

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH : BANGALORE**

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

**ITA No.1516 & 1568/Bang/2018**

**Assessment year : 2011 – 12**

M/s. Infinera India Pvt. Ltd., No. 401, Level 4, Prestige Solitaire No. 6, Brunton Road, Ashok Nagar, Bengaluru – 560 025. <b>PAN : AABCI1411R</b>	vs.	ITO, Ward – 3 (1) (4), Bengaluru.
APPELLANT		RESPONDENT

and

JCIT, Spl. Range – 3, Bengaluru.	vs.	M/s. Infinera India Pvt. Ltd., No. 401, Level 4, Prestige Solitaire No. 6, Brunton Road, Ashok Nagar, Bengaluru – 560 025. <b>PAN : AABCI1411R</b>
APPELLANT		RESPONDENT
Assessee by	:	Shri. Sumeet Khurana, CA
Revenue by	:	Shri. Pradeep Kumar, CIT (DR)(ITAT), Bengaluru
Date of hearing	:	17.02.2020
Date of Pronouncement	:	13.03.2020

**ORDER**

***Per A. K. Garodia, Accountant Member***

These two appeals are cross appeals filed by the revenue and the assessee and these are directed against the Order of CIT (A) – 3 Bengaluru dated 08.03.2018 for the Assessment Year 2011 – 12.

2. In course of hearing, learned AR of the assessee submitted that in the appeal filed by the assessee, there are 8 grounds and in Ground No. 6, there are 4 sub grounds but the assessee wants to press only Ground No. 6.1 and

6.4 and remaining grounds are not pressed. Accordingly, remaining grounds are rejected as not pressed. He submitted that as per these grounds i.e. Ground No. 6.1 and 6.4, the assessee is requesting for exclusion of four comparable i.e. Acropetal Technologies Ltd., eZest Solutions limited, Infosys Limited and Persistent System Limited. and inclusion of 2 comparable i.e. M/s Asian Business Exhibitions and Conferences limited & ICC International Agencies Limited and, in the appeal filed by the revenue, the revenue is challenging two exclusions allowed by CIT (A) i.e. M/s ICRA Techno Analytics Ltd. And M/s Tata Elxsi Limited. He submitted a chart about his arguments in respect of four exclusions being requested by the assessee and two exclusions being opposed by the revenue and pointed out that the issue regarding these six exclusions is covered in favour of the assessee by the tribunal order rendered in the case of Electronic Imaging India Pvt. Ltd. In IT (TP) A No. 1506/Bang/2015 dated 14.07.2017 for the same Assessment year and also submitted that copy of this tribunal order is available on pages 1489 to 1518 of the paper book and relevant Para Nos. are mentioned in the chart. Regarding the request of the assessee for two inclusions, he submitted that arguments in this regard are on pages 8 & 9 of the same chart and the same tribunal order rendered in the case of Electronic Imaging India Pvt. Ltd. (Supra) is relevant for inclusion request also. Learned DR of the Revenue supported the assessment order.

3. We have considered the rival submissions and we find that as per Para 9 of the order of TPO, 13 comparable were selected by TPO out of which, learned CIT (A) has excluded two comparable i.e. M/s ICRA Techno Analytics Ltd. and M/s Tata Elxsi Limited. and for that, the revenue is in appeal. Out of the remaining 11 Comparable, the assessee is seeking exclusion of 4 comparable i.e. Acropetal Technologies Ltd., eZest Solutions

limited, Infosys Limited and Persistent System Limited. The tribunal order cited by the learned AR of the assessee rendered in the case of Electronic Imaging India Pvt. Ltd. (Supra) is for the same year and functional profile is also same and hence, we respectfully follow this tribunal order and hold that these six comparable are not good comparable in the present case also. We also hold that two comparable i.e. M/s Asian Business Exhibitions and Conferences limited & ICC International Agencies Limited should not be included in the final list of comparable and in this regard also, we follow the same tribunal order cited by the learned AR of the assessee because in para 13 and 16 of this tribunal order, these comparable were excluded.

4. In the result, appeal of the assessee is partly allowed and the appeal of the revenue is dismissed.

*Pronounced in the open court on the date mentioned on the caption page.*

**(PAVAN KUMAR GADALE)**  
**Judicial Member**

Bangalore,

Dated: 13<sup>th</sup> March, 2020.

/NS/\*

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

By order

Assistant Registrar,  
ITAT, Bangalore.