

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'I-2' NEW DELHI**

**BEFORE SHRI PRAMOD KUMAR, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 1203/Del/2017
Asstt. Year: 2012-13**

Inductis India Pvt. Ltd., 414, 4 th Floor, DLF Jasola Tower B, Plot No. 10 & 11, DDA District Centre, Jasola, New Delhi-110044 (PAN: AAACI8497C)	vs	ACIT, Circle-12(1), New Delhi.
(Appellant)		(Respondent)

Appellant by: Shri Vishal Kalra, Adv.
Respondent by: Ms Paramita M. Biswas, CIT DR

**Date of hearing: 21.05.2018
Date of pronouncement: 20.08.2018**

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.

This appeal has been preferred by the assessee against the final assessment order passed subsequent to the directions of the Ld. Disputes Resolution Panel (DRP) for assessment year 2012-13.

2.0 Brief facts of the case are that the assessee is a wholly owned subsidiary of Inductis LLC, US, which is in turn a wholly owned subsidiary of Inductis Inc. The assessee provides

Information Technology (IT) enabled back office research and data analytics services to its Associated Enterprises (AE) which includes back office research involving data collection/collation, data processing, synthesis and analysis and graphics creation. The international transactions entered into by the assessee with the Associated Enterprises during the year under consideration were as under:-

- i) IT-enabled back office research and data analysis – Rs. 50,97,48,542/-
- ii) Reimbursement of expenses received by the company – Rs. 8,23,09,998/-
- iii) Reimbursement of expenses by the company on account of Employee Stock Option Plan issued to the employees of the company – Rs. 21,67,376/-

2.1 The assessee applied Transactional Net Margin Method (TNMM) as the Most Appropriate Method (MAM) and OP/OC ratio was taken as the Profit Level Indicator (PLI) in the TNMM analysis. The assessee had taken itself as the tested party and the PLI was computed at 19.41%. The assessee chose a set of nine comparables with a PLI of 22.41%. Thus, the assessee considered its international transaction to be at arm's length.

2.2 The return of income was filed declaring an income of Rs. 16,42,41,218/-. In view of the international transactions entered into by the assessee, a reference was made to the Transfer Pricing Officer (TPO). The TPO drew a final set of nine comparables with an average PLI of 26.24% and proposed an adjustment of Rs. 13,20,31,648/- with respect to Arms' Length Price (ALP) of the international transactions.

2.3 Aggrieved, the assessee approached the Ld. DRP and raised objections against the transfer pricing adjustment as well as against the disallowances made under corporate tax in the draft assessment order. Subsequent to the directions of the Ld. DRP, the final assessment order was passed by making an addition of Rs. 16,74,76,422/- on account of adjustment in the ALP with respect to the international transactions. The DRP also partially upheld the disallowance made u/s 14A of the Income Tax Act, 1961 (hereinafter called "the Act") and as per the directions, this disallowance was computed at Rs. 4,69,227/-. The assessment was completed at an income of Rs. 33,21,86,867/-.

2.4 Now the assessee is in appeal before the ITAT against the final assessment order and has raised the following grounds of appeal:-

"1. That on the facts and in the circumstances of the case and in law, the order passed by the Ld. Assessing Officer ("AO") is bad in law.

2. The Ld. Dispute Resolution Panel ('DRP') has inadvertently rejected specific ground raised by the Appellant during DRP proceedings in respect of seeking adjustment claimed on account of difference in the rate of depreciation charged by the comparables vis-a-vis Appellant's rate of depreciation. The Appellant has filed a rectification application with the Hon'ble DRP requesting appropriate adjudication on the same, which is pending.

3. The Ld. AO/ Ld. TPO erred on facts and in law in enhancing the income of the Appellant by Rs. 8,22,89,042 holding that the international transactions pertaining to provision of IT enabled services do not satisfy the arm's length principle envisaged under the Act and in doing so have grossly erred in:

3.1. disregarding the ALP as determined by the Appellant in the Transfer Pricing ("TP") documentation maintained by it in terms of section 92D of the Act read with Rule 10D of the Income-tax Rules, 1962 ("Rules") as well as the fresh search and in particular modifying/ rejecting the filters applied by the Appellant;

3.2. disregarding multiple year/ prior years' data as used by the Appellant in the TP documentation and holding that current year [(i.e. Financial Year ("FY") 2011-12] data for comparable companies should be used despite the fact that the same was not necessarily available to the Appellant at the time of preparing its TP documentation;

3.3. rejecting the economic and comparability analysis in the TP documentation/ fresh search and in conducting a revised comparability analysis based on application of

the following additional/ revised filters in determining the ALP:

3.3.1. exclusion of companies having different financial year ending (i.e. not March 31, 2012);

3.3.2. exclusion of companies having employee cost less than 25% of the operating cost;

3.3.3. exclusion of companies whose service income is less than Rs 1 crore (as against companies having zero sales or ceased business operations and were inactive);

3.3.4. exclusion of companies with export sales that are less than 75% of their total revenue (as against export sales to sales less than 25% applied by the Appellant).

3.4. not appropriately considering the functions, assets and risk profile of the companies used for comparison with the Appellant, thereby including in the final comparable set certain companies with completely different functional profile;

3.5. excluding certain companies considered by the Appellant in its TP Documentation/ fresh search on arbitrary/ frivolous grounds even though they are comparable to the Appellant in terms of functions performed, assets employed and risks assumed;

3.6. undertaking negative working capital adjustment for the computation of arm's length price;

3.7. including companies having abnormal margins/ volatile operating margins in the final comparables' set, that signify high element of entrepreneurial risk, thereby not appreciating the risk profile of the services rendered by the Appellant and not allowing risk adjustment to the Appellant;

3.7.1. without prejudice, that if risk adjustment is not allowed to compensate for risk free activities of the

Appellant and hence considered it to be risk bearing, in that case appropriate tested party for the arm's length analysis should be the Appellant's overseas Associated Enterprise ("AEs");

3.8. *considering reimbursement of expenses received as part of the core transaction of the Assessee and re-computing the PLI after considering it as part of the operating revenue and operating cost, thus, in effect proposing that a mark-up is required to be earned on such non-core, non-value adding pass through transactions.*

4. *The Ld. AO/ Ld. TPO erred on facts and in law in enhancing the income of the Appellant by Rs. 38,24,938 holding that the alleged international transactions pertaining to outstanding receivables do not satisfy the arm's length principle envisaged under the Act and in doing so have grossly erred in:*

4.1. *re-characterizing the outstanding related party receivable from overseas AEs beyond 90 days period as short term loans advanced to the AEs;*

4.2. *disregarding the business/ commercial arrangement by not appreciating the fact that unlike a loan or borrowing, outstanding receivable is not an independent transaction which can be viewed on standalone basis and needs to be examined with the commercial transaction as a result of which the debit balance has come into existence;*

4.3. *rejecting the Appellant's contention that independently benchmarking the outstanding receivables of the Appellant by considering an interest rate for comparability does not amount to the application of Comparable Uncontrolled Price ("CUP") Method or any of the "method" defined in the Act;*

4.4. *without prejudice to the above, disregarding the fact that undertaking working capital adjustment (as directed by the Ld. DRP while making adjustment on provision of IT enabled services) takes into account the impact of outstanding receivables.'*

3.0 The Ld. Authorised Representative (AR) submitted that ground no. 1 was general in nature and ground nos. 2 and 3 (3.1 to 3.7) incorporate the assessee's challenge to comparables/ companies which the assessee was either seeking to be excluded or included. It was further submitted by the Ld. AR that the assessee was also challenging the denial of depreciation adjustment in margin computation of comparables as well as was challenging the negative capital working adjustment. The Ld. AR further submitted that the assessee was also challenging consideration/reimbursement received from AEs as part of operating revenue and operating cost while computing margin of the assessee. The Ld. AR also submitted that the assessee was also challenging the adjustment pertaining to interest on outstanding revenues as well as disallowance u/s 14A of the Act.

3.1 The Ld. AR submitted that the assessee had raised a specific ground during the proceedings before the Ld. DRP in respect of the assessee seeking adjustment claimed on account of difference in the rate of depreciation charged by the comparables *vis-a-vis*

the rate of depreciation being charged by the assessee company. The Ld. AR submitted that the assessee was charging depreciation on Straight Line Method and the comparables were also charging depreciation on Straight Line Method. However, the assessee depreciated its assets at a rate higher than the rates prescribed under Schedule XIV of the Companies Act, 1956 whereas the comparables considered by the TPO adopted the rates as prescribed under the Companies Act, 1956, thereby charging a lower rate of depreciation. The Ld. AR submitted that both the TPO as well as the Ld. DRP had denied the adjustment on account of depreciation on the ground that the assessee had failed to furnish the margin computations of the comparable companies taking into account the depreciation charged by the assessee. The Ld. AR drew our attention to the relevant pages in the paper book and submitted that the detailed working in this regard was duly submitted before the TPO as well as the Ld. DRP. The Ld. AR submitted that if this depreciation adjustment was allowed on the margins of the comparables selected by the TPO, then the average margin would come to 16.58%. It was further submitted that in the immediately preceding year i.e. assessment year 2011-12, the Ld. DRP, in assessee's own case, had accepted

the assessee's claim for depreciation adjustment. It was also submitted that the Ld. DRP had given a similar direction in assessee's own case for assessment year 2014-15 also. The Ld. AR placed reliance on the order of the ITAT Delhi Bench in the case of EXLservice.com vs. ACIT reported in 152 ITD 778 (Del) wherein the ITAT Delhi Bench had allowed assessee's claim for depreciation adjustment.

3.2 The Ld. AR further submitted that the Ld. DRP had inadvertently issued directions for providing working capital adjustment to the assessee although the assessee had not raised any ground of objection in this regard before the Ld. DRP. It was submitted that subsequent to the directions of the Ld.DRP, the TPO, after computing the average margin of all the comparables at 24.27% worked out the negative working capital adjustment at 8.19% thereby working out the difference in ALP at 32.46%. The Ld. AR placed reliance on a number of judicial precedents to support his claim that the negative working capital adjustment was not warranted in the assessee's case.

3.3 The Ld. AR further submitted that the reimbursement of expenses received from the AEs were in the nature of expenses incurred by the assessee on behalf of the Associated Enterprises

and since these costs essentially comprised third party costs, these reimbursements were considered to be at arm's length by the assessee in its transfer pricing study. However, post the directions of the Ld. DRP, the TPO considered the reimbursements received to be part of the operating revenue as well as operating cost resulting in the margin of the assessee being computed at 16.29%. It was further submitted that these reimbursements received were mere pass through costs which should be excluded while computing the operating margins of the assessee. Alternatively, it was submitted that similar adjustment with respect to the reimbursements should be made in the case of comparables also. The Ld. AR placed reliance on a number of judicial precedents to support his averment that reimbursements should be excluded while computing the operating margins of the assessee.

3.4 With respect to the adjustment made by the TPO on account of notional interest on receivables, the Ld. AR submitted that such an adjustment was not warranted in the assessee's case as the assessee company was a debt free company. The Ld. AR submitted that similar adjustment had been deleted in assessee's own case in assessment year 2010-11 by ITAT Delhi Bench. The

Ld. AR also placed reliance on numerous other judicial precedents in support of his claim that no adjustment was warranted on account of notional interest on receivables in case of debt free companies.

3.5 With respect to the comparables being sought to be excluded by the assessee, the contentions of the Ld. AR were as under:-

(i) Eclerx Services Ltd:

It was submitted by the Ld. AR that this company was functionally different from the assessee company as Eclerx was engaged in the business of providing Knowledge Processing Outsourcing (KPO) Services and it was engaged in providing business/data analytics and customized process solution for clients in financial services, manufacturing, retail, media, travel and hospitality. It was further submitted that Eclerx provided services through two business units, viz. financial services and sales and marketing services but no segmental data was available in the annual report of this company. It was also submitted that in the immediately preceding year i.e. assessment year 2011-12, the Ld. DRP had excluded this company on account of it being functionally different from the assessee. It was further submitted

that similarly in assessment year 2014-15, the Ld. DRP had excluded Eclerx on account of functional dissimilarity. The Ld. AR also agitated the inclusion of this company by the TPO by stating that the turnover of this company was more than nine times the assessee's turnover.

(ii) Accentia Technologies Limited:

The Ld. AR submitted that this company had a different business profile than that of the assessee company as Accentia was engaged in offering services related to medical transcription and discreet reportable transcription, medical billing, practice management consulting, medical coding, receivables management and software as a service. The Ld. AR submitted that apart from the services, Accentia was also offering software products like Instakare, InstaPMS, InstaScribe, Insta DRT, InstaWeb, InstaBill, InstaEMR and InstaView. It was further submitted that in view of segmental data not being available, Accentia had been rejected in the cases of Avaya India (P) Ltd., Vodafone India Services P. Ltd. and Exevo India (P) Ltd. by the Delhi Benches of the ITAT. The Ld. AR also submitted that during the year under consideration Accentia had launched eight different products and there was amalgamation/acquisition during the year which warranted

exclusion of this company from the final set of comparables in the case of the assessee.

(iii) TCS E-Serve Ltd:

The Ld. AR submitted that this company rendered both Business Process Outsourcing (BPO) services as well as KPO services and also provided support services for both data and voice processes whereas the assessee company was only engaged in providing back office Information Technology Enabled Services (ITeS) and data analytics service to its associated enterprises. It was further submitted that the size of TCS E-Serve Ltd. as well as its turnover was significantly higher than that of the assessee company which was approximately more than 31 times of the assessee's turnover. It was further submitted that TCS E-Serve Ltd. owned intangibles in the form of software licences which was not so in the case of the assessee company. The Ld. AR also submitted that the employee cost base of TCS E-Serve Ltd. was 19 times more than the assessee's employee cost base. The Ld. AR placed reliance on a number of orders of ITAT Delhi Benches wherein TCS E-Serve Ltd. had been rejected as a comparable on account of being a giant company, high scale of operations, brand value associated with the company and high-end nature of services.

(iv) Acropetal Technologies Ltd (segment):

The Ld. AR submitted that this company was also not functionally comparable company as Acropetal Technologies Ltd. was engaged in providing healthcare services which included innovation, patient life cycle management, physician and clinical life cycle management, hospital administration management, drug discovery and administration management and disease life cycle management. The Ld. AR also drew our attention to the annual report of the company and submitted that segmental reporting was not available. It was also submitted that during the year under consideration, there were extraordinary events in Acropetal Technologies Ltd. as this company had acquired two US based companies. The Ld. AR also submitted that Acropetal Technologies Ltd. undertook substantial research and development activities and had also been making consistent investment in developing intellectual property which was not so in the case of the assessee. Reliance was placed on some orders of the ITAT Delhi Benches wherein this company was rejected on the ground that it was providing KPO services and also for the reason of extraordinary events.

3.6 The Ld. AR further submitted that the assessee was praying for inclusion of R Systems International Ltd. which was rejected by the TPO on the ground of different financial year ending. The Ld. AR submitted that the financial results of R Systems International Ltd. for the year ended 31.3.2012 could be derived from the financial results available on the company's website. The Ld. AR placed reliance on the judgment of the Hon'ble Delhi High Court in the case of Commissioner of Income Tax vs. Mckinsey Knowledge Centre India Pvt. Ltd. in ITA No. 217/2014 wherein the Hon'ble Delhi High Court had held that if the comparable is functionally the same as that of the tested party, then the same cannot be rejected merely on the ground that data for entire financial year was not available. The Ld. AR submitted that from the data available on website, the results for the financial year can be extrapolated. Reliance was placed on numerous orders of the ITAT Delhi Benches wherein R Systems International Ltd. was directed to be included as a comparable irrespective of different financial year ending.

3.7 Arguing against the disallowance of Rs. 4,69,227/- made u/s 14A of the Act, the Ld. AR submitted that section 14A r/w Rule 8D could not be invoked when no satisfaction had been

recorded by the Assessing Officer so as to establish a reasonable nexus between expenditure disallowed and dividend income earned. It was further submitted that in the assessee's case, the dividend was automatically credited to assessee's account without any effort as the assessee had invested in mutual funds in ICICI Liquidity Plan wherein the dividend was automatically re-invested with weekly frequencies. The Ld. AR also submitted that the assessee did not have any borrowings which could be said to have been used for making the investment in the mutual funds. It was reiterated by the Ld. AR that the Assessing Officer had not given any specific reason for not agreeing with the claim of the assessee regarding no expenditure having been incurred on earning the exempt income and, thus, the provisions of Rule 8D(2)(iii) were erroneously invoked.

4. In response, the Ld. CIT DR placed extensive reliance on the observations and comments of the TPO as well as the directions of the Ld. DRP. It was submitted that the Ld. DRP had dealt with the objections of the assessee in a methodical and judicious manner and there was no legal infirmity in the same. The Ld. CIT DR vehemently argued that the final assessment order passed subsequent to the directions of the Ld. DRP needed to be upheld.

5.0 We have heard the rival submissions and perused the material available on record. As far as the issue of adjustment with respect to depreciation is concerned, it is seen that the Ld. DRP in its directions for assessment year 2011-12, vide order dated 21.12.2015, had directed the TPO to allow depreciation adjustment in terms of the order of the ITAT in the case of EXLservice.com vs. ACIT reported in TII-313-ITAT-DEL-TP. Similarly for assessment year 2014-15, the Ld. DRP, vide its order dated 6.4.2018, directed the TPO to verify the claim of the assessee and re-compute the margins. The Ld. DRP has also noted in its directions for assessment year 2014-15 that the adjustment with respect to depreciation had also been upheld by the ITAT in assessee's group entity's case for assessment years 2004-05, 2005-06, 2007-08 and 2010-11. It is also seen that the Delhi Bench of the ITAT in the case of EXLservice.com vs. ACIT (supra) while considering an identical issue has observed in Para 5.23 of the said order as under:-

“5.23. Turning to the facts of the instant case, we find that the method of charging depreciation, both by the assessee and its comparables, is by and large the same that is SLM. The assessee is seeking adjustment only due to higher rates of depreciation charged by it under SLM with the lower rates of depreciation charged by four comparable companies, other than Mapro Industries Ltd.

and Karvy Consultants Ltd. In view of above discussion, we hold that the operating profit margins of these four comparable companies should be recomputed by the TPO/AO in line with the rates of depreciation charged by the assessee under SLM. To put it simply, the amount of depreciation of the four comparable companies on their assets shall also be recomputed under the SLM alone as per the rates at which the assessee has provided depreciation. In doing so, if the comparable companies have charged depreciation at a lower rate in comparison with the assessee, then suitable increase should be made to their amount of depreciation and if the comparables have charged depreciation at a higher rate in comparison with the assessee on some of the assets, then suitable reduction should be made in the amount of their depreciation. Here it is significant to note that one of these four companies, namely Nucleus Netsoft and GIS India Ltd has charged depreciation on all its assets under SLM except for Computers, on which it provided depreciation on written down value basis. The TPO should see if he can correctly deduce the amount of depreciation, on the basis of data available for the year on 'Computers' also under SLM. If due to one reason or the other, such precise calculation is not possible, then no adjustment should be carried out in the calculation of the operating profits of this company, even on other items of assets. Ordinarily, we would have ordered for the exclusion of this company from the list of comparables in the event of no possibility of computing depreciation on computers under the SLM by converting it from w.d.v. method, because of this being a material factor and not quantifiable. But since neither the assessee nor the Revenue seek the exclusion of this company from the list of comparables, we cannot suo motu order so. We, therefore, sum up our conclusion on this aspect of the matter by holding that if the assessee as well as the comparable companies are using the SLM and there is a difference in the rates of depreciation charged by them, then there is a need to make suitable adjustment to the profits of the comparables."

5.0.1 Therefore, keeping in view the principle of consistency and also respectfully following the ratio laid down by the Coordinate Bench, we direct the TPO to examine the facts and allow the depreciation adjustment to the assessee. Accordingly, this ground stands allowed for statistical purposes.

5.1 Coming to the issue of the assessee's challenge to the directions of the Ld. DRP in granting working capital adjustment to the assessee without the assessee raising any objection regarding the same before the Ld. DRP and, consequently, the same resulting in negative working capital adjustment being made by the TPO/Assessing Officer (AO), we find that this issue is covered in favour of the assessee by the order of ITAT Hyderabad Bench in the case of Adaptec (India) (P.) Ltd. vs. ACIT reported in (2015) 57 taxmann.com 307 (Hyderabad Trib.). In this case, the ITAT Hyderabad Bench has opined that there was no need for making any negative working capital adjustment when the assessee did not carry any working capital risk. Undisputedly, the assessee had not prayed for any working capital adjustment in the Memorandum of Objections filed before the Ld. DRP and, thus, the Ld. DRP has exceeded its jurisdiction by issuing directions on an issue which was not a subject matter before it.

In view of the facts being undisputed regarding the assessee not having raised any objection before the Ld. DRP regarding working capital adjustment to be granted to it as well as in view of the settled judicial precedent, we direct the TPO to re-compute the margins without making any negative working capital adjustment. Accordingly, this ground stands allowed.

5.2 Coming to the issue of reimbursements which were considered as part of operating revenue as well as operating cost while computing the margin of the assessee, we note that this issue has been partially resolved vide order passed u/s 154 dated 11.01.2017 wherein the proposed adjustment of Rs. 163,651,494/- has been reduced to Rs. 82,289,042/- after rectifying the order of not considering the reimbursements as part of the revenue. It is the plea of the assessee that the reimbursements should be excluded both from the margins of the assessee as well as of the comparables. The Ld. AR has also drawn our attention to copy of evidences filed before the TPO/Assessing Officer in this regard. While agreeing with the contention of the assessee that reimbursements should be excluded from both the assessee's margins as well as the margins of the comparables, we deem it fit to restore the issue to the

TPO/Assessing Officer for examining the claim of the assessee in light of the evidences filed by the assessee along with its application dated 21.1.2016 and submitted to the office of DCIT – TP- 2(3)(1) New Delhi. Thus, this ground stands allowed for statistical purposes.

5.3 Coming to the issue of notional interest being charged on receivables, we find that this issue is covered in favour of the assessee by the order of ITAT in assessee's own case for assessment year 2010-11 wherein in ITA No. 2075/Del/2015, vide order dated 6.3.2018, the Coordinate Bench of the Tribunal has, relying on the order of the Coordinate Bench of the Tribunal in Kadimi Tool Manufacturing Co. Pvt. Ltd. vs. DCIT reported in (2017) 87 Taxmann.com 42 (Delhi Tribunal), which was confirmed by the Hon'ble Delhi High Court as well the Hon'ble Apex Court, has held that adjustment made by the TPO/Ld. DRP on account of interest on receivables was not sustainable in the eyes of law in the case of the assessee as, undisputedly, the taxpayer is a debt free company. During the course of proceedings before us, the Ld. CIT DR could not point out any reason as to why this Bench should take a view different from the view taken by the Coordinate Bench in the order for assessment

year 2010-11 in assessee's own case as aforesaid. Respectfully, following the order of the co-ordinate Bench in assessee's own case for AY 10-11 and in view of principle of consistency, we hold that the adjustment made by the TPO/Ld. DRP on account of interest on receivables is not sustainable in the eyes of law in the case of the assessee as, undisputedly, the taxpayer is a debt free company. Consequently, this ground is also allowed in favour of the assessee.

5.4 Coming to the issue of comparables, our observations and findings are as under:-

(i) Eclerx Services Ltd:

The assessee has challenged the inclusion of this company as comparable on the ground that it was functionally different from the assessee company as Eclerx Services Ltd. is engaged in the business of providing KPO services whereas the assessee company is a captive IT enabled service provider. We note that the Ld. DRP, in assessee's case for assessment year 2011-12 as well as for assessment year 2014-15, in its directions, has excluded Eclerx Services Ltd. on account of being functionally different from the assessee company. We note that the Ld. DRP

has directed exclusion of this company for assessment year 2011-12 in Para 4.4.4 of its directions by placing reliance on the judgment of the Hon'ble Delhi High Court in Rampgreen Solution Pvt. Ltd. vs. CIT reported in 2015-TII-33-HC-DEL-TP and has also noted that the business activities of the assessee were materially different from the business activities of the Eclerx Services Ltd. The Ld. CIT DR during the course of proceedings before us, could not justify the inclusion of this company in this year as the functional profile of the assessee has remained the same. Therefore, in view of the principle of consistency as well as in view of settled judicial precedent, we direct exclusion of this company from the final set of comparables.

(ii) Accentia Technologies Limited:

The assessee has objected to this company being included in the final set of comparables on the ground that this company has a different business profile from that of the assessee company. It is undisputed that the assessee is a captive IT enabled service provider whereas as per the Annual Report of Accentia Technologies Limited, this company is engaged in offering medical transcription related services and is also into creation and selling of software products. We also note after going through the

Annual Report of this company that no segmental results are available in the case of this company. We note that the business activity of Accentia Technologies Limited has been classified under a single segment namely 'Healthcare Receivables Management' and the profit and loss account of this company shows income from three sources viz. medical transcription, medical discreet reportable transcription and billing and coding. We note that this company was excluded as a comparable by the Delhi Bench of the ITAT in the case of B.C. Management Services (P) Ltd. reported in (2017) 83 Taxmann.com 346 (Delhi Tribunal) on the ground that this company was engaged in software development, no separate segments in the financials were available, there was significant increase in revenue and there were acquisitions by this company. The order of the tribunal was upheld by the Hon'ble Delhi High Court in PCIT vs. B.C. Management Services (P) Ltd. reported in (2018) 253 Taxman 138 (Delhi). This company also directed to be excluded by the Delhi Bench of the ITAT in the case of Avaya India (P) Ltd. vs. ACIT reported in (2015) 64 Taxmann.com 452 (Delhi Tribunal), Vodafone India Services P. Ltd. reported in (2016) 66 taxmann.com 246 (Delhi Tribunal) and Exevo India (P) Ltd. vs.

ITO reported in 72 Taxmann.com 339 (Delhi Trib.) on the ground that segmental data was missing. On similar reasoning of absence of segmental data and following the settled judicial precedents, we direct the exclusion of this company from the final set of comparables.

(iii) TCS E-Serve Ltd:

It is the contention of the Ld. AR that TCS E-Serve Ltd. renders services which are functionally dissimilar to that of the assessee company and we note that the averment of the AR is correct in this regard. We also note that TCS E-Serve Ltd. has a huge scale of operations and enjoys the brand value associated with the Tata group whereas the assessee company does not have the same. We note that TCS E-Serve Ltd has been rejected as a comparable on account of being a giant company, high scale of operations, high brand value and high end nature of services by the ITAT Delhi Bench in the case of B.C. Management Services Pvt. Ltd. vs. DCIT reported in (2017) 83 taxmann.com 346 (Delhi Trib) which was later confirmed by the Hon'ble Delhi High Court in the case of PCIT vs. B.C. Management Services Pvt. Ltd. reported in (2018) 253 Taxman 138 (Del). Similar view has also been taken by the ITAT Delhi Bench in the case of Actis Global Service Pvt. Ltd.

reported in (2016)175 TTJ 506, Agilent Technologies (International) Pvt. Ltd. reported in (2018) 91 taxmann.com 59 (Delhi Trib.) and a host of other cases. Although the Ld. CIT DR has vehemently argued for inclusion of this company in the final set of comparables, keeping in view the settled judicial view in respect of this company, we are unable to agree with the contention of the Ld. CIT DR and we direct the exclusion of this company from the final set of comparables.

(iv) Acropetal Technologies Ltd (segment):

It has been submitted by the Ld. AR that this company is engaged in provision of healthcare services which include Electronic Medical Record, patient life cycle management, physical and clinical life cycle management, hospital administration management and disease life cycle management. It has also been submitted that segmental bifurcation pertaining to the various revenue streams was not disclosed. We find that these averments of the AR are correct. We also note that this company was directed to be excluded by the ITAT Delhi Bench in the case of Agilis Information Technologies Pvt. Ltd vs. ACIT reported in (2018) 89 taxmann.com 440 (Delhi – Trib.) on the ground that Acropetal Technologies Ltd. was engaged in provision of high end

healthcare services and owns intellectual property. It has also been noted by the ITAT Delhi Bench that this company was engaged in sale of software productw. Undisputedly, the assessee company i.e. Inductis India Pvt. Ltd. is a captive IT enabled service provider and, therefore, this cannot be compared to the services being offered by Acropetal Technologies Ltd. We also note that segmental data is not available for the year under consideration as is evident from the perusal of the annual report which has been placed on record. Therefore, we have no other option but to direct the exclusion of this company from the final set of comparables. It is directed accordingly.

(v) R Systems International Ltd:

The assessee is seeking to get this company included as a comparable. It is seen that this company was rejected as a comparable on the ground that this company had a different financial year ending. The issue of accepting a company having a different financial year ending as a comparable is no more *res integra* and the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Mercer Consulting (India) (P) Ltd. reported in (2017) 390 ITR 615 (P&H) has upheld the order of the ITAT Delhi Bench reported in (2014) 150 ITD 1(Delhi Trib.) on the issue. The

Hon'ble Punjab & Haryana High Court held that they were entirely in agreement with the decision of the Tribunal that if the data relating to the financial year o is strictly available from the annual accounts of that comparable then it cannot be held as not passing the test of sub rule (4) of Rule 10B. The Hon'ble Punjab & Haryana High Court has opined that Rule 10B(4) does not exclude from consideration the data of an entity merely because its financial year is different from the financial year of the assessee and further as long as the data relating to the financial year is available, it matters not if the financial year followed is different. Similar view has been taken by the Hon'ble Delhi High Court in the case of Commissioner of Income Tax vs. Mckinsey Knowledge Centre India Pvt. Ltd. reported in ITA No. 217/2014. Respectfully following the settled judicial precedent, we direct the TPO to include this company in the final set of comparables after duly verifying that data can be reasonably and satisfactorily compiled for the financial year ending 31st March.

5.5 Coming to the issue of disallowance of Rs. 4,69,227/- u/s 14A r/w Rule 8D it is the contention of the assessee that although the assessee had claimed that no expenditure had been incurred in relation to earning of exempt income, the Assessing

Officer did not record any satisfaction before invoking provisions of section 14A r/w Rule 8D. A perusal of the final assessment order shows that the Assessing Officer has observed that the assessee has maintained a consolidated bank account which has own funds as well as borrowed funds. The Assessing Officer has observed that the primary onus was upon the assessee to prove that the source of investment was from own funds and that no part of borrowed funds were invested in the investment of mutual funds. The Assessing Officer has also noted that no reconciliation has been filed by the assessee in respect of the amount available in the bank account relating to own funds or borrowed funds as the assessee had not furnished day-wise balance of own funds and borrowed funds along with corresponding entry of the investment made. The Assessing Officer has, thereafter, proceeded on an assumption that interest bearing funds could also have been utilized for making the investment. The assessee, on the other hand, has submitted that the investments were made in mutual funds in ICICI Liquidity Plan wherein the dividend was automatically reinvested with weekly frequency and there were no efforts for earning dividend income. It is also the claim of the assessee that the assessee company did not have any

borrowings and the interest expenses amounting to Rs. 22,279/- appearing in the profit and loss account pertained to interest on account of delay in payment of revenue dues under the various Acts. We have also perused the balance sheet of the assessee company placed on record and we note that both as on 31.3.2012 i.e. the year under consideration as well as on 31.3.2011 i.e. the immediately preceding year, there were no borrowed funds in the books of the assessee. This lends credence to the averment of the assessee that there was no borrowing by the assessee company and, therefore, there was no question of using borrowed funds for the purpose of investment in the mutual funds. Therefore, in overall view of the facts of the case, we are of the considered opinion that the impugned disallowance u/s 14A of the Act was unwarranted. Accordingly, we direct the deletion of this disallowance. This ground stands allowed.

6. In the result, the appeal of the assessee stands allowed in terms of our observations and directions as mentioned in the preceding paragraphs.

Order is pronounced in the open court on 20th August, 2018.

Sd/-
(PRAMOD KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 20th AUGUST, 2018
'GS'

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

TRUE COPY

By Order

ASSISTANT REGISTRAR

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	