

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH : BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

<b>ITA No. 2110/Bang/2024</b>
<b>Assessment Year : 2011-12</b>

The Assistant Commissioner of Income Tax, Circle – 1 (1)(1), Bangalore.	<b>Vs.</b>	M/s. Acuity Knowledge Centre (India) Pvt. Ltd., 7 <sup>th</sup> Floor, Elixir Chancery Building, Municipal Door No. 135/1-2, Residency Road, Bangalore – 560 025. <b>PAN: AAECA9391H</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Ms. Tanmayee Rajkumar, Advocate
Revenue by	:	Shri Parithivel .V, JCIT-DR

Date of Hearing	:	05-03-2025
Date of Pronouncement	:	03-06-2025

**ORDER**

**PER SOUNDARARAJAN K., JUDICIAL MEMBER**

This is an appeal filed by the Revenue challenging the order of the Ld.CIT(A)-12, Bengaluru dated 31/07/2024 in respect of the A.Y. 2011-12 and raised the following grounds:

- 1) Whether CIT (A) is right in adopting an overly narrow interpretation of functional similarity by excluding companies that are reasonably comparable in terms of primary business functions. It is a well-established principle in transfer pricing that the comparables should reflect similar core business functions, even if there are minor variations or ancillary services.
- 2) Whether CIT(A) is right in exclusion of comparables such as Accentia Technologies Limited, Acropetal Technologies Limited, ICRA Online Limited on the grounds of functional dissimilarity when on adequately considering the fact that these companies' core operations involve ITeS, which is the primary function of the assessee.
- 3) Whether the CIT (A) is right in excluding companies such as Accentia Technologies Limited, Acropetal Technologies Limited, ICRA Online Limited based on the fact that they operated in multiple segments. The core activities of these companies, including software development, are highly comparable to the tested entity, and the presence of additional segments should not lead to automatic exclusion.
- 4) Whether the CIT(A) is right in demanding comparability standards that may itself defeat the purpose of law relating to determination of ALP under the income tax Act.
- 5) Whether the CIT(A) is right in imposing conditions is beyond the scope of law and business reality by rejecting all close comparables on one or the other ground, without appreciating that not two companies can ever be same.
- 6) Whether the CIT(A) is right in trying to find out exact replica of the assessee for determining the Arm's length price based on such replica, even when the law and the international jurisprudence itself recognize that there cannot be an exact comparable to a given situation, especially with TNMM as the most appropriate method.
- 7) Whether the learned CIT(A) is right in excluding Jeevan Scientific Technology Ltd based solely on the grounds of high profit margin fluctuations, without demonstrating that such fluctuations were the result of extraordinary or non-recurring events.
- 8) Whether the margin fluctuations, in the absence of such exceptional circumstances, are a natural phenomenon in certain industries like ITES and should not lead to the exclusion of functionally comparable companies.
- 9) Whether the learned CIT(A) is right in excluding comparables by considering only single-year data and failing to evaluate the long-term performance of the excluded companies. Transfer pricing guidelines, as well as judicial precedents, recommend the use of multiple-year data to account for natural business cycles and



- fluctuations, as recognized in CIT vs. Mentor Graphics (Noida) Pvt. Ltd. (2007) 109 ITD 101 (Delhi ITAT).
- 10) Whether the learned CIT(A) is right in prioritizing margin stability over functional comparability in the selection of comparables when in Global Logic India Ltd. vs. ACIT (ITA No. 5383/Del/2012), the ITAT ruled that functional comparability takes precedence over financial indicators like margin consistency, and companies that are functionally comparable should not be excluded due to margin fluctuations alone.
  - 11) Whether the exclusion of comparables with high margin fluctuations by CIT(A) has unreasonably narrowed the pool of valid comparables, thereby distorting the transfer pricing analysis.
  - 12) Whether the CIT(A) is right in not following the decision of ITAT, Bangalore rendered in the case of M/s Societe Generale Global Solution Centre Pvt Ltd. in IT (TP) A No. 1188/BANG/2011 and M/s. Vmoksha Technologies Pvt. Ltd. in IT (TP) A No. 595/BANG/2013 dated 26.08.2016 for AY 2005-06 where the Tribunal has held that turnover is not a relevant criteria for deciding the comparability.
  - 13) Whether the CIT(A) is right in holding that there exists a co-relation between turnover and operating margin of an entity.
  - 14) Whether the transfer pricing guidelines mandate the exclusion of comparables purely based on turnover differences unless the turnover has a direct impact on profitability (e.g., economies of scale). In the case of Infosys BPO Limited, no evidence has been provided to suggest that turnover affects its ITeS margins to the extent that it becomes incomparable with assessee.
  - 15) Whether the learned CIT(A) is right in excluding Igate Global Solutions Ltd solely on the grounds of absence of segmental data. This exclusion disregards the fact that functional comparability is the primary criterion for determining the suitability of comparables in transfer pricing analysis
  - 16) Whether the learned CIT(A) is right to not give due consideration to the functional comparability of the excluded companies, when functional comparability is the cornerstone of transfer pricing analysis, and companies should not be excluded solely due to the absence of segmental data if their core operations are comparable to those of the tested entity.
  - 17) Whether the learned CIT(A) is right in not demonstrating that the excluded comparables were having extraordinary functional non-comparability that would justify their exclusion due to the lack of segmental data.
  - 18) Whether the exclusion of comparables due to lack of segmental data has resulted in an unreasonably narrow pool of comparables, which skews the transfer pricing analysis.
  - 19) Whether by focusing solely on the availability of segmental data, the learned CIT(A) has unjustly limited the scope of comparables, potentially leading to distorted results.
  - 20) Whether the CIT(A) is right in excluding Accentia Technologies Limited as a comparable solely due to the presence of extraordinary events such as mergers and acquisitions, without duly considering the primary requirement of functional comparability.
  - 21) The Appellant craves to add, alter, delete, modify or withdraw any of the above grounds of appeal.

2. The brief facts of the case are that the assessee is a company filed their return of income on 29/11/2011. Thereafter, a revised return was

filed on 30/11/2011 declaring the very same income. The assessee paid the tax based on the MAT provision. The return was processed and the case of the assessee was selected for scrutiny manually on the basis of form no. 3CEB. During the year, the assessee company had international transactions and therefore the AO had referred the issue to the transfer pricing officer to determine the arms length price. Thereafter, the transfer pricing officer passed an order u/s. 92CA of the Act in which an adjustment to arms length price to the extent of Rs. 4,60,63,053/- was made. The AO also accepted the adjustment made by the TPO and added back the said adjustment to the total income of the assessee.

**3.** As against the said adjustment, the assessee filed an appeal before the Ld.CIT(A) and raised several grounds in respect of the transfer pricing issues and submitted that the addition made by the Ld.TPO as well as the assessing officer on account of adjustment in the arms length price is not correct. The assessee also challenged the corporate tax issues in the appeal filed before the Ld.CIT(A). The Ld.CIT(A) after considering the submissions made by the assessee as well as the various datas furnished by the assessee in support of their case and also by following the earlier decisions rendered by this Tribunal, finally allowed the appeal.

**4.** As against the said order of the Ld.CIT(A), the revenue is in appeal before this Tribunal.

**5.** At the time of hearing, the Ld.DR relied on the order of the Ld.TPO and submitted that the Ld.CIT(A) is wrong in taking the comparable companies when there are minor variations. Similarly, the Ld.DR argued that the other companies which were all excluded by the Ld.CIT(A) are also not correct since the companies are comparable to the core activities of the assessee company. The Ld.DR strongly relied on the grounds raised by the revenue and prayed that the appeal may be allowed.

**6.** The Ld.AR filed two paper books and also filed a synopsis of arguments in support of their case. In one of the paper books, the Ld.AR filed the annual reports of the six companies which are sought to be excluded for the purpose of determining the arms length price. In the other paper book, the assessee submitted the notices as well as their replies and the financial statements. The assessee also relied on the judgment of the Hon'ble Bombay High Court in ITA No. 1120/2014 dated 16/12/2016 in support of their case. The assessee also filed a chart in support of their pleadings.

**7.** We have heard the arguments of both sides and perused the materials available on record.

**8.** The Ld.CIT(A) had analysed the every company and compared them with the assessee company and excluded the said companies which are not comparable to the assessee company. The Ld.CIT(A) had given a clear finding with regard to each company and how it could not be taken as a comparable to the assessee company and also considered the finding given by this Tribunal in the earlier orders in which the companies were excluded for the purpose of calculating the arms length price. For the sake of easy reference, the finding given by the Ld.CIT(A) is extracted as below:



## 5. Findings and Decisions

### 5.1 Comparables:

#### 5.1.1 Exclusion of comparable Jeevan Scientific Technology Limited

5.1.1.1 The appellant contended that this comparable has huge fluctuating margins and fails revenue earning filter of 75% and relied on the decision of ITAT, Bengaluru in the case of DCIT vs. C-Cube Solutions Pvt Ltd. for A.Y.2011-12 wherein it is held that:

*"5.3.1 We have heard the rival contentions and perused and carefully considered the material on record. We find that the DRP has dealt with the comparability of the company 'Jeevan' at pages 7 and 8 of its order and excluded it from the list of comparables to the assessee, by holding as under:*

*"Jeevan Scientific Technology Ltd: The objection against the wrong PLI becomes academic in nature in view of our findings in the subsequent para wherein this company has been rejected on functional analysis.*

*2.6 Ground of Objection 7: The Learned Transfer Pricing Officer and in turn the Assessing Officer erred in its functional analysis of Jeevan Scientific technologies Ltd, and went on to wrongly consider the same as a comparable company.*

*Having considered the submissions, it is noticed by us from the perusal of Annual Report that the foreign exchange earnings of 79.21 lakhs is only from BPO operate and there is no foreign exchange earning in respect of ERP segment. Therefore, the ERP segments cannot be considered as it does not have any revenue from the export. It is also noticed by us that the ERP segment is not otherwise comparable to the functions of the assessee company. The BPO segment alone cannot be considered as comparable as the revenue to the total revenue ratio is only 32.28%. It is also noticed by us that there is a huge fluctuation in the margin of the company from F.Y. 2008-09 to 2012-13 viz., in BPO segment 15.66%, 18.22%, 6.24%, 14.42% and (-)56.89%, which indicate that certain peculiar circumstances influencing the profit margin of the company and the company fails the revenue earning filter of 75% applied by the TPO, in view of the above differences, we direct the A.O. to exclude the above company from the comparables."*

5.1.1.2 The appellant further relied on the decision of ITAT, Bengaluru in the case of Finastra Software Solutions (India) (P.) Ltd. vs. ACIT for A.Y.2011-12 wherein it is held that:

*"25. As far as Accentia Technologies Ltd., Accropetal Technologies Ltd., and Jeevan Scientific Technology Ltd., are concerned, ITAT Bangalore Bench in the case of Swiss Re Shared India Pvt. Ltd. v. Asstt. CIT [2016] 76 taxmann.com 22 (Bang-Trib), (a company which is also engaged in providing ITES such as the Assessee), was pleased to hold that these three companies cannot be regarded as comparable companies with companies providing ITES. Following the said decision, we hold that*



*these three companies have to be excluded from the comparable companies."*

**5.1.1.3** The appellant also relied on the decision of ITAT, Bengaluru in the case of ACIT vs. AON Specialist Services (P.) Ltd. for A.Y.2011-12 wherein it is held that:

*"13. As far as exclusion of the comparable company Jeevan Scientific Technologies Ltd. ("Jeevan") is concerned, we find that this company was excluded by the DRP for the reasons that (a) the ERP segment of the company is not comparable to the assessee, (b) the BPO segment of the company, although is comparable to the assessee functionally, fails the filter of service income being greater than 75% of total revenue, and (c) the company suffers from huge fluctuations which indicate that certain peculiar circumstances influencing the profit margin of the company exist, for which appropriate adjustments cannot be made to balance the effect. The Revenue is in appeal before this Tribunal only insofar as (b) above is concerned, which is the rejection of the company on failure to satisfy the service income filter, and therefore, the other grounds on which the DRP excluded the company have attained finality. We further find that the total revenue of this company from 5*

*different segments of the Assessee was Rs. 246.75 lakhs and the segmental revenue from BPO segment was less than Rs. 1 crore. The TPO considered the ERP service as also BPO service which is incorrect since ERP implementation services are not in the nature of IT enabled services which were notified by CBDT vide Notification No. SO 890(E) dated 26-9-2000. If the service income from the BPO segment alone is considered, the component of service income to the total revenue of this company is less than 75% of total operating revenue. In any event if the turnover of BPO segment is considered it is less than Rs. 1 Crore and this company fails to satisfy the TPO's own filter of service revenue from the relevant segment having to be in excess of Rs. 1 crore as the revenue from the BPO segment of the said company is Rs. 79 lakhs only. The company is therefore not comparable to the Assessee and the DRP's findings on exclusion of Jeevan are right in law and ought not to be interfered with. In this regard we find that this Hon'ble Tribunal in Swiss Re Shared services (India) (P.) Ltd. (supra) directed the TPO to verify as to whether the TPO's filter of Sales > 1 Crore is satisfied by this company. In the present case, the DRP has examined the same and has given a finding that the filter of sales > Rs. 1 crore is not satisfied. Therefore, the exclusion of this company as a comparable company by the DRP does not require any interference."*

**5.1.1.4** Respectfully following the jurisdictional ITAT, Bengaluru decisions for the same A.Y.2011-12 in the above cases, this comparable is excluded from the list of comparables.

## **5.1.2 Exclusion of comparable Accentia Technologies Limited**

**5.1.2.1** The appellant contended that this comparable is functionally different and



relied on the decision of ITAT, Bengaluru in the case of *Amba Research (India) (P.) Ltd. vs. DCIT for A.Y.2011-12* wherein it is held that:

*"Accentia Technologies Limited*

12. As regards the selection of *Accentia Technologies Limited* as comparable, the learned counsel for the assessee has relied on the decisions of this Tribunal in the cases of *Capital IQ Information Systems (India) Pvt. Ltd. v. Addl./Dy. Commissioner of Income-tax, Circle 1(2), Hyderabad* and vice versa (ITA No.124 and 170/Hyd/2014 dated 31.7.2014); *Excellence Data Research Pvt. Ltd., Hyderabad v. ITO Ward 2(1), Hyderabad* (ITA No.159/Hyd/2014 dated 31.7.2014); and *Hyundai Motors India Engineering P. Ltd., Hyderabad v. DCIT, Circle 2(2), Hyderabad* (ITA No.255/Hyd/2014 dated 31.7.2014), wherein *M/s. Accentia Technologies Limited(Seg)* was excluded by the Tribunal from the list of comparables on the ground that it was a case of mergers and acquisition, and the company was also found to be functionally different. The relevant observations of the Tribunal as recorded in para 19.2 of the order passed in the case of *Excellence Data Research Pvt. Ltd., Hyderabad* (supra), being relevant in this case, are reproduced below—

"19.2 We have considered the rival contentions and noticed that this company operates in a different business strategy of acquiring companies for inorganic growth as its strategy. In earlier years on the reason of acquisition of various companies, being an extraordinary event, which had an impact on the profit, this company was excluded. As submitted by the learned counsel, this year also, the acquisition of some companies by that company may have impact on the profit. Considering the profit margins of the company and insufficient segmental data, we are of IT(TP)A No.146/Bang/2015 Page 42 of 52 the opinion that this company cannot be selected as a comparable. Moreover, this is also not a comparable in the case of *M/s. Mercer Consulting (India) (P.) Ltd.* (supra), which indicates that the TPO therein has excluded it at the outset. In view of this, we direct the Assessing Officer/TPO to exclude this comparable, from the list of comparables selected."

5.1.2.2 The appellant further relied on the decision of ITAT, Bengaluru in the case of *Finastra Software Solutions (I) P Ltd. vs. ACIT for A.Y.2011-12* wherein it is held that:

"25. As far as *Accentia Technologies Ltd., Accropetal Technologies Ltd., and Jeevan Scientific Technology Ltd.*, are concerned, ITAT Bangalore Bench in the case of *Swiss Re Shared India Pvt. Ltd. v. Asstt. CIT [2016] 76 taxmann.com 22 (Bang-Trib)*, ( a company which is also engaged in providing ITES such as the Assessee), was pleased to hold that these three companies cannot be regarded as comparable companies with companies providing ITES. Following the said decision, we hold that these three companies have to be excluded from the comparable companies."



**5.1.2.3** The appellant also relied on the decision of ITAT, Bengaluru in the case of *M/s Acusis Software India Pvt Ltd vs. ITO for A.Y.2011-12* wherein it is held that:

*"Accentia Technologies Limited*

*12. As regards the selection of Accentia Technologies Limited as comparable, the learned counsel for the assessee has relied on the decisions of this Tribunal in the cases of Capital IQ Information Systems (India) Pvt. Ltd. v. Addl./Dy. Commissioner of Income-tax, Circle 1(2), Hyderabad and vice versa (ITA No.124 and 170/Hyd/2014 dated 31.7.2014); Excellence Data Research Pvt. Ltd., Hyderabad v. ITO Ward 2(1), Hyderabad (ITA No.159/Hyd/2014 dated 31.7.2014); and Hyundai Motors India Engineering P. Ltd., Hyderabad v. DCIT, Circle 2(2), Hyderabad (ITA No.255/Hyd/2014 dated 31.7.2014), wherein M/s. Accentia Technologies Limited(Seg) was excluded by the Tribunal from the list of comparables on the ground that it was a case of mergers and acquisition, and the company was also found to be functionally different. The relevant observations of the Tribunal as recorded in para 19.2 of the order passed in the case of Excellence Data Research Pvt. Ltd., Hyderabad (supra), being relevant in this case, are reproduced below—*

*"19.2 We have considered the rival contentions and noticed that this company operates in a different business strategy of acquiring companies for inorganic growth as its strategy. In earlier years on the reason of acquisition of various companies, being an extraordinary event, which had an impact on the profit, this company was excluded. As submitted by the learned counsel, this year also, the acquisition of some companies by that company may have impact on the profit. Considering the profit margins of the company and insufficient segmental data, we are of IT(TP)A No.146/Bang/2015 Page 42 of 52 the opinion that this company cannot be selected as a comparable. Moreover, this is also not a comparable in the case of M/s. Mercer Consulting (India) (P.) Ltd. (supra), which indicates that the TPO therein has excluded it at the outset. In view of this, we direct the Assessing Officer/TPO to exclude this comparable, from the list of comparables selected."*

**5.1.2.4** Respectfully following the jurisdictional ITAT, Bengaluru decisions for the same A.Y.2011-12 in the above cases, this comparable is excluded from the list of comparables.

### **5.1.3 Exclusion of comparable Acropetal Technologies Limited**

**5.1.3.1** The appellant contended that this comparable is functionally different and relied on the decisions of ITAT, Bengaluru in the cases of *DCIT vs. C-Cube Solutions Pvt Ltd.*, *M/s AON Specialist Services(P) Ltd* and *Software Paradigms Infotech (P.) Ltd vs. ACIT for A.Y.2011-12* wherein it is held that:

**C-Cube Solutions Pvt Ltd**



*"4.3.1 We have heard the rival contentions and perused and carefully considered the material on record regarding the comparability of 'Acropetal' to the assessee in the case on hand. The DRP in its order, while deciding the comparability of 'Acropetal' to the assessee in the case on hand, at pages 5 and 6 thereof, has held as under:*

*"Acropetal Technologies Ltd*

*Having considered the submissions, on perusal of the annual report, it is noticed by us that the assessing officer has considered the revenue from the engineering design segment. Hon'ble ITAT, Bangalore in IT(TP)/A/1678/Bang/2012 in the case of Global E Business Operations, directed to exclude the above company by observing that 'we have considered the submission of the learned counsel for assessee, on perusal of note no.15 of notes to accounts, which gives segmental revenue of this company, it is clear*

*that the major source of the income for this company is from providing engineering design services and information technology services. The function performed by the engineering design services of the company cannot be considered as comparable to the ITES/BPO function performed by the assessee. The performance of the engineering design services is regarded as providing high end services amongst the BPO which require high skill whereas the services performed by the assessee are routing low end ITES function. We therefore hold that this company could not have been selected as comparable, especially when it performs engineering design services which only a knowledge processing outsourcing (KPO) would do and not a business processing outsourcing (BPO).' Similar View was taken by Hon'ble Bangalore ITAT in the case of - Symphony Marketing Solutions India Pvt. Ltd. v. ITO (IT (TP) A No. 1316/Bang/2012), held that Acropetal cannot be considered as comparable as it performs engineering design services accordingly, we direct the assessing officer to exclude the company from the comparables."*

**AON Specialist Services(P) Ltd**

*"11. As far as Ground No. 2 in the Revenue's appeal regarding exclusion of Acropetal Technologies Ltd. ('Acropetal') by the DRP is concerned, the learned DR reiterated the stand of the revenue as reflected in the order of the TPO and in the grounds of appeal which is to the effect that there cannot be any difference between Knowledge Process Outsourcing (KPO) and Business Process Outsourcing (BPO). The learned counsel for the Assessee placed reliance on the decision of this Hon'ble Tribunal in Swiss Re Shared Services (India) (P.) Ltd. v. Asstt. CIT [2016] 76 taxmann.com 22 (Bang. - Trib.) and e4e Business SolutionsIndia (P.) Ltd. v. Dy. CIT [IT (TP) Appeal No. 1397 (Bang.) of 2016, dated 13-1-2017] where, in the case of assesseees similar to the assessee herein for the same assessment year, the company was directed to be excluded from the list of comparables.*

*12. We have considered the rival submissions. We find that as per the Annual Report of the company for the year ending 31st March 2010, the company is engaged in*



provision of a variety of IT enabled services comprising of Enterprise solutions, IT Infrastructure Management Services, Cloud Services, Greenhouse Gas Management, unlike the Assessee who is a provider of routine IT enabled services. Further, the company is engaged in provision of engineering design services which are in the nature of high-end IT enabled services which are in the nature of Knowledge Process Outsourcing ("KPO"), which is not comparable to the Assessee's ITES. In this regard we find submissions were made before the TPO copy of which is at page Nos. 234-238 of the paper book and before the DRP copy of which are at pages 123-128 of the paper book. In the decision rendered in the case of Swiss Reshared Services (I) (P.) Ltd. (supra) vide paragraph 23 & 24 of the order held that Acropetal Technologies Ltd., was rendering high end services in the engineering design services which cannot be compared to the low end BPO services rendered by Acropetal Technologies Ltd., and therefore this company was not comparable to the Assessee and the DRP's findings on exclusion of Acropetal is therefore upheld."

#### Software Paradigms Infotech (P.) Ltd

"16. As far Acropetal Technologies is concerned this Tribunal in the case of Swiss Re Shared Services India (P.) Ltd., (Supra) took the view that this company was giving sophisticated set of services involving higher level of skills. It was also held that this company was rendering engineering design and enterprise solution infrastructural and health care etc. Since this company was more into engineering design services, it was held to be not functionally comparable."

5.1.3.2 Respectfully following the jurisdictional ITAT, Bengaluru decisions for the same A.Y.2011-12 in the above cases, this comparable is excluded from the list of comparables.

#### 5.1.4 Exclusion of comparable ICRA Online Limited

5.1.4.1 The appellant contended that this comparable is functionally different and relied on the decision of ITAT, Bengaluru in the case of M/s Acusis Software India Pvt Ltd. for A.Y.2011-12 wherein it is held that:

"31....

(ii) ICRA Online Limited :

The company is having turnover of Rs. 15.67 Crores and has three business segments namely, Information Services, Software Services and Outsourced Services and the TPO has considered the 'Outsourced Services' segment as comparable. Further the Annual Report of the company does not provide any description as to the nature of the services contained in the segment and the outsourcing segment of the company contains KPO services. Further functionally different as the company is engaged in provision of high end KPO services. Further margin error occurred due to the unallocated depreciation amount which was not considered by the learned TPO



and relied on decision of Sitel India (P.) Ltd. (supra) at page 10 paras 5.1 to 5.4 as under:

"5.1 The TPO included ICRA Online Ltd. (Seg) (in short 'ICRA') on the ground that it is engaged in data processing and data mining and accordingly it is providing similar services (ITeS). The DRP upholds the order of the TPO, which is followed by the AO.

5.2 The Ld. counsels of the assessee submit that as per the annual report, the company has following three business segments:

- (i) Information Services,
- (ii) Software Services and
- (iii) Outsource Services

It is further stated that the TPO has considered the operations of the 'Outsourced Services' segment as comparable to the operations of the appellant. The Ld. counsels argue that the annual report of the company does not provide any description as to the nature of the services contained in the segment. However, a reference may be drawn to the annual report of ICRA Ltd., the holding company of ICRA from where it can be seen that the outsourced segment of the company relates to KPO and online software services. The Ld. counsels further submit that the ITAT in appellant's own case for AY 2010-11 has followed the Tribunal discussion in the case of Tesco Hindustan Service Centre Pvt. Ltd. v. DCIT (ITA No. 191/Bang/2015) to reject the company functionally not comparable to the appellant i.e. companies not engaged in providing ITeS (BPO Services). In this regard, reliance is placed by them on the following orders of the Tribunal :

(i) M/s Sitel Operating Corporation India Pvt. Ltd. (since amalgamated with Sitel India Pvt. Ltd.) v. ITO [ITA No. 598/Bang/2015 & ITA No. 452/Bang/2015] dated 25 April 2018 [AY 2010-11]

(ii) M/s Tesco Hindustan Service Centre Pvt. Ltd. v. DCIT [IT (TP) A No. 191/Bang/2015] dated 25 January 2017 [AY 2010-11]

(iii) Outsource Partners International v. DCIT [IT (TP) A No. 337/Bang/2015] [AY 2010-11].

5.3 On the other hand, the Ld. DR submits that ICRA is engaged in data processing and data mining and accordingly it is engaged in providing similar services (ITeS). Thus it is stated that the inclusion of the above company by the TPO/AO in the list of final comparables be confirmed.

5.4 We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

The TPO has considered the operations of the 'Outsourced Services' segment of

ICRA as comparable to the operations of the appellant. However, we find that the annual report of the company does not provide any description as to the nature of the services contained in this segment. As per page 532 of the P/B, a reference may be made to the annual report of ICRA Ltd., the holding company of ICRA from where it can be seen that the outsourced segment of the company relates to KPO and online software services. Also, page 8 of the annual report of ICRA Ltd. delineates the business of ICRA stating that the company is engaged in providing KPO and online software services. As per the description at page 532 of the P/B, the knowledge process outsourcing division provides financial and analytical services and support to clients in the area of data extraction, aggregation, electronic conversion of financial statements, validation and analysis, accounting and finance, research and analytics.

Thus, the appellant in the instant case performs routine ITeS comprising of contact/call centre services and hence is a routine BPO service provider and cannot be compared to a company providing KPO services such as ICRA.

Also, we find that the TPO has wrongly computed the margin of the company as 33.54% instead of the correct margin 22.32%, because the TPO has excluded foreign exchange income and other receipts (allocated basis revenue in each segment), whereas, the same is to be added for information service, outsource service and software service to arrive at the correct margin.

In assessee's own case for AY 2010-11, the ITAT 'A' Bench Bangalore has followed the Tribunal discussion in the case of Tesco Hindustan Service Centre Pvt. Ltd. (supra) to reject the companies functionally not comparable to the appellant i.e. companies not engaged in providing ITeS (BPO) service. In the case of Tesco Hindustan Service Centre Pvt. Ltd. (supra), ICRA has been held to be noncomparable to an ITeS service provider. Accordingly, following the decision of Tesco Hindustan Service Centre Pvt. Ltd. (supra) and the observations in the Tribunal decision in appellant's own case for AY 2010-11, we reject ICRA Online as a comparable."

Considering the decision of EMC Software and Services (India) Pvt. Ltd. discussed the Accenture Technologies Ltd. cannot be considered as comparable with assessee company in ITES. We direct the TPO to exclude the comparable for determining ALP. Similarly, **ICRA Online Limited** is directed to be excluded for determining ALP based on the decision of Tribunal in Sitel India Pvt. Ltd. (supra)."

5.1.4.2 Respectfully following the jurisdictional ITAT, Bengaluru decision for the same A.Y.2011-12 in the above case, this comparable is excluded from the list of comparables.

#### 5.1.5 Exclusion of comparable Infosys BPO Limited

5.1.5.1 The appellant contended that this comparable has High turnover, Brand



value and significant intangibles and relied on the decision of ITAT, Bengaluru in the case of M/s Amba Research (India) (P.) Ltd. vs. DCIT for A.Y.2011-12 wherein it is held that:

**"Infosys BPO**

20. As regards selection of Infosys BPO as a comparable company, the learned counsel for the assessee has contended that the said company cannot be taken as comparable because of its uncomparable size of operations. He has contended that the turnover of the said company was many times higher than that of the assessee during the year under consideration. Although the Learned Departmental Representative has contended that the size of operations does not matter as far as selection of comparables is concerned especially in the sector of IT Enabled services, it is observed that similar issue has been decided by the Hon'ble Delhi High Court in the case of CIT v. Agnity Technologies Pvt. Ltd. (219 Taxman 26) holding that huge turnover companies like Infosys and Wipro cannot be considered as comparables with smaller companies like the assessee in the present case. Respectfully following the decision of the Hon'ble Delhi High Court in the case of Agnity Technologies P. Ltd. (supra), we direct the Assessing Officer/TPO to exclude **Infosys BPO** from the list of comparables."

5.1.5.2 The appellant further relied on the decision of ITAT Bengaluru in the case of DCIT vs. M/s CGI Information Systems and Management Consultation Pvt Ltd for A.Y.2011-12 wherein it is held that:

"6.11 For the reason that DRP there in noted the comparables having segmental details which was opposed by assessee. We have perused annual reports of these comparables in detail and are of opinion that segmental informations are not available. We therefore do not find force in argument raised by Ld. CIT DR.

**Infosys BPO**

In so far as Infosys BPO is concerned, this company has huge brand value. Tribunal in case of Zyme Solutions (P.) Ltd. v. Asstt. CIT [2019] 108 taxmann.com 495 (Bang. - Trib.) vide order dated 28/06/19 wherein this comparable has been excluded by observing as under: —

'5. We have heard the rival submissions on the comparability of Infosys BPO as a comparable company. The Delhi ITAT in the case of Baxter India Pvt. Ltd. v. ACIT ITA No. 6158/Del/2016 for AY 2012-13 in the case of a company rendering ITES such as the Assessee, vide order dated 24-8-2017 Paragraph 23 held that Infosys BPO is not comparable with a company rendering ITES for the following reasons:-

"23. In so far as exclusion of Infosys BPO Ltd. is concerned, we find from the submissions made by the assessee before the Assessing



Officer/TPO/DRP is that Infosys BPO Ltd. is predominantly into areas like Insurance, Banking, Financial Services, Manufacturing and Telecom which are in the niche areas, unlike the assessee. Further it was also submitted that the Infosys BPQ Ltd. comprises brand value which will tend to influence its business operation and the pricing policy thereby directly impacting the margins earned by the Infosys BPO Ltd.. We find the submissions of the Id. counsel for the assessee before TPO/DRP that in order to maintain the brand image of Infosys BPQ Ltd. in the market, the company incurs substantial selling and marketing expenditure whereas the assessee being a contract service provider does not incur such expenses to maintain its brand has not been controverted by them. Further, Infosys BPO Ltd. being a subsidiary of Infosys has an element of brand value associated with it. This can be further confirmed by the presence of brand related expenses incurred by Infosys BPO Ltd. Further, Infosys BPO Ltd. has acquired Australian based company M/s Portland Group Pty Ltd. during financial year 2011-12. They provide sourcing and category management services in Sydney, Australia. Therefore, this company also failed the TPO's own filter of rejecting companies with peculiar circumstances. In view of the above i.e. functionally not comparable, presence of brand and extraordinary event that has taken place during the year on account of acquisition of Australian based company, we are of the considered opinion that Infosys BPO Ltd. should not be included in the list of comparables. We accordingly direct the Assessing Officer/TPO to exclude Infosys BPO Ltd. from the list of comparables for the purpose of computing the average margin."

It was also brought to our notice that the Hon'ble Delhi High Court in ITA No. 260/2018 in the appeal filed by the Revenue against the aforesaid order dismissed the appeal at the admission stage observing that rationale given by the ITAT for exclusion was correct. In view of the aforesaid decision, we direct exclusion of Infosys BPO from the list of comparable companies chosen by the TPO.

From above, it is clear that this company is functionally not comparable with captive service provider and hence deserves to be excluded. We are therefore do not find any infirmity in exclusion of these comparables for high turnover. However, we have analysed the alledged comparable to be functionally not comparable with that of assessee. Accordingly, we direct Ld. AO/TPO to exclude, Acropetal Technologies Ltd, eZest Solutions Ltd., Elnfochips Ltd, Evoke Tech Pvt.Ltd, ICRA Techno Analytics Ltd, Larsen and Toubro Infotech Ltd, Persistent Systems and Solutions Ltd., in SWD segment. And Infosys BPO Ltd., Mindtree Ltd, iGate Global Soutions Ltd., in ITES Segment.

**5.1.5.3** Respectfully following the jurisdictional ITAT, Bengaluru decisions for the same A.Y.2011-12 in the above cases, this comparable is excluded from the list of



comparables.

#### 5.1.6 Exclusion of comparable iGate Global solutions Limited

5.1.6.1 The appellant contended that this comparable has no segmental information, exceptional year due to acquisitions and relied on the decision of ITAT, Bengaluru in the case of M/s AON specialist Services Pvt Ltd for A.Y.2011-12 wherein it is held that:

*"14. As far as exclusion of iGate Global Solutions Ltd. ("iGate") is concerned, the finding of the DRP is that i- Gate is engaged in provision of varied services and no segmental breakup of the same is available in its Annual Report. Further, the company's software services segment is clubbed with its ITES segment and there is no breakup between the revenues generated from the two segments. During the year under consideration, this company had acquired majority equity interest in Patni Computer Systems Ltd. rendering it incomparable due to it failing the TPO's own filter of having peculiar economic circumstances. In addition, the company owns significant intangibles in its name, which is evident from the balance sheet of the company for the Financial Year 2010-11 which is available at page no. 276 of the paper book. We are of the view that the above reasons given by the DRP for excluding this company as a comparable company is right and does not call for any interference."*

5.1.6.2 The appellant further relied on the decision of ITAT, Bengaluru in the case of M/s CGI Information Systems and Management Consultation Services Pvt Ltd for A.Y.2011-12 wherein it is held that:

*6.7 It is observed that comparables sought to be excluded are 100 % Software Development Companies, having high turnover and therefore respectfully following aforesaid view in case of Genesys Integrating Systems India (P.) Ltd. (supra) these comparables are to be excluded on both the counts of functionally not being similar with that of assessee and also because they have a high turnover. It is submitted that subsequently this Tribunal in case of Yodlee Infotech (P.) Ltd. v. ITO IT(TP)A No. 108/Bang/2014 For assessment year 2009-10, vide order dated 12/12/14, excluded these companies following Genesys Integrating Systems India (P.) Ltd. (supra). Hon'ble Delhi High Court in case of Chriscapital (supra), Hon'ble Court was of the opinion that assessee could not challenge functional differences before the court for first time and that assessee had included one of the companies in its earlier year. In the present case facts are not similar to that of Chriscapital Investment Advisory (India) (P.) Ltd. (supra).*

*6.8 Reliance is placed on decision of this Tribunal in case of Autodesk India (P.) Ltd. (supra), where this Tribunal followed similar view to exclude identical comparables by applying turnover filter, wherein all decisions relied upon by Ld. CIT DR has been considered and dealt with.*

6.9 However, we have also analysed functional similarities/dissimilarities of these comparables with assessee having regard to annual reports placed in Index to Annual report paper book Volume I & II. Comparables like Acropetal Technologies Ltd., e-zest Solutions Ltd., E-Infichips, ICRA Techno Analytics Ltd., Larsen and Toubro Infotech Ltd., Persistant Systems and solutions Ltd., Mindtree Ltd., iGate Global Solutions Ltd., do not have segmental details available. Also, that these comparables are either having diversified functions with no segmental details or into product sales or into consultancy services. Further, where the comparables are into product sales, there is presence of huge intangibles, which is not at all the case with assessee.

6.10 We have perused view of co-ordinate bench of this Tribunal in case of Mercedes-Benz Research and Development India (P.) Ltd. (supra) in respect of Accropatel Technologies Ltd and L&T Infotech Ltd. It is observed that these comparables were sent back to Ld. TPO

6.11 For the reason that DRP there in noted the comparables having segmental details which was opposed by assessee. We have perused annual reports of these comparables in detail and are of opinion that segmental informations are not available.

5.1.6.3 Respectfully following the jurisdictional ITAT, Bengaluru decisions for the same A.Y.2011-12 in the above cases, this comparable is excluded from the list of comparables.

9. Similarly, in respect of the exclusion of a company as comparables, the Ld.CIT(A) had given the following finding:

*“5.1.7 Inclusion of comparable Datamatics Financial Services Ltd.*

*5.1.7.1 The appellant contended that the comparable Datamatics Financial Services Ltd. should be included on the basis of functional similarity and relied on the ITAT Bengaluru decision in the case of M/s e4e Business Solutions India Pvt Ltd. for A.Y.2012-13 wherein it is held that:*

*“13. Datamatics Financial Services Ltd.,- 'Datamatics'*

*13.1 This company was selected by the assessee in its TP study. The TPO, however, rejected this company on the grounds that no data is available. The DRP upheld the rejection of this company on the ground that while it is engaged in the business of registration and share transfer work and ITES, but there is no segmental information available in the Annual report*



*of this company. Further, this company also fails the export earning filter adopted by the TPO.*

*13.2 We have heard the rival contentions and perused and carefully considered the material on record. Before us, except for raising this ground and reiterating that this company, 'Datamatics' is functionally comparable to the assessee in the case on hand, no evidence was brought on record to controvert the observations and findings of the DRP. In this factual matrix of the case, we have no hesitation in upholding the decision of the TPO in rejecting this company, 'Datamatics' as a comparable to the assessee.”*

**10.** Insofar as the other issues, the revenue has not challenged the same and therefore we are not adjudicating the said issues.

**11.** We have also gone through the synopsis of arguments filed by the assessee in which the assessee had considered a through analysis of the each and every company and a detailed argument was submitted why the said companies are to be excluded for the purpose of calculating the arms length price.

**12.** The synopsis of the arguments filed by the assessee is as follows:

**“D. Assessee's submissions on Revenue's appeal..**

**(i) Acropetal Technologies Ltd. ("Acropetal"):**

*It is submitted that the exclusion of this company was sought for the reasons that it was functionally dissimilar to the Assessee, since under the engineering design segment selected by the TPO for comparability analysis, the company renders services which are in the nature of KPO, which are incomparable to the ITE services of the Assessee.*

*The CIT(A) rightly accepted the contention of the Assessee, and rightly relied on the decisions of this Hon'ble Tribunal in **DCIT v. C-Cube Solutions (P.) Ltd.** (reported in [2019] 109 [taxmann.com](http://taxmann.com) 293 (Bangalore -Trib.)), **ACIT v. AON Specialist Services Pvt. Ltd.** (reported in [2020] 116 [taxmann.com](http://taxmann.com) 368 (Bangalore - Trib.)), and **Software Paradigms Infotech (P.) Ltd. v. ACTT** (reported in [2020] 116 [taxmann.com](http://taxmann.com) 923 (Bangalore -Trib.)), wherein this*

*company was directed to be excluded, and therefore, no interference is warranted.*

*As per the Annual Report of the company for the year ending 31st March 2010, the company is engaged in provision of a variety of IT enabled services comprising of Enterprise solutions, IT Infrastructure Management Services, Cloud Services, Greenhouse Gas Management, unlike the Assessee who is a provider of routine IT enabled services. Further, the company is engaged in provision of engineering design services which are in the nature of high end IT enabled services which are in the nature of Knowledge Process Outsourcing ("KPO"), which is not comparable to the Assessee's ITE services.*

*That apart, during the year under consideration, the company announced acquisition of Line Beyond Inc., and Optech Consulting Inc., USA and acquired 100% of Line Beyond Inc. and 70% of Optech Consulting Inc on 01.04.2011. The acquisitions were a strategic move that would boost shareholder value, enable Acropetal to provide profitable solutions, strengthen its Healthcare IT Services and also enhance the wide range of IT services and solutions portfolio and expands its global presence and would augment Acropetal's presence in the US Healthcare markets with specialized healthcare products and solutions. While the acquisitions were made in the financial year 2011-12, since the company declared its intention to acquire the companies in the financial year 2010-11 under consideration, its cannot be ruled out with certainty that the proposed acquisitions did not have an effect on the margin of the company. Also, no reasonably accurate adjustments can be made to eliminate the effect if any on the margin of the company.*

*This company is consistently excluded by this Hon'ble Tribunal in the case of similarly placed service providers as that of the Assessee. Reliance in this regard is placed on the following decisions:*

- **JCIT v. Dell International Services India P. Ltd.** (reported in (2021) 133 [taxmann.com](https://taxmann.com) 532 (Bang.-Trib.));*
- **Aspect Technology Centre (India) P. Ltd. v. ITO** (reported in (2020) 118 [taxmann.com](https://taxmann.com) 398 (Bangalore-Trib.));*
- **DCIT v. C-Cube Solutions (P.) Ltd.** (reported in [2019] 109 [taxmann.com](https://taxmann.com) 293 (Bangalore - Trib.));*

- **ACIT v. AON Specialist Services Pvt. Ltd.**  
(reported in [2020] 116 [taxmann.com](http://taxmann.com) 368  
(Bangalore - Trib.));
- **Software Paradigms Infotech (P.) Ltd. v. ACIT** (reported in [2020] 116 [taxmann.com](http://taxmann.com) 923  
(Bangalore - Trib.))
- **Swiss Re Shared Services (India) (P.) Ltd. v. ACIT** (reported in [2016] 76 [taxmann.com](http://taxmann.com) 22  
(Bangalore - Trib.));
- **e4e Business Solutions India P. Ltd v. DCIT** [Order dated 13.01.2017 in IT(TP)A  
No.1397/Bang/2016]
- **Finastra Software Solutions (India) (P.) Ltd. v. Assistant Commissioner of Income-tax**  
(reported in [2018] 93 [taxmann.com](http://taxmann.com) 460 (Bangalore-  
Trib)).

In view of the above, the decision of the CIT(A) in this regard ought to be affirmed by this Hon'ble Tribunal and the exclusion ought to be upheld.

**(ii) Accentia Technologies Ltd (Accentia):**

The Assessee sought exclusion of Accentia on the grounds that (i) the company is functionally different; (ii) while it renders varied services, segmental details are not available; (iii) revenue recognition is different; (iv) the company has faced inorganic growth; and (iv) the company owns significant intangible assets.

The CIT(A) rightly accepted the contention of the Assessee, and rightly relied on the decisions of this Hon'ble Tribunal in **Amba Research (India) (P.) Ltd. v. DCIT** (reported in [2016] 67 [taxmann.com](http://taxmann.com) 342 (Bangalore - Trib.)); **Finastra** (supra), wherein this company was directed to be excluded, and therefore, no interference is warranted.

Pertinently, while this company was excluded on account of (i) inorganic growth; and (ii) functional dissimilarity and lack of segmental details, the Revenue has not challenged the exclusion on account of inorganic growth. Therefore, the company ought to remain excluded.

In any event, the said company ought to remain excluded for the following reasons:

Accentia is engaged in providing high end services in the nature of Knowledge Process Outsourcing ('KPO') which is evident from its annual report. Further, the said company not only does medical transcriptions, but has also ventured into healthcare receivables cycle management and high-end consultancy to start-ups requiring field experts.



As can be seen from the annual report, coding income is contributing 15% of the total income which activities are akin to software development activity while the assessee is a mere provider of IT enabled services. The company has invested huge sums in the development of EMR software. Segmental details of its various activities are unavailable. The company is also involved in product development. The company further owns significant intangibles.

Accentia has continued to invest and acquire new companies for FY 2010-11. The company has invested in Tangent Corporation, a software development company having expertise in development of software related EMR and SaaS. Accentia also invested in Alpine Technologies Inc. through its subsidiaries during the year.

This company is consistently excluded by this Hon'ble Tribunal in the case of similarly placed service providers as that of the Assessee. Reliance in this regard is placed on the following decisions:

- **Aspect Technology Centre (India) P. Ltd. v. ITO** (reported in (2020) 118 [taxmannn.com](http://taxmannn.com) 398 (Bangalore-Trib.));
- **Assessee's own case for the assessment year 2010-11** (Order dated 09.03.2016 passed in IT(TP)A No. 286/Bang/2015);
- **Finastra Software Solutions (India) (P.) Ltd. v. ACIT** (reported in [2018] 93 [taxmann.com](http://taxmann.com) 460 (Bangalore - Trib.));
- **Amba Research Ltd. v. DCIT** (reported in [2016] 67 [taxmannn.com](http://taxmannn.com) 342 (Bangalore - Trib.));
- **Swiss Re Shared Services (India) (P.) Ltd. v. ACIT** (reported in [2016] 76 [taxmann.com](http://taxmann.com) 22 (Bangalore - Trib.));
- **Acusis Software India Pvt. Ltd. v. ITO** (Order dated 06.09.2019 passed in IT(TP)A No. 169/Bang/2016 for the assessment year 2011-12)

In view of the above, the decision of the CIT(A) ought to be affirmed by this Hon'ble Tribunal and Accentia ought to remain excluded from the final list of comparables.

(iii) **ICRA Online Ltd ("ICRA"):**

The Assessee sought exclusion of ICRA from the final list of comparables on the ground that the company is not comparable to the Assessee. The CIT(A) rightly accepted the contention of the Assessee, and rightly relied on the decision of this Hon'ble Tribunal in **Acusis Software India (P.) Ltd. v. ITO** (reported in

[2020] 115 [taxmann.com](http://taxmann.com) 479 (Bangalore -Trib.) wherein this company was directed to be excluded, and therefore, no interference is warranted.

ICRA ought to remain excluded from the final list of comparables as it is not comparable to the Assessee. ICRA has three business segments - Information Services, Software Services and Outsourced Services. It is submitted that the TPO has considered the outsourced service segment as a comparable to the Assessee. While the annual report of ICRA does not provide for any description as to the nature of the services in the said segment, a reading of the annual report leads to the reasonable inference that KPO services are rendered under the said segment, which is not comparable to the services rendered by the Assessee.

This company is consistently excluded by this Hon'ble Tribunal in the case of similarly placed service providers as that of the Assessee. Reliance in this regard is placed on the following decisions:

- **Aspect Technology Centre (India) P. Ltd. v. ITO** (reported in [2020] 118 [taxmannn.com](http://taxmannn.com) 398 (Bangalore-Trib.)):
- **Acusis Software India Pvt. Ltd. v. ITO** (Order dated 06.09.2019 passed in 1T(TP)A No. 169/Bang/2016 for the assessment year 2011-12)

In view of the above, the order passed by the CIT(A) ought to be affirmed in this regard and ICRA ought to remain excluded from the final list of comparables.

(iv) Infosys BPO Ltd. ("Infosys BPO"):

The Assessee sought exclusion of this company for the reasons that it was a market leader, having a huge brand value and having turnover far in excess of the Assessee. The CIT(A) rightly accepted the contention of the Assessee, and rightly relied on the decision of this Hon'ble Tribunal in **DCIT v. CGI Information Systems & Management Consultation (P.) Ltd.** (reported in [2020] 115 [taxmann.com](http://taxmann.com) 214 (Bangalore - Trib.)) wherein this company was directed to be excluded. and therefore, no interference is warranted.

Pertinently, in the aforesaid decisions. this company was excluded on account of it being functionally not comparable to an ITE service provider, on account of high turnover, on account of high brand value and on account of existence of extraordinary event of acquisitions. While so, the Revenue has



challenged the exclusion of the company only on account of high turnover. Since there is no dispute on the other counts on which the company was excluded, this ground of the Revenue ought to be rejected, and the company ought to remain excluded from the final list of comparables.

In any event, the company ought to remain excluded for the following reasons:

The company is engaged in providing high-end integrated services by assisting its clients in improving their competitive positioning. The company is a market leader and an established player in the BPO industry. The brand value maintained by the company, which enables it to command the market and earn better margin renders it incomparable to the Assessee which is a captive service provider. Also, during the financial year 2010-11 under consideration, the company acquired McCamish Systems LLC, which constitutes a peculiar economic circumstance. Since no reasonably accurate adjustments can be made to eliminate the material effects thereof on the margin of the company the company ought to remain excluded from the final list of comparables. Moreover, the turnover of this company of Rs. 1129 crores is far in excess of the Assessee's turnover of Rs. 61 crores.

This company is consistently excluded in the case of similarly placed service providers as that of the Assessee. Reliance in this regard is placed on the following decisions:

- **JCIT v. Dell International Services India P. Ltd.** (reported in (2021) 133 [taxmann.com](http://taxmann.com) 532 (Bang.-Trib.));
- **PCIT v. H & S Software Development and Knowledge Management Centre Pvt. Ltd.** (Order dated 03.01.2018 passed by the Hon'ble Delhi High Court in ITA No. 912/2017);
- **Assessee's own case for the assessment years 2008-09 and 2010-11** (Order dated 18.03.2016 passed by this Hon'ble Tribunal in 1T(TP)A No. 622/Bang/2013 and Order dated 09.03.2016 passed by this Hon'ble Tribunal in IT(TP)A No. 268/Bang/2015, respectively);
- **Zyme Solutions (P.) Ltd. v. ACTT** (reported in [2019] 108 [taxmann.com](http://taxmann.com) 495 (Bangalore - Trib.));
- **DCIT v. CGI Information Systems & Management Consultation (P.) Ltd.** (reported in [2020] 115 [taxmann.com](http://taxmann.com) 214 (Bangalore -Trib.)).

*in view of the above, the order passed by the CIT(A) ought to be affirmed in this regard and Infosys ought to remain excluded from the final list of comparables.*

**(v) Jeevan Scientific Technology Ltd. ("Jeevan"):**

*The exclusion of this company was sought on the grounds that (i) the TPO had selected the BPO and ERP segments as comparable to the Assessee, however, the ERP segment is not comparable to the Assessee; (ii) the turnover of the BPO segment is less than Rs. 1 crore and thus the company fails the TPO's filter; (iii) the company fails the export earning filter; (iv) the margins of the company fluctuate widely.*

*The CIT(A) rightly accepted the contention of the Assessee. and rightly relied on the decisions of this Honble Tribunal in **C-Cube** (supra) and **Finastra** (supra), wherein this company was directed to be excluded, and therefore, no interference is warranted.*

*Pertinently, in the aforesaid decisions, this company was excluded on account of (i) the ERP segment being incomparable to ITE service providers; (ii) the turnover of the BPO segment is less than Rs. 1 crore and thus the company fails the TPO's filter; (iii) the company fails the export earning filter; (iv) the margins of the company fluctuate widely. While so, the Revenue has challenged the exclusion of the company only on account of fluctuation in margin. Since there is no dispute on the other counts on which the company was excluded, this ground of the Revenue ought to be rejected, and the company ought to remain excluded from the final list of comparables.*

*In any event, the company ought to remain excluded for the following reasons:*

*It is submitted that this company is functionally not comparable to the Assessee for the reason that it is engaged in rendering diverse functions and the same are reported under one segment without segmental details regarding the same being made available. In any event, it is submitted that the ERP segment of the company is not comparable to the ITeS segment of the Assessee. The company suffers from huge fluctuations which indicate that certain peculiar circumstances influencing the profit margin of the company exist, for which appropriate adjustments cannot be made to balance the effect. It is submitted that the ERP implementation services are not in the nature of IT enabled services which were notified by CBDT vide Notification No. SO 890(E) dated 26.09.2000. If the BPO segment is considered. the*



company fails to satisfy the turnover filter from the relevant segment having revenue of Rs. 79 lakhs only which is less than Rs. 1 crore. Further, the Assessee submits that the foreign exchange earnings of Rs. 79.21 lakhs is only from the BPO operations and there is no foreign exchange earning in respect of the ERP segment, and therefore, the company fails the export earnings filter.

This company is consistently excluded in the case of similarly placed service providers as that of the Assessee. Reliance in this regard is placed on the following decisions:

- **JCIT v. Dell International Services India P. Ltd.** (reported in (2021) 133 [taxmann.com](https://taxmann.com) 532 (Bang.-Trib.));
- **Aspect Technology Centre (India) P. Ltd. v. ITO** (reported in (2020) 118 [taxmann.com](https://taxmann.com) 398 (Bangalore-Trib.));
- **DCIT v. C-Cube Solutions P. Ltd.** (reported in [2019] 109 [taxmann.com](https://taxmann.com) 293 (Bangalore - Trib.));
- **Finastra Software Solutions (India) (P.) Ltd. v. ACIT** (reported in 12018193 [taxmann.com](https://taxmann.com) 460 (Bangalore - Trib.));
- **ACIT v. AON Specialist Services Pvt. Ltd.** (reported in [2020] 116 [taxmann.com](https://taxmann.com) 368 (Bangalore - Trib.)).

In view of the above, the order passed by the CIT(A) ought to be affirmed and the exclusion of Jeevan ought to be upheld.

**(vi) iGate Global Solutions Ltd. ("iGate"):**

The exclusion of this company was sought on the grounds (i) that the company is functionally dissimilar and segmental details are unavailable; (ii) that there exists peculiar economic circumstance of acquisition; (iii) the company owns significant intangibles. The CIT(A) rightly accepted the contention of the Assessee, and rightly relied on the decisions of this Hon'ble Tribunal in **AON** (supra) and **CGI** (supra) wherein this company was directed to be excluded, and therefore, no interference is warranted.

Pertinently, in the aforesaid decisions, this company was excluded on the grounds that (i) that the company is functionally dissimilar and segmental details are unavailable; (ii) that there exists peculiar economic circumstance of acquisition; (iii) the company owns significant intangibles; and (iv) the company's turnover is very high. While so, the Revenue has challenged the exclusion of the company only on account of lack of segmental details. Since there is no

*dispute on the other counts on which the company was excluded, this ground of the Revenue ought to be rejected, and the company ought to remain excluded from the final list of comparables.*

*In any event, the company ought to remain excluded for the following reasons:*

*The company is functionally dissimilar as it is engaged in rendering diverse functions which are reported under one segment without segmental details regarding the same being made available. The company's software services segment is clubbed with its ITeS segment and there is no breakup between the revenues generated from the two segments. The company renders these services both under the onsite and offshore model.*

*Further, during the year under consideration, the company has acquired majority equity interest in Patni Computer Systems Ltd. This acquisition constitutes a peculiar economic circumstance, which is bound to have its effect on the company's margin. In the absence of any reasonably accurate adjustments capable of being made, which would eliminate the effects of the acquisition on the margin of the company, the company cannot be selected as a comparable. In addition, the company owns significant intangibles in its name, which is evident from the balance sheet of the company for the Financial Year 2010-11.*

*Moreover, the turnover of the company is Rs. 1184 crores which is far in excess of the Assessee's turnover of 61 crores.*

*This company is consistently excluded in the case of similarly placed service providers as that of the Assessee. Reliance in this regard is placed on the following decisions:*

- **Aspect Technology Centre (India) P. Ltd. v. ITO** (reported in (2020) 118 [taxmannn.com](http://taxmannn.com) 398 (Bangalore-Trib.));*
- **DCIT v. CGI Information Systems & Management Consultation (P.) Ltd.** (reported in [2020] 115 [taxmann.com](http://taxmann.com) 214 (Bangalore - Trib.));*
- **ACIT v. AON Specialist Services Pvt. Ltd.** (reported in [2020] 116 [taxmann.com](http://taxmann.com) 368 (Bangalore - Trib.)).*

*Therefore the company ought to remain excluded.”*



**13.** We have also given our careful consideration to the facts and circumstances in which the Ld.CIT(A) had accepted the arguments advanced by the assessee that the companies ought to be excluded for the purpose of determining the arms length price. We have also perused the chart filed by the assessee and in respect of Acropetal Technologies Ltd., we found that the said company is functionally different since the company rendered services in the nature of high end ITeS / KPO services whereas the assessee is doing only Information Technology enabled Services. Further, the said company is functionally dissimilar to the assessee company since the engineering design segment selected by the TPO is in the nature of KPO. Further, the company also renders services comprising of enterprise solutions, IT infrastructure management services, cloud services, green house gas management etc. whereas the assessee is doing only the Information Technology enabled Services (ITeS) and therefore the said company cannot be compared to the assessee's company. We have also perused the annual report of the Acropetal Technologies Ltd. and in the annual report, the said company had given the segment-wise revenues and also it was mentioned that the company had acquired two companies in USA and the key services are engineering design services, healthcare, enterprise solutions and IT infrastructure solutions. Therefore the activities done by the said company cannot be compared with the assessee company which was also accepted by the orders of this Tribunal and on that basis only, the Ld.CIT(A) had excluded the said company for the purpose of computing the arms length price. We, therefore, accept the finding of the Ld.CIT(A) in excluding Acropetal Technologies Ltd. as not a comparable.

**14.** Insofar as the Accentia Technologies Ltd., the assessee contended that the said company is functionally different and their segment details were not available and the revenue recognition is different and the company has faced inorganic growth.

**15.** The assessee submitted that the said company is also providing high end services in the nature of KPO and also entered into healthcare receivables cycle management and high end consultancy to start-ups.

**16.** We have also perused the annual report in respect of Accentia Technologies Ltd. and in the annual report, it was clearly mentioned that the company is developing their own EMR software rather than depending on third party offerings and propose to market the same all over US. Further, in the annual report, it was mentioned that the company realised that the adoption of EMR based clinical practice is opening up avenues for an integrated end to end Software as a Service (SaaS) model of service delivery. The annual report also says that the company had invested large amount in the development of EMR software and SaaS model and marketing of the same in the US. Therefore apart from the medical transcriptions, the said company is doing other development of software which will be very useful to the doctors and therefore the said company could not be taken as a comparable to the assessee company for the purpose of arriving the arms length price. The Ld.CIT(A) considered the said facts and also followed the earlier orders of this Tribunal and on that basis, the Ld.CIT(A) has rightly excluded the company from the comparables.

**17.** The revenue had challenged the exclusion of the company ICRA online Ltd. We have considered the submissions made by the assessee that the said company is rendering services in three segments and in fact, the exact nature of the services rendered by the said company are not available. Further, as seen from the three segments, i.e. the information services, software services and outsourced services, it seems that the said company is in the service of KPO and therefore the said company is functionally different.

**18.** We have also perused the annual report of the said company in which it was clearly mentioned that there are three lines of business carried on by the said company viz., outsourced services, information services and



software products and services. In the said annual report, it is mentioned that the company continues to focus on developing and offering new products in the area of health management and on broadening the range of offerings across other asset classes. Further, it is mentioned that capacity building and efficiency enhancement measures computed to be undertaken across all the lines of businesses to improve resource productivity and profitability.

**19.** From the said details available in the audit report of the said company, we came to the conclusion that the said company is functionally different and having three segments. Therefore the said services offered by the said company is in the nature of KPO services which could not be compared to the services rendered by the assessee company. The Ld.CIT(A) considered the said facts and also the findings given by the Tribunal in respect of the said company and correctly came to the conclusion that ICRA Technologies Ltd. is to be excluded from the list of comparables taken by the Ld.TPO. we do not find any error in the said finding given by the Ld.CIT(A) and therefore we are accepting the deletion of the said comparable by the Ld.CIT(A) as a correct one.

**20.** The next company which was deleted by the Ld.CIT(A) for the purpose of taking the same as comparables is M/s. Infosys BPO Ltd.

**21.** We have considered the submission made by the assessee that the said company is having a high brand value and they are market leader and therefore the said company could not be taken as a comparable. We also consider the submission made by the assessee that the said company is functionally dissimilar and it has huge brand value and the said company has acquired McCamish Systems LLC and their turnover is Rs. 1129 crores.

**22.** We have considered the above said arguments and the Ld.CIT(A) had considered all the reasons for excluding the said company including the turnover. The revenue had challenged the said finding of the Ld.CIT(A) on

the ground that the exclusion based on the huge turnover is not correct and insofar as the other reasons for excluding the said company, the revenue had not raised any pleas.

**23.** We have also gone through the audit report of the said company and also the name of the company itself indicates that the said company is having brand value and they are supposed to be the market leader. The revenue had also not disputed the acquisition made by the assessee and the functional dissimilarity between the assessee and the company.

**24.** In such circumstances, we are of the view that even though, there are several reasons for excluding the said company from the comparables, the revenue's grievance that the company should not be excluded based on the huge turnover is not correct. The other reasons for excluding the said company were not disputed by the revenue and therefore on the other reasons, the said company could be excluded from the comparables. We, therefore, find that the order of the Ld.CIT(A) is in order and requires no interference insofar as the exclusion of M/s. Infosys BPO Ltd. is concerned.

**25.** The next company which was deleted by the Ld.CIT(A) for the purpose of taking the same as comparables is M/s. Jeevan Scientific Technology Ltd. We have considered the submission made by the assessee that the said company is also functionally different since they derive revenue from BPO operations, ERP projects implementation, corporate and student training program, income from study centres and HR staffing services. The assessee further submitted that the company's segment details were not available and also the TPO had considered the BPO operations and the ERP projects implementation segments as comparables when the ERP segment is not at all comparable to the assessee. We have also considered the other contention that the company fails the export earning filter and the margins of the BPO also widely varies.



**26.** We have considered the said arguments and also gone through the annual report of the said company and from the said report, it is clear that the company is a functionally different company and their margins are fluctuated very widely and they also fail in the export earning filter. Further, the inclusion of the said company based on the ERP segment is also not correct which could not be taken as a comparable to the company. By considering all the details and also the functions performed by the said company, the Ld.CIT(A) had deleted the said company from the comparables.

**27.** In the present appeal, the revenue had challenged the said finding only on the ground that the fluctuation in margin could not be a reason to exclude the said company. We find that the other details available in the audit report as well as in the orders of the Tribunal, the said company is liable for exclusion not only based on the wide fluctuation profit margin but also on different reasons which includes the functional differentiation and the failure in the turnover filter and also failure in the export earning filter. The entire facts were considered by the Ld.CIT(A) and the said company was excluded on various factors. In such circumstances, the order of the Ld.CIT(A) in excluding the said company is in order.

**28.** The next company which was deleted by the Ld.CIT(A) for the purpose of taking the same as comparables is M/s. iGate Global Solutions Ltd.

**29.** We have considered the submission made by the assessee that the said company is functionally different since they are engaged in development of software and ITeS. Further, the assessee submitted that the said company had acquired major shares in Patni Computer Systems Ltd. and therefore there would be a peculiar economic circumstances when compared with the assessee company. We have also considered the fact that the company owns significant intangible assets. We have also gone through the annual report of the said company in which the annual turnover of the said company is Rs. 1184 crores which is very high when compared with the

assessee company. Therefore, considering the entire facts, the Ld.CIT(A) had excluded the said company. The revenue had contended that the said company could not be excluded only on account of lack of segmental details. It shows that the revenue had accepted the other reasons on which the company was excluded. When the Ld.CIT(A) had considered the said facts and the audit report of the said company also exhibits the said reasons and the several orders of this Tribunal had excluded the said company as comparables in respect of the similarly placed assessees, we do not find any reason to take a contrary view. We, therefore, accept the order of the Ld.CIT(A) in which the company was excluded as comparables.

**30.** In view of the above said reasons and also in view of the materials placed before us, we came to the conclusion that the order of the Ld.CIT(A) in excluding the above said companies from the list of comparables is in order and does not require any interference.

**31.** We have also perused the judgment relied on by the assessee cited supra in which the Hon'ble Bombay High Court had held as follows:

*“(c) By the impugned order, the Tribunal allowed the Respondent-Assessee's appeal. It held that merely because an Assessee has included M/s. Indowind Energy Ltd. and B. F. Utilities Ltd. in its list of comparables to determine the ALP would not by itself estop a party from establishing that these companies are not comparable. The impugned order found that the two comparables viz: M/s. Indowind Energy Ltd. and B. F. Utilities Ltd., were engaged in completely different line of business i.e. generation of wind energy while the Respondent-Assessee is engaged in generation of solar energy. Thus, not functionally comparable. In the above view, the impugned order on the basis of Function, Assets & Risk (FAR) analysis excluded M/s. Indowind Energy Ltd. and B. F. Utilities Ltd. from the list of final comparables to determine the ALP.*

*(d) We find that the impugned order of the Tribunal holding that a party is not barred in law from withdrawing from its list of comparables, a company, if the same is found to have been included on account of mistake as on facts, it is not comparable. The Transfer Pricing Mechanism requires*

*comparability analysis to be done between like companies and controlled and un- controlled transactions. This comparison has to be done between like companies and requires carrying out of FAR analysis to find the same. Moreover, the Assessee's submission in arriving at the ALP is not final. It is for the TPO to examine and find out the companies listed as comparables which are, in fact comparable. The impugned order has on FAR analysis found that M/s. Indowind Energy Ltd. and B. F. Utilities Ltd. are not comparable. They are in a different area i.e. wind energy while the Respondent-Assessee is in the field of solar energy."*

The above said finding of the Hon'ble Bombay High Court also supports the view taken by us.

**32.** In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 03<sup>rd</sup> June, 2025.

Sd/-  
(WASEEM AHMED)  
Accountant Member

Sd/-  
(SOUNDARARAJAN K.)  
Judicial Member

Bangalore,  
Dated, the 03<sup>rd</sup> June, 2025.  
/MS /

Copy to:

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

By order

Assistant Registrar,  
ITAT, Bangalore