

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “ C ” BENCH: BANGALORE  
**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER  
AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.978/Bang/2017  
(Assessment Year: 2011-12)

Rambus Chip Technologies (India) Pvt. Ltd.,  
12<sup>th</sup> Floor, Tower C & D,  
IBC Knowledge Park,  
4/1, Bannerghatta Road,  
Bangalore-560 029  
PAN AACCR 8522M

....Appellant

Vs.

Asst. Commissioner of Income Tax,  
Circle 5(1)(1), Bangalore.

.....Respondent.

IT(TP)A No.1029/Bang/2017  
(Assessment Year : 2011-12)  
(By Revenue)

Assessee By:	S/Shri G.C. Srivastava & Umashankar, Advocates.
Revenue By:	Smt. R. Premi, JCIT (D.R)

Date of Hearing :	14.11.2019
Date of Pronouncement :	10.01.2020

**ORDER**

**PER SHRI PAVAN KUMAR GADALE, JM :**

These are the cross appeals filed by the assessee and revenue against the order of Commissioner of Income Tax (Appeals)-5, Bangalore passed under Section

143(3) r.w.s. 144C(3) and 250 of the Income Tax Act, 1961 (the Act) Since the issues are common, they are Heard together and disposed off by consolidated order. For the sake of convenience, we shall take up the assessee appeal and facts narrated therein.

2. At the time of hearing the learned Authorised Representative submitted that the Ground Nos.1 to 5 are general in nature and Ground No.8 is not pressed and the effective grounds of appeal are Ground Nos.6 &7 which read as under :

6. That the learned CIT(A) erred in not considering the Appellant's submission regarding the exclusion of certain companies that otherwise fail the test of comparability. In doing so, the learned CIT(A) erred in not excluding Acropetal Technologies Ltd. (Seg), ICRA Techno Analytics Ltd., Persistent Systems Ltd., Sasken Communications Technologies Ltd., that otherwise fail the test of comparability.
7. That the learned CIT(A) erred in not considering the Appellant's submission regarding inclusion of certain companies in the set of comparable companies. To that extent, the learned CIT(A) erred in not including Spry Resources India Pvt. Ltd., Akshay Software Technologies Ltd., Thinksoft Global Services Ltd., FCS Software Solutions Ltd. that are otherwise functionally comparable to the Appellant.

3. The Brief facts of the case are that the assessee is a subsidiary of Rhombus (K M Ltd.) Grand KM which is a wholly owned subsidiary of Rhombus Inc., US and engaged in rendering software design, development services to Rhombus US and compensated on cost-plus mark up basis and the services provided, and is also engaged in the Business of software development segment(SDS) and filed the Return of Income on 23.11.2011 with total income of Rs.89,564 and book profits under Section 115JB of the Act of Rs.3,69,23,157. The case was selected for scrutiny and Notice under Section 143(2) and 142(1) of the Act were issued. In

compliance, the Id. AR submitted the details and clarifications. The Assessing Officer found that the Assessee is having International Transactions exceeding the limit and Hence with the prior approval of learned CIT, Bangalore, the matter was referred to the TPO for determination and computation of Arm's Length Price (ALP). The assessee's PLI on operating profit to cost is 12.03% dealt at page 3 para 3 of the TPO order. Similarly international transactions under Section 92CE of Income tax Act at paras 3.1 which are as under :

3. FINANCIAL RESULTS FOR THE F Y 2010-11 AS PER THE P & L A/C

Operating Revenues *	377657435
Operating Expenses **	337079242
Operating (Profit)/Loss	40578193
Op Profit on cost %	12.03%

\* Excluding other income

\*\*Excluding Exchange variation.

3.1 **International Transactions (as mentioned in the 92 CE report)**

Sl. No.	Type of transaction	Amount (Rs)	
1	Purchase of fixed assets	-	14,07,373
2	Software Development Services	37,76,57,435	
3	Reimbursement	69,51,148	1,28,34,294
	Total	38,46,08,583	1,42,41,667

The TPO called for documents mentioned under Section 92D along with the Agreements. The assessee has filed the details by letter dt.21.04.2014 and as per the TP Study and TP documents, the assessee has chosen 16 comparables in

respect of software development segment and applied the filters and adopted TNMM as Most Appropriate Method (MAM). The assessee has selected comparables engaged in same industry vertical as of the assessee including aero space and defence industry. The TPO has rejected the TP Study and found defects in the TP analysis carried out by the assessee referred at page 4 of the TPO order, whereas the TPO has applied the filters for Software Development Services segment and rejected the comparables and selected final set of comparables referred at para9 of Tpo order with Arithmetic Mean of 24.82 %.Further the TPO has granted Working Capital Adjustment and Risk Adjustment and computed the ALP at para 12.4 as under :

#### **12.4. 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 services rendered by the taxpayer to its AE(s) is computed as under:

#### **SOFTWARE DEVELOPMENT SERVICES**

Arm's Length Mean Margin on cost	24.82%
Less: Working Capital Adjustment (As per Annex. C)	1.61%
Adjusted margin	23.21%
Operating Cost	337,079,242
Arms Length Price(ALP) 123.21% of Operating Cost)	415,315,334
Price Received	377,657,435
<b>Shortfall being adjustment u/s 92CA:</b>	<b>37,657,899</b>

The TPO has passed order under Section 92CA of the Act dt.28.01.2015. The Assessing officer subsequently passed the Draft assessment order with Transfer Pricing Adjustment under Section 92CA of Rs.3,76,57,899 and other additions of foreign exchange loss, and restricting the claim under Section 10A of the Act and Assessed the total income at Rs.3,94,85,126 and passed under Section 143(3) r.w.s. 144C(1) Dt.9.3.2015. Subsequently, the final assessment order was passed under Section 143(3) r.w.s. 144C(3) dt.17.4.2015. Aggrieved by the assessment order, the assessee has filed an appeal with the learned CIT(Appeals) .whereas the learned CIT(Appeals) dealt on the grounds of appeal, findings of the Ao and the submissions of the assessee and has granted partial relief on and partly allowed appeal of the assessee. Aggrieved by the Cit(A) order, the assessee has filed an appeal with the Tribunal.

4. At the time of hearing, the learned Authorised Representative has argued for exclusion of four comparables and inclusion of comparable and restricted his arguments to the extent of comparables only and filed chart and Paper Book to support the submissions. Contra, the learned Departmental Representative supported the orders of learned CIT(Appeals) and filed written submissions.

5. We heard the rival contentions and perused the material on record. Prima facie, the learned Authorized Representative has argued only on the exclusion and inclusion of the comparables and filed chart and relied on the judicial decisions.

The learned Authorised Representative argued for Exclusion of four comparables which are functionally dissimilar.

(i) Acropetal Technologies Ltd. has a margin of 27.89% and functionally dissimilar and employee cost is more than 25% and failed the employee cost filter. The TPO has considered the cost towards the technical sub-contractor as e-expenses in the computation of employee cost. The company follows different modules and sub-contracts majority of it works to third party vendor. Further fails the revenue filter of 75% applied by the ld. TPO as the income from Software Development Services is Rs.81.40 Crores out of the total revenue of Rs.141 Crores. The ld. AR relied on the co-ordinate bench decision in the case of Finastra Software Solutions (India) Pvt. Ltd. Vs. ACIT ( IT(TP)A No.529/Bang/2016 dt.2.5.2018), Sales Force.com India Pvt. Ltd. Vs. DCIT in IT(TP)A No.697/Bang/2016 A Y 2011-12 dt.21.12.2018). Zynga Game Network India Pvt. Ltd. Vs. ACIT in IT(TP)A No.360/Bang/2016 Dt.12.07.2017 Assessment Year 2011-12). AT & T Global Business Service India Pvt. Ltd. Vs. ACIT in IT(TP)A No.171/Bang/2016 and Commonslope Networks (India) Pvt. Ltd. Vs. ITO in IT(TP)A No.166/Bang/2016 dt.22.02.2017; Capital IQ India Ltd. Vs. DCIT in IT(TP)A No.196/Hyd./2011 dt.23.11.2012. We find though the learned Authorised Representative has relied on catena of judicial decisions, we Support our view relying on the decision of Finastra Software Solutions (India) Pvt. Ltd. Vs. ACIT

(supra) . The Hon'ble Tribunal has observed at page 8 para 15 and excluded the comparable read as under :

“ 15. We will first deal with the plea of the Assessee for exclusion of comparable companies chosen by the TPO. The first company which the Assessee seeks exclusion is Accropetal Technologies Ltd. On exclusion of this company, we have heard the rival submissions. We find that the TPO has himself applied a filter for exclusion of companies for the purpose of comparison, viz., revenue from software development service should be more than 75% of the total operating revenue. The admitted factual position is that revenue from software development service of this company was 81.40 Crores out of the total operating revenue of Rs.141 Crores. Thus the revenue from software development is admittedly less than 75% of the total operating revenue of this company. Therefore his company has to be excluded from the list of comparable companies. It was also brought to our notice that the ITAT Bangalore in the case of Applied Materials Pvt.Ltd., in IT (TP) A.No.17 & 39/Bang/2016 for AY 2011-12 order dated 21.9.2016 noticing the aforesaid facts excluded this company from the list of comparable companies in the case of a software development service provider such as the Assessee. We therefore hold that this company should be excluded from the list of comparable companies.”

(ii) Icra Technologies ltd.

(iii) Persistent Systems Ltd. and

(iv) Sasken Communication Technologies Ltd. have been excluded by the Tribunal in the decision of Finastra Software Solutions (India) Pvt. Ltd. Vs. ACIT (supra).

The Hon'ble Tribunal has dealt and observed at page 9 para 17 which is read as under :

“17. The following 7 companies were excluded by the Tribunal ITAT Bangalore in the case of Applied Materials Pvt.Ltd., a company which is also engaged in providing software development services in IT (TP) A.No.17 & 39/Bang/2016 for AY 2011-12 order dated 21.9.2016. Following the said decision the ITAT Bangalore in the case of Commonslope Networks (India) Pvt.Ltd. IT (TP) A.No.166 and 181/Bang/2016 for AY 2011-12 order dated 22.02.2017 (vide Paragraph-9 of the said order). The seven companies so excluded were E-Inforchips Ltd., ICRA Technonogies Ltd., Infosys Ltd., Larsen & Toubro Infotech Ltd., Persistent Systems Ltd., Sasken Communication Technologies Ltd., and Tata Elxsi Ltd. Respectfully following the said decisions, we direct exclusion of these 7 companies from the list of comparable companies.”

We find the three comparables are excluded on the functional profile of dissimilarity by the co-ordinate bench in the case of Common scope India Pvt. Ltd. Vs. ITO in IT(TP)A No.166/Bang/2016 and 181/Bang/2016 at page 16 para 9 as under :

9. Now we decide about the remaining 6 comparables excluded by DRP and 4 comparables retained by DRP but for which the assessee is seeking exclusion. Out of these 6 comparables excluded by DRP, one comparable ICRA Techno Analytics Ltd. is having RPT in excess of 15% and therefore, for this reason alone, this comparable has to be excluded although DRP has excluded it for a different reason that it is having various activities and segmental data are not available. We uphold its exclusion on account of RPT filter. Exclusion of Acropetal Technologies Ltd. (Seg) is covered in favour of the assessee by the same tribunal order rendered in the case of Applied materials India Pvt. Ltd. vs. ACIT (Supra). Respectfully

following the same, we uphold its exclusion. Exclusion of 1) e – Zest Solutions Ltd., 2) Infosys Ltd., 3) Larsen & Toubro Infotech Ltd., 4) Persistent Systems & Solutions Ltd., 5) Persistent Systems Ltd., 6) Sasken Communication Technologies Ltd. and 7) Tata Elxsi Ltd. are also covered in favour of the assessee by the same tribunal order rendered in the case of Applied materials India Pvt. Ltd. vs. ACIT (Supra). Respectfully following the same, we uphold the exclusion of these Seven comparables also. Exclusion of E – Infochips Ltd. is covered in favour of the assessee by the tribunal order rendered in the case of Saxo India Pvt. Ltd. vs. ACIT in ITA No. 6148/Del/2015 dated 05.02.2016 Para 10.1 & 10.2 available at pages 221 to 223. Respectfully following the same, we uphold its exclusion. In this manner, we uphold the exclusion of six comparables excluded by DRP out of 9 comparables excluded by DRP and exclude 4 comparables retained by DRP and we have already held that out of 9 comparables excluded by DRP, 3 have to come back being 1) Evoke Technologies Pvt. Ltd., 2) Mindtree Ltd. (Seg) and 3) R S Software (India) Ltd. Now, we decide about LGS Global Ltd. As per the tribunal order rendered in the case of Applied materials India Pvt. Ltd. vs. ACIT (Supra), this is a good comparable and therefore, we direct the A.O. and TPO to include this comparable. So, there should be 4 comparables in the final list of comparable and on the basis of that, the AO/TPO should work out the ALP.

We considering the co-ordinate bench decisions, direct the TPO to exclude the 4 comparables form the final list of comparables selected for the purpose of determining the ALP.

6. The Lrd AR at the time of hearing submitted that the comparable FCS Software Solutions pvt Ltd is only pressed for inclusion, which is functionally comparable and is engaged in providing Software Development Services . The learned Authorised Representative relied on the co-ordinate bench decision Finastra Software Solutions (India) Pvt. Ltd. Vs. ACIT (supra) and VMware Software India Pvt Ltd. Vs. DCIT in IT(TP)A No.1311/Bang/2014 Dt.6.1.2017. We found the co-ordinate bench in the case of Finastra Software Solutions (India) Pvt. Ltd. Vs. ACIT (supra) observed at para 19 page 10 as under :

“ 19. As far as the plea for including the other two companies viz., Thinksoft Global Ltd., and FCS Software Ltd., we find both these companies were excluded by the TPO for the reason that the working capital adjustment was very high. ITAT Bangalore Bench in the case of VMware Software India Pvt.Ltd. Vs. DCIT in IT (TP) A.No.1311/Bang/2014 order dated 6.1.2017 has held that a company which is otherwise comparable cannot be excluded for the reason that the working capital adjustment to be done was very high. In view of the aforesaid decision, we are of the view that this company, which was otherwise found to be comparable, be included in the list of comparable companies.”

Whereas the comparable FCS Software Ltd. was included for the purpose of determination of ALP, and it was also considered for inclusion in the case of VMware Software India Pvt. Ltd. in IT(TP)A No.1311/Bang/2014 dt.6.1.2017 at page 22 para 27 which is read as under :

“ 27. We have considered the rival submissions as well as relevant material on record. The TPO has rejected these two companies on the ground of high working capital adjustment. The working capital adjustment was computed by the TPO at 4.30% which was restricted to 1.71%. Therefore the TPO has initially proposed these two companies to be included in the set of comparables but finally excluded from the set of comparables on the ground that their respective lost of working capitals are very high and impacting the profit margin of more than 4%. We note that the co-ordinate bench of this Tribunal in the case of **ARM**

**Embedded Technologies Pvt. Ltd. Vs. DCIT (supra)** has considered an identical issue in paras 20 to 23 as under :

“ 20. Coming to the ground for inclusion of M/s. Thinksoft Global Solutions Ltd and FCS Software Solutions Ltd, we find that TPO herself had suggested these in the show cause notice, but had thereafter come to a conclusion that working capital adjustment required for these two companies exceeded 4% of profits and could not be therefore taken as proper comparables. Reasons given by the TPO for excluding these two companies, appear at paras 3.6.5.1, of her order which reads as under :

b) Two companies proposed in the show-cause notice are functionally similar to the taxpayer. However, when the working capital of these companies is considered, the profit margin gets distorted. It may not be out of context to mention that our search for comparable is primarily focus on those companies whose profit margin is predominantly from operating business and not from financial activities. This prerequisite is not different in case of software development companies as they do not need any interest bearing funds to manage their working capital requirement. Therefore, with the purpose to identify only those uncontrolled comparables who are having profit margin from core operating activities and not from financial activities, the following two companies having working capital impact of more than 4% on profit have been excluded.

21. TPO has accepted that these companies were functionally similar to that of the assessee. However, according to her, the margins of these companies had not come from its core operating activities but from financial activities. Profit and Loss account of M/s. Thinksoft Global Solutions for the relevant previous year is placed at paper book page.247. Software service revenues of the said company came to Rs.920921452/-. Other income of the said company came to Rs.35,738,801/-. Break-up of the other income as given at schedule 10 placed at paper book page.256 show that out of such amount Rs.26,536,978/- was exchange gain. Interest received from deposits with banks and others came to Rs.29,15,080/- only. For better clarity this break-up is given hereunder :

Other income

Interest received on deposits with banks ..	2,371,740
Interest received from others ..	543,310
Profit on sale of fixed assets ..	6,276,773
Exchange gain (Net) ..	26,536,978
Miscellaneous income ..	<u>10,000</u>
	35,738,801

We cannot say that the ‘other income’ arose out of any financial services done by the assessee and would take away the sheen of its software services income. The amount, in our opinion, was insignificantly small and not enough to warrant a conclusion that its operating margins had come not from its core operational activities.

22. Coming to FCS Software Solutions Ltd, profit and loss account placed at paper book page 321 shows that its revenue from software development and other services was Rs.1902547907/-. As against

*this, miscellaneous income was only Rs.7875588/-. Break-up of such miscellaneous income as given at schedule M, placed at paper book page. 328 reads as under :*

<i>Interest</i>	<i>..</i>	<i>2,875,685</i>
<i>Rent income</i>	<i>..</i>	<i>4,515,000</i>
<i>Amount W/Back</i>	<i>..</i>	<i><u>484,902</u></i>
		<i><u>7,875,588</u></i>

23. *Compared to the software development services income, interest received by M/s. FCS Software Solutions Ltd, was in our opinion, insignificantly small. Thus the reasoning given by TPO for rejecting these two companies as proper comparables, was in our opinion, incorrect. We set aside the orders of the lower authorities in this regard and direct these two companies to be included in the list of comparables for working out the average PLI."*

Following the order of co-ordinate bench of this Tribunal, we direct the A.O./TPO to include these two companies in the set of comparables for determining the ALP."

We considering the ratio of the co-ordinate Bench decisions, direct the TPO to include the comparable in the final list in determination of ALP. And the appeal of the assessee is partly allowed for statistical purposes.

Now we shall take up the Appeal in IT(TP)A No.1029/Bang/2017.

7. The revenue has raised the following grounds of appeal :

1. The Ld.CIT(A) is not justified in giving relief on the issue of Foreign Exchange loss, which is notional in nature.
2. The Ld CIT(A) has not appreciated the fact that the loss has occurred towards statement of advance received from its holding company which is capital item and not allowable expenditure u/s.43A of the I.T.Act 1961.
3. The CIT(A) erred in law by directing the AO to reduce the expenditure incurred for foreign currency, both from export turn over as well as total turnover for the purpose of computation of deduction u/s.10A of the I.T.Act without appreciating the fact that the statute allows exclusion of such expenditure only from the ETO by way of specific definition of export turnover as envisaged by sub clause(4) of Explanation 2 below sub-section 8 of section 10A. On the other hand, there is no specific provision in section 10A warranting exclusion of the above expenses from the total turnover also.
4. In the facts and circumstances of the case, whether the Hon'ble CIT(A) was right in holding that few companies are functionally different from assessee when it satisfies all the qualitative and quantitative filters applied by the TPO. Hon'ble CIT(A) has used a narrower functionality filter than TPO, but has not tested other comparables against the narrower functionality filter applied by it.

5. Whether the Hon'ble CIT(A), Bangalore, was right in not setting aside the matter to TPO for fresh TP study after taking a new view on functional matrix which is narrower than the functionality matrix originally used by TPO.
  6. Whether change in any filter – qualitative or quantitative – by any appellate authority should be followed by fresh TP study, or whether Hon'ble CIT(A) can selectively apply their modified qualitative filter to only few comparables challenged by the assessee, or whether a fresh TP study has to be done.
  7. The CIT(A) erred by excluding the E-Infochips Ltd for absence of segmental data, even though when data was available in P & L account.
  8. The CIT(A) erred in appreciating the facts mentioned by the TPO regarding segmental data
  9. Whether the CIT(A) has justified in giving direction allow working capital adjustment on final comparable, where the segmental data on receivable and payable is not available in Annual Reports.
  10. Whether the CIT(A) has justified in giving direction allow working capital adjustment on final comparable, where there is no proof of impact of working capital adjustment on profit margin.
8. The learned Departmental Representative argued Ground of appeal Nos.1 & 2 in respect of foreign exchange loss occurred towards the settlement of advance received from holding company which is not eligible for deduction under Section 43A of the Act. Further learned CIT (Appeals) has erred in allowing foreign

exchange loss which is notional in nature. Contra, the Id. AR relied on the learned CIT (Appeals) order.

9. We found the learned CIT (Appeals) has dealt on this issue at para 10 page 61 as under :

10. The ground no.16 is against the disallowance of foreign exchange loss of Rs.37,49,314/- made by the Assessing Officer by treating the same as being notional in nature. The foreign exchange loss of Rs.37,49,314/- was recorded on account of exchange rate differences arising on account of restatement of balance in the debtors account/EEFC account and payment/receipt of forex to/from creditors/debtors. The appellant submitted that it has been consistency following the mercantile system of accounting in accordance with AS-11 which specifies that all exchange difference on foreign currency transactions should be recognize as income or expenses in the period in which they arise. In support its contention it relied on the Apex Court's decision in the case of CIT Vs. Woodward Governors 179 Taxmann 326 wherein the Hon'ble Supreme Court held that the expression 'any expenditure' as used in Section 37 may, in the circumstances of a particular case, cover an amount which is really a 'loss', even though the said amount has not gone out from the pocket of the assessee. Further in the case of Sulej Cotton Mills Ltd. vs. CIT[116 ITR 1]the Supreme Court has observed as under:

*"The law may, therefore, now be taken to be well settled that where profit or loss arises to an assessee on account of appreciation or depreciation in the value of foreign currency held by it, on conversion into another currency, such profit or loss would ordinarily be a trading profit or loss if the foreign currency is held by the assessee on revenue account or as a trading asset or as a part of circulating capital embarked in the business. But, if on the other hand, the foreign currency is held as a capital asset or as fixed capital, such profit or loss would be of capital nature."*

Respectfully following the decision of the Supreme Court in the case of CIT vs Woodward Governor and Sulej Cotton Mills Ltd. vs. CIT and also the CIT(A) in the Appellant's own case for AY 2008-09, held that foreign exchange loss is allowable expenditure under section 37 of the Act. The Assessing Officer is hereby directed accordingly.

10. When a query was raised to the learned Authorised Representative with respect to disclosure of loss in the Balance Sheet., the learned Authorised Representative demonstrated with copy of Balance Sheet, but there is no clarity on foreign Exchange loss claim. Therefore we considering the facts and submissions and the disclosure, Restore this disputed issue to the file of learned CIT (Appeals) to adjudicate afresh and allow this ground of appeal of Revenue for statistical purposes.

11. Ground No.3, the Id DR argued that the learned CIT (Appeals) has erred in directing the Assessing Officer to reduce the foreign exchange expenditure from both the export turnover and total turnover for the purpose of deduction under Section 10A of the Act. The Id. AR supported the orders of the learned CIT (Appeals) and Hon'ble jurisdictional High Court decision in the case of Tata Elxsi Limited Vs. CIT reported in 349 ITR 98. We found this issue was considered by the jurisdictional High Court in the case of Tata Elxsi Limited Vs. CIT (supra) and Id Cit(A) followed the Hon'ble High court decision and Granted Relief.

Accordingly we are not inclined to interfere with the order of Cit (A) and confirm the same and dismiss this ground of Appeal of the Revenue.

12. The Ld Dr argued on Ground of Appeal Nos.4 to 7, that the learned CIT (Appeals) has erred in selecting the comparables which are functionally different and the learned CIT (Appeals) erred in excluding E-infochip Ltd. in the absence of segmental data. whereas the learned Authorised Representative relied on the learned CIT (Appeals) order and the decision of Saxo India Pvt. Ltd. Vs. ACIT in IT (TP)A No.6148/Del/2015 Dt.5.2.2015 at page 22 paras 10.1 to 10.2 which is read as under :

“ (i) E-Infochips Limited:

10.1. The Transfer Pricing Officer included this company in the list of comparables. On being called upon to explain as to why it should not be considered as a comparable, the assessee contended that there was functional dissimilarity inasmuch as this company was engaged in software development and IT enabled services and also Products. The Transfer Pricing Officer observed that the revenues of this company from Products was only 15% of total revenue and hence the same qualified to be eligible for comparison. The DRP did not allow any relief.

10.2. After considering the rival submissions and perusing the relevant material on record, we find that the Annual report of this company is available in the paper book with its Profit and loss account at page 1025. Schedule of Income indicates its operating revenue from software development, hardware maintenance, information technology, consultancy etc. Revenue from hardware maintenance stands at Rs. 3.92 crore, which has been considered by the Transfer Pricing Officer himself as sale of products. Such sale of products constitutes 15% of total revenue. There is no segmental information available as regards the revenue from sale of products and revenue from software development segment. As the assessee is simply engaged in rendering software development services and there is no sale of any software products, this company, in our considered opinion, ceases to be comparable. It is obvious that from the common pool of income from both the streams of software products and software services, one cannot deduce the revenue from software services and no one knows the impact of revenue from Products on the overall kitty of profit, which may be significant. Since no segmental data of this company is available indicating operating profit from software development services, we order to exclude this company from the list of comparables.”

13. The ld. DR could not controvert the findings of the learned CIT (Appeals) and relied on the TPO order. Hence we find no merit in the submission of the ld. DR and confirm the order of the learned CIT (Appeals) on excluding the comparables.

15. The Ground Nos.8 & 9 are with respect to Working Capital Adjustment where the ld. DR has submitted that the learned CIT (Appeals) is not justified in allowing the Working Capital Adjustment where this issue was dealt in assessee's own case for the Asst. Year 2009-10 in IT(TP)A No.23/Bang/2015 and 61/Bang/2015 Dt.22.07.2015 at page 18 paras 13 & 14 read as under :

*“13. As regards ground No.3(f), learned counsel for the assessee submitted that the Assessing Officer/TPO while considering the working capital adjustment to be made while computing the ALP has arrived at the working capital adjustment in the case of the assessee at 5.97%, but while giving effect to the working capital adjustment, has restricted the said adjustment to 1.71%. The learned counsel for the assessee submitted that the TPO has not given any basis for such restriction of the Working Capital Adjustment. He submitted that the CIT (Appeals) also has not applied his mind to this issue but has summarily confirmed the order of the Assessing Officer and therefore it has to be set aside.*

*14. On going through the TPO's order as well as annexure D referred to in the transfer pricing order on Working Capital Adjustment, we find that the TPO has computed it at 5.97% but has not given any basis for restricting the adjustment to 1.71%. In various cases relating to transfer pricing adjustment, this Tribunal has been directing to give Working Capital Adjustment on actual basis and the TPO having arrived at 5.97%, ought to have adopted the same instead of restricting it to 1.71%. in view of the same, we deem it proper to remand this issue to the file of the TPO/A.O. for working out the ALP after giving adjustment of working capital as per the calculation of the A.O. in annexure D annexed to the transfer pricing order. This ground of appeal is accordingly allowed.”*

16. we considering the coordinate Bench decision, Restore the disputed issue to the file of learned CIT (Appeals) to adjudicate fresh on granting the Working Capital Adjustment and allow the ground of appeal of revenue for statistical purposes.

17. In the result, the revenue's appeal is partly allowed for statistical purposes.

18. In the Result , the assessee's appeal and revenue's appeal are partly allowed for statistical purposes.

Order pronounced in the open court on 10th Jan., 2020.

Sd/-

**(A.K. GARODIA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Dated: 10.01.2020.

\*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore