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 No.498/Bang/2015
Assessment year : 2010-11

The Assistant Commissioner of Income Tax, Circle 2(4)(1), Bangalore.	Vs.	24/7 Customer Private Ltd., 2/1, 2/2, 2/3 & 5/1, Embassy Golf Links Business Park, Challaghatta Village, Varthur Hobli, Off Intermediate Ring Road, Bangalore – 560 071. **PAN: AAACZ 1014A**
APPELLANT		RESPONDENT

IT(**TP**)A No.550/Bang/2015 & CO No.129/Bang/2015 [in IT(TP)A 498/Bang/2015]
Assessment year : 2010-11

24/7 Customer Private Ltd., Embassy Golf Links Business Park, Challaghatta Village, Varthur Hobli, Off Intermediate Ring Road, Bangalore – 560 071. **PAN: AAACZ 1014A**	Vs.	The Assistant Commissioner of Income Tax, Circle 2(4)(1), Bangalore.
APPELLANT / CROSS OBJECTOR		RESPONDENT

Revenue by	:	Shri C.H. Sundar Rao, CIT-I(DR), ITAT, Bangalore.
Assessee by	:	None

Date of hearing	:	12.09.2019
Date of Pronouncement	:	20.09.2019

O R D E R

Per N.V. Vasudevan, Vice President

IT(TP)A No.498/Bang/2015 is an appeal by the revenue, while IT(TP)A No.550/Bang/2015 is an appeal by the assessee. Both these cross appeals are directed against the order dated 27.01.2015 of the Assessing Officer passed u/s. 143(3) r.w.s. 144C(13) of the Income-Tax Act, 1961 ["the Act"] in relation to assessment year 2009-10.

2. The assessee has filed Cross Objection No.129/Bang/2015 in the appeal filed by the revenue.

3. The issue that arises for consideration in both the appeals by the assessee and revenue and the cross objection of the assessee are in relation to determination of arm's length price (ALP) in respect of international transaction of rendering Information Technology Enabled Services [ITeS] by the assessee and its Associated Enterprise (AE).

4. The assessee provided call centre services to the customers identified by 24 X 7 Inc. from its development centre located in India. For rendering such services to the AE, the assessee received a consideration of Rs.140,91,82,455 from the AE. In support of the claim by the assessee that the price received from the AE in the international transaction was at arm's length, the assessee filed a Transfer Pricing analysis choosing Transactional Net Margin Method (TNMM) as the Most Appropriate Method (MAM) and adopting Profit Level Indicator (PLI) for the purpose of comparability of profit margins of the comparable companies with that of the Assessee, as Operating Profit to Operating Cost (OP/OC). The OP/OC of the assessee was as follows:-

Operating Income(excld other income)	**1,409,246,534**
Total Expenditure	1,306,671,062
Less: Exchange loss	11,182,814
Less: Provision for doubtful	18,595,670
Less: Interest on loan	139,405
Operating Expenditure	**1,276,753,173**
Operating Profit	**132,493,361**
OP/OC	10.38%

5. The assessee had chosen comparable companies and arithmetic profit margin of those companies were within +/- 5% range of profit margin of the assessee and the assessee claimed that the price received by it was at arm's length. The TPO to whom the determination of ALP was referred to by the AO u/s. 92CA of the Act, rejected 8 out of 10 comparable companies chosen by the assessee in its TP analysis. After adopting his own analysis of data of companies in the public domain, the TPO arrived at a set of 10 comparable companies and the average arithmetic profit margin of these 10 companies were as follows:-

SLNO	NAME	PLI
1	ACCENTIA TECHNOLOGIES LTD	43.06%
2	ACROPETAL TECHNOLOGIES LTD (SEG.)	22.27%
3	E-CLERX SERVICES LTD	55.97%
4	FORTUNE INFOTECH LTD	22.80%
5	ICRA ONLINE LTD(SEG)	43.39%
6	INFORMED TECHNOLOGIES INDIA LTD	26.15%

7	INFOSYS BP°	31.23%
8	COSMIC GLOBAL LTD	14.97%
9	SUNDARAM BUSINESS SERVICES LTD	-12.31%
10	JEEVAN SCIENTIFIC TECHNOLOGY LTD.(SEG.)	21.05%
	AVERAGE	**26.86%**

6. After allowing adjustment towards working capital adjustment, the TPO computed arm's length price and addition to the total income on account of determination of ALP as follows:-

IT ENABLED SERVICES

Arm's Length Mean Margin on cost	26.86%
Less: Working Capital Adjustment (Annex.C)	0.14%
Adjusted margin	26.72%
Operating Cost	1,276,753,173
Arms Length Price (ALP) 126.72% of Operating cost	1,617,901,621
Price Received	1,409,246,534
Shortfall being adjustment u/s 92CA:	208,655,087

7. Aggrieved by the addition as made above in the assessment order, the assessee filed objections before the DRP.

8. The DRP accepted that companies having employee cost to sales of less than 25% should be excluded. According to the assessee, the employee cost constitutes major component in a service industry and expenditure on it was a direct reflection of the nature of business undertaken by an assessee. If the employee cost is very low, that would be an indication that companies outsource their functions to third parties

and such companies cannot be taken for the purpose of benchmarking the profits that are earned by pure ITeS companies. The DRP accepted the stand of assessee and by applying the aforesaid filter, excluded Jeevan Scientific Technology Ltd., where employee cost was 21.05% to sales and Acropetal Technologies Ltd. where employee cost was 12.11% of the sales.

9. The assessee also submitted before the DRP that the TPO applied lower turnover filter of Rs.1 crore in selecting comparables i.e., companies with turnover of Rs.1 crore and below, were not considered for comparison at all. The assessee contended by the same logic, companies having huge turnover also ought to have been excluded for the purpose of comparison. The assessee cited existence of goodwill, economies of scale and other factors as reason for excluding companies with high turnover. The assessee relied on the decision of the ITAT Bangalore Bench in the case of *Genesis Integrating Systems (India) Pvt. Ltd. v. DCIT, ITA No.1231/Bang/2010,* wherein the Tribunal held that companies with turnover of Rs.200 crores should not be compared with companies having turnover of less than Rs.200 crores. The DRP accepted the submission of the assessee and excluded Infosys BPO Ltd. which had a turnover o fRs.1226.63 crores. By the same logic, E-Clerx Services Ltd. having turnover of Rs.257 crores also ought to have been excluded, but the order of DRP is silent on exclusion of this company.

10. The next submission of the assessee was that wherever a comparable company had transactions with related party of more than 25%, such company should be excluded from the list of comparable companies. The process of excluding companies on the basis of existence of related party transaction is application of RPT filter. The DRP held that the threshold limit of RPT should be zero and any party having RPT even a

single related party transaction should be excluded for the purpose of comparison. By applying the aforesaid filter, the DRP excluded Accentia Technologies Ltd., Acropetal Technologies Ltd., Cosmic Global Ltd. and Jeevan Scientific Technology Ltd. from the list of comparables.

11. The next contention of the assessee before the DRP was that provision for doubtful debts should be considered as operating expenses and should not be excluded while computing the profit margin of the assessee. This was rejected by the DRP by observing as follows:-

> "7.2 The tax payer's objections as above have been considered. Operating expenses are those expenses which are incurred to earn operational income and have a direct nexus with the revenue. Doubtful debts cannot be considered as operating expenses since the genesis of the debt and its write off are intimately linked to the business wisdom as far as the timing of identification and claim as expenditure is concerned. They are not incurred in the normal course of business transaction and are peculiar to specific business conditions. This position finds acceptance in the case of Telcordia Technologies (India) Pvt. Ltd. Vs. ACIT (2012) 22 taxmann.com 96 (ITAT Mum). Hence, the objection cannot be accepted."

12. The next objection of the assessee was that the TPO calculated the working capital adjustment of the assessee and comparables and by doing so, the working capital adjustment was much higher than 0.23% working capital adjustment allowed by the TPO. The assessee pointed out that 0.23% was the average cost of capital of the comparable companies and the TPO ought to have allowed the working capital adjustment on the basis of actuals worked out by the TPO and ought not to have restricted the reduction of arithmetic profit margin of comparable companies only to the extent of 0.23%. The DRP rejected the contention of assessee observing as follows:-

"8.2 The objections of the taxpayer as above have been considered. The reason for restriction of the working capital adjustment to 0.23% has been given by the TPO in page 15 of his order along with the reason for non-inclusion of advances from AEs as follows -

> "The balance payables not considered in calculation of net working capital of the tested party is due to the fact that they are invested either in fixed assets or in the current assets having no cost, whereas in Transfer Pricing those receivables are taken into consideration that reduce the working capital requirement and accordingly the cost of working capital that must be recovered from the customers by factoring in the sales price. Any excessive advance which is received from the holding company by the Wholly Owned Subsidiaries (WOS) cannot be factored in reducing the sales price and less sale price cannot be defended on the ground that due to negative cost of capital it is managing to have arm's length profit margin even if it is having low profit margin on operating activity as discussed in the example given above. In a related party scenario, the entire payables/advances cannot be considered in working capital adjustment as in any business there is on optimum working capital that can be found out only on the basis of comparison with third parties us third parties alone represent the optimum working capital requirement. Accordingly the working capital adjustment is restricted to 0.23%."

8.3 Both the reasons given as above by the TPO are found to be appropriate for purposes of TP analysis which requires that the attempt should be to ensure the maximum extent of comparability between the tested entity and the uncontrolled comparables. Since the taxpayer is a captive unit remunerated on cost plus basis it is reasonable to understand the cost of working capital towards advances as 'nil'. The upper cap of 0.23% is also considered reasonable in the interest of protecting strict comparability in all facets which affect prices & profitability. The TPO's approach ensures this. Hence, the objection raised by the taxpayer in this regard cannot be accepted. The objection in respect of erroneous PLR adopted is factual for which the AO/TPO is directed to calculate the same correctly before adoption for working capital adjustment calculation."

13. The assessee prayed for allowing market risk adjustment and the TPO directed the AO to allow working capital adjustment. Besides the above, the DRP also held that Accentia Technologies Ltd. cannot be removed from list of comparables on the ground of functional non-comparability. The DRP also rejected the plea of assessee for exclusion of Acropetal Technologies Ltd. on the ground of functional comparability. The assessee also contended that as against the computation of 12% as OP to OC of assessee, the TPO was not right in arriving at PLI of 10.38%. The DRP directed the TPO to compute the correct PLI by treating the foreign exchange gain/loss as operational in nature and also considering other operating income and operating expenditure.

14. Aggrieved by the aforesaid directions of the DRP, the revenue as well as the assessee have filed appeals. The assessee has also filed cross objections, apart from the appeal filed against the impugned order of CIT(Appeals).

15. Notice of hearing of this appeal was served through DR and a copy of acknowledgement is placed on record. None appeared on behalf of assessee at the time of hearing. We therefore proceed to decide the appeals and the CO on merits, after hearing the submission of the ld. DR and perusing the material on record.

16. As far as the appeal of revenue is concerned, the grounds of appeal read as follows:-

> "The directions of the Dispute Resolution Panel are opposed to law and facts of the case.
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> 2. On the facts and in the circumstances of the case the Dispute Resolution Panel erred in law in directing the AO to exclude the expenditure incurred in foreign currency both from the export turnover as well as from total turnover for the purpose

of computation of deduction u/s 10A, without appreciating the fact that the statute allows exclusion of such expenditure only from export turnover by way of specific definition of export turnover as envisaged by Sub-clause (4) of Explanation 2 below Sub-section (8) of Section 10A and the total turnover has not been defined in this Section.

3. On the facts and in the circumstances of the case the Dispute Resolution Panel erred in directing the AO to compute deduction u/s 10A in the above manner by placing reliance on the decision of Hon'ble High Court of Karnataka in the case of M/s Tata Elxsi Ltd., which has not become final since the same has not been accepted by the Department and SLPs are pending before the Hon'ble Supreme Court.

4. On the facts and in the circumstances of the case, whether the Hon'ble Dispute Resolution Panel is correct in holding that the size and turnover of the company are deciding factors for treating a company as a comparable and accordingly erred in excluding the comparables.

5. On the facts and in the circumstances of the case, whether the Hon'ble Dispute Resolution Panel is correct in excluding uncontrolled comparables having turnover more than Z. 200 crores in the absence of Turnover criterion prescribed in Rule 10 B of Income tax Rules and also there being no correlation between turnover and profit margin.

6. On the facts and in the circumstances of the case, the Hon'ble Dispute Resolution Panel erred in applying 0% RPT.

7 On the facts and in the circumstances of the case, whether the Hon'ble Dispute Resolution Panel is correct in directing the TPO to compute Risk Adjustment in the case of the taxpayer without adducing any method for the same.

8. For these and other grounds that may be urged at the time of hearing, it is prayed that the directions of the Dispute Resolution Panel in so far as it relates to the above grounds may be reversed.

> 9. The appellant craves leave to add, alter, amend and / or delete any of the grounds mentioned above."

17. As far as ground Nos.2 & 3 of the revenue are concerned, it is not a dispute arising out of determination of ALP, but it is a dispute with regard to computation of deduction u/s. 10A of the Act. 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."

18. 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 DRP 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 allowed alternative relief pleaded by the Assessee.

19. Aggrieved by the order of DRP, the revenue has raised Gr.No.2 & 3 before the Tribunal. The learned counsel for the assessee relied on the order of the DRP.

20. 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 find no merits in Gr.No.2 & 3 raised by the Revenue.

21. As far as grounds No.4 & 5 raised by the revenue is concerned, the law by now is well settled that turnover is a relevant criterion for excluding companies. This Tribunal in the case of *Autodesk India Pvt. Ltd. v. DCIT in IT(TP)A No.540 & 541/Bang/2013, order dated 06.07.2018* after review of entire case laws on the subject, considered the question, whether companies having turnover more than 200 crores upto 500 crores has to be regarded as one category and those companies cannot be regarded as comparables with companies having turnover of less than 200 crores. The Tribunal held as follows:-

> "17.7. We have considered the rival submissions. The substantial question of law (Question No.1 to 3) which was framed by the Hon'ble Delhi High Court in the case of Chryscapital Investment Advisors (India) Pvt.Ltd., (supra) was as to whether comparable can be rejected on the ground that they have exceptionally high profit margins or fluctuation profit margins, as compared to the Assessee in transfer pricing analysis. Therefore as rightly submitted by the learned counsel for the Assessee the observations of the Hon'ble High Court, in so far as it refers to turnover, were in the nature of obiter dictum. Judicial discipline requires that the Tribunal should follow the decision of a non-jurisdiction High Court, even though the said decision is of a non-jurisdictional High Court. We however find that the Hon'ble Bombay High Court in the case of CIT Vs. Pentair Water India Pvt.Ltd. Tax Appeal No.18 of 2015 judgment dated 16.9.2015 has taken the view that turnover is a relevant criterion for choosing companies as comparable companies in determination of ALP in transfer pricing cases. There is no decision of the jurisdictional High Court on this issue. In the circumstances, following the principle that where two views are available on an issue, the view favourable to the Assessee has to be adopted, we

respectfully follow the view of the Hon'ble Bombay High Court on the issue. Respectfully following the aforesaid decision, we uphold the order of the DRP excluding 5 companies from the list of comparable companies chosen by the TPO on the basis that the 5 companies turnover was much higher compared to that the Assessee.

17.8. In view of the above conclusion, there may not be any necessity to examine as to whether the decision rendered in the case of Genisys Integrating (supra) by the ITAT Bangalore Bench should continue to be followed. Since arguments were advanced on the correctness of the decisions rendered by the ITAT Mumbai and Bangalore Benches taking a view contrary to that taken in the case of Genisys Integrating (supra), we proceed to examine the said issue also. On this issue, the first aspect which we notice is that the decision rendered in the case of Genisys Integrating (supra) was the earliest decision rendered on the issue of comparability of companies on the basis of turnover in Transfer Pricing cases. The decision was rendered as early as 5.8.2011. The decisions rendered by the ITAT Mumbai Benches cited by the learned DR before us in the case of Willis Processing Services (supra) and Capegemini India Pvt.Ltd. (supra) are to be regarded as per incurium as these decisions ignore a binding co-ordinate bench decision. In this regard the decisions referred to by the learned counsel for the Assessee supports the plea of the learned counsel for the Assessee. The decisions rendered in the case of M/S.NTT Data (supra), Societe Generale Global Solutions (supra) and LSI Technologies (supra) were rendered later in point of time. Those decisions follow the ratio laid down in Willis Processing Services (supra) and have to be regarded as per incurium. These three decisions also place reliance on the decision of the Hon’ble Delhi High Court in the case of Chriscapital Investment (supra). We have already held that the decision rendered in the case of Chriscapital Investment (supra) is obiter dicta and that the ratio decidendi laid down by the Hon’ble Bombay High Court in the case of Pentair (supra) which is favourable to the Assessee has to be followed. Therefore, the decisions cited by the learned DR before us cannot be the basis to hold that high turnover is not relevant criteria for deciding on comparability of companies in determination of ALP under the Transfer Pricing regulations under the Act. For the reasons given

> above, we uphold the order of the CIT(A) on the issue of application of turnover filter and his action in excluding companies by following the ratio laid down in the case of Genisys Integrating (supra)."

22. Consequently, there is no merit in ground Nos.4 & 5 raised by the revenue.

23. As far as ground No.6 is concerned, the DRP applied the Related Party Transaction (RPT) filter i.e., it excluded companies which had transactions with related parties. The threshold limit applied by the DRP on account of RPT filer was 0%. By applying the aforesaid filter, the DRP excluded Accentia Technologies Ltd., Acropetal Technologies Ltd., Cosmic Global Ltd. and Jeevan Scientific Technology Ltd. from the list of comparables.

24. The ld. DR submitted that in some of the decisions rendered by the Bangalore Bench of ITAT threshold limit of 25% of sales was applied to exclude companies on account of RPT Filter and therefore the decision of the DRP should be modified by holding that the threshold limit for applying RPT filter should be 25% of sales. We find that the Bangalore ITAT in the case of Autodesk India Pvt. Ltd., Vs. DCIT (2018) 96 taxmann.com 263 (Bangalore - Trib.) after considering the application of RPT Filter at 15% and 28% held as follows:-

> "In Ground No.4 (e) of the grounds of appeal, the Assessee seeks exclusion of Geometric Software solutions Co. Ltd; and Foursoft Ltd. from the list of comparable companies as these companies have Related Party Transaction (RPT) of more than 15%. learned DR drew our attention to the decision of the Hon'ble ITAT Bangalore 'B' Bench in the case of Robert Bosch Engineering and Business Solutions Ltd. (supra) wherein the Tribunal in paragraph 8 has observed 25% to 15% RPT filter has to be applied depending on availability of comparables. His submission was therefore that companies with RPT of 25% or more alone should be excluded from the list of comparable companies chosen by the TPO and the action

of the CIT(A) in excluding comparable companies even in a case where there are single and insignificant RPT was not correct. The learned counsel for the Assessee, on the other hand, pointed out that this Tribunal, in the eases of 2417 Customer (P.) Ltd. v. Dy. CIT [2012] 28 taxrnann.com 258/[2013] 140 ITD 344 (Punj.) Sony India (F) Ltd. v. Dy. CIT [2008]114 LTD 448 (Delhi) and various other cases, has taken a view that comparables having RPT of upto 15% of total revenues can be considered as comparable company. We have considered the rival submission. It is no doubt true that in the case of Robert Bosch (supra) this Tribunal has held that RPT filter can be in the range of 25% to 15% of the total receipts from software development services, depending on availability of comparable companies. It is no body's ease that there is dearth of comparable companies in software development services industry. Therefore it would be safe to follow the ruling of this Tribunal in the cases of 2417 Customer (P.) Ltd. (supra), Sony India (P.) Ltd. (supra) wherein a view has been taken that comparable companies having RPT of upto 15% of total revenues can be considered as comparable companies. In view thereof, the plea of the Assessee requires to be accepted. The TPO/AO are directed to adopt a threshold limit of 15% of the total revenue attributable to related party transaction as ground for rejecting comparable companies. Consequently, it is held that companies having RPT upto 15% of the total revenues can be included."

25. We have considered the submission of the learned DR in the light of the decision referred to above and we are of the view that application of RPT filer at 15% of the sales would be appropriate in the given facts and circumstances of the case and as laid down in the case of Auto Desk India Pvt. Ltd., (Supra). We hold accordingly and direct the TPO to exclude companies whose related party transactions are 15% or more of the sales.

26. As far as ground No.7 raised by the revenue is concerned, risk adjustment has been allowed by the DRP without any basis of computation and we agree with the submission of the ld. DR that without a proper method of computation of risk adjustment and the basis of such computation, risk adjustment cannot be allowed on an adhoc basis.

Accordingly, we hold that assessee is not entitled to risk adjustment. The other grounds are general and call for no adjudication.

27. In the result, the appeal by the revenue is partly allowed.

28. As far appeal by assessee is concerned, grounds 1 to 14 raised by the assessee are with regard to computation of ALP in respect of international transaction of rendering ITeS to the AE. These grounds read as follows:-

> "Transfer Pricing
>
> 1. The learned Assessing Officer ("AO"), the learned Transfer Pricing Officer ("TPO") and the Honorable Dispute Resolution Panel ('DRP') have erred in law and facts of the case in proposing a transfer pricing adjustment under section 92CA of the Income-tax Act. 1961 ("the Act") amounting to Rs. 17,87,79,063/- in respect of the IT enabled Services ('ITeS') to the Associated Enterprises ('AE').
>
> 2. The learned AO / learned TPO and the Honorable DRP have erred in rejecting the Transfer Pricing ('TP') documentation maintained by the Appellant on invoking provisions of sub-section (3) of 92C of the Act contending that the information or data used in the computation of the arm's length price is not reliable or correct.
>
> 3. The learned AO / learned TPO and the Honorable DRP have erred in rejecting the economic analysis performed by the Appellant in the TP documentation justifying the arm's length nature of the international transaction pertaining to ITeS.
>
> 4. The learned AO / learned TPO and the Honorable DRP have erred in not considering the multiple year / prior year financial data of comparable companies while determining the arm's length price and insisting that only the current year (i.e. FY 2009-10) data be used for determination of arm's length price.

5. The Honorable DRP has erred in modifying the filter of related party transaction applied by the learned TPO and by the Appellant to provide that companies having more than zero percent of related party transaction should be rejected as comparable.

6. The learned AO/ learned TPO and the Honorable DRP have erred in rejecting comparable companies selected by the Appellant in the TP documentation and introduced during the assessment proceedings.

7. The learned AO / learned TPO and the Honorable DRP have erred in selecting / introducing companies which are not comparable to the Appellant.

8. The learned AO / learned TPO and the Honorable DRP have erred in rejecting Jindal Intellicom Private Limited as a comparable company for the only reason that the financial statements of this company is for 15 months.

9. The learned AO/ learned TPO and the Honorable DRP have erred in applying the filter of different financial year ending to reject the companies that are otherwise functionally comparable.

10. The learned AO / learned TPO and the Honorable DRP have erred in not considering the provision for bad and doubtful debts as operating in nature.

11. The learned AO / learned TPO and the Honorable DRP have erred in restricting the working capital adjustment to the average cost of capital of the comparable companies selected in determination of arm's length price for the ITeS.

12. The learned AO / learned TPO have erred in incorrectly computing the working capital adjustments in the ITeS segment.

13. The Honorable DRP has erred in not providing an appropriate adjustment towards the risk differential between the Appellant and the entrepreneurial companies selected as comparable but for resorting to determine the risk adjustment on an ad hoc basis.

> 14. The learned TPO / learned AO erred in not allowing the benefit of range of +/- 5% as provided in proviso to Section 92C (2) of the Act to the Appellant, while determining the arm's length price."

29. As far as grounds 1 to 3 raised by the assessee are concerned, they are general in nature and call for no adjudication.

30. Ground No.4 with regard non acceptance of multiple year data chosen for the purpose of comparison by the Assessee in its TP analysis is concerned, the relevant statutory provisions as well as the Income Tax Rules, 1962 permit only the financial data of the relevant previous year to be used for the purpose of comparison of the tested party as well as the comparable companies and therefore there is no merit in Gr.No.4 raised by the Assessee.

31. Ground No.5 with regard to Related Party Transaction (RPT) has already been adjudicated while dealing with connected grounds of appeal of revenue and therefore the same does not require any consideration.

32. As far as ground Nos. 6 & 7 are concerned, these are general grounds and no specific instance of companies which are not comparable with assessee having been selected by the TPO as a comparable company has been set out in these grounds. Hence these grounds are treated as academic.

33. Ground No.8 is with regard to rejecting Jindal Intellicom P. Ltd. as a comparable company on the ground that its financial statements are for the period of 15 months, We are of the view that if the assessee can cull out and financial results of this company for the relevant financial year relevant to AY 2010-11 from the information available in public domain or other authentic evidence, then the AO can consider comparability of this

company, provided this company is found to be functionally and otherwise comparable.

34. Ground No.9 also is identical to ground No.8, but no specific company has been pointed out which was rejected on account of different financial year ending. Hence this ground is treated as academic.

35. As far as ground No.10 is concerned, the law is well settled that provision for bad and doubtful debts has to be regarded as operating expenses in nature and should be taken into account while computing the PLI of assessee and comparable companies.

36. Ground Nos. 12 & 13 regarding incorrect computation of working capital adjustment and risk adjustment are rejected as no details of incorrect computation has been brought on record even before the DRP.

37. Ground No. 14 with regard to allowing the benefit of second proviso to section 92C(2) of the Act is consequential and subject to the condition that the difference in the margin is +/- 5%. These grounds are accordingly decided.

38. As far as corporate issues are concerned, the computer software expenses that were disallowed while computing the income from business of the eligible Sec.10A unit, will go to increase the profits of 10A units and assessee should be given the benefit of deduction u/s. 10A of the Act on such enhanced profit. The other ground with regard to levy of interest is consequential and AO is directed to give consequential relief.

39. As far as CO of assessee is concerned, the grounds raised in CO are as follows:-

"1. On facts and circumstances of the case and in law, the respondent wishes to rely upon the directions (dated 08 December, 2014) passed under section 144C (5) of the Income-tax Act, 1961 by the Hon'ble Dispute Resolution Panel ("DRP") and grounds of appeal filed in Form 35A before the DRP which was disregarded by the Learned Assessing officer ("Ld. AO") / Learned Transfer Pricing Officer ("Ld. TPO") while filing an appeal before the Hon'ble Tribunal.

2. The Hon'ble DRP has erred in not adjudicating on the following grounds raised by the Assessee during the DRP proceedings for the exclusion of Infosys BPO Limited ("Infosys")

a) Infosys owns substantial brand value; and

b) Infosys is functionally dissimilar to the Assessee.

3. The Hon'ble DRP has erred in not adjudicating on the following grounds raised by the Assessee during the DRP proceedings for the exclusion of E-Clerx Services Limited ("E-Clerx"):

a) E-Clerx is functionally dissimilar to the Assessee;

b) Application of upper turnover filter; and

c) Extra-ordinary events of amalgamation / acquisition in E-Clerx during the relevant assessment year

4. The Hon'ble DRP has erred in not adjudicating on the following grounds raised by the Assessee during the DRP proceedings for the exclusion of Fortune Infotech Limited ("Fortune"):

a) Fortune is functionally dissimilar to the Assessee; and

b) Fortune uses intangibles, technology and technical know-how for the provision of BPO services.

5. The Hon'ble DRP has erred in not adjudicating on the other grounds raised by the Assessee during the DRP proceedings for the exclusion of ICRA Online Limited ("ICRA") wherein the

> Assessee argued that ICRA is functionally not comparable to the Assessee."

40. Grounds 1 to 3 in the CO are academic because Infosys BPO Ltd., E-Clerx Services Ltd. get excluded on application of turnover filter.

41. As far as grounds 4 & 5 are concerned, it would be appropriate to set aside the order of the DRP on this issue and direct the TPO to consider the comparability of the companies viz., Fortune Infotech Ltd. and ICRA Online Ltd., in the proceedings for determination of ALP in accordance with the directions given in this order.

42. We direct the TPO to compute the ALP in the light of directions given in this order after affording assessee opportunity of being heard.

43. In the result, the appeal by the assessee and revenue are treated as partly allowed, while CO of the assessee is partly allowed for statistical purposes.

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.