

आयकर अपीलीय अधिकरण “बी” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, PUNE

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

आयकर अपील सं. / ITA Nos.756 & 757/PUN/2014

निर्धारण वर्ष / Assessment Years : 2008-09 & 2009-10

The Deputy Commissioner of Income tax,
Circle-1(1), Pune.

... अपीलार्थी / Appellant

बनाम / V/s.

Amber Point Technology India Pvt. Ltd.
DLF Building No. 8, Tower C,
Ground floor, DLF Cyber City,
DLF Phase-II,
Gurgaon- 122 002.

... प्रत्यर्थी / Respondent

PAN : AAFCA0749Q

आयकर अपील सं. / ITA Nos.761 & 762/PUN/2014

निर्धारण वर्ष / Assessment Years : 2008-09 & 2009-10

Amber Point Technology India Pvt. Ltd.
DLF Building No. 8, Tower C,
Ground floor, DLF Cyber City,
DLF Phase-II,
Gurgaon- 122 002.

... अपीलार्थी / Appellant

PAN : AAFCA0749Q

बनाम / V/s.

The Deputy Commissioner of Income tax,
Circle-1(1), Pune.

... प्रत्यर्थी / Respondent

Assessee by : Shri Dhanesh Bafna

Revenue by : Dr. Vivek Aggarwal

सुनवाई की तारीख / Date of Hearing : 16.01.2018	घोषणा की तारीख / Date of Pronouncement : 25.01.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM

These two cross appeals filed by the Revenue and the assessee are against the consolidated order of CIT(Appeals)-IT/TP, Pune, dated 30.01.2014 relating to assessment years 2008-09 & 2009-10 against respective orders passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The two cross appeals filed by the Revenue and the assessee relating to assessment years 2008-09 and 2009-10 on similar issues were heard together and are being disposed of by this consolidated order for the sake of convenience. However, in order to adjudicate the issues, we make reference to the facts in ITA Nos.756/PUN/2014 and 761/PUN/2014. First, we take up the cross appeal filed by the Revenue and the assessee relating to assessment year 2008-09.

3. The Revenue in ITA No.756/PUN/2014 relating to assessment year 2008-09 has raised the following grounds of appeal:-

1. *On the facts and in the circumstances of the case, the Learned Commissioner of Income –tax (Appeals) erred in directing the Assessing Officer to exclude KALS Information Systems Ltd. from the list of comparable companies ignoring the fact that KALS Information Systems Ltd. has major turnover from software development services and qualifies all the filters applied by the TPO.*
2. *On the facts and in the circumstances of the case the Learned Commissioner of Income-tax (Appeals) erred in directing the Assessing Officer to include Akshay Software Technologies Ltd. as comparable company ignoring the fact that Akshay Software Technologies Ltd. has an altogether different business model and that functions, assets and risks were incomparable.*
3. *The appellant craves leave to add, alter or amend any or all the grounds of appeal.*

4. The assessee in ITA No.761/PUN/2014, relating to assessment year 2008-09 has raised the following grounds of appeal:-

The grounds hereinafter taken by the Appellant are without prejudice to one another.

1. *That the order passed by the learned Commissioner of Income Tax (Appeals) - IT/TP, Pune [CIT (Appeals)], to the extent prejudicial to the Appellant, is bad in law and liable to be quashed.*
2. *That the learned CIT (Appeals) erred in upholding the rejection of Transfer Pricing ('TP') documentation by the learned Assessing Officer ('AO')/learned Transfer Pricing Officer (TPO) and erred in arriving at adjustment in computation of arms length price in respect of software development services of the Appellant.*
3. *That on the facts and in the circumstances of the case, the learned CIT (Appeals) erred in;*
 - (a) *Upholding the rejection of comparability analysis of the Appellant in the TP documentation and partially confirming the comparability analysis as adopted by the learned TPO in the Transfer Pricing Order.*
 - (b) *Upholding the learned TPO's approach of using data as at the time of assessment proceedings, instead of that available as on the date of preparing the TP documentation for comparable companies while determining the arm's length price;*
 - (c) *Disregarding application of multiple year/ prior year data as used by the Appellant in the TP documentation and holding that current year (i.e. Financial Year 2007-08) data for companies should be used for comparability;*
 - (d) *Arriving at a set of companies as comparable to the software development services of the Appellant, by rejecting companies that are otherwise functionally comparable to the Appellant and by inclusion of companies that otherwise fail the test of comparability.*
 - (e) *Ignoring the limited risk nature of the services provided by the Appellant as detailed in the TP documentation and in upholding the conclusion of the learned AO/learned TPO that no adjustment on account of risk differential is required while determining the Arm's Length Price of the international transactions of the Appellant.*
 - (f) *That the learned AO erred in initiating the penalty proceeding and issued a notice under section 274 read with section 271(1)(c) of the income tax Act*
4. *The learned CIT (Appeals) erred in upholding the charging of interest under section 234B and 234D of the Act.*

5. The assessee has also raised additional ground of appeal which reads as under:-

5. The learned Commissioner of Income Tax (Appeals), Pune ('CIT(A)'), the learned Deputy Commissioner of Income Tax – Circle 1(1), Pune ('Assessing Officer' or 'AO') and learned Deputy Commissioner of Income Tax – Transfer Pricing – III, Pune ('Transfer Pricing Officer' or 'TPO') have erred in not providing working capital adjustment while computing the arm's length mark-up of software development services provided by the Appellant to its Associated enterprises.

6. Briefly, in the facts of the case, the assessee for the year under consideration had entered into international transactions of provision of software development services to its associated enterprises amounting to Rs.5,47,85,158/-. The Assessing Officer made reference under section 92CA(1) of the Act to the Transfer Pricing Officer (TPO) to benchmark the arm's length price of international transactions of assessee. The assessee had applied TNMM method and selected certain companies as comparables. The arithmetic mean margin of said concerns was 5.33%, whereas the margin of assessee was 11.50%. The TPO however, rejected all the comparables selected by the assessee in its TP study report and selected fresh set of comparables to benchmark the international transactions of provision of software development services by the assessee to its associated enterprises. The final set of comparables which were selected by the TPO were numbering ten and the arithmetic mean of margins of said concerns was determined at 27.83%. The said comparables are enlisted at pages 25 and 26 of the order of TPO. The TPO thus, computed the TP adjustment of Rs.80,23,137/- for software development services. The Assessing Officer in the draft assessment order incorporated the said adjustment made by the TPO.

7. Before the CIT(A), the assessee raised objections for exclusion of certain comparables and for inclusion of certain comparables. The CIT(A) in final analysis directed the Assessing Officer to exclude KALS Information Systems Ltd. (hereinafter referred to as KALS) from the final set of comparables and include Akshay Software Technologies India Ltd. (hereinafter referred to as ('Akshay')) in the final set of comparables. The CIT(A) also gave directions to the Assessing Officer / TPO to include certain comparables, provided if they fit into the filters applied by the TPO. There is no dispute by the assessee or the Revenue with regard to the above said directions of CIT(A). However, the assessee is aggrieved by inclusion of Helios & Matherson Information Technology Ltd. (hereinafter referred to as 'Helios'), FCS Software Ltd. (hereinafter referred to as 'FCS') and e-Zest Solutions Ltd. (hereinafter referred to as (e-Zest) in the final set of comparables. The assessee is also aggrieved by non-inclusion of CG-VAK Software & Exports Ltd. (hereinafter referred to as 'CG-VAK'). On the other hand, the Revenue is in appeal against the order of CIT(A) in excluding KALS and including Akshay.

8. We proceed to take up the appeals of assessee and the Revenue after hearing both the learned Authorized Representatives, wherein the issue raised was only in respect of selection or rejection of comparables.

9. On perusal of record, we find that the assessee is a wholly owned subsidiary of Amberpoint Technology Mauritius Pvt. Ltd., which in turn, was held by Amberpoint. The unit of assessee is registered under the scheme of Software Technology Park of India (STPI) of Govt. of India. The assessee has expertise in software development, installation and implementation, system

analysis and design, data processing and computer programming. The assessee undertakes development of functional specifications and requirement analysis for software modules as well as coding of the software for Amberpoint. During the year under consideration, the assessee had rendered software development services to the tune of Rs.5,47,85,158/- to its associated enterprises. The issue which arises in the cross appeals filed by the assessee and the Revenue is the benchmarking of said rendering of software development services by the assessee to its associated enterprises being international transaction. The assessee had applied TNMM method to benchmark its international transactions and had selected eight concerns to be functionally comparable. The PLI of assessee i.e. OP/OC was worked out to 11.50%, as against which the PLI arithmetic mean of comparables worked out was 5.33%. However, the TPO undertook fresh study and selected another set of comparables than the one selected by the assessee. The dispute which arises in the present cross appeals is final selection of comparables. The TPO had found the following comparables to be functionally comparable:-

S.No.	Name of Comparable Company	OP/TC
1	Bodhtree Consulting Ltd.	19.14%
2	E-Infochips Ltd.	30.32%
3	F C S Software Solutions Ltd.	57.02%
4	Goldstone Technologies Ltd.	27.06%
5	Helios & Matheson Information Technology Ltd.	36.05%
6	KALS Information Systems Ltd.	30.21%
7	L G S Global Ltd.	26.33%
8	R S Software (India) Ltd.	6.71%
9	Sagarsoft (India) Ltd.	16.89%
10	E-Zest Solutions Ltd.	28.58%
	Arithmetic Mean	27.83%

10. The arithmetic mean of margins of comparables was 27.83% as against margins of assessee at 11.50% and hence, an upward adjustment of Rs.80,23,137/- was made by the TPO. The CIT(A) excluded KALS and included

Akshay, against which the Revenue is in appeal. The case of assessee was that three concerns i.e. Helios, FCS and e-Zest had to be excluded in final list of comparables and CG-VAK should be included. The assessee has also asked for working capital adjustment as per additional ground of appeal.

11. Now, we proceed to take the case of comparables whether the same are to be included or excluded from the final set of comparables.

12. Coming to the appeal of assessee, the first comparable which has been sought to be excluded from final list of comparables by the assessee is Helios. The assessee claims that the TPO had adopted turnover filter of Rs.1 to 200 crores. However, the concern Helios had turnover of Rs.213 crores and hence, the same was not to be included in the final list of comparables. The TPO had included the said concern to be comparable on the basis of cost of turnover. The learned Authorized Representative for the assessee in this regard pointed out that total turnover of assessee for the year under consideration was Rs.5.47 crores. He further pointed out that the issue in the present appeal is squarely covered by the order of Tribunal in the case of MSC Software Corporation India (P.) Ltd. Vs. ACIT (2017) 80 taxmann.com 55 (Pune-Trib).

13. The learned Departmental Representative for the Revenue on the other hand, pointed out that the CIT(A) at page 19 vide para 2.7.5.2 has observed that though the turnover of Rs.213 crores exceeds upper filter of Rs.200 crores, applied by the TPO. However, the said turnover falls within +/- 10% of upper filter applied by the TPO and hence was within acceptable variation of turnover filter.

14. We find no merit in the stand of authorities below. The TPO himself has adopted a filter range of Rs.1 to 200 crores. Once a range has been applied, then there is no question of holding the same to be within +/- 10% of upper filter applied by the TPO. The total turnover of the assessee for the year under consideration was only Rs.5.47 crores and the concern selected had turnover of Rs.213 crores. Even if functionally comparable, then the margins could not be applied as it does not fit into filters applied by the TPO, against which the assessee has no dispute.

15. We find similar issue of exclusion of the concern Helios arose before the Tribunal in the case of MSC Software Corporation India (P.) Ltd. Vs. ACIT (supra) and the Tribunal vide para 6 at page 7 held as under:-

“6. The issue in ground of appeal No.3 raised by the assessee is the application of turnover filter of Rs.1 to Rs.200 crores as comparables selection criteria, as against the turnover filter up to Rs.100 crores applied by the assessee for identifying the comparable companies. The first part of the issue raised by way of ground of appeal No.3 is against the application of turnover filter of Rs.1 to Rs.200 crores and not Rs.100 crores as applied by the assessee. The learned Authorized Representative for the assessee pointed out that the first limb of ground of appeal No.3 is not pressed, hence, the same is dismissed as not pressed.”

16. Following the same parity of reasoning, we hold that the concern Helios is to be excluded from final list of comparables as it does not fulfill the turnover filter applied by the TPO.

17. Now, coming to the next concern FCS. The learned Authorized Representative for the assessee in this regard pointed out that the TPO had applied the filter of rejecting the concerns which were in software development services but less than 75% of total turnover. The learned Authorized Representative for the assessee in this regard has pointed out that the said filter

applied by the TPO has been accepted by the assessee as valid filter and if the said filter is applied, then FCS do not fall within range. He stressed that where the assessee was pure software development concern and provided services to its associated enterprises, then the margins of assessee could not be compared with FCS, which admittedly, was engaged in IT consulting, application support, infrastructure, management services and e-learning & digital consulting. He pointed out that IT consulting services of FCS were to the tune of 44% of total turnover and application support was to the tune of 11% and IT segment was to the tune of 45%. He further stressed that the perusal of financials of said concern would reflect that no segmental were available. Our attention was drawn to the pages 909 and 953 of the Paper Book in this regard. He further referred to the product description at page 954 of Paper Book. The learned Authorized Representative for the assessee pointed out that the Tribunal in TIBCO Software India (P.) Ltd. Vs. DCIT (2015) 56 taxmann.com 91 (Pune-Trib) rejected the said concern on the above said basis.

18. The learned Departmental Representative for the Revenue however, placed reliance on the observations of CIT(A) at pages 12 and 13 of the order, wherein the issue was the high profitability earned by the said concern. The learned Departmental Representative for the Revenue pointed out that no such issue was raised by the assessee before the Assessing Officer or the CIT(A).

19. We have heard the rival contentions and perused the record. The first step which needs to be seen while benchmarking international transactions applying the TNMM method is that the said concern should be functionally comparable and the second step is whether it falls within the filters applied for

benchmarking. The concern FCS was engaged in IT and ITES segment. The functional profile of the said concern is placed at page 908 onwards of the Paper Book. The annual report of the said concern reflects the said company to be engaged in different fields and the percentage of revenue from each segment was as under:-

<i>IT consulting</i>	-	44%
<i>Application support</i>	-	11%
<i>Infrastructure Management Services</i>	-	15%
<i>E-learning and Digital Consulting</i>	-	30%

20. It may be pointed out herein itself that the application support, infrastructure management services are in relation to ITES services. Further, E-learning and Digital consulting are not in relation to software development services. Therefore, total revenue in relation to software development activity was only 41% of total turnover. Further, in respect of different segments of said concern, no segmental profits were available. The relevant portion of Balance Sheet and Profit and Loss Account are placed at pages 953 and 954 of Paper Book. In view thereof, where the assessee before us is only engaged in providing software development services to its associated enterprises, then the margins of a concern whose total revenue in relation to software development activity was only 41% of total revenue could not be included as comparable and the same needs to be excluded from final set of comparables. Accordingly, we hold so.

21. Further, we also find that the Pune Bench of Tribunal in the case of TIBCO Software India Pvt. Ltd. Vs. DCIT (supra) on similar basis of product description had excluded the said concern while benchmarking international transactions of a concern providing software development services. The relevant findings of the Tribunal are vide paras 11 and 12, which read as under:-

“11. On this aspect, the learned counsel for the assessee has reiterated the submissions put-forth before the lower authorities by pointing out that the applications software segment of the said concern was into development and sale of software products, which is an activity distinct from providing software development services undertaken by the assessee. Our attention has been drawn to pages 1086 and 1087 and pages 1092 to 1096 of the Paper Book wherein are placed relevant extracts of the Annual Report of the said concern for financial year 2007-08 and the website extract respectively to support the pleas raised before the lower authorities. It has also been pointed out that the activities of said concern were considered by the Pune Bench of the Tribunal in the case of Bindview India P. Ltd. vide ITA No.1386/PN/2010 order dated 30.11.2011, wherein it has been held that the said concern was functionally different from a software development service provider. A reference has also been made to the decision of the Bangalore Bench of the Tribunal in the case of Trilogy E-Business Software India Pvt. Ltd. vide ITA No.1054/Bang/2011 order dated 23.11.2012, wherein also said concern was held to be not comparable to a software development service provider.

12. On the other hand, the learned CIT-DR has reiterated the stand of the lower authorities by pointing out that mere ownership of software products would not make a concern functionally non-comparable to a software development service provider, who did not own any software product. According to him, such difference is not a material difference contemplated under the TNM method for the purposes of comparability analysis. Apart therefrom, it has been pointed out that the said concern vide a communication dated 13.01.2009 addressed to the Addl.CIT (TP), Hyderabad confirmed that its core business was that of software development service provider. Further, according to the learned CIT-DR even the error in the segmental reporting by the said concern would not alter the bigger picture that it was deriving income mainly from software development service. Accordingly, inclusion of the said concern in the final set of comparables is sought to be defended.”

22. Accordingly, we direct the Assessing Officer to exclude FCS from final list of comparables.

23. The third concern whose inclusion has been objected to by the assessee is e-Zest. The case of assessee is that the said concern is engaged in diversified activity and is a product company. The learned Authorized Representative for the assessee referred to the decision of Pune Bench of Tribunal in MSC Software Corporation India (P.) Ltd. Vs. ACIT (supra) relating to the year under appeal and pointed out that the said concern was excluded because of its being a product company. The relevant findings of the Tribunal are in para 18, which read as under:-

“18. On perusal of record and the order of Tribunal in John Deere India Pvt. Ltd. Vs. ACIT (supra), we find that the concern E-zest Solutions Ltd. is a product company and is engaged in both the provision of software services and sale of software services. On the other hand assessee is engaged in Software development services where the segmental details are not available, accordingly, E-zest Solutions Ltd. is functionally not comparable. Accordingly, we hold that the said concern is to be excluded from the final set of comparables.”

24. In view of similarity of reasoning, we hold that the said concern e-Zest being a product company is not to be included as comparable to the assessee, which is engaged in providing IT services to its associated enterprises, hence the same is to be excluded from final list of comparables.

25. The Revenue is in appeal against exclusion of KALS which was also a product company. The reasoning as for exclusion of e-Zest is to be applied for KALS also. We further find that the Tribunal in MSC Software Corporation India (P.) Ltd. Vs. ACIT (supra) in para 21 at page 13 had also excluded KALS on similar basis. Accordingly, we find no merit in the stand of Revenue in this regard and hold that KALS not to be excluded from the final list of comparables.

26. The next concern which the Revenue is aggrieved upon is the inclusion of Akshay. The learned Authorized Representative for the assessee in this regard fairly pointed out that the issue is against the assessee and Akshay has to be included in the final set of comparables. In this regard, he again placed reliance on the order of Tribunal in MSC Software Corporation (P.) Ltd. Vs. ACIT (supra) at page 14, para 23, which reads as under:-

“23. Now, coming to the second argument of the assessee i.e. exclusion of concerns which were selected by the assessee in its TP analysis. The first concern is Akshay Software Technologies Ltd., which as per the assessee is functionally comparable to the assessee. However, the said concern is engaged in on-site development and hence, the margins of said concern are not comparable to the assessee which is off-site developer. The Pune Bench of Tribunal in TIBCO Software (India) Pvt. Ltd. Vs. DCIT in ITA No.2536/PN/2012 relating to assessment year 2008-09, order dated 11.02.2015 had held that both

Akshay Software Technologies Ltd. and Maars Software International Ltd. were to be rejected being on-site developers while comparing the margins with off-site developers. The said proposition was again applied by the Pune Bench of Tribunal in BMC Software India Pvt. Ltd. Vs. DCIT in ITA No.1425/PN/2010, relating to assessment year 2006-07, order dated 16.03.2016. Applying the said principle, we hold that Akshay Software Technologies Ltd. is to be excluded from the final list of comparables as done by the TPO. Applying the said principle, we further hold that the concern at serial No.3 i.e. Maars Software International Ltd. being on-site developer is also to be excluded from the final set of comparables. Similarly, the concern at serial No.6 i.e. R S Software (India) Ltd. is on-site developer and the same is to be excluded from the final list of comparables.”

27. In view of the concession of assessee, we hold that Akshay is to be included in the final list of comparables. Accordingly, the second issue raised by the Revenue stands allowed.

28. Now, coming to the last concern CG-VAK, which was excluded from the list of comparables on the ground that it was a loss making concern. The learned Authorized Representative for the assessee pointed out that it was not persistent loss making concern. In this regard, he pointed out that the margins of said concern in the early two years was positive and only in the year under consideration, there was loss of 1.97%. He further stressed that segmental details were available in respect of revenue from software development and revenue from BPO service. The assessee pointed out that the Tribunal in TIBCO software India Pvt. Ltd. Vs. DCIT (supra) at page 13 vide paras 26 and 29 had considered the plea of assessee and held the said concern to be included in the final list of comparables as it was not a consistent loss making company. He further placed reliance on the ratio laid down by the Hon'ble Bombay High Court in CIT Vs. Welspun Zucchi Textiles (2017) 77 taxmann.com 137 (Bom).

29. The learned Departmental Representative for the Revenue here pointed out that inclusion of CG-VAK has been raised by way of additional ground of appeal and there is no finding of CIT(A) in this regard. He further referred to the order of TPO at page 23, wherein the conclusion was that financial data was not available and also on the ground that it was a loss making concern.

30. We find no merit in the plea of Revenue in this regard. The reason for exclusion of CG-VAK was that the operating margin for the year under consideration was that the concern was showing loss. In the financial year 2005-06, the operating margin i.e. OP/OC was 2.54%, in financial year 2006-07 it was 5.69% and in financial year 2007-08, it was (-) 1.97%. The concern which has been thus, claimed to be persistent loss making by the TPO has only suffered losses in a particular year. Where the concern is not consistent loss making concern, then the same is not to be excluded from list of comparables, is the ratio laid down by the Hon'ble Bombay High Court in CIT Vs. Welspun Zucchi Textiles Ltd. (supra). The Tribunal in TIBCO Software India Pvt. Ltd. Vs. DCIT (supra) had also similarly held vide para 29, which reads as under:-

“29. We have carefully considered the rival submissions. In our considered opinion, the point sought to be made out by the TPO is quite mis-placed having regard to the purpose and import of the comparability analysis of the international transaction being undertaken for determining its arm's length price. Ostensibly, the whole objective of the transfer pricing proceeding is that the contours of an un-controlled transaction shall reflect a measure of arm's length price of the tested international transaction. The un-controlled transaction, if it reflects a loss, would not normally be excludible unless any peculiarity in such un-controlled transaction is brought out. For instance, the un-controlled transaction is of an entity which is consistently loss making or that the loss has arisen in the un-controlled transaction on account of an abnormal fact-situation, etc. In such situations, ostensibly, the un-controlled transaction would not reflect a normal business situation. In the present case, the comparable in question has incurred a loss; notably, incurrence of loss in business operations is a normal incident of business and there is nothing to suggest in the present case that it has been incurred in any abnormal situation. It is also not the case of the Revenue that the said concern is a consistently loss making concern. Therefore, the said concern cannot be excluded merely because of incurrence of loss in this year, especially when the said loss has not been established to be an abnormal business condition and more so in the context that the said concern is

not denied to be functionally comparable to the assessee. Therefore, on this aspect, we uphold the plea of the assessee for including the said concern in the final set of comparables in order to determine the arm's length price of the international transaction. Thus, on this aspect, assessee succeeds."

31. Accordingly, we allow the ground of appeal raised by the assessee and hold that CG-VAK is to be included in the final list of comparables.

32. Now, coming to the additional ground of appeal raised by the assessee, wherein it has asked adjustment on account of working capital.

33. The learned Authorized Representative for the assessee pointed out that in all the earlier years, working capital adjustment was allowed to the assessee. However, it was denied during the year. He fairly agreed that the issue may be sent back to the file of Assessing Officer and the actual may be computed. We find merit in the plea of assessee in this regard, where similar issue of working capital adjustment has been allowed in the hands of assessee and there is no finding of TPO why the same is being denied during the year under consideration. However, in order to compute the said economic adjustment, we remit this issue back to the file of Assessing Officer, who shall afford reasonable opportunity of hearing to the assessee and allow the working capital adjustment as per law. In final analysis, the grounds of appeal No.3a and 3d are allowed and the additional ground of appeal raised by the assessee is allowed. The grounds of appeal No.1 and 2 are general in nature and the balance grounds of appeal have not been pressed by the assessee and hence, the same are dismissed.

34. Now, coming to the appeal in assessment year 2009-10, wherein the learned Authorized Representative for the assessee has only stressed for

working of correct margins of concern Goldstone Technologies Ltd. He pointed out that the TPO had only taken the figures of Indian operations and international operations have not been considered. In this regard, he placed before us the working of margins calculation of Goldstone Technologies Ltd. and also brought to our notice the Profit and Loss Account and the segmental details of revenue for the year under consideration. We find merit in the plea of assessee in this regard and direct the TPO to compute correct margins of said concern, which is included in the final list of comparables. The Assessing Officer / TPO shall afford reasonable opportunity of hearing to the assessee for computing the margins of Goldstone Technologies Ltd. The assessee has not argued any other ground on the plea that once this is allowed and the appeal of Revenue is dismissed, then it is within +/- 5% range.

35. Now, we come to the appeal filed by the Revenue, which is against exclusion of KALS and inclusion of CG-VAK. We have in the paras hereinabove already dealt with the exclusion of KALS from the final list of comparables on the ground that it is a product company. Following the same parity of reasoning, we uphold the order of CIT(A) and dismiss the first issue raised by the Revenue.

36. The second issue is with regard to inclusion of CG-VAK. We have already held that the said concern is not persistent loss making concern and hence, the same is to be included in the final set of comparables. Accordingly, we dismiss the grounds of appeal raised by the Revenue.

37. The appeal of assessee is decided on the limited issue of correct of margins of Goldstone Technologies Ltd. and all the other grounds of appeal

become academic in nature. The grounds of appeal No.1 and 2 being general, are dismissed.

38. In the result, appeals of assessee for both the years are partly allowed and appeals of Revenue in assessment year 2008-09 is partly allowed and in assessment year 2009-10 is dismissed.

Order pronounced on this 25th day of January, 2018.

Sd/-
(ANIL CHATURVEDI)
 लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
 न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 25th January, 2018

GCVSR

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-IT/TP, Pune.
4. The CIT-I / DIT(TP/IT), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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