

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH " B "**

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER AND
SHRI VIJAY PAL RAO, JUDICIAL MEMBER**

I.T (T.P) A. No.1318/Bang/2012 (Assessment Year : 2008-09)		
M/s. Tektronix Engineering Development (India) Pvt. Ltd., Samrah Plaza, 2 nd Floor, 4/2, St. Marks Road, Bangalore-560 001 PAN AACT 7289F	Vs.	Dy. Commissioner of Income Tax, Circle 12(4), Bangalore.
Appellant		Respondent.

Appellant By : Shri Sharath Rao, C.A. Respondent By : Ms. Neera Malhotra, CIT (D.R)
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Date of Hearing : 06.10.2016.

Date of Pronouncement : 19.10.2016.

ORDER

Per Shri Vijay Pal Rao, J.M. :

This appeal by the assessee is directed against the assessment order dt.3.8.2012 passed under Section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (in short 'the Act') in pursuant to the directions of the Dispute Resolution Panel ('DRP') dt.6.6.2012 for the Assessment Year 2008-09.

2. The assessee has filed the following concise grounds :

1. The order passed by the Honorable Dispute Resolution Panel (DRP) and the learned Assessing Officer (AO) / Transfer Pricing Officer (TPO) is not in accordance with the law and is contrary to the facts and circumstances of the present case and in any case in violation of the principle of equity and natural justice.
2. The Honourable DRP and the learned AO/TPO have erred in law and on facts in rejecting, without appropriate reasons, the detailed benchmarking analysis conducted by the Appellant and embarking on a fresh search for comparables.
3. The Honourable DRP and the learned AO/TPO erred in fact and in law in determining the Arm's Length Price (ALP) by adopting the financial data for a single year (i.e. the financial year 2007-08) of the comparables as against multiple year data considered by the Appellant.
4. The Honourable DRP and the learned AO/TPO erred in fact and in law in using selective information, which was not available in public domain, obtained under section 133(6) of the Income tax Act, 1961 (the Act) and identifying additional comparables based on the same.
5. The Honourable DRP/ Learned AO has erred in law and on facts in upholding the ALP of 21.48 percent as proposed by the TPO, for the software development services rendered by the Appellant.
6. The Honourable DRP and the learned AO/TPO has erred in determining the ALP based on companies, which are not comparable to the Appellant due to various factors such as functional comparability, product / intangible led revenues, different business model, inadequate financial information, use of unreliable segment financials, irreconcilable differences in accounting policy, extra ordinary events /business restructuring, abnormal fluctuation in margins, exceptional year, lower employee cost levels, fails TPO's own filters, significant related party transactions, brand value, high turnover differences etc.
7. The Honourable DRP/learned AO have erred in law and on facts in upholding the TPO's action of not making a downward adjustment to the ALP, considering the risk differentials between the Appellant and the comparable companies;
8. The Honourable DRP and the learned AO/TPO erred in rejecting certain companies selected in the transfer pricing study of the Appellant based on incorrect reasons.

9. The Honorable DRP and the learned AO/TPO erred in law and on facts in upholding the arm's length margin arrived at by the learned TPO by not considering the benefit of the 5 percent tolerance range allowed under the Act and the Rules.
 10. The Honourable DRP has erred in law and on facts in upholding the AO's action of disallowing a sum of Rs 7,255,396, representing foreign exchange fluctuation loss incurred by the Appellant during the FY 2007-08, based on incorrect reasons including on the grounds that the same is capital in nature.
 11. The Honourable DRP has erred in law and on facts in upholding the AO's action of disallowing an amount of Rs 156,306, being provision for legal and professional charges for the FY 2007-08, based on incorrect reasons including on the ground that the said provision was towards unknown or unascertained liability.
 12. The Honourable DRP has erred in law and on facts in upholding the AO's action of disallowing an amount of Rs 59,544, paid by the Appellant towards freight charges during the FY 2007-08, on account of non-deduction of tax at source under the provisions of the Act.
 13. The Learned AO has erred in law and on facts in short granting credit for advance tax at Rs 7,219,408 as against Rs 7,700,000 paid by the Appellant for the AY 2008-09.
 14. The Honourable DRP, the learned TPO, the learned AO have erred in law and in facts in levying and computing interest under section 234B of the Act.+
3. Ground Nos.1 to 9 are regarding Transfer Pricing Adjustment and selection of comparables by the Transfer Pricing Officer ('TPO').
4. The profile of the assessee, financial results as well as international transactions are recorded by the TPO in paras 2.1 & 2.2 as under :

2.1. Profile of the taxpayer

M/s .Tektronix Engineering Development (India) Pvt. Ltd., is a subsidiary of M/s. Tektronix Inc., USA. The taxpayer provides Tektronix group affiliates with engineering and software development services with a mark-up.

2.2 Financial Results of the Company

The financials of the taxpayer for the F.Y. 2007-08 as per P & L a/c are as under:

Operating Revenues *	Rs.280068145
Operating Expenses **	Rs 244939626
Operating Profit	Rs 35128519
Op Profit on sales %	Rs 12.54%
Op Profit on cost %	14.34%

*Excluding other income, interest income

** Excluding bad debts written off and finance cost/interest

2.3 International transactions

As per the Transfer Pricing (TP) document furnished for the A.Y.2008-09, the taxpayer company has entered into the following international transactions with its Associated Enterprises (AEs):

International Transactions

Sl.no	Type of transaction	Amount	Amount received
1	Software development services		28,00,68,145
2	Advance towards services		18,65,755
3	Cross charges		2,31,47,182
4	Reimbursement of expenses	13,95,229	

5. The only dispute of TP Adjustment in the present appeal of the assessee is regarding software development services segment wherein the TPO selected 20 comparables as under :

Sl.No.	Name of the company	OP/TC %
1	Avani Cincom Technologies	25.62
2	Bodhtree Consulting Ltd	18.72
3	Celestial Biolabs	87.94
4	e-zest Solutions Ltd	29.81
5	Flextronics(Aricent)	7.86
6	iGate Global solution ltd	13.99

7	Infosys	40.37
8	Kals Information systems ltd(seg)	41.94
9	LGS Global Ltd	27.52
10	Mindtree Ltd(seg)	16.41
11	Persistent Systems Ltd	20.31
12	Quintegra Solution Ltd	21.74
13	R systems International(seg)	15.30
14	R S Software (India) Ltd	7.41
15	Sasken Communication Technologies ltd(seg)	7.58
16	Tata Elxsi(Seg)	18.97
17	Thirdware solution Ltd	19.35
18	Wipro Ltd(Seg)	28.45
19	Softsol India Ltd	17.89
20	Lucid Software Ltd	16.50
	AVERAGE	23.65

The TPO has computed the average margin of the comparable at 23.65% and accordingly proposed an adjustment under Section 92CA of Rs.2,27,99,703. The assessee challenged the action of the TPO before the DRP by filing the objections but could not succeed.

6. Before us, the assessee is seeking exclusion of 13 comparables out of the 20 comparables selected by the TPO. The comparables which are challenged by the assessee and sought to be excluded are as under :

Sl.No.	Company
1.	Avani Cincom Technologies Ltd.
2.	Bodhtree Consulting Ltd.
3.	Celestial Bio Labs Ltd.
4.	E-Zest Solutions Ltd.

5.	Infosys Technologies Ltd.
6.	KALS Info Systems Ltd.
7.	LGS Global Ltd.
8.	Lucid Software Ltd.
9.	Persistent Systems Ltd.
10.	Quintegra Solutions Ltd.
11.	Softsol India Ltd.
12.	Tata Elxsi Ltd.
13.	Wipro Ltd.

7. The Id. AR of the assessee has submitted the comparability of all these 13 companies have been examined by the co-ordinate bench of this Tribunal vide order dt.26.6.2015 in the case of **Broadcom Communications Technologies Pvt. Ltd. Vs. DCIT** in IT(TP)A No.1587/Bang/2012 and therefore these 13 companies are functionally not comparable with the assessee.

8. On the other hand, the Id. DR has submitted that out of these comparable companies challenged by the assessee, 2 comparables namely **Bodhtree Consulting Ltd. & Lucid Software Ltd.** were also part of the set of comparables for the Assessment Year 2006-07. The Id. DR has submitted that in assessee's own case for the Assessment Year 2006-07, the Tribunal vide its order dt.20.2.2015 in IT(TP)A No.1465/Bang/2010 has not disturbed these two companies as the comparability of these companies was not challenged by the

assessee therefore these two companies were accepted as comparable to the assessee. The Id. DR has thus contended that when these companies were accepted as functionally comparable for the Assessment Year 2006-07 and there is no material change in the business profile and activities of these two companies as well as the assessee for the year under consideration then these two companies cannot be excluded from the set of comparables.

9. The Id. AR of the assessee has submitted in the rejoinder of that if the other comparable companies are excluded from the set of comparables then without prejudice to the right of the assessee to challenge the functional comparability of these two companies, the assessee would not press the exclusion of these two companies because the Arm's Length Price (ALP) from the remaining comparables will be within the tolerance range of + or – 5% and consequently there will no TP Adjustment.

10. Having considered the rival submissions as well as the relevant material on record, at the outset we note that an identical set of 20 comparables were selected by the TPO for the same asst. year in the case of **Broadcom Communications Technologies Pvt. Ltd. Vs. DCIT** (supra). The Tribunal has

examined the comparability of all these companies as objected by the assessee in said case in paras 5 to 17.4.2 as under :

5. Avani Cincom Technologies Ltd. (S.No.1 in the chart).

5.1 This company was selected by the TPO as a comparable inspite of the objections of the assessee to the exclusion of this company as a comparable on the ground that this company is not functionally comparable to the assessee as it is into software products whereas the assessee only provides software development services to its AEs. The TPO rejected the assessee's objections on the ground that this company had categorised itself as a pure software developer, like the assessee and hence selected this company as a comparable. In coming to this conclusion, the TPO relied on information directly submitted by the company in response to enquiries under Section 133(6) of the Act.

5.2 Before us, the learned Authorised Representative reiterated the assessee's objections to inclusion of this company on the ground that it is not functionally comparable to the assessee as it is into software products. In support of this contention, the learned Authorised Representative placed reliance on the decision of the co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Ltd. (supra) for A.Y. 2008-09.

5.3 Per contra, the learned Departmental Representative supported the order of the TPO in including this company as a comparable.

5.4.1 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial pronouncements cited. We find that a co-ordinate bench of this Tribunal on the decision of the co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Ltd. (supra) for A.Y. 2008-09 had held that this company be omitted from the set of comparables as it was functionally dis-similar from a company which only provides software development services to its AEs, like the assessee in the case on hand. At paras 7.6.1 and 7.6.2 of its order, the co-ordinate bench held as under :-

" 7.6.1 We have heard both parties and perused and carefully considered the material on record. It is seen from the record that the TPO has included this company in the final set of comparables only on the basis of information obtained under section 133(6) of the Act. In these circumstances, it was the duty of the TPO to have necessarily furnished the information so gathered to

the assessee and taken its submissions thereon into consideration before deciding to include this company in its final list of comparables. Non-furnishing the information obtained under section 133(6) of the Act to the assessee has vitiated the selection of this company as a comparable.

7.6.2 We also find substantial merit in the contention of the learned Authorised Representative that this company has been selected by the TPO as an additional comparable only on the ground that this company was selected in the earlier year. Even in the earlier year, it is seen that this company was not selected on the basis on any search process carried out by the TPO but only on the basis of information collected under section 133(6) of the Act. Apart from placing reliance on the judicial decision cited above, including the assessee's own case for Assessment Year 2007-08, the assessee has brought on record evidence that this company is functionally dis-similar and different from the assessee and hence is not comparable. Therefore the finding excluding it from the list of comparables rendered in the immediately preceding year is applicable in this year also. Since the functional profile and other parameters by this company have not undergone any change during the year under consideration which fact has been demonstrated by the assessee, following the decisions of the co-ordinate benches of this Tribunal in the assessee's own case for Assessment Year 2007-08 in ITA No.845/Bang/2011 dt.22.2.2013, and in the case of Trilogy E-Business Software India Pvt. Ltd. (ITA No.1054/Bang/2011), we direct the A.O./TPO to omit this company from the list of comparables."

5.4.2 Following the above decision of the co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Ltd. (supra) for A.Y. 2008-09, we direct the Assessing Officer / TPO to exclude this company, i.e. Avani Cincom Technologies Ltd. from the list of comparables in the case on hand.

6. Bodhtree Consulting Ltd. (S.No.2 in the chart)

6.1.1 This company has been selected as a comparable by the TPO. The assessee objected to the inclusion of this company in the list of comparables both before the DRP and also before us on the grounds that it is functionally different as it is a product oriented company into software consulting, web services integration, data management, data clearing services, etc.

6.1.2 Before us, the learned Authorised Representative placed reliance on the decision of a co-ordinate bench of this Tribunal in the case of NXP Semi-Conductors

India P. Ltd. (supra) for A.Y.2008-09 and the decision of the Mumbai Bench of the ITAT in the case of Nethawk Networks India Pvt. Ltd. (supra) for A.Y. 2008-09 wherein Bodhtree Consulting Ltd., was excluded from the list of comparable companies on account of being functionally different from a provider software development services to its AE as it has software products and a hybrid service business model.

6.2 Per contra, the learned Departmental Representative supported the orders of the TPO in including this company in the list of comparable companies.

6.3.1 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial pronouncements relied upon by the assessee. We find that this company; i.e. Bodhtree Consulting Ltd. has been excluded from the list of comparables for providers software development services in the judicial decisions cited by the assessee (supra at para 6.1.2 of this order). The relevant portion at para 15 of the order in the case of NXP Semi-conductors India (P) Ltd. (supra) is extracted hereunder :-

" 15.

Bodhtree Consulting Ltd.

15.1 This company has been selected as a comparable by the TPO. The assessee has objected to the inclusion of this company as a comparable, both before the DRP and this Bench, on the grounds that this company is functionally different as it has software products and a hybrid service business model. In the proceedings before us, the learned Authorised Representative placed reliance on the decision of the co-ordinate benches of this Tribunal in the cases of Mindtech (India) Ltd. (supra) and CISCO Systems (India) Pvt. Ltd., in IT(TP)A No.271/Bang/2014 dt.14.8.2014, both for Assessment Year 2009-10, wherein this company was excluded from the list of comparables. It was submitted by the learned Authorised Representative that though these cited decisions were rendered for Assessment Year 2009-10, the facts and circumstances of the case are similar for Assessment Year 2008-09 as well and applies to the year under consideration. The learned Authorised Representative prays that in view of the above, this company be excluded from the list of comparables.

15.2 Per contra, the learned Departmental Representative supported the orders of the authorities below in including this company in the list of comparable companies.

15.3.1 We have heard both parties and perused and carefully considered the material on record, including the judicial decisions cited by the Id. A.R. We find

that this company has been excluded from the set of comparables for software development service companies in both the aforesaid decisions cited by the assessee. In Mindtech (India) Ltd., the relevant portion of the order at para 16 thereof it has been held as under :-

“ 16. We have considered the rival submissions. The Special Bench of the ITAT in the case of Maersk Global Centres (supra) had an occasion to deal with the question as to whether high profit margin making companies should be excluded as a comparable. The Special Bench after considering several aspects held in para 88 of its order that the potential comparable companies cannot be excluded merely on the ground that their profit is abnormally high. The Special bench held that in such cases it would require further investigation to ascertain the reasons for unusually high profit and in order to establish whether the entities with such high profits can be taken as comparable or not. In the light of the aforesaid decision of the Special Bench and in view of the admitted position that the assessee follows Fixed Price Project model where revenues from software development is recognized based on software developed and billed to clients, there is a possibility of the expenditure in relation to the revenue being booked in the earlier year. The results of Bodhtree from FY 2003 to 2008 excluding FY 2007 as given by the learned counsel for the assessee were also perused. Perusal of the same shows, that there has been a consistent change in the operating margins. The chart filed by the assessee in this regard is given as an annexure to this order. It appears to us that the revenue recognition method followed by the assessee is the reason for the drastic variation in the profit margins of this company. In the given circumstances, we are of the view that it would be safe to exclude Bodhtree Consulting from the final list of comparables chosen by the assessee. We hold and direct accordingly.”

The relevant portion of the order in the case of CISCO Systems (India) Pvt. Ltd. (supra) at para 26.1 is extracted hereunder :-

“ 26.1 Bodhtree Consulting Ltd.:- As far as this company is concerned, it is not in dispute that in the list of comparables chosen by the assessee, this company was also included by the assessee. The assessee, however, submits before us that later on it came to the assessee's notice that this company is not being considered as a comparable company in the case of companies rendering software development services. In this regard, the ld. counsel for the assessee has brought to our notice the decision of the Mumbai Bench of the Tribunal in the case of Nethawk Networks Pvt. Ltd. v. ITO, ITA No.7633/Mum/2012, order dated 6.11.2013. In this case, the Tribunal followed the decision rendered by the Mumbai Bench of the Tribunal in the case of Wills Processing Services (I) P. Ltd., ITA No.4547/Mum/2012. In the aforesaid decisions, the Tribunal has taken the view that Bodhtree Consulting Ltd. is in the business of software products and was engaged in providing open & end to end web solutions software consultancy and design & development of software using latest technology. The decision

rendered by the Mumbai Bench of the Tribunal in the case of Nethawk Networks Pvt. Ltd. (supra) is in relation to A.Y. 2008-09. It was affirmed by the learned counsel for the Assessee that the facts and circumstances in the present year also remains identical to the facts and circumstances as it prevailed in AY 08-09 as far as this comparable company is concerned. Following the aforesaid decision of the Mumbai Bench of the Tribunal, we hold that Bodhtree Consulting Ltd. cannot be regarded as a comparable. In this regards, the fact that the assessee had itself proposed this company as comparable, in our opinion, should not be the basis on which the said company should be retained as a comparable, when factually it is shown that the said company is a software product company and not a software development services company."

15.3.2 It is also seen that the decision relied on by the co-ordinate bench of this Tribunal in the above mentioned case; CISCO Systems (India) Pvt. Ltd. (supra), has been in relation to Assessment Year 2008-09 and therefore we find merit in the contention of the assessee that the finding rendered in the above cited decision applies to the facts and circumstances of the case on hand, which is for Assessment Year 2008-09. In this view of the matter, following the above decision of the co-ordinate bench of the Tribunal, we direct the TPO to include this company form the set of comparable companies to be applied to the assessee. It is ordered accordingly."

6.3.2 In view of the above mentioned decision of the co-ordinate bench of this Tribunal in the case of NXP Semi-Conductors India P. Ltd. (supra) for A.Y.2008-09. We direct the Assessing Officer/TPO to omit this company from the set of comparables to be applied to the assessee.

7. Celestial Biolabs Ltd. (S.No.3 in the chart)

7.1 The comparable was selected by the TPO as a comparable inspite of the assessee's objection to its inclusion in the list of comparables for the reason that it is functionally different form the assessee and as it fails the employee cost filter.

7.2 Before us, the learned Authorised Representative contended that this company is not functionally comparable as this company is into bio-informatics, software product / services and in this context placed reliance on the decision of the co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Ltd. (supra) for A.Y. 2008-09.

7.3 Per contra, the learned Departmental Representative supported the order of the TPO in including this company as a comparable.

7.4.1 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial pronouncement relied on by the assessee. We find that a co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Ltd. (supra) for A.Y. 2008-09 has held that this company be excluded from the list of comparables as it is functionally different from a provider of software development services to its AEs holding as under at paras 9.4.1 to 9.4.2 thereof which is extracted hereunder :-

" 9.4.1 We have heard both the parties and perused and carefully considered the material on record. While it is true that the decisions cited and relied on by the assessee were with respect to the immediately previous assessment year, and there cannot be an assumption that it would continue to be applicable for this year as well, the same parity of reasoning is applicable to the TPO as well who seems to have selected this company as a comparable based on the reasoning given in the TPO's order for the earlier year. It is evidently clear from this, that the TPO has not carried out any independent FAR analysis for this company for this year viz. Assessment Year 2008-09. To that extent, in our considered view, the selection process adopted by the TPO for inclusion of this company in the list of comparables is defective and suffers from serious infirmity.

9.4.2 Apart from relying on the afore cited judicial decisions in the matter (supra), the assessee has brought on record substantial factual evidence to establish that this company is functionally dis-similar and different from the assessee in the case on hand and is therefore not comparable and also that the findings rendered in the cited decisions for the earlier years i.e. Assessment Year 2007-08 is applicable for this year also. We agree with the submissions of the assessee that this company is functionally different from the assessee. It has also been so held by co-ordinate benches of this Tribunal in the assessee's own case for Assessment Year 2007-08 (supra) as well as in the case of Trilogy E-Business Software India Pvt. Ltd. (supra). In view of the fact that the functional profile of and other parameters of this company have not changed in this year under consideration, which fact has also been demonstrated by the assessee, following the decision of the co-ordinate benches of the Tribunal in the assessee's own case for Assessment Year 2007-08 in ITA No.845/Bang/2011 and Trilogy E-Business Software India Pvt. Ltd. in ITA No.1054/Bang/2011, we hold that this company ought to be omitted form the list of comparables. The A.O./TPO are accordingly directed."

7.4.2 Following the above decision of the co-ordinate bench of this Tribunal on the decision of the co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Ltd. (supra) for A.Y. 2008-09, we direct the Assessing Officer / TPO to omit this company from the list of comparables in the case on hand.

8. e-Zest Solutions Ltd. (S.No.4 in the chart)

8.1 This company was selected by the TPO as a comparable inspite of the assessee's objections to its inclusion as a comparable on the ground that it was functionally different from the assessee. The TPO rejected the assessee's objections on the ground that as per the information received under Section 133(6) of the Act this company is engaged in software development services and qualifies all the filters applied.

8.2 Before us, the learned Authorised Representative contended that this company ought to be excluded from the list of comparables on the ground that it is functionally different to the assessee. It was submitted that a co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Ltd. (supra) for A.Y. 2008-09, has held that this company is to be excluded from the list of comparables to a provider of software development services as it is rendering product development services and high and technical services which come under the category of KPO services.

8.3 Per contra, the learned Departmental Representative supported the order of the TPO including this company in the list of comparables.

8.4.1 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial decisions cited. We find that a co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Ltd. (supra) for Assessment Year 2008-09 has held that this company is to be omitted from the list of comparables to a provider of software development services as it is into product development services and high end technical services which come under the category of KPO Services; holding as under at para 14.4 thereof :-

"14.4 We have heard the rival submissions and perused and carefully considered the material on record. It is seen from the record that the TPO has included this company in the list of comparables only on the basis of the statement made by the company in its reply to the notice under section 133(6) of the Act. It appears that the TPO has not examined the services rendered by the company to give a finding whether the services performed by this company are

similar to the software development services performed by the assessee. From the details on record, we find that while the assessee is into software development services, this company i.e. e-Zest Solutions Ltd., is rendering product development services and high end technical services which come under the category of KPO services. It has been held by the co-ordinate bench of this Tribunal in the case of Capital I-Q InformationSystems (India) (P) Ltd. Supra that KPO services are not comparable to software development services and are therefore not comparable. Following the aforesaid decision of the co-ordinate bench of the Hyderabad Tribunal in the aforesaid case, we hold that this company, i.e. e-Zest Solutions Ltd. be omitted from the set of comparables for the period under consideration in the case on hand. The A.O. / TPO is accordingly directed."

8.4.2 Following the above decision of the co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Ltd. (supra) for Assessment Year 2008-09, we direct the Assessing Officer / TPO to omit this company from the list of comparables in the case on hand.

9. Infosys Technologies Ltd. (S.No.7 in the chart).

9.1 This company was selected as a comparable by the TPO in spite of the assessee's objections to its inclusion as a comparable on the grounds of its scale of operations and brand attributable profit margins. The TPO, however, brushed aside the assessee's objections on the ground that turnover and brand aspects were not materially relevant in the software development services segment.

9.2 Before us, the learned Authorised Representative contended that this company ought to be omitted from the list of comparables as it is not functionally comparable to the assessee since it commands substantial brand value, owns IPR's and is a market leader in software development activities, whereas the assessee in the case on hand is merely a provider of software services to its AEs and does not possess any brand value or own any intangibles or IPR's. In support of this proposition, the learned Authorised Representative placed reliance on the decision of a co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Ltd. (supra).

9.3 Per contra, the learned Departmental Representative supported the order of the TPO/DRP in including this company in the list of comparables to the assessee.

9.4.1 We have heard both parties and perused and carefully considered the material on record; including the judicial pronouncement relied on by the assessee. We find that a co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Pvt. Ltd. (supra) for Assessment Year 2008-09 has held that this company is to be omitted from the list of comparables as it has huge revenue's from software product development, Owned IPR's and was not purely a provider of software services by observing at paras 11.4 thereof as under :-

"11.4 We have heard the rival submissions and perused and carefully considered the material on record. We find that the assessee has brought on record sufficient evidence to establish that this company is functionally dissimilar and different from the assessee and hence is not comparable and the finding rendered in the case of Trilogy E-Business Software India Pvt. Ltd. (supra) for Assessment Year 2007-08 is applicable to this year also. We are inclined to concur with the argument put forth by the assessee that Infosys Technologies Ltd is not functionally comparable since it owns significant intangible and has huge revenues from software products. It is also seen that the break up of revenue from software services and software products is not available. In this view of the matter, we hold that this company ought to be omitted from the set of comparable companies. It is ordered accordingly."

9.4.2 Following the above decision of the co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Pvt. Ltd. (supra) for Assessment Year 2008-09, we direct the Assessing Officer to omit this company from the list of comparables in the case on hand.

10. KALS Information Systems Ltd. (S.No.8 in chart).

10.1 This is a comparable selected by the TPO inspite of the assessee's objections to its inclusion in the list of comparables on the grounds that it is functionally different and that the segment details were inconsistent with respect to software services revenue and software products revenue. The TPO, however, rejected the assessee's objections and included this company in the list of comparables by relying on the information received in reply to notice under Section 133(6) of the Act.

10.2 Before us, the learned Authorised Representative contended that this company ought to be excluded from the list of comparables as it is functionally different, being into software products, whereas the assessee in the case on hand is merely into provision of software development services. It was submitted that the rejection of

this company as a comparable to providers of software development services has been upheld by a co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Pvt. Ltd. (supra).

10.3 Per contra, the learned Departmental Representative supported the TPO's action in including this company in the final list of comparables.

10.4.1 We have heard both parties and perused and carefully considered the material on record, including the judicial decision relied on by the assessee. We find that the co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Pvt. Ltd. (supra) for Assessment Year 2008-09 has held that this company is to be omitted from the list of comparables as it was into development of software products and hence not comparable to a provider of software services; observing as under at para 10.4 of the order :-

" 10.4 We have heard both parties and perused and carefully considered the material on record. We find from the record that the TPO has drawn conclusions as to the comparability of this company to the assessee based on information obtained u/s.133(6) of the Act. This information which was not in the public domain ought not to have been used by the TPO, more so when the same is contrary to the Annual Report of the company, as pointed out by the learned Authorised Representative. We also find that the co-ordinate benches of this Tribunal in the assessee's own case for Assessment Year 2007-08 (supra) and in the case of Triology E-Business Software India Pvt. Ltd. (supra) have held that this company was developing software products and was not purely or mainly a software service provider. Apart from relying of the above cited decisions of co-ordinate benches of the Tribunal (supra), the assessee has also brought on record evidence from various portions of the company's Annual Report to establish that this company is functionally dis-similar and different form the assessee and that since the findings rendered in the decisions of the co-ordinate benches of the Tribunal for Assessment Year 2007-08 (cited supra) are applicable for this year i.e. Assessment Year 2008-09 also, this company ought to be excluded from the list of comparables. In this view of the matter, we hold that this company i.e. KALS Information Systems Ltd., is to be omitted form the list of comparable companies. It is ordered accordingly."

10.4.2 Following the above decision of the co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Pvt. Ltd. (supra) for Assessment Year 2008-09, we

direct the Assessing Officer to omit this company from the list of comparables in the case on hand.

11. Lucid Software Ltd. (S.No.10 in chart)

11.1 This company was selected as a comparable by the TPO. Before the DRP, the assessee objected to the inclusion of this company in the list of comparables but the DRP retained this company as a comparable on the ground that it is a pure software development services provider and does not have any revenue's by way of sale of products/licenses.

11.2 Before us also, the assessee objected to the inclusion of this company as a comparable on the grounds that it is into software product development and is therefore functionally different from the assessee in the case on hand. In this context, the learned Authorised Representative submitted that the co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Pvt. Ltd. (supra) for Assessment Year 2008-09 has omitted this company from the list of comparables on the ground that it is into development of software products and therefore is functionally different from provider of software development services.

11.3 Per contra, the learned Departmental Representative supported the orders of the authorities below in including this company as a comparable.

11.4.1 We have heard the rival contentions and perused and carefully considered the material on record; including the decision relied on by the assessee. We find that the co-ordinate bench in the case of 3DPLM Software Solutions Pvt. Ltd. (supra) for Assessment Year 2008-09 excluded this company from the list of comparables observing that this company, being into development of software products, is functionally different from a provider of software development services, as is the assessee's in the case on hand and therefore ought to be excluded from the list of comparables. At para 16.3 of this order the co-ordinate bench held as under :-

"16.3 We have heard the rival submissions and perused and carefully considered the material on record. It is seen from the details on record that the company i.e. Lucid Software Ltd., is engaged in the development of software products whereas the assessee, in the case on hand, is in the business of providing software development services. We also find that, co-ordinate benches of the Tribunal in the assessee's own case for Assessment Year 2007-08 (IT(TP)A No.845/Bang/2011), LG Soft India Pvt. Ltd. (supra), CSR India Pvt. Ltd.

(supra); the ITAT, Mumbai Bench in the case of Telecordia Technologies India Pvt. Ltd. (supra) and the Delhi ITAT in the case of Transwitch India Pvt. Ltd. (supra) have held, that since this company, is engaged in the software product development and not software development services, it is functionally different and dis-similar and is therefore to be omitted from the list of comparables for software development service providers. The assessee has also brought on record details to demonstrate that the factual and other circumstances pertaining to this company have not changed materially from the earlier year i.e. Assessment Year 2007-08 to the period under consideration i.e. Assessment Year 2008-09. In this factual matrix and following the afore cited decisions of the co-ordinate benches of this Tribunal and of the ITAT, Mumbai and Delhi Benches (supra), we direct that this company be omitted from the list of comparables for the period under consideration in the case on hand."

11.4.2 Following the above decision of the co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Pvt. Ltd. (supra) for Assessment Year 2008-09, we direct the Assessing Officer/TPO to exclude this company from the list of comparables in the case on hand.

12. Persistent Systems Ltd. (S.No.12 in chart).

12.1 This company was selected as a comparable by the TPO over-ruling the objections of the assessee that this company, being into development of software products engaged in product design and analytic services is functionally different from the assessee who is only a provider of software development services. The TPO rejected the assessee's objections on the ground that this company is mainly, a software development service company, and as per the details filed/obtained under Section 133(6) of the Act 96% of its revenues are from software development services.

12.2 Before us, the assessee objected to the inclusion of this company in the list of comparables on the ground that it is functionally different, being engaged in software designing and analytic services and is therefore not comparable to a provider of software development service provider, as is the assessee in the case on hand. The learned Authorised Representative submitted that a co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Pvt. Ltd. (supra) for Assessment Year 2008-09 has held that this company, being engaged in product development and product design services, is to be omitted from the list of comparables to providers of software development services.

12.3 *Per contra, the learned Departmental Representative supported the orders of the authorities below in including this company in the list of comparables.*

12.4.1 *We have heard the rival contentions and perused and carefully considered the material on record; including the judicial pronouncement relied on by the assessee. We find that a co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Pvt. Ltd. (supra) for Assessment Year 2008-09 has held that this company is to be omitted from the list of comparables as it is functionally different from a provider of software development services, being engaged in product development and product design services. At para 17.3 of this order the co-ordinate bench has held as under :-*

"17.3 We have heard the rival submissions and perused and carefully considered the material on record. It is seen from the details on record that this company i.e. Persistent Systems Ltd., is engaged in product development and product design services while the assessee is a software development services provider. We find that, as submitted by the assessee, the segmental details are not given separately. Therefore, following the principle enunciated in the decision of the Mumbai Tribunal in the case of Telecordia Technologies India Pvt. Ltd. (supra) that in the absence of segmental details / information a company cannot be taken into account for comparability analysis, we hold that this company i.e. Persistent Systems Ltd. ought to be omitted from the set of comparables for the year under consideration. It is ordered accordingly."

12.4.2 *Following the above decision of the co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Pvt. Ltd. (supra) for Assessment Year 2008-09, we direct the Assessing Officer/TPO to omit this company from the list of comparables in the case on hand.*

13. **Quintegra Solutions Ltd. (S.No. 13 in chart).**

13.1 *This company was selected as a comparable by the TPO inspite of the objection of the assessee to its inclusion in the list of comparables on the ground that there were peculiar economic circumstances in the form of acquisitions made during the year. The TPO rejected the assessee's objections holding that this company qualifies all the filters applied.*

13.2 *Before us, the assessee objected to the inclusion of this company as a comparable on the ground that it is functionally different as it is engaged in product engineering services and not in software development services. It was also submitted*

that this company was engaged in developing proprietary software products and has IPR's and is functionally different from a provider of software development services, as is the assessee in the case on hand. In support of its contentions, the assessee relied on the decision of the co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Pvt. Ltd. (supra) for Assessment Year 2008-09 where it was held that this company was to be omitted from the list of comparables.

13.3 Per contra, the learned Departmental Representative supported the orders of the authorities in including this company in the list of comparables.

13.4.1 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial decision relied on by the assessee. We find that the co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Pvt. Ltd. (supra) for Assessment Year 2008-09 has held that this company, being engaged in product engineering services, having substantial R&D activity resulting in the creation of proprietary software products and IPR's, is functionally different from a mere provider of software development services is to be omitted from the set of comparables; observing as under at paras 18.3.1 to 18.3.3 of the order :-

"18.3.1 We have heard the rival submissions and perused and carefully considered the material on record. It is seen from the details brought on record that this company i.e. Quintegra Solutions Ltd. is engaged in product engineering services and is not purely a software development service provider as is the assessee in the case on hand. It is also seen that this company is also engaged in proprietary software products and has substantial R&D activity which has resulted in creation of its IPRs. Having applied for trade mark registration of its products, it evidences the fact that this company owns intangible assets. The co-ordinate bench of this Tribunal in the case of 24/7 Customer.Com Pvt. Ltd. (ITA No.227/Bang/2010 dt.9.11.2012) has held that if a company possesses or owns intangibles or IPRs, then it cannot be considered as a comparable company to one that does not own intangibles and requires to be omitted from the list of comparables, as in the case on hand.

18.3.2 We also find from the Annual Report of Quintegra Solutions Ltd. that there have been acquisitions made by it in the period under consideration. It is settled principle that where extraordinary events have taken place, which has an effect on the performance of the company, then that company shall be removed from the list of comparables.

18.3.3 *Respectfully following the decision of the co-ordinate bench of the Tribunal in the case of 24/7 Customer.Com Pvt. Ltd. (supra), we direct that this company i.e. Quintegra Solutions Ltd. be excluded from the list of comparables in the case on hand since it is engaged in proprietary software products and owns its own intangibles unlike the assessee in the case on hand who is a software service provider."*

13.4.2 *Following the decision of the co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Pvt. Ltd. (supra) for Assessment Year 2008-09, we direct the Assessing Officer/TPO to omit this company from the list of comparables in the case on hand.*

14. Softsol India Ltd. (S.No.17 in chart)

14.1 *This company was selected as a comparable by the TPO inspite of the assessee's objections that it was functionally different and dis-similar from the assessee. The TPO rejected the assessee's objections on the ground that as per the company's reply to the information called for under Section 133(6) of the Act, the company has categorised itself as a pure software developer and therefore included this company as a comparable to the assessee in the case on hand who was also a provider of software development services.*

14.2 *Before us, the learned Authorised Representative submitted that this company ought to be excluded from the list of comparables as a co-ordinate bench of this Tribunal in its order in 3DPLM Software Solutions Ltd. (supra) has held that this company is to be excluded as a comparable as it has related party transactions (RPT) of 18.3%; thereby failing the RPT filter of 15%.*

14.3. *Per contra, the learned Departmental Representative supported the order of the TPO in including this company in the list of comparables.*

14.4.1 *We have heard the rival contentions and perused and carefully considered the material on record; including the judicial decision relied on by the assessee. We find that a co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Pvt. Ltd. (supra) for Assessment Year 2008-09 has held that this company is to be omitted from the set of comparables observing / holding as under at para 19.3 of the order :-*

" 19.3 We have heard both parties and perused and carefully considered the material on record. We find that the co-ordinate bench of this Tribunal in the

assessee's own case for Assessment Year 2007-08 in ITA No.845/Bang/2011 has excluded this company from the set of comparables for the reason that RPT is in excess of 15% following the decision of another bench of this Tribunal in the case of 24/7 Customer.Com Pvt. Ltd. in ITA No.227/Bang/2011. As the facts for this year are similar and material on record also indicates that RPT is 18.3%, following the afore cited decisions of the co-ordinate benches (supra), we hold that this company is to be omitted from the list of comparables to the assessee in the case on hand."

14.4.2 Following the above decision of the co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Pvt. Ltd. (supra) for Assessment Year 2008-09, we direct the Assessing Officer/TPO to exclude this company from the list of comparables in the case on hand.

15. Tata Elxsi Ltd. (Seq) (S.No.18 in chart)

15.1 This company was a comparable selected by the TPO inspite of the assessee's objections to its inclusion in the set of comparables on the ground that it is a product company which has significant R&D activity, IPR's, etc and is therefore functionally dissimilar from the assessee who is a provider of software development services. The TPO, however, rejected the contentions put forth by the assessee and included this company in the set of comparables on the ground that he has taken only the software development and services segment for comparability purposes.

15.2 Before us, it was submitted that this company is not functionally comparable to the assessee as it performs a variety of activities under the software development and services segment, namely, product design, innovation design engineering and visual computing labs, as is reflected in the Annual Report of the company and therefore it is not purely a provider of software development services like the assessee. The learned Authorised Representative also submitted that the co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Ltd. (supra) has held that this company is to be omitted from the list of comparables for providers of software development services, like the assessee in the case on hand.

15.3 Per contra, the learned Departmental Representative supported the orders of the authorities below in including this company in the list of comparable companies.

15.4.1 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial decision relied on by the assessee. We

find that a co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Pvt. Ltd. (supra) for Assessment Year 2008-09 has held that this company is to be omitted from the list of comparables to a provider of software development holding as under at paras 13.4.1 and 13.4.2 of its order extracted hereunder :-

" 13.4.1 We have heard both parties and carefully perused and considered the material on record. From the details on record, we find that this company is predominantly engaged in product designing services and not purely software development services. The details in the Annual Report show that the segment "software development services" relates to design services and are not similar to software development services performed by the assessee.

13.4.2 The Hon'ble Mumbai Tribunal in the case of Telecordia Technologies India Pvt. Ltd. V ACIT (ITA No.7821/Mum/2011) has held that Tata Elxsi Ltd. is not a software development service provider and therefore it is not functionally comparable. In this context the relevant portion of this order is extracted and reproduced below :-

" Tata Elxsi is engaged in development of niche product and development services which is entirely different from the assessee company. We agree with the contention of the learned Authorised Representative that the nature of product developed and services provided by this company are different from the assessee as have been narrated in para 6.6 above. Even the segmental details for revenue sales have not been provided by the TPO so as to consider it as a comparable party for comparing the profit ratio from product and services. Thus, on these facts, we are unable to treat this company as fit for comparability analysis for determining the arm's length price for the assessee, hence, should be excluded from the list of comparable portion."

As can be seen from the extracts of the Annual Report of this company produced before us, the facts pertaining to Tata Elxsi have not changed from Assessment Year 2007-08 to Assessment Year 2008-09. We, therefore, hold that this company is not to be considered for inclusion in the set of comparables in the case on hand. It is ordered accordingly."

15.4.2 Following the above decision of the co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Pvt. Ltd. (supra) for Assessment Year 2008-09, we

direct the Assessing Officer/TPO to omit this company from the list of comparables in the case on hand.

16. Thirdware Solutions Ltd. (S.No.19 in chart)

16.1 This company was included in the list of comparables despite the objections of the assessee to its inclusion in the list of comparables on the ground that its turnover was in excess of Rs.500 Crores.

16.2 Before us, the assessee objected to the inclusion of this company as a comparable for the reason that apart from software development services, it is in the business of product development, trading in software, giving licenses for use of software and that segmental details are not available. It was also submitted that a co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Ltd. (supra) in its order for Assessment Year 2008-09 has held that this company is to be omitted from the list of comparables for providers of software development services.

16.3 Per contra, the learned Departmental Representative supported the orders of the TPO in including this company in the list of comparables.

16.4.1 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial decision relied upon. We find that a co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Pvt. Ltd. (supra) for Assessment Year 2008-09 had held that since this company is engaged in product development and earns revenue from sale of licenses it is to be omitted from the list of comparables for software development services, holding as under at para 15.3 of the order :-

"15.3 We have heard the rival submissions and perused and carefully considered the material on record. It is seen from the material on record that the company is engaged in product development and earns revenue from sale of licenses and subscription. However, the segmental profit and loss accounts for software development services and product development are not given separately. Further, as pointed out by the learned Authorised Representative, the Pune Bench of the Tribunal in the case of E-Gain Communications Pvt. Ltd. (supra) has directed that since the income of this company includes income from sale of licenses, it ought to be rejected as a comparable for software development services. In the case on hand, the assessee is rendering software development services. In this factual view of the matter and following the afore cited decision

of the Pune Tribunal (supra), we direct that this company be omitted from the list of comparables for the period under consideration in the case on hand."

16.4.2 Following the above decision of the co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Pvt. Ltd. (supra) for Assessment Year 2008-09, we direct the Assessing Officer/TPO to omit this company from the list of comparables in the case on hand.

17. Wipro Ltd. (S.No.20 in chart)

17.1 This company was selected as a comparable by the TPO inspite of the assessee's several objections to its inclusion in the list of comparables on the grounds of functional dis-similarity, brand value, size, etc.

17.2 Before us, the learned Authorised Representative contended that this company i.e. Wipro Ltd. is not functionally comparable to the assessee as it owns significant intangibles; both in the nature of customer related and technology related intangibles. It was submitted that a co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Ltd. (supra) has held that this company be omitted from the list of comparables for providers of software development services since it is into product development, owns significant IPR's, has immense brand value, etc.

17.3 Per contra, the learned Departmental Representative supported the TPO's action in including this company in the final list of comparables.

17.4.1 We have heard both parties and perused and carefully considered the material on record; including the judicial pronouncements cited and relied upon. We find that the co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Pvt. Ltd. (supra) for Assessment Year 2008-09 has held that this company is to be omitted from the list of comparables for providers of software development services for the following reasons as laid out at paras 12.4.1 and 12.4.2 of its order which is extracted hereunder :-

" 12.4.1 We have heard both parties and carefully perused and considered the material on record. We find merit in the contentions of the assessee for exclusion of this company from the set of comparables. It is seen that this company is engaged both in software development and product development services. There is no information on the segmental bifurcation of revenue from sale of product and software services. The TPO appears to have adopted this

company as a comparable without demonstrating how the company satisfies the software development sales 75% of the total revenue filter adopted by him. Another major flaw in the comparability analysis carried out by the TPO is that he adopted comparison of the consolidated financial statements of Wipro with the stand alone financials of the assessee; which is not an appropriate comparison.

12.4.2 We also find that this company owns intellectual property in the form of registered patents and several pending applications for grant of patents. In this regard, the co-ordinate bench of this Tribunal in the case of 24/7 Customer.Com Pvt. Ltd. (ITA No.227/Bang/2010) has held that a company owning intangibles cannot be compared to a low risk captive service provider who does not own any such intangible and hence does not have an additional advantage in the market. As the assessee in the case on hand does not own any intangibles, following the aforesaid decision of the co-ordinate bench of the Tribunal i.e. 24/7 Customer.Com Pvt. Ltd. (supra), we hold that this company cannot be considered as a comparable to the assessee. We, therefore, direct the Assessing Officer/TPO to omit this company from the set of comparable companies in the case on hand for the year under consideration."

17.4.2 Following the above decision of the co-ordinate bench of this Tribunal in the case of 3DPLM Software Solutions Ltd. (supra), we direct the Assessing Officer / TPO to omit this company from telecommunication expenses list of comparable companies."

Since two comparable companies viz. Bodhtree Consulting Ltd. and Lucid Software Ltd. were accepted by the assessee itself as comparable for the Assessment Year 2006-07 and the Tribunal vide its order dt.20.2.2015 in assessee's own case has not disturbed the comparability of these two companies therefore by following the earlier orders of this Tribunal, we direct the A.O./TPO to exclude the remaining 11 companies from the set of comparables and then recompute the ALP. Needless to say the benefit of

proviso to section 92CA also to be considered if the price of the assessee is within the tolerance range of + or – 5% of ALP so computed by the TPO.

11. Ground No.10 is regarding disallowance of the loss of foreign exchange fluctuation on advance to holding company and Export Earner Foreign Company Account (EEFCA).

12. The Assessing Officer noted that the assessee has debited a sum of Rs.72,55,396 as foreign exchange loss. The Assessing Officer asked the assessee to submit the details. On verification of the record, the Assessing Officer found that the assessee has not furnished the details of the loss whether this income is capital or revenue in nature. Finally the Assessing Officer made disallowance of Rs.2,20,50,750 on account of foreign exchange loss by treating the same as capital loss. The details of the loss has been reproduced by the Assessing Officer in para 8.2 as under :

“8.2 The Assessee Company has not been able to establish that the following :

a. Advance to Holding Company	Rs.1,50,46,655.
b. Advance from Holding Company	Rs.18,65,755
c. Export Earners Foreign Currency Account.	Rs.51,38,309
	Rs.2,20,50,715”

13. Before us, the Id. AR has submitted that this is a revenue loss arising from foreign exchange fluctuation of receivables. He has referred to the details of the loss at pages 217 & 253 of the paper book and submitted that the advance to the holding company is pertaining to the payment made to the employees under Employees Stock Option Scheme which was receivable by the assessee from the holding company. Therefore it is a revenue expenditure and foreign exchange loss on this account is an allowable claim. As regards the EEFC Account, the Id. AR has submitted that this is a loss on realization amount in the EEFC Account and therefore it is in the nature of revenue and an allowable claim.

14. On the other hand, the Id. DR has referred to the relevant finding of the DRP at page 48 and submitted that the Assessing Officer as well as DRP has disallowed the claim for want of necessary details of bifurcation of the different head of the receivable on which the assessee has claimed foreign exchange loss. Thus the Id. DR has submitted that despite the sufficient opportunity given the assessee failed to produce any supporting evidence that this loss is in revenue account and not in capital account.

15. We have considered the rival submissions as well as the relevant material on record. At the outset we note that the Assessing Officer as well as DRP has disallowed the claim of the assessee on the ground that the assessee has failed to furnish the necessary details and supporting evidence to show that the loss is revenue in nature. Though the assessee has contended that the amounts are revenue receivables and therefore loss is also an allowable loss however we find that the necessary details and supporting evidence has not been produced by the assessee. Accordingly, in the facts and circumstances of the case as well as in the interest of justice the assessee is granted one more opportunity to produce the necessary details and supporting evidence before the Assessing Officer. Hence this issue is set aside to the record of the Assessing Officer for verification and examination of the necessary record to be filed by the assessee and then readjudicate the same.

16. Ground Nos.11 & 12 are regarding disallowance of provision for legal and professional charges and trade charges. The Assessing Officer disallowed the provision for legal and professional charges on the ground that it is an uncertain liability. As regards the freight charges, the Assessing Officer has disallowed the same for non-deduction of tax under Section 40(a)(ia) of the Act.

17. Before us, the assessee has not pointed out any error or illegality in the orders of the authorities below. Further no contrary fact has been brought to our notice to show that the finding of the Assessing Officer is perverse or illegal or not tenable. Accordingly in the absence of any facts or submissions to substantiate the claim of the assessee, we do not find any error or illegality in the orders of the authorities below qua this issue. Accordingly, Ground Nos.11 & 12 are dismissed.

18. Ground No.13 is regarding short grant of credit for advance tax.

19. We have heard the learned Authorised Representative as well as learned Departmental Representative and considered the relevant material on record. The assessee has pointed out that the advance tax is Rs.77 lakhs whereas the Assessing Officer has granted the credit on account of advance tax only to the extent of Rs.72,19,408 for the assessment year under consideration. Since this is purely a matter of verification of facts and therefore no dispute of decision is involved. Accordingly, we direct the Assessing Officer to verify the correct advance tax available for credit and then consider the plea of the assessee for granting of credit for advance tax.

20. Ground No.14 is levy of interest under Section 234B which is consequential in nature.

21. In the result, the assessee's appeal is partly allowed.

Order pronounced in the open court on 19th October, 2016.

Sd/-
(A.K. GARODIA)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Bangalore,
Dt.19.10.2016.

*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard File.

By Order

Asst. Registrar, ITAT, Bangalore