IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I-1' NEW DLEHI

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

ITA. No.1171/Del/2015
Assessment Year: 2010-11

ACIT, Circle-3(2), New Delhi.	**vs**	**Astra Business Services P. Ltd., Plot No.6, Sector -33, Legend Square, 1st Floor, Gurgaon. PAN: AAICS0901K**
(Appellant)		(Respondent)

Appellant by: Shri Sanjay I. Bara,CIT- DR.
Respondent by: Shri Ashutosh MohanRastogi, Advocate,
Ms AnchalKesari, Advocate

Date of hearing: 30/7/2019
Date of order : 30/8/2019

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the directions dated 12.11.2014 of the Dispute Resolution Panel-I, New Delhi ("DRP") for Assessment Years 2010-11, revenue preferred this appeal.

2. Brief facts of the case are that the assessee company, Astra Business Services Private Limited, was incorporated as a private limited company in India on 25th May, 2004. The Company is a Business Process Outsourcing Unit and primarily assist its

customers to collect their debts by making personal calls on their behalf to the defaulting customers. During the year Assessee Company had incurred loss due to increase in expense under the head Rates & Taxes, communication cost, foreign exchange fluctuation loss, allocation of depreciation cost from Astra Business Services Inc., USA. As the assessee company is not engaged in the trading activities, gross profit/net profit ratios are not applicable.

3. For the Asstt. Year 2010-11, assessee filed their return of income on 23.9.2010 declaring a loss of Rs.2,06,65,344/- under normal provisions of the Income-tax Act, 1961 (“the Act”) and a book profit at a loss of Rs.2,52,83,947/- u/s 115JB of the Act. Since during the financial year 2009-10, the assessee entered into international transaction with its associated enterprises (AE) determination of the arm’s length price was referred to the TPO. TPO by order dated 16.1.2014 suggested an adjustment of Rs.2,86,72,277/- attributable to the difference in the arm’s length price of the international transaction entered by the assessee with the AE.

4. Assessee filed objections before the ld. DRP and the ld. DRP by order dated 12.12.2014 directed the ld. TPO to recompute the TP adjustment after excluding two entities, namely, Infosys BPO and TCS E-Serve Ltd. from the final list of the comparables. Accordingly, ld. TPO complied with the directions. Thereafter, the ld. AO passed the final assessment order on 30.12.2014. Revenue is, therefore, aggrieved by the directions of the ld. DRP

in respect of exclusion of Infosys BPO and TCS E-Serve Ltd. from the final list of comparables and filed this appeal.

5. It is the argument of the learned DR that Infosys BPO is a good comparable as it is an ITES company and passes all filters. As regards TCS E-serve Ltd. is concerned, the company'srelated party transaction is less than 25%, as such it is a suitable comparable. The learned DR, therefore, placed heavy reliance on the order of the Ld. TPO and prayed for inclusion of these companies in the final list of comparables.

6. It is the submission of the learned AR that Infosys BPO should not be included in the list of comparables as it has huge brand and spent heavily on advertisement; it's functional profile is different from the assessee and has high turnover. As regards TCS E-Serve Ltd. it is submitted that as it has high turnover, functionally different, no segment wise details and exorbitant growth in its revenue as well as PBIT, it cannot be considered to be a good comparable. As such, both these companies being not a goods comparable, is rightly rejected by the ld. DRP.

7. We have gone through the record in the light of the submissions made on either side. There is no dispute of the fact that the total expenses of the Infosys BPO on brand building and advertisement is Rs.69,16,780/- and Infosys is a huge brand and naturally will be having leverage on the brand value. Further, the Infosys is engaged in multiple segments with several verticals

offering process management solutions using IT as a tool and thereby providing integrated value-added services.

8. TCS E-Serve is also a company with operations comprising of transactions processing and technical services which includes the broad spectrum of activities involving the processing, collections, customer care and payments in relation to the services offered by the Citigroup to its corporate and retail clients; that the technical services involved software testing, verification and validation of software at the time of implementation and data centre management activities. Like Infosys BPO, the other entity TCS E-Serve commands a huge goodwill and recognition associated with the brand leading to higher volume of business and premium pricing. As could be seen from the Annual Report of this company, no segmental financials are available in the annual report of the TCS E-Serve and there is no bifurcation available in respect of revenue of the company from transaction processing and technical services.

9. Further, it is not in dispute that Infosys has a substantially high turnover of Rs.1126 crores, whereas TCs has a turnover of Rs.1359.41 crores, which is approximately 133 and 131 times respectively to the turnover of the assessee for ITES services at Rs.10.38 crores.

10. In the case of PCIT vs EvalueserveSez in ITA No. 948/2018, the Hon’ble jurisdictional High Court while relaying on the decision in the case of PCIT vs B.C. Management Services (P)

Ltd. in ITA 1064/2017 and batch, held that both these two companies, namely, Infosys BPO and TCWS E-Serve with their huge brand value were able to command greater profit apart from operating on economic upscale. In this case, the Hon'ble jurisdictional High Court held that these two companies at not at all comparable to the ITES segment of the companies with low turnover.

11. So also in the case of Actis Global Services P. Ltd., ITA No.30/Del/2015 for Asstt. Year 2010-11, a coordinate bench of this Tribunal held that because of the huge difference in turnover and brand value, these two companies are not good comparables for the ITES segment of the entities like assessee. This view of the Tribunal is upheld by the Hon'ble jurisdictional high Court in the case of PCIT vs Actis Global P. Ltd., ITA No.417/2016. Likewise, in Equant Solutions India P. Ltd. vs DCIT, ITA No.1202/Del/2015, a coordinate bench of this Tribunal held that these two companies are engaged in high end integrated services and because of their brand and huge turnover, apart from the functional dissimilarity they are not comparable with ITES companies.

12. Having considered the volumes of turnover and brand apart from the diversified activities of these two companies in the light of the decisions cited supra, we are of the considered opinion that they are not good comparables to the ITES segment of the assessee and while following a catena of decisions rendered by a coordinate bench of this Tribunal and also the Hon'ble High

Court, we find that the ld. DRP is perfectly right in directing the deletion of these two companies in the comparables and the impugned order does not suffer from any illegality or irregularity. We accordingly uphold the same and dismiss the appeal of the revenue.

11. In the result, appeal of the revenue is dismissed.

Pronounced in open court on this the 30th August, 2019

Sd/-	sd/-
(PRAMOD KUMAR)	**(K. NARASIMHA CHARY)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Dated: 30th **August, 2019**
'VJ'

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

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