Company deriving revenue from medical transcription and consultancy services not comparable with ITES provider

Summary – The Delhi ITAT in a recent case of Xchanging Technology Services India (P.) Ltd., (the Assessee) held that a company mainly deriving revenue from medical transcription and consultancy services cannot be compared with ITES provider

Facts

- The assessee, a subsidiary of UK company, was engaged in rendering software development services and also information technology enabled services to its AEs. 14 companies were chosen as comparable to demonstrate that international transaction of the assessee was at arm's length price.
- The TPO did not agree with the comparables chosen by the assessee. After making certain exclusions and inclusions, the TPO finalized the six companies as comparables and worked out average profit margin of the above six comparable companies at 33.68 per cent which resulted into the transfer pricing adjustment in assessee's hands.
- DRP confirmed said order.
- On appeal, the assessee was aggrieved by inclusion of two comparables and also sought for inclusion of one comparable.

Held

Comparable Cosmic Global Ltd.

- The TPO considered Cosmic Global Ltd. as comparable with the assessee-company on entity level. The annual report of this company for the year in question showed that its revenue from operations consists of three amounts, namely, medical transcription and consultancy service charges, translation charge and accounts BPO charges. This company outsourced the activity of translation. 57.31 per cent of total operating expenses incurred by this company are outsourcing charges. Admittedly, outsourcing is confined to translation. This company cannot be considered as comparable with the assessee-company for the reason of its major activity, namely, translation, with revenue of Rs.6.99 crore (out of total revenue of Rs.7.35 crore), being dissimilar with the assessee's activities under this segment. The second reason for considering this company as incomparable on entity level is the business model adopted by it. It can be seen that this company has outsourced major activities in comparison with the assessee doing its business in-house. It goes without saying that these two business models, namely, outsourcing services and providing in-house services, cannot be compared with each other because of their inherent differences. Since the TPO has considered this company as comparable on entity level, the same cannot be so treated and the exclusion of this company is directed.

Comparable Accentia Technologies Ltd

- It can be noticed from the annual report of the company that during the year under consideration this company completed the acquisition of 96 per cent of a healthcare back-office processing company engaged in medical billing, coding and transcription activities and having substantial global work force. In view of the fact that there was merger of some entity with Accentia Technologies Ltd., this company cannot be considered as comparable. Accordingly, the same is directed to be excluded from the final list of comparables.

Comparable Microland Ltd.

- It is discernible that the assessee did not take up the issue of considering the company as comparable either in its TP study report or before the TPO but contention was raised before the DRP. There can be no reason to reject the contention at the outset without examining the actual comparability of a company. Since the authorities below have not pondered over the comparability of this company, the ends of justice would meet adequately if the impugned order on this score is set aside and the matter is restored to the file of AO/TPO for examining the comparability of this company.