

A Co. mainly outsourcing its work couldn't be compared to a Co. rendering IT enabled services

Summary – The Hyderabad ITAT in a recent case of Cognizant Technology Services (P.) Ltd., (the Assessee) held that where cost of a company is mainly with reference to translation charges, it cannot be compared to a company rendering IT Enabled Services

Facts

- The assessee-company, engaged in the business of providing IT Enabled Services ('ITES') to its Associated Enterprise, had entered into international transactions. Out of the companies selected by assessee to justify that its transaction was at arms length price, except for one all other companies were rejected by the TPO and he conducted a fresh analysis and arrived at 11 companies as final comparables.
- The TPO arrived at the average margin of the comparables at 26.23 per cent and proposed the adjustment towards the shortfall of the arm's length price.
- DRP confirmed said order.
- The assessee was in appeal against the inclusion of some comparables.

Held

Comparable Cosmic Global Ltd.

- The Tribunal in the case of *ACIT v. Hyundai Motors India Engineering (P.) Ltd.* [I.T. Appeal Nos. 1743 & 1917 (Hyd.) of 2014, dated 13-11-2013] has considered the comparability of the company to the assessee and has directed the exclusion of it holding that this company's employee cost is less than 21.30 per cent and most of the cost is with reference to the outsourcing charges or translation charges, and as such this is not a comparable company.

Comparable TCS Serve Ltd.

- The Tribunal has held during the relevant financial year, the TCS e-Serve International Ltd. had acquired Captive business processing outsourcing (BPO) arm for an all cash consideration and in return, had acquired the business of an aggregate amount of \$2.5 billion over a period of 9.5 years. This definitely is an exceptional circumstance. The Tribunal in a number of decisions held that exceptional circumstance like merger is a reasonable filter to exclude a company from the list of comparables. Therefore, the Assessing Officer/TPO is directed to exclude this company from the final list of comparables.

Comparable Accentia Technologies Ltd.

- The Tribunal had held that this company operates in a different business strategy of acquiring companies for inorganic growth as its strategy and considering the profit margins of the company and insufficient segmental data, cannot be selected as a comparable.

Comparable Eclerx Services Ltd.

- The Delhi High Court in the case of *Rampgreen Solutions (P.) Ltd. v. CIT* [\[2015\] 234 Taxman 573/60 taxmann.com 355](#) has held that ITeS encompasses a wide spectrum of services that use Information Technology based delivery. Such services 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. Clearly, characteristics of the service rendered would be dissimilar. Further, both service providers cannot be considered to be functionally similar.
- The findings of the Tribunal in the above referred case are applicable to the facts of the case and, thus, TPO/Assessing Officer is directed to exclude these companies from the final list of comparables and re-compute the arm's length adjustment accordingly.