

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
BANGALORE BENCH 'C'**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER  
AND  
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

IT(TP)A No.451/Bang/2017  
(Assessment Year : 2012-13)

M/s. e4e Business Solutions India Pvt. Ltd.,  
5<sup>th</sup> Floor, Vakil Square, Bannerghatta Road,  
Bengaluru.  
PAN ó AAACI 6324A.

í í . Appellant

Vs.

The Income-tax Officer,  
Ward 2(1)(2), Bengalore.

í í í í ..Respondent

Appellant by : Shri Ravindra T, C.A  
Respondent by : Shri R.N. Parbat, CIT-III (D.R)

Date of Hearing : 10-8-2017  
Date of Pronouncement : 3-11-2017

**ORDER**

**PER SHRI JASON P BOAZ, A. M. :**

This appeal by the assessee is directed against the order of assessment dated 26/12/2016 passed u/s 143(3) r.w.s. 92CA r.w.s. 144C(5) & (13) of the Income Tax Act, 1961 (in short "the Act") pursuant to the directions issued by the Dispute Resolution Panel -1, Bangalore (DRP) u/s 144C(5) of the Act on 23/11/2016. The asst. year involved is 2012-13.

2 Briefly stated, the facts of the case are as under:-

2.1 The assessee company, a subsidiary of e4e Business Solutions LLC, renders interactive entertainment services support to its parent company and other AEØ in the nature of testing, compatibility, localization services and end user customer support services. These services have been characterized as Information Technology Enabled Services (ITESØ). For asst. year 2012-13, the assessee filed its return of income on 30/10/2012 declaring total income of Rs. 6,84,77,190/-. The case was taken up for scrutiny and a reference, u/s 92CA of the Act was made by the Assessing Officer (AO) to the Transfer Pricing Officer (TPO) for determination of the ALP in respect of the international transactions entered into by the assessee with its AEØ in the year under consideration. The TPO passed an order u/s 92CA of the Act dated 29/1/2016 proposing an adjustment of Rs. 9,27,80,713/-; the breakup of which is as under.

i) ITES adjustment	Rs. 4,49,14,397/-
ii) Interest chargeable	<u>Rs. 4,78,66,316/-</u>
Total T.P. adjustment	<u>Rs. 9,27,80,713/-</u>

After receipt of the TPOØs order u/s 92CA of the Act, the AO passed the draft order of assessment for asst. year 2012-13 dated 25/2/2016 incorporating the aforesaid TP adjustments as proposed by the TPO (Supra).

2.2 Aggrieved by the draft order of assessment dated 25/2/2016 for asst. year 2012-13, the assessee filed its objections thereto before the DRP which disposed off issuing directions u/s 144C(5) of the Act, vide order dated 23/11/2016. Pursuant thereto, the AO passed the final order of assessment u/s 143(3) r.w.s. 92CA r.w.s. 144C(5) & (13) of the Act vide order dated

26/12/2016, wherein the assessee's income was determined at Rs. 6,56,04,314/-. Book Profits under Section 115JB of the Act were computed at Rs. 1,36,44,581/-.

3 Aggrieved by the order of assessment for asst. year 2012-13 passed u/s 143(3) r.w.s. 92CA r.w.s. 144C(5) & (13) of the Act dated 26/12/2016, the assessee has preferred this appeal, wherein it has raised the following grounds :

1. The Order dated December 26, 2016 passed by the learned AO 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. Rejection of the transfer pricing documentation of the Appellant.

2.1. Honourable DRP have erred in law and on facts by upholding the approach of the learned AO / TPO in rejecting the Transfer Pricing Documentation which has been prepared by the Appellant in the manner contemplated under Section 92D of the Act read with Rule 10D of the Income-tax Rules, 1962 stating that the data used in computation of the ALP is "not reliable or correct", under section 92C(3)(c) of the Act.

3. Use of multiple year data

3.1. Honourable DRP have erred in law and on facts by upholding the approach of the learned AO / TPO in rejecting the use of multiple year data, without considering that the past year's data had an influence on the determination of arm's length price and that the Appellant had considered contemporaneous data available at the time when it carried out the benchmarking study having regard to the statutory requirement to maintain the Transfer Pricing Documentation by the specified date.

3.2. Honourable DRP have erred in law and on facts by upholding the approach of the learned AO / TPO in ignoring the provisions of Rule 10B(4) of the Rules, international commentaries and judicial pronouncements, which advocate usage of multiple year data of comparable companies for the purpose of determination of the ALP.

4. Filters and qualitative criteria applied by the learned TPO

4.1. Honourable DRP has erred in law in upholding the approach of the learned AO / TPO of conducting a fresh search for comparable companies and by rejecting the search process carried out by the Appellant as contemplated under Section 92C of the Act.

4.2. Honourable DRP have erred in law and on facts by upholding the approach of the learned AO / TPO in adopting! modifying the following additional filters for conducting Transfer Pricing analysis, without appreciating the Transfer Pricing Documentation prepared by the Appellant.

4.3. Honourable DRP have erred in law and on facts by modifying the approach of the learned AO / TPO and yet including additional comparable companies without considering the detailed submissions of the Appellant.

- ~ Accentia Technologies Limited;
- ~ TCSE-Serve Limited;
- ~ BNR Udyog Limited (Seg) (Medical Transcription); and
- ~ Infosys BPO Limited

4.4 Honourable DRP have erred in law and on facts by upholding the approach of the learned AO / TPO in rejecting functionally comparable companies selected in the Transfer Pricing Documentation of the Appellant and the comparable companies sought for inclusion by the Appellant at the time of proceedings before the learned TPO.

- ~ Caliber Point Business Solutions Limited;
- ~ Cosmic Global Limited;
- ~ Datamatics Financial Services Limited; and
- ~ ICRA Techno Analytics Limited.

4.5 Honourable DRP has erred in law and on facts by rejecting Jindal Intellicom Ltd. from the set of the companies selected by the learned TPO in the Transfer Pricing Order on its own accord, even though the Appellant did not seek exclusion of Jindal Intellicom Ltd.

5. Information gathered under section 133(6) of the Act is inappropriate for the purposes of disturbing the Transfer Pricing Documentation undertaken by the Appellant

5.1. Honourable DRP have erred in law and on facts by upholding the approach of the learned AO / TPO of gathering information from various companies under section 133(6) of the Act, which were not available with the Appellant at the time of preparing its Transfer Pricing Documentation.

5.2. Honourable DRP have erred in law and on facts by upholding the approach of the learned AO / TPO in relying upon the information not available in public domain while carrying out the benchmarking analysis under the Act.

6. Treatment of gain/loss on account of foreign exchange fluctuation

6.1 Honourable DRP and the learned AO/ TPO failed to follow the decision by the Income Tax Appellate Tribunal (ITAT) for AY 2009-10, Bangalore in Appellant's own case (e4e Business Solutions India Pvt Ltd - ITA (TP)A No1845/ Bang/2013) where it was held that any income arising of foreign exchange fluctuation should be considered to be an operating item.

6.2 Honourable DRP have erred in law and on facts by upholding the approach of the learned AO / TPO of considering the foreign exchange fluctuations as non-operating in nature without considering the facts that Appellant renders services to foreign enterprises and receive revenues in foreign currency, owing to which, they are susceptible to gain/ loss on account of foreign exchange fluctuation which is integral to ITeS.

6.3 Honourable DRP have erred in law and on facts by upholding the approach of the learned AO / TPO in stating that the foreign exchange gain/ loss did not pertain to ITeS rendered by the Appellant, while factually the same pertained to ITeS and despite the same being considered to be operating in nature in AY 2009-10 by the Honourable ITAT.

6.4 Honourable DRP have erred in law and on facts by ignoring the information furnished in relation to break-up and ledger copy to establish exchange gain was made from operational transaction of provision of ITeS.

7. Computation of the operating margins

7.1 Honourable DRP have erred in law and on facts by upholding the approach of the learned AO / TPO of considering the miscellaneous income as non-operating in nature which is earned by the Appellant in the normal course of its operations of its business.

8. Risk *adjustment* and working capital *adjustment*

8.1 Honourable DRP have erred in law and on facts by upholding the approach of the learned AO / TPO in not appreciating that the Appellant being a captive service provider operates at lower risk levels as compared to comparable companies, which carry higher risks and accordingly erred in not granting appropriate risk adjustments to the margins of the comparable companies.

8.2 Honourable DRP have erred in law and on facts by concluding that the arithmetic mean margin of the comparable companies takes care of the adjustments on account of risk differences and thereby upholding the approach of the learned AO / TPO of not granting risk adjustment.

8.3 Honourable DRP erred in law and on facts by ignoring that e4e BS operates as a captive service provider for its AE and therefore there is no need for undertaking negative working capital adjustment when taxpayer does not carry any working capital risk and is funded entirely by its AE, placing reliance on the decision of Hon'ble Hyderabad Tribunal in the case of Adaptec (India) P. Ltd. (ITA No.206/Hyd/2014).

8.4 Honourable DRP erred in law and on facts by upholding the approach of the learned AO/ TPO in discounting the Prime lending rate ("PLR") for computing the working capital adjustment as the same is not in accordance with the guidelines provided by the Organization for Economic Development Manual adopted by learned TPO for computing the working capital adjustment.

9.1 Honourable DRP have erred in law and on facts by upholding the approach of the learned AO / TPO in making an addition of interest on outstanding debtors as the reference made by the learned AO to the learned TPO in respect of international transactions undertaken during the year under consideration, without considering the fact that the Appellant has not undertaken any international transaction of payment of interest to its AE.

9.2 Honorable DRP and the learned AO/ TPO have erred in disregarding the fact that financial transaction in the nature of a "trade credit" provided to a customer and that of a "financial loan facility" provided to a borrower are completely different, and in doing so, has erred in law and facts in equating the attributes of a "loan" to that of a "trade credit".

9.3 Honorable DRP and the learned AO/ TPO have erred in stating that, the entire year the taxpayer has realized only INR 1.25 crores by comparing and taking the difference between closing balance and opening balance of trade receivables without appreciating the basic accounting fact that debtors would fluctuate basis current year sales. The actual receipts during FY 2011-12 amounts to INR 32.23 crores as against the amount considered by the learned TPO at INR 1.25

crores.

9.4 Without prejudice to the argument in respect of re-characterization of trade debtors as loan, the Appellant submits that the Honorable ORP has erred in law and on facts by upholding the approach of the learned AO / TPO in carrying out a double adjustment by ignoring that the working capital adjustment takes care of the difference on account of outstanding debtors/creditors and the same does not warrant an additional adjustment by way of charging interest on the outstanding debtors.

9.5 Without prejudice to the above grounds in respect of re-characterization of trade debtors as loan, Honorable ORP has erred in considering the average interest on short term deposit for the period 180 days to 1 year and in not considering US dollar LIBOR prevailing during FY 2011-12 while determining the ALP, in view of the fact that the receivables are dollar denominated.

9.6 Honorable ORP and the learned AO/ TPO have based his conclusion and consequent addition of notional interest on outstanding trade debtors, based on a number of assumptions and surmises as indicated below, to which the Appellant objects since the same neither represent facts nor is in line with the position in law and commercial practices.

#### 10 Other transfer pricing related grounds

10.1 Honorable ORP and the learned AO/ TPO have erred, in law and on facts in holding that the transactions between the Appellant and its AE were not at an ALP as defined under section 92F(ii) of the Act and upholding the adjustment to the ALP made by the learned TPO.

10.2 Honorable ORP and the learned AO/ TPO have failed to appreciate the Appellant's commercial judgment about the application of arm's length principle which is tied to the business realities.

10.3 Honorable ORP and the learned AO/ TPO have erred in law and on facts, in making several observations and findings which are based on incorrect interpretation of law and contrary to facts of the case.

#### CONSEQUENTIAL GROUND

11. The Learned AO has erred, in law and on facts, in making an interest under section 234B and 234 C of the Act.+

**4 Grounds at S.Nos: 1,2,3,5 and 10** being general and generic in nature and having not been urged before us, the same are rendered infructuous and are accordingly dismissed.

5.0 Before proceeding to deal with the other grounds of appeal, the approach of the assessee in its TP study/documentation and that of the TPO are briefly summarized hereunder.

5.1 The financials of the assessee for the year under consideration are as under:-

Operating Income	Rs.10,04,76,469.
Operating Expenditure (OC)	Rs.8,23,79,455.
Operating Profit (OP)	Rs.1,80,97,014.
OP / OC	21,97%

5.2 The assessee characterized the services rendered to its AEs as being in the nature of Information Technology Enabled Services (ITES) and aggregated all the international transactions by applying TNMM as the most appropriate method (MAM). The assessee adopted 'Operating Profit to Total Cost' as the Profit Level Indicator (PLI), conducted a comparability analysis and based on certain filters, has selected a set of 5 companies as comparables with an arithmetic mean margin of 13.04%. Since the assessee's profit margin at 21.97% was higher than the arithmetic mean margin of the comparable companies at 13.04%, the assessee concluded that its international transactions were at arm's length.

5.3 The TPO examined the T.P Report and documentation submitted by the assessee and rejected the same for various reasons given in his TP order u/s 92CA of the Act. The TPO then conducted his own comparability analysis, adopting certain filters/criteria and finally selected the following 10 companies in the final set of comparables to the assessee, which included one

of the five comparable companies selected by the assessee. The TPO's set of 10 comparables are listed hereunder :

Sl. No.	Name of the case	OP/OC
1	Accentia Technologies Limited	11.75
2	Universal Print Systems Ltd. (Seg.)(BPO)	52.46
3	Informed Technologies India Ltd.	6.08
4	Infosys BPO Ltd.	36.30
5	Jindal Intellicom Ltd.	- 0.05
6	Microgenetic Systems Ltd.	19.61
7	TCSE ó Serve Ltd.	63.69
8	BNR Udyog Ltd. (Seg.)(Medical Transc)	41.58
9	Excel Infoways Ltd. (Seg.)	29.79
10	e4e Healthcare Services Pvt. Ltd.	19.85
	Average PLI	28.11 %

5.4 The TPO then computed the arms length price (ALP) of the ITES of the assessee's transactions with its AE's as under:-

Operating Cost	Rs.8,23,79,455
Arm's Length Mean Margin on Cost	28.11%
Less : Working Capital Adj.	(-) 48.38%
Adjusted Margin	76.49%
ALP @ 176.49% of operating cost	Rs.14,53,90,866
Price Received	Rs.10,04,76,469
Shortfall being adjustment in respect of the ITeS transactions.	Rs.4,49,14,397.

5.5 The TPO also proposed a TP adjustment in respect of interest chargeable on outstanding receivables for its AE's as under :

Receivables exceeding 6 months	Rs.34,56,05,173.
ALP Interest	13.85%
Interest chargeable	Rs.4,78,66,316

5.6 These TP adjustments (Supra) were included by the AO in the draft order of assessment for asst. years 2012-13. The assessee filed its objections in this regard before the DRP, which were disposed off by the DRP by issuing directions u/s 144C(5) of the Act vide order dated 23/11/2016. Pursuant thereto, the AO passed the impugned order of assessment for asst year 2012-13 u/s 143(3) r.w.s. 92CA r.w.s. 144C(5) & (13) of the Act dated 26/12/2006 which included the re-computed TP adjustment of Rs.6,56,04,314/-.

5.7 Aggrieved, by the aforesaid TP adjustments made in the impugned order of asst. dated 26/12/2016 for asst year 2012-13, the assessee is now before the Tribunal. Before us, the assessee has filed Paper Books in 3 volumes, written submissions and a chart of comparables containing details/short arguments on each of them. The written submissions, included reliance placed on certain judicial pronouncements which have been duly considered. The oral and written submissions made by the Id DR for Revenue have also been considered.

**Ground No: 4 (4.1 to 4.4) - Exclusion/Inclusion of Companies in/out of the final set of comparables sought for by the assessee**

8.1 In the grounds raised as well as in proceedings before us, the Id AR of the assessee submitted that the assessee seeks exclusion/inclusion of certain companies from/into the final set of comparables.

**8.2 The Companies sought to be excluded are**

1) Accentia Technologies Ltd.,

- 2) TCS E-Serve Ltd.,
- 3) BNR Udyog Ltd., (seg) and
- 4) Infosys BPO Ltd.

8.3 **The Companies sought to be included are:-**

- 1) Caliber Point Business Solutions Ltd.,
- 2) Cosmic Global Ltd.,
- 3) Datamatics Financial Services Ltd., and
- 4) ICRA Techno Analytics Ltd.,

We shall now proceed to examine the comparability of the above mentioned companies.

9 **Accentia Technologies Ltd.,** (Accentiaø)

9.1 This company was selected as a comparable by the TPO, overruling the objections of the assessee to its inclusion on grounds of it being functionally different from the assessee and on account of owning of IPRø. Before us, the ld AR submitted that the assessee seeks exclusion of this company from the final set of comparables on the grounds that this company ÷Accentiaø is functionally different from the assessee in the case on hand, as it earns revenue from medical transcription business, billings and collections, coding activities etc. It is further submitted that this company, ÷Accentiaø is a diversified KPO and has the presence of brands, owns IPRø and has goodwill and therefore cannot be considered comparable to the assessee in the case on hand which provides only ITES to its AEø. In support of its claim, the assessee has placed reliance on the decisions of the co-ordinate bench of this Tribunal in the assesseeø own case for asst. years 2011-12 in IT(TP) A No: 1397/Bang/2016 dated 13/1/2017.

9.2 Per Contra, the Id DR for Revenue supported the orders of the TPO in including this company, ~~Accentiaø~~ in the final set of comparables, wherein it has been held that this company is providing only ITES Services and is not into software products or licensing activities.

9.3.1 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial pronouncements cited. The co-ordinate bench of this Tribunal in the assesseeø's own case for asst year 2011-12 (Supra) has excluded this company from the list of comparables. In doing so, the co-ordinate bench relied on the decision of the Tribunal in the assesseeø's own case for asst. year 2009-10 in IT(TP)A No: 1777/Bang/2013, wherein the Tribunal has rendered the finding that ~~Accentiaø~~ is engaged in diversified activity of medical transcription, medical coding, medical billing, etc. which are different from the activities of the assessee; which is in the nature of call centre and therefore functionally not comparable.

9.3.2 We, however, find that for the year under consideration, the DRP has examined the TP study of the assessee and has rendered a finding that the functions performed by the assessee in the case on hand are in the nature of Testing, Compatibility, Localization services and end user support services and therefore the services rendered by the assessee are a mix of both high end and lowered services. In the light of the above factual finding rendered by the DRP, in our considered view, it may not be appropriate to apply the decision of the co-ordinate benches of this Tribunal in the assesseeø's own case for asst. years 2009-10 (Supra) and 2011-12 (Supra), unless it is established that there is no change in the functional profile of the assessee in the year under consideration vis-à-vis the earlier years. Further, while the TPO has

characterized the assessee as an ITES service provider, the DRP has rendered the finding that the assessee provided a mix of ITES and KPO services. In factual matrix of this case as discussed above, we deem it appropriate to remand the issue of determining the functional profits of the assessee back to the file of the TPO for a fresh analysis, to evaluate the finding rendered by the DRP that the services rendered by the assessee are a mix of high end and low end services and also to evaluate the change in the functional profile of the assessee, if any, over the years and to then decide the comparability. Needless to add, the TPO shall provide the assessee adequate opportunity of being heard and make submissions in this regard, which shall be duly considered before taking a decision in the matter. We hold and direct accordingly.

#### 10 **TCS E-Serve Ltd.**, ('TCS')

10.1 This company was selected by the TPO and included in the final set of comparables, overruling the assessee's objections to its inclusion on the grounds of functional difference, abnormally high margin, etc. Before us, the assessee seeks exclusion of this company, TCS on the grounds that it is functionally different; as it is a KPO whose operations include delivering core business processing services, analytics and support services. It was also submitted that the segmental details based on geographies has been disclosed but the segmental details as per business segments has not been disclosed; that TCS has huge turnover, and is a global brand with lakhs of employees. According to the Id AR since the TPO himself had rejected this company, TCS as a comparable in the assessee's own case in the earlier year on account diversified activities, this company ought to be excluded in the year also.

10.2 The Id DR placed strong reliance on the orders of the authorities below in including this company, TCSø in the final set of comparables to the assessee.

10.3.1 We have heard the rival contentions perused and carefully considered the material on record. From a perusal of the Annual Report of this company, TCSø for the year under consideration, it is seen that this company is an integral part of the Tata Consultancy Services strategy to build on its Full service Offerings ranging from IT Software development services to BPO services. This company offers BPO services in Banking, Financial Services and Insurance Services, the Operations including core business services, Analytics and Insights and support services for data and voice recording.

10.3.2 According to the assessee, the TPO rejected this company, TCSø in its own case for the earlier years on account of diversified activities. While the assessee has mentioned that the services rendered by this company as KPO services, it has not brought out as to which of the services would come under Transaction Processing and which of the services rendered would constitute KPO services. Further, as mentioned earlier, the DRP has rendered a finding that the assessee provides a mix of high end and low end services. While this company TCSø has been excluded as a comparable for companies performing ITES services in the few other cases also, these judicial pronouncements pertain to earlier asst. years and the assessee in the case on hand has not demonstrated before us that all the reasons are equally applicable to this year also.

10.3.3 In the factual matrix of the case, as discussed above, we are of the considered view that an examination is necessary to decide whether the

conditions/reasons on the basis of which his company was excluded in the earlier year are applicable to the fact situation prevailing in the asst. year under consideration; especially in the context of the finding rendered by the DRP that the assessee in the case on hand was performing various activities that constitute a mix of both high end and low end services. In this view of the matter, we deem it appropriate to remand the matter to the file of the TPO for examination to evaluate the functional profile of the assessee and then decide the comparability. Needless to add, the TPO shall afford the assessee adequate opportunity of being heard and make submissions in this regard, which shall be duly considered before a decision is reached in the matter. It is accordingly ordered.

#### 11 **BNR Udyog Ltd., ('BNR)**

11.1 This company was selected as a comparable by the TPO, overruling the assessee's objections that this company, 'BNR' is functionally not comparable to the assessee, fails the RPT filter, the foreign exchange filter and service income filter applied by the TPO. Both the TPO/DRP have rejected the assessee's contentions for exclusion of this company from the list of comparables and therefore the assessee is in appeal before the Tribunal.

11.2.1 Before us, the Id AR of the assessee submitted that this company 'BNR' is functionally different from the assessee. It is contended that 'BNR' has Commercial Medical Billing and Coding services in addition to Medical Transcription, but has not reported the results from these two activities in different segments, thereby rendering its results incomparable. Therefore, this company can be classified as rendering KPO services.

11.2.2 Apart from the above, it is also contended that this company, 'BNR' should be excluded from the set of comparables as its RPT at 49.60% is

higher than the RPT filter of 25% applied by the TPO (Viz., that BNRØ has RPT revenues of Rs. 1.70 crores as against total revenues of Rs. 3.63 crores) and thereby fails the RPT filter. It is also contended that this company also fails the service income filter applied by the AO.

11.3 Per contra, the Id DR for Revenue supported the order of the TPO in including this company in the list of comparables to the assessee.

11.4.1 We have heard the rival contentions and perused and carefully considered the material on record. The contention of the assessee that this company, BNRØ fails the RPT filter at the entity level has been countered by the TPO who has mentioned that while this company has three segments, the benchmarking has been done only with the Medical Transcription segment. The TPO has pointed out that while the entire Medical transcription segment is exported, the RPT are with domestic companies and therefore it could not have been with the Medical transcription segment.

11.4.2 The DRP in its order has further elaborated on the TPO's view that RPT expenses have been booked in the earlier year also when the Business support segment was in existence; which fact has been confirmed by this company in its response to information called for u/s 133(6) of the Act. In our view, the rationale given by the DRP does not give any conclusive finding. If there was no Business Support Services Segment in the earlier year but RPT have been booked, it would mean that those RPT expenses pertain to the Medical transcription service segment in the earlier year. Since, in the current year under consideration, there are 2 segments, how much of the RPT pertains to each of the segments requires examination. This has not been analyzed either by the TPO or by the assessee. While it is clear that benchmarking is done only for the Medical transcription segment, then the RPT pertaining to

that segment alone should be considered. However, the extent of the RPT pertaining to the Medical transcription segment has not been determined, either by the assessee or the TPO.

11.4.3 Apart from this, the assessee has sought exclusion of this company, ~~BNRø~~ from the list of comparables on the ground that it fails the service income filter applied by the TPO, which we find has not been examined by the DRP.

11.4.4 The assessee has also sought exclusion of this company, ~~BNRø~~ from the set of comparables on the grounds of being functionally not comparable to the assessee. According to the assessee, this company carried out both Medical transcription and medical billing and coding and thus performed KPO services also. In our view, this aspect requires examination, particularly in the light of the finding of the DRP that the assessee also performed a mix of high end and low end services. In this view of the matter, we deem it appropriate to remand the matter of comparability of this company, ~~BNRø~~ to the file of the TPO for examination and determination of this issue afresh, in line with the above observations made by us. Needless to add the TPO will pass orders deciding the issue only after affording the assessee adequate opportunity of being heard and to file details/submissions in this regard which shall be duly considered. We hold and direct accordingly.

## 12 **Infosys BPO Ltd.**, ('Infosys')

12.1 This company was selected by the TPO and included in the final set of comparables overruling the objections of the assessee to its inclusion on grounds of its being functionally different from the assessee. Before us also, the assessee seeks exclusion of this company from the list of comparables on grounds this company, ~~Infosysø~~ being functionally different as it is engaged

in providing integrated IT and BPO solutions across a variety of verticals like Banking, Communication, Media and Entertainment, Manufacturing, Retail and Energy sectors. It is also contended that this company has diversified activities, owns IPRs and has tremendous brand value. In support of its claims/contentions, this assessee placed reliance on the decision of the coordinate bench in the assessee's own case for Asst. year 2011-12 in IT(TP)A No.1397/Bang/2016 dated 13/1/2017.

12.2 Per contra, the Id DR for Revenue supported the orders of the authorities below.

12.3.1 We have been heard the rival contentions and perused and carefully examined the material on record, including the judicial pronouncement cited. We find that the coordinate bench of this Tribunal in its order in the assessee's own case for asst year 2011-12 in IT(TP)A No. 1397/Bang/2016 dated 13/1/2017 has excluded this company, Infosys from the set of comparables for the reason that it is functionally different; being an established market leader, enjoying immense brand value and goodwill, with huge economies of scale and geographical dispersion of customers. The relevant portion from the order of the coordinate bench at para 11 is extracted hereunder:-

¶ 11. The relevant portion of the order from the assessee's case in IT (TP)A no. 1765/Bang/2013 & IT(TP)A.1783/Bang/2013 dt 04.11.2015 for ay 2008-09 is extracted as under :

¶ 6.7 Infosys BPO Ltd.

6.7.1 As far as this company, chosen by the TPO as comparable, is concerned, the learned Authorised Representative for the assessee submitted that this company, being a wholly owned subsidiary of Infosys Technologies Ltd. would enjoy a premium in the market, due to brand value and goodwill of the parent company, whereas the assessee is a low end provider of BPO / ITES support services. It is submitted that Infosys BPO Ltd. incurred huge selling and marketing expenses and is not only a market leader but also has huge,

breadth in terms of economies of scale with diversity and worldwide geographical dispersion of customers. It is submitted that in view of these factors, Infosys BPO Ltd. is functionally dissimilar and different from the assessee in the case on hand. In support of its proposition for excluding this company from the list of comparables, the learned Authorised Representative placed reliance on the decision of the coordinate bench of this Tribunal in the case of Symphony Marketing Solutions India Pvt. Ltd. (supra) for Assessment Year 2008-09 wherein this company was excluded from the set of comparables.

6.7.2 Per contra, the learned Departmental Representative supported the orders of the TPO in including this company as a comparable to the assessee. 6.7.3 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 the coordinate bench of this Tribunal in the case of Symphony Marketing Solutions India Pvt. Ltd. (supra) for Assessment Year 2008-09 has excluded this company i.e. Infosys BPO Ltd. from the list of comparables to low end ITES / BPO support service providers as it is functionally different being an established market leader, enjoying huge brand value and goodwill, with huge economies of scale and diversity and geographical dispersion of customers. At para 24 of its order, the co-ordinate bench has held as under :-

ö (7) Infosys BPO Ltd

24. This company is listed at Sl.13 in the list of comparable companies chosen by the TPO. As far as this company is concerned, it is the submission of the ld. counsel for the assessee that this company has a brand value and therefore there would be significant influence in the pricing policy which will impact the margins. Schedule 13 to the profit & loss account of this company for the F.Y. 2007-08 shows that this company incurred huge selling and marketing expenses. Page 133 of the annual report of this company for the F.Y. 2007-08 shows that this company realizing its brand value has chosen to value the same on the basis of its earnings and that of Infosys. The brand value of the Assessee and Infosys has been valued at Rs.31,863 Crores. Infosys BPO, being a subsidiary of Infosys, has an element of brand value associated with it. This is also clear from the presence of brand related expenses incurred by this company. Presence of a brand commands premium price and the customers would be willing to pay, for the services/products of the company. Infosys BPO is an established player who is not only a market leader but also a company employing sheer breadth in terms of economies of scale and diversity and geographical dispersion of customers. The presence of the aforesaid factors will take this company out of the list of comparables. We therefore accept the contention of the assessee that this company cannot be regarded as a comparable.ö

Following the above cited decision of the co-ordinate bench of this Tribunal in the case of Symphony Marketing Solutions India Pvt. Ltd. (supra) for Assessment Year 2008-09, we are of the view that in the case on hand also, where the assessee is only providing low end ITES / BPO support services, this company i.e. Infosys BPO Ltd. is to be excluded from the list of comparables to the assessee in the case on hand. We hold and direct the TPO accordingly.

Thus, the assessee has made out a case in its favour from the above decisions. Following them, the TPO is directed to exclude Accentia Technologies Ltd , Acropetal Technologies Ltd & Infosys BPO Ltd from the list comparables and the assessee's corresponding appeal grounds are allowed.

12.3.2 As the facts of the case in the year under consideration are broadly the same as in the earlier years, as has been brought out from a perusal of the relevant portions of the Annual Report of this company, Infosys and following the aforesaid decision of the coordinate bench of this Tribunal in the assessee's own case for the earlier asst. year 2011-12 (Supra), we hold that this company shall be excluded from the set of comparables. We hold and direct accordingly.

### 13 **Caliber Point Business Solutions Ltd., (Caliber')**

13.1 This company was selected by the assessee as a comparable in its TP study. According to the assessee, this company is functionally comparable but has been rejected only grounds of different financial year ending. The Id AR for the assessee submitted that once functional comparability is established, the company cannot be rejected as a comparable on the ground of different financial year. In support of the assessee's above contentions for inclusion of this company Caliber as a comparable, reliance was placed on the decision of the Hon'ble Delhi High Court in the case of CIT V Mckinsey Knowledge Centre India Pvt Ltd (Supra).

13.2 Per contra, the Id DR for Revenue vehemently supported the orders of the authorities below.

13.3.1 We have heard the rival contentions and perused and carefully considered the material on record, including the judicial pronouncement cited.

From a perusal of the TPO's order it appears that this company, 'Caliber' has been excluded solely on the ground that this company has a different financial year. It is a settled principle that the application of different financial year ending is an appropriate filter as companies having different financial years cannot be a good comparable.

13.3.2 In the case cited by the assessee (Supra), it has been held that a comparable cannot be excluded solely on the ground that comparables have different financial year endings. If from the data available on record, the results of the financial year can be reasonably extrapolated, then the comparable cannot be excluded solely on the ground that the comparables have different financial year endings. Therefore, in our view, the aforesaid decision relied on by the assessee (Supra), is conditionally applicable only if the available data shows that the results can be reasonably extrapolated. The onus of demonstrating this is on the assessee. On a perusal of the record before us, we find that the assessee has not brought on record any details/information to that effect. In the absence of such details, it is not possible to conclude that the results of comparable periods can be extrapolated. In this factual matrix of this case, where such details are absent, the application of the financial year filter is upheld and we accordingly uphold the decision of the TPO in rejecting this company as a comparable.

#### 14 **Cosmic Global Ltd., ('Cosmic')**

14.1 This company was selected as comparable by the assessee in its TP study. On examination of its comparability, the TPO rejected/excluded this company as a comparable on the ground that this company fails the employee

cost filter. On appeal, the DRP in its directions was of the view that the application of employee cost filter is a valid filter and accordingly upheld the decision of the TPO to reject this company as a comparable. Before us, the assessee submitted that the TPO did not apply this filter at all but still the TPO rejected this company by invoking the employee cost filter. It was also submitted that the DRP has upheld this filter, even while both the assessee and the TPO have not applied this filter. In view of the above, the Id AR sought inclusion of this company 'Cosmicø in the list of comparables.

14.2 Per contra, the Id DR for Revenue supported the orders of the authorities below in rejecting 'Cosmicø as a comparable.

14.3.1 We have heard the rival contentions and perused and carefully considered the material on record. On a perusal of para 7 at pages 4 to 6 of his order, the TPO has discussed the filters applied by him in the search process for selecting appropriate comparables in the case on hand. We find, from a perusal thereof, that the TPO has not applied the employee cost filter. When the TPO has not applied the employee cost filter in his own comparability analysis, it is not appropriate to reject a company on this filter that was not adopted by him in the first place. The DRP has given its reasoning as to why this employee filter is an appropriate filter for ITES companies. However, in our view, a filter cannot be applied selectively or arbitrarily, as applying a filter could alter the contours of the comparability analysis. In this view of the matter, we deem it appropriate to remand the issue of comparability of this company to the file of the TPO for fresh consideration. The TPO shall take into account the observations of the DRP, while considering the applicability of the employee cost filter and also apply the decision taken in this regard to all the other companies thrown up in the comparability analysis. We make it

clear that we are not expressing any opinion on whether this filter is an appropriate one.

15 **Datamatics Financial Services Ltd.,- ‘Datamatics’**

15.1 This company was selected by the assessee in its TP study. The TPO, however, rejected this company on the grounds that no data is available. The DRP upheld the rejection of this company on the ground that while it is engaged in the business of registration and share transfer work and ITES, but there is no segmental information available in the Annual report of this company. Further, this company also fails the export earning filter adopted by the TPO.

15.2 We have heard the rival contentions and perused and carefully considered the material on record. Before us, except for raising this ground and reiterating that this company, ‘Datamatics’ is functionally comparable to the assessee in the case on hand, no evidence was brought on record to controvert the observations and findings of the DRP. In this factual matrix of the case, we have no hesitation in upholding the decision of the TPO in rejecting this company, ‘Datamatics’ as a comparable to the assessee.

16 **ICRA Techno Analytics Ltd., - (‘ICRA’)**

16.1 This company was selected by the assessee as a comparable in its TP study. The TPO however rejected this company on the ground of no available data. The DRP has upheld the rejection of this company on the ground that it is engaged in various functions, but no segmental information is available in the Annual Report of this company ‘ICRA’

16.2 We have heard the rival contentions and perused and carefully considered the material on record. Before us, the Id AR for the assessee reiterated that this company 'CRAØ is functionally comparable to the assessee in the case on hand, but could not adduce any material/factual evidence to controvert the observations of the DRP. In this factual view of the matter, we uphold the decision of the TPO in rejecting this company as a comparable to the assessee in the case on hand.

17 **Jindal Intellicom Ltd.,** - ('Jindal')

17.1 This company was selected as a comparable by the TPO to which the assessee had no objection. The DRP, however, excluded this company from the set of comparables.

17.2.1 We have heard the rival contention and perused the material on record. The assessee is in appeal before us against the exclusion of this company, 'JindalØ According to the assessee, this company is functionally comparable to the assessee and was accepted as such by the TPO. But the DRP excluded this company on its own accord, without affording both the assessee and TPO an opportunity in the matter, after observing from the Annual Report that this company provides both IT and ITES services whereas there is only one reported business segment as 'Call Centre ServicesØ It is in this context that the DRP observing that the assessee does not have segmental information related to ITES and therefore excluded this company.

17.2.2 The principle on which the DRP has excluded this company, 'JindalØ is valid. It is settled principle, upheld by several orders of the coordinate benches of this Tribunal, that if a company renders both IT and ITES services and there is no segmental information, then that company ought to be rejected

as a comparable. However, in our considered view, the procedure adopted by the DRP is not proper. This company, Jindalø was selected as a comparable by the TPO, which was accepted by the assessee. If the DRP felt that this company had been wrongly selected by the TPO, the least the DRP ought to have done was to have afforded an opportunity to both the assessee and the TPO to explain their stand, in the light of DRPø's observations, instead of suo moto excluding this company from the set of comparables. In the fitness of things, the assessee and TPO should be afforded adequate opportunity of being heard in the matter. In this view of the matter, we remand the issue of the comparability of this company Jindalø to the file of the DRP to determine the issue afresh after affording both the TPO and the assessee adequate opportunity of being heard in the matter, which shall be duly considered .

18 **Ground No.9 (9.1 to 9.6) – Adjustment towards notional interest on AE Debtors in excess of 6 months.**

18.1 In this ground, the assessee challenges the TP adjustment of Rs. 4,78,66,316/- made in connection with notional interest on outstanding receivables from AEø's.

18.2 The facts of the matter are that in the course of TP proceedings, the TPO observed that the assessee had total debtors outstanding excluding six months at Rs. 34,56,05,173/- whereas the opening balance of AE debtors at the beginning of the year was Rs. 35,81,53,026/-. In these circumstances, the TPO concluded that the realization during the year was only Rs. 1.25 crores. Since all the receivables are from the parent company, the TPO considered the receivables outstanding for more than 6 months as being in the nature of loan and made a TP adjustment toward notional interest payable on loan. The TPO also observed that if the interest had been charged by the

assessee on its AEs for the outstanding balance, it would have been included in the profit of the assessee company and as such will have a bearing on its profits. For benchmarking the rate of interest, the TPO adopted the average PLR at 13.85% as the applicable interest rate and worked out the TP adjustment at Rs. 4,78,66,316/-.

18.3 The DRP upheld the principle of charging interest on the outstanding receivables, but, however, modified the charging of interest, issuing the following directions in this regard:-

(i) The interest chargeable on the outstanding receivables is to be computed after allowing a credit period of 90 days and the interest is to be pegged with SBI rates for short term fixed deposits.

(ii) The period of charging of interest is to be restricted to the period of the relevant asst. year; in tune with the decision of the ITAT, Mumbai Bench in the case of Technimont ICB House V DCIT (ITA No: 487/Mum/2014).

(iii) The adjustment is to be restricted for delay in payment; upto the end of the financial year.

18.4 Before us, the Id AR submitted that by proposing the notional interest on outstanding receivables from AE, the TPO has tried to bring within the ambit of sec 92 of the Act, a transaction that is non-existent. It was submitted that in the absence of any specific provision in the Act which seeks to tax any hypothetical income, the assessee cannot be subjected to tax on -hypothetical income- i.e., to say an income which ought to have been earned or that income which the assessee failed to earn. The Id AR further submitted that since in the case on hand, no income has been earned or can be said to have been earned by the assessee in respect of interest chargeable from AEs, the question of applying the provisions of section 92 of the Act does not arise.

According to the assessee, notwithstanding its contention that no notional interest is chargeable, if the outstanding receivables are to be treated as being in the nature of loan, then the interest should be benchmarked with LIBOR rates and not Indian Bank rates.

18.5 Per contra, the Id DR supported the orders of the TPO and the directions issued by the DRP. In support of the contention that outstanding debtors constitute international transactions warranting adjustment, the Id DR placed reliance on the decisions of the Chennai Bench of ITAT, in the case of Professional Access Software Development Pvt . Ltd., in ITA No: 3305/Mds/2016 dated 9/2/2017. It was also submitted that the TPO has relied on the decision of the coordinate bench of this Tribunal in the case of Logic Micro Systems Ltd.

18.6.1 We have heard the rival contentions and perused and carefully considered the material on record. Sec 92(1) of the Act provides that "Any income arising from an international transaction shall be computed having regard to its arms length price (ALP). Sec 92B(1) of the Act defines an "international transaction" as under:-

**92B.** (1) For the purposes of this section and sections [92](#), [92C](#), [92D](#) and [92E](#), "international transaction" means a transaction between two or more associated enterprises, either or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on the profits, income, losses or assets of such enterprises, and shall include a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises.

According to the Id AR, the above definition implies that there should be a "real transaction" between two AEs ; i.e. a transaction involving actual exchange of goods/services to constitute an "international transaction" and it does not cover any hypothetical transaction that has not taken place between two AEs. 18.6.2. This concept of "Real Income" has been applied in certain

decisions of the Tribunal on the issue of charging of interest on receivables outstanding from AEs. In the case of Evonick Degussa India P Ltd., (ITA No: 7653/Mum/2011) the Mumbai Bench of the ITAT dealt with this issue at paras 23 to 28 of its order and deleted the interest charged on receivables from AEs; holding at para 28 thereof that TP adjustment cannot be made on hypothetical and notional basis until and unless there is some material on record to show that there has been undercharging of real income. As pointed out by the Id DR, the decision of the Chennai Bench of ITAT in the case of Professional Access Software Development Pvt Ltd; (Supra) seems to suggest that interest on receivables can be charged if there is a long delay in realization of the receivables from the AEs. Therefore, there are contrary decisions of various Tribunals on this issue.

18.6.3 Be that as it may; even if the receivables outstanding from AEs are to be treated as international transactions subject to transfer pricing adjustment, we find that the process and procedure adopted by the TPO in this regard is not in order. The TPO has assumed that receivables outstanding beyond a period of 6 months are to be treated as loans and requires adjustment. Even if the receivables outstanding are to be treated as international transactions, the TPO should have performed a comparability analysis to determine whether the transaction requires to be adjusted. The TPO ought to have examined whether the assessee has charged interest for delayed realizations in the case of Non-AE transactions, if any. The TPO should have also examined whether the debtors were outstanding beyond the specified period purely because of business reasons and whether this is a common business practice prevailing in the industry and the delay, if any, in the payment is not due to extension of the credit period by the assessee to its AEs. Further, while the TPO has taken

the credit period as 180 days (viz., 6 months) without giving any basis, we find that the

DRP has reduced the credit period to 90 days; again without assigning any reason for its decision.

18.6.4As was observed above, in the cited decision of the ITAT, Mumbai Bench in the case of Evonik Degussa India Pvt Ltd (Supra), it was held that the addition on account of notional interest relating to alleged delay in collection of receivables from AEs is not called for. However, the above finding was rendered in the factual context that there has been no agreement for charging interest on delay payment. We find that the decision cited by the Id DR ie., Professional Access Software Development Pvt. Ltd., (Supra) has also been rendered in the context of the facts of that particular case. In these circumstances, we deem it appropriate to remand this issue back to the file of the TPO/AO for examination as to whether there was any agreement for charging interest on late payments or not and to do a proper comparability analysis, if the adjustment is required to be made after affording the assessee adequate opportunity of being heard in the matter and to file details/submissions in his regard as well as in respect of the alternate ground of benchmarking transactions with LIBOR.

19 **Ground No.6 (6.1 to 6.4) Treatment of Foreign Exchange gain /loss**

19.1 In this ground, the assessee contends that the AO/TPO and DRP have erred in not following the decision of the coordinate bench in the assessee's own case for asst. year 2009-10 (IT(TP)A No. 1845/Bang/2013), wherein it was held that any loss/gain arising out of foreign exchange fluctuation should be considered to be a part of operating profits.

19.2 It is an accepted principle, upheld in several decisions of this Tribunal, including that of SAP Labs India Pvt. Ltd., V AUT (2010) 6 ITR (Trib)81(Bang-IAT) that foreign exchange fluctuations gain/loss is to be regarded as part of operating profits. However, from a perusal of the TPO's order u/s 92CA of the Act, it emerges that the TPO had called for details from the assessee in this regard to determine whether the foreign exchange gain is out of the operations or not. Since the assessee failed to furnish the details called for, the TPO did not consider the foreign exchange gain as operational while computing the margin. Similarly, as the details in this regard were stated to have not been filed before the DRP also, the DRP upheld the action of the TPO. Before us it was submitted that the assessee had furnished details to the DRP in support of its claim that foreign exchange gain was only out of transactions related to ITES and therefore should be treated as operational in nature.

19.3 After considering the rival submissions and perusing the record we find that the assessee, in Form No: 35A submitted before the DRP, at pgs 590 to 592 of paper book, has furnished certain details on this issue, which does not appear to have been considered by the DRP. In view of the above, we deem it appropriate to remand this issue to the file of the TPO for examination and consideration of the details filed and to decide the issue afresh, as per the principles laid down by the decision of the coordinate bench of this Tribunal in the assessee's own case for asst. year 2009-10 (Supra), after affording the assessee adequate opportunity of being heard in the matter and to file details/submissions required. Consequently, ground no: 6 (6.1 to 6.4) raised by the assessee is allowed for statistical purposes.

**20 Ground No:7 – Computing of Operating Margins**

20.1 In this ground, the assessee contends that the authorities below have erred in considering miscellaneous income as non-operating in nature, even though it is earned by the assessee in the normal course of its business operations.

20.2 We have heard the rival contentions on this issue and perused and carefully considered the material on record. From a perusal of the record before us, we find that while the assessee has raised this issue before the DRP, and the DRP has rejected the assessee's claims on the ground that the details of miscellaneous income were not furnished and therefore the assessee was not able to demonstrate that these were earned in the normal course of business. No details in respect of miscellaneous income have been filed by the assessee before us also in order to support its claim that miscellaneous income formed part of the operational income. In the absence of any details being filed by the assessee to prove its claim with material evidence, we are of the view that the assessee's contention/claim has been rightly rejected and we therefore uphold the decision of the authorities below. Consequently, ground no: 7 of the assessee's appeal is dismissed.

**21 Ground No: 8(8.1 to 8.4) : Risk Adjustment and Working capital adjustment****RISK ADJUSTMENT**

21.1 In this ground (Supra), the assessee assails the decisions of the TPO/DRP in not allowing the assessee risk adjustment. According to the assessee it is a captive service provider to its AE with low risk, whereas the comparable companies are full-fledged entrepreneurs carrying higher risk and therefore risk adjustment ought to be granted.

21.2 We have heard the rival contentions and perused and carefully considered the material on record. The issue of risk adjustment has been considered in several decisions of co-ordinate benches of this Tribunal wherein it has been held that as a matter of principle, risk adjustment needs to be granted. However, we find that in the case on hand the assessee has not furnished any details of the risk adjustment it seeks. In the absence of details/working/computation of the risk adjustment sought being filed by the assessee, the claim of risk adjustment is only an academic exercise and therefore we are not inclined to grant any such hypothetical adjustment. In this factual matrix of the matter, as discussed above, we dismiss this claim raised by the assessee for grant of risk adjustment

## 22 WORKING CAPITAL ADJUSTMENT

22.1 As regards its claim for working capital adjustment, the assessee contends that the TPO has computed negative working capital adjustment which is not tenable. In support of its contentions, the assessee placed reliance on the decision of the ITAT, Hyderabad Bench in the case of Adaptec (India) P Ltd., in ITA No: 206/Hyd/2014.

22.2.1 We have heard the rival contentions and perused and carefully considered the material on record. A perusal of the TPO's order u/s 92CA of the Act indicates that the working capital adjustment has been computed at (-) 48.38%, which appears to be an extremely high negative figure. As contended by the assessee, the Hyderabad Bench of the ITAT in the case of Adaptec (India) Pvt. Ltd., (Supra) has held that there cannot be a negative working

capital adjustment. Similar decisions have been rendered by co-ordinate benches of this Tribunal.

22.2.2 We, however, find that the assessee has raised generic ground before the DRP that the computation of working capital adjustment has been wrongly done; without any details as to what was considered and as to how the end figure of such adjustment was reached. From the details before us, it is not clear whether the negative working capital has been arrived at based on wrong computation. Before us also, the assessee has not filed any details in this regard. In this factual nature of the case, as discussed above, we remand the issue of computation of working capital adjustment to the file of the TPO, with a direction to grant working capital adjustment, as per law, keeping in mind the judicial pronouncement of the ITAT Hyderabad Bench in the case of Adeptec (India) Pvt. Ltd., (Supra) on the issue of negative working capital.

23 **Ground No: 11 – Charging of interest u/s 234B and 234C of the Act**

23.1 In this ground (Supra), the assessee denies itself liable to be charged interest u/s 234B and 234C of the Act. The charging of interest is consequential and mandatory and the AO has no discretion in the matter. This proposition has been upheld by the Honøble Apex Court in the case of Anjum H. Ghaswala (252ITR1) (SC) and we therefore uphold the action of the AO in charging the said interest. The AO is, however, directed to re-compute the interest chargeable u/s 234B and 234C of the Act, if any, while giving effect to this order.

24. In the result, the assessee's appeal for asst. year 2012-13 is partly allowed for statistical purposes.

Order pronounced in the open court on **3<sup>rd</sup> Nov., 2017**

**Sd/-**  
**(SUNIL KUMAR YADAV)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(JASON P BOAZ)**  
**ACCOUNTANT MEMBER**

Bangalore

Dated : 3/11/2017

\* Reddy gp/ Vms

Copy to :

1. The Assessee
2. The Revenue
3. The CIT concerned.
4. The CIT(A) concerned.
5. DR
6. GF

By order

Sr. Private Secretary, ITAT, Bangalore