

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

IT(TP)A No.257/Bang/2015
Assessment Year: 2010-11

ITO Ward-2(1)(1) Bengaluru	<b>Vs.</b>	M/s. Core One Technologies Pvt. Ltd. (Formerly M/s. CAPCO IT SERVICES India Pvt. Ltd.) Symphony Teleca, 6 <sup>th</sup> Floor No.5A, Pritech SEZ Park Bellandur Outer Ring Road Ecospace Campus Bengaluru-103.
<b>PAN NO : AACCC1734G</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>

IT(TP)A No.556/Bang/2015
Assessment Year: 2010-11

M/s. Core One Technologies Pvt. Ltd. (Formerly M/s. CAPCO IT SERVICES India Pvt. Ltd.) Symphony Teleca, 6th Floor No.5A, Pritech SEZ Park Bellandur Outer Ring Road Ecospace Campus Bengaluru-103.	<b>Vs.</b>	ITO Ward-2(1)(1) Bengaluru
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Muzaffar Hussain, D.R.
<b>Respondent by</b>	:	Shri Bharath. L., A.R.

Date of Hearing	:	23.07.2020
Date of Pronouncement	:	24.07.2020

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

These cross appeals are directed against the order passed by the A.O. for assessment year 2010-11 u/s 143(3) r.w.s. 144C (13) of the Act in pursuance of directions issued by Ld Dispute Resolution Panel (DRP) .

2. The grounds urged in appeals of both parties relate to the transfer pricing adjustment made by AO/TPO.

3. The assessee is engaged in the business of software designing, programming, development, testing and related services.

4. At the outset, both the parties submitted that the tax effect involved in the grounds urged by the revenue in its appeal is less than Rs.50.00 lakhs. Accordingly it was submitted that, as per the CBDT circular No.17/2019 dated 8.8.2019, the revenue is precluded from pursuing the present appeal. In view of the above submissions, we dismiss the appeal of the revenue in limini.

5. In the appeal filed by the assessee, various grounds relating to transfer pricing adjustment have been raised. The assessee has also raised additional grounds, inter alia, challenging the negative working capital adjustment made by the TPO.

6. The Ld. A.R. submitted that the assessee's international transaction would be at arms length, if

negative working capital adjustment made by the TPO is deleted. The Ld. A.R. submitted that the assessee's plea is supported by the decision rendered by the Bangalore Bench of Tribunal in the case of IZMO Ltd. (formerly Logis Microsystems Ltd.) Vs. DCIT (IT(TP)A No.453/Bang./2015 and IT(TP)A No.186/Bang/2016 dated 29.1.2020).

7. The Ld. A.R. submitted that, prima facie, the adjudication of remaining grounds may not be required. However, the assessee may be given liberty to move appropriate petition to urge the remaining grounds, in case even after deletion of negative working capital, any part of addition is sustained.

8. We heard the parties on this issue and perused the record. We notice that the issue of negative working capital has been examined by the Bangalore bench of Tribunal in the case of IZMO ltd. (supra) and it was held that the negative working capital adjustment ought not to have been made by the TPO. In this regard, the Tribunal has placed its reliance on the decision rendered by another coordinate bench in the case of FNF India Pvt. Ltd. (IT (TP)A No.195/Bang/2016 and 459./Bang/2017 dated 3.7.2019). For the sake of convenience, we extract below the relevant observations made in the case of IZMO Ltd.(supra).

20. We have considered the rival submissions and are of the view that the negative working capital adjustment ought not to have been made by the TPO. The Bangalore Bench of ITAT in IT(TP)A Nos.195/Bang/2016 & 459/Bang/2017 for Assessment years: 2011-12 & 2012-13 in the case of *FNF India Private Limited Vs. ACIT order dated 3.7.2019* had an occasion to deal with identical issue and the Tribunal held as follows:

"14. In Gr.No.11 the Assessee has contended that the TPO and the DRP erred in adding to the average arithmetic profit margin of the comparable companies chosen by the TPO, negative working capital adjustment. On the above ground, it is undisputed that the Hyderabad Bench of the ITAT in ITA.No. 206/Hyd/2014 for Assessment Year 2009-2010 in the case of *Adaptec (India) P. Ltd. Vs. The ACIT, Circle 1(1), order dated 25.3.2015* held that no such addition can be made for the following reasons:-

"Ground No.8 pertains to the issue of negative working capital. As briefly stated above, after arriving at the arithmetic mean of all comparables at 22.03%, the A.O. worked out negative working capital adjustment of 3.22% thereby, making arms length price at 25.25%. Even though, DRP refused to interfere with the objections of the assessee in its order, we were informed that DRP has directed the TPO/A.O. not to make any negative working capital adjustment in some of the cases in the next assessment year, in the cases of *Market Tools Research P. Ltd.*, and *Mega Systems Worldwide India P. Ltd.*, assessee placed on record copies of orders of DRP. In that DRP considered the issue and directed the TPO as under :

"14. Ground No.11 : Negative Working Capital adjustment

- Making a negative working capital adjustment without appreciating the fact that the company does

not bear any working capital risks. On this issue, the assessee submitted as under :

"The learned TPO determined the ALP for the international transactions with A.Es by making a negative working capital adjustment for the differences in working capital between the assessee and the companies considered as comparables. The assessee does not agree with the learned TPO as the company does not bear any working capital risk since it is been fully funded by it's A.E. from its inception and has no working capital contingencies. The company has never taken any loans till date from the date of incorporation nor has incurred any expense for meeting the working capital requirement."

We have gone through the submissions and the order of the TPO. The assessee pleaded that the DRP has acceded such a plea in some other case. On examination, we find that the DRP, Hyderabad in the case of Cordys Software India P. Ltd., for A.Y. 2008-09 in its directions dated 03.08.2012 has given a finding as under :

"7.7. 4 Thus, working capital adjustment is made for the time value of money lost when credit time is provided to the customers. The applicant is not an entrepreneur but a captive service provider. Its entire funding needs are provided by the A.E. This being so, the applicant does not stand to lose anything as it is compensated on a total cost plus basis. The TPO probably was carried away by the large amount of receivables appearing in the books of the applicant. But the applicant is running its business without any working capital risk while comparable companies have such a risk for them. If at all any working capital adjustment is to be made to this situation, only a positive adjustment has to be made to the comparables so that they are brought IT(TP)A No. 195/Bang/2016 & 459/Bang/2017 on par with the applicant. In view of the same, the Panel directs that negative working capital adjustment to

the arithmetic mean margin of the comparables shall not be made."

In view of the above, the Panel directs that negative working capital adjustment to the arithmetic mean margin of the comparables shall not be made."

15. In view of the above, we are of the opinion that assessee's case being similar, there is no need for making any negative working capital adjustment when assessee does not carry any working capital risk. In fact, TPO should have done necessary working capital adjustment to the profits of the selected comparables so as to make them comparable to the assessee. In view of this, we direct the TPO not to make negative working capital adjustment."

16. It is undisputed that the Assessee is also a captive service provider such as the Assessee in the case decided by the ITAT Hyderabad Bench and therefore making a negative working capital adjustment without appreciating the fact that the company does not bear any working capital risks, was not correct. Following the aforesaid decision, we allow Gr.No.11 raised by the Assessee. All other grounds relating to Transfer Pricing were not pressed. The grounds with regard to Charging of interest u/s.234A and 234 B of the Act has been challenged on the ground of improper computation. The AO is directed to verify the correctness of the claim of the Assessee and if found correct compute correct liability of interest u/s.234A and 234 B of the Act."

21. Respectfully following the aforesaid decision of the Tribunal, we hold that the action of the revenue authorities in making negative working capital adjustment and increasing the profit margin of the average arithmetic profit margin of comparable companies chosen, is not sustainable in the facts and circumstances of the present case which is identical to the case decided by the Tribunal in the case of *FNF India Private Limited (supra)*. The relevant ground of appeal of the Assessee is allowed.)

9. Respectfully following the aforesaid decision of the Tribunal, we hold that the action of the revenue authorities in making negative working capital adjustment and thereby increasing the average arithmetic profit margin of comparable companies is not sustainable in the facts and circumstances of the present case, which is identical to the case decided by the Tribunal in the case of FNF India Pvt. Ltd. (supra). Accordingly, this ground of the appeal is allowed.

10. Since the assessee has stated that the adjudication of other grounds may not be necessary, if ground relating to negative working capital adjustment is decided in its favour, we decline to adjudicate other grounds urged by the assessee. However, as requested, we give liberty to the assessee to move appropriate petition in accordance with law for adjudication of other grounds, if it is so warranted.

11. In the result, the appeal of the revenue is dismissed and the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 24.07.2020.

**Sd/-**  
**(N.V. Vasudevan)**  
**Vice President**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 24<sup>th</sup> July, 2020.  
VG/SPS

**Copy to:**

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

By order

**Asst. Registrar,  
ITAT, Bangalore.**