

2. Ground No. 1 is general in nature and needs no separate adjudication.

3. Ground No. 2, with its sub grounds, relates to the addition of Rs. 6.87 crores to the income of assessee, allegedly on account of difference in the arm's length price of the international transaction of provision of software development services.

4. Briefly stated, the facts of the case are that the appellant company is a subsidiary of Pitney Bowes Software Inc., USA and is engaged in the business of providing end-to-end business solutions in location Intelligence, which combines technology, data and services with domain expertise to enable an organization to measure, compare, visualize its business data.

5. The international transactions undertaken by the assessee company with its AEs, as reported are as under:

Nature of International transactions	Method	Amount [Rs.]
Provision of software development services	TNMM	1396735089
Royalty fee	TNMM	8324
Recovery of expenses	CUP	44655111
Reimbursement of expenses [paid]	CUP	35292817
Receivables	Other Method	114386193

6. Under the segment software development services, the assessee has used TNMM as the most appropriate method and OP/OC as the PLI. The assessee selected a set of 7 comparables with an average margin of 8.36%. The 7 comparables are as under:

Sr. No.	Company Name	OP/OC (%) (As per TP Study)	Updated margins submitted vide reply dated 17.03.2017
1.	Ace Software Exports Ltd	-2.70	-2.48
2.	CG-VAK Software & Exports Ltd.	10.32	12.39
3.	FCS Software Solutions Ltd	-6.00	-1.60
4.	Goldstone Technologies Ltd	5.11	3.52
5.	Nuclepsl Software Exports Ltd	19.39	19.39
6.	Polaris Enterprise Solutions Ltd	15.83	-
7.	Tata Elxsi Ltd	16.55	16.55
Arithmetic mean		8.36%	7.96%

7. Since the assessee's operating profit margin is shown at 14.09% and when compared to OP/OC of 7 comparables, which is 8.36%, the assessee returned the international transaction at Arm's Length.

8. While analyzing the TP study report vis a vis the comparables, the TPO rejected four comparable companies, namely:

- (i) FCS Software Solutions Ltd,
- (ii) Goldstone Technologies Ltd
- (iii) Nucleus Software Exports Ltd &
- (iv) Polaris Enterprise Solutions Ltd.

9. After rejecting the aforementioned comparables, the TPO included other comparables. The comparables finally used by the TPO are as under:

S.No	Name of the Company	OP/OC (%)
1	Ace Software Exports Ltd	-0.58%
2.	Acropetal Technologies Ltd	1.83%
3.	Akshay Software Technologies Ltd	0.44%
4.	Alcatel-Lucent India Ltd	10.71%
5.	Birlasoft (India) Ltd	32.83%
6	CG- VAK Software & Exports Ltd	10.16%
7.	Larsen & Toubro Infotech Ltd	26.76%
8.	Mindtree Ltd	19.42%
9.	Persistent Systems Ltd	34.48%

10.	Sasken Technologies Ltd	6.46%
11.	Tata Elxsi Ltd	15.78%
12.	Tata Technologies Ltd	34.38%
13.	Technosoft Engineering Projects Ltd	27.34%
14.	Thirdware Solution Ltd	49.19%
15.	Wipro Ltd	26.24%
	Average	19.70%

10. Accordingly, the TPO computed the adjustment as under:

Operating cost	1,23,17,72,445
Arms length margin (%) OP/OC	19.70%
Arms length margin	24,26,59,172
Arms length revenue	1,47,44,31,617
Operating revenue	1,40,52,72,880
Shortfall being adjustment	6,91,58,737
International transaction pertaining to provision of software development services	1,39,67,35,089
% of international transaction	99.39%
Shortfall being adjustment	6,87,36,868

11. The assessee raised objections before the DRP but without any success.

12. Before us, the ld. counsel for the assessee reiterated what has been stated before the lower authorities and submitted that if from the final set of comparables used by the TPO, four comparables are eliminated then mean average of the remaining comparables will conclusively decide that the assessee's transaction with the AE is at Arm's Length.

13. The four comparables are as under:

- i) Birla Soft India Ltd
- ii) Wipro Ltd
- iii) Larsen & Toubro Infotech Ltd
- iv) Tata Technologies Ltd

14. We will now consider these comparables one by one.

Birlasoft India Ltd

15. The TPO, at page 5 of his order has used certain filters keeping in mind the profile of the assessee and one of the filters is to reject the companies whose transaction with related party is more than 25% of its turnover. In the case of Birla Soft India Ltd, total sales is at Rs. 467 crores and the total related party transactions amounts to Rs. 377

crores which is about 80% of the total sales. These facts are clearly in contradiction to the filter applied by the TPO and, therefore, this company deserves to be excluded from the final set of comparables.

WIPRO Ltd.

16. The finances of this company shows that it is engaged in the provision of IT services, including Business Process Outsourcing [BPO] and I.T. products. Moreover, the Annual Report of this company states that segmental account have been prepared at consolidated level. Moreover, even within the I.T. Services segment [consolidated] this company has included revenue from BPO services. The balance sheet of this company shows that it owns significant intangibles in the form of brand, trademarks, patents and technical know-how etc.

17. The Hon'ble Jurisdictional High Court of Delhi in the case of Pr. CIT Vs. Oracle [OFSS] BPO Services Pvt. Ltd ITA No. 124/2018 has excluded WIPRO Ltd on the basis that the company has a significant brand presence and brand value of an entity has a significant role in the ability to garner profits and negotiate contracts. This decision of the Hon'ble High Court has been upheld by the Hon'ble Supreme Court in SLP (CC) No. 32469/2018.

18. As mentioned elsewhere, this company owns significant intangibles and its annual report states that during the year, it has applied for 118 new patents and was granted 18 new patents against its existing patent applications. The company has separately capitalized patents, trade-marks and technical know-how in its balance sheet.

19. Considering these facts in totality, we do not find WIPRO to be a fit comparable and accordingly direct for its exclusion.

Larsen & Toubro Infotech Ltd

20. A perusal of the annual account of this company shows that under the head 'Segmental reporting', this company has shown revenue from three segments, namely, service clusters, industrial clusters and telecom clusters [PES]. From the total segmental operating profit, this company has deducted unallocable expenses, which means that the operating margin of industrial cluster segment selected by the TPO is devoid of unallocable expenses as the same has been deducted from the total segmental profit.

21. In our considered opinion, such segmental accounts cannot be accepted as the company is having unallocated expenses. For similar reasons, in assessee's own case in assessment year 2013-14, the Tribunal has excluded this company at the threshold in ITA No. 7034/DEL/2017. Considering the peculiarity of the facts of this company in the light of the findings of the co-ordinate bench, we direct for exclusion of this company.

TATA TECHNOLOGIES LIMITED

22. As mentioned elsewhere, the TPO has adopted filter of related party transaction which is more than 25%. The accounts of this company shows total sales of 886 crores and the Revenue from related party transaction is Rs. 777 crores which comes to about 87% and is, therefore, hit by the filter adopted by the TPO himself. This company deserves to be excluded and we direct accordingly

23. The second adjustment disputed by the assessee relates to the addition of Rs. 81,649/- on account of notional interest imputed on receivables outstanding from the AE.

24. We have directed for exclusion of four comparables taken by the TPO, namely,

- i) Birla Soft India Ltd
- ii) Wipro Ltd
- iii) Larsen & Toubro Infotech Ltd
- iv) Tata Technologies Ltd

25. After the exclusion of these four comparables, the margin of the assessee comes within the range of +/- 5%. Since the operating profit margin of the assessee is within the plus minus 5% of the operating profit margin of the comparables, we do not find any reason why receivables should be considered separately for determining ALP. Interest has already been considered. Accordingly we hold that no interest can be imputed separately and additionally. We direct the Assessing Officer/TPO to delete the addition of Rs. 81,649/-. Ground No. 3 with its sub-grounds is allowed.

26. In the result, the appeal filed by the assessee in ITA No. 5052/DEL/2018 is allowed.

The order is pronounced in the open court on 17.12.2018.

Sd/-

**[KULDIP SINGH]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 17th December, 2018

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	.12.2018
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
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