IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BENGALURU

BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
and
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

IT(TP)A No.2297/Bang/2016
(Assessment year: 2012-13)

M/s. Societe Generale Global Solution
Global Centre Pvt. Ltd.,
10th Floor, 'Voyager' Building,
ITPL, Whitefield,
Bengaluru-560 066.
PAN:AAECS 6764 L … Appellant

Vs.

Deputy Commissioner of Income-tax,
Circle 6(1)(2),
Bengaluru. … Respondent

Appellant by : Shri Sampath Raghunathan, Advocate
Respondent by : Shri Pradeep Kumar, CIT(DR)

Date of hearing: 14/02/2019
Date of pronouncement: 22/02/2019

O R D E R

Per PAVAN KUMAR GADALE, JM :

The assessee has filed the appeal against the order of the Deputy Commissioner of Income-tax, Circle 6(1)(2), Bengaluru, u/s 143(3) r.w.s. 144C(13) of the Income-tax Act,1961 ['the Act' for short] dated 28/10/2016, passed in pursuance to the directions of the Dispute Resolution Panel (DRP) dated 31/08/2016.

2. The assessee has filed grounds of appeal with appeal memo and raised additional grounds of appeal before the Tribunal. At the time of hearing, the learned AR has not pressed grounds in respect of ground No.1 which are general in nature and whereas in respect of ground No.2 on determination of Arm's Length Price (ALP) of international transaction , learned AR has not pressed grounds No.2(a), 2(b), 2(e), 2(f), 2(g), 2(h), 2(i), 2(j), 2(k), 2(l), 2(m) and 2(n) and ground No.3, non-cognizance to rectification application filed before the TPO not pressed and ground No.4, non-allowance of appropriate adjustments to the comparable companies being 4(a)and 4(b) not pressed ground No.8, directions issued by the DRP, ground No.9 penalty proceedings and ground No.10 are also not pressed. Hence, the effective grounds of appeal are ground Nos.2(c), 2(d), 5, 6 and 7. which read as under:

"2. Determination of arm's length price of international transactions

c) The Ld. TPO erred in law in applying arbitrary filters to arrive at a fresh set of companies as comparable to the Appellant, without establishing functional comparability. The Ld. Panel/ AO erred in upholding the actions of the Ld. TPO.

d) The Ld. TPO also erred on facts in arbitrarily accepting companies without considering the turnover and size of the Appellant and comparable

companies. The Ld. Panel/ AO erred in upholding the actions of the Ld. TPO.

5. Mark-up on recovery transactions

The Ld. TPO erred in facts and circumstances of the case and in law, in determining the transfer pricing adjustment after charging mark-up on recovery transactions entered with associated enterprise without appreciating the submissions filed by the Appellant that these were mere pass through transactions. The Ld. Panel/ AO has not taken cognizance of the submissions filed by the Appellant and erred in upholding the actions

6 Variation of 5% from the arithmetic mean

The Ld. Panel/ AO/ TPO erred in law in not granting the benefits of proviso to section 92C(2) of the Act available to the Appellant.

7 Short grant of MAT credit under section 115JAA of the Act

The Ld. AO erred in not granting appropriate MAT credit under section 115JAA of the Act."

3. Whereas in the additional grounds of appeal raised before us, the learned AR has not pressed ground No.1(c), 1(d), 1(e), 1(f) and ground No.2 Therefore, the effective grounds are ground No.1(a) and 1(b) are as under:

1 "Determination of Arm's Length Price for rendering of IT Enabled Services

a) Ref: Ground 2m of original grounds of appeal

The Ld. AO/TPO has erred in selecting the following comparable companies which fail the TPO's own filter i.e. companies having employee cost less than 25% ought to be rejected.

The Ld. Panel erred in confirming the same:

i. Universal Print systems Limited
ii. Excel Infoways Ltd.

b) Ref: Ground 2b & 2m of original grounds of appeal

The Ld. AO/TPO has erred in selecting the following comparable companies which are functionally not comparable to the Appellant. The Ld. Panel erred in confirming the same:

i. Universal Print systems Limited
ii. Infosys BPO Ltd.
iii. TCS e-Serve Ltd.,
iv. BNR Udyog Ltd. (seg.)
v. Excel Infoways Ltd."

4. The learned AR, at the time of hearing has made endorsement in the original grounds of appeal filed with the Form No.36 and on the additional grounds raised in respect of grounds of appeal was not pressed and as referred in para 2 they are accordingly dismissed. The learned AR prayed for admission of the effective additional grounds as the same could not be raised at the time of filing of the appeal with Tribunal for various reasons and the learned DR has no specific objections. Accordingly, we admit the additional grounds.

5. Brief facts of the case are that the assessee is a wholly owned subsidiary of Genefinance, Paris, France which is a subsidiary of SG France. Whereas the assessee-company

provides service in the area of information technology, business and knowledge process outsourcing and infrastructure management services to SG Groups business lines around the world and is a captive service provider which provides software development and IT enabled Services to its Associated Enterprises (AE) and also provides back office software development and IT enabled services across group entities in the domain of Corporate and Investment Banking, Retail Banking, specialized Financing and insurance, private banking and global investment management and services and resource group.

6. The assessee filed the Return of income electronically on 29/11/2012 with total income of Rs.39,71,86,840/- and the Return of income was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny and notice u/s 143(2) and 142(1) were issued. In response, the learned AR of the assessee appeared from time to time and filed details and clarifications in the assessment proceedings. Whereas the AO, on perusal of transfer pricing study report and the Report in Form 3CED, found that the assessee has international transaction exceeding Rs.15 crores and has referred to the TPO for determination of ALP with prior approval of the Principal Commissioner of Income-tax, Bangalore.

7. Whereas the TPO, on reference u/s 92CA of the Act, made functional analysis of the assessee's business and dealt on the financial results of operating cost, operating revenue and operating profits. The TPO considering the segmental services of software development services and IT enabled services and worked out the profit analysis. The TPO found that the assessee has the international transactions referred at para.3.3 at page 3 of the order as under:

Sl. No.	***International Transaction***	***Amountreceived***	***Amount paid***
1	Software development and support services	2,715,570,582	
2	IT enabled and support services	1,028,640,716	
3	Provision of billing	78,784,466	
5	Reimbursement of Social Security Expenses		41,985,389
6	Bank Charges		3,883,727

The TPO considered the provisions of the foreign exchange gain/loss and rejected the assessee's TP study and further determined the ALP and pointed out defects in para 6 page 5 of the order. The TPO also made fresh search for comparables and applied the filters to the IT enabled services segment (ITeS) and software development services (SDS). Whereas the TPO applied the filter on the use of current year, data and the companies having different financial year ending 31/03/2012 or data of the company which does not fall within 12 months

period i.e. being 01/04/2011 to 31/03/2012 and the companies whose service income is less than Rs.1 crore are excluded.

8. Similarly companies whose software development services/IT enabled services is less than 75% of the total operating revenue were excluded and the TPO excluded the companies which are having more than 25% Related Party Transactions (RPT) and also export service income less than 75% of the sales and companies with employees cost less than 25% of turnover were excluded. Finally, the TPO rejected the assessee's comparables referred at para 8 of the order. The TPO made analysis and considered the remarks and arguments of the assessee in respect of the companies at pages 9 to 14 of the order and finally considered the comparables at page 15 at para.8.3. of the order which read as under:

i. Accentia Technologies Ltd.,
ii. Universal Print Systems Ltd.,
iii. Informed Technologies Ltd.,
iv. Infosys BPO Ltd.,
v. Jindal Intellicom Ltd.,
vi. Microgenetic Systems Ltd.
vii. TCS e-Serve Ltd.
viii. BNR Udyog Ltd.,(Seg)(Medical Transcription)
ix. Excel Infoways Ltd.,
x. E4e Healthcare Services Pvt. Ltd.,

9. The TPO applied TNMM method and the PLI has been worked out at 28.11%. The TPO considered the judicial decisions and worked out the effect of economies of skill and

working capital adjustment and risk adjustment and ALP in para. 12.4 as under:

IT ENABLED SERVICES

Arm's Length Mean Margin on cost	28.11%
Less: Working Capital Adjustment	-2.28%
(As per Annex. C)	
Adjusted margin	30.39%
Operating Cost	888,483,270
Arm's Length Price(ALP) 130.39% of Operating Cost	1158493336
Price Received	103,37,06,859
Shortfall being adjustment u/s 92CA:	14,52,23,589
5% of price received	5,16,85,343
Since the shortfall is exceeding 5% of the International Transaction, adjustment is made	

The TPO passed the order u/s 92CA dated 29/01/2016 with adjustment to the ALP after giving mark up of 5%. The ld.AO, based on the TPO's order where suggesting the ALP adjustment of Rs.14,52,23,589/- computed the total income of Rs.54,24,10,429/- and passed the assessment order u/s 143(3) of the Act dated 22/02/2016 which was forwarded to the assessee.

10. Against the Draft assessment order, the assessee has filed objections in Form 35A to the DRP and the DRP, after considering the findings of the TPO and the submissions of the assessee, passed the order on 31/08/2016 with directions which was received by the AO on 21/09/2016. The AO made the final assessment with transfer pricing adjustment of

Rs.12,19,10,876/- and passed the order u/s 143(3) r.w.s. 144C(13) of the Act dated 28/10/2016.

11. Aggrieved by the order of the AO passed in pursuance of the directions of the DRP, the assessee has filed an appeal with the Tribunal. Before us, learned AR argued the effective grounds and reiterated the submissions made before the AO and the TPO and the DRP and submitted that the TPO has erred in including companies which does not satisfy the assessee's business profile and made submissions on the functional comparability and turnover and filed a chart supporting with judicial decisions to exclude comparables raised in the additional grounds. Further the TPO has not granted benefit of provisions of 92CA which is available to the assessee and the learned AR mentioned that the AO has erred in not giving MAT credit under the provisions of section 115JAA of the Act and prayed for allowing the assessee's appeal.

Contra, learned DR supported the orders of the DRP and the AO/TPO and objected to the exclusion of comparables raised by the assessee.

12. We heard rival submissions and perused the material on record and also the chart filed. The learned AR's contention that the comparables selected by the TPO are functionally

different and differs in functional analysis. The learned AR's contentions in respect of comparable Universal Print Systems Ltd. selected by the TPO that the margin of profit is higher at 55.93% and the turnover is Rs.6.17 crores and also there is no proper information on segmentation and fails the employees cost filter and the DRP has overlooked the submissions of the assessee. The learned AR supported his arguments for exclusion of this comparable relied on the Annual Report in respect to net profit of segments and the said company performs pre-press activities and engaged in various other segments and also the turnover is less than 10 times of the lower limit of assessee's turnover. The learned AR relied on the co-ordinate bench decision of this Tribunal in the case of *CGI Information Systems & Management Consultants (P) Ltd. vs. ACIT* (2018) 94 taxmann.com 97(Bang.Trib) – para 52, page 21 of the order which reads as under:

> **"52.** There appears to be no bar in the Rules referred to above to considering segmental data under TNMM because the comparison is of "net profit margin realized by the enterprise from an international transaction" with the "net profit realized from a comparable uncontrolled transaction". Therefore comparison is of similar transaction. When segmental information is available and is not disputed, it cannot be argued that filters have to be applied at entity level. It cannot be argued that when the TPO himself applied the filters at the entity level he was not entitled to apply the filters at segmental level. As we have already stated if clear segmental information is available the filters can be applied at the segmental level in TNMM. Therefore the objection with regard to this company failing the employee cost filter and service revenue filter in our view was rightly rejected by the TPO and DRP. It is however seen that this

company has four segments *viz.*, Repro. Label Printing, Offset Printing and Pre-press BPO. Whether the label printing and offset printing segments supplement the functions performed in the Pre-press BPO segment has to be seen. We therefore set aside the order of the DRP in this regard and remand for fresh consideration by the TPO the comparability of this company. In terms of Rule 10B(3) of the rules the profit margins of Pre-Press BPO have to be adjusted taking into account the fact that two other segments supplement the pre-press BPO segment. If such adjustment cannot be reasonably or accurately made then this company has to be excluded from the list of comparable companies. The TPO for this purpose can use his powers u/s. 133(6) of the Act to get required details from this company. As far as the argument that this company fails functional comparability, we find that none of the objections raised by the Assessee in this regard about lack of information about allied services performed by die pre-press BPO segment of this company and the break-up of the revenue from such allied services have been dealt with specifically by the TPO or DRP. Since the comparability of this company is being remanded to be TPO for consideration of adjustments as mentioned above, the objection with regard to functional comparability should also be looked into by the TPO in the remand proceedings on the basis of materials which he may gather u/s. 133(6) of the Act, The Assessee should be given opportunity of being heard by the TPO before the issue is decided by the TPO."

We found the co-ordinate bench decision pertains to assessment year 2012-13 and functional profile is similar to assessee-company. Therefore, the observations of the Tribunal are applicable to the comparable company where it involves in pre-press activities of BPO. Accordingly, we follow the directions of the Tribunal in the above case and direct the AO/TPO to exclude Universal Print systems Ltd., from the list of comparables.

13. On the segmentation of exclusion of Infosys BPO Ltd., the learned AR submitted that the turnover of said company is Rs.1316.75 crores and functionally not comparable to the assessee-company and has brand profits and owns significant

intangibles to the extent of 7.55% and erroneous margin computation. The learned AR supported his argument of exclusion on the brand profit segment that the company is functionally not comparable as it owns brand intangibles and incurred huge advertisement expenditure of Rs.5.54 crores and marketing expenses of Rs.1.54 crores for brand building and referred to pages 930 and 931 of the paper-book. Similarly, peculiar economic circumstances being acquisition of 100% stake in Portland Group during the year and the forex is treated as non-operating and referred to page 932 of the paper-book and the turnover higher Rs.1316.75 crores which is outside 10 times range. Learned AR emphasized that Infosys BPO was excluded by the Tribunal considering the brand value and extraordinary event during the year and referred to paras.45 & 46 of the order of Tribunal in the case of *CGI Information Systems & Management Consultants (P) Ltd.* (supra) which reads as under:

> **45.** We have considered the rival submissions. In the case of *Baxter (I) (P.) Ltd.*, (*supra*) the Delhi ITAT Bench considered comparability of the aforesaid three companies with a company engaged in providing ITBS such as the Assessee. The functional profile of the Assessee and the Assessee in the case of *Baxter (I) (P.) Ltd.* (*supra*) are identical inasmuch as 7 out of the 10 companies chosen by the TPO in the case of the Assessee were chosen as comparable in the case of *Baxter (I) (P.) Ltd.* (*supra*). The Tribunal held on the comparability of the three companies Infosys BPO Ltd., TCS E-service Ltd. and Excel Infoway Ltd., as follows:

(*i*) In paragraph 23 of its order the Tribunal held that Infosys BPO Ltd., is not comparable with a company providing ITES because of brand value and extraordinary events in the previous year relevant to AY 2012-13 *viz*., acquisition of an Australia based company which had effect on its profits.

(*ii*) In paragraphs 24 & 25 of its order the Tribunal held Excel Infoway Ltd., as not comparable because of consistent diminishing revenue. The figures of diminution revenue are given in paragraph 24 of its order.

(*iii*) In paragraphs 21 & 22 of its order the Tribunal held that Excel Infoway Ltd., was liable to be excluded because it was also engaged in the business of software testing, Verification and validation of software at the time of implementation and data centre management activities.

46. Respectfully, following the decision of the Tribunal we hold that the aforesaid 3 companies be excluded from the final list of comparable companies for the purpose of arriving at the arithmetic mean of comparable companies for the purpose of comparison with the profit margins."

14. The learned AR supported his argument with the decision of the Delhi Tribunal in the case of *Baxter India Pvt Ltd. vs. ACIT* (85 taxmann.com 285) para.16 which reads as under:

"16. Coming to Infosys BPO Ltd. he submitted that this company also should be rejected from the list of comparables. He submitted that the TPO rejected the contention of the assessee stating that the company is engaged in ITES and hence functionally comparable. The TPO further mentioned that the Annual Report does not mention anything in regard to brand deriving its profitability. According to the TPO, the brand in service industry may derive revenue but does not affect the profitability. Ld. counsel for the assessee submitted that Infosys BPO Ltd. is functionally not comparable since the services are in the niche areas. He submitted that this company fails the TPO's own filter of rejecting companies with peculiar circumstances, since this company has acquired the Australian based company M/s. Portland Group Pty Ltd. during the financial year 2011-12. Further, the turnover of this company is more than 111 times than that of the assessee company and it has a presence of brand.

> **16.1** Referring to the decision of the Bangalore Bench of the Tribunal in the case of *Swiss Re Global Business Solutions India Pvt. Ltd.* (*supra*) for assessment year 2012-13, he submitted that this company was examined by the Tribunal and the Tribunal directed the Assessing Officer/TPO to exclude Infosys BPO Ltd. on account of high turnover. Referring to the decision of Delhi Bench of the Tribunal in the case of *Actis Global Services Pvt. Ltd.* (*supra*), he submitted that Infosys BPO Ltd. was directed to be excluded from the list of comparables on the ground of huge turnover. Further, it was also held that Infosys BPO Ltd. cannot be considered as comparable to a captive service provider. Similar view has also been taken by the Mumbai Bench of the Tribunal in the case of *Maersk Global Service Centers (India) (P.) Ltd.* v. *ITO* [IT Appeal No. 1082 (Mum.) of 2015, dated 29-7-2016] for assessment year 2010-11. This company was directed to be excluded on the ground that this belongs to Infosys Group thereby carries the goodwill and brand value of the group and it has got high turnover, apart from being functionally different from that company. He accordingly requested that Infosys BPO Ltd. should be rejected."

We found the submissions of the assessee are supported with the judicial decisions and are applicable to the assessee-company for excluding Infosys BPO Ltd., from the list of comparables selected. Accordingly, we direct the TPO/AO to exclude company Infosys BPO Ltd., for determination of ALP.

15. The third comparable being TCS e Service Ltd., learned AR submitted that the turnover being Rs.1578.44 crores and functionally not comparable as brand profits and also diversified activities of BPO and KPO and no segmentation information available. Further, TCS e Serve Ltd., is functionally not comparable as it enjoys more brand value and referred to pages 933 to 936 of the paper book and also engaged in KPO activities including delivery of core business processing

services, analytics and insights. The turnover being Rs.1578.44 crores which is outside the range being 10 times and ld. AR supported his submission with the decision of *CGI Information Systems & Management Consultants (P) Ltd.* (supra) and referred to paras.45 & 46 of the order and para.14 of the Delhi Tribunal decision in the case of *Baxter India Pvt Ltd.* (supra) which reads as under:

> **"14.** So far as the TCS e-Serve Ltd. is concerned, he submitted that the TPO rejected the contention of the assessee stating that the company is engaged in ITES and high turnover does not have any correlation with the profitability. He submitted that this company was rejected as a comparable in assessee's own case for assessment year 2011-12 on the ground of absence of segmental information and considerable brand value. He submitted that the TCS e-Serve Ltd. is functionally different. The company is engaged in ITES and software development services. Further, the segmental information between ITES and software development services are not available. The company has presence of brand and the services are provided pre-dominantly to Citi Group company. So far as the employee base is concerned, TCS e-Serve Ltd. has more than 296 times of that of the assessee's employee base. The turnover is greater than 133 times of the assessee. Incomparable size of operations, abnormal profitability trend and super normal profits are the other grounds for rejection of TCS e-Serve Ltd. as a comparable. He submitted that this company was examined by the Delhi Bench of the Tribunal in assessee's own case in ITA No. 345/Del/2016 and company was excluded from the list of comparables while computing the average margin of comparables.
>
> **14.1** Referring to the decision of the Bangalore Bench of the Tribunal in the case of *Swiss Re Global Business Solutions India (P.) Ltd.* v. *Dy. CIT* [IT (TP) Appeal No. 2315 (Bang.) of 2016, dated 13-4-2017] for the assessment year 2012-13, he submitted that the Tribunal had directed the Assessing Officer/TPO to exclude TCS e-Serve Ltd. from the list of comparables on account of high turnover."

We find the comparable TCS-e-Service was excluded due to its Brand value and KPO services and size of operation in above decision and accordingly we rely on decision and direct the TPO to exclude the same for ALP.

16. On the comparable company selected by the TPO viz., BNR Udyog Ltd., the learned AR's contention that the margin side 48.55% and the turnover being Rs.1.47 crores, fails RPT filter and also fails export turnover filter. The contention of the learned AR is that the said company is in medical transcription and medical billing and coding and performs KPO services, fails RPT filter and service turnover filter supported his argument referring to page 922 of the paper-book where the turnover is less than 10 times of the limit. We found that this issue was considered by the Tribunal in the case of *CGI Information Systems & Management Consultants (P) Ltd.* (supra) in paras.53 and 54 of the order which read as under:

> **"53.** The next comparable company retained after the order of the DRP which the Assessee seeks to exclude is BNR Udyog Ltd. As far as this company is concerned, it was the objection of the Assessee before the TPO that the TPO ought not to have selected this company as comparable company for the reason that the related party transaction of this company at the entity level was 49.60% of the total revenue and that this company has less than-75%-of its revenue from providing TTES. The TPO rejected The above contention by holding that this company has 3 major business segments and the segmental results of medical transcription business which is providing 1TES alone was considered for die purpose of comparison. When the segmental results are considered the related party transaction is *nil*. 100% of the segmental income was from providing 1TES, *i.e.*,

emedical transcription and therefore 75% revenue is from providing ITES and therefore the company passes the test of income from providing ITES being more than 75% of the total income. The DRP accepted the view of the TPO.

54. The submission of the learned counsel for me Assessee was identical as were made before the TPO and DRP. We have while deciding the objection with regard to excluding Universal Print Systems Ltd., already held that when clear segmental information is available then there is no bar in applying filters at the segmental level. The reasons given while coming to the above conclusion will equally apply to including BNR Udyog Ltd., as a comparable. Since this company passes RPT filter as well as income from providing ITES being more than 75% of its revenue, this company has to be regarded as comparable company. No other arguments were advanced for exclusion of this company. Hence this company is held to be comparable with that of the Assessee."

We found BNR Udyog Ltd., is providing IT enabled services of more than 75% of its revenue and whereas the learned AR could not substantiate with evidence in respect of other filters. Therefore, we are not inclined to interfere with the action of the AO/TPO in including the comparable company for transfer pricing adjustment. Accordingly, we uphold the action of the TPO and dismiss the submission of the assessee for exclusion.

17. The last comparable being Excel Infoways Ltd., where the turnover is Rs.7.90. The contention of the learned AR that it is functionally not comparable and fails ITeS revenue filter and employee cost filter. The learned AR substantiated his argument and relied on the abstract of Annual Report of the comparable company, where the said company is divided into ITeS and Infra activities and is functionally not comparable.

The co-ordinate bench of Tribunal in the case of *CGI Information Systems & Management Consultants (P) Ltd.* (supra) has dealt on exclusion , and the Delhi Tribunal in the case of *Baxter India Pvt Ltd.* (supra), para.25 which reads as under:

> **"25.** From the above, it is clear that above company does not pass the diminishing revenue filter as adopted by the TPO himself since its revenue has decreased consistently from financial years 2009-10 to 2011-12 i.e. including the year under consideration. Further, the above company has super normal profits. We further find the submissions of the assessee that Excel Infoways Ltd. has super normal profits during the current year has not been controverted by the Revenue. We find the Mumbai Bench of the Tribunal the case of *Willis Processing Services (India) Pvt. Ltd.* (*supra*) has upheld the order of the DRP rejecting Excel Infoways Ltd. as comparable company on the ground that the company has a super normal profit of 203.80% and low employee cost 10.02%. We, therefore, find merit in the submissions of the ld. counsel for the assessee that Excel Infoways Ltd. should be excluded from the list of comparable on account of super normal profit of the said company in the preceding year."

We find the decision of co-ordinate bench is for assessment year 2012-13 and matches with functional profile of the assessee-company and further the data of the company filed in the paper book is realistic and learned AR supported his arguments with practical aspects and the Tribunal decision cannot be overlooked. Accordingly, we direct the AO/TPO to exclude Excel Infoways Ltd., from the list of comparables for determination of ALP.

18. In respect of ground Nos.5 & 6, the learned AR argued that the TPO erred in determining TP adjustment of charging mark up of recovery transaction with its AE and the assessee's submissions were not considered and further no benefit was granted u/s 92C(2) of the Act. The learned AR filed the details on this aspect which were overlooked by the TPO. Whereas the learned DR supported the orders of the lower authorities and could not controvert the submissions of the learned AR.

19. We, on perusal of the material filed and the arguments of the learned AR and learned DR , are of the opinion that on the principles of natural justice, when the decision is being taken by TPO on mark-up in respect of the assessee-company, the submissions filed cannot be ignored and accordingly, we restore this disputed issue of the assessee to the file of the AO/TPO to consider and pass a reasoned order.

20. The last ground, the learned AR prayed that MAT credit be granted to the assessee. We have considered the submissions that the assessee is entitled for MAT credit u/s 115JAA which was not granted. Accordingly, we direct the AO to grant MAT credit as per provisions of law to the same.

21. In the result, the assessee's appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 22nd February, 2019.

Sd/-	sd/-
(A.K.GARODIA)	**(PAVAN KUMAR GADALE)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Place : Bengaluru
Dated : 22/02/2019
srinivasulu, sps

Copy to :

1 Appellant
2 Respondent
3 CIT(A)-
4 CIT
5 DR, ITAT, Bangalore.
6 Guard file

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore