आयकर अपीलीय अधिकरण, दिल्ली पीठें, नई दिल्ली

INCOME TAX APPELLATE TRIBUNAL
DELHI "I" BENCHES, NEW DELHI

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER AND SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA 663/DEL/2018 निर्धारण वर्ष/Assessment Year: **2011-12**)		
ACIT, CIRCLE- 27(2) ROOM NO. 194B, C.R. BUILDING, I.P. ESTATE, NEW DELHI-110002, DELHI	**Vs.**	**WNS BUSINESS CONSULTING SERVICES PVT. LTD.** PL NO. 10, GATE NO. 4, GODREJ & BOYCE COMPLEX,, PIROJSHANAGAR, LBS MARG, VIKHROLI (WEST) MUMBAI-400079, MAHARASHTRA
अपीलार्थी **Appellant**		प्रत्यर्थी **Respondent**
Permanent Account Number of Assessee**:**		**AABCT8951H**
अपीलार्थी द्वारा/Appellant represented by:		**Shri Mahesh Kumar, CIT(DR)**
प्रत्यर्थी द्वारा/Respondent represented by:		**Shri Tarandeep Singh, AR & Shri Sandeep Yadav, Adv.**
सुनवाई की तारीख / Date of conclusion of hearing:		**04-Jun-2026**
घोषणा की तारीख / Date of pronouncement:		**25-Aug-2026**

आदेश / ORDER

PER MANISH AGARWAL, A.M.:

The present appeal is filed by the Revenue against the order dated 29.09.2017 passed by Ld. Commissioner of Income Tax (A)-44, New Delhi ["Ld. CIT(A)"] in Appeal No. 73/2016-17/CIT(A)-44 u/s 250 of the Income Tax Act, 1961 ["the Act"] arising out of assessment order dated 30.04.2015 passed u/s 143(3) r.w.s. 144C(3) of the Act pertaining to Assessment Year 2011-12.

2. Brief facts of the case are that the assessee company was engaged in the business of export of information technology enable Business Process Services ("BPO") including IT Enable Delivery Solutions and back-office data operations and data processing to customers in financial services industry in the USA with significant focus on mortgage banking solutions. For the year under appeal, return of income was e-filed on 30.11.2011, declaring total income of INR 2,73,88,841/-. The case was taken up for scrutiny and since the assessee was having international transactions with its AE, a reference was made to Transfer Pricing Officer ("TPO") for determination of Arm Length Price ("ALP") of such international transactions, who in terms of its order dated 15.01.2015 passed u/s 92CA(3) of the Act has proposed ALP adjustments of INR 87,72,151/- to the international transactions carried out by the assessee under ITES segment. Thereafter the AO passed the draft assessment order wherein the ALP adjustments made by the TPO were proposed to be made, and further disallowance of INR 1,06,80,887/- out of export deduction claimed u/s 10A of the Act was proposed. Accordingly, total income of the assessee was proposed to be assessed at INR 4,68,41,880/-. Assessee has not filed any objections before the ld. DRP against the said order , therefore the AO in terms of eh order passed u/s 143(3) r.w.s. 144C(3) of the Act has passed the final order confirmed the additions proposed in the draft assessment order and the total income was assessed at INR 4,68,41,880/-.

3. Against the said order, the assessee filed appeal before ld. CIT(A) wherein ld. CIT(A) by following the order in assessee's own case for preceding AYs, has deleted both the additions/disallowances made.

4. Aggrieved by the said order of ld. CIT(A), Revenue is in appeal before the Tribunal in present appeal by taking various Grounds of appeal mentioned in the appeal memo.

5. **Ground of appeal No.1** raised by the Revenue is with respect to the deletion of transfer pricing adjustment of INR 87,72,151/-.

6. In this Ground of appeal, the Revenue has challenged the action of ld. CIT(A) of excluding certain comparables which were included by the TPO. The revenue further challenged the action of ld. CIT(A) of including certain comparables which were excluded by the TPO while benchmarking the transactions for computing the ALP of ITeS BPO services and ITeS delivery solutions including back office operations and data process. We comparable which are excluded or included by ld. CIT(A) are elaborately discussed as under:-

<u>Informed Technologies India Ltd.</u>

7. This comparable was selected by the assessee in its Transfer Pricing Study Report ("TPSR") which was excluded by TPO on the ground that rental income was not separately identified and segmental detail were not available. The claim of the assessee was that the TPO has compared the revenue earned from data outsourcing to total revenue earned which included the other income also. Since the entire income of the company is from the data outsourcing charges thus, it is very much comparable with the assessee. It is further submitted by the ld. AR that this company was also excluded by the TPO in immediately preceding AYs in assessee's own case and was included by ld. CIT(A) and no appeal was preferred by the Revenue against the said order.

8. Considering these facts, ld. CIT(A) has held that this company is to be included in the final set of comparables. Before us, the Revenue has failed to controvert this factual aspect thus, following the principal of consistency, we are of the view that Informed Technology Ltd. was rightly included by ld. CIT(A) in the final set of comparable which order is hereby, confirmed.

9. Now coming to the comparables which are included by TPO in the final set of comparable and excluded by ld. CIT(A).

Eclerx Services Ltd.

10. This company has OP/OC of 57.62% and is included by TPO by the in the final set of comparables. Claim of the assessee was that the year under appeal for this company was having exceptional year of operation and it had outsourced most of its services and therefore, is to be excluded. Ld. CIT(A) following the order of the Co-ordinate Bench in the case of ***B.C. Management Services Pvt. Ltd. vs DCIT*** reported in ***[2017] 83 taxmann.com 346***, has observed that Eclerx Services Ltd. has out-sourced most of its service to outsider where the assets deployed in the form of human resources, infrastructure and other intangible differ from the entity which operates from its own resources. Therefore, ld. CIT(A) directed to exclude the same.

11. Considering the overall facts and objections of the Revenue, we find that TPO has silent on the issue of outsourcing, therefore, this company cannot be held as comparable to the assessee who is mainly providing services through its own employees and had not outsourced the same. Accordingly, the order of ld. CIT(A) in excluding Eclerx Services Ltd. from the final set of comparable is hereby, upheld.

TCS E Serve Ltd. & Infosys BPO Ltd.

12. These two comparables were included by the TPO which were excluded by ld. CIT(A) by observing that these companies are not comparable with the assessee as they are giant company in this line of business and having very high brand value associated with them. This fact was affirmed by the Co-ordinate Bench of Tribunal in the case of B. C. Management Services Pvt. Ltd. (supra) for AY 2011-12 itself.

13. Before us, the Revenue has not controverted this fact stated by ld. CIT(A) who had excluded these two companies being not comparable looking to their volume and size as well as their brand value viz a viz of the assessee. Therefore, the order of ld. CIT(A) in confirming the exclusion from these two companies from final set of comparable is hereby, upheld.

Accentia Technologies Ltd.

14. Ld.CIT(A) while excluding this comparable from the final set of comparable, ld. CIT(A) has followed the order of Co-ordinate Bench of Tribunal in the case of ***Execo India Pvt. Ltd.*** reported in ***[2016] 72 taxmann.com 339 (Del.)*** wherein in AY 2011-12, the Co-ordinate Bench has held that this company owned a brand and goodwill on account of acquisition and amalgamation of dividend in force. Further, it was also providing services in the field of medical transcription and income from KPO, Data Process Outsourcing ("DPO") and high-end software services and segmental information was not available. It is further observed that in the case of the assessee for AY 2009-10 in terms of order dated 11.04.2022 in ITA No.7439/Del/2017, this company was excluded in the final set of comparable by the Tribunal. Since the facts remained the same, therefore, we find no error in the order of ld. CIT(A) in excluding this company from the final set of comparable.

ICRA Techno Analytics Ltd.

15. It is observed that the assessee has included ICRA Techno Analytics Ltd. in the final set of comparable in its TPSR which was accepted by the TPO however, the TPO has further proposed to include ICRA Online Ltd. Thereafter considering the objections filed by the assessee, TPO finally excluded ICRA Online Ltd and select ICRA Techno Analytics Ltd. in the final set of comparable. However, inadvertently the assessee has challenged the inclusion of ICRA Online before the ld. CIT(A), though the same was already excluded by

the TPO itself. Once the ICRA Techno Analytics Ltd. is included in the final set of comparables and not ICRA Online Ltd. therefore, there was no grievance remained of the revenue on the exclusion of ICRA Online Ltd. from the final set of comparables.

<u>Acropetal Technologies Ltd. (Seg.)</u>

16. The TPO has included this comparable in the final list of comparables by stating that the assessee has not objected to the inclusion of the same. However, the assessee has challenged the inclusion of this company on the ground of functional dissimilarity. Ld. CIT(A) has excluded the said comparables from the final set of comparable by following the judgment of Co-ordinate Bench of Tribunal in the case of ***Daksh Business Process*** reported in ***[2016] 72 taxmann.com 44 (Del.)*** wherein the Co-ordinate Bench has held that the company performed engineering design services which are Knowledge Process Outsourcing ("KPO") and not engaged in the business of BPO as of the assessee.

17. As this company was not functionally similar with the assessee and this fact has not been controverted before us, therefore, we find no error in the order of ld. CIT(A) in excluding the same in the final set of comparables.

18. In view of the aforesaid observations, the Ground of appeal No.1 raised by the Revenue is hereby, dismissed.

19. **Ground of appeal No.2** raised by the Revenue is with respect to the deletion of disallowance of INR 1,06,80,887/- made out of deduction u/s 10A by hooding that amount is not earned out of the eligible undertakings.

20. It was the claim of the assessee that the assessee has its units located in Gurgaon and registered under software Technology Park India (STPI) and providing services to its customers in USA in financial service industries. The activities of assessee company are squarely covered under the definition of computer software as clarified by CBDT Notification No. S.O. 890(E) dated 26.09.2000. At the outset, it is observed that similar disallowance was made by making identical observations in preceding AYs wherein for the first time in AY 2006-07, the same was deleted by the Co-ordinate Bench in ITA No. 236/Del/2011 which order was further confirmed by the Hon'ble Jurisdictional High Court in ITA No.807/2017 vide its order dated 30.01.2018. The relevant observations of the Co-ordinate Bench in para 6 to 8 are as under:-

> *6. "A perusal of Section 10A Explanation 2(b) shows that computer software means any customized electronic data or any product or service of similar nature as may be notified by the Board. Under this provision the Board has issued a notification referred to by the Ld. CIT (A) at page nos. 9 & 10 of his order which covers as many as 15 activities which are as follows:*
>
> *i. Back-office Operations;*
> *ii. Call Centres;*
> *iii. Content Development or Animation;*
> *iv. Data Processing;*
> *v. Engineering & Design;*
> *vi. Geographic Information System Services;*
> *vii. Human Resources Services;*
> *viii. Insurance Claim Processing;*
> *ix. Legal Databases;*
> *x. Medical Transcription;*
> *xi. Payroll;*
> *xii. Remote Maintenance;*
> *xiii. Revenue Accounting;*
> *xiv. Support Centres; and*
> *xv. Webs-site Services."*

21. The Hon'ble Jurisdictional High Court confirmed the order of Tribunal by making following observations:-

> *"The question of law urged is whether the activity of the assessee in providing call centre services to its principals is eligible for deduction under Section 10A of the Income Tax Act, 1961. The Assessing Officer initially brought to tax but denied the benefit under Section 10A holding that call centre services did not amount to export of software. The CIT (A) accepted the assessee's contention that software services were covered by virtue of Explanation 2 (b)*

to Section 10A. The CBDT's Notification No.890 (E) issued on 26.09.2000 expressly notifies call centres as activities covered by the Explanation.

Having regard to these facts, the ITAT confirmed the order of the CIT (A).

This Court has considered a similar issue in CIT v. Kiran Kapoor, 372 ITR 321 (Del.). Likewise in respect of the same assessee for the subsequent year AY 2007-08 the Court confirmed the view of the ITAT (ITA 91/2018, dated 29.01.2018). The Court is also cognizant of Section 10A, particularly Explanation 2, which in its material particulars define computer software as follows: -

(a) Any computer program recorded on any disc, tape, perforated media or other information storage device or

(b) Any customized electronic data or any product or service of similar nature.

In the above view of the matter, no substantial question of law arises; the appeal is, therefore, dismissed."

22. Thereafter, in AYs 2007-08 & 2008-09, disallowance of identical nature made by the AO was deleted by the Tribunal by following the aforesaid orders and same were upheld by Hon'ble Jurisdictional High Court. Since this issue is squarely covered in favour of the assessee by the order of Hon'ble Jurisdictional High Court and there being no change in the circumstances, we find no error in the order of ld. CIT(A) in deleting the disallowances made out of the deduction claimed u/s 10A of the Act as a principal of consistency. Accordingly, Ground of appeal No.2 of the Revenue is hereby, dismissed.

23. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 25.08.2026.

Sd/-	***Sd/-***
(SATBEER SINGH GODARA)	**(MANISH AGARWAL)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Date- 25.08.2026
**Amit Kumar, Sr. P.S*

Copy to:

1	**ACIT, CIRCLE- 27(2),** **ROOM NO. 194B, C.R. BUILDING, I.P. ESTATE,** **NEW DELHI-110002**
2	**WNS BUSINESS CONSULTING SERVICES** **PVT. LTD.,** **PL NO. 10, GATE NO. 4, GODREJ &** **BOYCE COMPLEX,, PIROJSHANAGAR, LBS** **MARG, VIKHROLI (WEST),** **MUMBAI-400079, MAHARASHTRA**
3	THE PCIT / CIT,
4	THE D.R., ITAT, DELHI BENCH
5	GUARD FILE

TRUE COPY

ASSISTANT REGISTRAR
I.T.A.T., DELHI