

आयकर अपीलीय अधिकरण , 'डी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष  
**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND**  
**SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A. No. 971/Mds/2015**

**निर्धारण वर्ष/Assessment Year : 2010-11**

Visual Graphics Computing Services  
(India) Private Limited,  
5<sup>th</sup> Cross, International Tech Park,  
CSIR Road, Taramani,  
Chennai – 600 113.

Deputy Commissioner of Income Tax,  
Vs. Corporate Circle 3(2),  
Chennai – 600 034.

**[PAN: AAACV 3342H]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थीकीओरसे/Appellant by

: Shri. NishantThakkar, Advocate

प्रत्यर्थीकीओरसे/Respondent by

: Shri. G.M. Doss, CIT

सुनवाईकीतारीख/Date of Hearing

: 06.09.2017

घोषणाकीतारीख/Date of Pronouncement

: 28.12.2017

**आदेश/ O R D E R**

**PER S. JAYARAMAN, ACCOUNTANT MEMBER:**

The assessee filed this appeal against the order of the AO passed in pursuant to the directions of the Dispute Resolution Panel (DRP) in F.No DRP/CHE/38/2014 dated 17.12.2014 for ay 2010-11.

2. Visual Graphics Computing Service India Pvt. Ltd., the assessee, is the subsidiary of McKinsey, USA. It operated as a captive service provider rendering visual aid services and global finance and accounting services collectively classified as an ITES provider to the group companies. The assessee adopted cost plus model for the visual aid services and man hour rate for finance and accounting services. The assessee is having two separate units – one at Chennai and the other at Tiruvanthapuram. However, for the Transfer Pricing purpose, the assessee as well as the TPO considered the enterprise level financials and applied TNMM as the most appropriate method. The assessee had identified seven comparables and determined the PLI at 12.26% after working capital adjustment on the basis of average profit margin for 3 years and accordingly considered the international transactions undertaken at Arm's length price as the assessee's profit margin (operating profit upon operating cost) was at 10.01%. The TPO though agreed with the assessee that TNMM is the most appropriate method but it appears that the TPO did not consider the uncontrolled comparables as proper comparables and therefore proceeded to identify a new set of uncontrolled comparables selected on the basis of certain relevant filters. Accordingly, the TPO determined the arithmetical mean of profit margins of the controlled comparables at 23.8% and there being short fall of 13.79% between the average profit margin of the comparables and the assessee, he proceeded to compute the proposed adjustment at Rs 10,52,34,898. Aggrieved, the

assessee filed an objection before the Dispute Resolution Panel (DRP), Chennai. The DRP by its order in F.No. DRP/CHE/38/2014 dated 17.12.2014 directed the TPO to include Micro Genetic System Limited in the state of uncontrolled comparable and dismissed all other objections.

3. Aggrieved, the assessee filed this appeal primarily on the ground that:

*"1. The Learned TPO/AO and the Hon'ble DRP have erred in law and in facts by making the detailed adjustment in the arm's length price of the Appellant's international transactions in the nature of provision of IT enabled services of INR 8,30,35,045.*

*8. The learned TPO/AO and the Hon'ble DRP have erred in law and in facts, by not providing risk adjustment (to account for difference in the risks undertaken by the Appellant and the comparable companies) as provided under Rule 10B(3)(ii) for equitable and reliable comparability analysis."*

4. Subsequently, the assessee filed additional grounds with the following plea:

*"As a matter of abundant caution, in addition to the Ground No. 2 of the appeal (the purview of which is broad enough), prays for admission of additional grounds 9 to 16. VGCS submits that none of the grounds raised require investigation of new facts and are being raised only with a view to bring to the fore the exact nature of objections for each of the comparables under dispute before this Hon'ble Tribunal, resulting in the adjustment impugned in Ground No. 2. In this connection, in accordance with the decisions of the Supreme Court in the case of Jute Corporation of India Ltd v CIT [187 ITR 688] and National Thermal Power Co. Ltd., [259 ITR 318], in the aforementioned circumstances, we humbly beg your Honours, to admit the enclosed additional grounds of appeal.*

*Based on the facts and circumstances of the case, Visual Graphics Computing Services (India) Private Limited (hereinafter referred to as the 'Appellant') craves leave to prefer an appeal against the order passed by the Deputy Commissioner of Income-tax - Corporate Circle 3(2), Chennai [hereinafter referred to as the 'learned AO'] under section 143(3) read with section 144C(5) of the Income-tax Act, 1961 (hereinafter referred to as the 'Act'), in pursuance of the directions issued by the Hon'ble Dispute Resolution Panel, (hereinafter referred to as the 'Hon'ble DRP') on the following additional grounds.*

*9. The learned AO/ Transfer Pricing Officer (TPO,) have erred in interchanging the operating margins of certain comparable companies (viz. Informed Technologies India Limited, Fortune Infotech Limited, Jeevan Scientific Technology Limited and Nittany Outsourcing Services Limited) while capturing the same in the table outlining the final set of comparables and the arm 's length price for benchmarking the international transaction of the Appellant.*

*10. The Hon'ble DRP has erred in not considering the arguments of the Appellant regarding inclusion of a comparable company (i.e. Datamatics Global Services Limited) in the final set of comparables since the company is functionally comparable to the Appellant and hence, ought to be included in the final set of comparables.*

*11. The Hon'ble DRP has erred in not considering the arguments of the Appellant regarding exclusion of a company (i.e. Cosmic Global Limited) from the final set of comparables since the company is functionally different to the Appellant and hence, ought to be rejected from the final set of comparables.*

*12. The learned AO/ TPO/ Hon'ble DRP have erred in not considering the arguments of the Appellant regarding exclusion of companies introduced by the learned TPO (i.e. Jeevan Scientific Technology Limited and Fortune Infotech Limited) from the final set of comparables since the companies are functionally different to the Appellant and hence, ought to be rejected from the final set of comparables.*

*13. The learned AO/ TPO have erred in not including a company (i.e. Jindal Intellicom Private Limited) which was sought to be included by the learned TPO at the stage of the transfer pricing proceedings.*

14. *The learned AO/TPO have erred in re-computing the unadjusted operating margin of a comparable company (i.e. Nittany Outsourcing Services Limited) at 31.03% as against the correct operating margin of 21.01% and using the said incorrect margin as base for computing the working capital adjusted margin of the company.*

15. *Without prejudice to the fact that the Jeevan Scientific Technology Ltd is functionally not comparable to the Appellant, the learned AO/TPO have erred in computing the margin of Jeevan Scientific Technology Ltd.,*

16. *The learned AO/TPO have erred in including Informed Technologies India Limited in the final set of comparables since the company is not comparable to the Appellant.”*

5. We heard the rival submissions on the additional grounds and on merits admit the additional grounds.

6. The AR submitted that Cosmic Global Limited has a different business model and functionally not comparable as the comparable activity is miniscule with the assessee. The assessee is primarily engaged in provision of translation services for which it subcontracts these services to third party vendors. He invited our attention to the paper book page no 11 and submitted the Employee cost ratios of Cosmic Global vis-a-vis VGCS are as under :

Cosmic Global		
AY	Emp Cost to sales	Emp cost to total cost
2010-11	34.39%	39.54%

Cosmic Global	
AY	Translation cost to total cost
2010-11	43.38%

VGCS		
AY	Emp Cost to Sales	Emp cost to total cost
2012-13	66.23%	72.89%
2010-11	64.28%	70.71%
2008-09	63.77%	67.46%

VGCS	
AY	Translation cost to total cost
2010-11	No translation cost

7. The AR submitted that Cosmic Global Limited is mainly engaged in translation services (i.e., 94% of its total revenues are from translation services). It has earned only Rs. 26,97,430 (i.e, 4.66% of the total revenues) from its BPO activities (pg. 12 of PB).The translation services rendered by the company are in the nature of translating documentation from one language to another by experts ensuring that the final product reads smoothly and fluently in the translated languages. These services are rendered by highly skilled language experts who have excellent spoken and written language skills. This is evident from the website of the company. Whereas, the assessee is only engaged in preparation of power point presentations from facsimile hand written documents provided by AEs, which

is accepted by the TPO in AY 2008-09 .Further, various rulings have held that only the activities from BPO segment are comparable to companies engaged in Information Technology Enables Services. Accordingly, in absence of separate segmental data, the company cannot be considered as a comparable and submitted that this issue is covered in assessee's own case in VGCS vs ACIT (ITA No. 3458/Mds/2016) for the assessment year 2012-13 dated 26.07.2017 & VGCS vs ACIT (ITA No. 2340/Mds/2012) for the assessment year 2008-09 dated 10.02.2017. Per contra, the DR relied on the orders of the DRP and questioned the various percentages arrived by the assessee.

8. We considered the rival contentions. We find that similar issue was considered by this tribunal in the assessee's own case in ITA No. 3458/Mds/2016 for ay 2012-13 dated 26.07.2017. The relevant portion is extracted as under:

*"8. Next ground raised by the assessee is that lower authorities erred in law and facts by retaining the functionally different comparable named Cosmic Global Limited as a comparable.*

*9. After hearing both the sides, we find that similar issue was considered by the Tribunal in assessee's own case in ITA No.2340/Mds/2012 (cited supra) wherein it was held at para 22 is reproduced hereunder:-*

*'22. We have considered the rival contentions and perused the orders of the authorities below. No doubt M/s. Cosmic Global Limited was one of the comparables considered by the assessee in its own TP study. However, assessee had before the Id. TPO itself pointed out that M/s.*

*Cosmic Global Limited had very low employee cost to total cost ratio, proving that it was getting its work done through outsourcing. Assessee had raised this issue before Id. DRP as well. By virtue of decision of Special Bench in the case of Dy. CIT vs. Quark Systems P. Ltd (2010) 42 DTR 414 which was upheld by Hon'ble Punjab and Haryana High Court (62 DTR 182) , an assessee cannot be estopped from seeking exclusion of a comparable which was on its own list. Assessee had specifically pointed out that M/s. Cosmic Global Limited had employee cost which was 25.2% of the total cost. However, Id. TPO as well as Id. DRP has held that if the outsourcing translation work of ₹2.86 crores incurred by the said company was considered as a part of its employees cost, then the employees cost would swell to 85%. In our opinion expenditure incurred on by M/s. Cosmic Global Ltd for outsourcing translation cannot be considered as part of its employee cost. We also find that Pune Bench of the Tribunal in the case of Maximize Learning Private Limited (supra) where also the concerned assessee was into ITES service, had with regard to comparability of M/s. Cosmic Global Ltd held as under in para 24 of its order:-*

*“We have carefully considered the rival submissions. The pertinent point made out by the Ld. Representative for the assessee is that the said concern is operating in a different business model wherein much of its activities are outsourced whereas the business model of the assessee is different. In an outsourcing business model obviously the expenditure incurred on employee costs would be low in comparison to the expenditure incurred on outsourcing. Ostensibly, where IT enabled services are outsourced to a third party vendor then the margin derived by the said concern would be attributable to services rendered by the outsourced vendor. Per contra, where IT enabled services are being rendered by a concern through its own employees, the margins from rendering of services by the said concern would be attributable to its own employees. Obviously, the level of margins in the two business models would not be comparable. The Hyderabad Bench of the Tribunal in the case of Capital IQ Information Systems (India) Private Limited (supra) has held that concerns who act as intermediaries having outsourced it*

*activity cannot be said to be comparable with a concern who is rendering services through its own employees. The said proposition has also been upheld by the Hyderabad Bench of the Tribunal in the case of Brigade Global Services Private Limited (supra). Having regard to the aforesaid discussion, in our view, the said concern is not a good comparable to be included for the purposes of comparability analysis as it operates under a different business model which impacts operating margins. As a consequence, we direct the Assessing Officer to exclude the said concern from the final set of comparables”.*

*We are therefore of the opinion that M/s. Cosmic Global Limited has to be excluded from the list of comparables. Ordered accordingly.*

*Accordingly, we direct the Id. Assessing Officer to exclude M/s. Cosmic Global Ltd from the list of comparables. This ground of the assessee is allowed. ”*

Following the abovedecision, we direct the AO to exclude Ms. Cosmic Global Ltd from the list of comparable. This ground of the assessee is allowed.

9. The next issue is on the comparable, Informed Technologies India Ltd. The AR submitted that Informed Technologies India Ltd has a different business model , functionally not comparable and fluctuating margins than that of the assessee. He invited our attention to page 23 of the paper book and submitted that the employee cost ratios of Informed Technologies vis-a-vis VGCS are as under:

Emp cost of total cost ratio		
AY	Informed	VGCS
2010-11	36.79%	70.71%

10. The AR further submitted that Informed Technologies India Ltd operated as a knowledge based back office processing center. It collected and analysed data on financial fundamentals, corporate governance, director/executive compensation and capital markets. These activities clearly indicate that the company is a KPO company and hence not comparable to the functional profile of the Appellant. Further, the company has also been considered as a comparable for assessee's engaged in investment advisory service since it is engaged in collection and analyzing of functional data. Further, the company's margin have been fluctuating over the years. Accordingly, the company should not be accepted as a comparable and relied on the following cases.

Aptara Technologies (Proceedings). Ltd., vs ACIT (ITA No. 259 & 579) (PN) of [2015] for the assessment year 2010-11 dated 31.05.2016,

Temasek Holdings Advisors (I) (P) Ltd vs DCIT ( ITA No. 4203 and 6504 (Mum) of 2012) for the ay 2007-08 & 2008-09 dated 30.08.2013,

Aptara Technologies (P) Ltd. vs ACIT (ITA No. 259 & 579 (PN) of 2015) for the ay 2010-11 dated 31.05.2016.

Per contra, the DR submitted that how the assessee has undertaken the data analyses is not known. Visual aids cannot be exact, however, it is functionally similar.

11. We have considered the rival submissions and gone through the relevant material. The relevant portion of the order from Aptara Technologies (P) Ltd. vs ACIT ITA No. 259 & 579/PN/2015 for ay 2010-11 is extracted as under:

*" 23. On perusal of record and the orders of Tribunal in earlier years in assessee's own case and also our order in the paras hereinabove, wherein, we have directed that Cosmic Global Ltd. has to be excluded because of its high transaction charges and low employee cost to the total cost ratio, we find that Informed Technologies Ltd. for the year under consideration is also following different business module and the employee cost to the total cost ratio of the said concern for the year under consideration is 36.79% as against 71.26% of the assessee. Similarly, in the earlier years also, the employee cost ratio of Informed Technologies Ltd. was lower than the said ratio shown by the assessee. The Hon'ble Delhi High Court in Rampgreen Solutions Pvt. Ltd. Vs. CIT (supra) have also excluded the concern due to its low employee cost ratio and operational on different business module. Following the same parity of reasoning, we hold that the said concern is to be excluded from the final list of comparables. We hold so.*

*24. Another aspect relating to the said concern was varying profitability shown by Informed Technologies Ltd. which is as under:-*

Particulars	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
OP/OC	-44.21%	34.71%	3.67%	22.61%	26.73%	6.97%	5.12%

*25. Where comparable picked up by the TPO for the purpose of benchmarking the international transaction in the hands of assessee is showing such differential profitability earned from year to year, then such a concern cannot be picked up as being functionally similar because of abnormal profitability trend. In this regard, we find that Pune Bench of Tribunal in case of Cummins Turbo*

*Technologies Ltd., UK Vs. DDIT (Int. Tax,) (supra) had also ITA No.259/PN/2015 ITA No.579/PN/2015 M/s. Aptara Technologies Pvt. Ltd. 18 held that Informed Technologies Ltd., because of its abnormal profitability trend, is to be excluded from the final list of comparables. Accordingly, we hold so.”*

Following the above, we direct the AO/TPO to exclude this comparable from the final list of comparable. The assessee's appeal ground is treated as allowed.

12. The next issue is on the comparable Jeevan Scientific Technology Ltd (former JeevanSoftech Ltd) .The AR submitted that Jeevan Scientific Technology Ltd is not functionally comparable with the assessee and questioned the margin computation. As per that company's website, it is a leading integrated service provider for clinical, education, staffing, software development and software testing services for healthcare/pharma, university/educational institutions, information technology, telecom, manufacturing and construction industries in India and overseas (separate website extract/pg. 47-48 of appeal memo).Further, without prejudice, the margin of the company has been incorrectly computed by the TPO since he has only considered the BPO segment and not the ERP segment which is also in the nature of IT enabled services and should be considered in computing the operating margin and relied on the cases DCIT vs Atmel R&D India Pvt Ltd (ITA No 812 (MDS) of 2015) for the ay 2010-11 dated 18.08.2016 and Aptara

Technologies (P) Ltd., vs ACIT (ITA No. 259 & 579 (PN) of 2015) for the ay 2010-11 dated 31.05.2016.

13. We have considered the rival submissions and gone through the relevant material. The relevant portion of the order from Aptara Technologies (P) Ltd. vs ACIT ITA No. 259 & 579/PN/2015 for ay 2010-11 is extracted as under:

*" 26. Another concern which was selected by the TPO was JeevanSofttech Ltd. The learned Authorized Representative for the assessee before us pointed out that the TPO has erred in working of the margins of said concern by adopting sales at Rs.1.41 crores, which admittedly is revenue from BPO operations. However, the TPO has failed to consider ERP segment revenue which is also classified in the audited financial statement of JeevanSofttech Ltd. as being from ITES segment and if the segmental margins of ITES segment are taken up, which includes total sales / income of Rs.1,74,43,276/-. The margin of the said concern worked out to 8.04% as against 39.38% applied by the Assessing Officer in the order passed under section 154 of the Act. In this regard, the learned Authorized Representative for the assessee drew our attention to the segmental details of said concern which are placed at pages 838 to 846 of the Paper Book. With regard to working of the TPO, the learned Authorized Representative for the assessee referred to page 406 of the Paper Book.*

*27. The learned Departmental Representative for the Revenue fairly pointed out that the correction of margins is to be given in the hands of assessee while benchmarking its international transaction and by including JeevanSofttech Ltd. in the final list of comparables.*

*28. In the totality of the above said facts and circumstances of the case, we find merit in the claim of assessee and direct the Assessing Officer / TPO to work out the correct margins of said concern JeevanSofttech Ltd. and thereafter, determine the average margins of comparables. Accordingly, we direct the ITA*

*No.259/PN/2015 ITA No.579/PN/2015 M/s. Aptara Technologies Pvt. Ltd. 19 Assessing Officer / TPO to exclude three concerns i.e. (1) Accentia Technologies Ltd., (2) Cosmic Global Ltd. and (3) Informed Technologies Ltd. from the final list of comparables and to correct the margins of JeevanSoftech Ltd. and work out the average margins of comparables. It was the case of learned Authorized Representative for the assessee before us that the same would be within +/- 5% and hence no addition on account of arm's length price of international transaction with the associate enterprises is to be made in the hands of assessee."*

In view of the above, we direct the TPO to work out the correct margin. To this extent, the appellant's grounds of appeal is treated as allowed.

14. The next issue is on the comparable R Systems International Ltd, Ground No The AR submitted that this Company should be included in spite of different FY as the use of different accounting year does not have any effect on the comparability parameters. Further, even though the company follows a different financial year ending, it operates during the same period of time as the assessee and also faces similar business cycles, market and economic conditions that the other comparables and the assessee (having a financial year of April to March) faces. Further, audited quarterly financial data pertaining to period starting from 1 April 2009 to 31 March 2010 is available in the public domain (pgs 28 to 42 of the Paper Book) and relied on the following cases

VGCS vs ACIT (ITA No. 3458/Mds/2016) for the ay 2012-13 dated 26.07.2016,

CIT vs Mercer Consulting India Pvt. Ltd., (ITA No 101 of 2015) (P&H HC) for the ay 2009-10 dated 24.08.2016,  
 CIT vs McKinsey Knowledge Center India Pvt Ltd. (ITA 217/2014) (Del HC) for the ay 2006-07 dated 27.03.2015,  
 RR Donnelley India Outsource (P) Ltd vs DCIT (ITA No. 678/Mds/2015) for the ay 2010-11 dated 18.08.2016,  
 Xchanging Technology Services India Ltd vs DCIT (ITA 1222 (Delhi) of 2015) for the ay 2010-11 dated 08.09.2015,  
 CISCO Systems India Pvt. Ltd vs DCIT (IT(TP)A No. 271(1)(c)/Bang/2014) for the ay 2009-10 dated 14.08.2015 and  
 Aegis Ltd vs Addl. CIT (ITA No. 1213/Mum/2014) for the ay 2009-10 dated 27.07.2015

15. We heard the rival contentions and gone through the order of this tribunal in the assessee's case for ay 2012-13, supra, The relevant portion is extracted as under:

*"6. Facts of the case are that assessee used the date of M/s. Caliber Point & R Systems International Limited where this comparable follow different accounting year i.e. year ending 31<sup>st</sup> December instead of 31<sup>st</sup> March. Therefore this comparable were not considered as comparable while taking Arms Length Price. Contention of the Id. Authorised Representative is that inclusion of the comparables having different accounting year have been examined by the Id. DRP. Rule 10B(4) clearly mandates utilization of current year data while Rule 10D(4) speak of contemporaneous data. Just as data of earlier years can be used only if it is demonstrated that the same had an impact on the financial outcome of the current year, similarly in case of companies with different financial year ending the change in economic and market conditions with time cannot be denied. These would significantly influence the profit margin. When companies with similar financial year ending are available as comparables there is no reason for retaining those with different financial year ending. Thus the contention of the Id. Authorised Representative lack substance. The TPO's application of this filter is*

*therefore found to have merit and M/s. Caliber point & R Systems International Limited are different to be excluded. Ld. DRP observed that they are not convinced that Rule 10B(4) can be interpreted in the way the assessee has interpreted it. The purpose of Rule 10B (4) is to consider the data which is contemporaneous; i.e., the data which pertains to the financial year in which the international transactions were undertaken by the tested parties. Hence, the claim of the assessee is rejected. Against this, the assessee is in appeal before us.*

*7. After hearing both the sides, we find that similar issue came for consideration before this Tribunal in the case of R R Donnelley India Outsource (P) Ltd vs. DCIT, (2016)75 taxmann.com 306 (Chennai Trib) wherein it was held at para 6 as under:-*

*6. We have heard the rival submissions and perused the material on record. In this case, there is no dispute that RSIL is functional comparability to the assessee's case. However, the accounting year adopted by the RSIL is different from the assessee's accounting year. RSIL is adopted 1st January to 31st December as accounting year as against the accounting year adopted by the assessee as 1st April and 31st March. However, data for the financial year could be compiled from the audited accounts of RSIL. Hence, the assessee is directed to furnish data for the financial year 2009-10 (1st April and 31st March) to the TPO, who after due verification shall consider the same as comparable to the assessee's case so as to determine the ALP. This view of ours is fortified by the decision of the Tribunal in the following cases :*

*(i) Xchanging Technology Services Pvt. Ltd. in ITA No.1222/Del/2015 dated 8.9.2015*

*(ii) Mercer Consulting (India) Pvt. Ltd. in IA No.966/Del/2014 dated 6.6.2014*

*(iii) Ameriprise India Pvt. Ltd. v. ACIT in ITA No.2010/Del/2014 dated 14.8.2015*

*(iv) M/s. Maersk Global Service Centres (India) Pvt. Ltd. v. DCIT in ITA No.2594/Mum/2014 dated 16.1.2015*

*(v) Aegis Ltd. v. ACT in ITA No.1213/Mum/2014 dated 27.7.2015*

*Accordingly, this ground is allowed".*

*Accordingly, this issue is remitted back to the Id. Assessing Officer on similar directions."*

Following the above order this issue is remitted back to the AO/TPO on similar directions.

16. With regard to Nittany Outsourcing Services Limited, the AR questioned the margin computation submitting that the margin of the company has been incorrectly computed by the TPO and accordingly, the operating margin of the company needs to be rectified.

17. We heard the rival contentions. In the facts and circumstances, this issue is remitted back to the TPO for computing the correct margin. To this extent, the appeal grounds are treated as allowed.

18. The next issue is not making suitable adjustments to account for the difference in the risks undertaken by the assessee vis-a-vis the comparables. The AR relied on this tribunal order in its case for ay 2012-13.

19. We heard the rival contentions and gone through the order of this tribunal. The tribunal has allowed 2% towards risk adjustment on adhoc basis. The DR pleads that the TPO should be directed to examine this issue on the basis of materials furnished by the assessee. Since, some of the issues are remitted back to the TPO, we remit this issue also back to the TPO. The

assessee shall lay all material in support of its contention. The TPO shall afford adequate opportunity to the assessee before deciding this issue.

20. In the result, the assessee's appeal is treated as allowed for statistical purpose.

Order pronounced on Thursday, the 28<sup>th</sup> day of December, 2017 at Chennai.

**Sd/-**  
(एन.आर.एस .गणेशन)  
(**N.R.S. GANESAN**)  
न्यायिकसदस्य/**Judicial Member**

**Sd/-**  
(एसजयरामन)  
(**S. JAYARAMAN**)  
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 28<sup>th</sup> December, 2017

**JPV**

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

- |                        |                          |                             |
|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त) अपील(/CIT(A) |
| 4. आयकरआयुक्त/CIT      | 5. विभागीयप्रतिनिधि/DR   | 6. गार्डफाईल/GF             |