आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.303/PUN/2015
निर्धारण वर्ष / Assessment Year : 2010-11

The Dy. Commissioner of Income Tax,
Circle 1(1), Pune …. अपीलार्थी/Appellant

Vs.

BNY Mellon International Operations
(India) Pvt. Ltd.,
Tower – III, Level III,
Cybercity, Magarpatty City,
Hadapsar, Pune - 411013 …. प्रत्यर्थी / Respondent

PAN: AADCM9640E

आयकर अपील सं. / ITA No.423/PUN/2015
निर्धारण वर्ष / Assessment Year : 2010-11

BNY Mellon International Operations
(India) Pvt. Ltd.,
Tower – III, Level III,
Cybercity, Magarpatty City,
Hadapsar, Pune - 411013 …. अपीलार्थी/Appellant

PAN: AADCM9640E

Vs.

The Dy. Commissioner of Income Tax,
Circle 1(1), Pune …. प्रत्यर्थी / Respondent

Assessee by : Shri Ketan Ved
Revenue by : Shri Rajeev Kumar, CIT

सुनवाई की तारीख /		घोषणा की तारीख /
Date of Hearing : 16.08.2017		**Date of Pronouncement: 27.09.2017**

आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The cross appeals filed by the Revenue and the assessee are against order of DCIT, Circle 1(1), Pune, dated 22.01.2015 relating to assessment year 2010-11 passed under section 143(3) r.w.s. 144C(13) of Income Tax Act 1961 (in short the 'Act').

2. The cross appeals filed by the Revenue and the assessee were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The assessee in ITA No.423/PUN/2015 has raised the following grounds of appeal:-

*1. **General:***

The learned DCIT, pursuant to the directions of the Hon'ble DRP has erred in law and on the facts and in circumstances of the case in making an adjustment amounting to INR 9,99,38,623/- to the value of international transactions entered into by the Appellant with its associated enterprise ("AE") with respect to export of transaction processing services.

*2. **Erroneous selection of comparable companies***

The learned DCIT, pursuant to the directions of the Hon'ble DRP has erred in law and on the facts and circumstances of the case in confirming the following companies as the comparable companies:

2.1 Infosys BPO Ltd
2.2 Accentia Technologies Ltd
2.3 Jeevan Softech Ltd (Segmental)

3. ***Erroneous rejection of comparable companies***

The learned DCIT, pursuant to the directions of the Hon'ble DRP has erred in law and on the facts and in circumstances of the case in rejecting Allsec Technologies Ltd. as the comparable company.

4. ***Erroneous calculation of the operating margins of certain comparable companies***

The learned DCIT, pursuant to the directions of the Hon'ble DRP has erred on the facts and in circumstances of the case in not complying with the binding directions of the Hon'ble DRP (para 3.3 to 3.6 on page nos. 5 and 6) in computing the operating margin of certain comparable companies.

5. ***Erroneous calculation of working capital adjustment***

The learned DCIT, pursuant to the directions of the Hon'ble DRP has erred on the facts and in circumstances of the case in not complying with the binding directions of the Hon'ble DRP (para 13.4 on page 27) in computing the working capital adjustment.

6. Inappropriate application of the enhanced foreign exchange earnings filter of greater than 75%

The learned DCIT, pursuant to the directions of the Hon'ble DRP has erred on the facts and in circumstances of the case in application of enhanced foreign exchange earnings filter of 75% (25% as applied by the Appellant) and has rejected Allsec Technologies Ltd. having a foreign exchange earnings/ service income ratio of 54.14%, however, has accepted Jeevan Softech Ltd having a foreign exchange earnings/ service income ratio of 59.49%.

7. Erroneous non-application of turnover filter

The learned DCIT, pursuant to the directions of the Hon'ble DRP has erred on the facts and in circumstances of the case in not applying upper turnover filter while selection of comparable companies.

8. Erroneous selection of Information Technology Enabled Services (ITeS) and Knowledge Process Outsourcing (KPO) companies unlike Business Process Outsourcing (BPO) companies as comparable to the Appellant which is into Transactional Processing BPO services

The learned DCIT has erred in law and on the facts and in circumstances of the case in selection of ITES and KPO companies unlike the Appellant which is into Transactional Processing BPO segment.

9. Erroneous selection of outliers companies as comparable to the Appellant

The learned DCIT, pursuant to the directions of Hon'ble DRP has erred in law and on the facts and in circumstances of the case in selection of outliers companies e.g. Infosys BPO Ltd, Accentia Technologies Ltd. and Jeevan Softech Ltd.

10. <u>Non-consideration of Risk adjustment to the Appellant</u>

The learned DCIT, pursuant to the directions of the Hon'ble DRP has erred on the facts and in circumstances of the case in non-granting risk adjustment to the Appellant.

11. <u>Transfer pricing adjustment without giving benefit of +/- 5 percent.</u>

The learned DCIT has erred in law and on the facts and in circumstances of the case in not granting the benefit of +/- 5 percent as per proviso to section 92C(2) of the Act.

12. <u>Disallowance of contribution to provident fund</u>

The learned DCIT erred in not granting a deduction for contribution to provident fund amounting to Rs.3,668,560 paid during the year.

13. <u>Non-granting of credit of Minimum Alternate Tax</u>

The learned DCIT has erred in not granting credit of Minimum Alternate Tax to the tune of Rs.8,176,909 in accordance with the provisions of section 115JAA of the Act, without any reasons whatsoever.

14. <u>Intimation of penalty proceedings</u>

The learned DCIT, erred on the facts and in law in proposing to initiate penalty proceedings section 271(1) (c) of the Act, without considering the facts of the case.

15. <u>Levying of interest</u>

15.1 The learned DCIT, has erred on the facts and in law by levying interest under sections 234B and 234C of the Act.

15.2 The Appellant pleads that the shortfall in advance tax and excess refund has resulted in view of the transfer pricing adjustment which have been objected in the ground above.

16. Each of the above grounds of appeal is without prejudice to the other.

17. The appellant reserved the right to amend, alter or add to the grounds of appeal.

4. The Revenue in 303/PUN/2015 has raised the following grounds of appeal:-

1. On the facts and in the circumstances of the case, the Ld. Dispute Resolution Panel erred in directing the Assessing Officer to exclude E-clerx on the basis of the fact the company is in the business of KPO.
2. On the facts and in the circumstances of the case, the Ld. Dispute Resolution Panel erred in not considering the fact that the assessee is taking inconsistent approach in selecting comparable.

> 3. *On the facts and in the circumstances of the case, the Ld. Dispute Resolution Panel erred in ignoring the Hon'ble ITAT's decision in the case of Willis Processing Services Ltd. TS 49 ITAT 2013 (Mum) and Agilent Technology International Ltd. TS 165 ITAT (2013) Del and Vodafone India Services TS 95 ITAT 2013(Mum).*
>
> 4. *The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal during the course of the appellate proceedings before the Hon'ble Tribunal.*

5. The assessee is aggrieved by the transfer pricing adjustment made in its hands. The Revenue is also aggrieved by the order of Dispute Resolution Panle (DRP) in excluding E-clerx on the basis that the said company was in the business of KPO.

6. The learned Authorized Representative for the assessee before us pointed out that the assessee is aggrieved by the selection of comparable companies while benchmarking international transactions of the assessee with its associated enterprises by applying TNMM method as most appropriate method. The first concern pointed out by the learned Authorized Representative for the assessee was Infosys BPO Ltd. which is not comparable because of its turnover and also certain extraordinary events during the year of acquisition of companies. The assessee is also aggrieved by inclusion of Accentia Technologies Ltd. because of extraordinary events during the year of acquisition of other companies. The learned Authorized Representative for the assessee further pointed out that PLI of Jeevan Softech Ltd. i.e. segmental details were wrongly computed in this regard. It was pointed out that the Transfer Pricing Officer (TPO) by an error only had considered the margins of BPO operations and had not considered ERP segment revenue which was classified in the audited financial statement of the said concern. In respect of E-clerx Ltd., it was pointed out by the learned Authorized Representative for the assessee that the said

concern was KPO company and was not functionally comparable to the assessee. The case of assessee before us was that once the above concerns are excluded from the list of comparables and the margins of Jeevan Scientific Technology Ltd. are correctly applied, then average mean of margins of comparables worked out to 19.22% and after applying the second proviso to section 92C(2) of the Act, the margins shown by the assessee would be within range of +/- 5% of operating revenue and no adjustment is warranted in the hands of assessee. By way of ground of appeal No.5, the assessee has raised the issue of allowing working capital adjustment. In respect of grounds of appeal No.6 to 10, the learned Authorized Representative for the assessee fairly admitted that the said issue would become academic in nature, since no adjustment is to be made in the hands of assessee. The issue in ground of appeal No.11 raised by the assessee was claimed to be against the assessee. Further, corporate issue raised by way of ground of appeal No.12 was against contribution to Provident Fund amounting to Rs.36,68,560/- paid during the year. The said amount was paid consequent to the demand raised by the Regional Provident Fund Commissioner in respect of dues of both employees contribution and employer's contribution and interest thereon. The assessee paid the said demand but in the books of account, it had shown the said amount as advance recoverable and debited to the Profit and Loss Account as provision for doubtful debts. The assessee had in the return of income for the year under consideration, disallowed such an amount being provision for doubtful debts. Subsequently, the said liability was confirmed in the hands of assessee in assessment year 2013-14 and no further appeal was filed by the assessee. Hence, the provision for doubtful advances were reversed during the assessment year 2013-14 and the amount was offered to tax in the said year on the ground that the employees contribution of PF was covered under the provisions of section 43B(b) of the Act and was allowable in the year in which the payment was made. The assessee thus, claims that letter was filed before the Assessing Officer during the course of assessment proceedings to allow the said amount as deduction which was not considered by the Assessing Officer. The ground of appeal No.13 was not pressed and hence, the same is dismissed as not pressed and the ground of appeal No.14 is against initiation of penalty proceedings, was pointed out to be premature. Further, ground of appeal No.15 was against levy of interest under section 234B and 234C of the Act, which is consequential.

7. The learned Departmental Representative for the Revenue placed reliance on the order of Assessing Officer / DRP.

8. We have heard the rival contentions and perused the record. Briefly, in the facts of the case, the assessee for the year under consideration had furnished the return of income declaring total income of Rs.3,06,96,230/- after claiming deduction under section 10A of the Act. The assessee had paid taxes under the provisions of section 115JB of the Act. The assessee was engaged in providing IT Enabled Services / Business Processing Services i.e. BPO services to its associated enterprises. The assessee company was subsidiary of MBC Investments Corporation, US, which in turn, was a subsidiary of Bank of New York Mellon Corporation, USA (the ultimate holding company). The assessee renders services in the areas of asset servicing, finance & accounts, private wealth management, cash management and investment and asset management solutions (collective as BPO services), exclusively to the Bank of New York Mellon, USA and the Bank of New York Mellon, SA / NV, Brussels. The

assessee claimed that the services rendered to its associated enterprises were priced on cost plus basis. The assessee had used TNMM method in its transfer pricing report, as most appropriate method to benchmark international transactions relating to provision of BPO services. The operating profits earned by the comparables were computed on operating cost. The assessee had identified certain comparable companies on the basis of FAR analysis. The TPO applied modified filters and out of the concerns rejected by the assessee, made further selection and 11 concerns, which were found to be functionally comparable to the assessee. The said concerns are as under:-

Sr. No.	*Name of company*	*PLI (after working capital adjustment)*
1	*BNR Udyog Ltd (segmental)*	*23.77%*
2	*Infosys BPO Ltd.*	*35.13%*
3	*Accentia Technologies Ltd.*	*39.33%*
4	*Jeevan Scientific Technology Ltd. (segmental) (earlier known as Jeeven Softech Ltd.)*	*43.00%*
5	*Fortune Infotech Ltd.*	*22.46%*
6	*Cosmic Global Ltd.*	*18.33%*
7	*Caliber Business Point Solutions Ltd.*	*19.30%*
8	*Jindal Intellicom (P) Ltd.*	*14.08%*
9	*Informed Technologies India Ltd.*	*28.54%*
10	*Coral Hubs Ltd. (Formerly Vishal Information Technology Ltd.)*	*32.05%*
11	*Eclerx Services Ltd.*	*55.97%*
	Average	***30.18%***

9. The average margins after working capital adjustment was 30.18% as against the margins shown by the assessee at 18.78% and an adjustment of Rs.14,17,03,927/- was made to international transactions relating to provision of BPO services. The assessee filed objections before the DRP, which directed that E-clerx Services Ltd. and Coral Hubs Ltd. be excluded from the list of comparables. The average margins of comparables worked out to 26.82% and the Assessing Officer thus, made an adjustment of Rs.9,99,38,623/-, against which both the assessee and the Revenue are in appeal.

10. The first plea raised by the assessee is against selection of Infosys BPO Ltd. Vide ground of appeal No.2, the assessee claims that the said concern had huge brand value and also had high turnover which was more than 6-7 times the turnover of assessee and further during financial year 2009-10, Infosys had acquired McCamish Systems LLC, a premier business process outsourcing service provider with revenue of USD of 38.2 millions. The learned Authorized Representative for the assessee in this regard placed reliance on following decisions of Tribunal for the instant assessment year, wherein it has been held that Infosys BPO Ltd. could not be considered as comparable because of extraordinary events.

i) Ameriprise India Pvt. Ltd. Vs. DCIT (2016) 66 taxmann.com 246 (Delhi-Trib)

ii) Aegis Ltd. Vs. DCIT (2017) 78 taxmann.com 275 (Mum-Trib)

iii) Omniglobe Information Technologies (India) Pvt. Ltd. (2016) 74 taxmann.com 25.

iv) ITO Vs. Knoah Solutions Pvt. Ltd. (2016) 73 taxmann.com 79 (Hyd.Trib)

11. We have heard the rival contentions and perused the record. The first issue which arises in the present appeal is that while benchmarking international transactions of transfer pricing, selection of concern Infosys BPO Ltd. The assessee claimed that the said concern was not comparable because of its huge brand value and higher turnover. Further, during instant year, there was extraordinary event, wherein Infosys BPO Ltd. had acquired McCamish Systems LLC and hence, the margins of said concern could not be applied for benchmarking international transactions of the assessee. We find that different Benches of Tribunal relating to assessment year 2010-11 has held so. Following the same parity of reasoning, we hold that because of brand value and high turnover associated with Infosys BPO Ltd. and the extraordinary financial events during the year, Infosys BPO Ltd. is to be excluded from final list of comparables.

Accordingly, we hold so and direct the Assessing Officer / TPO to exclude Infosys BPO Ltd.

12. The next concern against which the assessee has raised objections is Accentia Technologies Ltd. on the ground of extraordinary events during the year under consideration. The said concern had acquired IQ group of companies in the United Kingdom and there was amalgamation of Asscent Infoserve Pvt. Ltd. with the said concern and because of these extraordinary events, the margins of said companies should not be included in the final set of comparables. The Pune Bench of Tribunal in Aptara Technologies Pvt. Ltd. Vs. ACIT (2016) 72 taxmann.com 352 (Pune – Trib) and Cummins Turbo Technologies Ltd. Vs. DCIT (2017) 79 taxmann.com 260 (Pune – Trib) has held that the said concern cannot be accepted as comparable. The Tribunal in Aptara Technologies Pvt. Ltd. Vs. ACIT (supra) held as under:-

> *"14. We find that the Tribunal in assessee's own case in assessment year 2008-09 in ITA No.2235/PN/2012, order dated 02.02.2015 had held that the said concern could not be considered as comparable because of certain extraordinary events. The said ratio was also applied in assessee's own case while benchmarking the international transaction of assessee with its associate enterprises in assessment year 2009-10 in ITA No.267/PN/2014, order dated 29.04.2015. The Tribunal vide order dated 02.02.2015 had held that the concern Accentia Technologies Ltd. could not be included in the final set of comparables holding as under:-*
>
> > *"13. Next, assessee had contended that Accentia Technologies Ltd. has been wrongly included by the TPO as a comparable concern. As per the assessee, the said concern was engaged in functionally different activities. It was pointed out that the said concern is engaged in providing medical transaction, billing and coding services, application development & customization (segmental data not available). Moreover, it was contended that the sales/turnover of the said concern was more than Rs.50 crores for the year under consideration which did not meet with turnover filter applied by the assessee. On this point, it was pointed out that the assessee had selected sales/turnover filter of 1-50 crores i.e. any concerns having a turnover exceeding Rs.50 crores were excluded. Thirdly, it was pointed out that the activities of the said concern were not comparable to the activities of the assessee.*
> >
> > *14. The TPO has noted the aforesaid objections of the assessee in para 18.1 of his order and has rejected the same by merely noticing that 75% of the revenue/income of the said concern is from ITES and*

> *therefore it is to be considered as a comparable. Before us, the Ld. Representative for the assessee has reiterated the submissions put-forth before the TPO in order to justify exclusion of the said concern from the list of comparables. In particularly, it has been pointed out that for the very same assessment year, the Bangalore Bench of the Tribunal in the case of Symphony Marketing Solutions India Pvt. Ltd. vs. ITO, (2013) 38 taxmann.com 55 (Bang.) has excluded the said concern from the list of comparables in a similar situation following the decision of the Hyderabad Bench of the Tribunal in the case of Capital IQ Information Systems (India) Private Limited vs. DCIT, (2013) 32 taxmann.com 21 (Hyd.).*
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> *15. We have considered the submissions of the Ld. Representative for the assessee and also the stand of the Revenue as emerging from the order of the TPO. In our view, the ratio laid down by the Hyderabad Bench of the Tribunal in the case of Capital IQ Information Systems (India) Private Limited (supra) and by the Bangalore Bench of the Tribunal in the case of Symphony Marketing Solutions India Pvt. Ltd. (supra) is squarely applicable to the present case also. The aforesaid Benches of the Tribunal found that during the year under consideration there were extraordinary events that took place in the said concern which warranted exclusion of this company as a comparable. We therefore hold that the said concern cannot be considered as a comparable."*

> *15. Further, similar proposition has been laid down by different Benches of Tribunal while deciding the appeals relating to assessment year 2010-11 and it has been held that because of extraordinary events during the year, the concern Accentia Technologies Ltd. was not comparable to the entities engaged in ITES. Following the same parity of reasoning, we hold that Accentia Technologies Ltd. is to be excluded from the final set of comparables."*

13. Following the same parity of reasoning as in Aptara Technologies Pvt. Ltd. Vs. ACIT (supra) and Cummins Turbo Technologies Ltd. Vs. DCIT (supra), we hold that Accentia Technologies Ltd. cannot be compared as comparable because of extraordinary events of acquisition and amalgamation during the year. Accordingly, we direct the Assessing Officer / TPO to exclude Accential Technologies Ltd. from final list of comparables.

14. The next plea raised by the assessee is incorrect computation of PLI of Jeevan Scientific Technology Ltd., which was earlier known as Jeevan Softech Ltd. The said concern was picked up as comparable and there is no dispute about applying margins. The only dispute which is raised before us is the computation of PLI of said concern, wherein the segmental details were referred.

However, the TPO while considering the margins of said concern had only considered BPO operations, where the sales were considered at only Rs.1,41,10,000/- which was the revenue from BPO operations and had not considered ERP segment revenue from where it was classified as being from ITES segment.

15. Similar issue of computation of PLI of said concern Jeevan Softech Ltd. arose before the Tribunal in the case of Aptara Technologies Pvt. Ltd. Vs. ACIT (supra) for the instant assessment year and it was held as under:-

> *"26. Another concern which was selected by the TPO was Jeevan Softech Ltd. The learned Authorized Representative for the assessee before us pointed out that the TPO has erred in working of the margins of said concern by adopting sales at Rs.1.41 crores, which admittedly is revenue from BPO operations. However, the TPO has failed to consider ERP segment revenue which is also classified in the audited financial statement of Jeevan Softech Ltd. as being from ITES segment and if the segmental margins of ITES segment are taken up, which includes total sales / income of Rs.1,74,43,276/-. The margin of the said concern worked out to 8.04% as against 39.38% applied by the Assessing Officer in the order passed under section 154 of the Act. In this regard, the learned Authorized Representative for the assessee drew our attention to the segmental details of said concern which are placed at pages 838 to 846 of the Paper Book. With regard to working of the TPO, the learned Authorized Representative for the assessee referred to page 406 of the Paper Book.*
>
> *27. The learned Departmental Representative for the Revenue fairly pointed out that the correction of margins is to be given in the hands of assessee while benchmarking its international transaction and by including Jeevan Softech Ltd. in the final list of comparables.*
>
> *28. In the totality of the above said facts and circumstances of the case, we find merit in the claim of assessee and direct the Assessing Officer / TPO to work out the correct margins of said concern Jeevan Softech Ltd. and thereafter, determine the average margins of comparables. Accordingly, we direct the Assessing Officer / TPO to exclude three concerns i.e. (1) Accentia Technologies Ltd., (2) Cosmic Global Ltd. and (3) Informed Technologies Ltd. from the final list of comparables and to correct the margins of Jeevan Softech Ltd. and work out the average margins of comparables. It was the case of learned Authorized Representative for the assessee before us that the same would be within +/- 5% and hence no addition on account of arm's length price of international transaction with the associate enterprises is to be made in the hands of assessee."*

16. Following the same parity of reasoning, we direct the Assessing Officer / TPO to work out correct margins of said concern Jeevan Softech Ltd. and then determine average margins of comparables and apply the same.

17. The next issue which needs to be looked into is the issue raised by the Revenue against exclusion of E-clerx. The said concern was found to be functionally not comparable as it was engaged in KPO segment and the DRP directed its deletion from the final list of comparables. The Revenue is aggrieved by the said order of DRP.

18. We find similar issue of E-clerx Services Ltd. being KPO company and not comparable, has been decided by the Tribunal in Aptara Technologies Pvt. Ltd. Vs. ACIT (supra), wherein the issue was with regard to exclusion of E-clerx Services Ltd. from the final list of comparables. The Tribunal relied on the ratio laid down by the Hon'ble Delhi High Court in Rampgreen Solutions Pvt. Ltd. Vs. CIT in ITA No.102/2015, judgment dated 10.08.2015 and held as under:-

> *"33. Now, coming to the appeal filed by the Revenue, wherein the only issue is with regard to exclusion of Eclerx Services Ltd. being KPO company from the final list of comparables, whereas the assessee was BPO company.*
>
> *34. We find that the issue is squarely covered by the detailed judgment of Hon'ble Delhi High Court in Rampgreen Solutions Pvt. Ltd. Vs. CIT (supra), which has been applied by Pune Bench of Tribunal in Cummins Turbo Technologies Ltd., UK Vs. DDIT (Int. Tax) (supra). The relevant findings of the Tribunal are as under:-*
>
>> *"20. The next concern which the assessee wants to be excluded from final set of comparables is Eclerx Services Ltd., which was engaged in the business of KPO services and hence not functionally similar. We have in the paras hereinabove already held that the concern Crossdomain Solutions Pvt. Ltd. was engaged in the business of KPO services, was not functionally similar. Following the same parity of reasoning, where Eclerx Services Ltd. is engaged in the business of KPO services, is not functionally comparable to the assessee. We further find that the High Court of Delhi in Rampgreen Solutions Pvt. Ltd. Vs. CIT (supra) has also noted the functionality of Eclerx Services Ltd. being of KPO services and the Hon'ble High Court of Delhi directed the same is to be excluded while benchmarking the international transactions of ITES provider. Following the same line of reasoning, we hold that Eclerx Services Ltd. is to be excluded from the final set of comparables."*
>
> *35. Following the ratio laid down by the Hon'ble Delhi High Court in Rampgreen Solutions Pvt. Ltd. Vs. CIT (supra) as applied by Pune Bench of Tribunal in Cummins Turbo Technologies Ltd., UK Vs. DDIT (Int. Tax) (supra), we uphold the order of CIT(A) in excluding Eclerx Services Ltd. The grounds of appeal raised by the Revenue are thus, dismissed."*

19. Accordingly, we direct the Assessing Officer / TPO to re-work mean margins of said comparables by first excluding the margins of E-clerx Services Ltd., Infosys BPO Ltd. and Accentia Technologies Ltd. and reworking margins of Jeevan Softech Ltd. The learned Authorized Representative for the assessee in the written note has furnished PLI after working capital adjustment of said concerns at 19.22% and has pointed out that no adjustment is to be made on account of arm's length price of international transactions, in view of proviso to section 92C(2) of the Act, under which range of +/- 5% of operating revenue be applied. So, we direct the Assessing Officer to verify the computation in this regard and delete the addition in the hands of assessee.

20. Before parting, we may refer to the issue raised by way ground of appeal No.5 i.e. against erroneous calculation of capital adjustment.

21. The learned Authorized Representative for the assessee pointed out that the DRP had directed to compute working capital adjustment in the hands of comparables. However, the Assessing Officer has not effectively complied with the said directions. Accordingly, we direct the Assessing Officer to re-compute the margins after working capital adjustment. The grounds of appeal No.1 to 5 raised by the assessee are thus, allowed.

22. The issue in grounds of appeal No.6 to 10 raised by the assessee become academic in nature, since no further adjustment needs to be made after allowing relief as in the paras hereinabove. Accordingly, we hold so.

23. In respect of ground of appeal No.11 i.e. allowing the benefit of +/- 5% is against the assessee as admitted by the learned Authorized Representative for the assessee and hence, the same is dismissed.

24. The issue in ground of appeal No.12 raised by the assessee is corporate issue of allowing deduction for contribution to Provident Fund amounting to Rs.36,68,560/-.

25. Brief facts relating to the issue are that the said demand was raised against assessee consequent to the order passed by the Regional Provident Fund Commissioner, Employees Provident Fund Organization. The demand was on account of PF dues in respect of employees contribution and employer's contribution and interest thereon. The assessee had filed an appeal against the said order and hence, had challenged the demand so raised. Further, the assessee also paid the said demand during the year under consideration. In the books of account, the assessee had shown the said amount as advance recoverable and debited to Profit and Loss Account as provision for doubtful debts (advance). While filing the return of income, the assessee disallowed the said sum of Rs.36,68,560/- being provision for doubtful debts. In assessment year 2013-14, the appeal filed by the assessee against the said demand of PF was dismissed, against which the assessee had not filed any further appeal. Hence, the liability of Rs.36,68,560/- was confirmed in the hands of assessee. In the said assessment year, the provision for doubtful advance was reversed. However, while filing the return of income, the assessee did not reduce the said amount while computing the income and offered to the tax during assessment year 2013-14. The assessee during the course of assessment proceedings filed

a letter dated 20.09.2013 requesting the Assessing Officer to allow said claim of Rs.38,68,560/- under section 43B(b) of the Act. The Assessing Officer did not adjudicate the same and issued draft assessment order.

26. The claim of assessee before us is that in view of decision of the Hon'ble Bombay High Court in CIT Vs. Pruthvi Brokers & Shareholders (P) Ltd. (2012) 349 ITR 336 (Bom), wherein it has been held that the assessee is entitled to raise before appellate authorities any claim which was not claimed in the return of income and hence, the same may be allowed.

27. We find merit in the plea of assessee where the assessee during the course of assessment proceedings had made a claim before the Assessing Officer for allowing the benefit of deduction under section 43B of the Act. The assessee has made payment of PF dues during the year under consideration and consequently, the assessee is entitled to claim the said amount as deduction in the instant assessment year itself. Accordingly, we hold so and direct the Assessing Officer to allow the deduction of Rs.36,68,560/-. The ground of appeal No.12 is thus, allowed.

28. The ground of appeal No.13 is not pressed and hence, the same is dismissed as not pressed.

29. The ground of appeal No.14 being premature, is dismissed. The ground of appeal No.15 is against levy of interest under section 234B and 234C of the Act being consequential, is dismissed.

30. The grounds of appeal No.16 and 17 being general, are dismissed.

31. The Revenue's grounds of appeal against exclusion of E-clerx Services Ltd. is dismissed, in view of the ratio laid down by the Hon'ble Delhi High Court in Rampgreen Solutions Pvt. Ltd. Vs. CIT (supra).

32. In the result, appeal of assessee is partly allowed and the appeal of Revenue is dismissed.

Order pronounced on this 27th day of September, 2017.

Sd/-	Sd/-
(ANIL CHATURVEDI)	**(SUSHMA CHOWLA)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 27th September, 2017.

GCVSR

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to</u> :

1. The Appellant;
2. The Respondent;
3. The DIT (Intl. Taxation), Pune;
4. The DRP, Pune;
5. The DR 'A', ITAT, Pune;
6. Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune