

आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI R.S.SYAL, VP AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 133/PUN/2021

निर्धारण वर्ष / Assessment Year : 2016-17

Credence Resource Management Private Limited.  
Plot No.3/1, E Park, Second Floor, South Tower,  
MIDC, Kharadi, Pune-411 014  
Maharashtra.  
PAN : AADCI3240E

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax  
Circle-1(1), Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Ajit Kumar Jain &  
Shri Siddesh Chaugule

Revenue by : Shri Mahadevan A M Krishnan

सुनवाई की तारीख / Date of Hearing : 14.06.2021

घोषणा की तारीख / Date of Pronouncement : 18.06.2021

**आदेश / ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM:**

This appeal preferred by the assessee emanates from the directions of the Ld. Dispute Resolution Panel (DRP) dated 27.11.2020 passed u/s.144C(5) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for the assessment year 2016-17 as per the following grounds of appeal on record :

*“1. On the facts and circumstances of the case and in law, the Learned AO/TPO and the Hon'ble DRP erred making / confirming total addition of INR 42,152,857 under section 92CA(3) of the Income-tax Act,1961('the Act') in respect of Information Technology Enabled Services ('ITes') provided by the Assessee to its Associated Enterprise ('AE').*

*2. On the facts and circumstances of the case and in law, the Learned AO/TPO and Hon'ble DRP erred in disregarding benchmarking analysis and comparable companies selected by the Assessee based on the contemporaneous data in the transfer pricing study report maintained as per Section 92D of the Act read with Rule 10D of the Income-tax Rules, 1962 (the Rules').*

*3. On the facts and circumstances of the case and in law, the directions issued by the Hon'ble DRP is bad in law as it is issued in violation of the provisions of section 144C of the Act, and accordingly the DRP directions and consequential final assessment order is liable to be quashed.*

*4. On the facts and circumstances of the case and in law, the directions issued by the Hon'ble DRP have:*

- 1. Erred in incorrectly rejecting functionally comparable companies selected by the Appellant.*
- 2. Erred in applying modified and additional filters without providing cogent reasons and arrived at a fresh set of companies as comparable to the Appellant.*
- 3. Erred in cherry picking functionally non comparable companies.*
- 4. Erred in selecting comparable companies earning high margins and rejecting low margin comparable companies.*
- 5. Erred in not considering Informed Technologies India Limited and Allsec Technologies Limited as part of comparable set.*
- 6. Erred in not allowing economic adjustments like Risk, R & D, marketing adjustment in accordance with the provisions of Rule 10B of the Rules to account for difference between the Assessee and comparable companies.*
- 7. Erred in incorrectly computing operating margin of comparable companies.*

*The appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal at any time before or at the time of hearing of the appeal, so as to enable the Ld. AO to decide this appeal according to law.”*

2. The Ld. Counsel for the assessee submitted that this is a stay granted matter and the terms mentioned in the stay order of the Tribunal has been complied with by the assessee. Referring to the grounds of appeal, the Ld.

Counsel submitted that there are grounds on merits as well as legal grounds. It was further submitted that if the assessee succeeds in the legal grounds then he would not press the grounds on merits.

3. That in the legal grounds, the assessee has challenged the directions issued by the Ld. DRP as bad in law as it was issued in violation of the provision of Section 144C of the Act and accordingly, the assessee contends, the consequential final assessment order is also liable to be quashed. Referring to Page 73 of the appeal memo, the Ld. Counsel for the assessee submitted that in respect of two comparable companies i.e. **(i) Insync Analytics (India) Private Limited** (ii) **Manipal Digital Systems Private Limited**, the findings of the Ld. DRP at Para 4.2 was as follows :

*“4.2 The TPO is directed to verify the contentions of the assessee and compute the operating margins of Insync Analytics (India) Private Limited and Manipal Digital Systems Private Limited as per law. For statistical purposes, this objection shall be treated as partly allowed.”*

4. The Ld. Counsel for the assessee also submitted that Section 144C(8) of the Act specifically prohibits setting aside any proposed variation or issue any direction for further enquiry to the AO/TPO. This view was fortified by the decision of the Pune Bench of the Tribunal in the case of **M/s. Capstone Securities Analysis Pvt. Ltd. Vs. DCIT, Circle 1(1), Pune in ITA No.251/PUN/2017 for the assessment year 2012-13** dated 04.09.2019 vide its Para Nos. 5 & 6 of the order. Therefore, the contentions of the assessee was that the Ld. DRP has violated the provisions of Section 144C(8) of the Act and the consequential final assessment order needs to be quashed.

5. Thereafter, on analyzing the entire findings of the Ld. DRP, we observe that such directions of the Ld. DRP as contended by the assessee pertains to

only the above referred two comparable companies i.e. **(i) Insync Analytics (India) Private Limited (ii) Manipal Digital Systems Private Limited**. But in respect of other directions of the Ld. DRP that still stands valid and had to be followed. The point of the assessee asking for quashing the entire final assessment order just because in respect of the two comparable companies, the directions of the Ld. DRP were not in accordance with Section 144C(8) of the Act, would not render the other findings as invalid or contrary to law and therefore, we observe that in this background, **the prayer of the assessee on this legal grounds cannot be accepted and hence, dismissed**. Thereafter, the assessee on merits submitted that he prayed for exclusion of four comparable companies viz. **A. Manipal Digital Systems Pvt. Ltd. B. CES Ltd. C. MPS Limited D. Domex E-Data Pvt. Ltd.** which have been selected by the TPO and also prayed for inclusion of two companies Viz. **E. e4e Healthcare Business Services Pvt. Ltd. F. Informed Technologies India Ltd.** in the final set of comparables as selected by the assessee.

6. The Ld. Counsel for the assessee while opening his argument took us through the scope of activities of the assessee company at Page No.231 of the paper book at Para 5.1.1 onwards. He also brought to notice various agreements under which, the services were provided at Page No.511 of the paper book. Further at Page No.543 of the paper book, the detailed written submissions regarding scope of the activities of the assessee and various submissions as placed before the Ld. DRP were also filed before us.

7. The assessee Credence India Provides Information Technology enabled Services (ITes) to Credence Resource Management LLC, USA (unit USA) based on the instructions or specification of the AE. The assessee operates as

a call center and is primarily engaged in debt collection for the Telecommunication Industry and Healthcare Industry.

### **EXCLUSION OF COMPARABLE COMPANIES**

#### **A. Manipal Digital Systems Private Limited:-**

8. The assessee submits that the Manipal Digital Systems Private Limited is functionally different from the assessee which is involved in provision of ITes services. As per the annual report of the company, the activity undertaken by the company is in the nature of pre-press activities which is not comparable to the assessee. That further in the website of the company, it is engaged in the diversified set of activities which involves graphic solutions, packaging brand management, digital publishing and digital content solutions. Therefore, the assessee submits that this company should be rejected from the final set of comparables companies.

9. The TPO was of the opinion that in this company i.e. Manipal Digital Systems Private Limited, 90% of the revenue is earned from ITes which is similar to that of the assessee company. The TPO further observed that most of the information provided by the assessee was from website and it cannot be said reliable source of information as any company while projecting itself in public domain tries to shows its diverse functioning and range of products so as to create a brand image of itself. With these observations, the contention of the assessee was rejected and the company was taken as comparable company.

10. That before the Ld. DRP, objections have been raised by the assessee which are at running Page No.34 of the appeal memo and therein, apart from

reiterating the submissions made before the TPO, the assessee has stated that as per the online advertising laws and guidelines provided by the Advertising Standard Council of India, advertisements are based on principle of truthfulness and honesty of representation and there cannot be any misleading advertisement. That further, since the audited financial statements do not provide detailed description of operations/products in which the company deals, the website can be referred to for the analysis of functions performed by the company. The Ld. DRP vide Para (c) of Page No.67 to 70 of its order and as per reasoning therein, had upheld the findings of the TPO and included Manipal Digital Systems Private Limited in the final set of comparables companies. That again the prime observation of the Ld. DRP in this regard was that more than 90% of the total revenue of the operation of the company comes from ITes.

11. At the time of hearing, the Ld. Counsel for the assessee took us through the annual report of the company at Volume -II, Page 1279 onwards, Page 1302 having notes of accounts. The Ld. Counsel vehemently submitted that on perusal of the annual report, notes of accounts, nothing can be stated whether at all this company i.e. Manipal Digital Systems Private Limited is engaged in the business of call center or not. The realm of ITes involves various activities and on general principle the Revenue cannot say that since majority of the earning of the said company comes from ITes, it is comparable company with that of the assessee company.

12. Placing strong reliance on the decision of the Hon'ble Delhi High Court in the case of **Rampgreen Solutions Pvt. Ltd. Vs. CIT, ITA No.102/2015 dated 10.08.2015** copy of which is placed before us, the Ld. Counsel brought to our notice at Para 31 wherein the Hon'ble Delhi High Court observed that

the Tribunal had held that once a service falls under the category of ITes then there is no sub-classification of segment. Thus, according to the Tribunal, no differentiation could be made between the entities rendering ITes. The Hon'ble Delhi High Court rejecting such view of the Tribunal had held that such a view, if upheld, would be contrary to the fundamental rationale of determining ALP by comparing controlled transactions/entities with similar uncontrolled transactions/entities. ITes encompasses a wide spectrum of services that use Information Technology based delivery. Such service could include rendering highly technical services by qualified technical personnel involving advanced skills and knowledge, such as engineering, design and support. While, on the other end of the spectrum ITes would also include voice based call centers that render routine customer support for their clients. The relevant portion of the judgment is extracted as follows for the sake of completeness:

*“.....Clearly, characteristics of the service rendered would be dissimilar. Further, both service providers cannot be considered to be functionally similar. Their business environment would be entirely different, the demand and supply for the services would be different, the assets and capital employed would differ, the competence required to operate the two services would be different. Each of the aforesaid factors would have a material bearing on the profitability of the two entities. Treating the said entities to be comparables only for the reason that they use Information Technology for the delivery of their services, would, in our opinion, be erroneous.*

*32. It has been pointed out that whilst the Tribunal in Willis Processing Services (India) Pvt. Ltd. v. DCIT (supra) held that no distinction could be made between KPO and BPO service providers, however, a contrary view had been taken by several benches of the Tribunal in other cases. In Capital IQ Information System India (P.) Ltd. v. Dy. CIT, (IT) [2013] 32 taxmann.com 21 and Lloyds TSB Global Services Pvt. Ltd. v. DCIT, (ITA No. 5928/Mum/2012 dated 21th November 2012), the Hyderabad and Mumbai Bench of the Tribunal respectively accepted the view that a BPO service provider could not be compared with a KPO service provider.*

*33. The Special Bench of the Tribunal in Maersk Global Centers (India) Pvt. Ltd. (supra) struck a different cord. The Special Bench of the Tribunal held that even though there appears to be a difference between BPO and KPO Services, the line of difference is very thin. The Tribunal was of the view that there could be a significant overlap in their activities and it may be difficult to classify services strictly as falling under the category*

of either a BPO or a KPO. The Tribunal also observed that one of the key success factors of the BPO Industry is its ability to move up the value chain through KPO service offering. For the aforesaid reasons, the Special Bench of the Tribunal held that ITeS Services could not be bifurcated as BPO and KPO Services for the purpose of comparability analysis in the first instance. The Tribunal proceeded to hold that a relatively equal degree of comparability can be achieved by selecting potential comparables on a broad functional analysis at ITeS level and that the comparables so selected could be put to further test by comparing specific functions performed in the international transactions with uncontrolled transactions to attain relatively equal degree of comparability.

34. We have reservations as to the Tribunal's aforesaid view in *Maersk Global Centers (India) Pvt. Ltd.* (supra). As indicated above, the expression 'BPO' and 'KPO' are, plainly, understood in the sense that whereas, BPO does not necessarily involve advanced skills and knowledge; KPO, on the other hand, would involve employment of advanced skills and knowledge for providing services. Thus, the expression 'KPO' in common parlance is used to indicate an ITeS provider providing a completely different nature of service than any other BPO service provider. A KPO service provider would also be functionally different from other BPO service providers, inasmuch as the responsibilities undertaken, the activities performed, the quality of resources employed would be materially different. In the circumstances, we are unable to agree that broadly ITeS sector can be used for selecting comparables without making a conscious selection as to the quality and nature of the content of services. Rule 10B(2)(a) of the Income Tax Rules, 1962 mandates that the comparability of controlled and uncontrolled transactions be judged with reference to service/product characteristics. This factor cannot be undermined by using a broad classification of ITeS which takes within its fold various types of services with completely different content and value. Thus, where the tested party is not a KPO service provider, an entity rendering KPO services cannot be considered as a comparable for the purposes of Transfer Pricing analysis. The perception that a BPO service provider may have the ability to move up the value chain by offering KPO services cannot be a ground for assessing the transactions relating to services rendered by the BPO service provider by benchmarking it with the transactions of KPO services providers. The object is to ascertain the ALP of the service rendered and not of a service (higher in value chain) that may possibly be rendered subsequently.

35. As pointed out by the Special Bench of the Tribunal in *Maersk Global Centers (India) Pvt. Ltd.* (supra), there may be cases where an entity may be rendering a mix of services some of which may be functionally comparable to a KPO while other services may not. In such cases a classification of BPO and KPO may not be feasible. Clearly, no straitjacket formula can be applied. In cases where the categorization of services rendered cannot be defined with certainty, it would be apposite to employ the broad functionality test and then exclude uncontrolled entities, which are found to be materially dissimilar in aspects and features that have a bearing on the profitability of those entities. However, where the controlled transactions are clearly in the nature of lower-end ITeS such as Call Centers etc. for rendering data processing not involving domain knowledge, inclusion of any KPO service provider as a comparable would not be warranted and the transfer pricing study must take that into account at the threshold.



*36. As pointed out earlier, the transfer pricing analysis must serve the broad object of benchmarking an international transaction for determining an ALP. The methodology necessitates that the comparables must be similar in material aspects. The comparability must be judged on factors such as product/service characteristics, functions undertaken, assets used, risks assumed. This is essential to ensure the efficacy of the exercise. There is sufficient flexibility available within the statutory framework to ensure a fair ALP.”*

13. The Ld. Counsel for the assessee further submitted therefore, it is clear that merely because two companies are doing ITes services, on general categorization comparability is not permitted and one has to look into the specific services rendered in the spectrum of ITes and for this reason, the said company i.e. Manipal Digital Systems Private Limited is not a comparable company with that of the assessee company since absolutely functionally different. The Ld. Counsel also submitted that the TPO should have specifically stated why he has selected this company as comparable with that of the assessee company since the onus is on him to give reason for such inclusion. The logic was shown from the decision of the Pune Bench of the Tribunal in the case of **M/s. Tasty Bite Eatables Limited Vs. ACIT, ITA No.1823/PUN/2018 for the assessment year 2014-15 dated 03.06.2021** wherein it was held that since the comparable chosen by the assessee, the onus is upon it to prove the functional comparability of this company. Extending the same logic, the Ld. Counsel submitted that it was also for the TPO to explain the reasons for inclusion of this company i.e. Manipal Digital Systems Private Limited since it was chosen as comparable by him.

14. We are of the considered view on going through the order of the TPO, findings of the Ld. DRP and the various judicial pronouncements placed on record, first of all the Revenue has selected Manipal Digital Systems Private Limited as comparable to that of the assessee company based on the earning

of the company from ITes. However, there is no segmental specification provided neither by the TPO nor by the Ld. DRP for the reason of such inclusion of this company in the final set of comparable companies with that of the assessee company. In the decision of the Hon'ble Delhi High Court (supra.), it is very much clear in the wide spectrum of ITes if two companies are to be comparable one has to look into the characteristic of service or business provided under ITes by them. This exercise was not done by the Department in this case. We also opine that as per Indian Council for Advertising, the online advertising has to be published on true and honest disclosure basis and therefore, when proper documentation of activities are not physically available, in such scenario, referring the website for information is correct option and the information therein cannot be doubted. These are all multi-national companies and certain amount of honesty has to be attributed to them since all are functioning as per relevant rules and laws. With these observations and respectfully, following the judgment of the Hon'ble Delhi High Court (supra.) we direct the AO/TPO to exclude this company i.e. **Manipal Digital Systems Private Limited** from the final set of comparables with that of the assessee company.

**B. CES Limited :-**

15. The contention of the assessee are that as per the annual report of CES Limited for FY 2015-16, the company is engaged in providing IT and ITes services. The Director's report has further provides the detailed disclosure of activities carried out under ITes segment which describes that the revenue under this segment is generated from BPO as well as KPO activities for which the bifurcated information is not available. Therefore it cannot be comparable to the business of the assessee which is engaged in BPO services. Further the

assessee contended that as per the website of the company the BPO segment is engaged in providing varied activities which includes fraud prevention and process automation. Thus, CES Limited is engaged in high end activities which are distinguished from low end back office activities of the assessee.

16. The TPO has observed that CES limited is engaged in the business of ITes only. The TPO even referred the annual report of this company at Page 39 where IT enabled services are comprising of BPO and KPO and still the TPO was of the opinion that since at Page 12 of the annual report of this company, there are ITes activities which formed 79% of the revenue and therefore, it is functionally comparable with that of the assessee company and hence, it was retained.

17. The Ld. DRP while upholding the observation of the TPO at running Page 70 of its order observed that the company derives revenue mainly from provision of ITes which works out to 79.75% of its total operational revenue for the year. Therefore, this company is very much functionally comparable with that of the assessee company. In respect of the submissions of the assessee that ITes comprises two services i.e. BPO & KPO services, referring to the Director's report, the Ld. DRP observed that they have only made reference in the ITes segment only and whether it is BPO or KPO services has nowhere been referred to. That further, the Ld. DRP also observed that most of the information was gathered from website of the company which may not always be reliable and relevant.

18. The Ld. Counsel for the assessee at the time of hearing reiterated the submissions made in respect of exclusion of Manipal Digital Systems Private Limited, for this company also. He took us through the annual report of the

company, P & L account, notes of financial accounts and segmental information and therein, it is evident that companies operations predominantly relate to providing IT services in two primary business segments viz. IT services and IT Enables Services (ITes). The company considered the business segment as the primary segment and Geographical segment based on the location of the customers as the secondary segment.

19. Having perused the relevant documents on record, analyzing the facts and circumstances, we find that the Revenue Authorities have not clearly stated regarding involvement of BPO/KPO ITes services as evident from Page 39 of the annual report of the company where principal business activities of the company has been given. Both the Revenue Authorities TPO as well as DRP have gone into the revenue generation aspect from ITes which is at around 79%. That however, they have not specifically given reasons why this company should be included in the final set of comparables. The inclusion of KPO along with BPO is also not disputed by the Department and in respect thereof, following the decision of the Hon'ble Delhi High Court in the case of **Rampgreen Solutions Pvt. Ltd. Vs. CIT, ITA No.102/2015 dated 10.08.2015**, it is an undisputed fact therefore that the assessee in the present case is involved in ITes services which is primarily a call center. However, CES Ltd is doing both BPO and KPO services. The principle involved in the judgment of the Hon'ble Delhi High Court (supra.) is crystal clear that segregation of ITes services has to be categorically conducted before classifying as functionally comparable with another. In this case Revenue Authorities have only looked into the revenue earning from ITes segment and included this company as comparable. The facts remains both these companies are functionally different. We therefore, direct the AO/TPO to

exclude **CES Limited** from the final set of comparables with that of the assessee company.

**C. MPS Limited :-**

20. The assessee contends that MPS Limited is functionally different from the assessee which involves in provision of ITes services. That as per the annual report of MPS Limited, MPS Limited is engaged in the business of providing publishing solutions viz. type setting and data digitalization services for overseas publishers and supports international publishers through every stage of the author to reader publishing process and provides a digital first strategy for publishers across content production, enhancement and transformation, delivery and customer support. The assessee further contends that this company is engaged in research and development activities and there has been several acquisitions leading to extraordinary events and also MPS Limited has an fluctuation margin ranging from 8.23% in FY 2011-12 to 67.08% in FY 2015-16. The detailed submissions of the assessee are at running Page No.188 of the TPO's order and thereafter, the TPO has given his detailed findings running Page No.189 to 191 of his order.

21. The Ld. DRP while upholding the findings of the TPO at running Page 58 to 62 of its order and as per reasoning given therein had found the company to be functionally comparable with that of the assessee company.

22. The Ld. Counsel for the assessee at the time of hearing took us through the annual report of this company i.e. MPS Limited specifically at Page No.1134 of the paper book wherein products of the company has been enumerated and submitted that they are functionally different with that of the assessee company. This fact was not disputed by the Ld. DR. The Ld.

Counsel for the assessee also submitted that the high end activities performed by MPS Ltd. are akin to IT services and not ITes.

23. The Ld. Counsel for the assessee heavily relied on the decision of the Pune Bench of the Tribunal in the case of **Symantec Software India Private Limited Vs. DCIT, ITA No.1824/PUN/2018 for the assessment year 2014-15 dated 17.02.2020** wherein the Tribunal in respect of MPS Limited has held and observed as follows :

*“20. We have perused the case records and heard the rival contentions. We find from the annual report of MPS Limited is engaged in high end activity i.e. type-setting, data digitization, content and product development for learners which is in the nature of ‘knowledge processing outsourcing services. From the various functions performed by MPS Limited, we find that the said comparable is predominantly in the business of digital publishing which cannot be treated at par with ITes which is in the name of the assessee in ITes segment. In this regard, we find in the case of **Emerson Electric Company (India) Private Limited Vs. ACIT (supra.)** wherein the Co-ordinate Bench of the Tribunal, Mumbai held the MPS Limited as functionally not comparable by observing as follows:*

*“9.3. From the perusal of the annual report for the year ended 31/03/2014 of the said comparable, we find from page 707 of the paper book that the said comparable had incurred outsourcing cost of Rs.1078.76 Crores which is included under the head "miscellaneous expenses" which goes to prove that it has got a different business model. From the various functions performed by MPS Ltd., we find that the said comparable is predominantly in the business of digital publishing which cannot be treated at par with ITeS which is the case of the assessee in ITeS segment. In this regard, we find that the reliance placed by the ld.AR on the Co-ordinate Bench decision of Bangalore Tribunal in the case of M/s. Google (India) Pvt. Ltd., vs. DCIT in ITA No.1368/Bang/2010 for A.Y.2006-07 dated 19/10/2012 is well founded wherein it was held asunder:-*

*16. As far as (4) Apex Knowledge Solutions Pvt. Ltd., is concerned, we find that the assessee had taken objections before the TPO that it is functionally different, as it provides services such as E-publishing knowledge based services etc. But TPO has rejected the objection on the ground the assessee has not considered the verticals or functional lines during the search process conducted by it and, therefore, it is not proper to make any objection on this basis now. We are not able to agree with the finding of the TPO as confirmed by the DRP on this issue. Merely because, the assessee itself has not considered the said filter while making its TP study; it cannot be said that it cannot raise such an objection before the TPO. It is the TPO who has adopted this company as comparable.*

*On such adoption, the assessee has every right to raise the objections as regards the functional differences between the assessee and comparable. It is the bounden duty of the TPO to consider the said objections in accordance with law. As brought out by the assessee, the assessee is in the IT enabled services, whereas the said company Apex Knowledge Salutation Pvt. Ltd., is in the business of E-publishing which cannot be said to be in the same line of business. The functional differences are likely to affect the profit marking capacity of both the companies. In view of the same, we are of the opinion that this company is also to be excluded from the list of comparables.*

*9.3. In view of the above, we hold that the comparable chosen by the ld. TPO, M/s. MPS Ltd., is functionally not comparable with that of the assessee and accordingly, we direct the ld. TPO to exclude the same from the list of comparables.”*

21. We further observe in the case of **United Health Group Information Services Pvt. Ltd. Vs. ACIT (supra.)** wherein with regard to Vishal Informatics which is engaged in e-publishing business like the company in the instant case i.e. MPS Limited, on same issue, the Co-ordinate Bench of the Tribunal, Delhi has held as follows:

“Vishal Informatics

*12.1. The TPO included this company in the list of comparables by noticing that it was engaged in providing BPO services. The assessee failed to convince him and the DRP that it was incomparable.*

*12.2. Having heard the rival submissions and perused the relevant material on record, we find from the Annual report of this company that it is mainly engaged in e-publishing business. It has more than 10,000 classic books to its credit which are also converted into large font titles for visually challenged. Apart from e-publishing, this company is also engaged in Documents scanning & Indexing. It can be seen from the financial results of this company that both the segments viz., e-publishing and Documents scanning etc. have been combined and there are no separate financial results in respect of Documents scanning work, which may be comparable with the assessee to some extent. As the assessee is not engaged in any e-publishing business and the financials given by this company are on consolidated basis, we direct to exclude this company from the list of comparables. The assessee succeeds.”*

22. We further observe that the Ld. DRP held MPS Limited as BPO Company and is engaged in ITes only. In this regard, the Pune Bench of the Tribunal in the case of **Macom Technology Solutions (India) Private Limited Vs. DCIT in ITA No.2393/PUN/2017** for A.Y.2013-14 vide its order dated 08.08.2019 discussed the definitions as provided under Rule 10TA of Part-II DB wherein the definition of Information Technology Enabled Services are provided the business process outsourcing is defined under clause (e) which provides mainly with assistance or use of Information Technology which as back office operations, call centre, data processing or insurance claim processing. Further, the definition of KPO is provided under clause (g) of Rule 10TA to mean certain business process outsourcing services (BPO) services provided mainly with the assistance or use of information technology

*requiring application of knowledge and advanced analytical and technical skills such as geographic information system, human resource services, business analytical services, financial services or engineering and design services, therefore, the Tribunal held being a KPO, it cannot be compared with that of company which is into business of BPO. The revenue recognition note states that the company is deriving revenue from website design and development and website hosting which is not similar to ITes. Further, MPS Limited underwent type-setting, data digitization, content and product development for learner which as per Safe Harbour Rules issued by Central Board of Direct Taxes qualifies to be in the nature of KPO.*

*In view of the above, respectfully following the decisions of the Tribunal as mentioned hereinabove, we are of the considered view, high end activities of the MPS Limited is akin to IT services and not ITes. The activities of the MPS Limited i.e. typesetting, data digitization, content development and product development are in the nature of "Knowledge Processing Outsourcing Services (KPOs) and not BPO. Accordingly, MPS Limited cannot be treated as comparable company and the AO/TPO is directed to exclude **MPS Limited** from final list of comparable companies with regard to its technical support service segment."*

24. Having gone through the annual report of the company, findings of the Sub-ordinate Authorities and the submissions of the assessee placed on record along with judicial pronouncements, it is evident that MPS Limited is functionally different from that of the assessee company in more-so that high end activities of MPS Ltd is akin to IT services and not ITes. Respectfully following the decision of the Co-ordinate Bench of the Tribunal (supra.) we direct the AO/TPO to exclude **MPS Limited** from final list of comparable companies.

**D. Domex E-Data Pvt. Ltd. :-**

25. The assessee submits that as per the annual report of the company for FY 2015-16, Domex E-Data Pvt. Ltd. is engaged in the business of providing export of IT, KPO and BPO services (note (ii) of Annexure to Auditor's Report for FY 2014-15.). Further it has diverse range of activities without sufficient segmental details and earns super normal profits. Website of the company reveals that Domex E-Data Pvt. Ltd. is a KPO company. The Domex E-Data



Pvt. Ltd. is engaged in high end research and IT activities which is distinguished from low end back office activities of the assessee and therefore, both these companies are completely different and should not be considered as comparable with that of the assessee company.

26. The submissions of the assessee were not accepted by the TPO which is evident at running Page No.192 of the order and the main reason again is that the company earns most of the revenue from export of ITes. The TPO has however not dealt specifically with the objection of the assessee that Domex E-Data Pvt. Ltd. is primarily a KPO company. The Ld. DRP as per their observation at running Page No.66 on their order has given reasoning for upholding the findings of the TPO and making this company as comparable with that of the assessee company. Therein the Ld. DRP has emphasized again on the revenue earned from ITes services and regarding the objections of the assessee company i.e. Domex E-Data Pvt. Ltd. being KPO company, the Ld. DRP was of the opinion that since information was available in the website that cannot be relied on since the company has provided information in website which they intend to carry out but however at the present moment they may not be dealing with those activities.

27. Per contra, the Ld. Counsel for the assessee took us through the annual report, P & L account and reiterated the submissions placed before the Revenue Authorities. Here again as per facts placed on record, this company is primarily a KPO company as per Note-II of Annexure to Auditor's report for FY 2014-15. Here again the Revenue Authorities have not specifically stated the reason why this company is made comparable to that with the assessee company. That as per the logical principle following from the decision in the case of M/s. Tasty Bites Eatables Limited Vs. ACIT

(supra.), it is for the TPO to explain the reason for inclusion of this company since it was chosen as comparable by him. That even the Ld. DRP had emphasized on the revenue earning of this company from ITes. Here also, the decision of the Hon'ble Delhi High Court (supra.) is clear that if two companies performing ITes are to be considered as comparable then the specific business of the said two companies has to be analyzed and then decide upon whether they are at all comparable or not. In this case, we do not find such exercise was conducted neither by TPO nor by the Ld. DRP. Therefore, we are of the considered view that in the given set of facts, this company is functionally not comparable with that of the assessee company. We, therefore, direct the AO/TPO to exclude this company i.e. **Domex E-Data Pvt. Ltd.** from the final set of comparables.

#### **INCLUSION OF THE COMPARABLE COMPANIES**

##### **E. e4e Healthcare Business Services Pvt. Ltd.:-**

28. The TPO had rejected this company as comparable as it fails the RPT filter. The assessee had not objected to the application of the RPT filter by the TPO (as per which the companies in whose cases the related party transaction exceeded 25% are not to be included as comparable) as such. The assessee had applied the same filter for identification of comparable companies in its TP study report. The assessee further contended that RPT in the case of the company for the FYs 2013-14 and 2014-15 was 23.03 % and 1.45% respectively. The assessee placed strong reliance on the decision of the Hon'ble Punjab & Haryana High Court in the case of **CIT Vs. M/s. Mercer Consulting (India) Pvt. Ltd., ITA No.101/2015** wherein it has been held that a miniscule difference cannot be result in the rejection of the case if

it is otherwise comparable. The relevant portion of the said judgment reads as follows :-

*“16. A minuscule difference cannot result in the rejection of the case if it is otherwise comparable. There is no difficulty in permitting reasonable deviation so long as the deviation does not render the case incomparable to the one in question. The extent of deviation that ought to be accepted would of necessity vary from case to case. In a given case a minor deviation may render the case incomparable. In another case a larger deviation may not affect the comparison and relevance of the case. The TPO must take all the factors into consideration and decide whether the deviation renders the case comparable to the one in question or not.”*

29. It was observed by the Ld. DRP that the correct percentage of RPT transaction in respect of the e4e Healthcare Business Services Pvt. Ltd. was 25.60% and that it had already failed RPT filter and since allowable deviation suggested by the Hon'ble High Court is 0.5% and in this case it was more than that, the action of the TPO in excluding this company from the list of comparable was upheld.

30. At the time of hearing, the Ld. Counsel for the assessee submitted that the functional compatibility of this company can be determined by the AO/TPO and since none of the Authorities has commented on this issue and therefore, the issue may be restored to the file of the AO/TPO for factual verification on the said functional compatibility and then decide whether it can be included in the final list of comparables. The Ld. DR did not object to this proposition.

31. Having perused the case record on this issue, in our considered view, the Hon'ble Punjab & Haryana High Court (supra.) has stated that a miniscule difference cannot result in the rejection of the case if it is otherwise comparable. However, it had not laid down any specific percentage as to the deviation permissible. We find, the Ld. DRP stated the permissible deviation is

at 0.5% but this is not appearing anywhere in the said judgement. That further, the Sub-ordinate Authorities have rejected this company as it failed on the RPT filter which according to the assessee was not correct. Now before us, the Ld. Counsel for the assessee has prayed that the issue may be restored to the file of AO/TPO for factual verification of functional Compatibility to which the Ld. DR also has not objected. Therefore, in the interest of justice, we set aside the order of the Ld. DRP on this issue i.e. **e4e Healthcare Business Services Pvt. Ltd.** and remand this matter back to the file of AO/TPO for verification of functional compatibility of this company with that of the assessee while complying with the principles of natural justice.

**F. Informed Technologies India Limited:-**

32. The Ld. Counsel for the assessee advanced his argument for inclusion of this company i.e. Informed Technologies India Limited and subsequently, he did not press for inclusion of the said company. **Hence, this part of the ground is dismissed as not pressed.**

33. Therefore, the grounds pertaining to merits are partly allowed for statistical purposes.

34. In the combined result, **appeal of the assessee is partly allowed for statistical purposes.**

Order pronounced on 18<sup>th</sup> day of June, 2021.

Sd/-  
**R.S.SYAL**  
**VICE PRESIDENT**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 18<sup>th</sup> June, 2021.  
SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-13, Pune.
4. The Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "सी" बेंच,  
पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	14.06.2021	Sr.PS/PS
2	Draft placed before author	18.06.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		