

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I-1' : NEW DELHI)**

**BEFORE HON'BLE VICE PRESIDENT, SHRI N.K. SAINI
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1703/Del./2015
(ASSESSMENT YEAR : 2010--11)**

M/s. Lime Labs (I) Pvt. Ltd., vs. ITO, Ward 15 (3),
27, First Floor, Babar Lane, New Delhi.
Bengali Market,
New Delhi – 110 001.

(PAN : AABCL2898P)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ved Jain, Advocate
Shri Rishabh Jain, CA
Ms. Surbhi Goyal, CA

REVENUE BY : Shri Sandeep Mishra, Senior DR

Date of Hearing : 31.10.2018
Date of Order : 12.12.2018

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The Appellant, M/s. Lime Labs (I) Pvt. Ltd., (hereinafter referred to as 'the taxpayer') by filing the present appeal sought to set aside the impugned order dated 19.01.2015 passed by the AO in consonance with the orders passed by the Id. DRP/TPO under section 143 (3) read with section 144C of the Income-tax Act, 1961

(for short 'the Act') qua the assessment year 2010-11 on the grounds inter alia that :-

“1. On the facts and circumstances of the case, the order passed by the learned Assessing Officer under Section 143(3) read with Section 144C of the Act is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned Assessing Officer has erred both on facts and in law in assessing the income at Rs.92,06,510/- as against income of Rs.61,681/- declared by the assessee.

3. On the facts and circumstances of the case, the learned Assessing Officer has erred both on facts and in law in making an addition of Rs.91,44,831/- as difference in arm's length price.

4. On the facts and circumstances of the case, the learned DRP has erred both on facts and in law in including the following comparables, despite the appellant company bringing sufficient material and evidences on record to the effect that line of activities of these com parables is totally different from that of line of activities of the assessee company:

- i) Infinite Data System Private Limited*
- ii) Infosys Limited*
- iii) Persistent Systems Limited*
- iv) Sonata Software*
- v) Tata Elxsi*
- vi) Zylog Systems Limited*
- vii) Thirdware Solutions Limited*

5. On the facts and circumstances of the case, the learned DRP has erred in rejecting the contention of the assessee that the inclusion of Infosys Limited and Sonata Software is bad in law as the same are not comparable with the assessee.

6. On the facts and circumstances of the case, the learned Assessing Officer has erred both on facts and in law in applying arm's length price for determination of income of the appellant based on the data of comparables which are not comparable with the level of operation of the appellant.

7. *On the facts and circumstances of the case, the learned DRP has erred, both on facts and in law in rejecting the contention of the assessee that the exceptional comparables should be excluded while determining the arms' length price.*

8. *On the facts and circumstances of the case, the learned TPO has erred in excluding the following comparables selected by the assessee having exact the same line of activities as that of the assessee:-*

- i) *LGS Global Limited*
- ii) *Helios & Matheson Information Technology Ltd.*
- iii) *Silverline Technologies Limited*
- iv) *Aarman Software Pvt. Ltd.*
- v) *Sagarsoft (India) Ltd.*
- vi) *R Systems International*
- vii) *Compulink Systems Ltd.*

9. *On the facts and circumstances of the case, the learned Assessing Officer has erred both on facts and in law in arbitrarily rejecting the comparables given by the appellant for determination of arm's length price.*

10. *On the facts and circumstances of the case, the learned DRP and the AO has erred both on facts and in law in rejecting the contention of the appellant that the Id. TPO has erred both on facts and in law in not applying the comparability criterion/filters uniformly.*

11 (i) *On the facts and circumstances of the case, the learned DRP has erred both on facts and in law in holding the approach of the assessee, in its TP study of taking multiple years' data, being wrong, despite holding the TNMM method used by it as an appropriate method.*

(ii) *That the above has been held despite the fact that the earlier years' data in this case has an impact on the profits in the current financial year of the assessee.*

(iii) *On the facts and circumstances of the case, the learned DRP has erred both on facts and in law in using the data of the comparables even after the date of TP study done by the assessee.*

(iv) On the facts and circumstances of the case, the learned DRP has erred both on facts and in law in using the data of the com parables only pertaining to the current year.

12. On the facts and circumstances of the case, the learned DRP has erred both on facts and in law in rejecting the calculation of the assessee for making appropriate adjustment to account for varying risk profiles and difference in working capital of the assessee vis-a-vis com parables.

13. On the facts and circumstances of the case, the learned DRP has erred both on facts and in law in rejecting the contention of the assessee that the benefit of arms' length range of +/- 5% be given in view of proviso to Section 92C(2) of the Act.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : M/s. Lime Labs (I) Pvt. Ltd., the taxpayer's 99.99% shares were held by Lime Labs India Holdings A LLC, USA whereas balance 0.01% shares were held by Lime Labs India Holdings B LLC, USA. The taxpayer is involved into providing software development support services for the Lime Domains, Lime Wire and Lime Exchange Lines of business as per specifications provided by the Associated Enterprises (AEs). The taxpayer is providing AEs with prototype software for quality testing and approval. On the basis of AE's input, the taxpayer undertakes requisite changes / re-work as required.

3. During the year under assessment, the taxpayer entered into international transactions with its AE as under :-

<i>S.No.</i>	<i>Description of transaction</i>	<i>Method</i>	<i>Value (in Rs.)</i>
<i>1</i>	<i>Provision of software development services</i>	<i>TNMM</i>	<i>9,36,97,282/-</i>
<i>2</i>	<i>Provision of IT Enabled Services (ITES)</i>	<i>TNMM</i>	<i>3,89,48,274/-</i>

4. The taxpayer provides software development support services and Information Technology Enabled Services (ITES) to its AE. To benchmark its international transaction, the taxpayer applied TNMM as the Most Appropriate Method (MAM) with operating profit / operating cost (OP/OC) as the Profit Level Indicator (PLI). The taxpayer in order to benchmark its international transactions selected 12 comparables, out of which the Id. TPO rejected 7 comparables and thereafter 7 more comparables were included by the Id. TPO. The taxpayer computed its PLI at 14.6% as against PLI of comparable at 12.12% and found its transactions at arms length. The Id. DRP confirmed all the comparables chosen by the TPO.

5. Ld. TPO without disputing the Transactional Net Margin Method (TNMM) as the MAM with OP/OC as the PLI introduced 7 new comparables with average PLI at 25.79% as against PLI of taxpayer at 14.6% and thereby made an adjustment of Rs.91.44,831/-.

6. The taxpayer carried the matter before the Id. DRP by filing objections who has disposed of the objections. Feeling aggrieved, the taxpayer has come up before the Tribunal by way of filing the present appeal.

7. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

8. Undisputedly, TNMM as the MAM with OP/OC as the PLI applied by the taxpayer to benchmark its international transactions has been accepted by the Id. TPO, who has selected 5 comparables out of 12 comparables chosen by the taxpayer and introduced 7 new comparables which are as under :-

<i>S.No.</i>	<i>Name of the Company</i>	<i>OP/OC</i>
<i>1.</i>	<i>Akshay Software Technologies Ltd.</i>	<i>-1.07%</i>
<i>2.</i>	<i>Infinite Data System Private Limited</i>	<i>88.25%</i>
<i>3.</i>	<i>Infosys Limited</i>	<i>45.47%</i>
<i>4.</i>	<i>Mindtree Ltd. (Segment)</i>	<i>13.92%</i>
<i>5.</i>	<i>Persistent Systems Limited</i>	<i>29.02%</i>
<i>6.</i>	<i>Quintegra Solutions Ltd.</i>	<i>-8.20%</i>
<i>7.</i>	<i>R S Software (India) Ltd.</i>	<i>10.18%</i>
<i>8.</i>	<i>Sonata Software</i>	<i>35.87%</i>
<i>9.</i>	<i>Tata Elexi (Segment)</i>	<i>20.29%</i>
<i>10.</i>	<i>Thinksoft Global Services Ltd.</i>	<i>17.35%</i>
<i>11.</i>	<i>Thirdware Solutions Limited</i>	<i>33.43%</i>
<i>12.</i>	<i>Zylog Systems Limited</i>	<i>25.07%</i>
<i>AVERAGE</i>		<i>25.79%</i>

9. Ld. TPO, by computing the average PLI of OP/OC at 25.79% as against 14.6% of the taxpayer computed the arm's length price of international transaction qua software services rendered by the assessee as under :-

<i>Operating Cost</i>	<i>8,17,56,986</i>
<i>Arm's Length Price at a margin of 125.79%</i>	<i>10,28,42,113/-</i>
<i>Price received</i>	<i>9,36,97,282/-</i>
<i>Shortfall being adjustment u/s 92CA</i>	<i>91,44,831/-</i>

10. The ld. TPO thereby enhanced the income of the taxpayer by Rs.91,44,831/- i.e. on account of difference of adjustment u/s 92CA of the Act.

11. The ld. AR for the taxpayer in order to cut short the controversy contended that 7 comparables, namely, (i) *Infinite Data System Private Limited*, (ii) *Infosys Limited*, (iii) *Persistent Systems Limited*, (iv) *Sonata Software*, (v) *Tata Elexi*, (vi) *Zylog Systems Limited and (vii) Thirdware Solutions Limited* introduced by the ld. TPO are not valid comparables to benchmark the international transactions and consequently sought exclusion thereof.

12. We would examine the comparability of each of the aforesaid 7 comparables one by one as under.

INFINITE DATA SYSTEMS PRIVATE LTD. (INFINITE)

13. This is TPO's comparable. The taxpayer sought exclusion of Infinite on two grounds – one, it is functionally different; and two, Infinite is earning abnormal profit to the tune of 1496%. Perusal of annual report of Infinite, available at page 56 of the paper book, shows that Infinite is a global service provider of Application Management Outsourcing, Remote Infrastructure Management Services, R&D and Intellectual Property Leveraged Solutions and related IT Services. Furthermore, when we examine revenue recognition of Infinite it shows that primarily it derives its revenue from technical support and infrastructure management services whereas the taxpayer is deriving its revenue from software development support services. Infinite is also into rendering technical consultation, design & development of software, maintenance system integration, implementation, testing & infrastructure, management services and its segmental information is not available, whereas the taxpayer is into providing routine software development support services to its AE.

14. The taxpayer placed reliance on decision rendered by coordinate Bench of the Tribunal in *DCIT vs. Exchanging Technology Services India Ltd. (ITA No.121/Del/2015)* wherein Infinite was ordered to be excluded being not a valid comparable

vis-à-vis Exchanging Technology which was a routine software development support services provider.

15. Furthermore, it is brought on record by the taxpayer that the profitability of Infinite is increased by 1496% as compared to the preceding year despite the fact that for computation of OP/OC, foreign exchange loss has been excluded from OC. So, we are of the considered view that super-normal profit to the tune of 1496% certainly affects OP/OC but, in this case, even foreign exchange loss has been excluded from the OC by the TPO and as such, it makes the Infinite not a valid comparable vis-à-vis the taxpayer. So, we are of the considered view that because of functional dissimilarity of Infinite vis-à-vis the taxpayer and earning super-normal profit by 1496% as compared to preceding years makes Infinite as invalid comparable. So, we direct the AO/ TPO to exclude Infinite from the final set of comparables.

INFOSYS LIMTIED (INFOSYS)

16. This is again TPO's comparable. The taxpayer raised objection before the TPO for its inclusion in the final set of comparables on the grounds inter alia that Infosys is not only an established player but a giant in its field; that it has abnormally high turnover having its own brand value; that it is a full-fledged

risk entrepreneur; that it is incurring substantial amount on R&D activities.

17. When we examine the functional profile of Infosys in its annual report, available at pages 208 of the paper book, it shows that the Infosys provides end-to-end business solutions that leverage cutting edge technology, thereby enabling clients to enhance business performance. The company provides solutions that span the entire software lifecycle encompassing technical consulting, design, development, re-engineering, maintenance, systems integration, package evaluation and implementation, testing and infrastructure management services. In addition, the company offers software products for the banking industry. Furthermore, Infosys spent 2.1% of the total revenue on its R&D expenditure during the year under assessment as is evident from pages 187 & 188 of the paper book. Moreover, Infosys is having huge intangible assets, it being a “brand” in itself.

18. Comparability of Infosys vis-à-vis routine software development and support services provider has been examined by Hon’ble Delhi High Court in case cited as *CIT vs. Agnity India Technologies Pvt. Ltd. (ITA 1204/2011)* affirmed the findings of the Tribunal that Infosys is not a valid comparable and referred to para 3.3 of the order of the Tribunal which is as under :-

<i>Basic Particular</i>	<i>Infosys Technologies Ltd.</i>	<i>Agnity India</i>
<i>Risk Profile</i>	<i>Operate as full-fledged risk taking entrepreneurs</i>	<i>Operate at minimal risks as the 100% services are provided to AEs</i>
<i>Nature of Services</i>	<i>Diversified-consulting, application design, development, re-engineering and maintenance system integration, package evaluation and implementation and business process management, etc. (refer page 117 of the paper book)</i>	<i>Contract Software Development Services.</i>
<i>Revenue</i>	<i>Rs.9, 028 Crores</i>	<i>Rs.16.09 Crores</i>
<i>Ownership of branded/ proprietary products</i>	<i>Develops/owns proprietary products like Finacle, Infosys Actice Desk, Infosys iProwe, Infosys mConnect, Also, the company derives substantial portion of its proprietary products (including its flagship banking product suite "Finacle")</i>	
<i>Onsite Vs. Offshore</i>	<i>As much as half of the software development services rendered by Infosys are onsite (i.e., services performed at the customer's location overseas). And offshore (50.20%) (Refer page 117 of the paper book) than half of its service, income from onsite services.</i>	<i>The appellant provides only offshore services (i.e., remotely from India)</i>
<i>Expenditure on Advertising/Sales promotion and brand building</i>	<i>Rs.61 Crores</i>	<i>Rs. Nil (as the 100% services are provide to AEs)</i>

<i>Expenditure on Research & Development</i>	<i>Rs. 102 crores</i>	<i>Rs. Nil</i>
<i>Other</i>		<i>100% offshore (from India)</i>

6. Learned counsel for the Revenue has submitted that the tribunal after recording the aforesaid table has not affirmed or given any finding on the differences. This is partly correct as the tribunal has stated that Infosys Technologies Ltd. should be excluded from the list of comparables for the reason latter was a giant company in the area of development of software and it assumed all risks leading to higher profits, whereas the respondent-assessee was a captive unit of the parent company and assumed only a limited risk. It has also stated that Infosys Technologies Ltd. cannot be compared with the respondent-assessee as seen from the financial data etc. to the two companies mentioned earlier in the order i.e. the chart. In the grounds of appeal the Revenue has not been able to controvert or deny the data and differences mentioned in the tabulated form. The chart has not been controverted.”

19. Keeping in view the functional dissimilarity between Infosys vis-à-vis the taxpayer and the fact that Infosys is incurring huge expenditure to the tune of 2.1% of its total revenue on its R&D activities leading to the creation of significant intangible property and the fact that Infosys is a brand in itself and the fact that it assumes entrepreneurial risk and it also deals in software product and following the decision rendered by Hon’ble Delhi High Court in *CIT vs. Agnity India Technologies Pvt. Ltd.* (supra), it cannot be taken as a valid comparable. So, we direct the AO/ TPO to exclude Infinite from the final set of comparables.

PERSISTENT SYSTEMS LIMITED (PERSISTENT)

20. This is again TPO's comparable which has been challenged for exclusion by the taxpayer on the ground of functional dissimilarity. Perusal of the annual report, available at page 412 of the paper book, goes to prove that Persistent is into providing outsourced software product development services covering full lifecycle of product to its customers whereas no segmental financials are available. Perusal of the annual report at page 368 of the paper book further goes to prove that Persistent has earned revenue from sale of software services and product whereas the taxpayer is into providing software services only. Furthermore, perusal of Schedule XIV forming part of the profit & loss account, available at page 369 of the paper book, shows that it has paid commission on sales to other than sole selling agents to the tune of Rs.3.3 crores and this fact proves that Persistent has substantial income from sales.

21. Comparability of Persistent has been examined by coordinate Bench of the Tribunal in numerous cases viz. (i) ***Mentor Graphics (India) Pvt. Ltd. vs. DCIT 2018 (5) TMI1584-ITAT Delhi***; (ii) ***NEC Technologies India Ltd. vs. DCIT – ITA no.1102/Del/2015 – ITAT, Delhi***; (iii) ***Open Solutions Software Services Pvt. Ltd. vs. DCIT – ITA No.7078/Del/2014 – ITAT,***

Delhi; (iv) DCIT vs. Electronics for Imaging India Pvt. Ltd. – IT(TP) A.No.212/Bang/2015 – ITAT, Bangalore; and Equant Solutions India Pvt. Ltd. vs. DCIT – ITA No.1202/Del/2015 – ITAT, Delhi.

22. Hon'ble Delhi High Court has also affirmed the findings returned by the coordinate Bench of the Tribunal in case cited as *PCIT vs. Cashedge India Pvt. Ltd. – ITA No.279/2016* and ordered to exclude the same as a valid comparable vis-à-vis routine software service provider by returning following findings :-

“6. As far as the first company, i.e., Persistent Systems Ltd. is concerned, the material on record -as found by the ITAT - shows that this company was involved in software development, software products and marketing. Furthermore and perhaps more importantly published segmental data was not available. In these circumstances, having regard to the specificity of the Transfer Pricing Rules under Rule 10 (b) to 10 (e) of the Income Tax Rules, the data of the said firm, i.e., Persistent Systems Ltd. could not have been included.”

23. In view of what has been discussed above, we are of the considered view that Persistent is not a valid comparable vis-à-vis taxpayer. So, we direct the AO/ TPO to exclude Infinite from the final set of comparables.

SONATA SOFTWARE LTD. (SONATA)

24. This is again TPO's comparable who has chosen the same on the ground that it is also a software development services provider. The taxpayer sought to exclude the same on ground of functional

dissimilarity as well as on ground of substantial Related Party Transactions (RPT). When we examine functional profile of Sonata, available at page 742 of the paper book, it goes to prove that Sonata is primarily engaged in development of software product and it also provides Information Technology (IT) solutions, IT consulting, Development services globally, enhancing competitive advantage of its customers. The company also provides both onsite as well as offshore services in the area of RP customization conversion and migration projects, data warehousing, Business Intelligence, Web Development, Infrastructure Management amongst others.

25. Furthermore, when we examine Related Party Transactions of Sonata, available at page 726 of the paper book, it goes to prove that its RPT as percentage of sales is 53.83% whereas TPO himself has applied the filters to exclude the companies with more than 25% of RPT from the final set of comparables. So, keeping in view the functional dissimilarity as well as substantial Related Party Transactions, Sonata cannot be a valid comparable vis-à-vis taxpayer, hence ordered to be excluded.

TATA ELXSI

26. This is again TPOs comparable, which the tax payer has sought to exclude on ground of functional dissimilarities. The Ld.

TPO retained this comparable despite objections raised by the tax payer that it is engaged in the provision of animation, hardware – designing etc. However, TPO by taking into consideration the segment reporting observed that Tata Elxsi's operation predominantly relate to providing systems integration and software developments services in the information technology field.

27. However, perusal of annual report of Tata Elxsi available at page 116 to 118 of the paper book under the head “Management Discussion and Analysis (MDA) statement”, shows that software development and services is broken up into three distinct business groups viz. Productive Design Services (PDS) innovation, design, Engineering and visual computing labs. So from the annual report- it is proved that Tata Elxsi is functioning into specialized domain of software products / services, thus, functionally dissimilar vis-à-vis the tax payer.

28. Comparability of Tata Elxsi has been examined by the Coordinate Bench of the Tribunal in case cited as *M/S. Nec Technologies India Ltd. (formerly known as Nec Hcl Systems technologies Ltd. vs. DCIT* and Tata Elxsi is held to be not a suitable comparables for benchmarking international transactions vis-à-vis a routine software development services provider by recording following findings :

“27. So keeping in view the fact that Tata being engaged in product design services, innovation design engineering services and visual computing labs and has specialized and niche domain of software products/services and by following the decision rendered by the Tribunal in Toluna India Pvt. Ltd. and Telcordia Technologies India Pvt. Ltd. (supra), we find Tata as not a suitable comparable for benchmarking the international transaction.”

29. So in view of what has been discussed above and by following decision rendered by Co-ordinate bench of Tribunal in *M/s. NEC Technologies India Ltd. (supra), Toluna India Pvt. Ltd. and Telcordia Technologies India Pvt. Ltd. (supra)* Tata Elxsi is being functionally dissimilar vis-à-vis tax payer is ordered to be excluded from the final list of comparable for benchmarking the international transactions.

ZYLOG SYSTEMS LIMITED (ZYLOG)

30. This is again a TPO's comparable which the taxpayer has sought to exclude on ground of extraordinary event that it has acquired directly M/s. Matrix Primus Partners Inc., USA, M/s. Algorithm Solutions Private Limited, India and acquired M/s Brainhunters Inc. Canada.

31. Perusal of the annual report available at page 457 goes to prove that Zylog has acquired directly M/s. Matrix Primus Partners Inc. USA, M/s. Algorithm Solutions Private Limited, India and acquired M/s. Brainhunters Inc., Canada, through our WOS Zylog Systems (Canada) Ltd., during the Financial years

2009-10 relevant for year under assessment in case of the tax payer.

32. Furthermore the Zylog has invested in acquiring this business an amount of Rs. 62,12,04,848/- and has adopted the policy of amortizing this amount over a period of 5 years. Thus, the company has amortized a sum of Rs. 10,72,97,170/- in the year under assessment. So the acquisition being an extraordinary event has certainly affected the profitability of the company and as such cannot be a valid comparable.

33. Coordinate bench of Tribunal in case cited as *Equant Solutions India Pvt. Ltd. v. DCIT (ITA no. 1202/Del/2015)* has examined comparability of Zylog vis-à-vis software developments supports service provider and held the same to be not an invalid comparable on the ground that it has undergone into the business of restructuring where it is clear Dugout fair flex matrix. Moreover Zylog is also having significant intangibles and also carrying out research and development activities creating significant intangibles.

34. So keeping in view the fact that the Zylog has undergone into business restructuring due to acquisition, which is an extraordinary event, the same cannot be a valid comparable hence order to be excluded from the final set of comparable.

THIRDWARE SOLUTIONS LTD. (THIRDWARE)

35. This is again a TPO's comparable which the tax payer has sought to exclude on ground of functional dissimilarity. The TPO retained this comparable despite objections raised by the tax payer on the ground that software development, implementation and support services are sub-segments of software development services only.

36. It is the case of the tax payer that Thirdware is into providing software product development implementation and consulting based on ERP and business intelligences and relied upon decision rendered by Co-ordinate Bench of Tribunal in case cited as *Open Solutions Software Services Pvt. Ltd. vs. DCIT [ITA No. 7078/Del/2014*, whereby co-ordinate Bench of the Tribunal has ordered to exclude Thirdware as a comparable vis-à-vis routine software development and supports services provider by returning following findings :-

“11. After considering the rival submissions and on perusal of relevant material referred to before us, we find that under the head "sales" the following items have been disclosed:-

a)	<i>Exports from SEZ units-</i>	<i>Rs. 47,58,40,447/-</i>
b)	<i>Exports from STPI unit-</i>	<i>Rs. 11,20,90,633/-</i>
c)	<i>Revenue from subscription -</i>	<i>Rs. 1,53,13,736/-</i>
d)	<i>Sale of licences-</i>	<i>Rs. 1,51,38,618/-</i>
e)	<i>Sale of software services -</i>	<i>Rs. 5,72,23,072/-</i>
		<i>Rs. 67,56,06,505/-</i>

From the above it is not clear as to what constitutes the sale of exports, whether it is product or software development services. Revenue from subscription and sale of licence also indicate that there is income from products also which would indicate different business model and consequently the profit margin. Without any ITA 7078/Del/2014 A.Y. 2010-11 M/s Open Solutions Services Pvt.Ltd. proper segmental information regarding revenues from software development and software products, it would be very difficult to accept that the proper comparability analysis can be carried out with the assessee which is purely providing software development services. Apart from above it is noticed that in the case of Fiserve, this comparable company has been excluded precisely on the same ground and the said order of the Tribunal stands affirmed by the Hon'ble High Court also. Accordingly, we direct the TPO to exclude the said comparable from the list of comparables.”

37. So in view of what has been discussed above and following the decision rendered by Co-ordinate bench of Tribunal in *Open Solutions Software Services Pvt. Ltd. Vs. DCIT* (supra). We are of the considered view that Thirdware is also into development and sale of software products whereas the tax payer is purely into providing software development services. Moreover complete segmental financials are also not available. So keeping in view the fact that the Thirdware is having a different business model cannot be a valid comparables vis-à-vis tax payer who is a routine software development services provider, hence ordered to be excluded from the final set of comparables.

38. Keeping in view the fact that the AO/TPO is to make a fresh comparability analysis from the final list of comparables to benchmarking the international transaction under taken by the tax payer.

39. Consequently, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in open court on this 12th day of December, 2018.

**Sd/-
(N.K. SAINI)
VICE PRESIDENT**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 12th day of December, 2018
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A).
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**