be excluded for the reason of high or low turnover or high or low profit margin. In reaching this conclusion, the Delhi bench also considered a Special Bench order passed in the case of *Maersk Global Centres*

*(India) (P.) Ltd. Vs ACIT (2014) 147 ITD 83 (Bom.) (SB).* In view of the fact that the assessee has admitted the functional comparability of the relevant segment of this company and the only difference pointed out is about its higher turnover, we are satisfied that this case cannot be excluded from the list of comparable. The impugned order is upheld on this score.

iv) Eclerx Service Ltd.

8. We have heard the rival submissions and perused the relevant material on record. The Annual Report of this company for the Financial year 2006-07 does not throw any light on the nature of business carried on by it. However, the Annual Report for the Financial year 2007-08, a copy of which is available on the paper book, divulges the nature of business carried on by it. It is seen that this company is a Knowledge Process Outsourcing (KPO) company providing data analytics and data processing solution to its clients. It is a recognized expert in Financial services and Retail and Manufacture. It provides consulting services and also process outsourcing. The above details have been pointed out by the Id. AR from the Annual accounts of this company for the Financial

year 2007-08. Nothing has been brought on record by the Id. DR to show that the functions performed by this company in the relevant year were any different. When we consider the nature of assessee's business, which is primarily that of processing insurance claim and data entry, it becomes vivid that Eclerx Service Ltd. cannot be considered as functionally comparable with the assessee company. The same is therefore, directed to be excluded from the list of comparables.

v) & vi) Maple Esolutions Ltd. and Triton Corp. Ltd.

9. We have heard both the sides and perused the relevant material on record. Both these companies are inter-related entities. During the year under consideration, there was acquisition of 100% shares of Maple Esolutions Ltd. by Triton Corp. Ltd. and thus, Maple Esolutions Ltd. became a wholly owned subsidiary of Triton Corp. Ltd. w.e.f 01.01.2007. It can be seen that this merger/acquisition has taken place during the year under consideration, thereby shattering their comparability.



10. The Id. AR also pointed out that both these companies are owned by Rastogi Group and the reputation of the Directors of these companies was having question-mark in earlier years. In support of the contention for the exclusion of these companies, the Id. AR relied on an order passed by Delhi Bench of the Tribunal in the case of ITO Vs CRM Services India (P) Ltd. (ITA No. 4068/D/2009), copy placed on pages 141 onwards of the paper book, in which Maple Esolutions Ltd. and Triton Corp. Ltd. were directed to be excluded by the Tribunal on this score. The Id. DR, on the other hand, opposed this contention.

11. We find that there is a direct order by the Delhi Benches of the Tribunal in which these two companies have been excluded because of financial irregularities committed by their directors. In the absence of any contrary order brought on record by the Id. DR permitting the inclusion of companies under cloud, in the list of comparables, respectfully following the precedent we direct the exclusion of these two companies from the list of comparables.

12. The impugned order is therefore, set aside and the matter is sent back to AO/TPO for a fresh determination of ALP of the international transaction in conformity with our above directions.

13. In the result, the appeal is partly allowed for statistical purposes.

Order pronounced in the open Court on 04/12/2014.

Sd/-  
(A.T. Varkey)  
JUDICIAL MEMBER

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

Dated: 04/12/2014

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

		Date	Initial	
1.	Draft dictated on	03.12.2014		PS
2.	Draft placed before author	03.12.2014		PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			

\*