IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBE

IT(**TP**)A Nos.1156/Bang/2011 & 1471/Bang/2012
Assessment years : 2007-08 & 2008-09

M/s. Wipro GE Healthcare P. Ltd., (for the merged entity of GE Medical Systems India P. Ltd), Plot No.4, Kadugodi Industrial Area, Bangalore – 560 067. **PAN: AAACG 7655G**	Vs.	The Deputy Commissioner of Income Tax, Circle 11(3), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri K.R. Pradeep, Advocate
Respondent by	:	Shri C.H. Sundar Rao, CIT-I(DR)(ITAT) Bangalore.

Date of hearing	:	16.09.2019
Date of Pronouncement	:	20.09.2019

O R D E R

Per N.V. Vasudevan, Vice President

IT(TP)A No.1156/Bang/2011 and IT(TP)A No.1471/Bang/2012 are appeals by the assessee against the final orders of assessment dated 21.09.2011 and 27.09.2012 passed by the Dy.CIT, Circle 11(3), Bangalore u/s. 143(3) r.w.s. 144C of the Income-Tax Act, 1961 ["the Act"] relating to assessment year 2007-08 and 2008-09 respectively.

IT(TP)A No.1156/Bang/2011

2. At the time of hearing, the ld. counsel for the assessee made a prayer for restricting adjudication of this appeal only insofar as concise grounds of appeal filed by the assessee before the Tribunal. The concise grounds of appeal read as follows:-

Concise Grounds of Appeal

A snap-shot of the detailed Grounds of Appeal is as under:

I. Transfer Pricing

A. Contract Manufacturing Segment:

1. Cost Plus Method ("CPM") has been taken as the most appropriate method instead of Transactional Net Margin Method ("TNMM"), as applied by the Appellant;

2. functional comparability ought to take precedence over product comparability

3. the comparable companies selected by the TPO is not comparable even based on product comparability;

B. Software services segment:

4. The learned AO/learned TPO/Hon'ble DRP erred in determining the ALP of provision of software services and proposing a transfer pricing adjustment of Rs. 71,470,061.

5. The learned AO/learned TPO/Hon'ble DRP erred in:

    5.1. in rejecting the comparability analysis carried in the TP documentation and conducting a fresh comparability analysis

    5.2. in adopting the arm's length mark-up to be 23.20 % [working capital adjusted margin]

5.3. in taking recourse to Section 133(6) of the Income-tax Act, 1961 ("the Act")

5.4. in considering 25% as the threshold limit for the Related Party Transactions ("RPT") filter.

5.5. in rejecting the upper limit for sales turnover filter proposed by the Appellant without providing any empirical analysis.

5.6. in not maintaining consistency in applying the filters of rejecting companies with software development revenue less than 75% of the total revenue and companies of different year end.

5.7. in upholding the actions of the learned TPO in applying the onsite filter for selection of software comparable companies with the use of the data obtained u/s 133(6) of the Act

5.8. in accepting companies which are not comparable to the appellant

6. That the learned AO/learned TPO/Hon'ble DRP erred in disregarding the use of multiple year data

7. That the learned AO/learned TPO/Hon'ble DRP erred in disregarding the fact that the Appellant has not shifted profits.

8. That Hon'ble DRP erred in concluding that the Appellant is exposed to single customer risk without evaluating the business arrangement of the Appellant.

9. That the learned AO/learned TPO/Hon'ble DRP erred in not allowing the benefits of market risk adjustment to the Appellant.

10. That the learned AO/learned TPO/Hon'ble DRP erred in not allowing the benefit of range of +/- 5%

C. Engineering Services and ITES segments:

The learned AO/ learned TPO/ Hon'ble DRP erred:

11. in determining the ALP of provision of engineering Services and IT enabled services [ITES] and in proposing a transfer pricing adjustment of Rs.230,203,182/-.

12. in considering the engineering services segment as functionally similar to ITES segment and benchmarking the engineering services segment with ITES comparable companies.

13. in considering the Rule 10 A definition as the basis of functional characterisation of engineering services segment by ignoring the fact that in the earlier years they had accepted the ALP of engineering services segment by benchmarking with engineering services comparable companies instead of ITES companies.

14. Erred in rejecting the TP documentation, and in doing so has grossly erred:

    14.1. in upholding the rejection of comparability analysis conducted in the TP documentation and performing a fresh comparability analysis.

    14.2. in adopting the arm's length mark up to be 28.30 %. [working capital adjusted margin] pertaining to the rendering of engineering services and ITES

    14.3. in completely relying on the unaudited data requisitioned and consequently obtained by taking recourse to the provisions of Section 133(6) of the Act, which in many instances are inconsistent with the data disclosed in audited reports.

    14.4. in considering 25% as the threshold limit for the RPT filter.

    14.5. inconsistency in applying the filters

14.6. in accepting companies which are functionally not comparable

14.7. in accepting companies having RPT exceeding 10%

15. in disregarding the use of multiple year data.

16. in concluding that the Appellant is exposed to single customer risk without evaluating the business arrangement of the Appellant.

17. erred in not allowing the benefits of market risk adjustment to the Appellant.

18. erred in not allowing the benefit of range of +/- 5%

Corporate Tax

Re- computation of deduction under section 10A of the Income Tax Act, 1961 ('Act')

Ignoring the concept of parity between Export Turnover and Total Turnover enunciated by the High Courts and not removing the expenses from Total Turnover also, when they are removed from Export Turnover.

The Appellant craves leave to add, alter, rescind and modify the grounds herein above or produce further documents, facts and evidence before or at the time of hearing of this appeal. For the above and any other grounds which may be raised at the time of hearing, it is prayed that necessary relief may be provided."

3. The assessee has also filed application for admission of certain additional grounds, but admission and adjudication of those additional grounds may not be necessary as the issues emerging in the concise grounds of appeal need to be remanded to the TPO for fresh adjudication and the assessee is always at liberty to raise the issues sought to be raised in the additional grounds in the set aside proceedings before the AO/TPO.

4. The assessee is a company engaged in the business of manufacturing of medical diagnostic equipment parts. The assessee had international transactions with Associated Enterprise and therefore the payments/receipts from the AE in the international transaction has to satisfy the Arms Length Price (ALP) as laid down in the provisions of section 92 of the Act. There were basically 4 segments for which the arm's length price (ALP) had to be determined viz., (1) Contract Manufacturing Segment, (2) Software services (3) Information Technology Enabled Services [ITeS], and (4) Engineering Services. The break up of the details of international transactions and the operating profit on sales and operating profit on cost in each of the segment was as follows:-

Segmental results :					
Description	Manufacturing	Software	ITES	Engineering services	TOTAL
Revenues	332,90,62,967	39,45,24,963	5,37,54,606	111,51,83,463	489,25,25,999
cost	301,43,33,165	37,57,38,061	4,83,18,549	103,35,10,225	447,19,00,000
profit	31,47,29,802	1,87,86,902	54,36,057	8,16,73,238	42,06,26,000
OP / Sales	9.45%	4.76%	10.11%	7.32%	8.60%
OP / Cost	10.44%	5.00%	11.25%	7.90%	9.41%

5. We shall now deal with each of the segments and the issues raised by the assessee in the grounds of appeal.

Contract Manufacturing Segment

6. As far as contract manufacturing segment is concerned, the TPO determined the ALP by adopting the Cost Price Method [CPM] as the Most Appropriate Method [MAM]. The determination of ALP by applying CPM was made by the TPO as follows:-

"11.8 Determination of Arm's Length Price:

Mean Arm's length Gross Margin	41.89% on Cost
Less: Adjustment for selling & distribution expenses	7.26% on Cost
Adjusted mean Gross Margin	34.63% on Cost

In the case of taxpayer, the cost of production is arrived at as under (Based on the details given in Annexure C12 of the TP study)

Description	Amount (Rs)
Sales	3329062967
Change in stock	**NA**
Raw material expenses	270,73,42,070
Packaging expenses / consumables	3,20,20,503
Purchase of finished goods	0
Power, fuel & water charges	NA
Compensation to employees	11,96,42,332
Indirect taxes	NA
Royalties, technical know-how	99,28,847
Lease rent & other rent	NA
Repairs & maintenance	4,03,94,544
Insurance premium paid	0
Outsourced mfg. jobs (incl. job	0
Depreciation	5,46,58,810
Cost of Production	**296,39,87,106**
Gross Margin	**36,50,75,861**
Gross Margin to Cost of	**12.32%**

Gross Cost incurred for contract manufacturing activity (as arrived at above)	A	Rs. 296,39,87,106/-
Arithmetical mean gross markup on cost	B	34.63%
Arms length Price @ 134.63% of the Cost	C	Rs. 399,04,15,841/-
Price shown in the international transactions	D	Rs. 332,90,62,967/-
Shortfall being adjustment u/s.92CA	D - C	Rs. 66,13,52,874/-

The above difference of Rs. 66,13,52,874/- is treated as an adjustment under manufacturing segment."

7. It is not in dispute before us that the assessee objected to the aforesaid adjustment made by the TPO and the DRP considered the price received in the international transaction as at arm's length. Therefore, the grievance projected by the assessee in concise grounds of appeal No.1.1 to 1.4 will not survive. Nevertheless, the ld. counsel for the assessee submitted that in AY 2006-07, the Tribunal in assessee's own case in IT(TP)A No.1414/Bang/2010 by its order dated 23.6.2017 vide para 4 held that TNMM will be the most appropriate method for determining ALP and restored the issue of determination of ALP to AO/TPO for fresh consideration. It is the stand of assessee before that even applying TNMM, the transaction is at arm's length and has in this regard placed reliance on the submissions filed on 18.1.2018 before us in the form of synopsis. The ld. counsel for the assessee made a request that accepting the submissions made in the synopsis, it should be held that even as per TNMM, no adjustment is required in determination of ALP.

8. We have considered the submissions and are of the view that the grievance projected by the assessee in this regard is purely academic because addition made consequent to determination of ALP has been deleted by the DRP and the revenue is not in appeal against the order of DRP. It appears to us that this ground has been taken by the assessee purely by way of abundant caution and we are of the view that no adjudication is required on this issue as raised in the concise grounds of appeal and recording the submissions of the assessee as above would be sufficient. Consequently, the grounds 1 to 3 are dismissed as academic and not requiring any adjudication.

Software services segment

9. As far as software services segment is concerned, the TPO computed the ALP of the international transaction of rendering software

development services to AE by choosing 26 comparable companies as per the chart given as **Annexure-I to this order**.

10. The TPO determined the ALP as follows:-

"21.8 Computation of Arms Length Price:

The arithmetic mean of the Profit Level indicators is taken as the arms length margin. (Please see Annexure B for details of computation of PLI of the comparables). Based on this, the arms length price of the software development services rendered by the taxpayer to its AE(s) is computed as under:

Arithmetic mean PLI	:	25.14%
Less: Working capital adjustment (Annexure-C)	:	1.94%
Adj. Arithmetic mean PLI		**23.20%**

Arm's Length Price:

Operating Cost (Rs. 37,57,38,061/-+ Recovery of expenses received of Rs. 1,33,00,576/-)	Rs. 38,90,38,637/-
Arm's Length Margin	23.20% of the Operating Cost
Arm's Length Price (ALP) @123.20% of operating cost	Rs. 47,92,95,600/-

21.9 Price Received vis-à-vis the Arm's Length Price:

The price charged by the tax payer to its Associated Enterprises is compared to the Arms Length price as under:

Arms Length Price @ 123.20% of operating cost	Rs. 47,92,95,600/-
Price charged in the international transactions (Rs. 39,45,24,963/- Recovery of expenses received of Rs. 1,33,00,576/-)	Rs. 40,78,25,539/-
Shortfall being adjustment u/s 92CA	Rs. 7,14,70,061/-

> The above shortfall of Rs. 7,14,70,061/- is treated as transfer pricing adjustment u/s 92CA.
>
> If any filter or criteria applied by the taxpayer for search of comparables is accepted or any filter or criteria applied by the TPO is relaxed, the entire accept / reject matrix changes resulting in a new comparable set including those companies which are not taken either by the taxpayer or by the TPO in its final comparable set and which may not be finding place in this order. In essence, any disturbance in any one of the criteria of the taxpayer or the TPO results in fresh comparability analysis and the TPO should be given an opportunity if such situation arises.
>
> Based on the above detailed discussion, the arm's length price of the international transactions pertaining to providing software development services is determined at Rs. 47,92,95,600/- (including recovery expenses received) instead of Rs. 40,78,25,539/- (including recovery expenses received) charged in its international transactions resulting in an adjustment to the extent of Rs. 7,14,70,061/-."

11. The assessee preferred objections before the DRP, but was not successful in getting the addition deleted. Aggrieved by the order of DRP, which was incorporated in the final order of assessment by the AO, the assessee has raised concise grounds 4 to 10. The ld. counsel for the assessee submitted that similar addition made by the AO in the AY 2006-07 was subject matter of appeal by the assessee before the Tribunal in IT(TP)A No.1414/Bang/2010 and the Tribunal by order dated 23.6.2017 set aside the order of DRP/AO and remanded the issue to TPO for fresh consideration. In the light of the decision of the Tribunal for AY 2006-07, the issue requires to be set aside to the AO. The ld. counsel for the assessee also prayed that the TPO should be directed to apply turnover filter on the higher side also in the light of decision of ITAT Bangalore Benches in the case of *Cenduit India Services Ltd. in IT(TP)A No.59/Bang/2016 dated 24.04.2019.* We direct the AO to consider the claim of assessee in this regard in accordance with the law. The TPO shall

decide the issue afresh keeping in mind the directions of the Tribunal for AY 2006-07 and after affording opportunity of being heard to the assessee.

Engineering Services & ITeS

12. As far as the dispute in the Engineering Services & ITeS segment is concerned, the concise grounds of appeal are grounds 11 to 18. The assessee rendered ITeS as well as engineering services. It is the plea of assessee that engineering segment is different from ITeS and that the TPO was not justified in treating the engineering services segment also as ITeS. The computation of ALP in the engineering segment done by the TPO was as follows:-

Net margin on cost earned by GEMS India for Engineering

Particulars	**Amount (IN R)**
Operating Income	111,51,83,463
Operating Expenses	103,35,10,225
Operating Profit (Op. Income - Op. Expenses)	8,16,73,238
Operating margin to total cost (OP/TC)	**7.90%**

Comparable companies selected by GEMS India in the engineering segment and their arithmetic mean

S.No.	**Company name**	**Operating Margin**
1	Geometric Software Solutions Co. Ltd.	8.13%
2	Infotech Enterprises Ltd.	18.45%
3	Larsen & Toubro Infotech Ltd.	10.66%
4	Lurgi India Co. Ltd.	-3.90%
	Mean	**8.33%**

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13. The Assessee claimed that its profit margins are within the +/- 5% variation to the profit margins of comparable companies permitted under the provisions of Sec.92C(2) of the Act.

14. The TPO however held that Engineering services provided by the Assessee was akin to ITES and therefore he combined the financials of both ITES and Engineering services segment and by doing so arrived at a OP/OC of 8.05%. The Assessee had benchmarked the ITES and Engineering services segment separately in its TP Analysis. But this was disregarded by the TPO.

15. The TPO selected 27 comparable companies in the ITES segment and arrived at an average arithmetic mean profit margin of 30.21% and after allowing a reduction of 1.91% determined the shortfall being adjustment u/s.92CA at Rs.23,02,03,182/- in the combined ITES and Engineering services segment. The calculations of the TPO in this regard are found at Paragraph 39.5 & 39.6 of his order. The DRP confirmed the action of the TPO.

16. The learned counsel for the Assessee submitted that the services provided by Assessee in the Engineering services segment were in the nature of engineering drawing/designs (both 2D and 3D models) like CAD, CAM etc. The engineering segment has been analyzed independently in the TP report and in the prior years by the Learned TPO, Hon'ble DRP and CIT (Appeals). The TPO until AY 2006-07 has not disputed the separate analysis of engineering segment and has also accepted the comparable companies provided in the TP report of the Assessee. The Assessee submitted that knowledge services do not constitute CAD /CAM driven engineering services. Engineering services is a separate recognized service line which can be distinctly demarcated from the IT Services, BPO services or KPO services. Hence, engineering services cannot be ideally compared with KPO or BPO services. He also brought to our notice that in the preceding years i.e. AY 2004-05, AY 2005-06 and AY 2006-07, the Learned TPO, Hon'ble DRP and Hon'ble CIT(Appeals) had accepted the

engineering services company as comparable companies proposed by the Assessee and have not combined or compared it with the ITES comparable companies. Placing reliance on the prior year orders of DRP AY 2006-07 and CIT(A) AY 2004-05, he gave the computation of net margin to total cost of the comparable companies for AY 2007-08 as given in the table below.

Particulars	**Source**	**Unadjusted margin (OP/TC) FY 2006-07**	**Working capital adjusted margin (OP/TC) FY 2006-07**
UB Engineering Ltd.	CIT(A) order AY 04-05	-24.43%	-25.71%
Hi Quality Steels Ltd.		2.45%	2.36%
RJ Shah & Co. Ltd.		21.65%	9.34%
Raunaq International Ltd.		8.55%	7.59%
TCE Consulting Engineers Ltd.	DRP order AY 06-07	22.69%	21.18%
Average		**6.18%**	**2.95%**

17. The learned counsel for the Assessee claimed that the adjusted operating profit to total cost of comparable companies was 6.28%. The Assessee's margin for the engineering segment was 7.90% which was higher than the aforementioned adjusted margins of the comparable companies. Based on the above submission, he pleaded that the engineering service segment is not comparable to ITES, BPO or KPO services and hence it will not be appropriate to aggregate the engineering service segment with the ITES segment. The learned DR relied on the order of the TPO/DRP.

18. We have heard the submissions and we find that the TPO/DRP did not accept the stand taken by the assessee and it considered engineering segment also as part of ITeS, despite a separate TP analysis having been carried out by the assessee in engineering services and ITeS. It is also the

plea of assessee that engineering services and ITeS have been considered as separate segments in the safe harbour guidelines framed under the Income-tax Rules, 1968 and this also supports the plea of assessee. We also find that in the preceding years 2004-05, 2005-06 & 2006-07, the engineering segment has been considered separately from the ITeS. The ld. DR, however, pointed out that the services rendered by the assessee were akin to ITeS and the conclusion of the revenue authorities have to be upheld.

19. After considering the rival submissions, we are of the view that rule of consistency will apply and consistent with the approach adopted for the AYs 2004-05 to 2006-07, engineering services segment should be considered as distinct from ITeS and comparable companies chosen accordingly. We hold and direct accordingly and set aside the orders of the DRP and remand the issue for fresh consideration by the TPO/AO in accordance with the above observations and in accordance with law, after affording opportunity of being heard to the assessee.

20. The only other ground that remains for consideration in the concise grounds of appeal is the issue with regard to exclusion of certain items of expenditure incurred in foreign exchange from the total turnover without excluding the same from the export turnover.

21. The Assessee was entitled to claim deduction u/s.10A of the Act on the profits derived from its Software Technology Parks of India (STPI) registered unit. Sec.10A(4) provides the methodology of computation of deduction u/s.10A of the Act and it lays down that the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the

undertaking. Export turnover has been defined under Explanation 2 (iv) to Sec.10A as:

> "export turnover" means the consideration in respect of export by the undertaking of articles or things or computer software received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (3), but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things or computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India."

22. While computing the deduction u/s.10A of the Act, the AO noticed that during the relevant assessment year, the Assessee had incurred certain expenditure in foreign currency, which was not reduced from the export turnover while computing deduction under section 10A of the Income Tax Act, 1961. The AO therefore excluded the aforesaid sum from the export turnover without excluding them from the total turnover. As a result, the deduction claimed u/s.10A of the Act by the Assessee was allowed at a lesser sum than what was claimed by the Assessee. It was the plea of the Assessee in the appeal against the assessment order before the CIT(A) that at all times during the relevant previous year, it was engaged in development of computer software and not in rendering any technical services. Communication expenses were incurred not for export of computer software outside India and therefore the exclusion from export turnover as done by the AO was not correct. Without prejudice to its contention that the aforesaid sums should not be excluded from the export turnover while computing deduction u/s.10A of the Act, the Assessee has also made an alternate prayer that expenses that are reduced from the export turnover should also be reduced from the total turnover and in this

regard has placed reliance on the decision of the Hon'ble Karnataka High Court in the case of *CIT v. Tata Elxsi Ltd [2012] 349 ITR 98 (Karn)* wherein it was held that while computing deduction u/s.10A of the Act expenses that are reduced from the export turnover should also be reduced from the total turnover. The DRP did not allow the claim of the Assessee.

23. Aggrieved by the order of DRP, the Assessee is in appeal before the Tribunal. The learned DR relied on the order of the DRP.

24. We have considered his submission. Taking into consideration the decision rendered by the Hon'ble High Court of Karnataka in the case of *CIT v. Tata Elxsi Ltd [2012] 349 ITR 98 (Karn)*, we are of the view that expenditure incurred in foreign currency should be excluded both from export turnover and total turnover. We are of the view that as of today, law declared by the Hon'ble High Court of Karnataka which is the jurisdictional High Court is binding on us. Moreover, the order of the Hon'ble Karnataka High Court has been upheld by the Hon'ble Supreme Court in the case of *CIT v. HCL Technologies Ltd. in Civil Appeal No.8489-98490 of 2013 & Ors. dated 24.04.2018*. In view of the above, we allow the alternative plea of the Assessee.

25. In the result, this appeal of the assessee is partly allowed.

IT(TP)A.No.1471/B/2012(AY 2008-09)

26. As far as this appeal by the Assessee for AY 2008-09 is concerned, the concise grounds of appeal filed by the Assessee that needs adjudication are as follows:

"**Concise Grounds of Appeal**

A snap shot of the Detailed Grounds of Appeal is as under:

I. Transfer pricing

1. **Contract Manufacturing Segment**:

1.1. The learned DRP has taken a contrary stand compared to the position taken by the Honourable DRP and CIT(A) in the earlier years;

1.2. Cost Plus Method ("CPM") has been taken as the most appropriate method instead of ("TNMM"), as applied by the Appellant;

1.3. functional comparability ought to take precedence over product comparability;

1.4. the comparables selected by the TPO is not comparable even based on product comparability;

1.5. erred in withdrawing the average selling and marketing adjustment granted by the learned TPO in the transfer pricing order without issue of any notice;

1.6. if TNMM is applied, the margins will be within +/-5 percent range at ALP; and 1.7. Has not provided the working capital adjustment and selling and marketing adjustment under CPM and a contrary position has been adopted against the position approved in the preceding years by the Honourable DRP and CIT(A).

2. **Engineering Services**:

2.1. The learned DRP has taken a contrary stand compared to the position taken by the Honourable DRP and CIT(A) in the earlier years;

2.2. considering the engineering services segment as functionally similar to ITES segment and benchmarking the engineering services segment with ITES comparable companies, though ;

2.3. the Appellant has provided two separate benchmarking analysis; and

2.4. Our stand was accepted in the earlier years and a contrary stand has been taken in this year, without adducing any reason.

3. **ITES and Software services segments**:

The Honourable DRP and the learned AO have erred in:

3.1. changing the functional characterisation of engineering services segment, thereby taking a contrary stand this year, without any reason;

3.2. in not granting adjustment for market;

3.3. in taking a RPT limit of 25%, which is against the guidance set in several case laws, including those of the Hon'ble Bangalore Tribunal;

3.4. inconsistency in applying filters like export earnings etc. and not applying necessary filters like employee cost filters, which are again not consistent with the guidance of several case laws;

3.5. upholding the actions of the learned TPO in applying the export filter, accepting companies with significant advertisement expenses and research and development expenses and companies having different year end; and

3.6. selecting wrong comparables, inconsistent with the guidance of several case laws.

II. **Corporate Tax**

1. **Re- computation of deduction under section 10A of the Act**

Ignoring the concept of parity between ET and TT enunciated by the High Courts and not removing the expenses from TT also, when they are removed from ET

2. **Disallowance of expenses under section 14A**

Has Ignored the fact that, the disallowance under section 14A can be made only if the actual expense are incurred in relation to exempt income and the assessee has not incurred any such expenditure.

III. **Prayer**

In view of the above, the Company would like to submit that, as 92% of the demand has arisen due to contrary stand taken by the Honourable DRP from the earlier years, pressing for payment of such demand would cause undue hardship to the Company. Therefore, request the Honourable bench to post the hearing and grant the relief to Company at the earliest."

27. As in AY 2007-08, one of the disputes in this appeal is also determination of ALP in respect of international transactions in the four different segments viz., Contract Manufacturing segment, Engineering Design Services, ITES Segment and SWD services segments. The arguments advanced in AY 2008-09 are also identical to the arguments advanced on these issues in AY 2007-08.

28. As far as Ground No.1 raised by the Assessee in the grounds of appeal is concerned, the facts are that the Assessee entered into a contract for contract manufacturing with its AE and therefore the said transaction was an international transaction and the price received by the Assessee in the said transaction has to pass the ALP test as laid down in Sec.92 of the Act. The Assessee adopted TNMM as the MAM for determining ALP. The net margin on cost earned by the Assessee in the contract manufacturing segment was as follows:

Operating Income	Rs.2,832,793,348
Cost of Production	Rs. 2,704,125,868
Gross Profit (Op. Income - Cost of Production)	Rs. 128,667,480
Gross Margin on Cost of Production	4.76%
Total Operating Expenses	Rs. 2,729,518,203
Operating Profit	Rs. 103,275,145
Operating /Net margin (OP/TC)	**3.78%**

29. The Assessee chose comparable companies and the average arithmetic mean profit of such comparable companies after permissible variation u/s.92C(2) was within Arm's Length Price.

30. The learned TPO rejected the analysis carried out by the Assessee and rejected all the comparable companies selected in the TP Study. The learned TPO adopted Cost Plus Method ("CPM") as the most appropriate method and granted selling and marketing adjustment for the below mentioned comparable companies. The following Comparable companies were selected by TPO and their arithmetic mean of profit margin was as follows:

SI. No.	Name of the Company	Unadjusted
1	Alpha X-Ray Technologies (India)	26.96%
2	Artficial Limbs manufacturing	28.09%
3	Centenial Surgical Surture Ltd	56.27%
4	Iscon Surgicals Ltd	18.56%
5	Poly Medicure Ltd	19.56%
6	Shree Pacetronix Ltd	47.99%
7	South India Surgicals Company Limited	33.28%
	ARITHMETIC MEAN	**32.96%**

31. The TPO has granted average marketing adjustment of 7.18% on the above. However no working capital adjustment was granted. The learned TPO imposed an adjustment as shown in the table below.

"Computation of arm's length price by TPO and the adjustment made

Arm's Length Mean Margin	32.96%
Less: Marketing Adjustment	7.18%
Adjusted mean margin of the comparable companies	25.78%
Operating Cost	2,704,125,868
Arm's Length Price (ALP) 134.63% of Operating Cost	34,01,249,516
Price charged in international transactions	2,832,793,348
Short fall being adjustment u/s. 92CA	**5,68,456,168**

32. The DRP confirmed the order of the TPO. Before us, the learned counsel for the Assessee submitted that working capital adjustment proportionate to the cost of production and selling and marketing adjustment on actual basis ought to have been provided. It was submitted that even after considering the comparable companies selected by the TPO, the price received by the Assessee should be regarded as at ALP, if working capital adjustment and marketing adjustment is allowed at actuals, the details of which are given below. It was submitted that the method of providing adjustments at actuals was also approved by the Hon'ble DRP for AY 2007-08 and AY 2006-07 and the Hon'ble CIT (A) in AY 2005-06 and AY 2004-05 [DRP order for AY 2007-08 and AY 2006-07 and the CIT(A) order for AY 2005-06 and AY 2004-05. Margin of the comparable companies post working capital and selling and marketing adjustment on actuals is as given below:

Company	**Gross Margin/COP [A]**	**Working Capital Adjustment [B]**	**Selling & Marketing Adjustment [C]**	**Adjusted Gross Margin/COP [D=A-B-C]**
Artificial Limbs	14.28%	8.76%	10.78%	-4.72%
Centennial Surgical	55.39%	7.10%	39.25%	10.62%
Poly Medicure	16.94%	3.10%	5.06%	8.93%
Shree Pacetronix	37.21%	9.31%	6.59%	22.06%
South India Surgicals Co. Ltd	22.94%	7.37%	8.86%	6.96%
Iscon Surgical	17.18%	6.62%	6.04%	4.30%
Alpha X-Ray	28.44%	5.92%	10.09%	12.86%
Average	**27.48%**	**6.9%**	**12.4%**	**8.72%**
GEMS India				**4.76%**

33. It was submitted that if the Assessee's argument is accepted and the working capital adjusted arithmetic mean of the 7 comparable companies as shown in the tables above i.e. 8.72% is taken, then the same

would be within the range of + / - 5% of the Assessee's Net Margin, no TP adjustment is required and therefore the TP adjustment made by the TPO is liable to be quashed. It was further submitted that the TPO adopted Transactional Net Margin Method ("TNMM") as the most appropriate method for AY 2009-10 and AY 2011-12. The ITAT also accepted TNMM as the MAM in Assessee's own case for AY 2006-07 and the matter was remitted back to the file of the TPO for further verification by the TPO. It was submitted that by adopting TNMM as the most appropriate method for the contract manufacturing segment, the net level margin of the Assessee would be at ALP even considering the TPO's set of comparable companies. The Margin of the comparable companies adopting TNMM as the most appropriate method, was also given and the same is as follows:

Company	OP/TC
Artificial Limbs	1.45%
Centennial Surgical	55.39%
Poly Medicure	4.20%
Shree Pacetronix	11.31%
South India Surgicals Co. Ltd.	22.94%
Iscon Surgical	8.68%
Alpha X-Ray	4.48%
Average	**6.33%**

Range Computation

Particulars	Assessee's Segment	5%	-5%
Revenue	2,83,27,93,348	2,97,44,33,015	2,69,11,53,680
Cost	2,72,95,18,203	2,72,95,18,203	2,72,95,18,203
Operating Profit	10,32,75,145	244914812	-38364522
OP/OC	**3.78%**	**8.97%**	**-1.41%**

Therefore, even if TNMM is considered as the most appropriate method then the operating margin of the company would be within the range of + / -

5% of the Assessee's Net Margin, no TP adjustment is required and therefore the TP adjustment made by the TPO is liable to be quashed.

34. It was also submitted that reimbursement of expenses received should not be included in the cost base. It was argued that reimbursements of expenses received are expenses incurred on behalf of related parties for administrative convenience and only represent "pass through costs". These reimbursements were not received against any specific services rendered by the assessee to its AEs. These were pure cost reimbursements (e.g. travel expenses, hotel stay expenses) which the assessee had incurred behalf of its AE for administrative convenience and later got reimbursed at cost. It was submitted that the reimbursement of expenses received be allowed without a mark-up and not be added back to the operating revenue for the purposes of an adjustment. The learned counsel for the Assessee placed reliance on the Bangalore Tribunal ruling in the case of FCG Software Services India Ltd [IT. TP A No. 1242/Bang/2012] wherein the ITAT held that if the receipts are mere recovery of expenses incurred without service element, then the same should not be considered as part of the cost base for computation of mark-up.

35. The learned DR relied on the order of the DRP.

36. We find that the ITAT Bangalore in Assessee's own case for AY 2006-07 in IT(TP) A.No.1414/Bang/2010 order dated 23.6.2017 remanded the issue of determination of ALP in the contract manufacturing segment to the TPO/AO for fresh consideration holding that TNMM should be the MAM for determination of ALP. Facts and circumstances of the case being identical in AY 2008-09, following the decision of the Tribunal, we set aside the impugned order with similar directions as was given in AY 2006-07 and direct the TPO/AO to determine ALP in accordance with the directions

contained in the earlier order of the Tribunal and keeping in view the other submissions on merits made by the Assessee before us. Gr.No.1 is thus treated as allowed for statistical purpose.

37. As far as Ground No.2 is concerned, the preliminary issue is as to whether engineering services should not be regarded as being ITES in nature and comparable companies ought not to have been selected treating the engineering services segment as akin to ITES segment. The arguments and submissions on this ground are identical to the arguments advanced in AY 2007-08. The factual details in this regard are as follows:

The Net margin on cost earned by the Assessee for Engineering Segment was as follows:

Particulars	**EDS**
Operating Income	1,310,310,457
Operating Expenses*	1,176,105,198
Operating Profit (Op. Income - Op. Expenses)	134,205,259
Operating/Net margin (OP/TC)	**11.41%**

38. The Comparable companies selected by the Assessee in the engineering segment and their arithmetic mean was as follows:

S.No	**Comparable Companies**	**ROTC**
1	Aztecsoft Ltd.	11.70%
2	Geometric Ltd.	16.99%
3	Infotech Enterprises Ltd.	25.04%
4	Larsen & Toubro Infotech Ltd.	15.64%
5	Neilsoft Ltd.	9.17%
6	Quintegra Solutions Ltd.	9.85%
7	Prithvi Information Solutions Ltd.	14.17%
8	T V S Infotech Ltd.	-
	Arithmetic Mean	**11.32**

39. The Assessee claimed that the price charged in the international transaction should be regarded as at Arm's Length after permissible variation to the ALP profit margin of +/- 5% permitted under the provisions of Sec.92C(2) of the Act.

40. The TPO however combined the ITES and Engineering services segment together and determined ALP and consequent addition to be made to the total income on account of adjustment to ALP.

41. The submissions made by the Assessee are identical to the submission made in AY 2007-08 which we have extracted in the earlier part of this order and do not wish to repeat the same. The net margin to total cost of the comparable companies for AY 2008-09 is provided in the table below.

Particulars	Source	Unadjusted margin (OP/TC) FY 2007-08	Working capital adjusted margin (OP/TC) FY 2007-08
UB Engineering Ltd.		6.70%	5.71%
Hi Quality Steels Ltd.	CIT(A) order AY 04-05	2.15%	2.08%
RJ Shah & Co. Ltd.		49.07%	-24.36%
Raunaq International Ltd.		11.46%	9.96%
TCE Consulting Engineers Ltd.	DRP order AY 06-07	27.93%	27.69%
Lurgi India Co. Ltd.		-0.14%	0.86%
Mahindra Acres Consulting Engineers Ltd.		33.89%	31.88%
Average		18.72%	7.69%

42. The learned counsel for the Assessee submitted that the adjusted operating profit to total cost of comparable companies is 7.69%. The Assessee's margin for the engineering segment is 11.32 which is higher than the aforementioned adjusted margins of the comparable companies. Based on the above submission, he submitted that the engineering service segment is not comparable to ITES, BPO or KPO services and hence it will not be appropriate to aggregate the engineering service segment with the ITES segment.

43. The learned DR relied on the order of the DRP.

44. We have already decided similar issue in AY 2007-08 in the earlier part of this order. Facts and circumstances being identical in the present AY, we deem it fit and proper to remand the issue of determination of ALP to the TPO/AO for fresh consideration as per directions given in AY 2007-08. Gr.No.2 is accordingly treated as allowed for statistical purpose.

45. As far as Gr.No.3 raised by the Assessee is concerned, the same deals with two segments ITES and SWD services segment. The first segment to be considered is ITES. As far as this segment is concerned, the facts are as follows:

ITeS Segment

Net margin on cost earned by the Assessee for the ITeS Segment

Particulars	Amount (INR)
Operating Income	55,994,948
Operating Expenses*	47,873,928
Operating Profit (Op. Income - Op. Expenses)	8,121,021
Operating/Net margin (OP/TC)	**16.96%**

Comparable companies selected by the Assessee and their arithmetic mean

Sr. No.	Company Name	Operating Margin
1	Cosmic Global Ltd.	11.49
2	Shreejal Info Hubs Ltd.	1.02%
3	Triton Corp Ltd.	28.43%
4	Transworks Information Services Ltd.	4.35%
5	H T M T Global Solutions Ltd.	15.01%
6	Allsec Technologies Ltd.	28.47%
7	Sparsh B P 0 Services Ltd.	4.91%
	Mean	**13.38%**

Since the profit margin of the Assessee was higher than the comparable companies, the Assessee claimed that the price received should be regarded as at Arm's length.

46. The learned TPO rejected the analysis carried out by the Assessee and imposed an adjustment of Rs. 161,312,284 in the ITeS segment by combining Engineering and ITeS segment, which action was confirmed by the DRP.

Sr. No.	Name of the Company	Unadjusted	Working Capital Adjusted (incorporated from SCN)
1	Accentia Technologies Ltd	41.77%	37.58%
2	Acropetal Technologies Ltd (Seg)	35.30%	13.50%
3	Aditya Birla Minacs Worldwide Ltd	-4.00%	-4.82%
4	Asit C Mehta Financial Services Ltd (Seg)	9.42%	7.55⁰/0
5	Caliber Point Business Solutions Ltd	10.97%	7.06%
6	Coral Hubs Ltd	50.68%	37.60%
7	Cosmic Global Ltd	23.30%	21.94%
8	Crossdomain Solutions Ltd	27.03%	26.34%
9	Datamatics Financials Services Ltd (Seg)	29.11%	-6.39%
10	e4e Healthcare solutions Ltd (formerly known as Nittany Outsourcing Services Pvt Ltd)	18.54%	16.33%

11	Eclerx Services Limited	58.80%	56.48%
12	Genesys International corporation Ltd	47.40%	44.14%
13	Infosys BPO Ltd	19.66%	18.60%
14	IServices India Private Limited	10.77%	9.41%
15	Jindal Intellicom Pvt Ltd	-10.29%	-11.38%
16	Mold Tek Technologies Ltd	96.66%	90.28%
17	R Systems International Ltd (Seg)	4.30%	3.32%
18	Spanco Ltd (Seg)	8.81%	3.07%
19	Wipro Ltd (Seg)	30.05%	30.05%
20	Allsec Technologies Ltd	-13.29%	-15.56%
	ARITHMETIC MEAN	**24.75%**	**19.26%**

47. The learned counsel for the Assessee submitted that Without prejudice to the other grounds of appeal, if decisions of this Hon'ble Tribunal in the cases of Flextronics Technologies India Pvt. Ltd. ITA No. 1559/Bang/2012, rendered in the case of an ITES company such as the Assessee for the very same AY, is followed, the following comparable companies would be the Accepted / Rejected.

Sr. No.	Name of the Company	Margin Unadj. %	Margin WC adjusted	Remarks	Page Reference in the case law compendium
1	Accentia Technologies Ltd.	41.77%	37.58%	Reject - dissimilar function	Page No. 346
2	Acropetal Technologies Ltd.	35.30%	13.50%	Reject - dissimilar function	Page No. 347

3	Aditya Birla Minacs Worldwide Ltd.	-4.00%	-4.80%	Accept	
4	Asit C Mehta Financial Services Ltd.	9.42%	7.56%	Accept	
5	Caliber Point Business Solutions Ltd.	10.97%	7.07%	Accept	
6	Coral Hubs Ltd.	50.68%	37.59%	Reject - dissimilar function	Page No.349
7	Cosmic Global Ltd.	23.30%	21.94%	Accept	
8	Crossdomain Solutions Ltd.	27.03%	26.34%	Reject - dissimilar function	Page No.349
9	Datamatics Financial Services Ltd.	29.11%	-6.37%	Accept	
10	e4e Healthcare Solutions Ltd.	18.54%	16.34%	Accept	
11	Eclerx Services Ltd.	58.80%	56.46%	Reject — dissimilar function	Page No. 350
12	Genesys International Corporation Ltd.	47.70%	44.13%	Reject — dissimilar function	Page No. 351
13	Infosys BPO Ltd.	19.66%	18.60%	Reject — dissimilar function	Page No. 351
14	Iservices India Pvt. Ltd.	10.77%	9.41%	Accept	
15	Jindal Intellicom Pvt. Ltd.	-10.29%	-11.36%	Accept	
16	Mold-Tek Technologies Ltd.	96.66%	90.24%	Reject dissimilar function	No. 352
17	R Systems International Ltd.	4.30%	3.33%	Accept	
18	Spanco Ltd.	8.81%	3.09%	Accept	
19	Wipro Ltd.	30.05%	30.05%	Reject - dissimilar function	Page No.352, 353
20	Allsec Technologies Ltd.	-13.29%	-15.54%	Accept	

48. The Computation of arithmetic mean of 11 comparable companies that remain after accept/reject matrix as given in the table is adopted would be as follows:

SI. No	Name of the Company	Unadjusted OP/TC	Adjusted OP/TC
1	Aditya Birla Minacs Worldwide Ltd.	-4.00%	-4.80%
2	Asit C Mehta Financial Services Ltd.	9.42%	7.56%
3	Caliber Point Business Solutions Ltd.	10.97%	10.97%
4	Cosmic Global Ltd.	23.30%	21.94%
5	Datamatics Financial Services Ltd.	-5.35%	-6.37%
6	e4e Healthcare Solutions Ltd.	18.54%	16.34%
7	'services India Pvt. Ltd.	10.77%	9.41%
8	Jindal Intellicom Pvt. Ltd.	-10.29%	-11.36%
9	R Systems International Ltd.	4.30%	3.33%
10	Spanco Ltd. (Seg)	8.81%	3.09%
11	Allsec Technologies Ltd.	-13.46%	-15.54%
	Arithmetic mean	**4.82%**	**3.14%**

49. The working capital adjusted arithmetic mean of the 11 comparable companies would be within the arm's length range. Therefore, no TP adjustment is required and the TP adjustment made by the TPO is liable to be quashed.

50. We have already held while deciding Gr.No.2 that the engineering and the ITES segments should be separately considered and not combined. In view of the aforesaid finding, we set aside the order of the DRP/AO on this issue and remand the question of determination of ALP in the ITES segment alone without combining the same with the engineering services segment afresh. The TPO/AO will consider the submissions made by Assessee before us and also afford opportunity of being heard to the Assessee in the set aside proceedings.

51. As far as the SWD services segment which is also part of Gr.No.3 is concerned, the factual details are as follows:-

a. Software Segment

Net Margin on cost earned by the Appellant

Particulars	**OP/OC**
Operating Income	Rs.371,438,299
Operating Expenses	Rs.345,260,313
Operating Profit (Op. Income - Op. Expenses)	Rs.26,177,986
Operating/Net margin (OP/TC)	**7.58%**

Comparable companies selected by the Assessee

S.No.	**Company Name'**	**Operating Margin**
1	Aztecsoft Ltd.	7.10%
2	Larsen & Toubro Infotech Ltd.	15.43%
3	Mindtree Ltd.	14.87%
4	Mphasis Ltd.*	13.73%
5	P S I Data Systems Ltd.*	6.84%
6	Persistent Systems Pvt. Ltd.	19.75%
7	Prithvi Information Solutions Ltd.	13.49%
8	Quintegra Solutions Ltd.	9.85%
9	R S Software (India) Ltd.	13.96%
10	S I P Technologies & Exports Ltd.	13.10%
11	Sonata Software Ltd.	13.69%
12	T V S Infotech Ltd.	-12.04%
	Arithmetic Mean	**10.81%**

52. The TPO rejected the analysis carried out by the Assessee and accepted only three comparable companies.

Comparable companies selected by the TPO

Sr. No.	**Name of the Company**	**Unadjusted margin**	**WC Adjusted margin**
1	Avani Cincom Technologies	25.62%	25.62%
2	Bodhtree Consulting Ltd	18.72%	18.12%
3	Celestial Biolabs	87.94%	80.25%
4	E-Zest Solutions Ltd	29.81%	28.17%
5	Flextronics (Aricent)	7.86%	4.17%
6	iGate Global Solutions Ltd	13.99%	10.05%
7	Infosys	40.37%	37.18%

8	KALS Information System (Seg)	41.94%	27.60%
9	LGS Global Ltd	27.52%	24.06%
10	Mindtree Ltd (Seg)	16.41%	12.35%
11	Persistent Systems Ltd	20.31%	19.11%
12	Quintegra Solutions Ltd	21.74%	13.35%
13	R Systems Intenational (Seg)	15.30%	12.05%
14	RS Software (India) Ltd	7.41%	6.06%
15	Sasken Communication Technologies Ltd (Seg)	7.58%	5.61%
16	Tata Elxsi Ltd (Seg)	18.97%	17,38%
17	Thirdware Solutions Ltd	19.35%	15.53%
18	Wipro Ltd (Seg)	28.45%	28.45%
19	Softsol India Ltd	17.89%	14.11%
20	Lucid Software Ltd	16.50%	14.93%
ARITHMETIC MEAN		**23.65%**	**20.71%**

Computation of arm's length price by TPO and the adjustment made

Arm's Length Mean Margin	23.65
Less: Working Capital Adjustment	2.47
Adjusted mean margin of the comparable companies	21.18
Operating Cost	35,63,12,516/-
Arm's Length Margin (21.18% of Operating Cost)	7,54,66,991/-
Arm's Length Price (ALP) 121.18% of Operating Cost	43,17,79,506/-
Price charged in international transactions*	38,24,90,503/-
Short fall being adjustment u/s. 92CA	**4,92,89,004**

53. The DRP confirmed the order of the TPO. The learned counsel for the Assessee submitted that without prejudice to the other grounds of appeal if the decision of this Hon'ble Tribunal rendered in the cases of **Infineon Technologies India Pvt. Ltd. Vs. ACIT- ITA No. 1670/13/12, a company which is also in SWD services and similar to the Assessee company, 13** out of the 20 comparable companies selected by the TPO would stand excluded and in that event the following would be the Accept / Reject matrix:

Sr. No.	Name of the Company	Margin Unadj. %	Margin - WC adjusted	Remarks	Page Reference in the case law compendium
1	Avani Cimcon	25.62%	25.62%	Reject - dissimilar Page 314function	
2	Bodhtree Ltd	18.72%	18.12%	Reject - dissimilar Page 336function	
3	Celestial Biolabs Ltd	87.94%	80.25%	Reject - dissimilar Page 326function	
4	E-Zest Solutions Ltd	29.81%	28.17%	Reject - dissimilar Page 331function	
5	Flextronics Software	7.86%	4.17%	Accept	
6	Igate Global Solutions Ltd	13.99%	10.05%	Accept	
7	Infosys Technologies Ltd	40.37%	37.18%	Reject - dissimilar Page 329function	
8	Kals Info Systems (Seg)	31.29%	27.60%	Reject - dissimilar Page 328function	
9	LGS Global Ltd (Lanco)	27.52%	24.06%	Accept	
10	Lucid Software	16.50%	14.93%	Reject - dissimilar function	Page 333
11	Mindtree Consulting (Seg)	16.41%	12.35%	Accept	
12	Persistent Systems Ltd	20.31%	19.11%	Reject - dissimilar function	Page 334
13	Quintegra Solutions Ltd	21.74%	13.35%	Reject - dissimilar function	Page 335
14	R S Software (India) Ltd	7.41%	6.06%	Accept	
15	R Systems International (Seg)	15.30%	12.05%	Accept	
16	Sasken Communications (Seg)	7.58%	5.61%	Accept	
17	Softsol India Ltd	17.89%	14.11%	Reject - dissimilar function	Page 335
18	Tata Elxsi Ltd(seg)	18.97%	17.38%	Reject - dissimilar function	Page 331
19	Thirdware Solutions	19.35%	15.53%	Reject – dissimilar function	Page 332
20	Wipro Limited (Seg)	28.45%	28.45%	Reject - dissimilar function	Page 330

54. If the correct working capital adjusted margins are considered, the arithmetic mean of seven accepted comparable companies out of the 20 comparable companies would be as follows:

Computation of arithmetic mean of seven comparable companies

SI. No.	Name of the Company	Operating margin on cost - WC adjusted
1	Flextronics Software (Seg)	4.17⁰/0
2	iGate Global Solutions Ltd. (Seg)	10.05%
3	LGS Global Ltd.	24.06%
4	Mindtree Consulting (Seg)	12.35%
5	R Systems International (Seg)	12.05%
6	R S Software India Ltd.	6.06%
7	iGate Global Solutions Ltd. (Seg)	5.61%
	Arithmetic Mean	**10.62%**

Range Computation

Particulars	GEMS (IT Segment)	5%	-5%
Revenue	371,438,299	390,010,214	352,866,384
Cost	345,260,313	345,260,313	345,260,313
Operating Profit	26,177,986	44,749,901	7,606,071
OP/OC	**7.58%**	**12.96%**	**2.20%**

55. The working capital adjusted arithmetic mean of the seven comparable companies which works out to be 10.62% would be within the range of + / - 5% of the Assessee's net margin. Therefore, no TP adjustment would be required and therefore, the TP adjustment made by the TPO is liable to be quashed.

56. We have considered the submission of the Assessee. While deciding identical ground in AY 2007-08, We have already set aside this issue to the TPO/AO for fresh consideration with certain directions. Facts and circumstances being identical in the present AY, we deem it fit and proper to remand the issue of determination of ALP to the TPO/AO keeping in mind the submissions made as above, for fresh consideration. This part of Gr.No.3 is accordingly treated as allowed for statistical purpose.

57. The other corporate issue that arises for consideration is whether expenses incurred in foreign currency should be excluded from both Export turnover and total turnover while computing deduction u/s.10A of the Act.

58. We have already decided identical ground of appeal in AY 2007-08 in the earlier part of this order. Taking into consideration the decision rendered by the Hon'ble High Court of Karnataka in the case of *CIT v. Tata Elxsi Ltd [2012] 349 ITR 98 (Karn)*, we are of the view that expenditure incurred in foreign currency should be excluded both from export turnover and total turnover. We are of the view that as of today, law declared by the Hon'ble High Court of Karnataka which is the jurisdictional High Court is binding on us. Moreover, the order of the Hon'ble Karnataka High Court has been upheld by the Hon'ble Supreme Court in the case of *CIT v. HCL Technologies Ltd. in Civil Appeal No.8489-98490 of 2013 & Ors. dated 24.04.2018*. In view of the above, the ground raised in this regard is allowed.

59. The other ground relating to disallowance u/s.14A of the Act, was not pressed for adjudication and hence dismissed as not pressed.

60. In the result, this appeal is partly allowed.

61. In the result, both the appeals by the Assessee are partly allowed.

Pronounced in the open court on this 20th day of September, 2019.

Sd/-	Sd/-
(VIKRAM SINGH YADAV) ACCOUNTANT MEMBER	(N.V. VASUDEVAN) VICE PRESIDENT

Bangalore,
Dated, the 20th September, 2019.

/ Desai Smurthy /

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

By order

Assistant Registrar,
ITAT, Bangalore.

ANNEXURE-I TO ORDER

Sl. No.	Company Name	Sales (Rs.cr.)	OP to Total Cost%	Product sales (Rs. / % of sales)	RPT(Rs.cr.)	% of RPT over Sales	Export (Rs. Cr.)	% of exports over Sales	Onsite Revenues	R&D (Rs.cr.)	%of r&d over sales	Mktg. (Rs.cr.)	%of mktg. over sales	% of salary /sales	Data base
1	Accel Transmatic Ltd (Seg.)	9.68	21.11%	0	0.6	6.20%	9.43	97.42%	3.28%	0	0.00%	0.04	0.41%	37.90%	P (Seg.)
2	Avani Cimcon Technologies Ltd	3.55	52.59%	0	0.07	1.97%	3.55	100%	0	0	0.00%	0.05	1.41%	41.78%	P
3	Celestial Labs Ltd	14.13	58.35%	0.51 / 3.61%	0	0.00%	13.23	93.63%	0	2.52	17.83 %	0.94	6.65%	25.69%	P
4	Datamatics Ltd	54.51	1.38%	0	7.16	13.14%	53.53	98.20%	23.00%	0	0.00%	0.14	0.26%	61.59%	P
5	E-Zest Solutions Ltd	6.26	36.12%	0	0	0.00%	6.14	98.08%	0	0	0.00%	0.07	1.12%	61.50%	P
6	Flextronics Software Systems Ltd (Seg.)	848.66	25.31%	9.21 / 1.08%	44.21	5.21%	807.75	95.18%	22.00%	3.88	0.46%	7.02	0.83%	46.31% *	P (Seg.)
7	Geometric Ltd (Seg.)	158.38	10.71%	0	31.64	19.98%	134.71	85.05%	21.66%	0	0.00%	3.18	2.01%	60.86% *	
8	Helios & Matheson Information Technology Ltd	178.63	36.63%	0	5.24	2.93%	101.86	57.02%	73.00%	0	0.00%	6.28	3.52%	35.67%	P
9	IGate Global Solutions Ltd	747.27	7.49%	0	39.64	5.30%	747.27	100%	54.00%	0	0.00%	4.51	0.60%	69.74%	P (EF)
10	Infosys Technologies Ltd	13149	40.30%	538 / 4.1%	664	5.05%	12939	98.40%	51.70%	167	1.27%	719	5.47%	45.84%	P
11	Ishir Infotech Ltd	7.42	30.12%	0	1.63	21.97%	7.08	95.42%	0	0	0.00%	0.57	7.68%	48.25%	P
12	KALS Information Systems Ltd (Seg.)	2.00	30.55%	106 / 3%	0	0.00%	2	100%	0	0	0.00%	0.08	4.00%	36.62%	C (EF)
13	LGS Global Ltd (Lanco Global Solutions Ltd)	45.39	15.75%	0	1.22	2.69%	43.75	96.39%	56.14%	0	0.00%	0.83	1.83%	64.00%	P
14	Lucid Software Ltd	1.70	19.37%	0	0	0.00%	1.69	99.41%	0	0	0.00%	0.3	17.65 %	41.17%	P (EE)
15	Mediasoft Solutiions Ltd	1.85	3.66%	0	0	0.00%	1.84	99.46%	0	0	0.00%	0.03	1.62%	69.19%	P
16	Megasoft Ltd	139.33	60.23%	26.47 / 19%	10.21	7.33%	134.36	96.43%	56.00%	0	0.00%	2.2	1.58%	37.87%	P
17	Mindtree Ltd	590.35	16.90%	0	0	0.00%	553.44	93.75%	36.18%	0	0.00%	2.75	0.47%	55.27%	P
18	Persistent Systems Ltd	293.75	24.52%	2.16 / 0.73%	28.55	9.72%	282.06	96.02%	4.83%	2.71	0.92%	2.35	0.80%	54.95%	P
19	Quintegra Solutions Ltd	62.72	12.56%	0	0	0.00%	59.91	95.52%	48.52%	0.39	0.62%	2.02	3.22%	66.68%	P
20	R S Software (India) Ltd	101.04	13.47%	0	0.85	0.84%	97.17	96.17%	68.77%	0	0.00%	1.83	1.81%	64.62%	P
21	R Systems International Ltd (Seg.)	112.01	15.07%	2.68 / 2.39%	12.77	11.40%	105.36	94.06%	8.55%	0.63	0.56%	0.93	0.83%	56.32%*	P

22	**Sasken Communication Technologies Ltd (Seg.)**	343.57	22.16%	0	3.94	1.15%	262.66	76.45%	21.43%	0	0.00%	22.26	6.48%	57.03%*	P
23	**SIP Technologies & Exports Ltd**	3.80	13.90%	0	0	0.00%	3.8	100%	30.96%	0	0.00%	0.04	1.05%	39.92%	P
24	**Tata Elxsi Ltd (Seg.)**	262.58	26.51%	0	3.34	1.27%	252.57	96.19%	22.90%	10.91	4.15%	2.63	1.00%	54.35%	P
25	**Thirdware Solutions Ltd**	36.08	25.12%	0	3.60	9.90%	27.44	76.05%	7.98%	0	0.00%	0.07	0.19%	62.64%	P
26	**Wipro Ltd (Seg.)**	9616.09	33.65%	0	58.26	0.61%		98%	54.70%	817.36	8.50%	427.4	4.44%	42.13%*	C
			25.14%												

*Note: The working of profit margins of the above companies is enclosed as **Annexure-B** to this order.*
** At the enterprise level.*

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